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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Edgar W. Dickson, Circuit Court Judge

BRAHEIM J. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212413

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STATE OF SOUTH CAROLINA	}	COURT OF GENERAL SESSIONS
COUNTY OF AIKEN		
		06-GS-02-883,884

THE STATE OF SOUTH CAROLINA	}	TRANSCRIPT OF RECORD
PLAINTIFF		
VS.		
BRAHEIM J. HILL		
DEFENDANT		

JULY 26, 2006
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE; AND A JURY.

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

LAUREN M. WILLIS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

DAVID M. MAULDIN, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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STATE EXHIBITS

9	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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	10	PHOTO	38	84

COURT EXHIBITS

17	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
18	1	MIRANDA WARNING	38	

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20
21
22
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25

1 (WHEREUPON, ON JULY 26, 2006 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: GOOD MORNING. WE ARE NOW READY TO BEGIN
4 WITH THE CASE OF THE STATE VERSUS -- IS IT BRAHEIM?

5 THE DEFENDANT: BRAHEIM.

6 THE COURT: BRAHEIM? BRAHEIM JAMAL HILL. MR. HILL
7 HAS BEEN INDICTED IN TWO INDICTMENTS THE FIRST OF WHICH IS
8 2006-GS-2-883 FOR ARMED ROBBERY. IN THAT INDICTMENT IT IS
9 ALLEGED THAT BRAHEIM JAMAL HILL DID IN AIKEN COUNTY ON
10 ABOUT NOVEMBER 28, 2005 WHILE ARMED WITH A DEADLY WEAPON
11 OR WHILE ALLEGING EITHER BY ACTION OR WORDS THAT HE WAS
12 ARMED WHILE USING A REPRESENTATION OF A DEADLY WEAPON OR
13 AN OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF
14 A ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON; TO
15 WIT, A SHOTGUN, FELONIOUSLY TAKE FROM THE PERSON OR
16 PRESENCE OF WILLIE R. RUTLAND BY MEANS OF FORCE OR
17 INTIMIDATION GOODS OR MONIES OF BOBBY'S CONVENIENCE STORE,
18 3007 PINE LOG ROAD, WARRENVILLE, SOUTH CAROLINA, SUCH
19 GOODS OR MONEYS BEING DESCRIBED AS FOLLOWS: APPROXIMATELY
20 \$300 ALL IN VIOLATION OF SECTION 16-11-330 OF THE SOUTH
21 CAROLINA CODE OF LAWS. IN INDICTMENT 2006-GS-2-884
22 MR. HILL HAS BEEN INDICTED FOR POSSESSION OF A FIREARM OR
23 KNIFE DURING THE COMMISSION OF -- DURING THE COMMISSION OF
24 OR ATTEMPT TO COMMIT A VIOLENT CRIME. IN THAT INDICTMENT
25 IT IS ALLEGED THAT BRAHEIM JAMAL HILL DID IN AIKEN COUNTY

1 ON OR ABOUT NOVEMBER 28, 2005 POSSESS OR VISIBLY DISPLAY A
2 FIREARM OR VISIBLY DISPLAY A KNIFE DURING THE COMMISSION
3 OR ATTEMPTED COMMISSION OF A VIOLENT CRIME; TO WIT, ARMED
4 ROBBERY, ALL IN VIOLATION OF SECTION 16-23-490 OF THE
5 SOUTH CAROLINA CODE OF LAWS.

6 NOW, LADIES AND GENTLEMEN, FOR THOSE OF YOU WHO ARE
7 SELECTED TO SERVE ON THIS JURY IN A FEW MINUTES I WILL
8 GIVE YOU SOME MUCH MORE DETAILED INSTRUCTIONS ABOUT WHAT
9 YOUR RESPONSIBILITIES ARE AS JURORS AND SOME OTHER ASPECTS
10 OF THE TRIAL, BUT FOR NOW I WANT TO GO AHEAD AND EXPLAIN
11 TO YOU WHAT THE INDICTMENT DOES AND DOES NOT MEAN. THE
12 ALLEGATIONS THAT I JUST READ TO YOU FROM THE INDICTMENT
13 ARE NOT IN ANY SENSE EVIDENCE OF THOSE ALLEGATIONS. THE
14 INDICTMENT IS SIMPLY THE FORMAL DOCUMENT THAT CONTAINS THE
15 ALLEGATIONS THAT HAVE BEEN MADE AGAINST THE DEFENDANT AND
16 THE INDICTMENT SERVES TO PROCESS THIS CASE AND BRING IT
17 INTO THIS COURT FOR TRIAL. THE DEFENDANT HAS PLEAD NOT
18 GUILTY TO EACH OF THESE TWO INDICTMENTS AND THE PLEA OF
19 NOT GUILTY CASTS THE BURDEN ON THE STATE TO PROVE THE
20 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

