

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

R. Markley Dennis, Jr., Circuit Court Judge

JOHN G. KIMBLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213572

APPENDIX

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	)	
COUNTY OF GREENVILLE	)	Case No(s) : 09-GS-23-00476;
	)	09-GS-23-00477;
State of South Carolina,	)	09-GS-23-00478;
	)	10-GS-23-02717
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
John G. Kimble,	)	
	)	
Defendant.	)	
	)	

June 8-9, 2010
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

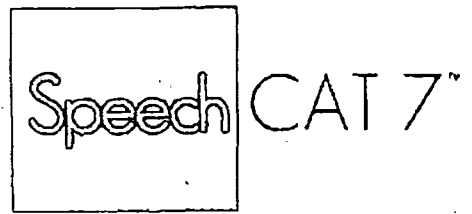
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P R O C E E D I N G S

(WHEREUPON, the proceedings begin at approximately 9:46 a.m.)

THE COURT: All right.

MS. SUSTAKOVITCH: May it please the Court, Your Honor, good morning.

THE COURT: Yeah.

MS. SUSTAKOVITCH: Uh, the State is before you on the matter of John Kimble. He is charged under Indictment 2009-GS-23-0477 for Armed Robbery. He is also charged under Indictment 2009-GS-23-0478 for Armed Robbery. He is charged under Indictment 2009-GS-23-0476, Burglary in the First degree and Indictment 2010-GS-23-2717, Possession of a Weapon During the Commission of a Violent Crime. The State is prepared and ready to proceed at trial today, Your Honor. We'd like to make a motion to try this Defendant in his absence at the appropriate time. My understanding is that he is not present. I will let the defense respond and then make my motion.

THE COURT: Mr. Harbin.

MR. HARBIN: Uh, I can confirm that I don't see him here this morning. I've gone upstairs and made sure he's not wondering around in the

1 wrong place. I have spoken with him as recently
2 as yesterday evening. In fact, we were
3 discussing the possibility of him pleading very
4 seriously. So I'm surprised he's not here this
5 morning. He's come to court every time he's been
6 asked to. I'm not aware of him missing roll call
7 or anything. Excuse me. Obviously, whenever she
8 makes her motion for TIA, I would make a motion
9 to simply issue a bench warrant and allow him to
10 defend himself. These are two most serious
11 charges.

12 **THE COURT:** Yeah. You've already made your
13 motion but you have to add to it? Anything you
14 want to say? I don't want to cut you off.

15 **MS. SUSTAKOVITCH:** Your Honor, I did want to
16 put some things on the record.

17 **THE COURT:** Okay.

18 **MS. SUSTAKOVITCH:** A little bit of a summary
19 of who this Defendant is. He is a very dangerous
20 person. The charges before you are from August
21 30th of 2008. They involve two Hispanic victims,
22 one of which is not present. The other one is
23 here. He's very scared. He does not want to be
24 here. I can tell you that if this trial happens
25 six months from now, I have no idea if we'll ever

1 see him again.

2 This Defendant was also charged the next day
3 with another Armed Robbery on August 31st of
4 2008. He was charged with four counts of
5 Pointing and Presenting, four counts of
6 Kidnaping, three counts of Armed Robbery and
7 another Burglary first for robbing another set of
8 Hispanic victims. We -- and I'll be completely
9 candid. We can not find any of them.

10 Next, last summer, he robbed more Hispanic
11 victims on June 21st, 2009, one count of Armed
12 Robbery, Assault and Battery with Intent to Kill,
13 Possession of a Weapon during Commission of a
14 Violent Crime and Conspiracy. And, Your Honor,
15 we don't have those victims.

16 What this is boiling down to, the State's
17 position is this Defendant is playing a game with
18 the system.

19 **THE COURT:** How did he get out of jail?

20 **MS. SUSTAKOVITCH:** Well, that's a very good
21 question. I have no idea other than to say --
22 and I think defense -- well, I think the
23 Defendant truly believes or believed that these
24 victims wouldn't come today. And I think he's
25 playing the system hoping that if this case does

1 not go forward today, a bench warrant would be
2 issued and then --

3 THE COURT: What's his bond?

4 MS. SUSTAKOVITCH: His bond?

5 MR. HARBIN: Judge, if I can, I believe that
6 the total of the charges he has active was
7 somewhere in the \$150,000 range.

8 MS. SUSTAKOVITCH: Right.

9 MR. HARBIN: I believe that, uh, most, if
10 not all of that, was put up by some kind of
11 family property. Actually, I take that back.
12 One of the sets of charges, I believe, was
13 accounted for. Maybe as collateral for payment
14 later, I'm not sure. But I asked them, frankly
15 because this is an appointed case, I asked him
16 how he made that bond. So that's the
17 recollection of the conversation I had about
18 that.

19 MS. SUSTAKOVITCH: Just in closing, I wanted
20 to mention that the State has notified this
21 Defendant, has sent proper notice to his
22 addresses that are listed on his bond sheet.

23 THE COURT: Well, if we do this, you're
24 going to have to put it up through evidence.

25 MS. SUSTAKOVITCH: Okay.

1 **THE COURT:** Sound his name and all that
2 stuff. Who are his bondsmen? I want those
3 people here. We going to take their property.

4 **MS. SUSTAKOVITCH:** Your Honor, I believe
5 defense counsel also spoke with him verbally
6 yesterday. He knew this case was going.

7 **THE COURT:** Okay. Who are the bondsmen?
8 That's what I want to know. I want to get them
9 up here.

10 **MR. HARBIN:** Judge, I'm not sure. I have a
11 copy of the bond sheet.

12 **THE COURT:** Okay.

13 **MS. SUSTAKOVITCH:** All right. It looks like
14 Cathy Stoddlemeyer, Alliance Bond Company. That
15 would be on the charges for trial. We also sent
16 notice to Catch-22 Bail Bonds, which would be on
17 his other set of charges, just as a precaution.
18 We sent notice to Mr. Harbin. We sent notice to
19 29 Lakeview in Travelers.

20 **THE COURT:** Right, I mean, you're going to
21 have to do all that at the right time.

22 **MS. SUSTAKOVITCH:** Yes, sir.

23 **THE COURT:** Right now, I would ask that you
24 contact this bondsperson. How much was the bond
25 on these specific charges? Do you know?

1 MS. SUSTAKOVITCH: This one was a \$30,000
2 bond.

3 THE COURT: Well, that person needs to know
4 that that bond is going to get gone. They may,
5 uh, --

6 MS. SUSTAKOVITCH: This would be Cathy
7 Stoddlemeyer. We can try to contact her.

8 THE COURT: Yeah, let's get in touch with
9 her ---

10 MS. SUSTAKOVITCH: All right.

11 THE COURT: --- before we decide exactly
12 what to do.

13 MS. SUSTAKOVITCH: Thank you, Judge.

14 THE COURT: You might call these other bond
15 -- if he was bond-carded in from some other case,
16 call them too. They might know. Okay. Thanks.
17 All right.

18 (WHEREUPON, a short recess is taken.)

19 MR. HARBIN: He said that when a deputy went
20 to their house, there were children at the house.
21 Children said that he knew he was supposed to be
22 here and he's on his way.

23 THE COURT: When was that? Do you know?

24 MR. HARBIN: I don't believe they got that
25 detail.

1 **MS. SUSTAKOVITCH:** The officer just left his
2 house, I would say about 15 minutes. We do have
3 Scott Willis here from Palmetto Security. He
4 could provide information to the court related to
5 Catch 22 which is one of two bonding companies
6 for Mr. Kimble's various charges.

7 **THE COURT:** All right.

8 **MS. SUSTAKOVITCH:** The State calls Scott
9 Willis.

10 **THE COURT:** Well...

11 **MS. SUSTAKOVITCH:** Well, no. Do you want
12 testimony from him, Judge?

13 **THE COURT:** Well, you want to do this TIA,
14 right?

15 **MS. SUSTAKOVITCH:** Yes, sir. And we can
16 wait on Mr. Kimble if you want.

17 **THE COURT:** No, if he shows up, we'll let
18 him come in. Let's go ahead and get whatever
19 information we can get.

20 **THE CLERK:** All right. Please come forward.
21 If you would, please place your left hand on the
22 Bible and raise your right hand.

23 **SCOTT WILLIS**

24 having first been sworn, testifies as follows:

25 **THE CLERK:** Thank you. Please be seated.

1 Please state your full name for the record.

2 THE WITNESS: Scott B. Willis.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. SUSTAKOVITCH:

6 Q Good morning, Mr. Willis. Where are you
7 employed?

8 A With Palmetto Surety Corporation.

9 Q And what is your position there?

10 A I'm the Chief Operating Officer.

11 Q What does Palmetto Security -- Surety,
12 rather, do?

13 A We're a traditional insurance provider in the
14 state of South Carolina and Florida. We underwrite
15 surety bonds.

16 Q All right. Are you familiar with a Defendant
17 by the name of John Kimble?

18 A I am.

19 Q And is your company, uh, familiar with the
20 original bondslady on Mr. Kimble's charges, Cathy
21 Stoddlemeyer with Alliance Bonding?

22 A I am.

23 Q Can you give us a little information about
24 her background?

25 A She was a licensed insurance agent in the

1 state of South Carolina in, I believe, October of
2 2008. She applied for surety with Palmetto Surety
3 Corporation through the line of bail. She was granted
4 that in the end of 2008. And she worked for
5 approximately a month and a half.

6 Q Mr. Kimble, I have a bond sheet for the
7 charges that he's being called to court today for.
8 And, uh, she is listed as the bondslady. Was she ever
9 suspended, I guess, and not -- is she currently
10 writing bonds?

11 A She is not currently writing bonds through
12 Palmetto Surety Corporation, no.

13 Q Who has her bonds now?

14 A Uh, we suspended Ms. Stoddlemeyer in January
15 of 2009 due to some violations of the underwriting
16 procedures. We sent that to the state. It was
17 granted and she stopped January the 20th of 2009.

18 Q All right. And her cases were then
19 transferred to who?

20 A It was transferred to another licensed agency
21 in the state. They were transferred to Aces High.

22 Q And then can you verify that Ms. Stoddlemeyer
23 -- a bond card was sent by the Solicitor's office to
24 give notice to Mr. Kimble to Cathy Stoddlemeyer at
25 McGee Road in Anderson, South Carolina, 29625. Uh,

1 can you testify that Aces High was getting mail
2 forwarded from that address to them?

3 A That is correct.

4 Q All right. Then secondarily, you can't state
5 whether Aces High received this, but you can state
6 that Cathy Stoddlemeyer's mail from this address,
7 which the Solicitor's office has, was being forwarded
8 to Aces High. Is that correct?

9 A That's correct.

10 Q Then, as to Catch 22, that's the bonding
11 company for a second set of charges that Mr. Kimble
12 was bond-carded to court today for. What is your
13 relationship with Catch 22?

14 A We are also an underwriter for Catch 22 for a
15 line of bail in South Carolina.

16 Q And can you give us some information about
17 Catch 22 and the bond card that was sent out to them
18 also for today to have Mr. Kimble be in court?

19 A Yes, I did. After we spoke this morning, I
20 made contact with Catch 22, a gentleman by the name of
21 Ryan who actually wrote the bond. He stated that they
22 did make a home visit on May the 11th. He was at
23 home. Did a residence check --

24 Q And I want to correct you, it's not May 11th
25 yet. I'm sorry. It is -- go ahead. May 11th.

1 A On May 11th, they did a home visit, saw the
2 Defendant, spoke with him, did their home visit and
3 left. Uh, further conversation revealed that they did
4 have a bond card in their file and they were able to
5 pull that out today. They said that they did speak to
6 the aunt on June 1st and also relayed that to him by
7 phone shortly after that day.

8 Q All right.

9 THE COURT: That was to appear when?

10 BY MS. SUSTAKOVITCH:

11 Q To clarify what your testimony was, Catch 22
12 received a bond card for today, June 8th, 2010, for
13 Mr. Kimble. They are a second bonding company on his
14 charges, correct?

15 A That is correct.

16 Q You spoke with -- first, you went out to his
17 home for a home visit on May 11th, 2008?

18 A They did.

19 Q They did. Catch 22 did?

20 A That's correct.

21 Q And who did they speak with on May 11th?

22 A Spoke to Mr. Kimble.

23 Q Spoke to Mr. Kimble to make sure that that
24 was his correct address. Where did they go on May
25 11th?

1 A When I spoke to them, that's when they said
2 to his residence. I can not say what the residence
3 actually was.

4 Q Okay. All right. Uh, that would probably be
5 what he had listed on his bond sheet, Lake Loop in
6 Travelers Rest?

7 A I would assume, yes.

8 Q All right. As far as you stated, you just
9 had conversation this morning related to knowledge
10 that he was supposed to be in court today. Could you
11 relay that to the court.

12 A Ryan and Craig with Catch 22 bonding agency.
13 They stated they did speak to an aunt on June the 1st
14 about receiving their card. She confirmed that she
15 was aware of it. He advised a few days after that
16 that he spoke with Mr. Kimble and relayed the court
17 date as well.

18 THE COURT: And that date was?

19 THE WITNESS: June 8th.

20 MS. SUSTAKOVITCH: For today. June 8th.

21 THE COURT: Okay.

22 MS. SUSTAKOVITCH: All right. Please answer
23 any questions defense counsel has.

24 CROSS-EXAMINATION

25 BY MR. HARBIN:

1 Q Catch 22 is actually the surety that -- the
2 charges that are not on the trial docket today. I'm
3 not sure if you have been explained exactly which ones
4 they are. But is that your understanding as to the
5 charge, that they are not being tried today?

6 A I'm not sure.

7 MR. HARBIN: Do you have the information --
8 Judge, it's going to take a little longer to
9 do this. (Pause.) May I approach, Judge?

10 THE COURT: Sure.

11 MS. SUSTAKOVITCH: Judge, here are the bond
12 cards.

13 MR. HARBIN: Okay.

14 BY MR. HARBIN:

15 Q This right here -- this lady here, these --
16 just for the record, this is Cathy Stoddlemeyer with
17 Alliance Bonding. This is for a warrant number ending
18 in 163 -- let's see. 476163. That's the charges that
19 are on trial for today. This -- and you can tell me
20 if what I'm saying is correct. This is the bond sheet
21 that now is being handled by Catch 22, is that
22 correct?

23 A That's correct.

24 MR. HARBIN: And these charges, for the
25 record, Judge, are 09-10617, which are not the --

1 the point is these are not the charges that are
2 being on trial.

3 BY MR. HARBIN:

4 Q Your testimony earlier was that Catch 22
5 confirmed that he knew he had a court date, correct?

6 A Correct.

7 Q So Catch 22 confirmed that he knew he had a
8 court date for the charges that were not on the trial
9 docket?

10 A I'm not sure what charges. I just know they
11 said they had a card in his file and they contacted
12 him.

13 Q Catch 22 is the one that said that they
14 confirmed that?

15 A Correct. Yes, sir.

16 MR. HARBIN: That's all I have, Judge.

17 THE COURT: Okay.

18 MS. SUSTAKOVITCH: Nothing further.

19 THE COURT: How much money is he -- how much
20 are the bonds? Do you know?

21 THE WITNESS: Yes, sir. One is for \$30,000.
22 That was the December 20th, 2008. And the
23 February 2nd of this year is \$65,000.

24 THE COURT: So a total of \$95,000, is that
25 right?

1 **THE WITNESS:** That's correct.

2 **THE COURT:** And \$30,000 is by Aces High?

3 **MS. SUSTAKOVITCH:** That's for the charges
4 today, Your Honor.

5 **THE COURT:** Okay. All right. Thanks.

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Appreciate it.

8 All right. Anything else?

9 **MS. SUSTAKOVITCH:** Nothing further, Your
10 Honor.

11 **THE COURT:** All right. I want to make --
12 yeah, Mr. Harbin.

13 **MR. HARBIN:** I was just -- the point I was
14 trying to make, and I apologize because he
15 doesn't know the exact warrant numbers is that if
16 I'm making what might be a hypertechnical
17 argument, his notice that he confirmed today was
18 Catch 22 was responsible for getting him here on
19 nontrial-related.

20 **THE COURT:** Okay. Have we sounded his name
21 three times in the halls of the courthouse?

22 **MS. SUSTAKOVITCH:** Yes, sir. A
23 representative from the Solicitor's office did.

24 **THE COURT:** Put them up and get it under
25 oath.

1 MS. SUSTAKOVITCH: Yes, sir. Melita Green
2 is on the way.

3 THE COURT: Okay.

4 MS. SUSTAKOVITCH: I'm sorry. Lindsey
5 Kicklighter can also testify. She sounded his
6 name upstairs as well. The State calls Lindsey
7 Kicklighter.

8 THE COURT: All right. Come on around.

9 THE CLERK: Please raise your right hand.

10 LINDSEY KICKLIGHTER

11 having first been sworn, testifies as follows:

12 THE CLERK: Thank you. Please be seated. And
13 please state your name for the record.

14 THE WITNESS: Lindsey Kicklighter.

15 DIRECT EXAMINATION

16 BY MS. SUSTAKOVITCH:

17 Q Ms. Kicklighter, where are you employed?

18 A The Greenville County Solicitor's Office.

19 Q What is your position there?

20 A I'm an investigator.

21 Q Whose investigator are you?

22 A Yours and Jeff Weston.

23 Q All right. Did you sound John Kimble's name
24 three times upstairs in the courthouse related to his
25 appearance today in court?

1 A Yes, ma'am.

2 Q And what was the result of that?

3 A He did not respond.

4 Q I'm also showing you -- recognize what I'm
5 showing you?

6 A Yes, ma'am.

7 Q What are those?

8 A Bond cards.

9 Q Who sent those bond cards out?

10 A I did.

11 Q Where did you send the bond cards to?

12 A You want me to tell you the address?

13 Q Yeah, if you'll just state it on the record.

14 A One went to Cedar Lane Road, Apartment
15 , 29611 for John Kimble. One went to his attorney,
16 Chase Harbin, Catch 22 Bail Bonds, Cathy Stoddlemeyer
17 with Alliance Bonding -- sorry -- and another to John
18 Kimble at Lake Loop, Travelers Rest, 29690.

19 Q And if you'll look at this bond sheet on that
20 last address. Will you tell me whose home address is
21 Lake Loop in Travelers Rest?

22 A Mr. Kimble.

23 Q All right. Nothing further.

24 THE COURT: All right. Any exam?

25 MR. HARBIN: No questions.

1 THE COURT: Okay. All right. Any motions?

2 MS. SUSTAKOVITCH: Yes, sir. Are we done
3 with the TIA part? Are you asking for pretrial
4 matters?

5 THE COURT: No, I'm not asking for pretrial
6 matters. I just want to know if there's anything
7 else before we go forward?

8 MS. SUSTAKOVITCH: No, sir. Nothing
9 further.

10 THE COURT: Anything?

11 MR. HARBIN: Yes, sir, Judge. I would make
12 a motion to deny the TIA and instead issue a
13 bench warrant. To begin with, our last -- excuse
14 me -- witness, he wasn't technically notified or
15 we can't confirm he was notified for trial. We
16 can confirm his expectation would be if he missed
17 a roll call, he would get a bench warrant.

18 I guess the more practical argument, Judge,
19 is really that these are two most serious
20 offenses. One carries life in prison. He has
21 reported for every roll call he's had. And it's
22 been many because this has been going on for a
23 while. I understand the State's position about
24 their witnesses, but that's not my
25 responsibility. It honestly, kind of, perhaps

1 speaks to the case as well. I don't know that
2 simply because they are having trouble holding on
3 to a witness should detract from the importance
4 of having my client here to help defend themselves
5 against charges that are honestly this great and
6 with this much consequence. I would ask that the
7 TIA motion be denied and there be a bench warrant
8 issued for his failure to appear here.

9 THE COURT: Okay. Normally, I would, uh, --
10 I'm not in favor of trials in the absence, but
11 under these unusual circumstances, I'm going to
12 allow this case to move forward. It has
13 previously been reported to me that he was, uh,
14 notified of this trial date on these charges --
15 I certainly would not -- by his attorney,
16 speaking to the Court as an officer of the court.
17 He knew he was supposed to be here and he didn't
18 show up. He will just have to face the
19 consequences. Okay. Now, what else before we get
20 a jury up here?

21 MS. SUSTAKOVITCH: Your Honor, the State
22 does have a Neil versus Biggers hearing related
23 to the photographic lineup and, very briefly, a
24 motion to amend one of the indictments. I guess
25 the first one, the motion to amend the

1 indictment, the Burglary first indictment, Your
2 Honor, it states he did enter the home of Juan
3 Garcia located at Little Rio Road. The State
4 would just ask that that be changed to "did enter
5 a home located at Little Rio Road in Marietta,
6 South Carolina". We're not going to be able to
7 prove that Juan Garcia actually lived there. I
8 think what we will be able to prove is he stayed
9 there off and on, but there was never a
10 requirement that we prove he lived in the
11 dwelling, just that it was a dwelling. That's a
12 minor change. I just wanted to bring that up.

13 **MR. HARBIN:** Judge, I would say that one of
14 the elements they are going to have to prove is
15 that he didn't have permission to be in the home.
16 So it's not inconsequential who lived there and,
17 therefore, who would give or deny permission to
18 be in the home.

19 **THE COURT:** Yeah, under these circumstances,
20 I'm going to deny your motion to amend it. Uh,
21 I'm going to deny it. We'll just go with this
22 indictment. Whether or not you can prove Juan
23 Garcia live there or not is not essential to the
24 proof of your case.

25 **MS. SUSTAKOVITCH:** Okay.

1 THE COURT: All right. Anything else?

2 MS. SUSTAKOVITCH: Uh, next would be the
3 Neil versus Biggers hearing.

4 THE COURT: Well, anything before we pick a
5 jury. This jury has been waiting.

6 MS. SUSTAKOVITCH: No, sir.

7 THE COURT: Okay. Y'all got any voir dire
8 or anything?

9 MS. SUSTAKOVITCH: None from the State.

10 MR. HARBIN: Nothing from the defense, Your
11 Honor.

12 THE COURT: All right. I have a witness
13 list from the State.

14 MS. SUSTAKOVITCH: Yes, sir.

15 MR. HARBIN: Judge, we don't expect to call
16 anybody.

17 THE COURT: Okay. All right. Well, let's
18 go ahead, Mary.

19 THE CLERK: Yes, sir.

20 (WHEREUPON, there is a pause.)

21 MS. SUSTAKOVITCH: Very brief. I need to
22 put up Omar Arcos.

23 THE COURT: You think we could get that done
24 Mary before the jury?

25 THE CLERK: It would probably take a few

1 minutes for them to pick them.

2 THE COURT: All right. Let's go ahead with
3 the Neil v. Biggers then.

4 (WHEREUPON, State's Exhibits 1 through 5 are
5 marked for identification purposes.)

6 MS. SUSTAKOVITCH: Your Honor, the State
7 calls Omar Arcos.

8 THE COURT: Okay. Come around and be sworn.

9 MS. SUSTAKOVITCH: Oh, and I apologize,
10 Judge. We do have an interpreter that needs to
11 be sworn for this witness.

12 THE COURT: Okay.

13 (WHEREUPON, Elizabeth Giersberg, the interpreter,
14 is duly sworn.)

15 OMAR ARCOS

16 having first been sworn, testifies as follows:

17 THE CLERK: Thank you. Please be seated.
18 Please state your full name for the record.

19 THE INTERPRETER: Omar Garcia Arcos.

20 THE CLERK: Thank you.

21 (WHEREUPON, the following answers are translated
22 by the interpreter.)

23 DIRECT EXAMINATION

24 BY MS. SUSTAKOVITCH:

25 Q Mr. Arcos, would you please let me know if I

1 speak to fast or if I need to slow down.

2 **A** Okay.

3 **Q** If there's anything you don't understand, if
4 you will, please stop the interpreter and ask for the
5 question to be repeated.

6 **A** (No response.)

7 **Q** You need to verbalize your answers.

8 **A** Oh, yes, yes.

9 **Q** How old are you, Mr. Arcos?

10 **A** 28.

11 **Q** And just directly to the photographic lineup,
12 did an incident happen where you were the victim of a
13 crime on August 30th of 2008?

14 **A** Yes, yes, of course.

15 **Q** What were you doing that day?

16 **A** That day, I arrived at my friend's house at
17 around 6:30 p.m. and then -- and then I heard my car
18 was not running very well. So I lifted the hood and I
19 was there. And then I was working on my car. I saw a
20 car that went by behind me. And I really thought that
21 was suspicious. I went into my friend's house and told
22 him not to come out.

23 **Q** What was the location of your friend's house
24 that you were parked in front of?

25 **A** You mean the location -- what do you mean?

1 Q Where the trailer was, where his friend Juan
2 lives.

3 A Well, I was like this and the trailer was
4 about 15 feet away.

5 Q Was the location on Little Rio Road in
6 Greenville County?

7 A Uh-huh. In Marietta, yes.

8 Q When you saw the car come by, what happened
9 next?

10 A I went inside. I told him not to come out
11 because I seen a car that looked suspicious. Then I
12 went back out and continued working on my car by
13 myself.

14 Q Who did you tell not to come back out?

15 A My friend Juan.

16 Q What happened once you came back outside?

17 A Then I continued working on my car. Their
18 car came by and stopped behind mine.

19 Q What time of day was this when the car, the
20 suspicious car pulled behind your car?

21 A Around 7 p.m., something like that.

22 Q Was it still daylight outside where you could
23 see what was going on around you?

24 A Yes, still.

25 Q Once the car parked behind you, what happened

1 next?

2 A Uh, a woman stepped out the car and asked if
3 I wanted sex.

4 Q What happened next?

5 A Then I said no, I don't want to. She asked
6 me if there were more people inside. I said yes,
7 there are several. She asked me if I thought that
8 they would want sex. I said no, I didn't think that
9 they would want to. Then she went back into the car.
10 I continued with my car.

11 Q One question. There was -- Juan was the only
12 person inside, correct?

13 A Yes.

14 Q Why did you want her to think there were more
15 people inside?

16 A I don't know. I don't really, really know
17 why I thought it was a good idea, maybe so that they
18 would go away.

19 Q To scare them possibly to think there were
20 more people?

21 A Yes, maybe.

22 Q Okay. So then what happened?

23 A Well, then she went back to the car and I
24 continued with my car. Then, the next thing I know, I
25 have a pistol to my head.

1 Q Tell me about the pistol to your head. Who
2 was holding the pistol to your head? A man or woman?

3 A A man.

4 Q What happened when the man put the pistol to
5 your head? What was he saying to you?

6 A He asked me, uh, for money. I told him that
7 I didn't have any money. He required money that
8 otherwise he would kill me.

9 Q Was anybody else with the man with the gun to
10 your head?

11 A Yes, another man and the woman.

12 Q All right. And the man, the other man, was
13 he armed with a weapon?

14 A A knife, yes.

15 Q A knife. Going back to the man with the gun,
16 how far away was he from you when he had the gun
17 pointed at your head?

18 A He was about two feet away from me.

19 Q So fairly close. After he would have put the
20 gun to your head outside, what happened next?

21 A Uh, well, he demanded money. I told him that
22 I didn't have any money. So he put me in the car. He
23 demanded money again. I had \$30. I gave them to him.
24 And then afterwards, he demanded and demanded more
25 money. I told him that I didn't have any more money.

1 He demanded my wallet. He said that I had to have a
2 wallet. I told him that I did not have a wallet, that
3 I left my wallet. And he kept asking for money.

4 Q Where was the man with the knife at this
5 point?

6 A He was in my car's trunk taking out the
7 amplifiers.

8 Q All right. I'm going to try to speed up
9 here. Did you meet with Investigator Jarvis, the lead
10 detective on this case?

11 A Yes.

12 Q Do you recognize him seated on the front row?

13 A Yes.

14 Q All right. After what happened to you at the
15 car, did the man with the gun force you to do anything
16 else after that point?

17 A Yes.

18 Q Briefly, what did he make you do at that
19 point?

20 A He made me give him the money and then he
21 took me inside the house.

22 Q Okay. So he made you give him money, get out
23 of the vehicle and then he had the gun on you as you
24 went into the house, correct?

25 A Yes.

1 Q Did you have a good opportunity at the time
2 that he was at the car robbing you and then forcing
3 you into the trailer to visually see him and see what
4 his face looked like?

5 A Yes, of course, I did.

6 Q When you met with Investigator Jarvis, how
7 soon after the crime did you meet with him? A few
8 days, weeks, months?

9 A A couple of days.

10 Q And when you met with Investigator Jarvis,
11 did he speak to you in Spanish or English?

12 A In Spanish.

13 Q Did you have any trouble or difficulty
14 understanding what he was saying to you in Spanish
15 when he was speaking with you?

16 A No, no trouble at all.

17 Q Did Investigator Jarvis show you what's been
18 marked as State's Exhibit 2?

19 A Yes.

20 Q When you take a look at this document, do you
21 recognize this document?

22 A Yes.

23 Q Did Investigator Jarvis ask you if you could
24 pick out the person who had held a gun to your head,
25 robbed you at the car and then forced you into the

1 trailer?

2 A Yes.

3 Q Did he, uh, -- when he showed you that
4 photographic lineup, did he tell you that you have to
5 pick someone out of the lineup?

6 A No.

7 Q And did you -- I'm sorry. What was that?

8 A No, no, no.

9 Q Okay. Did you feel any pressure to pick
10 somebody out of the lineup and state that they had
11 robbed you at gunpoint?

12 A No, none.

13 Q And did he -- I need to slow down. Did he
14 suggest to you which photograph to pick out?

15 A No, not at all.

16 Q Uh, when you looked at this, and I'd like you
17 to take a look at it right now. Did you see the
18 person that had the gun held to your head at the car
19 and then forced you into the trailer displayed in this
20 photographic lineup?

21 A Yes.

22 Q And would you state for the court which
23 photograph you picked out?

24 A This one.

25 MS. SUSTAKOVITCH: Your Honor, if the record

1 would reflect, he's pointing to the, uh, first
2 picture on the bottom row starting from the left
3 that is a picture of John Kimble.

4 BY MS. SUSTAKOVITCH:

5 Q If you will look at that, uh, do you see any
6 markings on that photograph that you may have made to
7 identify your choice as the Defendant who pointed the
8 gun at you?

9 A Marking? Like what kind of mark?

10 Q Did you circle the photograph? I'm sorry.

11 A Yes, yes, of course.

12 Q Do you recognize your initials next to it?

13 A Yes, of course.

14 Q Does there appear to be any deletions or
15 changes to the photographic lineup that you were
16 shown?

17 A No.

18 Q Would you please turn the document over and
19 take a look at it?

20 A Uh-huh.

21 Q What is on the back of that document?

22 A Uh, it says I recognize the person that
23 robbed me and he had a pistol and my signature.

24 Q And you wrote that is Spanish, correct?

25 A Yes.

1 Q Did you have any question whatsoever that the
2 photograph you picked out was the man that robbed you
3 at gunpoint?

4 A No.

5 Q All right. Please answer any questions that
6 defense counsel has.

7 THE COURT: Just a second. (Pause.) All
8 right.

9 MR. HARBIN: Thank you, Judge. May it
10 please the Court.

11 CROSS-EXAMINATION

12 BY MR. HARBIN:

13 Q Mr. Arcos, you testified earlier that you saw
14 a car drive behind you while you were fixing your car,
15 is that correct?

16 A Yes.

17 Q And you then described the vehicle as being
18 suspicious. Why?

19 A Uh, because that place -- at that place, it
20 is not a street. It's private. So every vehicle that
21 goes through there, we know those vehicles.

22 Q You also said, I guess, when they asked you
23 how many people were in the house, you lied and said
24 that there were more than there actually were, there
25 being only one. Are you telling the court you were

1 already scared, even though you hadn't really met
2 anyone at that point, other than the lady that got out
3 of the car?

4 A Yes, I did lie to them. It was not that much
5 out of fear but lack of confidence. As I said, they
6 looked suspicious.

7 Q So you were suspicious of a female that had
8 gotten out of the car to approach you for sex?

9 A Yes.

10 Q And you had never met this female before?

11 A Never, never.

12 Q You also testified earlier that after the
13 female was turned away by you, that you then felt a
14 gun in the back of your head, is that correct?

15 A Well, at that time, when I turned her away,
16 she didn't have a pistol right there. She went back
17 to the car. I didn't see when somebody came back with
18 a pistol.

19 Q So the first thing you realized about the
20 pistol being put to your head was the fact that it was
21 touching the back of your head?

22 A Yes, of course.

23 Q Okay. Just to be overly specific here, you
24 didn't see anybody leave the car with a pistol and
25 walk up to you?

1 A No, not at all until I felt it touching my
2 head.

3 Q Okay. So the person that was holding the
4 pistol was behind you at the time. Then I believe
5 your testimony was that they essentially demanded
6 money. You told them you didn't have any. Then they
7 walked you into your house, I presume, in search of
8 more money?

9 A When -- when they demanded money, they didn't
10 take me to the house initially. They took me to
11 inside the car first.

12 Q Okay. The whole time, was the gun to the
13 back of your head?

14 A Yes, here. Here.

15 Q Where exactly? Could you point please.

16 A I can't say exactly, but it was around here.
17 I don't remember. Don't remember.

18 Q Okay. That's fine. At some point, they were
19 in search of money, correct?

20 A Yes.

21 Q So the person holding the pistol was behind
22 you, yelling at you to get your money and they took
23 you over to the car?

24 A Yes, of course, yes.

25 Q So the person was standing behind you and

1 directing you to get something in the car or yelling
2 at you to try to reach in the car and grab something
3 of value to give back to them?

4 **THE INTERPRETER:** The interpreter will request
5 for repetition of the question.

6 **BY MR. HARBIN:**

7 **Q** Uh, I'll rephrase if I can. When he walked
8 you over to the vehicle, he remained behind -- the gun
9 remained behind you on your head and did he basically
10 force you up to the vehicle and then you have to reach
11 into the vehicle to try to find something of value to
12 give to them? What was the point of him taking you to
13 car?

14 **A** He took me to the car. He pushed me down in
15 the driver's seat still with a pistol to my head. And
16 he demanded my wallet, asking where my wallet was.

17 **Q** After he did that, and I believe your
18 testimony was he did not have a wallet, you did not
19 have any more money, did he pull you back out of the
20 car and direct you back to the -- or did he back up
21 and let you out of the car? Did he yank you or force
22 you into the house?

23 **A** Uh, well, he didn't -- he didn't force me.
24 He just lift me up. He said to walk towards the car.
25 Uh, interpreter needs to correct. Told me to go

1 towards the house, still with a pistol to my head.

2 Q Okay. At this time, you were in fear for
3 your safety, if not your life, is this correct?

4 A Yes, of course.

5 Q And you would testify before you did not know
6 the lady that initially got out of the car?

7 A No, I don't know her and -- I didn't know
8 her.

9 Q Is it also correct to say that you did not
10 know the other two gentlemen in the vehicle?

11 A Correct. I didn't know them either.

12 Q So is it fair to say that you were nervous,
13 scared and perhaps petrified at this moment in time?

14 A Yes, of course.

15 Q Okay. How long did the entire encounter last
16 from start to finish? A minute, minute and a half, 30
17 seconds, how much?

18 A Since they stop behind me until they left or
19 from when to when?

20 Q However you would like to describe it,
21 particularly from the moment that you began speaking
22 with the female.

23 A I don't remember exactly but around 15
24 minutes.

25 Q 15 minutes?

1 A Yes.

2 Q What were y'all doing for 15 minutes?

3 Fifteen minutes is as long as -- is not even as long
4 as I think when Ms. Sustakovitch began questioning
5 you. That's quite some time.

6 A Because they arrived, they put the gun to my
7 head, they put me in the car, they took me to the
8 house. And then in the house, they searched the
9 house.

10 Q When they took you in the house, where did
11 they put you?

12 A Uh, in the entrance against the refrigerator.

13 Q Against the refrigerator?

14 A Yes.

15 Q So your belly is up against the refrigerator?

16 A No, my back.

17 Q So -- okay.

18 MR. HARBIN: Judge, I'm almost finished. I
19 apologize for taking so long.

20 BY MR. HARBIN:

21 Q Mr. Arcos, did you describe the man with the
22 gun as having blond hair?

23 A Yes, somewhat blond.

24 MR. HARBIN: May I approach, Judge?

25 THE COURT: Yeah.

1 BY MR. HARBIN:

2 Q What color do you think my hair is?

3 A A little bit blond.

4 Q A little bit blond? What color is the hair
5 -- and for the Court, Judge, I'm indicating the
6 picture that Ms. Sustakovitch indicated earlier. What
7 color is this hair here?

8 A Well, not as blond. It was darker, but it's
9 not completely dark either.

10 MR. HARBIN: No further questions, Judge.

11 Thank you.

12 THE COURT: All right. Anything on
13 redirect?

14 MS. SUSTAKOVITCH: Very briefly. Actually,
15 nothing further, Your Honor.

16 THE COURT: All right. Anything else?

17 MS. SUSTAKOVITCH: I have the officer. You
18 need to hear from him?

19 THE COURT: Well, he can step down. We need
20 to get the jury. They are sitting in the other
21 courtroom.

22 MS. SUSTAKOVITCH: Okay.

23 THE COURT: We'll conclude this after we get
24 them picked. (Pause.) How long will this case
25 take?

1 MS. SUSTAKOVITCH: We've got eight
2 witnesses. I thought it would be a day if we
3 started at 9:00. It will spill into tomorrow.

4 THE COURT: All right.

5 THE BAILIFF: Judge, tell them you're ready?

6 THE COURT: Yes, sir, whenever they are.

7 THE BAILIFF: All right, sir.

8 (WHEREUPON, the jury panel enters at approximately
9 12:14 p.m.)

10 THE COURT: All right. Ladies and
11 Gentlemen, I want to thank you for your patience.
12 Uh, it's been a lot of waiting for you all. I
13 apologize for that. If you need to be upset with
14 anybody, be upset with me. I try to juggle a lot
15 of balls and keep them all in the air at the same
16 time, and I'm not that good at it. So I
17 apologize. I do thank you for your patience.

18 I do welcome you up here to Courtroom number
19 4 where we are, as I told you yesterday,
20 conducting a term of General Sessions Court or
21 also known as criminal court.

22 Uh, can you all lay that piece of equipment
23 down, the arm, so I can make sure everybody can
24 -- go a little bit farther. All right.

25 Okay. We are -- as I told you yesterday, the

1 process is we're going to select a jury from this
2 group, your group. I'm going to qualify you all
3 to serve on this case. In order to do that, I
4 need to introduce the case to you. I will tell
5 you that this is a case of the State versus John
6 G. Kimble. There are four indictments.

7 Let me announce those to you. The first one
8 is Indictment 09-476. It is for Burglary in the
9 first degree. It alleges that John G. Kimble
10 did in Greenville County on or about the 30th day
11 of August, 2008, willfully and unlawfully enter
12 the home of Juan Garcia, located at Little Rio
13 Road in Marietta, South Carolina, without consent
14 and with the intent to commit a crime therein
15 accompanied by circumstances of aggravation, that
16 is, they entered the dwelling armed with a deadly
17 weapon.

18 The second indictment would be Indictment
19 number 09-478. It alleges that John G. Kimble
20 did in Greenville County on or about August 30th,
21 2008 while armed with a deadly weapon or while
22 alleging, either by action or words he was armed,
23 while using the representation of a deadly weapon
24 or any object which a person present during the
25 commission of the robbery would reasonably

1 believe to be a deadly weapon, took, by means of
2 force or intimidation, goods or moneys described
3 as U.S. currency from the person or presence of
4 Juan Garcia.

5 The next indictment is 09-477. It, as well,
6 is for armed robbery. It alleges that John G.
7 Kimble did in Greenville County on or about
8 August 30th, 2008, while armed with a deadly
9 weapon or while alleging, either by action or
10 words, he was armed while using a representation
11 of a deadly weapon or any object which a person
12 present during the commission of the robbery
13 would reasonably believe to be a deadly weapon,
14 took by means of force or intimidation goods or
15 monies described as U.S. currency from the person
16 or presence of Omar Arcos.

17 Finally, the last indictment is 2010-2717.
18 It is for possession of a weapon during the
19 commission of a crime. It alleges that John G.
20 Kimble did in Greenville County on or about
21 August 30th of 2008 possessed or visibly
22 displayed a pistol during the commission or
23 attempted commission of a violent crime, that is,
24 burglary first degree and/or armed robbery.

25 Now, Ladies and Gentlemen, to these

1 indictments, John G. Kimble has plead not
2 guilty. As such, that entitles him to certain
3 basic rights which belong to every citizen of
4 this country, that is, that every person who is
5 charged with a crime is presumed to be innocent
6 unless and until the State, who has the burden of
7 proof and always has the burden of proof can
8 prove in the minds of each of the 12 jurors
9 beyond any reasonable doubt each and every
10 element of each offense that that person is
11 charged with. I request that you keep that in
12 mind throughout the course of these proceedings.

13 Now, Ladies and Gentlemen, before I begin the
14 fairly brief qualification process, I will ask
15 the attorneys to stand and introduce themselves.

16 **MS. SUSTAKOVITCH:** Good afternoon. My name
17 is Christy Sustakovitch. This is Lauren Davis.
18 We are both assistant solicitors with the
19 Greenville County Solicitor's Office.

20 **THE COURT:** Thank you.

21 **MR. HARBIN:** My name is Chase Harbin. I'm
22 an attorney here in Greenville County.

23 **THE COURT:** All right. Thank you very much.

24 Ladies and Gentlemen, is there any member of
25 the jury panel who is related by blood or

1 marriage or has a business, personal or social
2 relationship with any of the attorneys involved
3 in this case or any member of their office? If
4 so, please stand. (No response.)

5 Okay. Is there any member of the jury panel
6 who is related by blood or marriage or who has a
7 business, personal or social relation with either
8 Mr. John G. Kimble, Mr. Juan Garcia or Mr. Omar
9 Arcos? If so, please stand. (No response.)

10 I'm going to read a list of potential
11 witnesses in this case. Please listen because
12 I'm going to want to know the same information
13 about them. J.C. Carlise, Greenville County
14 Sheriff's Office; Tomlin with the Greenville
15 County Sheriff's Office Forensics Division; Bill
16 Cromer with the Department of Public Safety; Omar
17 Arcos, Mike Jarvis with the Greenville County
18 Sheriff's Office, Judy Rogers, Judy Best,
19 Stallard Anderson, Stephanie Anderson, Clark
20 Brazier with the Travelers Rest Police
21 Department. Is there any member of the jury
22 panel who is related by blood or marriage or who
23 has a business, personal or social relationship
24 with any of those individuals whose names I have
25 just read? If so, please stand. (No response.)

1 Is there any member of the jury panel who has
2 any knowledge about the events that are alleged
3 in any of these indictments? If so, please
4 stand. (No response.)

5 Is there any juror or a family member or
6 friend has ever been the victim of or charged
7 with any of these types of offenses? If so,
8 please stand. (No response.)

9 Is there any member of the jury panel who is
10 aware of any bias or prejudice towards either the
11 State or the defense? If so, please stand. (No
12 response.)

13 Is there any member of the jury panel who
14 knows of any reason whatsoever why you should not
15 serve in this case with particular emphasis on
16 your ability to be fair and impartial to both the
17 State and the Defendant? If so, please stand.
18 (No response.)

19 Okay. Anything further?

20 MS. SUSTAKOVITCH: Nothing from the State,
21 Your Honor.

22 MR. HARBIN: Nothing, Judge.

23 THE COURT: All right. Ladies and
24 Gentlemen, we're going to do what we call -- it's
25 a legal term of art -- strike the jury. So

1 nothing to fear. All right.

2 THE CLERK: You want them to stand in place?

3 THE COURT: Yeah, please just stand in place
4 when your name is called.

5 THE CLERK: And then await further
6 instructions. Juror 115, Mary Meister.

7 What says the State?

8 MS. SUSTAKOVITCH: Please present this
9 juror.

10 THE CLERK: What says the Defendant?

11 MR. HARBIN: Please present this juror.

12 THE CLERK: All right. Ms. Meister, please
13 bring your things and have a seat in the jury
14 box.

15 Juror 87, Kristien Hammer.

16 What says the State?

17 MS. SUSTAKOVITCH: Please present this
18 juror.

19 THE CLERK: What says the Defendant?

20 MR. HARBIN: Please present this juror.

21 THE CLERK: Ma'am, please bring your things.
22 Come have a seat in the jury box.

23 Juror 113, Jeremy McLaughen.

24 What says the State?

25 MS. SUSTAKOVITCH: Please present this

1 juror.

2 THE CLERK: What says the Defendant?

3 MR. HARBIN: Please present this juror.

4 THE CLERK: All right. Sir, please bring your
5 things. Have a seat in the juror's box.

6 Juror 20, Traci Bridwell.

7 MS. SUSTAKOVITCH: Please present this
8 juror.

9 THE CLERK: Okay. What says the Defendant?

10 MR. HARBIN: Please present this juror.

11 THE CLERK: Ma'am, please come have a seat in
12 the jury box.

13 Juror number 2, Shirley Aldrich.

14 What says the State?

15 MS. SUSTAKOVITCH: Please present this
16 juror.

17 THE CLERK: What says the Defendant?

18 MR. HARBIN: Please present this juror.

19 THE CLERK: Ma'am, please have a seat in the
20 jury box.

21 Juror 61, Brenda Ferguson-Frady.

22 What says the State?

23 MS. SUSTAKOVITCH: Please present this
24 juror.

25 THE CLERK: What says the Defendant?

1 MR. HARBIN: Please present this juror.

2 THE CLERK: Ma'am, come have a seat in the
3 jury box.

4 Juror 79, Cathy Grills.

5 What says the State?

6 MS. SUSTAKOVITCH: Please present this
7 juror.

8 THE CLERK: What says the Defendant?

9 MR. HARBIN: Please present this juror.

10 THE CLERK: Ma'am, please have a seat in the
11 jury box.

12 Juror 51, Toni Daft.

13 What says the State?

14 MS. SUSTAKOVITCH: Please present this
15 juror.

16 THE CLERK: What says the Defendant?

17 MR. HARBIN: Please present this juror.

18 THE CLERK: Ma'am, come have a seat in the
19 jury box please.

20 Juror 142, Gregory Ricks.

21 What says the State?

22 MS. SUSTAKOVITCH: Please present this
23 juror.

24 THE CLERK: What says the Defendant?

25 MR. HARBIN: Please present this juror.

1 THE CLERK: Sir, please come have a seat in
2 the jury box.
3 Juror 45, Andrew Copeland.
4 What says the State?
5 MS. SUSTAKOVITCH: Please present this
6 juror.
7 THE CLERK: What says the Defendant?
8 MR. HARBIN: Please present this juror.
9 THE CLERK: Sir, please come have a seat in
10 the jury box.
11 Juror 131, Brentley Owens.
12 What says the State?
13 MS. SUSTAKOVITCH: Please present this
14 juror.
15 THE CLERK: What says the Defendant?
16 MR. HARBIN: Please excuse the juror.
17 THE CLERK: All right. You may be seated.
18 You have been excused in this case.
19 Juror 117, Kathy Merkle.
20 What says the State?
21 MS. SUSTAKOVITCH: Please present this
22 juror.
23 THE CLERK: What says the Defendant?
24 MR. HARBIN: Please present this juror.
25 THE CLERK: Ma'am, please have a seat in the

1 juror's box.

2 Juror 165, Jay Stevenson.

3 What says the State?

4 MS. SUSTAKOVITCH: Please present this
5 juror.

6 THE CLERK: What says the Defendant?

7 MR. HARBIN: Please excuse this juror.

8 THE CLERK: All right. Sir, you may be
9 seated. You have been excused from this case.

10 Juror 41, Emily Cook.

11 What says the State?

12 MS. SUSTAKOVITCH: Please present this
13 juror.

14 THE CLERK: What says the Defendant?

15 MR. HARBIN: Please present this juror.

16 THE CLERK: Ma'am, please come have a seat in
17 the juror's box.

18 THE COURT: One alternate. One and two.

19 THE CLERK: Juror 99, Michael Jensen.

20 What says the State?

21 MS. SUSTAKOVITCH: Please present this
22 juror.

23 THE CLERK: What says the Defendant?

24 MR. HARBIN: Please present this juror.

25 THE CLERK: Sir, please come have a seat in

1 the juror's box.

2 THE COURT: All right. Ladies and
3 Gentlemen, uh, we have two distinct groups here.
4 One group thinks they one the lottery and one
5 group thinks they lost the lottery. I think that
6 the group in the box won the lottery. I know
7 some of you may not agree with me, but, uh, --
8 particularly those folks, but I think when it's
9 all said and done, they will understand why I
10 feel that way.

11 It is a great privilege, a great
12 responsibility and a great honor to serve on a
13 jury. And I hope that you, the remaining members
14 will get an opportunity to do that, if not this
15 week, I hope this week, but if not, at some point
16 in the future. I am obliged to tell you now that
17 you are excused. We ask that you please call
18 back after six o'clock. Thank you very much.

19 (WHEREUPON, the jury panel exits at approximately
20 12:30 p.m.)

21 THE COURT: Ladies and Gentlemen, I'm
22 sincere when I say that. I really think that you
23 are the fortunate ones. It is a great
24 responsibility, a great privilege and honor to
25 serve on a jury. We appreciate your presence and

1 your service today. As I told you a little bit
2 yesterday, we have a dispute about the facts in
3 this case which requires that a jury listen to
4 the facts that will be presented to you, the
5 evidence that will be presented to you in this
6 courtroom under oath and subject to
7 constitutional scrutiny and make a decision which
8 will resolve that dispute. We greatly appreciate
9 the efforts and work that you will put in to do
10 that. It's not an easy job, but I know that each
11 of you are up to the task.

12 I want to remind you what I said about the
13 basic rights which attach to Mr. Kimble today,
14 that is, the presumption of innocence, the burden
15 of proof beyond a reasonable doubt are really the
16 foundation, bedrock of our justice system. They
17 provide for the freedoms that each of us enjoy
18 every day. It is vital and it's important. And
19 you will swear an oath in just a moment to
20 protect those basic rights and ensure that they
21 are protected in this courtroom today.

22 Please remember that every person charged
23 with a crime is presumed innocent of the
24 allegations against them unless and until the
25 State, which is the charging body, who has the

1 burden of proof can prove to each of you beyond
2 any reasonable doubt each and every element of
3 each offense that that person is charged with.

4 Now, a couple of other things that I want to
5 tell you are that the indictments which I
6 published to you or read to you are not evidence
7 and you should not consider them as evidence.
8 You shouldn't take any inference or make any
9 presumption from the fact that an indictment is
10 issued with respect to guilt or innocence. That
11 can only arise from the evidence that is
12 presented in the courtroom so please keep that in
13 mind.

14 I want to tell you briefly that you can
15 divide a trial into as many parts as you possibly
16 -- as you want. Uh, you watch television or read
17 novels, they do that. They dissect a trial into
18 tiny parts. For our purposes, so you all have
19 sort of a procedural roadmap as to where we are,
20 I divide it into five parts. The first part, we
21 are engaging in right now. I've made a few
22 opening comments to you. The attorneys are going
23 to make opening statements to you in just a
24 moment.

25 The second part of the trial is the meat and

1 potatoes of every case, that is the presentation
2 of the testimony and the evidence in the case
3 which is generally admitted in one of three ways.
4 One is through oral testimony, which is what we
5 all sort of associate with evidence. The second
6 part will be through the introduction of tangible
7 objects or documents. And the third generally
8 accepted way of doing it is through a stipulation
9 of the attorneys. I don't know what combination
10 of those types of evidence will be presented
11 today, but those are the three commonly used
12 types of evidence. So you can expect that in the
13 trial today.

14 Uh, the -- then the third part of the trial
15 will be, after the conclusion of the evidence,
16 the attorneys make their closing arguments to you
17 where they advocate on behalf of parties they
18 represent to urge you to decide the case and
19 resolve the dispute in their favor. The fourth
20 part of the trial will be when I charge you the
21 law in the case as it applies to this case. And
22 then the fifth part of the trial will be when you
23 all retire to your jury room to deliberate and
24 resolve this dispute and make the decision on
25 these charges.

1 I'm going to ask you to do probably many
2 things throughout the course of the trial, but
3 there are three main things I ask you to do. The
4 first is to keep an open mind. I go through this
5 process of asking you these questions to make
6 sure you are qualified to ensure that we have a
7 fair and impartial jury, one that comes into the
8 -- into the -- where you are now without your
9 minds made up. Keep an open mind so you can make
10 the decisions based on the testimony and the
11 evidence presented today.

12 The second thing I ask you to do is fairly
13 simple and maybe not be as easy as it sounds,
14 that is, to pay attention. I'm as bad as anybody
15 to let my mind wonder. But I want to tell you
16 that I urge you in this important situation to
17 keep -- pay attention. At the close of the case
18 when you are deliberating in the jury room with
19 your fellow jurors, if you have daydreamed or let
20 your mind wonder, you may miss an important piece
21 of evidence that could be the crux of the case.
22 So I ask you all to pay close attention
23 throughout the course of the trial.

24 Finally, I ask you not to discuss this case
25 with anyone until you are freed up to deliberate.

1 That includes the bailiffs. That includes --
2 when we break for lunch shortly, that includes
3 who you might see at lunch. If the case lasts
4 into -- lasts -- goes into tomorrow, tonight when
5 you go home or you go out and you see friends or
6 you see family, uh, you can't talk about it with
7 them. It's human nature that -- we know you want
8 to. We know that some of you may go home to
9 someone you love and trust and you might want to
10 bounce it off of them. That's understandable,
11 but I tell you you can not do that.

12 The reason for that is we want your opinions.
13 We don't want anyone outside of this courtroom to
14 have an influence on the outcome of this case.
15 Whatever they think or say, they would not have
16 observed the testimony, they would not have
17 observed the evidence. They would not have
18 watched witnesses to determine what their
19 demeanor is. And it wouldn't be fair to the
20 parties here. It wouldn't be fair to your fellow
21 jurors. And it wouldn't be fair to yourselves
22 that someone who is not making the sacrifices
23 that you are making to have an impact on the
24 outcome of this case. It's very important you
25 don't discuss it.

1 And then finally, I want to tell you that
2 you, the jury, are the sole judges of the facts
3 in this case. It is entirely up to you all to
4 decide who to believe, what to believe, who not
5 to believe and all those various combinations. A
6 trial judge, by law, is not allowed to have an
7 opinion about the facts of the case. So don't
8 think by anything I might say or do throughout
9 the course of the proceeding that I have an
10 opinion. The law does not allow it.

11 I would also tell you that the same law that
12 makes you all the sole judges of the facts makes
13 me the sole judge of the law. So if you have an
14 idea or an opinion as to what you think the law
15 is or what it should be, as it applies to this
16 case, you will swear your oath to set that
17 opinion aside and apply the law precisely as I
18 state it to you throughout the course of the
19 trial and at the end of the case.

20 Now, one other thing I think I should
21 probably tell you is that, from time to time, I
22 may have to excuse you all to go back to your
23 jury room during the course of the proceedings
24 because we may have a point of law to talk about
25 or piece of evidence to talk about. We are not

1 -- we are trying to hide something from you but
2 we're not trying to deceive you. As you can
3 imagine, if it is a piece of evidence that should
4 not be introduced, you all should not hear it.
5 That's why we excuse you from time to time. We
6 try to ensure that what you hear and receive as
7 evidence in the case is appropriate and is not
8 influenced by anything inappropriate.

9 Now, I'm going to ask you all to stand and
10 take your oath. Then we'll do our brief opening
11 statements from the attorneys.

12 **THE CLERK:** Please raise your right hand. The
13 proper response is "I will". You shall well and
14 truly try the case 2009-GS-23-476, the State
15 versus John G. Kimble who is indicted for
16 Burglary in the first degree, 477 and 478 for
17 Armed Robbery and 2010-GS-23-2717 for the
18 Possession of a Weapon during the Commission of a
19 Crime and a true verdict render according to the
20 law and the evidence so help you God. I will?

21 (WHEREUPON, each juror responds.)

22 **THE CLERK:** Thank you. Please be seated.

23 **THE COURT:** All right.

24 **MS. SUSTAKOVITCH:** Thank you, Your Honor.
25 May it please the Court.

1 Good afternoon. On May 30th of 2008, excuse
2 me, Omar Arcos was at a friend's house. He was
3 in the front yard. He was working on his car.
4 Mr. Arcos had no idea that day that he was going
5 to become the victim of a crime. Inside the
6 mobile home was his friend Juan Garcia. Mr.
7 Garcia didn't know that August 30th of 2008 would
8 be the day that he would be the victim of a crime
9 here in Greenville County, but they both were.
10 That's the day that John Kimble held Omar Arcos
11 at gunpoint in front of his car, demanded money,
12 robbed him, forced him into the trailer and
13 that's where the robbery continued with Juan
14 Garcia now being the object of the crime.

15 Ladies and Gentlemen, my name is Christy
16 Sustakovitch and this is Lauren Price. We are
17 assistant solicitors. What that means is, it is
18 a prosecutor. Our job is to present to you
19 evidence in a case, to prove to you beyond a
20 reasonable doubt that John Kimble committed
21 several crimes on this date. The crimes as Judge
22 Miller just mentioned to you are two counts of
23 Armed Robbery, one for Mr. Arcos, one for Mr.
24 Garcia, and also the crime of Burglary in the
25 first degree. The final crime is the Possession

1 of a Weapon during the Commission of a Violent
2 Crime.

3 As prosecutors, we present the evidence to
4 you and let you do your job which is to decide --
5 excuse me -- determine what happened on that
6 date. I'll tell you from the outset, as a
7 prosecutor, you don't get to pick the crime, the
8 witnesses. That's all chosen for you. Some of
9 what you're going to hear, you're not going to
10 like. It's going to be hard for you to relate
11 to. It's not going to be something that, in your
12 common lives, you can really understand.
13 Lifestyles and the way people act and things such
14 as that. I'll tell you from the outset that that
15 is just part of these cases.

16 You are going to hear more at the end of this
17 case about the law. Judge Miller is going to
18 instruct you on the law. But very briefly, let
19 me explain to you what Armed Robbery is. In this
20 case, it's pretty simple. You're going to hear
21 how Mr. Kimble held a gun to Omar Arcos' head
22 demanding money. It's that simple. Then he
23 comes into the house and he points the gun at
24 another victim.

25 As to Burglary in the first degree, what that

1 means is it's when somebody enters a dwelling, a
2 dwelling being a place where you live and, when
3 they are inside that dwelling, something happens,
4 there's another aggravator. It could be
5 nighttime. That could be an aggravator. In this
6 case, what the aggravator is is that while inside
7 the home, Mr. Kimble was armed with a deadly
8 weapon.

9 The final crime, just so when you hear the
10 evidence it will make sense to you, is Possession
11 of a Weapon During the Commission of a Violent
12 Crime. Two of the crimes in this case are
13 designated as violent crimes, burglary and armed
14 robbery. If you determine that Mr. Kimble is
15 guilty of armed robbery or burglary or both, the
16 fact that he was carrying a weapon, a gun, during
17 the time that he was committing those crimes
18 would make him guilty of Possession of a Weapon
19 During the Commission of a Violent Crime.

20 Very briefly, this case, I expect it to be
21 short. You're going to hear from the victim, one
22 of the victims in this case, Mr. Arcos. He'll
23 explain to you that day how the whole situation
24 went down for him. He'll tell you how he was
25 working with his car. He saw a suspicious

1 vehicle drive up. That's when Mr. Kimble and two
2 other co-Defendants got out of the car, Judy
3 Carol Rogers and Stallard Anderson. You will
4 hear from both of them in this case.

5 Ms. Rogers will tell you how her whole goal
6 that day was to come over and trade sex for
7 money. She approached Mr. Arcos and asked him if
8 he wanted any. He will testify he didn't know
9 her, he didn't want any sex for money. He said
10 no.

11 But then you will hear how the whole
12 situation very quickly changed. That's when Mr.
13 Kimble, this Defendant, gets out of the car with
14 a silver semiautomatic weapon and his co-
15 Defendant, Stallard Anderson gets out of the car
16 with a knife and they proceed to rob this man as
17 he's trying to work on his car. You will hear
18 how that all went down, how he was forced into
19 his vehicle, money was taken from him, Stallard
20 Anderson takes amplifiers from the trunk of his
21 car while this Defendant, John Kimble, is holding
22 the victim at gunpoint.

23 Mr. Arcos will tell you then how he is forced
24 into his friend's house, Juan Garcia, and that's
25 when things got even worse. That's where Juan

1 Garcia is robbed by Mr. Kimble. Judy Rogers runs
2 around the trailer, the mobile home, trying to
3 find stuff to steal. Stallard Anderson stands
4 there with a knife to Mr. Arcos now. They've
5 switched off. That is essentially what this case
6 is about.

7 You will also hear -- you will hear from both
8 co-Defendants. They'll tell you their part in
9 the crime. They'll tell you Mr. Kimble's part in
10 the crime. You will hear how there was a
11 forensic match of a fingerprint of Mr. Kimble's
12 inside the vehicle of the victim, Mr. Arcos.

13 That's what this case is about. It's about
14 the right of any person to be free of guns and
15 violence in our society. And everybody in this
16 courtroom has a job. Judge Miller has his job.
17 I have my job. Defense counsel has his job to
18 zealously defend his client. But frankly, Ladies
19 and Gentlemen, you have the most significant job,
20 with all deference to Judge Miller, of anyone in
21 this courtroom. You alone determine what
22 happened on that date. You alone will determine
23 what is justice in this case. So I ask you to
24 listen to the evidence and, at the end of this
25 case, return a verdict that speaks justice.

1 Thank you.

2 THE COURT: Mr. Harbin.

3 MR. HARBIN: May it please the Court. I'm
4 going to address the elephant in the room and
5 that is where is Mr. Kimble? I hope that one of
6 y'all have asked that question. He's not here.
7 He didn't make it today.

8 MS. SUSTAKOVITCH: Your Honor, may we
9 approach. Objection to this.

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference is held off the
12 record.)

13 MR. HARBIN: Basically, I'm just reminding
14 y'all that part of the thing y'all have to do is
15 be fair and impartial even in the face of things
16 that might seem prejudicial. Maybe you would
17 come to your own trial but he has chose not to.
18 You have to go through this trial and you have to
19 give him every benefit of the doubt as if his
20 warm body is sitting in that chair. It's going
21 to be difficult, but I'm going to ask you to do
22 it.

23 Now that we've addressed that, Ms.
24 Sustakovitch put forward a fairly simple
25 recitation of facts. I'm going to suggest to you

1 that maybe it's not quite that simple. Sometimes
2 the most simple explanation is because somebody
3 just had that story and that's the one they stuck
4 with. I just want you to listen to the
5 witnesses. This will be a much more interesting
6 conversation at the end of this case than the
7 beginning because y'all have no idea what I'm
8 talking about.

9 But if you would just listen to each
10 individual witness, ask yourself what is the
11 relationship between that guy and that guy and
12 that girl and that guy? Why did this girl choose
13 this place and this guy go this particular way?
14 Why does this make sense and why it did not make
15 sense? At the end of the day, you are going to
16 have a couple of questions that I'm not sure
17 you're going to be able to answer. It's just not
18 quite as simple as the State might have you
19 believe.

20 The last thing that I'll say, and this is
21 kind of related to what I just said, is that
22 although -- the State is certainly right that
23 she can't pick her witnesses and she can't pick
24 her evidence. She can't pick certain parts of
25 this case. But don't let that tell you that just

1 because the witness is a bad witness, it's still
2 a bad witness. Just because she can't get a
3 better one, don't give the State a pass. If the
4 witness stinks, the witness stinks. If they have
5 a reason to lie, they still got a reason to lie.
6 It's because they couldn't find somebody that
7 didn't have a reason to lie. It's their burden.
8 It's going to be tough for you to do.

9 I think that you have the toughest job. I
10 know that Chris and I went to law school and
11 certainly Judge Miller did as well. To stay
12 unbiased throughout a whole trial like that is
13 tough. I appreciate your effort and I'll
14 appreciate your attention throughout the trial.
15 I'll encourage you to pay very close attention to
16 everything, not just my questions but also Ms.
17 Sustakovitch's questions. I think it will
18 highlight some of the things that I would like to
19 tell you at the end of the case. Thank you very
20 much.

21 **THE COURT:** All right. Ladies and
22 Gentlemen, it's 10 til 1:00. We're going to
23 break for lunch. I'm going to ask y'all to be
24 back in your jury room at 2:30. Hopefully, that
25 will give you enough time to get lunch and take

1 care of a little business while you are out.
2 Again, I'll remind you do not discuss the case.
3 You don't know very much about it, but don't talk
4 about it. Don't do any research. Don't go on
5 the internet and look anything up. Don't, uh, go
6 visit the scene or anything like that.

7 And when you come back, I'm going to ask you
8 to do one other thing. We need a foreperson to
9 serve. And, uh, the foreperson must come from
10 among the first twelve who were selected. The
11 foreperson's job is to moderate the discussions
12 during your -- when you are resolving the dispute
13 during your deliberations and to be the jury
14 spokesperson in the courtroom if that becomes
15 necessary.

16 I like to give juries an opportunity to elect
17 their own foreperson. I certainly understand if
18 you can't do that. That's fine. I'll pick
19 somebody out to do it. I'll just close my eyes
20 and point to the sheet and there you go. It's a
21 little more sophisticated than that, but not too
22 much. Y'all have a pleasant lunch. We'll see
23 you back at 2:30. Thank you.

24 (WHEREUPON, the jury exits at approximately
25 12:50 p.m.)

1 THE COURT: All right. Anything before we
2 break?

3 MS. SUSTAKOVITCH: Nothing further.

4 THE COURT: I just want to say for the
5 record that I have, uh, my ruling on the Neil v.
6 Biggers situation is that the identification is
7 appropriate, pretrial identification is
8 appropriate. I don't think I put that on the
9 record prior to swearing the jury, but I'm going
10 to allow it. Okay.

11 MS. SUSTAKOVITCH: Thank you, Your Honor.

12 MR. HARBIN: Thanks, Judge.

13 THE COURT: See y'all back. Mr. Harbin, I
14 know you'll go out and find your client.

15 (WHEREUPON, a lunch recess is taken at
16 approximately 12:51 p.m.)

17 (WHEREUPON, the Court resumes at approximately
18 2:45 p.m.)

19 THE COURT: All right. The foreperson is
20 Brenda Ferguson-Frady.

21 You got that, Teresa? Mark that as a Court's
22 Exhibit.

23 (WHEREUPON, Court's Exhibit 1 is marked for
24 identification.)

25 THE COURT: Y'all ready to roll?

1 MS. SUSTAKOVITCH: Your Honor, we just had
2 two brief things to take up with the Court.

3 THE COURT: You found your guy?

4 MR. HARBIN: No, sir.

5 THE COURT: Okay.

6 MS. SUSTAKOVITCH: Very briefly, two of
7 these next witnesses have RAP sheets. On
8 Stallard Anderson, we wanted to get Your Honor to
9 rule on what the prior convictions are admissible
10 for impeachment. He was convicted of CSC with a
11 Minor in 1994 and then his probation was revoked
12 in 2001. The actual date he pled would have been
13 outside the 10 years, but the probation violation
14 would be inside the 10 years.

15 THE COURT: When he was released from
16 incarceration.

17 MS. SUSTAKOVITCH: So that would count,
18 right?

19 THE COURT: Yeah.

20 MS. SUSTAKOVITCH: Okay. The second issue
21 is the Defendant in this case did give a
22 statement to the police. The State would make a
23 motion in limine that that statement -- and I
24 could pass it up to Your Honor -- is self-serving
25 hearsay and is not admissible. If he wanted to

1 testify and be subject to impeachment, that would
2 be fine. But we just didn't want defense counsel
3 to bring out portions of the statement through
4 the investigating officer where we're not given
5 any chance to -- basically let him put his
6 defense into our case without us having a chance
7 to, uh, cross-examine him. We wanted a pretrial
8 ruling on that.

9 MR. HARBIN: I would just argue that --

10 THE COURT: Wait, wait, wait. Wait a
11 minute. You put their statements in all the
12 time, a Defendant's statement, and you don't
13 necessarily get a chance to cross-examine him,
14 right?

15 MS. SUSTAKOVITCH: Statements against their
16 interest we put in with incriminating
17 information, but this is --

18 THE COURT: Well, what does that say?

19 MS. SUSTAKOVITCH: This is saying I didn't
20 do anything. The two co-Defendants did it. I
21 sat in the car. We just would say that that's
22 inadmissible hearsay and it should not be
23 admitted into our case.

24 THE COURT: Is he admitting that these guys
25 were robbed by the other people in the car?

1 MS. SUSTAKOVITCH: That's what he's saying,
2 but it's his defense.

3 THE COURT: Hand of one is the hand of all.

4 MS. SUSTAKOVITCH: He's saying he didn't
5 have anything to do with it, Your Honor, that he
6 sat in the car and he didn't know the robbery --

7 MR. HARBIN: Judge, I'm okay with her
8 motion. The only thing I would observe is ---

9 THE COURT: Okay.

10 MR. HARBIN: --- if somehow -- I'm not sure
11 what the hypothetical would be, if somehow that
12 door got opened, but I don't plan on mentioning
13 it at all.

14 THE COURT: Okay. Well, that answers that.

15 MS. SUSTAKOVITCH: Didn't know that. Thank
16 you.

17 MR. HARBIN: That was a better way of saying
18 what I was trying to. Sorry.

19 MS. SUSTAKOVITCH: Okay.

20 THE COURT: Anything else?

21 MS. SUSTAKOVITCH: Nothing from the State.

22 MR. HARBIN: Nothing from me, Judge.

23 THE COURT: Where do you think Mr. Kimble
24 is?

25 MR. HARBIN: I could not tell you.

1 **THE COURT:** It's just breaking my heart he's
2 not here. All right.

3 (WHEREUPON, the jury enters at approximately
4 2:49 p.m.)

5 **THE COURT:** Ms. Frady Ferguson, thank you
6 for agreeing to serve. I hope you didn't get
7 elected just because you got put in that seat to
8 start with. Thank you for serving. All right.

9 **MS. PRICE:** Thank you, Your Honor. The
10 State is ready to proceed. The State calls J.C.
11 Carlisle.

12 **THE CLERK:** Sir, please come forward. Please
13 place your left hand on the Bible and raise your
14 right hand.

15 **JUSTIN CARLISLE**
16 having first been sworn, testifies as follows:

17 **THE CLERK:** Thank you. Please be seated.
18 Sir, please state your full name for the record.

19 **THE WITNESS:** Justin Cole Carlisle.

20 **DIRECT EXAMINATION**

21 **BY MS. PRICE:**

22 **Q** Thank you, Deputy Carlisle. By whom are you
23 employed?

24 **A** The Greenville County Sheriff's Office.

25 **Q** How long have you been employed with them?

1 A Going on six years.

2 Q What is your official title again?

3 A I'm a deputy.

4 Q And what sort of duties and responsibilities
5 are involved in your job?

6 A Currently, I'm a court security officer for
7 Greenville County Family Court. At the time of this
8 case, I was a uniform patrol deputy and responded to
9 911 calls and calls for service.

10 Q Have you had any training to help you in this
11 position or your position at that time?

12 A Yes, ma'am. Nine weeks at the South Carolina
13 Criminal Justice Academy, 16 weeks of field training
14 with a Master Deputy and also yearly in-service
15 training and legal updates.

16 Q You said you were working for the Greenville
17 County Sheriff's Office on August 30th of 2008?

18 A Yes, ma'am.

19 Q What were you doing that day?

20 A I was patrolling a beat on the west side of
21 Greenville.

22 Q Okay. And did you respond to a call that
23 lead you, has lead you now to come to court today to
24 testify?

25 A I did.

1 Q To where did you respond that day?

2 A Little Rio Road.

3 Q What was the nature of that call?

4 A It was an armed robbery.

5 Q Do you know what county Little Rio Road is
6 located?

7 A It's in Greenville County.

8 Q And why, precisely, did you respond to the
9 property that day?

10 A Someone on the property had called 911 and
11 requested an officer respond.

12 Q Do you recall what time you responded to the
13 property?

14 A I received the call at 7:30 p.m.

15 Q What time did you get to the property?

16 A 8:42 p.m.

17 Q So it took you a little over an hour to get
18 out to the property, is that right?

19 A Yes, ma'am.

20 Q What was the reason for the delay in the
21 response time there?

22 A My primary beat area was around East Parker
23 Road. Uh, the property in question is extremely far.
24 It's in Marietta. Also when I got in the general
25 vicinity, the road wasn't marked, nor were any

1 mailboxes. So I had to narrow it down between the
2 cross streets and the mailboxes and eventually ended
3 up guessing that that was the right street and went
4 down it.