21 NOW, WE'RE GOING TO GO THROUGH A PROCESS OF QUESTIONS
22 AND ANSWERS NOW CALLED VOIR DIRE WHERE I AM GOING TO ASK
23 YOU SOME QUESTIONS THAT RELATE TO THIS CASE AND RELATE TO
24 THE PEOPLE AND TO THE ISSUES THAT WE'LL BE DEALING WITH IN
25 THIS CASE. PLEASE LISTEN VERY CAREFULLY TO ALL OF MY

1 QUESTIONS. IF YOU HAVE ANY INFORMATION THAT IS RESPONSIVE
2 TO A QUESTION THAT I ASK, THEN I WOULD LIKE FOR YOU TO
3 STAND AND TELL ME YOUR NAME AND THEN TELL ME YOUR
4 INFORMATION. NOW, IF YOU HAVE ANY REASON WHY YOU DON'T
5 WANT TO STAND UP AND GIVE YOUR INFORMATION OUT LOUD IN
6 FRONT OF THE OTHER MEMBERS OF THE JURY PANEL, THEN YOU CAN
7 JUST TELL ME AT THAT TIME THAT YOU WOULD LIKE TO SPEAK TO
8 ME PRIVATELY AND I'LL GET YOU DOWN FRONT AND YOU CAN SPEAK
9 PRIVATELY WITH ME AND WITH THE LAWYERS.

10 NOW, IF YOU KNOW ANYTHING ABOUT THIS CASE OR IF YOU
11 KNOW ANY OF THE PEOPLE WHO ARE GOING TO BE INVOLVED IN
12 THIS CASE AND IF YOU THINK THAT GIVING YOUR INFORMATION
13 OUT LOUD IN FRONT OF THE OTHER MEMBERS OF THE JURY MIGHT
14 EXPOSE THOSE OTHER POTENTIAL JURORS TO INFORMATION THAT
15 THEY SHOULD NOT BE EXPOSED TO, THEN IN THAT EVENT YOU MUST
16 COME DOWN FRONT AND ANSWER THE QUESTION PRIVATELY WITH ME
17 AND WITH THE LAWYERS.

18 NOW, I WILL REMIND YOU THAT WHEN I GAVE YOU OR WHEN
19 THE CLERK GAVE YOU AN OATH ON MONDAY THAT OATH APPLIES FOR
20 THE ENTIRE WEEK AND THAT INCLUDES ANY OF THE INFORMATION
21 THAT YOU'LL BE GIVING ME THIS MORNING.

22 MA'AM, WOULD YOU PLEASE INTRODUCE YOURSELF AND ANYONE
23 WHO WILL BE ASSISTING YOU IN THE TRIAL OF THE CASE TO THE
24 JURY?

25 MS. WILLIS: YES, YOUR HONOR. I AM LAUREN WILLIS. I

1 AM ONE OF THE ASSISTANT SOLICITORS IN THE SOLICITOR'S
2 OFFICE. THIS IS GRANT GIBBONS. HE IS A DEPUTY SOLICITOR
3 AND MS. STEPHANIE PRICE IS OUR PARALEGAL.

4 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
5 IS RELATED BY BLOOD OR BY MARRIAGE TO MS. WILLIS OR TO
6 MR. GIBBONS OR TO MS. PRICE OR DO YOU KNOW EITHER OF THE
7 THREE OF THEM IN ANY WAY? IF SO, PLEASE STAND.
8 MS. GREEN?