5 Q Can you describe your approach to the
6 property as you responded to it?

7 A The entrance of the property actually appears
8 like you are pulling into the middle of a field.
9 There is a -- like a cattle-type fence that surrounds
10 the outside. When you pull in, it's a very heavily
11 wooded area. As you get further down the road, they
12 open up on the lefthand side. There will be a
13 trailer. Behind that trailer will be a row of trees
14 and then an additional trailer. I believe there are
15 four or five total trailers back there.

16 Q Separated by a little wooded area?

17 A By a little wooded area between each trailer,
18 yes, ma'am.

19 Q Okay. And what did you observe as you pulled
20 up to Little Rio Road?

21 A As I pulled up to the address, there were
22 several people around the front of the trailer. I was
23 flagged down by who I later identified as Omar Arcos.

24 Q What did you do after you pulled up to the
25 property?

1 A I identified my two victims, who are Omar
2 Arcos and Juan Garcia.

3 Q Could you speak to both of those victims?

4 A I could only speak to Omar due to Juan unable
5 to speak English. But Omar would give me the details
6 and translate for me so I could speak to Juan.

7 Q Do you speak any Spanish at all?

8 A No, ma'am.

9 Q So, uh, did you have any sort of language
10 barrier when you were communicating with Omar at all?

11 A I had a little bit of language barrier with
12 Omar. He seemed to be able to understand me but
13 sometimes I would have to repeat a question or use
14 hand gestures especially when determining that I had
15 to move my hand up and down to kind of get him to
16 understand when I was trying to ask for the height.

17 Q Generally, Omar Arcos was able to convey to
18 you what had occurred?

19 A Yes, ma'am.

20 Q And he translated for Juan Garcia?

21 A Yes, ma'am.

22 Q Did the victims take you inside of the Little
23 Rio Road property?

24 A They did.

25 Q What did you see when you walked inside that

1 property?

2 A When I entered the trailer, I immediately
3 observed the kitchen to my right. When you walk into
4 the living area, inside the living area was a set of
5 bunk beds and a refrigerator. I then began to go
6 through the house with the victims looking for any
7 additional property that may have been taken and ended
8 up in the far back bedroom. There were clothes and
9 other items strung out across the floor.

10 Q Did you determine what, if any, items had
11 been taken from the victims?

12 A \$300 in cash and some Sony amplifiers.

13 Q After speaking with them, did you determine
14 whether or not there were any additional witnesses to
15 what had occurred besides Juan and Omar?

16 A I did. I inquired and there were no
17 additional victims or witnesses.

18 Q So those people you saw when you pulled up
19 were not a part of the incident?

20 A No, ma'am.

21 Q Okay. Was Omar Arcos able to provide you
22 with any information that lead to suspects being
23 developed in this case?

24 A Yes, ma'am. He was able to give me three
25 suspect descriptions and a vehicle description which

1 the suspects fled in which was a Honda Civic wearing a
2 South Carolina tag 498, X-ray, Sara, Juliett, XSJ.

3 Q Okay. So that was 498XSJ?

4 A Yes, ma'am.

5 Q Okay. After speaking with both Omar and
6 Juan, what did you do next?

7 A The first thing I did was contacted dispatch
8 to get forensics to respond and process the scene. I
9 also gave them the bullet information for the suspects
10 and the vehicle. I then contacted my supervisor who
11 later, in turn, contacted the on-call investigator for
12 armed robbery.

13 Q For lay people, what is BOLO?

14 A It's, uh, be on the lookout for. Basically a
15 general everybody look out for these people.

16 Q People fitting this description?

17 A Yes, ma'am.

18 Q Okay. So on the night of the robbery and
19 burglary, did you or anyone else know the identity of
20 the suspects in this case?

21 A No, ma'am.

22 Q Did you, after you spoke with the victims,
23 continue to investigate the matter further?

24 A No, ma'am.

25 Q Did you then hand over the investigation to

1 someone?

2 A I did. Once I finished my report, the case
3 was handed over to the armed robbery division and
4 Investigator Jarvis was given the case.

5 Q So after calling forensics and handing over
6 the case for further investigation to Investigator
7 Jarvis, did you have any further involvement in this
8 case at all?

9 A No, ma'am.

10 Q Okay. Thank you, Deputy. Please answer any
11 questions that Mr. Harbin may have for you.

12 MR. HARBIN: Thank you. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. HARBIN:

17 Q Deputy, you said there were several people in
18 front of the trailer when you pulled up. How many is
19 several?

20 A I believe five or six.

21 Q Did they speak Spanish or speak English?

22 A I believe the majority spoke Spanish.

23 Q So you really weren't practically able to
24 interview them one way or the other, I suppose?

25 A No, sir.

1 Q And I'll ask but I think I know the answer
2 based on those questions. You don't know how long
3 those folks had been at the residence waiting around
4 or if they lived there or not?

5 A No, sir. I do not.

6 Q When you asked Mr. Arcos for a description of
7 Mr. Kimble, can you tell us what he told you please.

8 A The descriptions he gave me was that there
9 was a white female, between 35 and 40 years of age
10 with blond hair approximately 5'10 and 110 pounds with
11 rotten teeth. She had an unknown tattoo on her bicep,
12 wearing a purple shirt and blue jeans. He also gave
13 me two male subjects that were caucasian, 25 to 30
14 years of age, blond hair, six foot tall and 160 pounds
15 wearing a black hat and white -- black and white hat,
16 black and white t-shirt. He advised that the second
17 subject was approximately 35 to 40 years old, six foot
18 tall, 170 pounds, wearing blue jean shorts and no
19 shirt.

20 Q So in reference to the two males, I think I'm
21 reading what you're reading, but 25 to 30 year-old
22 blond male, six foot, a buck-sixty and 35 to 40 year-
23 old male, six foot, 170 pounds?

24 A Yes, sir.

25 MR. HARBIN: Okay. Thank you. I have no

1 further questions, Judge.

2 MS. PRICE: Your Honor, I have brief --

3 THE COURT: Yep.

4 REDIRECT EXAMINATION

5 BY MS. PRICE:

6 Q Just to clarify. When you were getting a
7 description of the suspects with Mr. Arcos, and we
8 went over this very briefly, you couldn't communicate
9 particularly clearly with him. Is that correct? You
10 had to use hand gestures and had some communication
11 barriers, is that correct?

12 A Yes, ma'am.

13 MS. PRICE: Okay. Nothing further.

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

16 MS. SUSTAKOVITCH: Your Honor, may this
17 witness be excused?

18 MR. HARBIN: No objections.

19 THE COURT: Okay.

20 MS. SUSTAKOVITCH: The State calls Omar
21 Arcos.

22 THE CLERK: Pause right there. Ma'am, I'm
23 going to put you under oath first and then I'll
24 put Mr. Arcos under oath.

25 (WHEREUPON, Elizabeth Giersberg, the interpreter,

1 is duly sworn.)

2 **THE CLERK:** Mr. Arcos, please place your left
3 hand on the Bible and raise your right hand.

4 **OMAR ARCOS**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** Please be seated. Please state
7 your full name for the record.

8 **THE INTERPRETER:** Omar Garcia Arcos.

9 (WHEREUPON, the following answers are translated
10 by the interpreter.)

11 **DIRECT EXAMINATION**

12 **BY MS. SUSTAKOVITCH:**

13 **Q** Good afternoon, Mr. Arcos. I'm going to ask
14 you questions via the interpreter. If there's ever a
15 point where you don't understand or you need me to
16 repeat it, will you please let the interpreter know.

17 **A** All right.

18 **Q** First, as to your level of understanding
19 English, how would you describe what you understand
20 and then what you can speak?

21 **A** I can understand 97, 98 percent. I can speak
22 about 20, 25 percent.

23 **Q** All right. So a good bit of what I'm saying
24 to you, you can understand, you just can't articulate
25 it back accurately?

1 A Yes, of course.

2 Q So we'll use an interpreter the whole time so
3 that you understand everything and can repeat it back
4 accurately.

5 A All right.

6 Q How old are you?

7 A 28.

8 Q And how long have you lived in Greenville?

9 A Eight years.

10 Q Did an incident happen on August 30th, 2008
11 where you became the victim of a crime?

12 A Yes, of course.

13 Q Now, let's talk about that first. What were
14 you doing that day?

15 A Well, I was visiting my friend. I went to
16 his house.

17 Q What's your friend's name?

18 A Juan Garcia.

19 Q Where did Juan live?

20 A In Marietta. I don't remember the address
21 but it was in Marietta.

22 Q Was it on Little Rio Road in Marietta?

23 A I believe so.

24 Q What type of a structure was it that he lived
25 or you thought he lived in in Marietta? Was it a

1 house or a trailer or what you are talking about?

2 A It was a trailer.

3 Q Now, did you live in the trailer on Little
4 Rio Road?

5 A No.

6 Q To your knowledge, did you believe that Juan
7 lived in that trailer?

8 A Yes.

9 Q But are you certain whether he just visited
10 there or was an actual renter at that location?

11 A I'm sure he lived there.

12 Q Okay. Let's talk about what happened. So
13 you go to his house. How do you get to his house?

14 A In my car.

15 Q What type of vehicle did you have?

16 A It was a 97 Lincoln Towncar.

17 Q What time of day did you go over to Juan's
18 house?

19 A Around 6:30 p.m.

20 Q What were you doing outside with your car
21 when you got there?

22 A When I arrived there, I heard a noise that I
23 didn't like in my car. So once I got there, I opened
24 the hood to look to see what was going on.

25 Q What happened next?

1 A Uh, well, I was working on my car. Then I
2 saw a car driving into where the trailers are and I
3 found that suspicious. I went inside the house and I
4 told Juan not to come out because it was a suspicious
5 car.

6 Q Let's talk about why you thought it was
7 suspicious. Little Rio Road, is that on like a main
8 road where lots of cars go by or is that on private
9 property where you wouldn't see a lot of cars drive
10 by?

11 A It's not a main road. It's more a private
12 road. So it's not normal to see many cars there.
13 That's why I found it suspicious.

14 Q So what happened -- when you saw the
15 suspicious car drive by, what happened next?

16 A Uh, I went inside. I told Juan not to come
17 out, that I had seen a suspicious car. I told him to
18 remain inside and not to come out.

19 Q What did you do after that?

20 A Well, the car came back with them inside.
21 They stop behind me and a woman stepped out of the car
22 offering sex.

23 Q All right. Tell me about that. Had you ever
24 seen this woman before that offered you sex?

25 A No, never.

1 Q And when you say she offered you sex, did she
2 offer you sex in exchange for money?

3 A Yes, exactly.

4 Q All right. Uh, when you -- you told her you
5 didn't want the sex with her, correct?

6 A That's right.

7 Q What happened at that point?

8 A Uh, after she offered me sex, I said no.
9 Then she asked if there were more people inside the
10 house. I said yes that there were several people
11 inside. So she asked me if they would be interested
12 in having sex. I told her that I thought they would
13 not be interested.

14 Q At this point, you see the woman. Do you see
15 anybody else with her that arrived in the vehicle?

16 A I don't remember -- I don't remember seeing
17 both of them. I saw that there was someone else
18 driving, but I don't remember seeing both of them.

19 Q All right. After you turned her down and
20 said you didn't want the sex for money, what happened
21 then?

22 A Then she went back to her car. I went back
23 to working on my car. Suddenly, I felt a pistol to my
24 head.

25 Q All right. When you felt a pistol to your

1 head, who had the pistol? The woman or was it another
2 man who had come with the woman?

3 A One of the men.

4 Q Tell me what he did at that point, when he
5 had the pistol to your head.

6 A Uh, when he put the pistol to my head, he
7 demanded money. I told him I didn't have any. He
8 demanded money again and again. He pushed me down on
9 the car. He told me to look for my wallet.

10 Q Go ahead.

11 A So he kept insisting on demanding money. And
12 he said that, uh, if you don't give me money, I'm
13 going to kill you. He said you have a wallet. I said
14 that I didn't, that I had forgotten my wallet. He
15 kept demanding money, otherwise he would kill me. I
16 gave him \$30 that I had. I didn't have any more than
17 that.

18 Q Had you ever seen this man -- the man with
19 the gun, had you ever seen him before in your life?

20 A No, never.

21 Q And while this is happening, are you scared or
22 upset that he might actually hurt you?

23 A Yes, I was worried, yes.

24 Q Can you give me a little bit about what he
25 looked like the guy with the gun who was forcing you

1 into the vehicle and had the gun pointed at you?

2 A He was a white man, age 25 to 30, six feet.
3 About 160 pounds.

4 Q You remember if he was wearing a hat or not?

5 A Yes, he did.

6 Q Can you describe the hat he had on?

7 A It was a baseball cap. He had it sideways.
8 It was white and black.

9 Q During this time, did you get a clear look at
10 his face between the time that he had the gun pointed
11 at your head and was forcing you into the vehicle?

12 A Yes, when I was already in the vehicle.

13 Q Besides the woman that first came up to you
14 and then the man with the gun pointed at your head,
15 was there anybody else present at the scene that got
16 out of the vehicle?

17 THE INTERPRETER: The interpreter requests
18 repetition.

19 BY MS. SUSTAKOVITCH:

20 Q Besides the woman that approached you and the
21 man that had the gun pointed at your head, was there
22 any other person that threatened you or was part of
23 this whole incident?

24 A Yes, it was another man. While I was in the
25 vehicle, in the meantime, he was taking out the

1 amplifiers in the trunk of my car.

2 Q Did this man have a weapon on him?

3 A A knife.

4 Q So after you gave the man with the gun
5 pointed at you in the car the \$30, what happened at
6 that point?

7 A Uh, then, uh, he pulled me. He made me stand
8 up and he told me to walk towards the trailer.

9 Q To clarify, he is the man with the gun or the
10 man with the knife?

11 A The one with the pistol.

12 Q So what happens? He tells you to walk
13 towards the trailer. Does he have the gun pointed at
14 your head, your back, where is it? Do you recall?

15 A Still with the pistol to my head.

16 Q Do you go inside the trailer at this point?

17 A Yes.

18 Q When you get inside the trailer, what
19 happened?

20 A When we got inside, he threw me against the
21 refrigerator with my back against the refrigerator.
22 He told the guy with the knife to, uh, guard me. In
23 the meantime, he went to look inside, inside the house
24 and look for other things.

25 Q And to clarify, when you say he threw me

1 against the refrigerator, you are talking about the
2 man with the gun, is that correct?

3 A Yes.

4 Q And he told the other man with the knife to
5 guard you now at the refrigerator, is that what you
6 pointed to?

7 A Yes, of course.

8 Q What did the man with the knife look like?

9 A About six feet tall, 30-35 years old, about
10 170 pounds.

11 Q While you're at the refrigerator with this
12 knife held to you, what is happening with Juan? Did
13 you see Juan Garcia inside the trailer?

14 A I was against the refrigerator and Juan was
15 in one of the bedrooms. They found him and they
16 brought him over to where I was.

17 Q And where you were, where was that in the
18 trailer? The living room, I believe you testified?

19 A Yes, in the living room.

20 Q Who brought Juan into the living room?

21 A The woman along with the man with the pistol.

22 Q When they brought him into the living room,
23 did you observe what happened to Juan at this point?

24 A Yes.

25 Q Please tell the jury what you observed

1 happened to Juan.

2 A They brought him over. They put him against
3 the wall. They asked him for money, that otherwise if
4 he didn't produce any money, they would kill him. But
5 since he didn't speak English, I told him that they
6 wanted money and to better give them all the money
7 otherwise they would kill him or kill us.

8 Q When you say "they", did you observe whether
9 the man with the gun had it pointed at Juan at any
10 point during this when the money was being asked for?

11 A Yes, of course.

12 Q So the man with the gun, if you would tell me
13 a little bit more about that, what was he saying to
14 Juan that you observed?

15 A He was asking for money or otherwise he would
16 kill him. That's what he was saying.

17 Q At this point, where is the weapon, the gun?

18 A He was -- he had it pointed at Juan.

19 Q Did Juan -- did you observe Juan hand over
20 any money that was being demanded from him?

21 A Yes, of course.

22 Q Do you know how much money Juan handed over
23 to him?

24 A No, not exactly. He said it was over \$200.
25 I don't know exactly how much it was.

1 Q After Juan hands over this money, with the
2 gun pointed at him, what happened at that point?

3 A Uh, when he was pointing the gun at Juan, the
4 woman went back to the bedroom to look for more stuff.
5 She came back with change and cigars.

6 Q What were they looking for inside the
7 trailer? What items were they looking for?

8 A I really don't know, maybe valuable goods,
9 but there was nothing.

10 Q Now, tell me about you and the refrigerator.
11 Did the man with the knife hold the knife on you the
12 entire time you were inside the house?

13 A Yes, yes.

14 Q At this point, when he's holding the knife on
15 you, is he saying anything to you?

16 A He only told me not to move because he would
17 hurt me.

18 Q While you are standing at the refrigerator,
19 are you able to observe anything out the window,
20 outside the window that you later turned over to law
21 enforcement?

22 A Yes, of course. I was able to look at the
23 car's license plate, the color of the car, the model.
24 And I was able to memorize all that.

25 Q So you saw the license tag of the vehicle

1 that they all came in by looking out the window, is
2 that correct?

3 A Yes, of course.

4 Q It's been some time. Do you recall what the
5 license tag was?

6 A I only think I remember .

7 Q That's okay. Showing you what's marked as
8 State's Exhibit 1. Do you remember giving a statement
9 to Investigator Jarvis, who is on the front row, in
10 this case?

11 A Yes, I remember.

12 Q Can you look at the date that's written on
13 the statement as far as when you gave it?

14 A Yes.

15 Q What's the date that's listed on this
16 statement?

17 A October 8th -- I'm sorry. October 5th.

18 Q Of which year?

19 A 2008.

20 Q Actually, I don't know if this is a language
21 problem. Can you read to him these numbers and make
22 sure he understands the numbers written on the
23 statement. The date that's written is 9/5/2008. Are
24 you able to read that?

25 A Yes, yes, yes.

1 Q Okay. So you gave a statement to
2 Investigator Jarvis on September 5th, 2008, correct?

3 A Yes, of course.

4 Q At that point, you are able to tell him
5 information about what had happened to you, the
6 license tag number and that type of information?

7 A Yes, of course.

8 Q When you met with Investigator Jarvis, did
9 you speak with him in English or in Spanish?

10 A In Spanish.

11 Q Did you have any trouble understanding your
12 communications with him when you met with him?

13 A Yes, of course. It was no difficulty.

14 Q That is you understood what he was saying to
15 you in Spanish, is that what you are saying?

16 A Yes, of course.

17 Q Did Investigator Jarvis show you photographic
18 lineups in this case to see if you could pick out the
19 man with the gun, the man with the knife and the woman
20 that had approached you?

21 A Yes.

22 Q First, let's talk about the man with the gun.
23 I'm showing you what's marked as State's Exhibit 2.
24 Do you recognize that photographic lineup?

25 A Yes.

1 Q When Investigator Jarvis showed you this
2 photographic lineup, did he tell you that you had to
3 pick someone out of the lineup?

4 A No.

5 Q Did he pressure you, in any way, to pick out
6 of that lineup the person who you believed had the gun
7 on you?

8 A No.

9 Q Did he give you any direction on who to pick
10 out in that lineup at all?

11 A No.

12 Q Where did you look at that photographic
13 lineup? Where did he bring it to let you look at it?

14 A He brought it over to my house.

15 Q Was there anybody else at your house helping
16 you pick out of that lineup the person who you
17 believed had the gun?

18 A No. I was by myself.

19 Q I believe you testified to some of this, but
20 when you were being robbed at gunpoint, was it daytime
21 or was it nighttime?

22 A In the afternoon and it was still light.

23 Q Was it light enough that you got a good look
24 at the person's face?

25 A Yes, of course.

1 Q When you look at this photographic lineup,
2 did you see the picture of the person who held the gun
3 to your head and robbed you at gunpoint?

4 A Yes, yes, of course.

5 Q Can you now point out which photograph was
6 the person that held you at gunpoint and robbed you?

7 A Yes, this one.

8 MS. SUSTAKOVITCH: All right. Your Honor,
9 let the record reflect he is pointing to the
10 second row, far left, a picture of John Kimble
11 which is also circled with his initials.

12 BY MS. SUSTAKOVITCH:

13 Q Uh, would you look at that photograph and
14 tell me are there any markings on it that you
15 recognize?

16 A Yes, of course.

17 Q What markings?

18 A My initials and circle.

19 Q And can you turn that document over? Is
20 there anything written on the back of it?

21 A Yes.

22 Q What does that writing say on the back?

23 A Uh, it says I recognize the person that
24 robbed me, this person as the person who robbed me.
25 He had a pistol and my signature.

1 Q And it has, you said, your signature on it?

2 A Yes.

3 Q What's the date and time that's written on
4 it?

5 A September 3rd, 2008 at 10:21 a.m.

6 MS. SUSTAKOVITCH: Your Honor, at this time,
7 the State moves to admit State's Exhibit 2.

8 MR. HARBIN: Without objection.

9 THE COURT: All right. Without objection.

10 (WHEREUPON, State's Exhibit 2 is admitted into the
11 record.)

12 BY MS. SUSTAKOVITCH:

13 Q Next, I want to show you State's Exhibit 3.
14 Did Investigator Jarvis also ask you if you could pick
15 out the photograph of the man that had the knife on
16 you by the refrigerator?

17 A Yes.

18 Q Will you take a look at State's Exhibit 3 and
19 see if you recognize it?

20 A Yes, it's here.

21 Q First, when Investigator Jarvis showed you
22 that lineup, did he, in any way, influence your
23 decision in picking out a photograph in that lineup?

24 A No.

25 Q Did Investigator Jarvis tell you that the man

1 who had the knife was definitely in this lineup?

2 A No.

3 Q Again, could you point out the photograph of
4 the person you recall holding the knife to you during
5 the robbery?

6 A This one.

7 Q All right.

8 MS. SUSTAKOVITCH: Your Honor, let the
9 record reflect that --

10 THE COURT: Wait a minute.

11 MS. SUSTAKOVITCH: Yes, sir.

12 MR. HARBIN: Before you say that ---

13 MS. SUSTAKOVITCH: Yes, sir.

14 THE COURT: --- I want to tell the jury that
15 what the attorney asks or words from the
16 attorney's mouths is not evidence. Okay. He's
17 identified somebody in there and we don't know
18 who it is.

19 MS. SUSTAKOVITCH: I can rephrase. I
20 apologize.

21 THE COURT: All right.

22 MS. SUSTAKOVITCH: Let the record reflect he
23 has pointed to the bottom row middle picture.

24 BY MS. SUSTAKOVITCH:

25 Q Can you see any markings on that photograph

1 that show that you picked that out as the person who
2 had the knife?

3 A Yes, a circle and my initials.

4 Q And can you turn the document over? What's
5 on the back of that document?

6 A It says I recognize this person as the person
7 who robbed me, he had a knife and my signature.

8 MS. SUSTAKOVITCH: All right. Your Honor,
9 at this time, the State moves to admit State's
10 Exhibit 3.

11 MR. HARBIN: No objection.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit 3 is admitted into the
14 record.)

15 MS. SUSTAKOVITCH: Your Honor, permission to
16 publish State's Exhibit 2 to the jury.

17 BY MS. SUSTAKOVITCH:

18 Q Mr. Arcos, going back to State's Exhibit 2,
19 this is the person you previously identified as the
20 man with the gun. Is that correct?

21 THE INTERPRETER: The interpreter requests
22 repetition.

23 BY MS. SUSTAKOVITCH:

24 Q I'm just showing the jury what's been
25 admitted as State's Exhibit 2 and asking the person

1 with the circle around the face, he has previously
2 identified as the man with the knife, is that correct?
3 With the gun, I apologize, with the gun.

4 A Yes, of course.

5 Q Just for publication to the jury, the man
6 with the circle around his face with your initials who
7 you previously identified as the man with the knife,
8 is that correctly identified on the screen?

9 A Yes, of course.

10 Q Thank you. Mr. Arcos, after you saw -- going
11 back to the robbery, after you looked out the window
12 and you saw the license tag, how did this whole
13 situation end?

14 A When I was against the refrigerator and I was
15 looking outside, looking at the car and recognizing
16 the car, they came back from looking for some money
17 and they didn't find any more money. They told us not
18 to call the police, that if we called the police, they
19 would come back and kill us.

20 Q A question about the woman, were you ever
21 able to pick her out of a six-person lineup? Was one
22 ever shown to you by Investigator Jarvis and were you
23 able to pick her out?

24 A I believe so.

25 Q With the vehicle color, you remember what

1 type of vehicle it was?

2 A It was a green Honda Civic. It was a '95,
3 '96. Four doors.

4 Q All right. What did you do? Once the man
5 and the woman -- the two men and the woman left, what
6 did you do at that point?

7 A I wrote down the license tag and I called the
8 police.

9 Q And back to your friend Juan, do you have any
10 idea where your friend Juan is at this point?

11 A He was with me right there in the living
12 room.

13 Q Right. At this point though, do you spend
14 time with Juan and do you still have contact with him?

15 A You mean at this time like recently?

16 Q Yeah, currently. Do you know where Juan is?
17 Do you still stay in contact with him?

18 A No.

19 Q All right. Please answer any questions the
20 defense counsel has.

21 CROSS-EXAMINATION

22 BY MR. HARBIN:

23 Q Mr. Arcos, how long have you known Juan?

24 A About three, four years.

25 Q Now, does that include the two years that,

1 four years ago that you met him or six years ago you
2 met him, since this happened a couple of years ago?

3 A Now, if we include these years, it's about
4 four.

5 Q So you had known him for a couple of years
6 about that time?

7 A Uh-huh.

8 Q How do you know him? Where did you meet him?

9 A Right there where he lived because I met him
10 there. In fact, we come from the same town in Mexico.

11 Q So you didn't know him before that?

12 A Before then when? Before the robbery or
13 before what?

14 Q You said that y'all came from the same town,
15 so you are telling me that you did not know him from
16 your home town, you only met him when you came to the
17 United States?

18 A That's right. I didn't meet him in Mexico.

19 Q What do you do for a living, Mr. Arcos?

20 A Construction.

21 Q And Juan, what did he do for a living as far
22 as you know?

23 A As far as I know, he was a farm worker.

24 Q And he -- that area, he lived on the farm or
25 like right around the farm in the middle of nowhere?

1 A Yes, he lived on the property of the farm.

2 Q What were you doing, you said you met him at
3 the property. Why were you at the property?

4 THE INTERPRETER: The interpreter requests
5 repetition.

6 BY MR. HARBIN:

7 Q He told me just now in his testimony that he
8 met Juan because he met him in the area of his
9 trailer. Why was he in the area of his trailer to
10 begin with?

11 A Because he worked there.

12 Q Why were you there, Mr. Arcos?

13 A Because we had mutual friends and I visited
14 frequently with him.

15 Q So what were you going over there to do that
16 afternoon?

17 A We were just usually talking and have a beer
18 and that's it.

19 Q You went over to Juan's house occasionally to
20 party?

21 A Not to party. I would go just for visit.

22 Q Describe your friendship with him. Were you
23 close? I mean, as close as a brother to you? Do you
24 not even know his last name? Give us an accurate
25 description of your relationship to Juan.

1 A Uh, well, as I told you before, I did not
2 know him in Mexico. We didn't meet in Mexico. We met
3 here. When I went there, it was not just to visit
4 him, it was to visit other friends. All the other
5 friends and we would just talk. He and I would just
6 talk.

7 Q How often did you go over there to visit Juan
8 and your other friends?

9 A Once or twice a month.

10 Q And let me back up a little bit. Where do
11 you live? You don't live there, do you?

12 A No, I was living in Greer.

13 Q Where in Greer?

14 A The address is 102 American Legion.

15 Q The officer that testified before you said
16 when he arrived, there were several people at the
17 property, two of which were yourself and Juan and then
18 there were others that he said he could not speak to.
19 How many people do you recollect were at the property
20 when the officer arrived?

21 A I don't know exactly, but around five.

22 Q And how many of those five lived in the
23 trailer with Juan?

24 A I don't remember who lived with him, but they
25 all lived in the same area.

1 Q Okay. You testified earlier that when you
2 had started working on your car that you saw a car
3 approaching -- another car approaching this property,
4 and you became suspicious immediately. Tell me if
5 this is correct. You went inside to tell Juan to stay
6 inside and then you went back outside. Is that
7 correct?

8 A Yes, that's correct.

9 MR. HARBIN: No further questions.

10 THE COURT: Any redirect?

11 MS. SUSTAKOVITCH: Very briefly.

12 REDIRECT EXAMINATION

13 BY MS. SUSTAKOVITCH:

14 Q Inside the trailer, was Juan able to
15 communicate with the officers or officer that came out
16 to the scene or did you translate for him to relay
17 what had happened?

18 MR. HARBIN: Judge, I'd object. That wasn't
19 a subject of cross.

20 THE COURT: Yeah, how is that in response to
21 cross? This is redirect.

22 MS. SUSTAKOVITCH: Right. I was going into
23 matters that we discussed on direct, but that
24 question is not terribly important.

25 THE COURT: All right.

1 MS. SUSTAKOVITCH: Nothing further.

2 THE COURT: All right. Thank you, sir. You
3 may step down.

4 Okay. Madam Forelady, Ladies and Gentlemen
5 of the jury, let's take a short break. We'll get
6 back in just a few minutes. Thank you very much.
7 (WHEREUPON, the jury exits at approximately
8 3:52 p.m.)

9 THE COURT: Uh, before we break, I'm not
10 sure I put specifically on the record the factual
11 finding that Mr. Kimble knew about the trial
12 date. I want to put that on the record. I
13 believe that he was informed.

14 One thing I need -- and it's on every other
15 bond sheet I ever seen so I didn't require it at
16 the time. Does the bond sheet that he signed say
17 that the case will proceed, the trial will
18 proceed even if he's not here?

19 MS. SUSTAKOVITCH: Yes, sir, Your Honor. It
20 says acknowledgment by the Defendant. It does
21 say I understand and have been informed that I
22 have a right and obligation to be present at
23 trial, and should I fail to attend the court, the
24 trial will proceed in my absence.

25 THE COURT: Okay. Let's make that part of

1 the record and make it a Court Exhibit.

2 MS. SUSTAKOVITCH: Yes, sir, Your Honor.

3 THE COURT: Okay. Let's be at ease for
4 about 10 or 15 minutes.

5 (WHEREUPON, Court's Exhibit 2 is marked for
6 identification purposes.)

7 (WHEREUPON, a short recess is taken at
8 approximately 3:53 p.m.)

9 (WHEREUPON, the Court resumes at approximately
10 4:10 p.m.)

11 THE COURT: Okay.

12 THE BAILIFF: You ready?

13 (WHEREUPON, the jury enters at approximately
14 4:12 p.m.)

15 THE COURT: All right. Call your next
16 witness.

17 MS. PRICE: Thank you, Your Honor. The
18 State calls Judy Best.

19 THE CLERK: Please place your left hand on the
20 Bible and raise your right hand.

21 JUDY BEST

22 having first been sworn, testifies as follows:

23 THE CLERK: Thank you. Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Judy Ann Best.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. PRICE:

4 Q Thank you, Ms. Best. How long have you lived
5 in Greenville?

6 A 61 years.

7 Q 61 years. Do you have any children?

8 A Yes, two.

9 Q Are they grown?

10 A Yes.

11 Q Are you actually a partner in a business?

12 A Yes.

13 Q What is that business?

14 A Farming. Family Farm.

15 Q It's called Family Farm?

16 A Yes.

17 Q What do you do?

18 A I grow strawberries and peppers and tomatoes.

19 Q Is that a commercial farm, a very large farm?

20 A Large for this area, I guess.

21 Q How many acres is it approximately?

22 A 300.

23 Q Where is Family Farm located?

24 A Marietta.

25 Q Have you also heard people refer to it as

1 Beechwood Farm?

2 A Yes.

3 Q And why is that?

4 A My brother and I are partners and his
5 operation is called Beechwood Farm and my operation is
6 Family Farm.

7 Q Okay. It is off of Beechwood Road?

8 A Yes.

9 Q Do you hire seasonal workers to help you in
10 your business?

11 A Yes.

12 Q When did the seasonal workers arrive and when
13 do they leave?

14 A They arrive at different times, but they
15 start about mid-March.

16 Q Okay. And leave by when?

17 A November 1st.

18 Q Where do those seasonal workers reside when
19 working on Family Farm?

20 A We have housing for them on our farm.

21 Q Okay. What type of housing is it?

22 A Family Farm has five mobile homes.

23 Q And are there any additional homes that your
24 -- that Beechwood Farm owns in conjunction?

25 A Yes, my brother owns two mobile homes.

1 Q So there are seven total?

2 A Yes.

3 Q They are all in the same general area?

4 A Close.

5 Q And in what areas are those mobile homes
6 located?

7 A Little Rio Lane.

8 Q Okay. Now coming into the Family Farm
9 property, what road runs into the Family Farm?

10 A Beechwood Road -- there are two ways to
11 enter, but Beechwood Road comes down straight into the
12 farm.

13 Q And is Little Rio Lane off of Beechwood Road
14 or is that on the property, actually on the property?

15 A It's on the property.

16 Q Okay.

17 A But Beechwood Road comes down into the
18 property. At the end of Beechwood, it turns right off
19 of Beechwood.

20 Q Okay. Now, those workers, is their mobile
21 home arrangement part of what you pay them for working
22 on the farm? Is that provided to them?

23 A We have to provide housing for them.

24 Q Okay. So it's free?

25 A Yes.

1 Q Are you the landlady for those properties?

2 A Yes.

3 Q What sort of interiors do those mobile homes
4 have? Can you just describe it very generally?

5 A Most of them have three bedrooms, small
6 kitchen and bathroom and small living area.

7 Q Okay. Now, how many folks live in each of
8 those trailers to your knowledge?

9 A Usually five.

10 Q How long have you had the trailers on the
11 property?

12 A About 25 years.

13 Q The area where those trailers are located, is
14 it a through-traffic area or is it fairly private?

15 A No, it's very private. It's a dirt road.
16 You go through trees. You come to the top of the hill
17 and it's a very tranquil place. It's trees all
18 around. It feels good.

19 Q Okay. Well, that's lovely. Do you recall if
20 people were using those trailers as a residence on
21 August 30th of 2008?

22 A Yes.

23 Q They were?

24 A Yes, they were.

25 Q At that time, were your residents allowed to

1 have guest?

2 A Yes.

3 Q So anyone could come and visit any of your
4 workers and you wouldn't have any knowledge of who
5 those folks are?

6 A Yes.

7 Q Are you familiar with the names Omar Arcos or
8 Juan Garcia?

9 A Only after you told me.

10 Q So before this incident, you were not
11 familiar with those names?

12 A No.

13 Q But if those two folks were guests of the
14 main tenants on those properties, would you know their
15 names?

16 A Yes.

17 Q You would know their names?

18 A If they were guests, no, I would not.

19 Q Not if they were guests. And did you know
20 all of the people visiting the mobile homes?

21 A No.

22 Q Okay. But you are 100 percent certain that
23 35 Little Rio was being used as a residence by people
24 working at your Family Farm on August 30th, 2008?

25 A Yes, they were.

1 Q Okay. Okay. Thank you very much. Please
2 answer questions that Mr. Harbin has for you, Mrs.
3 Best.

4 **CROSS-EXAMINATION**

5 **BY MR. HARBIN:**

6 Q I think I only have one question, Ms. Best. I
7 appreciate you being here. Just to make sure I'm
8 understanding what a seasonal worker is, is that what
9 we used to call a migrant worker and now it's
10 basically kind of a PC term for the same thing or is
11 it a different definition for that that you are using?

12 A It's basically the same.

13 Q Okay. Thank you very much.

14 **MR. HARBIN:** That's all the questions I
15 have, Judge.

16 **THE COURT:** All right. Thank you. You can
17 step down.

18 **MS. SUSTAKOVITCH:** Your Honor, permission to
19 release this witness.

20 **MR. HARBIN:** No objection, Judge.

21 **THE COURT:** All right. You are released
22 from your subpoena.

23 **MS. SUSTAKOVITCH:** The State calls Stallard
24 Anderson.

25 **THE CLERK:** Mr. Anderson, please come around

1 this way. Please pause at the end of the bench.
2 Please place your left hand on the Bible and, as
3 best you can, please raise your right hand.

4 **STALLARD ANDERSON**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** Thank you. Please be seated.

7 Sir, please state your full name for the record.

8 **THE WITNESS:** Stallard Anderson.

9 **DIRECT EXAMINATION**

10 **BY MS. SUSTAKOVITCH:**

11 **Q** Good afternoon, Mr. Anderson. How old are
12 you?

13 **A** I'm 45.

14 **Q** And where are you from?

15 **A** I'm originally from Rogersville, Tennessee.

16 **Q** Could you slide up just a little bit and
17 speak up so the jury can hear you.

18 **A** I'm originally from Rogersville, Tennessee.

19 **Q** And have you lived in Greenville for some
20 period of time?

21 **A** 30-some-odd years.

22 **Q** Where do you live in Greenville?

23 **A** In, uh, Marietta, South Carolina.

24 **Q** Do you have any children?

25 **A** I have two children.

- 1 Q And what are their names?
- 2 A Stephanie Anderson and
- 3 Q How old is Stephanie Anderson?
- 4 A She is, uh, 19.
- 5 Q And how old is, I believe you said ?
- 6 A He is 12.
- 7 Q I see you are in a prison jumpsuit. We're
- 8 going to talk about that. Where are you currently
- 9 incarcerated?
- 10 A Allendale Correctional Institution.
- 11 Q Where is Allendale Correctional?
- 12 A It is in, uh, Fairfax, South Carolina.
- 13 Q Before you were incarcerated at Allendale,
- 14 where were you living?
- 15 A Story Street.
- 16 Q What county is that in?
- 17 A It's in, uh, Greenville and Marietta.
- 18 Q Greenville and Marietta?
- 19 A Yeah.
- 20 Q Okay. Still having a little trouble hearing
- 21 you. If you would, slide up. Do you know a man by
- 22 the name of John Kimble?
- 23 A Yes, I do.
- 24 Q How long have you known John Kimble?
- 25 A For now about two and a half years.

1 Q I want to take you back to August 30th of
2 2008. At that point, how long had you known John
3 Kimble?

4 A Approximately six months.

5 Q Do you know whether John Kimble goes by any
6 other nicknames?

7 A At that time, the only thing I known him was,
8 was by Toby.

9 Q The only way you knew him was the nickname
10 named Toby, correct?

11 A Yes.

12 Q Do you go by any nicknames?

13 A Buster.

14 Q Buster. All right. Why are you incarcerated
15 right now?

16 A For committing the armed robbery and first
17 degree burglary that me, Toby and Carol had committed
18 together.

19 Q So the incident that we are having a trial on
20 right now, you are incarcerated for your involvement
21 in that incident, is that correct?

22 A Yes.

23 Q When did you plead -- did you plead on that
24 incident?

25 A Yes, I did.

1 Q And what did you plead to?

2 A To seven years non-violent.

3 Q And what were the charges you plead to?

4 A Second degree Burglary and Strong Arm
5 Robbery.

6 Q At the time you pled, which was -- when was
7 that? A few months back or when was it?

8 A Back in February.

9 Q When was it?

10 A February.

11 Q At the time you pled, had you ever met with
12 me or anybody from the State to discuss this case and
13 your testimony, potential testimony in this case?

14 A No.

15 Q At the time that this all went down, August
16 30th, 2008 when the investigation was going on, did
17 you ever give a statement to police at that time?

18 A No.

19 Q So when you met with me, it was after you had
20 entered a guilty plea, correct?

21 A Yes.

22 Q And essentially, you had nothing to gain by
23 talking to me at that point other than to be truthful
24 and say what your involvement was at that point, is
25 that correct?

1 A Yes.

2 Q I want to go back to August 30th of 2008.
3 Take the jury back to what was going on on that night
4 almost two years ago.

5 A I was at my residence at Story Street. I
6 don't remember the exact time, but it was late on a
7 Saturday afternoon. I left my house and went to
8 Castlegate trailer park. Toby and Carol usually hung
9 out at Carol's sister's trailer. When I had got
10 there, Carol asked me to give her a ride to Beechwood
11 Farms which was Little Rio Road. I told her I would.
12 The reason she asked me was to go exchange sex for
13 money to buy crack with.

14 Q So Carol wanted to exchange sex for money to
15 get crack?

16 A Yes.

17 Q And wanted you to go take her over to Little
18 Rio Road to do that?

19 A Yes.

20 Q So Toby who you said is a nickname for this
21 Defendant, what happens at that point?

22 A He said that he was going to go ride with us.
23 So we all three got in the car and went to Little Rio
24 Road.

25 Q Let me ask you this first. You said all

1 three got into the car. What car did you get into?

2 A It was my daughter's car. It was a 1995 or
3 '96 Honda. I think it was a '96 Honda Civic.

4 Q Why were you driving your daughter's car?
5 Did you normally have access to it and use it on
6 occasion?

7 A I had full access to it at all times.

8 Q August 30th, 2008, you recall what day of the
9 week that might have been?

10 A It was on a Saturday.

11 Q How do you remember that?

12 A It was -- that Friday night, she had went to,
13 uh, -- she went to Berea High School and she went to
14 the football game that Friday night.

15 Q So you get in your daughter's car and who is
16 driving the vehicle?

17 A I am.

18 Q Where is the Defendant that you call him
19 Toby?

20 A Toby was in the front passenger's seat.
21 Carol was in the back.

22 Q When you say Carol, what's Carol's real name?

23 A Judy. Judy Carol Rogers.

24 Q Judy Carol Rogers and she was where?

25 A She was in the back seat, passenger's back.

1 Q So the plan is to go over to Little Rio Road
2 so that she could exchange sex for money for drugs.
3 What happens when y'all get there?

4 A When we get there, we seen -- the only way I
5 know to say it was we seen a Mexican standing outside
6 of the trailer working on a car. It was a silver
7 Lincoln Towncar. I went by the trailer, turned around
8 and come back and stop. Carol had got out of the car
9 and walked up and talked to the guy.

10 Q This Mexican you say you saw standing outside
11 working on his silver Towncar, had you ever seen him
12 before?

13 A No.

14 Q Did you know him at all?

15 A Never knowed him, never seen him before.

16 Q All right. At the point you stop, Carol gets
17 out. She walks up. What happens then?

18 A They was -- I could see that they was having
19 a conversation. I could not hear what they were
20 saying. She come back to the car and was talking to
21 me and Toby. Then me and Toby -- Toby asked me to
22 come, uh, go with him. So we got out of the car. I
23 went to the right side of the car. Toby and Carol
24 went to the left side where the Mexican was at.

25 Q When you said Toby said come on, at this

1 point, what is going to go down? At least in your
2 mind, what's going to happen?

3 A Toby's got a gun in his hand. So I'm pretty
4 sure he was fixing to rob somebody.

5 Q All right. So Toby has a gun. Can you
6 describe the gun that Toby had?

7 A It was a silver, little silver semiautomatic.
8 I'm not sure if it was a 25 or a 22.

9 Q So he has a gun. Do you have any weapons on
10 you?

11 A I have a pocketknife.

12 Q You have a pocketknife. What happens when
13 you get your knife and this Defendant, Toby, gets his
14 gun?

15 A Toby and Carol approached the guy on the left
16 side of the car. Toby puts the gun on him and starts
17 telling him to give him his money. The guy is saying
18 that he don't have no money. Toby said -- asked him
19 about his billfold. He said he didn't have a
20 billfold. I was on the right-hand side of the car. I
21 remember Toby forcing him into the car hunting for his
22 wallet. I don't know -- I don't remember who, but
23 somebody said pop the trunk. The guy reached over and
24 popped the trunk. I went to the trunk of the car and
25 was looking for whatever may be in there. I found two

1 Sony amplifiers and I got those out.

2 Q You got the amplifiers?

3 A I got the amplifiers out of the trunk. At
4 this point, I could not see what was going on because
5 the trunk was raised. I leaned over into the trunk
6 and so I don't know what they was doing.

7 Q All right.

8 A I remember Carol going to the trailer.

9 Q Carole going where?

10 A Into the trailer.

11 Q All right.

12 A She went into the trailer. She come back
13 out. She said somebody else in here. I put the
14 amplifiers into the trunk, not in the trunk, I put the
15 amplifiers into the car, in my car. I fell in behind
16 Toby as he was forcing the other guy into the trailer.

17 Q Okay. Before we go any further, I just want
18 to backtrack and make sure I understand what you just
19 said. You said Toby got out and had the gun on him.
20 When you say had the gun on him, what do you mean by
21 that?

22 A He was pointing the gun at his head.
23 Pointing it at his head.

24 Q Pointing it where?

25 A At his head.

1 Q What was this man, you referred to him as
2 Mexican man, but what is he doing at this point?

3 A Just cooperating.

4 Q Cooperating?

5 A Cooperating.

6 Q All right. And your testimony was that Toby
7 forced him in the car. That's when you got the
8 amplifiers out of the trunk?

9 A Yes.

10 Q Tell me about -- I believe you just testified
11 he was -- Toby had the gun on him and they were going
12 towards the house, is that -- pick up there and tell
13 us what happened.

14 A When we get into the trailer, there was
15 another guy standing there. Toby had grabbed him and
16 spun him around against the wall and had the gun on
17 him going to his pocket. I had the -- the other guy
18 that was outside, I had him against the refrigerator
19 holding him with a knife.

20 Q I want to clarify. When you walked into the
21 trailer, you stated there was another man inside the
22 trailer. Had you ever seen this man before?

23 A No.

24 Q Did not know him?

25 A Didn't know him.

1 Q You said, at this point, Toby spins him
2 around and starts searching him. Where is he
3 searching him?

4 A Going in his pockets.

5 Q What is he trying to find?

6 A Money.

7 Q What?

8 A Money.

9 Q Money. At this point, you go to where?

10 A To the guy that was outside. I had him
11 against the refrigerator.

12 Q Did you have a weapon when you had him
13 against the refrigerator?

14 A I had a pocketknife.

15 Q You had the knife on -- the man that had been
16 outside, now you have him against the refrigerator,
17 correct?

18 A Yes.

19 Q What happens at that point?

20 A Then Toby forced the guy back to the trailer.
21 Him, Toby and Carol took the guy back to the back of
22 the trailer. From there, I don't know what they had
23 done.

24 Q While you are standing at the refrigerator
25 with the man, again, who had been outside working on

1 his car, is he saying anything to you?

2 A He asked me to let him go back where they was
3 at, that the other guy could not speak English. He
4 was afraid Toby might hurt him because he didn't
5 understand what Toby was asking.

6 Q He was afraid Toby might hurt him because he
7 didn't understand what Toby was asking?

8 A Yeah.

9 Q Did you let him go back and help his friend?

10 A No.

11 Q Why not?

12 A I had him at bay, so I was trying to -- I
13 didn't want to get killed myself. That was the first
14 time I had ever done anything like that.

15 Q Anything with a knife you mean?

16 A Or robbery.

17 Q All right. So they go back. You testified
18 Toby forced the man that had been in the trailer back
19 into the back bedroom. You're not sure what happened
20 back there. Did you see them come back out into the
21 living room where you could observe what was going on?

22 A Yes. They had to come right back by me to
23 get back into the living room. When they come back
24 into the living room, it was just Toby and Carol.
25 Carol and went over (inaudible).

1 Q I'm having a little trouble understanding.
2 I'm sorry. Say that again.

3 A They come back into the living room. There
4 was a set of bunk beds in the living room. Carol
5 walked over there with a little basket and set it on
6 there. There was one that had some change in it. She
7 got the one that had some change in it. Then we all
8 three went out and got into the car and left.

9 Q Carol is searching for stuff to steal. Is
10 that the way you took it?

11 A Yes.

12 Q While Carol was rifling through the bunk beds
13 looking for change, where is this Defendant, or Toby
14 as you call him, with Juan, the man that was in the
15 trailer?

16 A The one that was out -- the original one was
17 outside I was holding. Now, he was still against the
18 refrigerator. The other guy, he stayed back in the
19 back. He never came back out.

20 Q At this point after Carol gets the money from
21 the bunk bed, you all left. Is that correct?

22 A Yes.

23 Q How did you leave? Did you leave on foot, in
24 a car?

25 A We got back in the Honda Civic.

1 Q Where did you go at that point?

2 A Went back to Castlegate trailer park.

3 Q What happened when you got to Castlegate
4 trailer park?

5 A I had got some crack cocaine for my part of
6 what we got and I left and went back home.

7 Q Okay. And as far as what you got out of this
8 whole robbery, you said you got the amps, you put them
9 in the car. What did you get out of the whole deal
10 that you did that night? Did you get money? Did you
11 get any of the money?

12 A No. I just got the two amplifiers and some
13 crack cocaine.

14 Q I want to clarify. You said when you came
15 into the living room, the second man, not the one who
16 had been outside, but the second man, you saw Toby
17 searching him, patting him down. Did you see him take
18 anything from that man?

19 A No, at that point, after he searched him
20 down, he took him back to the back to another room.

21 Q When he took him to the back, you couldn't
22 see?

23 A I couldn't see what --

24 Q All right. Please answer any questions the
25 defense counsel has.

1 MR. HARBIN: Thank you.

2 CROSS-EXAMINATION

3 BY MR. HARBIN:

4 Q Mr. Anderson, what is your drug of choice?

5 A Crack cocaine.

6 Q It was crack cocaine back then? Before then,
7 that's your drug, period, you don't have any other
8 habits?

9 A No.

10 Q You said specifically, you tell me if I'm
11 wrong. You just said, told the Solicitor you didn't
12 go back in the bedroom when you were holding the knife
13 to this fellow up against the refrigerator because
14 that's the first time I had ever done anything like
15 that, is that what you said? And then she said you
16 mean -- and I'm paraphrasing a little bit here. You
17 mean using a knife. You said a robbery, does that
18 mean that you've used a knife before?

19 A No.

20 Q You never used a knife before, you never done
21 anything like this before?

22 A I never committed no kind of robbery like
23 this.

24 Q But, in fact, you have been in plenty of
25 trouble?

1 A Oh yeah. I been to prison, in trouble.

2 Q In 2001, you were revoked on probation for
3 Criminal Sexual Conduct with a Minor?

4 A No.

5 Q You weren't?

6 A No.

7 Q Tell me what happened back in 2001 because on
8 your RAP sheet, it was.

9 A In 1994, I was charged with Criminal Sexual
10 Conduct on a minor. In 2001, I violated probation as
11 far as failing drug test for the Criminal Sexual
12 Conduct.

13 Q Fair enough. In 2003, you were convicted for
14 Burglary, is that right?

15 A Yes.

16 Q Then in -- I'm sorry. Go ahead.

17 A Yes, I was.

18 Q And Larceny. I'm sorry. And then three
19 years later after that, you had another probation
20 violation for that same burglary charge, is that
21 right?

22 A Yes, sir.

23 Q You said you had known Toby for six months.
24 I'm going to call him Toby since everybody seems to be
25 calling him Toby. So were y'all good buddies at this

1 point? What is your relationship with Mr. Kimble?

2 A We were friends. That's the only way I know
3 how to --

4 Q Well, I need a little bit more information
5 because you essentially are giving a lady who has
6 admitted to you as a prostitute to a dude's house you
7 never met in the middle of nowhere and then someone
8 you've only known for six months says let's go and
9 without any discussion, without anything, you jump out
10 of the car with a knife and assault this dude in his
11 house. My question, of course, getting a round about
12 way is, what kind of relationship do you have with Mr.
13 Kimble that you would do such a thing on a moment's
14 notice?

15 A It wasn't the relationship, it was the drugs.

16 Q So you were so high at the time that you were
17 willing to do whatever it took to get --

18 A I wasn't so high at that time. I was at the
19 point where I was wanting to get high.

20 Q So you weren't high. You were thinking
21 rationally. This is just want you wanted to do at the
22 time?

23 A Wanting to get high.

24 Q When Ms. Sustakovitch asked you what you were
25 currently serving time for, you said seven years non-

1 violent.

2 Q Why did you volunteer to us that your time
3 was non-violent? Why is non-violent important to you?

4 A The difference between doing 85 percent of
5 your time and 65 percent of your time.

6 Q You were originally charged with Burglary in
7 the first degree? Is that correct?

8 A Yes.

9 Q Would that -- to your understanding, would
10 that have been violent and caused you to have to do 85
11 percent of that sentence?

12 A Yes, it would.

13 Q And right now, you don't have to do nearly 85
14 percent of your sentence, do you?

15 A No.

16 Q Same thing with armed robbery?

17 A Yes.

18 Q You plead down to Strong Arm Robbery?

19 A Yes.

20 Q You also mentioned that when you got out of
21 the car, you heard Mr. Juan, excuse me, Juan -- Arcos
22 -- I'm sorry. Not Juan, Mr. Arcos, the fellow that
23 was outside with his car, you said that Toby was
24 telling him to give him money and he was telling him I
25 don't have any money, I don't have any money. That's

1 what you heard?

2 A Yes.

3 Q Just so I'm clear, the car that you borrowed,
4 you borrowed your 17-year-old daughter's vehicle?

5 A Yes.

6 Q And decided to commit an armed robbery with
7 it?

8 A Yes.

9 Q No further questions.

10 MS. SUSTAKOVITCH: Your Honor, the State
11 needs to approach.

12 (WHEREUPON, a bench conference is held off the
13 record.)

14 REDIRECT EXAMINATION

15 BY MS. SUSTAKOVITCH:

16 Q Mr. Anderson, I do want to go back to your
17 relationship with Toby Kimble, uh, John Kimble. You
18 stated you knew him six months before this happened,
19 correct?

20 A Yes.

21 Q What was the nature of your relationship? I
22 believe you stated it was the drugs. Can you
23 elaborate?

24 A Toby was a known drug dealer in the area. I
25 bought drugs from him.

1 Q Was that basically the only interaction you
2 really had with him was through that?

3 A Yes.

4 MS. SUSTAKOVITCH: No further questions.

5 THE COURT: Anything? All right. You can
6 step down.

7 MS. SUSTAKOVITCH: Your Honor, may we
8 briefly approach on this issue?

9 (WHEREUPON, a bench conference is held off the
10 record.)

11 THE CLERK: Ms. Rogers, please come around.
12 Ma'am, would you please place your left hand on
13 the Bible and raise your right hand.

14 JUDY ROGERS
15 having first been sworn, testifies as follows:

16 THE CLERK: Thank you. Please be seated.
17 Please state your full name for the record.

18 THE WITNESS: Judy Carol Rogers.

19 DIRECT EXAMINATION

20 BY MS. SUSTAKOVITCH:

21 Q Good afternoon, Ms. Rogers.

22 A Good afternoon.

23 Q How old are you?

24 A I'm 38.

25 Q And where are you from originally?

- 1 A Travelers Rest, South Carolina.
- 2 Q You lived there all your life?
- 3 A Yes, ma'am.
- 4 Q You have any children?
- 5 A I have one son that's eight years old.
- 6 Q I see you are in a prison jumpsuit as well.
- 7 Where are you currently incarcerated?
- 8 A In Columbia, South Carolina.
- 9 Q Where?
- 10 A At Camille Griffin.
- 11 Q We're going to talk about why you are there
- 12 in just a few minutes, but first, do you know the
- 13 Defendant John Kimble?
- 14 A Yes, ma'am.
- 15 Q How long have you known him?
- 16 A For many years, since he was about three or
- 17 four years old.
- 18 Q And do you know whether he has a nickname?
- 19 A Toby.
- 20 Q I want to take you back, uh, to the incident
- 21 date. Let me ask you this first too. Do you know a
- 22 gentleman by the name of Stallard Anderson?
- 23 A Yes, ma'am.
- 24 Q Does he have a nickname?
- 25 A Buster.

1 Q Buster. Why are you incarcerated currently?

2 A Because of a robbery that happened against
3 two gentlemen, uh, uh, on August the 30th of 2008.

4 Q A case that we're going to trial on right
5 now, is it correct that you are incarcerated because
6 of your involvement in that robbery?

7 A Yes, ma'am.

8 Q And what did you plead to?

9 A Guilty.

10 Q Right. What charges did you plead to?

11 A Armed robbery and Burglary first.

12 Q Did you plead actually to the reduced charges
13 of Strong Arm and Burglary second?

14 A Yes, ma'am. My charges got reduced.

15 Q What was your sentence? How much time are
16 you serving?

17 A Seven years.

18 Q And when you pled, was there a recommendation
19 in your case?

20 A Yes, ma'am.

21 Q What was the recommendation in your case?

22 A Non-violent with my jail credit added.

23 Q I want to show you what is marked as State's
24 Exhibit 5. Do you recognize that document?

25 A Yes, ma'am.

1 Q What is that document?

2 A It's a statement I voluntarily turned myself
3 in to the private investigators and told them what
4 happened.

5 Q Will you review that statement and tell me
6 what date you gave that statement.

7 A September the 5th of 2008.

8 Q At the time you gave this statement to police
9 detailing your involvement, had anybody promised you
10 anything or given you any deal whatsoever for this
11 statement?

12 A No, ma'am.

13 Q I want to go back to the incident date in his
14 case, August 30th, 2008. Tell the jury what you
15 remember about that night, ma'am.

16 A I was in drug addiction which is a very big
17 mistake of mine. My intentions was to get money for
18 -- I went to sell -- to trade sex for money for drugs.
19 I was at my sister's house. Toby was there with me if
20 you don't mind me calling him by his nickname Toby.
21 Buster had pulled up. I had asked Buster to give me a
22 ride to the two gentlemen's house so that I could get
23 money for the drugs trading sex for money. I got out
24 of the car when we pulled up at the house. I got out
25 of the car and a gentleman was standing outside, which

1 is Omar.

2 Q I want to back you up one second and be
3 clear.

4 A Okay.

5 Q Who all got in the car and left?

6 A Me, Buster and Toby.

7 Q Buster being Stallard Anderson?

8 A Yes.

9 Q Toby being this defendant?

10 A Yes.

11 Q Who was driving the car?

12 A Buster was driving.

13 Q Where was this defendant Toby?

14 A He was in the passenger seat.

15 Q Where were you?

16 A I was in the backseat.

17 Q And before you left, did you let them know
18 what your plan was which was I need to go --

19 A I --

20 Q I'm sorry.

21 A I was going to get money. I asked Buster to
22 give me a ride to get money.

23 Q You said you were a drug addict. How long
24 have you been a drug addict?

25 A Since '94.

1 Q All right.

2 A But now, I'm in recovery.

3 Q All right. So you three get in the car, what
4 car were you driving in?

5 A It was Buster's daughter's car that belonged
6 to Stephanie.

7 Q And you get in the car and where do you go
8 to?

9 A We go to Rio Road.

10 Q Rio Road?

11 A Yes. I don't know exactly -- it's Rio Road,
12 Little Rio Road.

13 Q And where is that located?

14 A It's in Marietta.

15 Q Okay.

16 A We pulled up. It's like a back road. It's
17 the back, Beechwood Farm. We pull up and a guy -- I
18 see a gentleman standing outside that I do not know.
19 I didn't know him, but I do know the guy that lives
20 there, lived there. I got out of the car. I
21 approached him. He was working on his car at the
22 time.

23 Q For the jury to be clear, the guy working on
24 his car, you didn't know him. You didn't know his
25 name was Omar Arcos?

1 A Right.

2 Q And you never been -- the guy that was inside
3 the trailer, who do you know him as?

4 A Juan. Juan Garcia.

5 Q And how do you know him?

6 A Because I have done business with him before
7 and traded sex for money in the past a couple of times
8 prior to him, you know, as a seasonal farm worker.
9 I've done business with him before.

10 Q And business being sex for money?

11 A Yes.

12 Q You thought you might be able to get some
13 money over there?

14 A Yes, ma'am.

15 Q So you pull up and you see a man outside that
16 you didn't know. Go ahead.

17 A And once I got out of the car, I approached
18 him and I asked him if he was willing -- if he wanted
19 business -- if he wanted to trade sex for money. He
20 said no. He said he was not interested. I asked him
21 if his friend -- if anybody was in the house, if his
22 friends, any friends were there. He said no one was
23 home.

24 I went and I knocked on the door. Juan was
25 inside. He said come in. Well, I discussed the

1 situation with him. I asked him if he wanted to, you
2 know, do business, which is trading sex for money, and
3 he said yes. Well, we go to shut the door. And as I
4 go and we shut the door, Buster and Toby had got out
5 of the car and Toby had the gentleman that was
6 standing outside, which is Omar, on the ground with a
7 gun to his back. And Buster proceeded the speakers
8 out of his car.

9 Q He proceeded?

10 A I mean he stole. You know, he had speakers---

11 Q Okay.

12 A --- that he stole out of the car.

13 Q All right.

14 A And once they --

15 Q Did you have any idea that that was going to
16 happen when you came over there that day?

17 A No, ma'am. No, ma'am.

18 Q Go ahead.

19 A I -- as we seen them outside, well, Juan, he,
20 they come in the house. They seen us and we seen
21 them. They forced Juan in the house.

22 Q I'm sorry. They forced the man that was
23 outside?

24 A Yes, ma'am. Excuse me. I'm nervous. But
25 Omar outside, they forced him in the house with the

1 gun and then Buster had Omar up against the wall with
2 a knife. Toby had Juan, pointed a gun in his back up
3 against the wall. He made him give him his wallet.
4 He gave him his wallet. Toby threw it back at him.
5 Then he told me to search the house.

6 Q I want to go back to you stated the man had
7 been outside who you now know as Omar, he was against
8 the refrigerator, right?

9 A Uh-huh.

10 Q Who was with him, who, if anybody?

11 A Buster was with him.

12 Q And did Buster have a weapon?

13 A He had a knife.

14 Q Then, as far as Juan, did you observe whether
15 Toby had any weapon on him?

16 A Toby had a gun to his back.

17 Q Did you observe whether Toby took anything
18 from Juan?

19 A He got his wallet.

20 Q Do you know how much money he got?

21 A No, I don't know.

22 Q Did you see him actually get money out of the
23 wallet?

24 A Yeah. I seen -- money come out of the
25 wallet. I don't know the amount.

1 Q Did he take the wallet, Toby take the wallet
2 or throwed it back?

3 A He took the money out of the wallet and
4 throwed the wallet back.

5 Q What happened next?

6 A He told me to search the house. I searched
7 the house. Then I got a little change, a jar of
8 change. After that, we all left. I went back to my
9 sister's house. That's what happened.

10 Q I'm going to ask you a few more things. You
11 are in a prison jumpsuit. You stated you pled to what
12 your involvement was in this case.

13 A Uh-huh.

14 Q You do have a prior record as well, correct?

15 A Yes, ma'am.

16 Q 2000, Breach of Trust?

17 A Yes, ma'am.

18 Q Also 2001, Forgery?

19 A Yes, ma'am.

20 Q 2005, two other Forgeries?

21 A Yes, ma'am.

22 Q And a Crime against a Federally Chartered
23 Institution sound correct?

24 A Uh-huh.

25 Q How are you doing with your drug addiction?

1 A I'm a recovering addict. I have been clean
2 for going on two years now. I have successfully
3 completed a drug treatment program. It's an everyday
4 fight, but I am very proud of myself.

5 Q When you gave the statement to law
6 enforcement on September 5th, 2008 --

7 A Uh-huh. I had been clean for three days
8 then.

9 Q Why did you voluntarily give this statement?

10 A I feel like I done the crime, I need to, you
11 know, do the time. I just told the truth and put all
12 this behind me.

13 Q Please answer any questions defense counsel
14 has.

15 A Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. HARBIN:**

18 Q You just testified that when you went up to
19 the house, you basically encountered Juan,
20 propositioned him, he said yes, y'all were about to
21 close the door and then that's when the other two
22 fellows came in. Is that right?

23 A That's -- they had -- when I was in there
24 talking to Juan, that's when they got out of the car I
25 suppose because when we looked out the door, that's

1 when Omar was on the ground with the gun to his back.

2 Q I'm sorry. Out the door of his trailer?

3 A Yes, me and Juan looked out the door and Omar
4 was on the ground with a gun to his back.

5 Q Okay.

6 A That Toby had.

7 Q All right. Your statement, I believe, said
8 went inside and you found another Mexican walking up
9 the hallway and you yelled to Toby that there was
10 someone else in the trailer. That doesn't sound
11 exactly like you just said.

12 A That's not exactly -- no. What happened is
13 what I just told you. The statement is -- it was
14 September the 5th of 2008. That's two years ago.
15 It's not exactly correct. I'm telling you exactly
16 what happened.

17 Q Is it not correct because you were still a
18 little drug addicted and not very clear?

19 A When I wrote the statement, I didn't have a
20 lawyer present. I did it on my own. I turned myself
21 in.

22 MR. HARBIN: Okay. May I approach the
23 witness, Judge?

24 THE COURT: Yeah.

25 BY MR. HARBIN:

1 Q Do you recognize this as a copy of the
2 statement that you gave?

3 A Uh-huh.

4 Q And this is your initial by each paragraph?

5 A Uh-huh.

6 Q And why did you initial each paragraph?

7 A Because I initialed it and I didn't fully
8 read it when I initialed it.

9 Q You didn't?

10 A No, sir.

11 Q Okay. All right. And up until now, you are
12 recently clean and sober -- and congratulations for
13 two years -- you would have been essentially a drug
14 addict, I guess, up until then probably about 14
15 years, I guess.

16 A Yes, sir.

17 Q Thank you very much. You need to say
18 anything else?

19 A No, sir.

20 MR. HARBIN: Okay. Thank you. I have no
21 further questions, Judge.

22 MS. SUSTAKOVITCH: Nothing further, Your
23 Honor.

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

1 All right. Madam Forelady, Ladies and
2 Gentlemen of the jury, it's almost five o'clock.
3 Normally, we keep on going. The case is going to
4 go into tomorrow. I want to break now in case
5 any of you all have not voted and you would like
6 to go vote in the primaries. I want to give you
7 that opportunity. I want to ask you to be back
8 in your jury room at 9:30 in the morning.

9 Remember, don't discuss the case with
10 anything. The deeper you get into the trial, the
11 more you are going to want to talk about it.

12 Remember why I asked you not to do it. It's
13 vitally important that the only influence that
14 you have comes from the evidence in this
15 courtroom. Y'all have a pleasant night and we'll
16 see you all tomorrow morning at 9:30.

17 (WHEREUPON, the jury exits at approximately

18 4:56 p.m.)

19 THE COURT: What do you have left?

20 MS. SUSTAKOVITCH: Three witnesses, Your
21 Honor.

22 THE COURT: How long do you anticipate?

23 MS. SUSTAKOVITCH: Two, relatively brief, on
24 prints and then the main officer.

25 THE COURT: So an hour and a half?

1 MS. SUSTAKOVITCH: I would say an hour and a
2 half.

3 THE COURT: Two hours?

4 MS. SUSTAKOVITCH: Two hours max.

5 THE COURT: All right.

6 MR. HARBIN: I still got nothing so...

7 THE COURT: I'll bet Mr. Kimble shows up
8 tomorrow. What do you think? Okay. See y'all
9 tomorrow.

10 MR. HARBIN: 9:30, Judge?

11 THE COURT: Yeah.

12 (WHEREUPON, the Court recesses for the day at
13 approximately 4:58 p.m.)
14
15
16
17
18
19
20

P R O C E E D I N G S

1
2 (WHEREUPON, the Court resumes on the 9th day of
3 June, 2010 at approximately 10:08 a.m.)

4 (WHEREUPON, State's Exhibits 6, 6A, 6B, 6C, 7, 7A,
5 8, 9 and 10 are marked for identification purposes.)

6 THE COURT: All right. Bring them in.

7 (WHEREUPON, the jury enters at approximately
8 10:08 a.m.)

9 THE COURT: Again, Ladies and Gentlemen,
10 welcome back. Thank you all for being here and
11 thank you again for your patience. We have
12 disposed of -- uh, handled a couple of other
13 matters. That's why we had to ask you to wait.
14 But we are now ready to resume the trial.

15 MS. PRICE: Thank you, Your Honor. May it
16 please the Court.

17 THE COURT: Okay.

18 MS. PRICE: The State calls Aubrey Tomlin.

19 THE CLERK: Mr. Tomlin, please pause at the
20 end of the bench, place your left hand on the
21 Bible and raise your right hand.

22 AUBREY TOMLIN

23 having first been sworn, testifies as follows:

24 THE CLERK: Thank you. Please be seated.

25 Sir, would you please state your full name for

1 the record and please spell your last name.

2 THE WITNESS: Aubrey Tomlin, T-O-M-L-I-N.

3 DIRECT EXAMINATION

4 BY MS. PRICE:

5 Q Good morning, Mr. Tomlin.

6 A Good morning.

7 Q Mr. Tomlin, can you tell us where you were
8 working on August 30th, 2008?

9 A Uh, Forensics Division with the Department of
10 Public Safety.

11 Q And what are you doing today?

12 A I'm a freelance photographer.

13 Q So you are no longer with the Department of
14 Public Safety?

15 A No, ma'am.

16 Q Could you briefly tell us why you are no
17 longer with the Department of Public Safety?

18 A I was terminated from my position for
19 procedural protocol.

20 Q Okay. Does it have anything to do with this
21 case today?

22 A No, ma'am.

23 Q So the reason why you are no longer with them
24 has nothing to do with today?

25 A Correct.

1 Q What was your official title on August 30th,
2 2008?

3 A Forensic Crime Scene Technician.

4 Q Can you tell us a little bit about your
5 duties, responsibilities at that time?

6 A Responsibility to preserve collect and
7 process any evidence, possible evidence that the
8 deputies feel that they might need or that we might
9 find.

10 Q Okay. How long had you performed that
11 function, fingerprinting, at the time, on August 30th,
12 2008?

13 A Seven years at that time.

14 Q Seven years. And had you had any specialized
15 training for that position at all?

16 A Uh, yes, ma'am. Latent fingerprint
17 developing and also from supervisors.

18 Q Can you give us sort of a brief lesson on how
19 you process a scene for fingerprints?

20 A Basically, most of the time we are looking
21 for latent fingerprints which means they are naked to
22 the eye. They have to process. With this case, I was
23 using black powder dusting. We would take black
24 powder and use a fiberglass blush and dust over the
25 surface of the items I was processing.

1 Q What do you do when you get a positive
2 result?

3 A Take a -- cut a section of it. Lightly frost
4 it. Basically, scotch tape it and put it on a white
5 card, patent card.

6 Q Okay. Do you recall being dispatched to
7 Little Rio Road on August 30th, 2008?

8 A Yes, ma'am.

9 Q And could you describe the location as you
10 arrived?

11 A It was kind of dark. A couple of trailers on
12 the lefthand side going down pretty much like a field
13 cut road.

14 Q Pretty rural?

15 A Yes, ma'am.

16 Q What time were you dispatched? Do you
17 recall?

18 A I was in route at 9:15 p.m.

19 Q Okay. And what time did you arrive?

20 A At 10:08 p.m.

21 Q So it took you almost an hour to get out
22 there?

23 A Yes, ma'am.

24 Q And that was because of why?

25 A The distance it was from my office.

1 Q And was the initial responding officer on the
2 scene when you arrived?

3 A No, ma'am.

4 Q Did you see him at all on the way out there?

5 A On the way out there, he was at the entrance
6 of the road. He basically told me armed robbery,
7 second trailer on the left and went his way.

8 Q Was there anyone else from law enforcement on
9 the scene when you were there?

10 A No, ma'am.

11 Q When you arrived, what did you do?

12 A I met with Mr. Arcos, the only person out
13 there that spoke a little bit of English. Everybody
14 else spoke Spanish.