9 THE JUROR: JUROR 53, CHRISTINA GREENE. MY DAUGHTER
10 PLAYS BALL WITH MS. WILLIS, BUT I DO NOT KNOW HER
11 PERSONALLY.

12 THE COURT: OKAY.

13 THE JUROR: I HAVE SEEN HER SEVERAL TIMES, BUT I HAVE
14 NEVER SPOKEN WITH HER.

15 THE COURT: THIS IS -- WHAT KIND OF BALL?

16 THE JUROR: SOFTBALL.

17 THE COURT: SOFTBALL. OKAY. THANK YOU. YES, MA'AM?

18 THE JUROR: JUROR 103. I KNOW STEPHANIE PRICE FROM
19 PREVIOUS EMPLOYMENT.

20 THE COURT: TELL ME YOUR NAME, PLEASE?

21 THE JUROR: ROBIN NUNEZ.

22 THE COURT: NUNEZ? YOU KNOW HER FROM PREVIOUS
23 EMPLOYMENT?

24 THE JUROR: YEA, WE USED TO WORK TOGETHER OVER 10
25 YEARS AGO WHEN I WORKED AT THE BANK -- C&S BANK.

1 THE COURT: AT THE BANK?

2 THE JUROR: YES, SIR.

3 THE COURT: OKAY. AND IN THE 10 YEARS SINCE THEN
4 HAVE YOU SEEN MUCH OF MS. PRICE?

5 THE JUROR: NO, NOT REALLY. I HAVE SEEN HER IN
6 WAL-MART, BUT WE DON'T ASSOCIATE.

7 THE COURT: OKAY. THANK YOU. YES, SIR?

8 THE JUROR: ROBERT HARTE, JUROR 158. MS. PRICE IS A
9 MEMBER OF MY CHURCH.

10 THE COURT: AND DO YOU SEE HER REGULARLY AT CHURCH?

11 THE JUROR: YES, SIR.

12 THE COURT: ARE Y'ALL PARTICULARLY CLOSE OR DO YOU
13 JUST HAPPEN TO RUN INTO HER AT CHURCH?

14 THE JUROR: JUST ACQUAINTANCES.

15 THE COURT: OKAY. ALL RIGHT. THANK YOU, MR. HARTE.

16 THE COURT: NOW, MS. WILLIS AND MR. GIBBONS AND

17 MS. PRICE WORK FOR BARBARA MORGAN WHO IS THE ELECTED

18 SOLICITOR OF THIS CIRCUIT. IT IS HER RESPONSIBILITY TO

19 PROSECUTE CRIMINAL CASES HERE IN AIKEN COUNTY AND ALSO IN

20 BARNWELL COUNTY AND IN BAMBERG COUNTY. SHE HAS A STAFF OF

21 LAWYERS AND ALSO NON-LAWYERS WHO ASSIST HER IN DOING THAT.

22 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY

23 BLOOD OR BY MARRIAGE TO SOLICITOR MORGAN OR TO ANYONE WHO

24 WORKS FOR HER OR DO YOU KNOW SOLICITOR MORGAN OR ANYONE

25 WHO WORKS FOR HER? IF SO, PLEASE STAND. YES, SIR?

1 THE JUROR: I AM JUROR 91, MICHAEL MAYO. I KNOW BILL
2 WEEKS AS I STATED IN HERE MONDAY.

3 THE COURT: ALL RIGHT. NOW, TELL ME AGAIN HOW YOU
4 KNOW MR. WEEKS.

5 THE JUROR: SOME PEOPLE THAT HAD ROBBED MY WIFE'S
6 BUSINESS -- HE WAS THE PROSECUTOR ON THAT TRIAL.

7 THE COURT: ALL RIGHT. AND THAT WAS A GOOD WHILE
8 AGO?

9 THE JUROR: YES, SIR. IT'S BEEN SEVERAL YEARS AGO.

10 THE COURT: ALL RIGHT. THANK YOU, MR. MAYO. ALL
11 RIGHT. YES, MA'AM?

12 THE JUROR: EUNICE NEW, JUROR 160, AND I KNOW BILL
13 WEEKS; ALSO.

14 THE COURT: HOW DO YOU KNOW HIM?

15 THE JUROR: WE HAD HIS CHILD IN OUR CLASSROOM WHEN I
16 WORKED AT SCHOOL.

17 THE COURT: ALL RIGHT. THANK YOU, MRS. NEW. YES,
18 MA'AM?

19 THE JUROR: I KNOW BILL. WELL, MY HUSBAND -- WELL,
20 MY HUSBAND -- I'D LIKE TO COME UP FRONT.

21 THE COURT: OKAY. COME ON UP. LET ME SEE THE
22 LAWYERS.

23 (WHEREUPON, THE JUROR CAME TO THE FRONT OF THE
24 COURTROOM.)

25 THE JUROR: MRS. SANDERS, 120. HE REPRESENTED MY

1 HUSBAND BACK IN '89 FOR A DUI CASE THAT NEVER CAME TO
2 TRIAL. THEY NEVER WENT TO COURT. IT WAS LIKE THROWN OUT
3 OF COURT.

4 THE COURT: SO, WAS HE -- IT WAS IN '89? THIS IS
5 WHEN HE WAS NOT IN THE SOLICITOR'S OFFICE?

6 MS. WILLIS: CORRECT, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU. MA'AM, LET ME ASK
8 YOU THIS QUESTION. WOULD THE FACT THAT HE REPRESENTED
9 YOUR HUSBAND, WOULD THAT INTERFERE IN ANY WAY WITH YOUR
10 WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE
11 DEFENDANT AN IMPARTIAL TRIAL?

12 THE JUROR: NO EITHER WAY.

13 (WHEREUPON, THE JUROR RETURNED TO HER SEAT.)

14 THE COURT: YES, MA'AM, TELL ME YOUR NAME, PLEASE.

15 THE JUROR: LYDIA MARY WEATHERSBEE, 169. I WAS
16 ASSOCIATED WITH BILL WEEKS WHEN WE WERE IN COLLEGE AND MY
17 HUSBAND IS A FRIEND OF THE FAMILY.

18 THE COURT: OKAY. THANK YOU, MRS. WEATHERSBEE. ALL
19 RIGHT. WOULD THE FACT THAT YOU ALL KNOW MR. WEEKS, WOULD
20 THAT INTERFERE IN ANY WAY WITH EITHER YOUR WILLINGNESS OR
21 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
22 FAIR AND IMPARTIAL TRIAL? MR. MAYO?

23 THE JUROR: NO, SIR.

24 THE COURT: MRS. NEW?

25 THE JUROR: NO, SIR.

1 THE COURT: MRS. WEATHERSBEE?

2 THE JUROR: NO, SIR.

3 THE COURT: ALL RIGHT. SIR, WOULD YOU PLEASE
4 INTRODUCE YOURSELF TO THE JURY AND ALSO YOUR CLIENT AND
5 ANYBODY WHO IS GOING TO BE ASSISTING YOU IN THE TRIAL OF
6 THE CASE.

7 MR. MAULDIN: MY NAME IS DAVID MAULDIN. I AM ONE OF
8 THE PUBLIC DEFENDERS. THIS IS BRAHEIM HILL. SITTING WITH
9 ME IS ONE OF MY INVESTIGATORS ROBERT ANDERSON AS WELL IS
10 MISS WALLIS ALVES.

11 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
12 IS RELATED BY BLOOD OR BY MARRIAGE TO MR. MAULDIN, TO
13 MR. HILL, TO MR. ANDERSON, OR TO MISS ALVES OR DO YOU KNOW
14 EITHER ONE OF THEM IN ANY WAY? IF SO, PLEASE STAND.
15 MS. NUNEZ?

16 THE JUROR: I KNOW WALLIS ALVES. SHE WAS MY PUBLIC
17 DEFENDER.

18 THE COURT: OKAY. THANK YOU, MA'AM. MS. GREENE?

19 THE JUROR: JUROR 53, CHRISTINA GREENE. I KNOW ROBERT
20 ANDERSON WHEN I WORKED AT THE SHERIFF'S OFFICE IN THE MID
21 '90'S.

22 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

23 NOW, I AM GOING TO READ TO YOU ALL A LIST OF
24 POTENTIAL WITNESSES AND ASK -- AFTER I HAVE READ YOU THAT
25 LIST OF POTENTIAL WITNESSES I AM GOING TO ASK YOU WHETHER

1 YOU KNOW OR ARE RELATED TO ANY OF THESE POTENTIAL
2 WITNESSES. IF THE WITNESS IS IN THE COURTROOM WHEN I CALL
3 YOUR NAME PLEASE STAND AND FACE THE JURY. CHARLES CAIN OF
4 THE AIKEN COUNTY SHERIFF'S OFFICE. THANK YOU, SIR. CLAY
5 ADAMS WITH THE AIKEN COUNTY SHERIFF'S OFFICE. STUART
6 JOHNSON WITH THE SHERIFF'S OFFICE. KEVIN LILES ALSO WITH
7 THE SHERIFF'S OFFICE. BRYAN WILLIAMS, WILLIE RUTLAND,
8 ROBBY GRANDLE, JOHN SWEARINGEN. THANK YOU.

9 ANY ADDITIONAL WITNESSES?

10 MS. WILLIS: NONE FROM THE STATE, YOUR HONOR.

11 MR. MAULDIN: NO, YOUR HONOR.

12 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
13 IS RELATED BY BLOOD OR BY MARRIAGE TO ANY OF THESE
14 POTENTIAL WITNESSES OR DO YOU KNOW ANY OF THEM IN ANY WAY?
15 IF SO, PLEASE STAND.