15 Q Okay. Along with Mr. Arcos, was there
16 another victim that you saw?

17 A Yes. The person that I was told was a
18 resident of the house was Juan Garcia.

19 Q And, uh, did Juan Garcia speak any English?

20 A No, ma'am.

21 Q Did you communicate with him through Mr.
22 Arcos?

23 A As best we could.

24 Q After speaking with Mr. Arcos and Mr. Garcia,
25 what did you do next?

1 A Mr. Arcos and Mr. Garcia pointed out areas
2 where the suspect had reportedly touched in the
3 residence. You enter in -- there's bunk beds to the
4 left as you enter into the living room area. On top
5 of the bunk beds were a couple of toiletry baskets.
6 The items had been removed out of there. They pointed
7 there and told me that somebody had gone through
8 there. They also said that the secondary bedroom,
9 clothing had been moved about and a shoe box had been
10 opened.

11 Q So you processed those areas inside of the
12 trailer?

13 A Yes, ma'am.

14 Q Did you process anything outside of the
15 trailer?

16 A Yes, ma'am. Mr. Arcos also said that the
17 suspects had been in the vehicle and around the
18 vehicle at the time, Mr. Arcos' vehicle.

19 Q Do you recall what type of vehicle that was?

20 A It was a Lincoln Towncar, '97.

21 Q Did you process the Lincoln Towncar?

22 A Yes, ma'am.

23 Q Did you get any results?

24 A Yes, ma'am. I believe I did.

25 Q Were they positive? Do you recall?

1 A Yes, ma'am. I turned in latents from there.

2 Q All right. I'm showing you what's been
3 marked as State's Exhibit 6. Do you recognize that
4 item?

5 A Yes, ma'am.

6 Q How is it that you recognize the item?

7 A This envelope, it's called a latent envelope.
8 I put the latent cards inside.

9 Q Okay. Is there anything on that envelope
10 that helps you recognize that it --

11 A My name, my writing on there.

12 Q Okay. Your handwriting?

13 A Yes, ma'am.

14 Q And what is inside that envelope? Do you
15 recognize those items that it contains? Those have
16 been marked 6A, 6B and 6C.

17 A Yes, ma'am. These are three latent cards
18 from the vehicle.

19 Q And how do you recognize those?

20 A My name on here. My handwriting.

21 Q Okay. Looking at those, what list were you
22 able to get?

23 A This one is from the exterior portion of the
24 front driver's side door. This one is also from the
25 exterior portion of the front driver's side door.

1 Q I'm going to stop you right there. When you
2 are telling me which one, can you tell me what exhibit
3 number you're looking at?

4 A I see. 6A.

5 Q It's from --

6 A The exterior portion of the front driver's
7 side door.

8 Q Okay.

9 A Exhibit 6B is also from the exterior portion
10 of the front driver's side door. Exhibit 6C is from a
11 magazine that was under the driver's side seat of the
12 vehicle. I'm not fluent in Spanish, but it was a
13 magazine that was under the front driver's side door,
14 uh, seat.

15 Q Okay. You said you also processed some items
16 inside the mobile home?

17 A Yes, ma'am.

18 Q Okay. From items inside the mobile home, do
19 you recall getting any positive results?

20 A Yes, ma'am.

21 Q Do you recall from what?

22 A It was from a bottle of One Source Daily
23 supplements.

24 Q Okay. I'm showing you what's been marked as
25 State's Exhibit 7. Do you recognize that item?

1 A Yes, ma'am.

2 Q How is it that you recognize that item?

3 A My name on here and my handwriting.

4 Q Okay. Looking inside, do you recognize the
5 item inside that envelope?

6 A Yes, ma'am.

7 Q Okay. And what is that?

8 A It's a latent lift. It's Exhibit 7A. It's
9 from the exterior portion of the bottle of One Source
10 Daily 50 count that had been removed from the toiletry
11 basket.

12 Q Okay. And how can you be certain that that's
13 the lift that you got?

14 A Because when I did these, I always labeled a
15 tag on the back side of this tape and I turn it around
16 and transfer the information on the lines here.

17 Q Okay. And what did you do after you
18 developed those latent prints?

19 A I left the scene.

20 Q Okay. And what did you do with the latent
21 prints, the envelopes after you left the scene?

22 A When I got back to the office, I placed them
23 in a latent envelope box that's locked where they sat
24 until a latent examiner would pick them up the next
25 business day.

1 Q Is that a secure place?

2 A Yes, ma'am.

3 Q Is that where Phil Cromer works?

4 A No, ma'am.

5 Q No?

6 A He works for the latents division.

7 Q Okay.

8 A The box was at a crime scene office.

9 Q Okay.

10 A They come by our office or their office every
11 business day and pick up the latents and take them
12 into their office.

13 Q Okay. So Bill Cromer would have picked them
14 up potentially?

15 A Potentially. One of the latents examiner.

16 Q Okay. And why did you send them -- why did
17 you drop them off there?

18 A I felt that they were good enough to be
19 examined. That's where everybody drops them off.

20 Q Okay. So you don't analyze the prints?

21 A No, ma'am.

22 Q You just pick them up from the scene, collect
23 them and then have somebody else analyze them. Is
24 that right?

25 A Yes, ma'am.

1 Q And when did you fill out those cards?

2 A Same date.

3 Q Being August 30th, 2008?

4 A Yes, ma'am.

5 Q And when did you drop them off?

6 A Same date.

7 Q August 30th, 2008?

8 A Yes, ma'am.

9 Q At that time, did you know who the suspects
10 were in this case?

11 A No, ma'am.

12 Q Did you know who John Kimble, Stallard
13 Anderson or Judy Carol Rogers are?

14 A No, ma'am.

15 Q After leaving those print cards in the drop
16 box, did you have any further involvement in this case
17 whatsoever?

18 A No, ma'am.

19 Q Okay. All right. Please answer any
20 questions that Mr. Harbin has for you.

21 MR. HARBIN: Thank you.

22 CROSS-EXAMINATION

23 BY MR. HARBIN:

24 Q Mr. Tomlin, I'm interested in what types of
25 surfaces are best able to capture a fingerprint?

1 A The best would be a nice hard, solid surface
2 like glass or metal or smooth plastic.

3 Q And so in any given house, there are a lot of
4 surfaces that are good for fingerprints and a lot of
5 surfaces that just simply won't work?

6 A Yes, sir.

7 Q For instance, a couch is going to get any --

8 A Correct.

9 Q Cloth. A mirror would be good?

10 A Yes, sir.

11 Q Refrigerator might be good depending on how,
12 you know --

13 A Yes, sir.

14 Q Uh, sink?

15 A Yes, sir.

16 Q Obviously a bottle since you got it off a
17 bottle.

18 A Yes, sir.

19 Q Without sounding facetious, would you
20 consider yourself pretty good at what you do? I don't
21 mean to be facetious, but you've got -- you've told us
22 about your training. If there's fingerprint in the
23 house, are you going to find it?

24 A I hope I would.

25 Q Okay. Last question, how long could an

1 undisturbed fingerprint last?

2 A I can't answer that question.

3 Q Is it possible for it to last for days or
4 weeks?

5 A It's all determinant of its environment it's
6 subject to.

7 Q But it is possible?

8 A As far as I know, it is. But I can't say yes
9 to that.

10 Q Thank you, sir.

11 A Yes, sir.

12 MR. HARBIN: No further questions.

13 THE COURT: All right. Anything on
14 redirect?

15 MS. PRICE: Nothing further, Your Honor.

16 THE COURT: Okay. You can step down. Thank
17 you, sir.

18 MS. PRICE: May this witness be excused?

19 MR. HARBIN: No objection.

20 THE COURT: All right. Released from
21 subpoena.

22 THE WITNESS: Thank you, sir.

23 MS. PRICE: Your Honor, the State calls Bill
24 Cromer to the stand.

25 THE COURT: Okay.

1 **THE CLERK:** Mr. Cromer, please place your left
2 hand on the Bible and raise your right hand.

3 **BILL CROMER**
4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. Please be seated.
6 Please state your name for the record.

7 **THE WITNESS:** My name is William Cromer.
8 The spelling of the last name is C-R-O-M-E-R.

9 **THE CLERK:** Thank you.

10 **DIRECT EXAMINATION**

11 **BY MS. PRICE:**

12 **Q** Thank you, Mr. Cromer, good morning.

13 **A** Good morning.

14 **Q** Uh, could you tell us where and when you
15 began your law enforcement career?

16 **A** I began my law enforcement career in 1996
17 with the Clemson City Police Department. Since that
18 time, I worked with the Clemson University Police
19 Department, the Pickens County Sheriff's Office. In
20 the past 26 and a half years, I been employed here in
21 Greenville County by the Department of Public Safety
22 Forensic Division.

23 **Q** And what's your official title?

24 **A** My official title at present is Principal
25 Criminalist. I'm a latent print examiner, supervisor

1 of that section.

2 Q What sort of official duties go on with the
3 title of Principal Criminalist?

4 A Uh, basically, what I am assigned to do aside
5 from running the unit, I'm assigned to conduct
6 examinations of known or even unknown of fingerprints,
7 palm prints, those type impression evidence, footwear
8 and shoe impression evidence and also tire impression
9 evidence from crime scenes.

10 Q How long have you been in that position?

11 A 11 years.

12 Q And is that prints that you've been doing for
13 11 years?

14 A Yes, it is.

15 Q And how long have you been employed in the
16 forensic field generally and what sort of specialized
17 training and education have you had?

18 A I've been employed in the forensic area,
19 forensic aspect in addition to the Greenville County
20 position I hold and have held. I have also been
21 employed with the Pickens County Sheriff's Office
22 several years. I probably have, in total, 28, 29
23 years of forensic experience.

24 Q Do you have specialized training or
25 education, certification with relation to fingerprint

1 analysis?

2 **A** Yes, I do. I have attended three 40-hour
3 courses specific in encompassing fingerprint
4 examination, also completed courses in footwear
5 examination and I currently am certified by the
6 International Association for Identification as a
7 Senior Crime Scene Analyst, at last count, one of
8 about five in the state.

9 **Q** How many fingerprint comparisons do you
10 conduct annually?

11 **A** I would have to say it would probably be
12 100,000-plus examinations a year. We have three full-
13 time examiners. Our division caption does
14 examinations part-time. And we would do between 3-
15 400,000 examinations per year.

16 **Q** What sort of equipment do you use in
17 comparisons?

18 **A** Unlike what you might see on television,
19 there are some computers involved and things like
20 that. But the basic work is done with a handheld
21 magnifier mounted on the base. Using that to actually
22 put up with the print, put up with the known print
23 which is the ink print that you would take known
24 standards and also over the latent print, the unknown
25 print. And you would look at both of those through

1 the glass.

2 MS. SUSTAKOVITCH: Your Honor, at this time,
3 the State would move to have Mr. Cromer declared
4 an expert in fingerprint analysis.

5 THE COURT: Any voir dire?

6 MR. HARBIN: No, sir. No objection.

7 THE COURT: All right. No objection.

8 MS. SUSTAKOVITCH: Thank you, Your Honor.

9 BY MS. PRICE:

10 Q Mr. Cromer, what is a latent print?

11 A As I mentioned earlier, latent is a term that
12 means hidden. Generally, refer -- in the forensic
13 area, we refer to a latent print as being an unknown
14 print, an unknown print from a crime scene, one that
15 we don't know the origin of that print.

16 Q And what is a known print?

17 A A known print, as I mentioned earlier, is a
18 standard. It's a known standard where someone, a
19 known individual actually had their fingers rolled in
20 ink or actually rolled on one of the more modern live
21 scan devices where it photographically captures the
22 image along the finger and palm.

23 Q And how are known prints, latent prints
24 compared and identified?

25 A As I mentioned earlier, primarily our basic

1 first-line tool is the hand magnifier. There are some
2 electronic means where we can enhance prints, you
3 know, bring them up on a screen, adjust lightness and
4 darkness, those type things. You know, the basic
5 thing is the handheld microphone.

6 Q Okay. And could two individuals have the
7 same prints?

8 A No two people have ever been found to have
9 the same fingerprint, even identical twins. Identical
10 twins do have the same DNA.

11 Q Did you have occasion to examine any latent
12 prints on the case that we are here to discuss today?

13 A Yes, I did.

14 Q And who provided those to you?

15 A Those were actually picked up, I picked those
16 prints up out of the locked drop box that Officer
17 Tomlin referred to. I picked those up on September
18 2nd, 2008. I carried them back to the latent print
19 section where I conducted my examinations for
20 comparability and matched, you know, compared to any
21 known suspects.

22 Q Is that drop box a secured location?

23 A Yes, it is. It's actually within our crime
24 scene office. Only crime scene personnel have keys to
25 get into the crime scene office. The latent examiners

1 are the only people that have a key to get into the
2 locked box. So yes, it is a secure location.

3 Q After you picked up the prints, where did you
4 take the prints?

5 A I brought the prints back to the latent print
6 section at the law enforcement center.

7 Q Is that also a secured location?

8 A Yes, it is. Prints are maintained in the
9 latent print office in file cabinets. Those files are
10 isolated and maintained separate. No one has a key to
11 get into our office. It's not on the master system of
12 the law enforcement center or anything like that.

13 Q Were you provided any suspect information in
14 this case that allowed you to examine some known
15 prints?

16 A Yes, I did. I was given three potential
17 suspect names in March of 2010.

18 Q And did you have an opportunity to compare
19 the known fingerprints that you were given to the
20 latent prints that were conducted in this case?

21 A Yes, I did.

22 Q Were you able to match any of those latent
23 lifts to the known prints?

24 A I was able to match out of the two envelopes
25 submitted by Officer Tomlin. One envelope, I was able

1 to match a female named Judy Carol Rogers to one of
2 the prints there, a print that came out of the house
3 off of a bottle. In the other envelope that came out
4 of a car that Officer Tomlin alluded to, I was able to
5 match a print off of a magazine that was under the
6 driver's seat to John Gardner Kimble.

7 Q Okay. This exhibit is marked State's Exhibit
8 7. Do you recognize this item?

9 A Yes, I do.

10 Q What is it?

11 A This is a latent print envelope. When the
12 crime scene investigators go out to crime scenes, they
13 lift fingerprint lifts like this. Once they fill
14 these out with case information, put any latent lifts
15 on the -- actually attach it to the card, they will
16 put those inside of these envelopes. The envelopes
17 are then dropped in the secure box I spoke of earlier.

18 Q Okay. And so this Exhibit that's been marked
19 7A that you were just discussing, what is that again?

20 A This is a latent print card, latent lift
21 card. This particular one apparently came from the
22 interior of the residence.

23 Q Okay. Does the card indicate where the
24 latent lift was specifically lifted from?

25 A Uh, in the description where latent was

1 lifted from, it mentions the exterior portion of the
2 bottle of, quote, unquote, One Source Daily 50 count,
3 unquote, that had been removed from the toiletries
4 basket.

5 Q And you matched that print to a suspect in
6 this case?

7 A Yes, I did. I matched this particular print
8 to a Judy Carol Rogers.

9 Q And how can you identify that print as one
10 that you matched?

11 A When I received these envelopes, I placed my
12 initials and the date I received them at the bottom
13 lefthand corner. Also, the individual latent print
14 cards, I initialed down here so I can identify the
15 card. Also, I made a notation. Any time I match a
16 print, I put down the finger number. I put down the
17 finger number and the individual I matched and the
18 date I matched that print. I also put the same
19 information and match information on the top of this
20 latent print envelope.

21 MS. PRICE: Your Honor, at this time, the
22 State would move to have Exhibit 7 and 7A moved
23 into evidence.

24 MR. HARBIN: No objection.

25 THE COURT: All right. Without objection.

1 MS. PRICE: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibits 7 and 7A are admitted
3 into the record.)

4 BY MS. PRICE:

5 Q I'm showing you now what's marked as State's
6 Exhibit 6. Again, do you recognize that item?

7 A Yes, I do. This is a latent print envelope.
8 It says "Nature of the Crime", it says robbery and,
9 uh, slash vehicle burglary. My initials in the bottom
10 lefthand corner just as I pointed out on the previous
11 envelope.

12 Q Okay. And does that envelope indicate where
13 the prints were taken from?

14 A It says -- looks like -- Little Rio Lane,
15 Marietta.

16 Q Okay. And, uh, is there a vehicle name on
17 that envelope?

18 A The vehicle's name is Omar Arcos.

19 Q Okay. Looking at State's Exhibits 6A, 6B and
20 6C, uh, can you tell me what those are?

21 A Yes, these are latent print cards. As
22 Officer Tomlin testified, he utilized a black powder
23 to put on the surface of various objects at the crime
24 scene. Once he saw what he thought was a comparable
25 fingerprint, he put a piece of tape over that and lift

1 it off and put that tape on this card. Then he would
2 label the back side of these cards.

3 Q Okay. Does Exhibit 6A indicate where that
4 latent print was taken from?

5 A 6A indicates the exterior bottom portion of
6 front driver's side door of a 1997 Lincoln
7 Continental.

8 Q And did you match that latent print to any of
9 the suspects in this case?

10 A No, I did not.

11 Q Okay. Looking at Exhibit 6B, does that
12 indicate where the print was taken from?

13 A Yes, it does. This is the exterior also
14 portion of the front driver's side door of the 1997
15 Lincoln.

16 Q Did you match that latent print to any
17 suspects in this case?

18 A No, I did not.

19 Q Okay. Finally looking at Exhibit 6C, did you
20 match that print to any suspects in this case?

21 A Yes, I did. This particular print came off
22 the exterior front cover of the Furia, F-U-R-I-A,
23 magazine under the front driver's side seat of a 1997
24 Lincoln. I was able to match this particular print to
25 the left index and left middle finger of Mr. John

1 Gardner Kimble. I matched those on March 18th, 2010.

2 Q And how can you identify that print as one
3 that you matched?

4 A I put the information down here, the finger
5 number that I matched as well as Mr. Kimble's name on
6 the front side of the card, also as far as my
7 identification of this individual card, my initials on
8 the bottom left corner of this card.

9 MS. PRICE: Your Honor, at this time, the
10 State would move to have Exhibit 6, 6A, 6B and 6C
11 into evidence.

12 MR. HARBIN: No objection.

13 THE COURT: All right. Without objection.

14 (WHEREUPON, State's Exhibits 6, 6A, 6B, 6C are
15 admitted into the record.)

16 BY MS. PRICE:

17 Q Mr. Cromer, as to your conclusions, do you
18 have another examiner verify your findings?

19 A Yes, we do. Any fingerprint examinations we
20 conduct where we make an identification, we have
21 another experienced examiner look behind us and verify
22 our findings. In this particular case, Captain Jackie
23 Kellett, who is a division supervisor and one of our
24 part-time latent examiners, she's been doing this for
25 over 20 years. She verified my conclusions and my

1 findings on this case.

2 Q Did you complete any reports containing your
3 results?

4 A Yes, I did.

5 Q And what are those?

6 A I completed two actual reports on the case,
7 one, the match to the female Rogers and the other, uh,
8 match to Mr. Kimble.

9 Q And is it your regular practice to usually
10 document your findings and reports such as this?

11 A Yes, it is. We verify it and then document
12 that on the report. The report is initialed by the
13 supervisor, which in this case was Captain Kellett.

14 Q I'm showing you what's been marked as State's
15 Exhibit 8. Do you recognize this exhibit?

16 A Yes, I do.

17 Q And what is it?

18 A This is the match report that I prepared on
19 March 18th, 2010 for the match that I previously
20 described off of a bottle to Judy Carol Rogers. It
21 has my initials besides my name here. Captain Kellett
22 who verified this identification also initialed by her
23 name.

24 Q Okay. And I'm showing you now what's been
25 marked as State's Exhibit 9. What is that?

1 A This is also a latent print match report.
2 This is the particular latent I described earlier that
3 was matched off of the Furia magazine cover under the
4 front driver's seat of the 1997 Lincoln matched to
5 John Gardner Kimble. Also has my name at the bottom,
6 my initials, Captain Kellett's name and her initials
7 and she verified the identification.

8 MS. PRICE: Okay. At this time, the State
9 would move to have our exhibits 8 and 9 admitted
10 into evidence.

11 MR. HARBIN: No objection, Your Honor.

12 THE COURT: All right. Without objection.

13 MS. PRICE: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibits 8 and 9 are admitted
15 into the record.)

16 BY MS. PRICE:

17 Q After writing up your reports, did you have
18 any further involvement in this case?

19 A Not specifically, no.

20 Q Other than testifying today?

21 A Other than testifying today.

22 Q Okay. Thank you very much, Mr. Cromer.
23 Please answer any questions that Mr. Harbin has for
24 you.

25 A Thank you.

1 CROSS-EXAMINATION

2 BY MR. HARBIN:

3 Q Mr. Cromer, I'm going to ask you a question
4 Mr. Tomlin said he couldn't really answer. Maybe you
5 can't either but I'll ask it anyway. Maybe I'll back
6 up a second. What exactly is a fingerprint? How is
7 it made?

8 A A fingerprint basically is an image. If
9 you'll look at the tips of your fingers, the second
10 joints, third joints, your palms, even the bottom of
11 your feet and hands have ridges along those surfaces.
12 They are known as friction ridge skin. What we do in
13 a comparison is we look at the totality of these
14 prints and determine what we could tell, if there's a
15 pattern type we could tell, either a loop, whirl or an
16 arch.

17 If we could tell anything more specific, then
18 we narrow down and look at actual ridge
19 characteristics where ridges end, the shape of ridges,
20 as well as the placement of pores along those ridges.
21 The fingerprint -- actually, there are -- the human
22 body, the prints are formed before birth. You -- as
23 you touch things, body fluids are secreted through the
24 pores and they are transferred to a surface through
25 the fingers. Also anything -- maybe you come in

1 contact with, you've had potato chips or something
2 like that, anything on your fingerprints, a foreign
3 substance may also allow you to touch and leave
4 something behind, a print.

5 Q Thank you, Mr. Cromer. I guess now that
6 we've got kind of an idea of how they are transferred
7 to surfaces, I guess, what other factors would cause a
8 fingerprint to either last a long time or perhaps --
9 do fingerprints disappear or do they stay there until
10 they are wiped off? How does that work?

11 A I've seen some people actually touch things
12 and you process behind it with powder, chemicals or
13 whatever method you use and they don't even leave a
14 fingerprint. Other fingerprints I've seen in test
15 conditions that we've done in studies at the law
16 enforcement center where you touch something, leave a
17 print and you may come back six months later and it be
18 there.

19 A fingerprint is relatively fragile. It's
20 made up primarily of water. Therefore, any exposure
21 to heat and humidity, those type things, sometimes
22 they can even be wiped off of a surface. They are
23 generally fragile. There is no scientific method of
24 telling the length of time a print may remain on a
25 surface.

1 Q So generally, it just depends kind of?

2 A It depends.

3 Q I think you may have already answered this
4 really, but in theory, it's very easy for a
5 fingerprint to last a number of hours or a number of
6 days or weeks, just depending on whatever condition
7 that fingerprint is and where the fingerprint is?

8 A Yes, sir. It would depend on the conditions.

9 Q And you said that your office processes 3 to
10 400,000 -- I'm sorry -- 300-400,000 prints per year?

11 A Examinations.

12 Q Okay. And you did personally about 100,000?

13 A Probably divide that up by three and a half.
14 Part-time examiner. Probably somewhere in the
15 neighborhood of 100,000 examinations a year. Multiply
16 that out by the 11 years I've been doing that full-
17 time.

18 Q All right. That had nothing to do with the
19 case. That's just amazing. That's a job right there.

20 A That's a lot of looking.

21 Q Thank you. Appreciate that.

22 THE COURT: Any redirect?

23 MS. PRICE: Nothing further from the State,
24 Your Honor.

25 THE COURT: All right. Thank you, sir. You

1 may step down.

2 MS. PRICE: May this witness be excused?

3 THE COURT: Release him?

4 MR. HARBIN: No objection.

5 THE COURT: All right.

6 MS. SUSTAKOVITCH: Your Honor, the State
7 calls Investigator Mike Jarvis.

8 THE COURT: All right.

9 THE CLERK: Sir, please place your left hand
10 on the Bible and raise your right hand.

11 MIKE JARVIS

12 having first been sworn, testifies as follows:

13 THE CLERK: Thank you. Please be seated.

14 THE WITNESS: Thank you.

15 DIRECT EXAMINATION

16 BY MS. SUSTAKOVITCH:

17 Q Good morning, Investigator Jarvis.

18 A Morning.

19 Q Where are you employed?

20 A The Greenville County Sheriff's Office.

21 Q How long you been employed there?

22 A Just a little over 14 years.

23 Q I'm sorry. 14?

24 A 14. Yes, ma'am.

25 Q What are your duties, your current duties?

1 A I am currently an investigator in the
2 Criminal Investigative Division.

3 Q Could you give the jury an idea of through
4 your 14 years of law enforcement, the different jobs
5 that you held?

6 A I initially started on the road as uniform
7 patrol deputy answering calls for service. I was
8 there for probably seven or eight years. Then I went
9 to a specialized unit called the Directed Patrol Unit.
10 Also in uniform, uh, was there for three or four
11 years. I've been an investigator for just a little
12 under three years.

13 Q And how would investigations come to you?
14 What are the different ways that investigations can
15 come to you for review?

16 A At the time that this incident happened, I
17 was assigned to the Armed Robbery Division. The
18 incidents are assigned based on type of crime. This
19 particular incident was assigned to me because I was
20 an armed robbery investigator and it was reported as
21 an armed robbery. My directed supervisor, my sergeant
22 assigned it to me to investigate further.

23 Q I guess what I'm trying to help the jury
24 understand, uh, when a call goes out, when the initial
25 deputy responds, do you always go there or you pick up

1 the case a couple of days later after the deputy has
2 done his initial report?

3 A Usually, it's a couple of days later. It
4 could be the next day depending on if it was on the
5 weekend or not. He turns his report in that day to
6 his supervisor who, in turn, turns it into our
7 division. Then our supervisor will assign it to an
8 investigator.

9 Q Going back to August 30th of 2008, did
10 investigation begin involving this Defendant John
11 Kimble that's led you have to come to court today and
12 testify?

13 A Yes.

14 Q What was your role in that investigation?

15 A I was the lead investigator in this case.

16 Q How did you become involved and when did you
17 become involved?

18 A It was assigned to me, I believe it was the
19 2nd of September of 2008, by my supervisor.

20 Q And who did the initial report or responded
21 to the scene on August 30th, 2008?

22 A Deputy Carlisle did.

23 Q Now, did you review his initial report ---

24 A I did.

25 Q --- and go from there with your

1 investigation?

2 A Yes, ma'am.

3 Q At the time you first got the case in
4 September, I believe you said second. That would have
5 been three days after the robbery or something,
6 correct?

7 A Yeah, something like that.

8 Q You reviewed his report, correct?

9 A Correct.

10 Q At that point, did you have any suspects, uh,
11 for the people that committed this crime? Did you
12 have any identified at that point?

13 A No, ma'am.

14 Q And what did you do once you received the
15 case to try to determine who had committed this crime?

16 A I first reviewed Deputy Carlisle's report to
17 see if there were any leads that I could follow up on.
18 Obviously, the most important lead that I had to start
19 off with was the vehicle description that one of the
20 victims was able to provide along with a tag number

21 Q Who provided the vehicle information and the
22 tag number?

23 A The vehicle, Omar Arcos.

24 Q What tag number did he provide?

25 A He provided , , , , , .

1 XSJ, 498.

2 Q Were you able to determine who that vehicle
3 came back registered to?

4 A Yes, we have access to the South Carolina
5 Department of Motor Vehicles. I ran the tag through
6 the South Carolina Department of Motor Vehicles and
7 found that it was registered to a Betty Anderson. She
8 lived at Groves Road which is in Greenville, South
9 Carolina.

10 Q Did you try to make contact with Betty
11 Anderson?

12 A I did. I went to her residence that day. I
13 didn't find anybody there. Nobody came to the door.
14 The vehicle was not there. So I went next door and
15 knocked just to see if they were familiar with the
16 people who lived at Groves Road or maybe had seen
17 a car matching that description. I spoke to some of
18 the neighbors who were able to give me some additional
19 information. They said that the owner of the car,
20 Betty Anderson's daughter was the one -- they were
21 familiar with the car and her daughter was the one who
22 actually drives that car.

23 Q Were you able to determine -- first, what are
24 the names of the other co-Defendants in this case with
25 John Kimble?

1 A Stallard Anderson. His nickname is Buster.
2 Also Judy Carol Rogers.

3 Q Back to the Andersons, Betty Anderson and
4 Stephanie, were you able to determine whether there
5 was any relationship between Betty Anderson to
6 Stallard Anderson and Stephanie Anderson -- to
7 Stephanie?

8 A Yes. I was able to determine that Betty
9 Anderson was -- I'm not sure of their current marital
10 status, but they were, at one point, husband and wife.
11 And Stephanie Anderson, who was the one in possession
12 of the car or driving the car is the daughter of
13 Stallard Anderson and Betty Anderson.

14 Q What did you do once you got the information
15 that Stephanie, the daughter, used the vehicle?

16 A The information I received was she went to
17 school at Berea High School. So it was still during
18 the day time, during school. I went immediately over
19 to Berea High School. I did locate a vehicle in the
20 parking lot. It was a 1995 bluish-gray -- it was kind
21 of faded blue -- uh, Honda Civic in the parking lot
22 with that same tag that vehicle described at 4, 9, 8,
23 X-ray, Sierra, Juliett.

24 Q Did you try to locate Stephanie at Berea High
25 as well?

1 A Yes, I did meet with her there at the high
2 school. She was still at the school.

3 Q All right. Did you speak with her about
4 whether, you know, she possibly had any knowledge
5 about the car and August 30th and when her father had
6 it that night?

7 A Yes, I did.

8 Q And can you -- did you find anything in the
9 vehicle?

10 A No. I asked her for consent to search her
11 vehicle. She gave me consent to search it. I didn't
12 find anything in the vehicle that might have been, uh,
13 -- belonged to any of the victims.

14 Q Based on your conversation with her, did
15 Stallard Anderson or Buster then become a primary
16 suspect in the case?

17 A Yes.

18 Q And next, going to John Kimble, how did your
19 investigation lead to him?

20 A Uh, that same day, uh, I spoke with an
21 investigator with the Travelers Rest Police
22 Department, Clark Braiser. After speaking with him
23 and also speaking with Stephanie, my investigation did
24 lead to John Gardner Kimble, also, uh, his nickname is
25 Toby.

1 Q You were able to identify that his nickname
2 was Toby? Is that through Stephanie?

3 A Through Stephanie, yes.

4 Q All right. Did you identify any female or
5 who the female suspect may be in this -- or who the
6 female suspect was in this investigation?

7 A Yes, uh, Judy Carol Rogers was the female
8 that was identified in this case.

9 Q And did you end up speaking with her at some
10 point?

11 A I did.

12 Q Showing you what's marked as State's Exhibit
13 5. How did you end up speaking with her? Did you
14 have to hunt her down? Did she come to you
15 voluntarily? What happened?

16 A Uh, she -- we, uh, ended up picking her up at
17 a trailer up in Marietta.

18 Q And did she voluntarily give you a statement?

19 A She did.

20 Q Did she detail her involvement and the other
21 co-Defendants involvement in the case?

22 A Yes, she did.

23 Q What date do you have on that statement?

24 A The date on the statement is the 5th of
25 September of 2008.

1 Q Did you make any deal with her or promise or
2 anything to get her to give you that statement?

3 A No, ma'am.

4 Q Turning to the victims in the case,
5 Investigator, were you able to identify the victims in
6 the case?

7 A Yes. One was Omar Arcos and the other one
8 was Juan Garcia.

9 Q Did you speak with the victims in the case?

10 A I did speak with Omar Arcos. I was not able
11 to speak with Juan Garcia. I made several attempts to
12 make contact with him, but I was not successful in
13 contacting him and was later advised by Mr. Arcos that
14 he had left town.

15 Q And to date, you have not been able to speak
16 with him, is that correct?

17 A That's correct.

18 Q When did you speak with Mr. Arcos about what
19 had happened to him?

20 A I spoke with him on the 3rd of September of
21 2008.

22 Q Was Mr. Arcos able to speak before? Did he
23 speak with you in English or did he speak with you in
24 Spanish?

25 A He spoke with me in Spanish.

1 Q And do you speak Spanish?

2 A I do.

3 Q What's your background and training to speak
4 Spanish?

5 A Uh, my parents are missionaries in South
6 America, so I grew up there in Bogota, Colombia. I
7 lived there for about 14, 15 years. So I learned
8 Spanish growing up. It's pretty much a second
9 language. I speak it just about as good as English.

10 Q So you are considered fluent?

11 A Yes.

12 Q Do you have any question whether Mr. Arcos,
13 when you spoke with him had any problem understanding
14 you and what you were asking him and what your
15 conversation was?

16 A None at all.

17 Q Did you conduct photographic lineups in this
18 case?

19 A Yes, I did.

20 Q And how many did you conduct?

21 A I conducted three separate photographic
22 lineups.

23 Q How do you -- we'll talk about all that in
24 just a second. Can you tell the jury how do you go
25 about putting together a photographic lineup?

1 A What I'll do is I'll get, uh, a known picture
2 of the person that may be a suspect in the case and
3 I'll put it in a lineup with five other pictures. I
4 will try to make it -- all the other pictures look
5 similar to one that's a suspect in the case, be it the
6 same race, height, weight, physical description,
7 facial hair, that sort of thing so they all look
8 similar to the person that is a suspect in the case.

9 Q All right. First, let's talk about the man
10 that the victim relayed had a gun in this case. Did
11 you put together a photographic lineup involving the
12 suspect in that?

13 A Yes, I did.

14 Q And how many photographs were put into that
15 lineup?

16 A Uh, six.

17 Q Was -- I'll show you what's marked as State's
18 Exhibit number 2. Can you take a look at that
19 document and tell me what that is?

20 A Yes, this is a six-person photo lineup that I
21 presented to Mr. Arcos on the 3rd of September 2008.

22 Q And is the Defendant, John Kimble, in that
23 lineup?

24 A Yes, he is.

25 Q Would you -- were the other five people that

1 are in this lineup of similar physical description to
2 Mr. Kimble as much as you could?

3 A Yes.

4 Q And in what way are they similar?

5 A Uh, obviously same race, roughly the same
6 age, tried to get the same facial hair, color of hair,
7 uh, as close as possible.

8 Q And when doing a lineup, there's no way to
9 make them perfect. It's just an attempt to make it as
10 similar as possible, is that correct?

11 A Correct.

12 Q What date did you show him this lineup?

13 A I showed him the 3rd of September 2008.

14 Q Approximately what time?

15 A A little bit after 10:00 in the morning. I
16 think on back, it's like 10:21 in the morning.

17 Q Okay. Where did you show him the lineup?

18 A I actually went to his residence. I called
19 him and there was some problem getting him to the law
20 enforcement center. I drove to his residence and met
21 with him outside his residence.

22 Q Was anybody else present with you when you
23 showed Mr. Arcos that lineup?

24 A No, ma'am.

25 Q And what did you tell Mr. Arcos when you did

1 show him that lineup?

2 A I told him I had a couple of possible
3 suspects in the case. I told him that I was going to
4 present him several different lineups and that I had
5 some possible suspects in each of the lineups. I told
6 him that there is a possibility that they may be in
7 the lineup, they may not be in the lineup, that I
8 wanted him to make sure that whenever he did look at
9 the lineup that he could tell me without a shadow of a
10 doubt that that was the person who robbed him.

11 Q Okay. Did you tell Mr. Arcos that the person
12 specifically to that exhibit that has Mr. Kimble, this
13 Defendant's photograph, did you say to him, Mr. Arcos,
14 one of these six guys are definitely the guy that
15 robbed you at gunpoint, now pick one out. Did you say
16 that to him?

17 A No, ma'am.

18 Q And did you lead him to believe that he had
19 to pick anyone out of that lineup?

20 A No.

21 Q Did you suggest to him which photograph to
22 pick out?

23 A No, ma'am.

24 Q Did you in any way try to influence him in
25 picking out a person from that lineup?

1 A No, ma'am.

2 Q And did Mr. Arcos in fact select a photograph
3 of the person that he stated had held him at gunpoint
4 and robbed him?

5 A Yes. When I handed it to him, what I
6 generally do is I'll hand it to him face down and
7 before I let him look at it, I explain everything to
8 him. Then I tell him once he's ready. He understands
9 that there's no pressure in picking anybody out if he
10 can't recognize anybody. I asked him to turn it over.
11 Immediately when he turned it over, it was -- as soon
12 as he turned it over, he looked at it. And within a
13 second or two, he pointed right to the known picture
14 of John Kimble.

15 Q My next question was how confident was he in
16 his selection at least to you?

17 A Very confident. It was a very quick
18 identification.

19 Q Did you ask him to make any markings on the
20 lineup to designate which photograph he had selected
21 as the person that had robbed him at gunpoint?

22 A Yeah, I did. I asked him to circle the
23 picture of the person that he had selected and also to
24 put his initials in the same box where the picture is.

25 Q Again, I'm asking you just to take a look at

1 this lineup. Is this the photographic lineup that you
2 used?

3 A Yes.

4 Q And how do you recognize it?

5 A It's the one that I developed. Also, after
6 completing my investigation, uh, I placed this into
7 Property and Evidence. Then I collected it prior to
8 coming to court. So it's been in Property and
9 Evidence since then.

10 Q And what is Property and Evidence?

11 A That's where we put our evidence basically,
12 uh, and store it until we need it for trial.

13 Q Is the lineup in substantially the same
14 condition as it was when you showed it to Mr. Arcos in
15 September?

16 A Yes.

17 Q Any changes, any deletions or anything made
18 to it?

19 A No, ma'am.

20 Q All right. I'd like you to flip over the
21 document.

22 A Sure.

23 Q And there's some writing on the back, what's
24 the writing on the back?

25 A It's in Spanish. I asked him to just write

1 out, uh, a sentence of how he recognized the person
2 that he identified. And he wrote out a sentence.

3 Q What does that say?

4 A You want to read -- me -- in Spanish?

5 Q Sure.

6 A (Reads aloud in Spanish.)

7 Q Actually, what does -- thank you.

8 A You're welcome.

9 Q Uh, --

10 A I just wanted to show off a little bit.

11 Q I asked that question wrong. Uh, what does
12 it say in English for the people that don't speak
13 Spanish?

14 A It says I recognize the person who robbed me
15 and he had a pistol.

16 Q And below that, are there any other writings
17 on this page?

18 A Yes. It has the victim, Omar Garcia Arcos'
19 signature. Then he dated it November -- I'm sorry --
20 September the 3rd, 2008 and he put 10:21 as the time.

21 Q All right. Would you step down one second
22 for me?

23 A Sure.

24 Q Well, you can turn the light back on. If you
25 will, just for clarify to the jury, point out the

1 photograph that you state was selected by Mr. Arcos as
2 being the person that robbed him.

3 A This bottom lefthand picture right here which
4 is a known picture of John Kimble.

5 Q All right. Thank you. Uh, next, I want to
6 show you what is marked as State's Exhibit 3. Do you
7 recognize this item?

8 A I do.

9 Q What is that item?

10 A It is the second photographic lineup that I
11 showed to Mr. Arcos on that same day.

12 Q What did you tell Mr. Arcos as to the second
13 photographic lineup?

14 A The same thing as I told them on the first
15 one. There's a possible suspect within this lineup.
16 The person who robbed him could be there, he could not
17 be in there. There was no pressure to pick anybody
18 out. Uh, if he recognized the person who had robbed
19 him, that he could point him out. Again, I did the
20 same thing where I laid it face down. Made sure he
21 understands everything before he turns it over.

22 Q All right. And on that photographic lineup,
23 was Mr. Arcos able to select a photograph of somebody?

24 A Yes, he selected the bottom middle picture,
25 which was is a known picture of Stallard Anderson.

1 Q Would you flip that document over please?

2 A Yes.

3 Q Is there any writing on the back of that
4 photograph?

5 A Yes.

6 Q I mean that lineup. What does it state?

7 A And I will translate into English. It says I
8 recognize the person who robbed me and he had a knife.

9 Q I recognize the person who robbed me and he
10 had a knife?

11 A Yes, and then it has the signature.

12 Q Step down really quickly and just point that
13 out to the jury.

14 A Sure.

15 Q For clarification, who was the person that
16 Mr. Arcos identified as having the knife?

17 A He selected the bottom middle picture. That
18 is a known picture of Stallard Anderson.

19 Q Was there any -- as far as his selection, how
20 would you describe how quickly or not quickly or --
21 how did he select it?

22 A He was very confident in his selection of Mr.
23 Anderson as well. He was very quick to pick him out.

24 Q The last one is State's Exhibit 10. Do you
25 recognize that item?

1 A Yes.

2 Q What is that?

3 A This is the 3rd photographic lineup that I
4 presented to him. This one included a known picture
5 of Judy Carol Rogers.

6 Q Was he able to select anybody out of that
7 photographic lineup as being the female involved in
8 this?

9 A He was not.

10 Q He was not?

11 A No, ma'am.

12 Q All right. I want to ask you, as to any
13 forensic evidence in this case, are you aware of --
14 are you aware of whether forensics responded to this
15 incident location?

16 A Yes, they did respond.

17 Q What was the incident location again?

18 A It was Little Rio Road which is in
19 Marietta, South Carolina.

20 Q Is there any evidence, possible evidence that
21 was collected that you, as lead officer, became aware
22 of?

23 A Yes, I became aware that there was some
24 fingerprints lifted, latents lifted from the scene
25 there at Little Rio Road by, uh, Tomlin who was

1 forensics officer at the time.

2 Q And as lead officer, did you have any, uh,
3 part in asking to have those examined by examiner Bill
4 Cromer?

5 A Yes. When I became aware that there was some
6 fingerprints in the case, I, uh, sent an email to Bill
7 Cromer who was the Principal Criminalist. And I
8 provided him the names of all three of the, uh,
9 Defendants in this case and asked him to compare those
10 known prints to the prints that were lifted from the
11 scene on the night of the incident.

12 Q Okay. And I think we had plenty of testimony
13 on that. Please answer any questions defense counsel
14 has.

15 A Okay.

16 MR. HARBIN: Thank you.

17 CROSS-EXAMINATION

18 BY MR. HARBIN:

19 Q Investigator, ---

20 A Yes.

21 Q --- as lead detective, or lead investigator
22 rather, you have the ability to direct forensics to
23 do, just as you said, please look at these prints, go
24 process this scene and that kind of thing. Okay. And
25 with regard to these lineups, the idea, I think, and

1 you can correct me if I'm wrong, the ID -- the more
2 these folks look alike, the better the ID. In other
3 words, the more detail that it requires to ID
4 somebody, the better it is for your purposes, is that
5 correct?

6 A Correct.

7 Q Okay. And specifically, I believe you
8 touched on this. Let's do it one more time. The idea
9 is to try to find, not only, you know, six white
10 fellows, but six white fellows with dark hair and some
11 facial hair.

12 A Correct.

13 Q As similar as you can possibly make them look
14 really.

15 A Right.

16 MR. HARBIN: No further questions. Thank
17 you.

18 THE COURT: Anything on redirect?

19 MS. SUSTAKOVITCH: No, sir, Your Honor.

20 THE COURT: All right. Thank you, sir. You
21 can step down.

22 THE WITNESS: Thank you, Judge.

23 MS. SUSTAKOVITCH: Your Honor, at this time,
24 the State rests.

25 THE COURT: Okay. All right. Madam

1 Forelady, Ladies and Gentlemen of the jury, this
2 is one of those times we have to take up some
3 legal issues outside your presence. This is
4 probably also a good time to take one of your
5 breaks. We'll get back to you shortly. Please
6 don't discuss the case yet.

7 (WHEREUPON, the jury exits at approximately
8 10:59 a.m.)

9 THE COURT: Motions. Any motions?

10 MR. HARBIN: Yes, sir. Uh, With regard to
11 indictment number 2009-GS-23-478, which is the
12 armed robbery in connection with Juan Garcia, and
13 the same motion, well, related motion anyway,
14 2009-GS-23-0476, which is the Burglary in first
15 degree which names the unlawfully entering the
16 home of Juan Garcia, the defense would make a
17 motion for directed verdict that there's been no
18 evidence from the proprietor, the owner of the
19 dwelling, the person that actually lives in the
20 dwelling, that Mr. Kimble did not have permission
21 to go into the dwelling.

22 Obviously -- although it's a crime against
23 property, it's also basically a crime against the
24 person or the person's property. I don't know
25 that without having Mr. Garcia here, Judge, that

1 we know -- we've ever been told that he did not
2 have permission to go into the home.

3 The offense of armed robbery, I believe,
4 would be a crime against the person. So without
5 Mr. Garcia's testimony that he was an unwilling
6 participant, that he wasn't doing whatever,
7 something else with Mr. Kimble, that the State
8 has failed to meet its burden.

9 THE COURT: All right. That's an
10 interesting argument, but, uh, I'm going to deny
11 it. It's certainly a reasonable inference to be
12 drawn from the evidence presented.

13 MR. HARBIN: Yes, sir. And finally, with
14 regard to 2009-GS-23-0477, this is the armed
15 robbery indictment naming John Kimble as the
16 alleged assailant and an armed robbery against
17 the person of Omar Marcus, M-A-R-C-U-S. I will
18 argue, although I understand that that may have
19 been at one point in time a scribner's error, the
20 State has rested and has never addressed a
21 different name and alias and AKA. Every witness
22 that has gotten on that stand, including Mr.
23 Arcos himself has identified himself as Omar
24 Arcos, A-R-C-O-S, and that clearly is not who was
25 identified in the indictment.

1 MS. SUSTAKOVITCH: Briefly to respond, Your
2 Honor, that is an honest scribner's error. I
3 read it. His name is Arcos. I didn't see the M,
4 Marcos. I don't have any other thing to add
5 other than --

6 THE COURT: I'm going to find that it is a
7 scribner's error, but that doesn't prevent you
8 from arguing it to the jury. So I'm going to
9 deny that motion as well.

10 MS. SUSTAKOVITCH: Thank you.

11 MR. HARBIN: Thank you, Judge.

12 THE COURT: All right. You're going to put
13 anything up?

14 MR. HARBIN: No, sir.

15 THE COURT: You want to rest formally in
16 front of the jury?

17 MR. HARBIN: I don't think that's necessary.

18 THE COURT: All right. What, uh, --

19 MR. HARBIN: Unless you do.

20 THE COURT: No. Any specific charges that
21 you want? Let me just ask you this, do you want
22 -- I have a charge -- very simple. It's absent
23 defendant under the laws of this state and a
24 defendant may be tried even if the defendant does
25 not attend the trial, but the fact that the

1 defendant is not present may not be considered in
2 any manner whatsoever. Do you want the charge on
3 the failure of the defendant to testify?

4 MR. HARBIN: Uh, yes, sir, out of abundance
5 of caution, yes.

6 THE COURT: Okay. How about an
7 identification -- charge on identification?

8 MS. SUSTAKOVITCH: I apologize. What charge
9 would that be, Your Honor? You mean photographic
10 lineup?

11 THE COURT: Yeah. I mean, the guy, he's not
12 here.

13 MS. SUSTAKOVITCH: Right.

14 THE COURT: Identification is kind of an
15 issue in this case.

16 MR. HARBIN: Judge, I don't want to get much
17 in the way by telling you anything else. I'm
18 just going to remain silent.

19 MS. SUSTAKOVITCH: Whatever Your Honor wants
20 to do on that.

21 THE COURT: I'm going to give it because it
22 is an issue in this case. Anything else you can
23 think of? Hand of one is the hand of all?

24 MS. SUSTAKOVITCH: I would ask for that one.

25 THE COURT: Anything else?

1 MR. HARBIN: No, sir.

2 THE COURT: Okay. Well, let's take a break
3 and we'll come back and crank it up.

4 MS. SUSTAKOVITCH: Your Honor, could I ask
5 for one clarification in closings? I've never
6 objected to an opening ever so I apologize to Mr.
7 Harbin for doing that, but I want to make sure as
8 far as the defendant not being here, what was
9 stated in opening that was objectionable to the
10 State is he said the defendant could not make it.
11 I want to make sure that that does not happen
12 again in his closing. The Defendant chose not to
13 be here. I just want to make sure he didn't try
14 to portray it in that manner again.

15 MR. HARBIN: I meant it collectively. I'm
16 not sure that helps him one way or the other, but
17 I will agree not to use the word "could not".

18 THE COURT: Right. He can talk about him
19 not being here.

20 MR. HARBIN: Right. I just did not want him
21 to make it sound like he could not make it.

22 THE COURT: You can't comment on what's not
23 in evidence. There hasn't been any evidence
24 presented with respect to why he's not here.

25 MS. SUSTAKOVITCH: Okay. Thank you.

1 THE COURT: Okay. All right.

2 (WHEREUPON, a short recess is taken at
3 approximately 11:05 a.m.)

4 (WHEREUPON, the Court resumes at approximately
5 11:40 a.m.)

6 (WHEREUPON, the jury enters at approximately
7 11:41 a.m.)

8 THE COURT: All right. Madam Forelady,
9 Ladies and Gentlemen of the jury, uh, we have --
10 if you remember yesterday, I gave you that little
11 roadmap, the five parts of a trial. The first
12 part was opening statements. The second part was
13 presentation of testimony and the evidence. I
14 want to tell you that we have concluded the
15 second part of the trial. All the testimony and
16 all the evidence that's going to be presented is
17 now before you.

18 We are about to move into the third phase of
19 the trial which are the closing arguments of the
20 attorneys. So y'all paid close attention
21 throughout the course of this trial and we really
22 appreciate that. I ask you to continue to do
23 that through the arguments of these fine
24 attorneys. All right.

25 MS. SUSTAKOVITCH: Thank you, Your Honor.

1 May it please the Court.

2 What is this case really about and why should
3 you all care? This case is about some very
4 serious charges against the Defendant who has
5 clearly shown he doesn't have respect for laws.
6 It's a man who the evidence shows thinks it's
7 okay to rob people at gunpoint, force them into
8 residences. He thinks that's okay. And all for
9 what? Omar Arcos gave up what? \$30. Juan Garcia
10 gave up maybe \$200. I think some speakers were
11 taken from Omar.

12 What this case is about is that this type of
13 activity can't be tolerated in Greenville County.
14 Trios of people can not be driving around
15 committing these types of crimes in this
16 community. This is a court of justice and it's
17 about a search for the truth. It's not about
18 what the defense wants the truth to be or wishes
19 the truth to be or tries to confuse the truth
20 into becoming. It's just really about plain
21 simple truth.

22 I honestly believe -- I said this at the
23 beginning, I think, I hope the case would be
24 short. I think it's a straightforward nontricky
25 case when you listen to it. It's not

1 complicated. Frankly, it's not pretty. I told
2 you at the beginning some parts of it. I'm sure
3 y'all sat there and you were just stunned that
4 some people were living certain lifestyles that
5 you can't imagine. It's not your life. It's not
6 something you can identify with, but it's reality
7 for some people.

8 I'm going to refer to some notes, if you
9 don't mind. What we're doing is very
10 significant. I want to try to do a good job not
11 to miss important pieces of parts. So I'm going
12 to look at them from time to time.

13 Uh, one thing that I would say from the
14 outset is the defense is here to do his job to
15 zealously defend his client. Oftentimes, part of
16 that ends up being confusion of issues, clouding
17 of issues, getting you off track of what is
18 simple and easy to understand. I call it rabbit
19 trails, but it's making you look over here at
20 some minute issue, go over here for some minute
21 issue when really what's right in front of you is
22 what you need to be looking at. I would ask you
23 to keep your eye on the ball with this case and
24 let it be simple. Let the evidence take you to
25 the truth and return a verdict that speaks

1 justice.

2 Uh, very briefly about the burden of proof in
3 this case, the burden of proof is always on the
4 State. It is a significant burden. It's an
5 important burden. Our criminal justice system,
6 it's one of the most important rights that any
7 person has. No person should be convicted unless
8 the State proves beyond a reasonable doubt that
9 they are guilty of the charges they are charged
10 with.

11 Judge Miller is going to explain that to you
12 further in just a minute. But just briefly, what
13 is proof beyond a reasonable doubt? It's kind of
14 this amorphous idea. But really, what it is it's
15 not beyond an unreasonable doubt, it's beyond a
16 reasonable doubt. There are very few things in
17 this life that you or I know with complete
18 certainty. The law doesn't require the State to
19 prove that. It would be impossible.

20 What the State is required to prove is that
21 when you listen to this evidence which you
22 listened to very attentively yesterday and today,
23 the bottom line is were you firmly convinced --
24 as you sat there in your seats, were you firmly
25 convinced that John Kimble committed these

1 crimes? If you were, then it is your duty, under
2 your oath, to convict him of these crimes.

3 Procedurally, this is how this works at this
4 point. I'm required to go first with closing
5 arguments. Defense counsel is going to get up,
6 Mr. Harbin, and he's going to speak to you next.
7 I don't get a chance to get back up and respond
8 to anything he says. I don't know what he'll say
9 frankly, but what I would ask you to do is keep
10 your eye on the ball. Follow the evidence.
11 Don't get sidetracked on small little issues.
12 Don't change the overall big picture of this
13 case.

14 Another thing is, what I say is not evidence.
15 What he says is not evidence. If anything that
16 we say is in conflict with what you remember, I'm
17 sure it's conventional that either one of us
18 would say something that would conflict with what
19 you remember. You go with what you remember.
20 You are the factfinders in this case. What you
21 heard was right there from that witness stand.
22 That's the evidence in this case.

23 I want to go through the charges that this
24 Defendant is charged, the elements of each
25 charge. And that's just how my brain works, just

1 to go through them and explain to you and kind of
2 bring out how the State has met its burden on
3 each one of these charges. First, as to Armed
4 Robbery, there's an Armed Robbery charge with
5 Omar Arcos, the victim. Second, I mentioned to
6 you Possession of a Weapon during the Commission
7 of a Violent Crime. Next, another Armed Robbery
8 charge with Juan Garcia, the victim. Finally, a
9 Burglary in the first degree charge.

10 Let's go through the evidence and start with
11 Armed Robbery. The elements of that are, first,
12 we had to prove that the Defendant committed a
13 robbery while he was armed with a weapon. What's
14 a robbery? A robbery is if I come up to Lauren
15 and I take something, and I'm armed with a knife
16 or a gun, and I take it from her. In this case,
17 so we basically have to prove that there was a
18 robbery while armed with a weapon. In this case,
19 we've proven that.

20 Let's start with Omar's case, with his armed
21 robbery. You heard Omar, through a translator.
22 He stated to you, I believe, that he understands
23 about 97 or something percent of English, but he
24 can only speak about 20 percent. So keep in
25 mind, particularly at the beginning of this case,

1 when the first officer went out there, Carlisle,
2 he testified that there was some language
3 problems. He said they had to use hands to
4 figure out how tall people were and he didn't
5 speak Spanish. If you don't speak Spanish, it's
6 hard to get with a victim and totally get
7 completely clear, accurate information. Now,
8 Investigator Jarvis, you saw speak Spanish. He
9 could communicate with him better.

10 Going back to Omar's testimony, Omar said he
11 felt the gun to his head. This is as he got in
12 his friend's yard. Just imagine that. An
13 average day. You're working on your car. You're
14 not expecting to get jacked up and held at
15 gunpoint. That happened to Omar working on his
16 car. And this car comes up. He thought it was
17 suspicious. Why? Because the evidence in this
18 case is that Little Rio Road is a private road.
19 There's not a thoroughfare of traffic going back
20 and forth. So when he saw this car come through,
21 when he saw the car come through, he thought it
22 was strange.

23 At that point, he went to tell his friend,
24 hey, Juan, there's a suspicious car. Don't come
25 outside. That's when you heard Omar tell you

1 about Judy. Judy, she admits she's an addict, a
2 drug addict. Pretty upfront with you about the
3 fact that she was over there to sell her body to
4 get money and get crack. Not pretty. Omar
5 turned her down. You heard her testify that she
6 didn't know him at all. At that point to the
7 armed robbery, there's testimony that Omar felt
8 the gun to the back of his head. The man who was
9 holding that gun was later identified as John
10 Kimble.

11 Omar testified that the man with the gun
12 demanded money several times. He pushed me in
13 the car. He tells me to look for my wallet,
14 he'll kill me if I don't have it. Then Omar
15 gives him what he has, \$30. Never seen him
16 before. This is the man that Omar picked out of
17 the photographic lineup. You heard from
18 Investigator Jarvis how he conducts that lineup.
19 He never said Omar got to pick somebody out of
20 here. One of these six people is the guy that
21 did it. I don't want to repeat what you just
22 heard, but you heard his direct testimony on how
23 he presents a lineup.

24 Without hesitation, Omar picked John Kimble
25 out. He described he had a hat on. So possibly,

1 he didn't see his hair that well. That might
2 explain that, but he saw his face. His testimony
3 was when I was in the car, I saw his face. He
4 had the gun in my face.

5 Then you go to the fact that he gets, at
6 gunpoint, forced inside the trailer. What must
7 he be thinking at that point? He gets thrown up
8 against the refrigerator. John Kimble's buddy
9 there, Stallard Anderson switches off. You heard
10 Omar testify that while he was outside, Stallard
11 Anderson is busy ripping out amplifiers from the
12 truck of the car. That's part of the robbery.

13 The robbery is complete with just what Kimble
14 did holding the gun to his head and taking the
15 \$30, armed robbery is complete at that point.
16 But just to add insult to injury, his confederate
17 there, his little buddy Stallard takes the
18 speakers, the amplifiers. And you will hear,
19 under the hand of one, hand of all, even if
20 Kimble had never got that \$30, it would still be
21 an armed robbery.

22 You heard Stallard Anderson's testimony.
23 Let's talk about the co-Defendants in this case.
24 Not pretty. I told you at the beginning. The
25 State doesn't get to pick who John Kimble made

1 his friends. They have records. We'd love to be
2 able to put up a Sunday school teacher, but
3 that's not who he was hanging out with. He
4 picked them, not us.

5 Stallard Anderson, you saw his demeanor. You
6 got to listen to him. Did he seem like he was
7 putting you on or did he seem scared, a little
8 nervous? You gauge people. Did he seem to be
9 telling you straight up what went down? He
10 admitted to crack being his drug of choice. Went
11 through his RAP sheet. Let the defense attorney
12 know his probation issues. And we wanted to make
13 sure all that prior criminal history was correct,
14 we didn't get it wrong. But that doesn't change
15 that his testimony consistently corroborates the
16 victim. The victim didn't know him. Stallard
17 Anderson testified to that. I didn't know who
18 got out of the car. He basically said Toby said
19 come on. I asked him when he said come on, what
20 does that mean. At that point, he knew they were
21 going to rob Omar.

22 Now, Judy's testimony was she didn't know
23 that whole plan was going to happen. Her plan
24 was do to, quote, business, right? Her business
25 was, first, to try to get some sex set up with

1 Omar. When he turned her down, she went up to
2 the trailer. She testified, excuse me, she
3 testified that Juan had done that in the past. I
4 don't know. Assume that he did. That's not
5 good. Assume that he did.

6 At that point, Judy Rogers is not involved
7 mentally, from what she says, with what Stallard
8 Anderson and Toby Kimble cooked up, this armed
9 robbery that's kind of unfolding as we speak.
10 You look at Stallard Anderson's corroborating
11 testimony. He said, I saw Kimble put the gun to
12 Omar's head. He admits he had a knife. He saw
13 Kimble ask for money. He remembers seeing --
14 this is outside again with Omar in the armed
15 robbery. He remembers seeing Omar getting pushed
16 into the car. He told you I didn't see what
17 happened at that point because I was busy ripping
18 off the amplifiers.

19 Judy Carol Rogers also corroborates the
20 victim, Omar, who she didn't know either. She
21 says that she looks out and then that's when her
22 first indication is that there's going to be an
23 armed robbery. She sees Kimble and Anderson
24 robbing Omar. She sees them bring him into the
25 house at gunpoint. That's when whatever she had

1 set up in trying to get some money to go get some
2 crack or whatever her drug was that night
3 changed. That's when it all went down a lot
4 differently for Omar and Juan.

5 Besides the victim, you go back and think
6 about -- well, besides the victim and his
7 testimony and his photographic identification of
8 both men and then co-Defendants basically giving
9 consistent corroborating accounts, now, are there
10 some inconsistencies in their stories? Sure.
11 Can you imagine if they came in and had exactly
12 the same story? Wouldn't that be a problem?
13 They shouldn't have exactly the same story.

14 All of you sitting there will go back and
15 deliberate. You might have remembered something
16 slightly different than somebody else. That's
17 the way it works. People's mental recall does
18 not come and remember everything exactly the
19 same. It's more credible to me that there would
20 be some minor, I believe, inconsistencies in
21 their stories. But as to the general overall
22 account of what happened, it mirrors one another
23 between those two co-Defendants.

24 Then, at the very end, you have the forensic
25 evidence. What do we know about John Kimble? He

1 was there. His fingerprint was in the car. So
2 even if our victim in this case could never
3 identify the man that put a gun to his head, this
4 case would still be before you. The State could
5 have still gone forward with the victim giving
6 you his account of what happened. He could have
7 said I don't know. I can't pick anyone out.
8 Then you have two co-Defendants, then you have
9 the print. We have a much stronger case because
10 you do have the victim ID. The point to it is,
11 with the fingerprint, he was there. He was in
12 the car.

13 Now, defense counsel, I have no idea what
14 they are going to argue, but they may say, god,
15 it was just one print, just one print in the car.
16 Should have been prints all over the house and
17 the refrigerator. You heard testimony, first of
18 all, we don't know what they touched. We heard
19 testimony that Omar gets thrown up against the
20 refrigerator and held at knife point when Kimble
21 switches off his gun holding duties with
22 Stallard.

23 We don't have -- we don't know who was
24 touching what. We just know Omar was held at
25 knife point right there at the refrigerator. We

1 also know from testimony that at that point
2 Kimble was running through the trailer. We don't
3 know if he's touching stuff. Bottom line is
4 there is nothing that says there should be more
5 prints there.

6 You heard Bill Cromer. He said they are
7 fragile. We don't know what he may or may not
8 have touched. Even if he did touch something,
9 there's nothing to say that they would even be
10 there. So that's a rabbit trail. I point out
11 that it might come up. That's a recap of what I
12 believe, beyond a reasonable doubt, proves that
13 Omar was the victim of an armed robbery and that
14 John Kimble committed that crime.

15 Second, the second charge is Possession of a
16 Weapon During the Commission of a Violent Crime.
17 This is one that you can check off pretty
18 quickly. If you go back there and you deliberate
19 and you say, okay, we believe the State proved
20 that Omar was the victim of an armed robbery at
21 the hands of John Kimble, the Possession of a
22 Weapon During the Commission of a Violent Crime,
23 that is when someone commits an armed robbery or
24 burglary.

25 There's lots of crimes that are designated

1 violent. But if you find that he committed an
2 armed robbery against Juan, excuse me, Omar,
3 check possession of a weapon off as you go. He's
4 guilty of that as well. You don't have to
5 convict him of all four crimes. I would say he
6 is guilty of all four crimes, but as you go
7 through this, once you find him guilty of armed
8 robbery for Omar, next you go to possession of a
9 weapon. If he committed the armed robbery, he's
10 guilty of possession of a weapon as well.

11 Next, we go to the armed robbery charge with
12 Juan. Excuse me. I'm going to grab water. One
13 second. We go to the armed robbery charge with
14 Juan. Talk about elephants in the room. Let's
15 talk about the fact that Juan's not here. Didn't
16 testify. The State couldn't produce him. There
17 is no requirement that we put him up. We would
18 have liked to, but we couldn't. In this
19 situation, what you have to do is determine if we
20 put up enough evidence from other witnesses to
21 prove beyond a reasonable doubt that he was the
22 victim of an armed robbery. I submit to you we
23 did. How do you know that?

24 And going back to if Juan's not here, why
25 should you care, why should it matter? Because

1 the starting point of this case is this is not
2 Omar Arcos versus John Kimble. This is not Juan
3 Garcia versus John Kimble. It's the State of
4 South Carolina versus John Kimble. These are
5 crimes against our community, against these
6 victims, but also our community, where people are
7 out there in the community committing these
8 crimes making it not a safe place to be.

9 Going back to the armed robbery charge with
10 Juan, let's go through Omar's testimony. You
11 heard direct testimony which came from that
12 witness stand where he told you about the
13 beginning of his terrifying experience out by the
14 car. Then you heard how he came into the trailer
15 and there is Juan. He -- and I'm going to refer
16 back. Omar sees the gun pointed at Juan. He
17 sees Juan being forced go give up money. Kimble
18 is patting him down. Does it seem like a
19 consensual situation? No. Most people I know
20 don't get held at gunpoint with their back to the
21 wall and patted down and had money taken away.
22 That's direct testimony from Omar.

23 Stallard Anderson, he says -- now, his
24 testimony is consistent with the victim. Doesn't
25 know Stallard, doesn't know the other co-

1 Defendant. Stallard says I watched Kimble grab
2 Juan, throw him against the wall, search him.
3 That's when I get thrown -- that's when -- excuse
4 me -- Omar gets thrown by the frig. He states
5 that he did not know why.

6 Judy Rogers, go back to her testimony. She
7 was upfront about her intentions when she went
8 over there. Yes. She's a drug addict,
9 recovering, she states. Pretty pathetic,
10 honestly, the whole situation. Sad.

11 Judy says that she didn't know that the armed
12 robbery was going to go down the way it did. And
13 she testified that when they came inside, she
14 observed Omar, excuse me, she observed Kimble, at
15 that point, with the gun to Juan. She observed
16 him committing an armed robbery. She sees Kimble
17 take money from Juan. How do we know her story
18 is consistent? Well, her prints are in the
19 house. She was there too. We got Judy in the
20 house, Kimble outside the house. We've got
21 forensic evidence that these people were there.

22 I submit to you that as to Juan, even though
23 he is not present, the testimony in this case is
24 consistent from Omar to both Judy Rogers and
25 Stallard Anderson as to what happened to him.

1 There's nothing to indicate that he was part of
2 some cooked up plan to pretend like he was the
3 victim of a crime when he was getting jacked up
4 against the wall. You heard Omar -- I believe it
5 was Stallard Anderson and Omar say that Omar
6 wanted to go back and translate for his friend.
7 His friend was terrified. His friend was being
8 drugged back into the trailer at gunpoint and
9 Omar is telling Stallard, hey, listen, he can't
10 speak English, can I please go back and translate
11 so he doesn't get hurt?

12 Finally, as to the Burglary in the first
13 degree charge, the elements of that are that the
14 Defendant entered a dwelling without consent with
15 the intent to commit a crime inside that
16 dwelling. Then we have to prove that there was a
17 circumstance of aggravation inside the dwelling.
18 In this case, I told you at the beginning, the
19 circumstance of aggravation is that they went in
20 with weapons. Both of them. If just one of them
21 had gone in with a weapon, it would still be an
22 aggravating factor. But here, we have Stallard
23 with a knife and we have Kimble with a gun.

24 Let's go through and make sure that the
25 State's met the elements for Burglary first.

1 First, as to a dwelling, how do you know that
2 this is a dwelling? Well, numerous people
3 provided testimony. Judy Rogers -- I'm sorry.
4 Judy Best, I'm sorry, the other Judy, she was the
5 landlady. She testified as to what those
6 trailers were used for. She testified that they
7 were used as dwellings. She explained to you
8 about their family farm, that they grow
9 strawberries, they have workers that live in
10 them.

11 She explained to you -- now, she said she
12 wasn't familiar with either one of the victim's
13 names, but that the people that lived there would
14 have friends over. So according to Omar, he
15 believed Juan lived there. Juan very certainly
16 could have been living in that trailer and
17 there's no way that Judy Best would know. But
18 the bottom line is we've got to prove it's a
19 dwelling. We did that through Judy's testimony,
20 which was very clear that those trailers were
21 dwellings.

22 To corroborate that, you met Carlisle, the
23 main officer, first officer who went out. He
24 told you when he walked in he saw a living room,
25 a kitchen, back bedroom with clothes, all of that

1 consistent with what the landlady said which
2 would show a dwelling. You had Omar describe the
3 living room. You had Anderson and Rogers talking
4 about bunk beds, et cetera. And you had Judy
5 Rogers' fingerprint on some toiletry items in the
6 living room.

7 The next one is a little bit trickier, but
8 that's talk about it. The Defendant, Kimble,
9 entered a dwelling without consent. Well, let's
10 go back to assume -- and this is what could get
11 you confused here, but assume that Judy Rogers
12 does know Juan. She goes up. Juan lets her in
13 at that point. Judy's testimony to you is she
14 was there to broker sex for money for crack. She
15 was in no way involved in any armed robberies
16 planned or plot. That happened between Stallard
17 and Kimble when Toby Kimble says come on and they
18 start robbing Omar.

19 So then you look at lack of consent. If Juan
20 was the one that could consent to let people in,
21 he never consented to let John Kimble, with a gun
22 pointed at his friend's head and with Stallard
23 Anderson in tow with a knife, come into that
24 house and force his friend into that house and
25 then rob him. There's nothing to indicate

1 consent. All the evidence shows a lack of
2 consent by the force that was used to get Omar
3 Arcos into that house.

4 You have Omar's testimony about Juan. He's
5 not consenting, I don't believe, when he's thrown
6 up against the wall in the living room with the
7 gun to his back and with the Defendants patting
8 him down to get money. Anything that may or may
9 not happen with Judy, rabbit trail, what you go
10 back to is, was there consent when Omar is forced
11 in at gunpoint when the robbery takes place the
12 way it did.

13 I don't want to take too much of your time
14 because it's lunchtime. You've been very, very
15 thoughtful. You've listened very attentively.
16 Uh, we appreciate your service. What you're
17 doing is very important. What we're doing here
18 in this courtroom is very important. It's
19 important to the State. It's important to John
20 Kimble. It's important to the victims in this
21 case. This is the only way that a lawful society
22 can figure out disputes and conflicts. We have
23 laws and we have orders that people live by that
24 make us all safe. Everyone deserves their day in
25 court.

1 The State has a burden. When the State meets
2 its burden, the victim deserves justice. I
3 submit to you that we have proven our case beyond
4 a reasonable doubt. I ask you to convict John
5 Kimble on these charges. Thank you.

6 **MR. HARBIN:** May it please the Court.

7 I too have to use notes. I apologize. It's
8 not exactly Jack McCoy from Law and Order.
9 Hopefully, we'll get through it. I touched on,
10 in my opening, that it's going to be difficult
11 for y'all to ignore the fact that Mr. Kimble's
12 not here. I think personally that's probably the
13 hardest thing y'all have to do. You're listening
14 to folks. I think being unbiased and following
15 instructions that naturally you might not be
16 inclined to do, absent the judge's order, that's
17 really difficult. So I don't envy you that task,
18 but I'll ask you to continue doing it because Mr.
19 Kimble is under absolutely no obligation to prove
20 anything.

21 That's the way our system works. The State
22 has to bring their evidence. They have to
23 convince you. It has absolutely nothing to do
24 with what we can prove. In a way, it's kind of a
25 luxury for me because I just get to pick apart

1 their case.

2 I guess I can just go in order of the
3 witnesses and that kind of helps to organize some
4 stuff. Mr. Arcos got on the stand. I don't know
5 if it's in exact order, but the order I have.
6 Mr. Arcos told us that he speaks 97 to 98 percent
7 English. Essentially, he speaks English. I
8 didn't get the feeling though that he was fluent
9 when I was talking to him. Or if he was, he
10 wasn't cooperating. I was asking pretty simple
11 questions. He wasn't giving me simple answers. I
12 don't know why. I can't tell you why. But it's
13 not my job to tell you why. It's just my job to
14 point out that he looked like he was evading
15 questions. I mean simple questions like, what
16 kind of friend are you to him; how long have you
17 known him; where do you know him from? I think
18 that's going to become important -- become more
19 important as we talk more.

20 I asked him what he was doing there that day.
21 He said I was going to visit. I said okay. It
22 was a Saturday, a Saturday afternoon. I said,
23 okay, you were going to party. He said no, going
24 to talk. So a grown man is going on a Saturday
25 afternoon to talk to his buddy. He goes over

1 there. I said what do you normally do over
2 there? We go and we talk. I'm sure he does
3 talk, but I would imagine he has a few beers in
4 his hand when he does.