16 THE JUROR: I AM JUROR NUMBER 93, WILLIAM MCELHANEY.
17 I KNOW ROBBY GRANDLE AND JOHN SWEARINGEN.

18 THE COURT: HOW DO YOU KNOW THEM?

19 THE JUROR: FRIEND OF ROBBY AND I KNOW JOHN'S
20 BROTHER.

21 THE COURT: ALL RIGHT. JUST TELL ME BRIEFLY HOW
22 CLOSE OF A FRIEND ARE YOU WITH ROBBY?

23 THE JUROR: WE USED TO OWN PROPERTY NEXT DOOR TO EACH
24 OTHER.

25 THE COURT: NEXT DOOR? WAS THAT RESIDENTIAL

1 PROPERTY?

2 THE JUROR: YES, SIR.

3 THE COURT: DID BOTH OF YOU LIVE THERE?

4 THE JUROR: NO, SIR.

5 THE COURT: HOW LONG AGO HAS THAT BEEN?

6 THE JUROR: ABOUT THREE YEARS.

7 THE COURT: THREE YEARS. WOULD YOU DESCRIBE YOUR
8 FRIENDSHIP WITH HIM AS PARTICULARLY CLOSE?

9 THE JUROR: NO, NOT REALLY. WE JUST KNOW EACH OTHER.

10 THE COURT: ALL RIGHT. AND AS FAR AS MR. SWEARINGEN
11 YOU KNOW HIS BROTHER?

12 THE JUROR: UH-HUH.

13 THE COURT: HOW DO YOU KNOW HIS BROTHER?

14 THE JUROR: THROUGH WORK.

15 THE COURT: YOU AND HIS BROTHER WORK TOGETHER?

16 THE JUROR: BEFORE, YES, SIR.

17 THE COURT: YOU DO NOW OR YOU DID BEFORE?

18 THE JUROR: IN THE PAST.

19 THE COURT: YOU DON'T NOW.

20 THE JUROR: NO, SIR.

21 THE COURT: NOW, DO YOU STILL SEE MR. SWEARINGEN'S
22 BROTHER ON A REGULAR BASIS?

23 THE JUROR: NO, SIR.

24 THE COURT: ALL RIGHT. THANK YOU, MR. MCELHANEY.

25 YES, MA'AM?

1 THE JUROR: JUROR NUMBER 11, LAURA BOWEN. I THINK MY
2 HUSBAND WENT TO SCHOOL WITH KEVIN LILES AND I THINK HIS
3 STEPBROTHER MAY WORK WITH MY HUSBAND.

4 THE COURT: MR. LILES' STEPBROTHER WORKS WITH YOUR
5 HUSBAND YOU THINK?

6 THE JUROR: I BELIEVE SO.

7 THE COURT: OKAY. NOW, AS FAR AS YOUR INTERACTION
8 WITH MR. LILES, DO YOU KNOW HIM PERSONALLY YOURSELF?

9 THE JUROR: NO, SIR.

10 THE COURT: MA'AM?

11 THE JUROR: NO, SIR.

12 THE COURT: OKAY. THANK YOU, MRS. BOWEN. YES, SIR?

13 THE JUROR: JUROR NUMBER 6, MIKE BENSON. I HAVE SEEN
14 THIS GENTLEMAN IN ROBBY'S CONVENIENCE STORE.

15 THE COURT: ALL RIGHT. YOU GO TO ROBBY'S CONVENIENCE
16 STORE?

17 THE JUROR: I DO.

18 THE COURT: REGULARLY?

19 THE JUROR: OCCASIONALLY, YES.

20 THE COURT: GIVE ME A ROUGH IDEA OF HOW OFTEN YOU GO
21 THERE?

22 THE JUROR: ABOUT ONCE A WEEK. IT'S PRETTY REGULAR.

23 THE COURT: IN GOING IN THERE YOU SEE IS IT
24 MR. RUTLAND?

25 THE JUROR: YES, SIR.

1 THE COURT: OKAY. ALL RIGHT. THANK YOU, MR. BENSON.
2 YES, MA'AM?

3 THE JUROR: BRENDA TAYLOR, JUROR NUMBER 130. I KNOW
4 ROBBY.

5 THE COURT: HOW DO YOU KNOW HIM?

6 THE JUROR: HE IS A CLOSE FRIEND OF OUR FAMILY'S.
7 I'VE KNOWN HIM FOR QUITE A WHILE. HE IS VERY CLOSE.

8 THE COURT: VERY CLOSE FRIEND? OKAY.

9 THE JUROR: HE WAS AT MY HOUSE LAST TUESDAY.

10 THE COURT: HE WAS AT YOUR HOUSE LAST TUESDAY. ALL
11 RIGHT. THANK YOU, MS. TAYLOR.

12 THE COURT: MS. GREENE?

13 THE JUROR: THE SAME SITUATION WITH KEVIN LILES AND
14 CHARLES CAIN.

15 THE COURT: YOU KNOW THEM FROM WHEN YOU WORKED AT THE
16 SHERIFF'S OFFICE?

17 THE JUROR: I KNEW ACTUALLY KEVIN FROM E.M.S. PRIOR
18 TO THE SHERIFF'S OFFICE.

19 THE COURT: NOW, SINCE YOU HAVE WORKED WITH THE
20 SHERIFF'S OFFICE HAVE YOU HAD ANY INTERACTION WITH THESE
21 GENTLEMEN?

22 THE JUROR: I HAVE SEEN CHARLES EATING DINNER AND
23 SPOKE HELLO SEVERAL YEARS AGO, BUT OTHERWISE, NO.

24 THE COURT: OKAY. THANK YOU, MA'AM. YES, MA'AM?

25 THE JUROR: I KNOW ROBBY GRANDLE. MY NAME IS CHERYL

1 JACKSON. I AM NUMBER 69.

2 THE COURT: HOW DO YOU KNOW HIM?

3 THE JUROR: WHEN I WAS MARRIED TO MY FIRST HUSBAND
4 THEY USED TO HANG OUT TOGETHER, PLAYED SOFT BALL.

5 THE COURT: ALL RIGHT. HOW LONG AGO WAS THAT?

6 THE JUROR: THAT'S BEEN ABOUT 20 YEARS.

7 THE COURT: TWENTY YEARS. OKAY. SO, IN THE LAST 20
8 YEARS YOU HAVEN'T SEEN MUCH OF HIM?

9 THE JUROR: NO, JUST RAN INTO HIM EVERY NOW AND THEN.

10 THE COURT: EVERY NOW AND THEN. OKAY. THANK YOU,
11 MRS. JACKSON. YES, SIR?

12 THE JUROR: I AM JUROR 168, ANDREW TEMPLES. STUART
13 JOHNSON IS MY COUSIN'S HUSBAND.

14 THE COURT: DO YOU INTERACT WITH MR. JOHNSON AND YOUR
15 COUSIN VERY OFTEN?

16 THE JUROR: AT FAMILY GATHERINGS.

17 THE COURT: TELL ME YOUR JUROR NUMBER, PLEASE.

18 THE JUROR: 168.

19 THE COURT: HOW CLOSE OF A COUSIN IS HIS WIFE TO YOU?

20 THE JUROR: I'D SAY PRETTY CLOSE. I MEAN, WE DON'T
21 SEE VERY OFTEN --

22 THE COURT: FIRST COUSINS?

23 THE JUROR: YES, YES. OH, FIRST COUSIN.

24 THE COURT: OKAY. ALL RIGHT. THANK YOU,
25 MR. TEMPLES. YES, MA'AM?

1 THE JUROR: I AM NUMBER 153 PATRICIA BROWN. I WAS
2 ACQUAINTED WITH KEVIN LILES WHEN HE WAS A STUDENT AT
3 U.S.C. AIKEN WHERE I TEACH.

4 THE COURT: HOW LONG AGO WAS THAT, MA'AM?

5 THE JUROR: I WOULD SAY 10 OR 12 YEARS.

6 THE COURT: IN THOSE 10 OR 12 YEARS THAT HAVE PASSED
7 SINCE THEN HAVE YOU SEEN HIM?

8 THE JUROR: MAYBE ONCE OR TWICE JUST IN PASSING.

9 THE COURT: OKAY. THANK YOU, MS. BROWN. YES, MA'AM?

10 THE JUROR: I AM JUROR NUMBER 165, SUSAN SADLER. I
11 HAVE KNOWN STUART JOHNSON. I HAVE NOT KNOWN HIM FOR A
12 WHILE NOW, BUT HE USED TO PLAY BALL WITH MY SON, BUT I
13 HAVE NOT HAD ANY CONTACT WITH HIM.