5 Now, I don't think that changes whether or
6 not he's wrong. I don't. I think that changes
7 whether or not he's telling the truth. I think
8 that means and that indicates that he's not
9 sharing something. I don't know what he's not
10 sharing but he's definitely not telling me the
11 truth. He doesn't want to tell anybody what he's
12 doing there. This isn't Oprah's book club. He's
13 not going to talk to his buddies. He's going to
14 do something. He doesn't live there. It's out
15 in the middle of nowhere. He's going there for a
16 reason. I don't know what the reason is. He
17 didn't offer it to us.

18 I found it very interesting, and again, I
19 have no idea why, why does he go to Juan's house?
20 He's outside working on his car. He sees
21 somebody that he immediately calls suspicious
22 which I find interesting. He sees a car from
23 long enough away for him to go inside the house
24 and tell Juan there's some suspicious car coming
25 and he comes back outside.

1 Now, the question is this, why does he come
2 back outside? Remember, he said Juan stayed
3 inside. Why? What does he know that he did not
4 tell us? What does he know that the State didn't
5 tell us? Now, I'm not telling you that the State
6 knew and didn't tell you on purpose, I'm telling
7 you they don't know.

8 But it doesn't make sense, if I go to my
9 buddy's house and I'm outside and I see something
10 suspicious and I go and run inside and say there
11 is something suspicious going on, which I think
12 is suspicious in and of itself, using that word,
13 but there's something suspicious going on, I'm
14 not running back outside. If there's something
15 suspicious going on, I'm staying inside. There's
16 something about this car, something about this
17 visit that we weren't told about. I don't know
18 what it is. I'm venting to you that he didn't
19 tell us what that was. There's something that we
20 weren't told.

21 The last thing about Mr. Arcos, when I talked
22 to -- when I questioned Investigator Jarvis about
23 the lineup, I thought this was very important.
24 Those lineups -- and you will be able to see them
25 back in the jury room. Those six dudes in

1 Kimble's lineup, they look really similar. I
2 represent him and it takes me -- if I didn't know
3 the block already, I would have to go through
4 them. Mr. Arcos identified him within a second
5 was the testimony, I believe. It didn't take him
6 a second. This is the guy that said he never
7 seen him before, has a gun to the back of his
8 head and threatens him. I asked him did you fear
9 for your life, did you fear for your safety?
10 Yes.

11 So this guy is telling you, on one hand, I've
12 never seen him in my life, don't know who he is,
13 don't know why he's here. He believes that he
14 could die, yet he has such a clear picture of
15 this dude that he doesn't even take a few seconds
16 to make sure that's the dude? I think that's
17 indicative of a guy that actually does know him.
18 I don't doubt that. But I think it's a lot more
19 likely for you to pick out somebody instantly who
20 you already know.

21 Okay. Moving on from Mr. Arcos. I don't
22 want to pick on Mr. Arcos much. Judy Carol
23 Rogers. I don't know what it means that she said
24 in one statement that she went in and hollered
25 back to the guy, hey, there's another guy in here

1 as opposed to what she remembers. She says I'm
2 right now, I wasn't right then because at the
3 time I have a lawyer. I don't know why your
4 statement changes when you have a lawyer. I
5 don't know how that benefits her.

6 I don't even know why she would lie, but I do
7 know that when I asked her or maybe the State
8 asked her what did you plea to, uh, non-violent,
9 non-violent. Now, do any of us care if it's non-
10 violent? No. They care if it's non-violent. We
11 want to know what she pled to. She pled to
12 Strong Arm Robbery which is a lesser version of
13 Armed Robbery and she pled to Burglary second
14 degree which is a lesser version of Burglary
15 first degree. All she cared about was telling
16 you it was non-violent because that affects her
17 custody status or whatever it is in SCDC.

18 They don't care what they did. They care if
19 it's non-violent. So they can say all they want,
20 they didn't get a proper deal. There's not a
21 written deal. There's not a spoken deal. These
22 people know what they're getting. I'll give them
23 credit that they hold up their end of the bargain
24 so to speak because there's nothing hanging over
25 their head now. Can't deny that. They can't be

1 punished.

2 But non-violent. She didn't tell you what
3 she did. She wanted you to know it was non-
4 violent. She seemed pretty happy with the non-
5 violent. Bless her heart. She's been addicted
6 to drugs and now she's clean. She's been clean
7 for two years because she's been in prison for
8 two years.

9 Again, I don't want to pick on anybody in
10 particular, but Mr. Anderson -- my wife tells me
11 that my tone of voice would give away immediately
12 whether I don't like somebody. And I don't know
13 -- I don't mean to dislike or like witnesses but
14 he just rubbed me the wrong way. I don't believe
15 almost anything he says. If he told me that it
16 was raining, I wouldn't bother to pick up an
17 umbrella. This is a dude that got convicted for
18 CSC with a Minor, Burglary, Larceny, probation
19 violations. When I asked him what he was
20 convicted of, he said seven years non-violent.
21 He knew exactly how much time he's got to do, how
22 much time he's got to cover, exactly what he had
23 to do on the stand, I guess.

24 His demeanor bothered me. This wasn't
25 somebody that -- I believe the Solicitor may have

1 referenced that they were nervous on the stand
2 about some of these folks. He didn't look
3 nervous. He looked disturbingly calm. Maybe
4 it's because he's an experienced fellow in this
5 particular system. He just looked a little --
6 I'd point out that he looked a little too
7 comfortable.

8 When I asked him -- actually he volunteered
9 during direct testimony that it was the first
10 time he had done something like that. That's the
11 closest quote as I can get. The Solicitor said
12 use a knife. He didn't say -- no, he said a
13 robbery. I thought that was interesting. I
14 thought he essentially told us no, that's not the
15 first time I used a knife. That's the first time
16 I got caught for doing a robbery. He said I
17 didn't -- first time ever doing something like
18 that, I would consider burglary something like
19 that. This, essentially, is the same thing.

20 At the very last of his testimony, the
21 Solicitor got up and asked him one question, a
22 question I had already asked him and he just
23 answered it a different way. She said what is
24 your relationship to Mr. Kimble. What did he
25 say? If you remember, he said Mr. Kimble is my

1 drug dealer. First of all, why is that
2 important?

3 I can tell you why I would want that out if I
4 was a prosecutor. If I was a prosecutor, I would
5 want y'all to go he's a drug dealer. I don't
6 care if he's guilty or not. He deals drugs, he
7 can go to jail. If we don't get him today, we'll
8 get him tomorrow. If we don't get him for this
9 one, we will put him in jail cause he's a drug
10 dealer.

11 Well, I have no idea, I mean, if he's a drug
12 dealer. But I'll tell you this, if he's a drug
13 dealer, that makes this whole story a lot more
14 interesting, doesn't it? He's a drug dealer if
15 he's a white guy driving to Little Rio Road in
16 the middle of nowhere on a Saturday afternoon, a
17 migrant village. That's essentially what it is.
18 The State wants you to believe that he goes to
19 rob these folks.

20 This isn't Thornblade. What kind of money do
21 you think you'll get from these people? The lady
22 that owns the farm said there is up to five
23 people living in the trailer at a time. She
24 doesn't even know who they are. So his plan,
25 according to the State, is to go to this migrant

1 village, go into a trailer that he doesn't know
2 if there's five dudes, one dude, two dudes,
3 whatever. He's probably pretty sure that they
4 don't have any money.

5 The State's the one that brought this drug
6 dealer thing up. I can tell you that whether
7 he's the drug dealer or not, y'all's duty is to
8 figure out whether or not he committed this
9 crime. I will tell you it clouds this whole
10 story. It makes it a lot more interesting that
11 Mr. Arcos claims to not know him but he can pick
12 him out, I mean, right on top of him. I still
13 don't know why in the world these three white
14 people are in the middle of -- I apologize if I
15 offend anybody, but there are three white people
16 that clearly are out of place on this country
17 road where there's trailers of seasonal workers.

18 If he's a drug dealer, at least if he's a
19 mildly successful drug dealer, does he need the
20 30 bucks from Omar? Do you need the 200 or
21 whatever dollars from what's his name? The risk
22 of reward for that just doesn't make any sense.
23 There's something that we weren't told.

24 Again, I'm not asking you to believe that
25 Investigator Jarvis is hiding anything or the

1 Solicitor's office is. I don't believe they are.
2 I simply think that there are things that the
3 witnesses did not tell us that actually could
4 possibly lead us to an entirely different
5 conclusion about what happened that day.

6 The first officer, I believe, was Officer
7 Carlisle. He was a responding officer. The only
8 thing that I think is really worth pointing out
9 with him is if he gets there and he can't speak
10 Spanish, call somebody that does. I mean,
11 Greenville County is a pretty big county.
12 Somebody somewhere speaks Spanish. And you have
13 potentially other witnesses or at least people
14 who can tell you who lives where and if they
15 recognize this person or recognize this person.

16 He said there were five people there. Those
17 are five people that we'll never get to hear from
18 that simply could have told us very simple things
19 like yeah, I know that dude; yeah, I seen that
20 car before; yes, they are here all the time; yes,
21 Juan lives there. We don't even know if he --
22 Omar had to guess if he lives there. If we don't
23 know that he lives there, you can't convict
24 anybody of burglary because we don't have anybody
25 that lives there. Omar -- I mean, Omar, I think

1 at some point he said, oh, yes, definitely he
2 lives there, but he has no idea how he knows that
3 he definitely lives there.

4 So whether or not you believe that an armed
5 robbery occurred, I don't know how you know for
6 certain or beyond any reasonable doubt that a
7 burglary occurred, because you don't know Juan
8 actually lived there. Even the landlady doesn't
9 know if she lives there, excuse me, if he lives
10 there.

11 The, uh, forensic officer. Obviously, it's
12 more impressive to me when you have something you
13 can touch, some tangible evidence. Fingerprint
14 evidence is that for me. I would argue that the
15 fingerprint evidence doesn't actually tell you
16 anything. It doesn't tell you who was there. It
17 told you he was at -- it told you he touched a
18 magazine that was in a car. Now, I don't mean
19 not to sound absurd but the fingerprints were on
20 a magazine, not on a card and they were under the
21 seat. So by everybody's account, this guy is
22 forced into his car. He's yelling at him to find
23 money, find money.

24 Why does Mr. Kimble grab a magazine and then
25 slide it under the seat? That doesn't make any

1 sense. Now, I can't tell you whether he knows
2 Mr. Arcos, whether Mr. Arcos knows him, whether
3 he's been there or not, but I can tell you it is
4 odd. I can tell you it doesn't make any sense.
5 Mr. Arcos said they spent 15 minutes in that
6 house.

7 I've been standing here for, I don't know,
8 hopefully less than 15 minutes now, but that's a
9 long time. If you are savaging a house for
10 money, you are touching a whole bunch of stuff
11 for 15 minutes because I really thought he meant
12 to say 3 minutes. That's why I asked about it.
13 I figured they were in and out. You don't really
14 hang around a place when you are robbing a place.
15 15 minutes. They were in that back room for a
16 long time. Remember? I don't know what happened
17 in the back room. Why is Juan back there by
18 himself? I don't understand that.

19 But I also don't -- I asked Mr. Tomlin, I
20 said, if there's a fingerprint in the house,
21 you're going to find it. He said yes. I asked
22 Mr., uh, Cromer, I said can fingerprints last a
23 long time. He said sure. Unless the folks that
24 lived in the house are wiping everything down,
25 which I couldn't explain if they did, how are you

1 going to savage through a house for 15 minutes
2 and not leave a fingerprint anywhere? On the
3 refrigerator, which we know he was near, a coffee
4 table or mirror or anything. Something.

5 But the fact that Judy's fingerprints were on
6 a pill bottle doesn't mean anything other than
7 Judy touched a pill bottle. I don't doubt that
8 Judy was in there and touching a pill bottle. I
9 believe it. I believe that John Kimble touched
10 that magazine. I believe that Judy touched the
11 bottle. I just don't know why that means or how
12 that helps you determine whether or not there was
13 an armed robbery.

14 We're more than two-fifths the way through.
15 Don't worry. I won't keep you too much longer.
16 Quickly, I asked Investigator Jarvis whether or
17 not he had the authority as lead investigator to
18 ask forensics to go certain places and test for
19 certain things. The reason I asked him that is
20 because I wanted to know whether or not he could
21 have had the Honda Civic -- when he went to talk
22 to that girl, if he could have that
23 fingerprinted. Right now, we don't have
24 verification from somebody that I don't think is
25 the real suspect, that he was ever in that car.

1 There's a perfectly reasonable explanation
2 that Kimble, he knows these people already, he
3 could touch that magazine, touch that car. He
4 could go in the house. He could go in the house
5 and do whatever. But it doesn't mean he rode
6 there with him. I'm not inclined to believe
7 personally that Mr. Anderson, who has a RAP sheet
8 long as his arm and Ms. Rogers who's been
9 addicted to crack for 10 years.

10 At the time she was addicted, I assume that
11 she looked a lot better yesterday than she did
12 for the last 14 years. Then she reminded us that
13 her memory is better today than it was two years
14 ago. I'm not so sure that Ms. Rogers and Ms.
15 Anderson are two people that we can take a story
16 and actually believe. When you put it together
17 with Mr. Arcos and how he doesn't really like to
18 answer questions, he don't put things together, I
19 start to doubt the voracity of their story.

20 Now, I will grant you this, the Solicitor has
21 put up a good case. She's got so many things
22 that happened that seems to make sense. They
23 follow a certain order. But that's not her whole
24 job. Her job is to convince you that there's
25 really no other reasonable possibility. If

1 there's a reasonable possibility, then that's a
2 reasonable doubt as to the voracity of her story.
3 It's not my job to tell you which possibility it
4 is, luckily, because I have no idea what happened
5 there. But I don't -- this doesn't pass the
6 smell test. There's something that doesn't add
7 up here.

8 I ask you to guess whose chair this was. I
9 would assume that y'all were going to say that it
10 was John Kimble's chair. But, in fact, that's
11 his chair. This is Mr. Garcia's chair. Mr.
12 Garcia could have offered a whole bunch of
13 answers. We already know Mr. Garcia knew Judy
14 Rogers. The Solicitor is absolutely right. She
15 doesn't have to put them up here. I sure would
16 like him here. He would eliminate a lot. He
17 could tell me what this relationship with Judy
18 Rogers is, if she's ever gotten a ride with this
19 Stallard Anderson fellow before or John Kimble
20 for that matter.

21 If Judy Rogers is a crack head, who else is a
22 crack head? The answers for me are in that
23 chair. They should be in that chair. Mr. Garcia
24 should be in that chair. Mr. Garcia is the only
25 one, well, he's not the only one, but he's the

1 guy that could clarify and corroborate what Mr.
2 Arcos is saying. Frankly, Mr. Arcos didn't
3 impress me and I hope he didn't impress you.

4 I'll say this in closing, I don't expect you
5 to not look at the Solicitor's case and say Mr.
6 Defense Attorney, that doesn't make sense to me.
7 I mean, it's pretty dust dry. You've got two
8 people up there that pled guilty. You've got
9 another guy that said I saw him, picked him out
10 of a lineup and, heck, you've got a fingerprint
11 now. I'm not asking you to say that that doesn't
12 make sense. But I am asking you to go back there
13 and ask yourself questions. Why do this? If
14 something just doesn't make sense and really
15 doesn't make sense, why are these people in the
16 middle of nowhere and they just spare of the
17 moment just decide to rob seasonal workers in a
18 rundown trailer and they don't know whose inside,
19 if they are running into people that they don't
20 want to run into. It just doesn't add up. It
21 doesn't make sense. I have doubt. I would
22 suggest that y'all have doubt. I'd say that's
23 reasonable.

24 There's something going on here. The people
25 you are depending on for your story, either have

1 a motive because of, you know, lesser sentences
2 or lesser, non-violent versus violent offenses or
3 they have something potentially to hide. I don't
4 think Mr. Arcos is fully truthful with all of us.
5 I really don't. At the very least, we have no
6 idea whether or not Juan really lived there. Mr.
7 Arcos did not convince me that he knows Juan
8 lived there. Somebody lived there but we need
9 the actual person who lived there to tell us.

10 I do think your job is very difficult here.
11 I do. I realize that empty chair over at my
12 table makes it extraordinarily difficult.
13 Remember when you go in there, this is the
14 State's burden. It's their job to give you a
15 lesson plan, if you will. They are giving you
16 all the facts. They are telling you what you are
17 supposed to be looking at. They are telling you
18 what detracts from their case. It also allows
19 the possibility that some of these folks aren't
20 telling the truth.

21 There were ways to verify some of this stuff.
22 There were things that could have been done or
23 interviews could have been conducted. Somebody
24 who spoke Spanish could have been out there. It
25 took them an hour and 15 minutes to respond. The

1 forensics guy wasn't out there for three hours.
2 Who knows what happened in that timeframe? I
3 would just ask you to hold the State to its
4 burden. I think if you do, you will find that
5 what seemed to be very simple at the outset is
6 not at all. It's a simple explanation.

7 It's too much going on. There's too many
8 people that have something to benefit from this.
9 If Mr. Arcos doesn't say he was robbed, maybe
10 they would start asking other questions and he
11 would have to answer them. Thank you for your
12 attention.

13 **THE COURT:** All right, Ladies and Gentlemen
14 of the jury, during this trial, you and I have
15 certain duties to perform. As the trial judge,
16 it is my responsibility to preside over the trial
17 of the case and rule on the admissibility of the
18 evidence that's offered during the trial. It's
19 also my duty to charge you the law applicable to
20 the case. It is your duty, as jurors, to accept
21 and apply the law as I now state it to you. As I
22 told you at the outset, if you think you have any
23 idea as to what the law is or what the law ought
24 to be and it disagrees with what I tell you the
25 law is now, you have sworn an oath to set aside

1 your own opinion and apply the law precisely as I
2 state it to you.

3 I would also remind you that in every case
4 tried in this court before a jury, the jury is
5 the sole and exclusive judge of the facts and a
6 trial judge can not comment on or make any
7 statement about the facts in a case. Please do
8 not think by anything I may have said or done
9 throughout the course of the trial that I have an
10 opinion about the facts because I do not and the
11 law does not allow it.

12 I would instruct you again that the fact that
13 the Defendant was arrested, charged and indicted
14 in this case is not evidence of guilt, nor does
15 it create any presumption or inference of guilt.
16 These documents are simply the formal written
17 instruments which contain the charges made
18 against a Defendant and they serve as the formal
19 documents by which this case is processed and
20 brought into court.

21 Now, the indictments in this case allege
22 several different offenses against the Defendant.
23 They are Burglary in the first degree; Armed
24 Robbery with respect to Mr. Arcos and Armed
25 Robbery with respect to Mr. Garcia, and finally

1 Possession of a Weapon During the Commission of a
2 Violent Offense. Each indictment charges a
3 separate and distinct offense. You must decide
4 each indictment separately on the evidence and
5 the law applicable to it uninfluenced by your
6 decision as to any other indictment. A Defendant
7 may be convicted or acquitted on any or all of
8 the offenses charged. And you will be asked to
9 write a separate verdict of guilty or not guilty
10 for each indictment.

11 Necessarily, your job as jurors is to
12 determine the credibility or believability of the
13 witnesses who have testified in the case. It
14 becomes your duty as jurors to evaluate the
15 evidence and determine which evidence convinces
16 you it is true. And in determining the
17 believability of witnesses, you may believe one
18 witness over several or several over one. You
19 may believe a part of the testimony of a witness
20 and reject the remaining part. You may believe
21 the testimony of a witness in its entirety or
22 reject that same testimony in its entirety. You
23 may consider whether the witness has an interest
24 in the result of the trial, whether the witness
25 is prejudiced towards either the State or the

1 Defendant, the opportunity for the witness to
2 have seen the matters and things about which the
3 witness has testified and the way the witness
4 acts on the witness stand or what we call a
5 witness' demeanor.

6 Now, under the laws of this State, a
7 Defendant may be tried even if the Defendant does
8 not attend the trial. But the fact that the
9 Defendant is not present may not be considered
10 against the Defendant in any manner whatsoever.

11 Additionally, I instruct you and emphasize
12 that the fact that the Defendant did not testify
13 is not a factor to be considered by you in any
14 way in your deliberations on the question of
15 guilt or innocence of the Defendant. It must not
16 be considered by you in any manner whatsoever.
17 Every citizen has a constitutional right to
18 remain silent and the assertion of this right
19 must not be considered by you in your
20 deliberations.

21 Now, the Defendant has pled not guilty to
22 these indictments. That plea puts the burden on
23 the State to prove the Defendant guilty. A
24 person charged with committing a criminal offense
25 in South Carolina is never required to prove

1 themselves innocent. I charge you that it is a
2 cardinal and important rule of the law that the
3 Defendant in a criminal trial will always be
4 presumed to be innocent of the crime or crimes to
5 which an indictment has issued unless guilt has
6 been proven by evidence satisfying you of guilt
7 beyond a reasonable doubt.

8 Now, a reasonable doubt is the kind of doubt
9 that would cause a reasonable person to hesitate
10 to act. Reasonable doubt may arise from the
11 evidence which is in the case or from the lack or
12 absence of evidence in a case. You, the jury,
13 must determine whether or not reasonable doubt
14 exists as to the guilt of this Defendant. The
15 State has the burden of proving each and every
16 element of a crime beyond a reasonable doubt.
17 Any reasonable doubt that you have in your
18 deliberations should be resolved in favor of the
19 Defendant.

20 Now, an issue in this case is the
21 identification of the Defendant as the person who
22 committed the crime charged. The State has the
23 burden of proving identity beyond a reasonable
24 doubt. You must be satisfied beyond a reasonable
25 doubt the accuracy of the identification of the

1 Defendant before you may convict the Defendant.
2 Identification testimony is an expression of
3 belief or impression by a witness. You must
4 determine the accuracy of the identification of
5 the Defendant.

6 You must consider the believability of each
7 identification witness in the same manner as any
8 other witness. You may consider whether the
9 witness had an adequate opportunity to observe
10 the offender at the time of the offense. They
11 would be affected by things like how long or
12 short a time was available to view, how far or
13 close the witness was, the lighting conditions
14 and whether the witness had the chance to see or
15 know the person in the past. Once again, I
16 instruct you, the burden of proof on the State
17 extends to every element of the crime charged.
18 This specifically includes the burden of proving
19 beyond a reasonable doubt the identity of the
20 Defendant as the person who committed the crime.

21 Now, if a crime is committed by two or more
22 people who are acting together in committing a
23 crime, the act of one is the act of all. A
24 person who joins with another to accomplish an
25 illegal purpose is criminally responsible for

1 everything done by the other person which occurs
2 as a natural consequence of the acts done in
3 carrying out the common plan and purpose.

4 For example, two people can be guilty of
5 killing another person when only one of the two
6 had a gun, there was only one bullet and only one
7 of the two fired the shot that caused the death.
8 If two or more people are acting together, they
9 are together in assisting each other in
10 committing the offense, the act of one is the act
11 of all or, as it is sometimes said, the hand of
12 one is the hand of all.

13 Now, with respect to the charge of burglary
14 in the first degree, the defendant is charged
15 with first degree burglary and the State must
16 prove beyond a reasonable doubt that the
17 Defendant entered a dwelling without consent. A
18 dwelling is any building or portion of a building
19 in which a person ordinarily sleeps. A building
20 constructed as a dwelling that has never been
21 occupied can not be considered a dwelling for
22 purposes of burglary. But a building is a
23 dwelling, even if the residents are temporarily
24 absence from them -- absent from the building.

25 In order to prove that the Defendant entered

1 the dwelling, the State does not have to show
2 that the Defendant's entire body entered the
3 dwelling. The smallest entry is sufficient. It
4 may be any part of the body such as a hand or
5 foot or even an instrument such as a hook or
6 other instrument. In addition, the State does
7 not have to prove that force was used to gain
8 entry. If a person enters a building by using
9 deception, artifice, trick or misrepresentation
10 to get consent to enter, this is an entry without
11 consent.

12 Next, the State must prove beyond a
13 reasonable doubt that the Defendant intended to
14 commit a crime, either a felony or a misdemeanor,
15 at the time of the entry. The mere entry into a
16 dwelling without consent is not burglary. If the
17 intent to commit a crime is formed after the
18 entry, it is not burglary. On the other hand, if
19 the Defendant intended to commit a crime at the
20 time of the entry, it is a burglary even if the
21 intent was abandoned after the entry. It does
22 not matter that the intended crime was not
23 completed. An intent may be shown by acts and
24 conduct of the Defendant and other circumstances
25 from which you may naturally and reasonably infer

1 intent.

2 Finally, the State must prove beyond a
3 reasonable doubt, one, whether entering, while in
4 the dwelling or when fleeing, the Defendant or an
5 accomplice was armed with a deadly weapon or an
6 explosive. A deadly weapon is an article,
7 instrument or substance which is likely to cause
8 death or great bodily harm. And whether an
9 instrument has been used as a deadly weapon
10 depends on the facts and circumstances of each
11 case. The following are examples of instruments
12 which may be deadly weapons, a pistol, a shotgun,
13 a rifle, a dirk, a dagger, a knife, slingshot,
14 metal knuckles, a razor, gasoline, a fire bomb or
15 Molotov cocktail or lighter fluid. And a gun may
16 be a deadly weapon, even if it is not operating.

17 Two, when entering or while in the dwelling
18 or when fleeing, the Defendant or an accomplice
19 -- accomplice caused physical injury to anyone
20 not participating in the crime or, three, when
21 entering, while in the dwelling or when fleeing,
22 the Defendant or an accomplice used or threatened
23 to use a dangerous object or, four, when
24 entering, while in the dwelling or when fleeing,
25 the Defendant or an accomplice displayed what was

1 or what appeared to be a knife, pistol, revolver,
2 shotgun, machine gun or other firearm.

3 Now, with respect to armed robbery, the
4 Defendant is charged with armed robbery. This is
5 to two indictments as to separate individuals.
6 Each indictment must be considered separately.
7 In order to prove armed robbery, the State must
8 first prove beyond a reasonable doubt that the
9 Defendant took personal property from the person
10 or presence of another person. Property is in
11 the presence of a person if it is within the
12 person's reach, inspection, observation or
13 control so that the person could, if not overcome
14 with violence or prevented by fear, keep
15 possession of the property.

16 The State must also prove beyond a reasonable
17 doubt that the Defendant carried the property
18 away intending to permanently deprive the owner
19 of the property and to keep the property for the
20 Defendant's own use. The slightest removal of
21 the property or the complete possession of the
22 property, even for an instant, by the Defendant
23 is sufficient to show a taking and carrying away
24 of the property. A taking and carrying away of
25 the property must have been done with violence or

1 by putting the owner of the property in fear of
2 violence.

3 Finally, the State must prove beyond a
4 reasonable doubt that the Defendant was armed
5 with a deadly weapon during the robbery or
6 alleged either by action or words that he was
7 armed while using a representation of a deadly
8 weapon or any object which a person present
9 during the commission of the robbery reasonably
10 believed to be a deadly weapon. Again, a deadly
11 weapon is any article, instrument or substance
12 which is likely to cause death or great bodily
13 harm. Whether an instrument has been used as a
14 deadly weapon depends on the facts and
15 circumstances of each case. I have given you
16 previously examples of what would constitute a
17 deadly weapon. That applies in armed robbery as
18 well as in burglary.

19 Finally, the Defendant is charged with
20 Possession of a Weapon During the Commission of
21 or Attempt to Commit a Violent Crime. The State
22 must prove beyond a reasonable doubt that the
23 Defendant was in possession of a firearm or
24 visibly displayed what appeared to be a firearm
25 or visibly displayed the knife during the

1 commission of a violent crime. And a firearm
2 means any machine gun, automatic rifle, revolver,
3 pistol or any which will, if designed to or may
4 be readily converted to, expel a projectile. A
5 knife means an instrument or tool with a sharp
6 cutting blade whether or not fastened to a handle
7 which can be used to inflict, cut, slash or
8 wound.

9 In order to find the Defendant guilty of a
10 weapon during the commission of a violent crime,
11 you must find the Defendant guilty of either
12 committing a violent crime or attempting to
13 commit a violent crime. I will tell you that
14 Burglary first under the law of South Carolina
15 and Armed Robbery are both considered violent
16 crimes.

17 Now, Ladies and Gentlemen, we have prepared a
18 verdict form which we are going to send back into
19 the jury room with you. There are four -- each
20 indictment is listed under a separate number.
21 There is one possible verdict that you can come
22 up with -- excuse me -- two possible verdicts
23 that you can arrive at for each indictment.
24 There's no importance in the order in which I
25 state them, but one has got to be stated first.

1 Those two choices are guilty or not guilty.

2 I want to tell you that, uh, all 12 of you
3 must agree on your verdict. It's got to be
4 unanimous. Your verdict can not be based on
5 sympathy, passion, prejudice, emotion or any
6 other consideration which is not in evidence in
7 this case. Remember, you have no enemies to
8 punish and you have no friends to reward.

9 Madam Forelady, when you all have reached
10 your verdict as to each indictment and you have
11 checked the form, I would ask you to sign it at
12 the bottom. And then signal to the bailiffs, and
13 they will explain how to do that. We will
14 receive you back in the jury room to take your
15 verdict.

16 At this time, I'm going to excuse you back
17 into the jury room. I'm going to ask you one
18 more time not to, uh, begin your deliberations.
19 Uh, I have go over my charge to you on the law to
20 make sure that I did not misstate anything or
21 omit anything. But when the evidence comes back
22 into the jury room along with the verdict form,
23 you all may begin your deliberations.

24 I hope -- is lunch here?

25 **THE BAILIFF:** Not yet.

1 THE COURT: Okay. We've ordered your lunch.
2 Hopefully, it will get here very shortly. All
3 right. At this time, I'll excuse you all back to
4 your jury room with the exception of Mr. Jansen.

5 If you would, remain in the courtroom please,
6 sir.

7 (WHEREUPON, the jury exits at approximately
8 12:48 p.m.)

9 THE COURT: Mr. Jansen, uh, do you -- it's
10 always sort of painful for me when I have an
11 alternate who we don't use. I have to tell you
12 that the law only allows 12 to deliberate.

13 THE JUROR: That's fine.

14 THE COURT: I know you had other things
15 going on this week. I appreciate your service.
16 I will tell you you are just as qualified as any
17 of the twelve, but the law just won't allow you
18 to go back in there.

19 THE JUROR: That's fine.

20 THE COURT: I want to again thank you for
21 your service. I hope I didn't make a liar out of
22 myself. I hope this was a rewarding experience
23 for you. Honestly, we can't operate without you.
24 I'm going to cut you loose for the week. You are
25 free to go. You are done. You've completed your

1 service. Please hang around and get your lunch.

2 All right. Thank you very much, sir.

3 (WHEREUPON, the alternate juror exits at
4 approximately 12:50 p.m.)

5 THE COURT: All right. Thank you very much,
6 sir. Any exceptions or objections to the charge?

7 MS. SUSTAKOVITCH: None from the State, Your
8 Honor.

9 MR. HARBIN: Nothing, Judge.

10 THE COURT: Okay. Y'all go through the
11 evidence and make sure it's all there and let's
12 let them get started.

13 I want to tell you both that even though that
14 was an incredibly long charge, it was shorter
15 than any one of your arguments. All is good?

16 MR. HARBIN: Yes, sir.

17 THE COURT: Send it back.

18 (WHEREUPON, jury deliberation begins at
19 approximately 12:51 p.m.)

20 (WHEREUPON, the Court resumes at approximately
21 2:22 p.m.)

22 THE COURT: Can we have a copy of the
23 transcripts? Can we know Kimble's --

24 THE CLERK: Kimble.

25 THE COURT: Well, they spelled it K-I-M-P-L-

1 E -- arrest history, prior convictions?

2 MS. SUSTAKOVITCH: Sure. I've got that
3 right here.

4 THE COURT: All right. I don't know what
5 transcripts they are asking for.

6 THE BAILIFF: They must be wanting to hear
7 some evidence is the only thing I can figure.

8 THE COURT: Okay. Well, they can't have
9 prior arrest history or convictions.

10 MR. HARBIN: Judge, one concern that
11 question would raise, for us anyway, would be
12 that if they are asking for that that they be
13 told that not only can they not have it but why
14 they can't have it.

15 THE COURT: I would tell them that all the
16 evidence has been presented and they can't
17 receive any evidence that has not already been
18 given to them. That's how I would respond to
19 that because I'm not getting into giving them
20 reasons. It would be sort of commenting on the
21 facts and I'm not doing that. So what I would
22 propose, uh, I'm just going to write please
23 describe what transcripts you are requesting and
24 see what they answer.

25 MS. SUSTAKOVITCH: Your Honor, could I just,

1 as to the RAP sheet, could you say all admissible.
2 evidence has been presented? I just don't want
3 it to be inferred either that because it's not
4 there that he doesn't have one.

5 THE COURT: If I say all admissible
6 evidence, they could infer from that that, oh, he
7 has one and it's inadmissible. So I'm not going
8 to put any adjectives on that. Keep it just as
9 clean as we can.

10 All right. Teresa, would you make this a
11 Court's Exhibit and we'll send it on back in
12 there.

13 (WHEREUPON, Court's Exhibit 3 is marked for
14 identification purposes.)

15 THE COURT: We'll just sit and wait.

16 (WHEREUPON, there is a pause.)

17 THE COURT: Okay. This question reads we
18 are having questions about where and when Juan
19 was when his wallet was taken. Possibly copies
20 of statements would help, question mark. Omar's,
21 Judy's and Buster's.

22 MS. SUSTAKOVITCH: Your Honor, I would say
23 that they could replay it back. I hate to say
24 it, but they could replay that testimony because
25 it's in there. He was in the living room. He

1 got slammed up against the wall.

2 THE COURT: Who said it more succinctly?
3 The business woman, did she talk about it?

4 MS. SUSTAKOVITCH: Judy Best?

5 THE COURT: Yeah.

6 MS. SUSTAKOVITCH: She did. Oh, you mean
7 the business woman. Sorry. My one brain cell
8 shut down.

9 THE COURT: Who has the best that we can get
10 to?

11 MS. SUSTAKOVITCH: I feel --

12 THE COURT: I don't want to replay the whole
13 testimony if we can avoid it.

14 MR. HARBIN: Obviously one is going to have
15 an interpreter and the other is not.

16 MS. SUSTAKOVITCH: I think Omar said it. I
17 think Stallard said it. I think Judy said it. I
18 think they all three. I'm not certain. That's
19 the problem. I just feel like those three
20 witnesses all have information that they should
21 be able to repeat or -- that's the problem.

22 (WHEREUPON, there is a pause.)

23 THE COURT: All right. I've got Carol,
24 whatever her name is, took Juan's wallet and
25 money out of wallet and gave the wallet back. It

1 was towards the end of her direct.

2 (WHEREUPON, the Court went off the record.)

3 (WHEREUPON, Court's Exhibit 4 is marked for
4 identification purposes.)

5 (WHEREUPON, the jury enters at approximately
6 2:45 p.m.)

7 THE COURT: All right. Madam Forelady, I've
8 been told that you all have reached a verdict; is
9 that right?

10 THE JUROR: Yes, Your Honor.

11 THE COURT: All right. Before we -- I just
12 want to make sure. You all have sent in a couple
13 of questions. You have asked about, you
14 described transcripts. I want to make sure that
15 the fact that we hadn't gotten that to you yet is
16 not a factor in your decision. Does anybody want
17 to hear testimony before the verdict is
18 published?

19 THE JUROR: I think that we -- after we sent
20 that last request, we discussed it again and
21 everyone felt comfortable.

22 THE COURT: All right. Okay.

23 THE JUROR: And then we took another vote.

24 THE COURT: Very good. I just want to make
25 sure that you all have received everything you

1 think is necessary to arrive at your verdict.

2 Okay.

3 THE JUROR: And you're allowing them to
4 speak, right?

5 THE COURT: If there's anyone here who
6 thinks they have not received sufficient answers
7 to the questions, please raise your hand. (No
8 response.)

9 Okay. No hands go up. All right. Thank
10 you.

11 Okay. Please publish it.

12 THE CLERK: Your Honor, in the case of 2009-
13 GS-23-476, 477, 478 and 2010-GS-23-2717, the
14 State of South Carolina versus John G. Kimble,
15 number one, as to the charge of Burglary in the
16 first degree, we, the jury, find the Defendant
17 guilty. Number two, as to the charge of Armed
18 Robbery upon Omar Arcos, we, the jury, find the
19 Defendant guilty. Number three, as to the charge
20 of Armed Robbery upon Juan Garcia, we, the jury,
21 find the Defendant guilty. Number four, as to
22 the charge of Possession of a Weapon During the
23 Commission of a Crime, we find the Defendant
24 guilty. This is signed by our foreperson, Brenda
25 Ferguson-Frady.