14 THE COURT: IN SEVERAL YEARS?

15 THE JUROR: YES, SIR.

16 THE COURT: ALL RIGHT. THANK YOU, MS. SADLER. YES,
17 SIR?

18 THE JUROR: DAVID COON, NUMBER 32. I KNEW
19 MR. SWEARINGEN FROM SCHOOL.

20 THE COURT: FROM WHEN Y'ALL WERE IN SCHOOL?

21 THE JUROR: YES, SIR.

22 THE COURT: AND SINCE THEN HAVE YOU ALL SEEN EACH
23 OTHER?

24 THE JUROR: NO, SIR.

25 THE COURT: ALL RIGHT. THANK YOU, MR. COON. ANYONE

1 ELSE?

2 NOW, FOR THOSE OF YOU WHO KNEW OR WERE RELATED TO
3 SOME OF THE WITNESSES WHO MIGHT BE CALLED ON TO TESTIFY
4 HERE, WOULD THE FACT THAT YOU KNOW OR ARE RELATED TO THOSE
5 WITNESSES INTERFERE IN ANY WAY WITH EITHER YOUR
6 WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE
7 DEFENDANT A FAIR AND IMPARTIAL TRIAL? MR. MCELHANEY?

8 THE JUROR: NO, SIR.

9 THE COURT: MS. BOWEN?

10 THE JUROR: NO, SIR.

11 THE COURT: MR. BENSON?

12 THE JUROR: NO, SIR.

13 THE COURT: MS. TAYLOR?

14 THE JUROR: NO, SIR.

15 THE COURT: MS. GREENE?

16 THE JUROR: NO, SIR.

17 THE COURT: MS. JACKSON?

18 THE JUROR: NO, SIR.

19 THE COURT: MR. TEMPLES?

20 THE JUROR: NO, SIR.

21 THE COURT: MS. BROWN?

22 THE JUROR: NO, SIR.

23 THE COURT: MS. SADLER?

24 THE JUROR: NO, SIR.

25 THE COURT: MR. COON?

1 THE JUROR: NO, SIR.

2 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR
3 ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS NOW OR WHO HAS
4 EVER BEEN AN EMPLOYEE OF ANY LAW ENFORCEMENT AGENCY OR
5 POLICE DEPARTMENT? IF SO, PLEASE STAND. OF COURSE, I
6 REALIZE THAT MANY OF YOU HAVE ALREADY ANSWERED EARLIER IN
7 THE WEEK THIS QUESTION AND SOME OF THE OTHERS THAT I'M
8 GOING TO BE ASKING, BUT NEVERTHELESS YOU NEED TO ANSWER
9 THE QUESTION AGAIN. THIS IS A SEPARATE CASE, AND I NEED
10 TO HEAR YOUR ANSWERS OVER AGAIN. SO, PLEASE STAND.

11 ALL RIGHT. MS. BOWEN?

12 THE JUROR: MY HUSBAND'S UNCLE WORKED FOR VARIOUS
13 POLICE AGENCIES, MOST RECENTLY RICHMOND COUNTY FOR
14 PROBABLY 20 YEARS.

15 THE COURT: OKAY. THANK YOU. YES, MA'AM?

16 THE JUROR: JEANETTE MANOR, JUROR 86. MY SON WORKS
17 FOR RICHMOND COUNTY, AND I HAVE A NEPHEW THAT WORKS FOR
18 CITY OF AIKEN.

19 THE COURT: WHAT IS HIS NAME?

20 THE JUROR: BRYAN DAVENPORT AND JOSEPH WHITE.

21 THE COURT: ALL RIGHT. THANK YOU, MS. MANOR.
22 MS. SANDERS?

23 THE JUROR: MY NEPHEW -- HE WORKED FOR RICHMOND
24 COUNTY SHERIFF'S DEPARTMENT. HE JUST LEFT THERE ABOUT TWO
25 WEEKS AGO AND NOW HE IS GOING OVER TO SOUTH CAROLINA

1 HIGHWAY PATROL.

2 THE COURT: ALL RIGHT. AND WHAT IS HIS NAME?

3 THE JUROR: JASON CUNNINGHAM.

4 THE COURT: JASON CUNNINGHAM? ALL RIGHT. THANK YOU.

5 MRS. NEW?

6 THE JUROR: EUNICE NEW, JUROR 160. MY HUSBAND AND I
7 HAVE BEEN MARRIED FOR FIVE YEARS RETIRED FROM AIKEN PUBLIC
8 SAFETY IN 1995 AND MY DAUGHTER IS DEBRA PEARSON. SHE'S
9 ONE OF THE RESERVE DEPUTIES NOW.