1 Ladies and Gentlemen of the jury, if you
2 agree these are the verdicts you have reached in
3 your deliberation room, would you please raise
4 your right hand?

5 (WHEREUPON, each juror responds.)

6 THE CLERK: Thank you.

7 THE COURT: Anything further of the jury
8 from the State?

9 MS. SUSTAKOVITCH: Nothing further.

10 THE COURT: From the defense?

11 MR. HARBIN: Nothing, Judge.

12 THE COURT: Great. Thank you very much.
13 Uh, good news for you, you have completed your
14 service for the week. You don't have to call in
15 or come back. Okay. So I want to thank you all
16 for what you have done.

17 I hope I didn't make a liar out of myself
18 when I told you you can look back on this as a
19 rewarding experience. If you don't feel that way
20 right now, perhaps as a little time passes, you
21 can look back at this and recognize just how
22 important a service you performed for your fellow
23 citizens. The thing is they may not even know
24 it, may not recognize it, but I hope that you all
25 have a sense of self-satisfaction for what you're

1 doing. We really appreciate everything you've
2 done. Thank you very much.

3 (WHEREUPON, the jury exits at approximately
4 2:48 p.m.)

5 MS. SUSTAKOVITCH: Your Honor, we're having
6 a brain lapse on the possession of a weapons
7 charge.

8 THE COURT: Five.

9 MS. SUSTAKOVITCH: We know it's up to five.
10 We can't remember is it non-violent. Chase and I
11 are -- I don't think it's most serious or
12 violent.

13 THE COURT: I don't think so. I don't
14 believe it's violent.

15 MS. SUSTAKOVITCH: Okay.

16 THE COURT: Let's give him the benefit of
17 the doubt anyway.

18 MS. SUSTAKOVITCH: Okay. Did you want his
19 prior record?

20 THE COURT: Yeah. I think I probably ought
21 to have that.

22 MS. SUSTAKOVITCH: '97, Possession of Beer
23 by a minor; '98, Breach of Peace; 2001, Resisting
24 Arrest; 2001, Malicious Injury to Personal
25 Property two counts; 2001, Burglary second,

1 ABHAN, Resisting Arrest; 2002, Attempted
2 Burglary, Burglary second and another Burglary
3 second. Your Honor, I would put on the record
4 the State is going to be dismissing, just so you
5 know, the other two sets of armed robbery charges
6 that Mr. Kimble is charged with. We do not have
7 the victims in those cases.

8 THE COURT: Okay. Mr. Harbin, anything you
9 want to tell me?

10 MR. HARBIN: Well, I guess the only thing I
11 can tell you is he was real close to bellying up
12 and asking for leniency. I think he was scared
13 of the jailhouse.

14 THE COURT: Okay.

15 MS. SUSTAKOVITCH: I just spoke to
16 Investigator Jarvis. He did want me to relay to
17 the Court that Mr. Kimble has been a real problem
18 for law enforcement and they would like for him
19 to get time.

20 THE COURT: He's getting that. Okay. I
21 don't announce it. It's sealed. Okay. Good
22 job. Thank y'all.

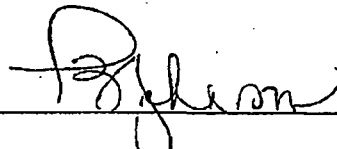
23 (WHEREUPON, the proceeding concludes at
24 approximately 2:55 p.m.)

CERTIFICATE

268

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on this 19th
9 day of March, 2011.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12
13
14 

15
16 Teresa B. Johnson

17 Official Court Reporter
18
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

JOHN Garner Kimble 284110)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF2011 JAN -3 P. 3:57
FILED CLERK OF COURT
GREENVILLE CO. SC

2011-CP-23- 0011

INSTRUCTIONS B 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 Kirkland Reception and Evaluation Center
C116 4344 Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville County Court
305 EAST NORT ST Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) Stallard "Buseter" Lynn Anderson
Judy Carol Rogers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-23-0476

(b) 2009-GS-23-0477(c) 2009-GS-23-0478("see reverse side")

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December, 6 2010 received 30 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) ☒ after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) lawyer never explained how to appeal or what to do.

4, The Indictment Number D. 2009-GS-23-2717
(

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Insufficient Counsel
- (b) I was sentenced on a charge not pertaining to this C
- (c) I was convicted on Armed robbery without a victim
11. State concisely and in the same order the facts which support each of the grounds set out in (10): (See other side)
- (a) My lawyer took me to trial after I told him I
- (b) I was sentenced on Conspiracy and has nothing to do with this C
- (c) One victim said I robbed a nother victim but the other victim never...
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

11. A. wanted to accept the solicitor's plea, Times and dates from victims, witnesses, and police reports do not match. And my lawyer also took me to trial in my absence. I feel like my lawyer didn't do all of his research on my case, statements, police report.
11. C. filed a statement only the first report the police could never find the other version.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Just got sentenced.
- (b) lawyer has not advised me how to do so.
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes, Chase Harbin
- (c) your sentencing? Yes, Chase Harbin
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. H. Chase Harbin Esq.
419 Vardin Street Greenville, South Carolina 29601

- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trail
- ii. Sentencing
- iii. _____

19. State clearly the relief you seek in filing this application:

Over turn of sentence, or get the same plea
co-defendants got. Or New trial.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/200

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, John Garner Kimble, 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.

John Garner Kimble

SWORN to and subscribed before me this 23rd
 day of December, 2010.

[Signature] (L.S.)
 Notary Public

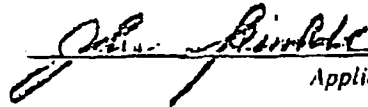
My Commission Expires
 October 8, 2014

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John Garner Kimble, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) ☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

23rd day of December, 2012.


Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

John Kimble 28410

KC-J R-F

C 11 16

4344 Broad River Rd

Columbia, S.C. 29216

KC

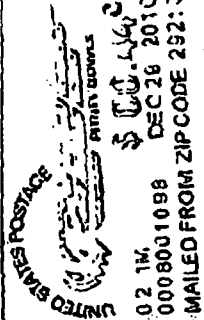
ILROOM

DEC 29 2010

Greenville County Clerk of Court

305 EAST NORTH ST

Greenville, S.C. 29601



LEGAL
MAIL
ONLY

X



2560142150

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	CASE NO: 2011-CP-23-11
COUNTY OF GREENVILLE	)	
	)	
John G. Kimble, SCDC # 284110,	)	AMENDMENTS TO
Applicant,	)	POST CONVICTION
	)	RELIEF APPLICATIONS
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

2011 JUN -6 AM 8:
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENING

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

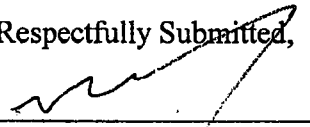
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

Dated: June 2, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMONS PLEAS
 CASE NO: 2011-CP-23-11

John G. Kimble, SCDC # 284110)

AFFIDAVIT OF SERVICE

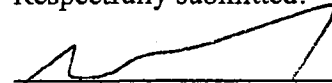
vs.)

THE STATE OF SOUTH CAROLINA)

2011 JUN - 6 AM 8:53
 FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENSINGER

I certify that I have served the PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on June 2, 2011, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:


 Rodney Richey
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603
 Attorney for the Applicant

Sworn to before me

June 2, 2011



Notary Public of South Carolina

My Commission Expires: 12-24-11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-0011
COUNTY OF GREENVILLE	)	
	)	
John Garner Kimble,	)	
S.C.D.C. No. 284110,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 3, 2011, 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 for first-degree burglary (2009-GS-23-0476), two counts of armed robbery (2009-GS-23-0477, -0478), and possession of a weapon during commission of a violent crime (2010-GS-23-2717). H. Chase Harbin, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 9, 2010, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirty (30) years for first-degree burglary, thirty (30) years for each count of armed robbery, and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections. The trial transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Insufficient counsel.
2. Was sentenced on a charge not pertaining to this case.
3. Was convicted of armed robbery without a victim.

III.

The Respondent interprets the Applicant's allegations to be that his trial attorney was ineffective. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 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,

ALAN WILSON
Attorney General

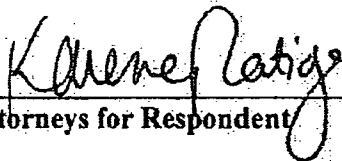
JOHN W. McINTOSH
Chief Deputy Attorney General

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

April 12, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-0011

JOHN GARNER KIMBLE, 284110)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

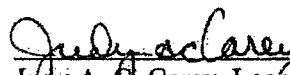
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**John Garner Kimble, 284110
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 12th day of April, 2011.


Judy A. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE) 2011-CP-23-0011
3)
4 John Kimble) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 State of South Carolina)

8 October 30, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE R. MARKLEY DENNIS, Judge.

12 A P P E A R A N C E S

13 Rodney Richey, Esquire
14 Attorney for the Applicant

15 Karen Ratigan, Esquire
16 Assistant Attorney General
17 Attorney for the Defendant

18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

John Kimble versus State of South Carolina

P R O C E E D I N G S

THE BAILIFF: All rise, Court will come to order. The Honorable R. Markey Dennis presiding.

THE COURT: Thank you. Please be seated.
Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor. May it please the Court. The last case of the morning is John Kimble versus the State of South Carolina. The docket number is 2011-CP-23-0011.

Mr. Kimble was indicted for first degree burglary, two counts of armed robbery and one count of possession of a weapon during the commission of a violent crime. He was represented by Mr. Harbin who is seated to my right.

The case was brought to trial -- actually Mr. Kimble was tried in his absence and found guilty. On June 9, 2010 Judge Miller sentenced him -- well, he sealed the sentence, I should say, on June 9, 2010. He was actually sentenced in December of 2010 to concurrent terms of 30 years for first degree burglary, 30 years for each count of armed robbery and 5 years for the weapon's charge. He did not file an appeal and the State is ready to go forward.

THE COURT: You are John Kimble?

APPLICANT KIMBLE: Yes, sir.

I N D E X

WITNESSES

DIR

CROSS

John Kimble
Chase Harbin

4
12

10
15

(There were no exhibits presented).

John Kimble versus State of South Carolina

1 THE COURT: You may move forward with your
2 application. Mr. Richey, you may call your first witness.

3 MR. RICHEY: We call John Kimble.

4 THE CLERK: Mr. Kimble, would you step over
5 to the Bible, place your left hand on it and raise your
6 right hand.

7 JOHN KIMBLE, having been duly sworn,
8 testified as follows:

9 You may be seated. Please state your full
10 name for the record.

11 THE WITNESS: John Kimble.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q. Mr. Kimble, are you incarcerated?

15 A. Yes, sir.

16 Q. Where are you incarcerated?

17 A. Broad River.

18 Q. And what are you incarcerated for?

19 A. First degree burglary, two armed robberies,
20 possession of a weapon during the commission of a violent
21 crime.

22 Q. Were you convicted in Greenville County?

23 A. Yes, sir, I was.

24 Q. Who represented you on those charges?

25 A. Mr. Chase Harbin.

John Kimble versus State of South Carolina

1 Q. And did you file an application that he did not
2 effectively represent you?

3 A. Yes, sir, I did.

4 Q. Did you plead guilty or did you have a trial?

5 A. I had a trial.

6 Q. Were you present for the trial?

7 A. No, sir, I wasn't.

8 Q. Can you tell me if you talked to your lawyer
9 prior to the trial date?

10 A. Yes, sir, I did.

11 Q. And at that time did he ever tell you when the
12 trial would be?

13 A. No, sir, he did not.

14 Q. Did you receive any letters from him or anything
15 saying when your trial would be?

16 A. No, sir, I did.

17 Q. You had a conversation with him how close to your
18 trial?

19 A. I think it was a week prior to my trial.

20 Q. And during that conversation, did he give you any
21 kind of feeling when the trial would be?

22 A. He just told me my trial was coming up on the
23 docket and this was my only chance to accept a plea if I
24 wanted to accept a plea.

25 Q. So he told you his came was coming up?

John Kimble versus State of South Carolina

1 A. Right.

2 Q. So he --

3 A. He never actually gave me no court date. He just
4 told me it was coming up on the docket and I wanted to
5 accept the solicitor's plea, I need to go ahead and accept
6 it now, it's my last opportunity?

7 Q. What did you tell him about the plea?

8 A. I told him I wanted to accept the plea.

9 Q. Do you know what the plea was?

10 A. It was 10 years.

11 Q. And you told your lawyer you wanted to accept
12 that plea?

13 A. Right, because I had two co-defendants that was
14 going to point me to be the main suspect in the crime so I
15 had no choice but to accept the plea basically because
16 they had everything to gain.

17 Q. What did he say to you after you told him you
18 wanted to accept the plea?

19 A. He told me he was going to get in contact with
20 the solicitors so they could draw up the necessary
21 paperwork.

22 Q. Slow down and just relax.

23 A. They said they was going to contact the
24 Solicitor's Office and let them know to prepare the
25 paperwork that I was going to accept the plea. And he

John Kimble versus State of South Carolina

1 would contact me and let me know when I need to go and
2 sign the plea agreement.

3 Q. Did he ever contact you?

4 A. No, sir.

5 Q. Did you ever call him and say, hey, did the case
6 come up or something like that?

7 A. No, I did not.

8 Q. When did you realize you had already been tried?

9 A. I didn't realize until US marshals was kicking my
10 door in and told me I had a bench warrant for a trial in
11 absence. That's when I realized it.

12 Q. How long was it after the time that you talked to
13 your lawyer to the time that they kicked you door in.

14 A. Approximately a month-and-a-half.

15 Q. So you believe that your lawyer was ineffective
16 by not notifying you of the trial?

17 A. Yes, sir, I do.

18 Q. After you were tried, there was a sealed
19 sentence, correct?

20 A. Yes, sir.

21 Q. And during -- after that sealed sentence, you
22 were brought to court to be sentenced; is that correct?

23 A. Yes, sir, I was.

24 Q. And you had a jury trial even though you wasn't
25 there, correct?

John Kimble versus State of South Carolina

1 A. Yes, sir.

2 Q. Did you have an opportunity to talk to your
3 lawyer after you were sentenced?

4 A. Actually I talked to him before they opened the
5 sealed sentence. He came down to the holding area down
6 there and pulled me in. I talked to him there and he
7 related to me that I had been tried in my absence and that
8 I could face up to 30 years for each crime. So I told him
9 I said, well, I want to appeal the case and he said,
10 appeal what? I said appeal the sentence and appeal the
11 whole case and he said there's nothing to appeal so I'm
12 not going to appeal it.

13 At the time, him being my lawyer, he let me
14 know there's nothing to appeal that I have no issues. I
15 didn't know it was up to the court to decide whether or
16 not I got merit or not. I didn't know that. It's up to
17 the court to decide whether or not I got appeal issues.

18 Q. So you actually discussed the issue of appeal
19 with your lawyer?

20 A. I actually told him I wanted to appeal.

21 Q. And during your times with your attorney, did you
22 all discuss the elements of the crime in this case?

23 A. We discussed absolutely nothing about the case.

24 Q. You said there was a plea offer, right?

25 A. He never told me no elements of the crime. He

John Kimble versus State of South Carolina

1 never told me none of that.

2 Q. Did you discuss what you'd be pleading too?

3 A. Yes, dropped down to strong armed robbery.

4 Q. And did he discuss with you what the State had to
5 prove in a strong armed robbery?

6 A. No, he did not.

7 Q. But you agree to take it?

8 A. Yes, I did.

9 Q. Did you ever talk to your attorney about the
10 offer at the time that you came back to the holding cell.
11 Did you ever talk to him about the offer?

12 A. Yes, I did. I asked him how could I be tried in
13 my absence and I wanted to accept the plea agreement, so
14 how come I been tried in my absence. And he said don't
15 put this on me, you the one didn't show up for trial.

16 Q. So you're asking this Court for a new trial and
17 you're asking this Court for appeal.

18 A. Yes, I am.

19 Q. Thank you. Answer any questions Ms. Ratigan may
20 have for you.

21 THE COURT: Cross-examine.

22 MS. RATIGAN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. RATIGAN:

25 Q. How many meetings do you say you had with

John Kimble versus State of South Carolina

1 Mr. Harbin before your trial?

2 A. Maybe three.

3 Q. And what did you discuss with him at these
4 meetings?

5 A. He came to the jail house and he let me know he
6 was going to represent me. And then I got a second set of
7 charges and he let me know he was going to represent me on
8 them too. Then the third time I met him at his office and
9 that's when he let me know about the plea agreement.

10 Q. Your testimony is that you never talked about the
11 evidence in this case?

12 A. Never did.

13 Q. Did you ever tell him your version of what had
14 happened that day?

15 A. Yes, when he came to the jail. He took a
16 statement from me to let me know he was going to represent
17 me in the crime.

18 Q. But you never got a chance to look at any
19 discovery materials or anything like that?

20 A. Never.

21 Q. The trial was in June of 2010, when did the State
22 make a plea offer, do you remember?

23 A. No, ma'am, I do not.

24 Q. Was it like a month before, two months before?

25 A. I really don't remember.

John Kimble versus State of South Carolina

1 Q. But you specifically told Mr. Harbin you were
2 going to accept the plea offer?

3 A. Yes, ma'am, I did. And it's in my trial
4 transcript where he said I discussed with him to accept
5 the plea agreement.

6 Q. But that last time you met with Mr. Harbin was
7 about a week before the trial?

8 A. Yes, ma'am.

9 Q. But he never told you the date?

10 A. No, ma'am.

11 Q. Your testimony is if you had been given notice of
12 the trial date, you would have shown up for your trial?

13 A. Yes, ma'am. I had been out on bond for almost
14 two years. I showed up for every roll call and everything
15 else every time I was out on bond.

16 MS. RATIGAN: That's all I have, Your Honor.

17 THE COURT: Redirect.

18 MR. RICHEY: No questions.

19 THE COURT: You may come down, sir.

20 MR. RICHEY: I call Mr. Harbin.

21 THE CLERK: Mr. Harbin, place your left hand
22 on the Bible and raise your right hand.

23 CHASE HARBIN, having been duly sworn,
24 testified as follows:

25 Thank you. You may be seated. Please state

John Kimble versus State of South Carolina

1 your full name for the record.

2 THE WITNESS: Hunter Chase Harbin.

3 DIRECT EXAMINATION

4 BY MR. RICHEY:

5 Q. Mr. Harbin, you did represent Mr. Kimble; is that
6 correct?

7 A. Yes, sir.

8 Q. No. 1, in terms of appeal, did you talk to him
9 about an appeal?

10 A. I don't recollect that we did have a conversation
11 about an appeal. The only thing I remember is the
12 conversation downstairs letting him know that the judge
13 had already sentenced him and he just needed to find out
14 what the sentence was at that time.

15 Q. You don't know if his recollection of the
16 conversation was correct or not?

17 A. Well, I can tell you this that I've never had
18 somebody ask me to file an appeal and me just say no, I'm
19 not going to do it, so whatever did happen if I told him
20 he had a right to an appeal or I didn't, I certainly did
21 not refuse to file an appeal but I can't tell you the
22 specifics.

23 Q. And in terms of him not being at the trial and I
24 noticed in the transcript you were kind of surprised he
25 was not there; is that right?

John Kimble versus State of South Carolina

1 A. Yes, sir.

2 Q. He had been pretty conscience about coming to
3 court?

4 A. He had been.

5 Q. And you had talked to him sometime before the
6 trial, the actual trial; is that correct?

7 A. My recollection is that I talked to him either
8 the day before or the night before or two nights before
9 the actual trial date. The only reason I remember that is
10 because I was in constant communication with Christy
11 Sustacovich who was the prosecuting attorney because the
12 typical answer at the Solicitor's Office is once you're on
13 the trial docket, there are no more plea deals. In this
14 case I was trying to keep that plea deal possibility alive
15 because he had some other pending charges.

16 Q. At the time you were communicating with him he
17 was actually on the trial roster or docket?

18 A. Yes, sir.

19 Q. Did you tell him that he was on the trial docket?

20 A. Yes.

21 Q. Did you ever give him the time of his trial date?

22 A. To my recollection it was the date -- I met him
23 late -- I remember but I don't remember the dates but I
24 remember it was late like 5:00 or 6:00 in my office. I
25 met him and it was the following day that he was supposed

John Kimble versus State of South Carolina

1 to be in court. That was one of the things I remember
2 being so surprised that he wasn't there because he had
3 come and cooperated and spoke with me about everything
4 before then.

5 Q. In Greenville, the solicitor has to put it on
6 trial and each trial is given a date and most of them
7 don't rollover; is that correct?

8 A. I'm not sure of your question but, yeah, I would
9 have had a date that if we were going to go, it was going
10 to be on that day.

11 Q. And you would have discussed that date with him?

12 A. Yes, sir.

13 Q. Do you know any reason why you wouldn't have told
14 him, hey, tomorrow is your trial? Is there any reason
15 why?

16 A. No, sir.

17 Q. And when you say a possibility of a plea,
18 according to the testimony of Mr. Kimble, he had a 10-year
19 plea offer out there, does that sound familiar to you?

20 A. It is. That was a plea that was on the table for
21 quite some time and Mr. Kimble came to bond card dates
22 repeatedly. My recollection of the reason he did not want
23 to take the plea is he did not believe his victims were
24 going to show up. He had a specific belief that those
25 specific victims in the trial docket case were not going

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1 to appear and he didn't want to take the plea because of
2 that.

3 Q. Do you believe that there was -- after a client
4 has a trial, is it reasonable for the lawyer to discuss
5 the appeal with him? Is that reasonable?

6 A. I don't think it would be unreasonable to discuss
7 the appeal.

8 MR. RICHEY: Thank you. No other questions.

9 THE COURT: Cross-examine.

10 CROSS-EXAMINATION

11 BY MS. RATIGAN:

12 Q. Were you appointed on this case or were you
13 retained?

14 A. I was appointed.

15 Q. And did you file the usual Brady Rule 5 motions?

16 A. Yes, ma'am.

17 Q. Did you receive those materials from the State?

18 A. I did.

19 Q. Did you review those with Mr. Kimble?

20 A. I did, yes.

21 Q. Did you review with him the elements of the
22 charges he was facing?

23 A. Yes. And specifically he was concerned or I
24 would have been concerned at least with letting him know
25 about the strong armed that he had mentioned earlier and

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1 the actual armed robbery. The other thing that he was
2 kind of unclear about or at least had to be explained to
3 is the concept of the hand of one, hand of all, because
4 one of his offenses was one of his co-defendants was the
5 one who actually committed the act and he didn't commit
6 the actual act.

7 Q. Did you explain to him the sentence exposure on
8 both armed robbery and strong arm?

9 A. Yes, ma'am.

10 Q. As well as the burglary?

11 A. Yes, ma'am.

12 Q. Did he explain to you his version of what
13 happened that day?

14 A. Yes, he did.

15 Q. Mr. Kimble stated y'all had about three meetings,
16 does that sound accurate?

17 A. If you don't count the meeting that we actually
18 had for plea court. All of his cases had run for quite
19 some time so not only did I have the opportunity to meet
20 with him more than he stated that he did, but I would say
21 four, five, six times in the courthouse we could go out to
22 one of these rooms out here and discuss the progress of
23 his case as well.

24 Q. When did the State make that initial 10-year
25 offer for strong armed, do you remember? Was it in pretty

John Kimble versus State of South Carolina

1 close proximity to the trial?

2 A. No. The offer was standing for quite some time
3 but I can't tell you when it was. It would not have been
4 some close time like a week or a few days. It would have
5 been a matter of months.

6 Q. And your testimony is you reviewed that
7 information with your client?

8 A. Yes, ma'am. And just to be clear I had heard
9 Mr. Kimble reference, our last meeting prior to the trial
10 date I do believe he was contemplating actually pleading
11 guilty and the last I left things was that I had to call
12 Christy, I had her cell phone number at the time, to see
13 if she was going to be allowed to make any kind of plea
14 offer because of the solicitor's standing policy at the
15 time.

16 Q. And, again, that would have been one or two
17 nights before the actual trial?

18 A. Yes, ma'am.

19 Q. If Mr. Kimble had asked you to file a notice of
20 appeal, would you have done so?

21 A. Yes, ma'am.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: Redirect.

24 MR. RICHEY: No other questions.

25 THE COURT: You may come down. Thank you,

John Kimble versus State of South Carolina

1 sir.

2 You can call your next witness. Any
3 additional witnesses?

4 MR. RICHEY: No, sir.

5 THE COURT: Any witnesses from the State?

6 MS. RATIGAN: Your Honor, we'd rest on the
7 record and Mr. Harbin.

8 THE COURT: Thank you very much. I'd be
9 happy to hear from you, Mr. Richey.

10 MR. RICHEY: Thank you, Your Honor. If it
11 please the Court. Your Honor, I think in this case, one,
12 I believe my client is entitled to a belated appeal. I
13 think that prior counsel testified that he would have
14 filed an appeal had he been asked but I think the standard
15 is he has to meet and discuss that issue with the client.
16 I believe that based on that standard he should be
17 entitled to a belated appeal.

18 As to the notice that counsel gave him for
19 the trial, I think the Court is going to have to determine
20 what facts the Court is going to believe when it comes to
21 that, but I do believe that he is entitled to a belated
22 appeal.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Richey.

25 MS. RATIGAN: Your Honor, the State would

John Kimble versus State of South Carolina

1 argue that Mr. Kimble has not met his burden of proof
2 under Stickling with regards to any of these issues. I
3 think it's clear from Mr. Harbin's testimony that he was
4 on notice of the trial, the specific date and simply chose
5 not to appear.

6 I believe the issue about the appeal,
7 Mr. Harbin testified he did not recall whether or not he
8 spoke to the applicant about the issue and as Your Honor
9 knows doesn't mean he did not. And he specifically stated
10 that if he were asked to file an appeal, he would have
11 done so.

12 The other issue Mr. Kimble raised was
13 discussing the elements of the charges as to what ~~he~~ was
14 facing. Mr. Harbin testified that he discussed the
15 elements of the charges, the potential sentencing
16 exposure, hand of one, hand of all, the difference between
17 armed robbery and strong armed, as well as the applicant's
18 version of what happened that day.

19 Again, the applicant hasn't met his burden of
20 proof and is not entitled to relief in this case.

21 THE COURT: Reply.

22 MR. RICHEY: Just briefly. I would just say
23 that the applicant is entitled to the relief.

24 THE COURT: Thank you.

25 I believe the applicant has failed to meet

John Kimble versus State of South Carolina

1 his burden of proof and I will deny the application as to
2 ineffective assistance of counsel. Thank you.

3 MS. RATIGAN: Thank you, Judge.

4 ---END OF TRANSCRIPT RECORD---

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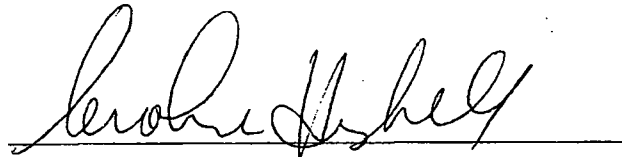
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John Kimble versus State of South Carolina

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of Common Pleas, Greenville, South Carolina on
8 the 30th day of October, 2012.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

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13 

14 Caroline Hiskell
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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

John Garner Kimble,
S.C.D.C. No. 284110,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-0011

ORDER OF DISMISSAL

2012 DEC - 5 A 10:19

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 3, 2011. The Respondent made its return on April 12, 2011. An evidentiary hearing into the matter was convened on October 30, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, 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, H. Chase Harbin, 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 application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant for first-degree burglary (2009-GS-23-0476), two counts of

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armed robbery (2009-GS-23-0477, -0478), and possession of a weapon during commission of a violent crime (2010-GS-23-2717). He was represented by H. Chase Harbin, Esquire.

After the State called the case to trial, the Applicant was tried in absentia and found guilty. On June 9, 2010, the Honorable Edward W. Miller sealed the Applicant's sentence. On December 6, 2010, Judge Miller sentenced the Applicant to concurrent terms of thirty (30) years for first-degree burglary, thirty (30) years for each count of armed robbery, and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Insufficient counsel.
2. Was sentenced on a charge not pertaining to this case.
3. Was convicted of armed robbery without a victim.

The Applicant, through counsel, submitted an amendment to his application dated June 2, 2011, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.
 - l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
 - m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.

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- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charge or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

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 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 Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR 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 he had three meetings with trial counsel but that they never reviewed the State's evidence. The Applicant stated trial counsel never explained the elements of the charges. The Applicant stated he wanted to accept the State's ten year plea offer. The Applicant stated trial counsel never notified him of the trial date. The Applicant stated he told trial counsel he wanted to appeal but that counsel said he would not file an appeal because there were no issues.

Trial counsel testified he filed discovery motions, received discovery materials from the

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State, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events, the elements of the charges, the potential sentencing ranges, and the concept of accomplice liability. Trial counsel testified the State made a plea offer to reduce the armed robbery charges to strong arm robbery and recommend ten years. Trial counsel testified he discussed the plea offer with the Applicant, who did not want to take it because he was convinced the victims would not appear in court. Trial counsel testified he had a meeting with the Applicant one or two nights before the trial in which he advised the Applicant of the trial date. Trial counsel testified he did not recall whether the Applicant asked him to appeal but that he would have filed an appeal if he had been asked to do so.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately advise him of the elements of the charges. Trial counsel testified they discussed the elements of both the indicted charges and the lesser-included offense of strong arm robbery. This Court finds trial counsel's testimony is credible. This Court finds the Applicant failed to show either that he was not advised of the elements or that he suffered any prejudice.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not convey his acceptance of the plea offer. Both the Applicant and trial counsel agree the State made an offer to reduce the armed robbery charges to strong arm robbery and make a ten year sentence recommendation. While the Applicant stated he wanted to accept this offer, trial counsel testified the Applicant rejected the offer based on his belief the Hispanic victims would

not appear at a jury trial. This Court finds trial counsel's testimony is more credible. This Court finds trial counsel fulfilled his obligation to convey and discuss the plea offer and the Applicant simply chose to exercise his right to reject that offer and proceed to trial. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not advise him of the trial date, which resulted in a trial in absentia. Trial counsel testified he spoke with the Applicant one or two nights before the trial and that the Applicant was aware of the trial date. This is corroborated by pre-trial testimony from an agent of the bonding company who testified they had received a bond card for the court date and confirmed a member of the Applicant's household said he was aware of the trial date. (Trial transcript, pp.13-22).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not file an appeal. The Applicant testified he asked trial counsel to file an appeal and that counsel replied that he refused to do so. Trial counsel testified he did not recall whether or not he had a conversation with the Applicant about an appeal, but that he would have filed a notice of appeal if he had been asked to do so. Trial counsel further testified he has never had a client ask him to file an appeal and he refuse to do so. This Court notes trial counsel is an experienced criminal defense attorney and finds his testimony to be more credible than that of the Applicant.

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. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he

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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.

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

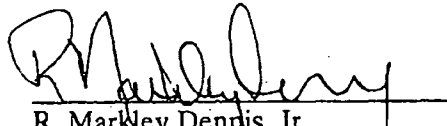
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this 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 29 day of November, 2012.


R. Markley Dennis, Jr.
Presiding Judge

Moncks Corner, South Carolina.

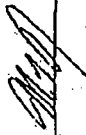
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DOCKET NO. 2009-GS-23-0476

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WITNESSES

Michael Jarvis



Greenville County Sheriffs Office

10/1/2008

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010

THE STATE

GUILTY

vs.

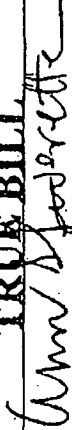
JOHN G KIMBLE

ARREST WARRANT NUMBER

1476163

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

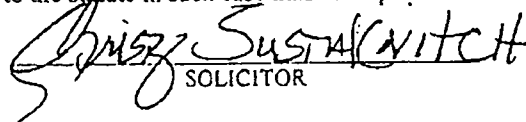
APR 13 2010

the Grand Jurors of Greenville

County present upon their oath:

That JOHN G KIMBLE did in Greenville County, on or about the 30th day of August, 2008, willfully and unlawfully enter the home of JUAN GARCIA located at , Marietta, South Carolina, without consent and with the intent to commit a crime therein accompanied by circumstances of aggravation, to wit: the defendant entered the dwelling armed with a deadly weapon. This is in violation of §16-11-311 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

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.
John G Kimble

AKA:

Race: W Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: GREENVILLE, SC 29611

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Suzanne Christy Kednocker SC Bar# 70325

Defendant

Attorney for Defendant

SC Bar# 70274

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Paul B. Wickens
T. Johnson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2300476

A/W#: 1476163

Date of Offense: 8/30/2008

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Mandatory GPS(CSC w/minor 1st or Lewd Act)

☐ §17-25-45

(defendant's initials)

Recommendation by the State.

Defendant

Attorney for Defendant

SC Bar# 70274

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

2130
6-8-10

DOCKET NO. 2009-GS-23-0477

CLK

WITNESSES

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2010

THE STATE

GUILTY vs.

JOHN G KIMBLE

ARREST WARRANT NUMBER

1476164

ACTION OF GRAND JURY

TRUE BILL

Ann Sporett

FOREMAN GRAND JURY

Forperson of Grand Jury

VERDICT

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Forperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on

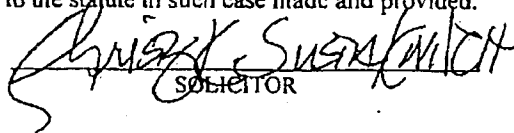
APR 13 2010

the Grand Jurors of Greenville

County present upon their oath:

That JOHN G KIMBLE did in Greenville County, on or about the 30th day of August, 2008, 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 believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. Currency from the person or presence of OMAR MARCUS. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEGreenville
VS.
John G Kimble

AKA:

Race: W Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: GREENVILLE, SC 29611

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2009GS2300477

A/W#: 1476164

Date of Offense: 8/30/2008

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST:
Christy Kettner
SC Bar# 7325

Defendant

Attorney for Defendant

SC Bar# 7074

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code:

Sentence Date:

2170
6-8-10

DOCKET NO. 2009-GS-23-
KBF 000479

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

10
TERM 2009

THE STATE

vs.
GUILTY

JOHN G KIMBLE

WITNESSES

Michael Jarvis

Greenville County Sheriffs Office

10/1/2008

ARREST WARRANT NUMBER

1476165

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on
County present upon their oath:

APR 13 2010

the Grand Jurors of Greenville

That JOHN G KIMBLE did in Greenville County, on or about the 30th day of August, 2008, 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 believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. Currency from the person or presence of JUAN GARCIA. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.
John G Kimble

AKA:

Race: W

Sex: M

Age: 30

DOB:

SS#:

Address:

#E48

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, hearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Susakovitch, Christy Knepper

SC Bar# 70325

Defendant

Attorney for Defendant

SC Bar# 7074

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Paul B. Wickensamer
T. Johnson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2300478

A/W#: 1476165

Date of Offense: 8/30/2008

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

LOH

7074

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

213.0
6-9-10

DOCKET NO. 2010-GS-23-
CLK 002717

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010

THE STATE

GUILTY vs.
JOHN G KIMBLE

WITNESSES

Michael Jarvis

Greenville County Sheriffs Office

10/1/2008

ARREST WARRANT NUMBER

1476166

ACTION OF GRAND JURY

TRUE BILL

Ann Spivey

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on

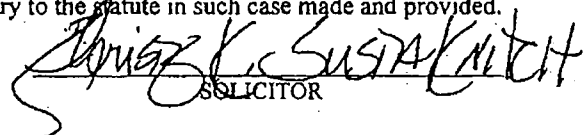
APR 13 2010

the Grand Jurors of Greenville

County present upon their oath:

That JOHN G KIMBLE did in Greenville County, on or about the 30th day of August, 2008, possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: Burglary 1st Degree and/or 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

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.
John G Kimble

AKA:

Race: W Sex: M Age: 30

DOB: /9 SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sustakovitch, Christy Kednocker

7035
SC Bar#

Defendant

Attorney for Defendant

70074
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Paul B. Wiekman
T. Johnson

Presiding Judge

Judge Code:

Sentence Date:

E. W. W. W.

2130

6-9-10