10 THE COURT: ALL RIGHT. I HAD THE PLEASURE OF MEETING
11 HER YESTERDAY. THANK YOU, MRS. NEW. MR. DANDY?

12 THE JUROR: MY BROTHER IS AN OFFICER WITH AIKEN
13 COUNTY PUBLIC SAFETY.

14 THE COURT: TELL ME HIS NAME, PLEASE.

15 THE JUROR: WILSON DANDY.

16 THE COURT: THANK YOU. YES, MA'AM?

17 THE JUROR: DAISY BOOZER, NUMBER 9. MY FIRST COUSIN
18 IKE LEWIS IS WITH PUBLIC SAFETY MAYBE 5 OR 10 YEARS AGO.

19 THE COURT: HE IS NOT WITH THEM ANYMORE?

20 THE JUROR: NO.

21 THE COURT: OKAY. THANK YOU. MR. MAYO?

22 THE JUROR: YES, MY WIFE'S NEPHEW TODD PROCTOR WORKS
23 FOR THE SOUTH CAROLINA STATE TROOPERS.

24 THE COURT: FOR THE HIGHWAY PATROL?

25 THE JUROR: YES, SIR.

1 THE COURT: ALL RIGHT. WHAT IS HIS NAME?

2 THE JUROR: TODD PROCTOR.

3 THE COURT: OKAY. THANK YOU. MS. GREENE?

4 THE JUROR: I WAS EMPLOYED WITH THE SHERIFF'S OFFICE
5 FROM APPROXIMATELY '93, '94 TO '97.

6 THE COURT: THANK YOU, MA'AM. MR. TEMPLES?

7 THE JUROR: 168. THE SAME AS BEFORE, MY COUSIN BY
8 MARRIAGE TO STUART JOHNSON WHO IS WITH THE SHERIFF'S
9 DEPARTMENT.

10 THE COURT: ALL RIGHT. THANK YOU. YES, MA'AM?

11 THE JUROR: ADDIE WRIGHT, JUROR 170.

12 THE COURT: WHAT WAS YOUR LAST NAME?

13 THE JUROR: WRIGHT.

14 THE COURT: MS. WRIGHT?

15 THE JUROR: YES, SIR. I USED TO WORK FOR AIKEN
16 COUNTY DETENTION CENTER, AND I ALSO WORKED FOR SOUTH
17 CAROLINA DEPARTMENT OF CORRECTIONS IN '99.

18 THE COURT: ALL RIGHT. THANK YOU, MS. WRIGHT.

19 IS THERE ANY MEMBER OF THE JURY PANEL OR ANY MEMBER
20 OF YOUR IMMEDIATE FAMILY WHO HAS EVER BEEN INVOLVED IN ANY
21 TYPE OF VIOLENT CRIME IN ANY WAY AND THERE ARE SEVERAL
22 WAYS THAT YOU COULD HAVE BEEN INVOLVED IN SUCH A CRIME OR
23 YOU MIGHT HAVE HAD AN IMMEDIATE FAMILY MEMBER WHO WAS
24 INVOLVED IN SUCH A CRIME. YOU COULD HAVE BEEN A VICTIM OF
25 THE CRIME, A WITNESS TO THE CRIME. YOU MIGHT HAVE BEEN

1 INVOLVED IN INVESTIGATING SUCH A CRIME, OR YOU COULD HAVE
2 BEEN INVOLVED YOURSELF OR HAD A FAMILY MEMBER WHO WAS
3 CHARGED WITH OR WHO WAS A DEFENDANT IN THE CRIME. IF SO,
4 PLEASE STAND. I REALIZE, AS I SAID, SOME OF YOU ALREADY
5 ANSWERED THIS, BUT YOU HAVE TO ANSWER IT AGAIN.

6 MS. BOWEN?

7 THE JUROR: AS BEING A PAID AND VOLUNTEER E.M.T. I'VE
8 BEEN RENDERED CARE TO MANY VICTIMS OF VIOLENT CRIMES.

9 THE COURT: ALL RIGHT. THANK YOU, MS. BOWEN.
10 MR. MAYO?

11 THE JUROR: YES, I WAS CHARGED WITH ASSAULT AND
12 BATTERY WHEN -- ON MY NEPHEW WHERE MY SISTER-IN-LAW HAD
13 CALLED US OVER AS I EXPLAINED MONDAY, AND HE HAD JUMPED ON
14 MY SISTER-IN-LAW AND THEN PROCEEDED TO JUMP ON MY WIFE AND
15 ME WHEN I GOT OVER THERE. OF COURSE, I PROTECTED MYSELF
16 AND WHIPPED HIM. SEVERAL MONTHS LATER --

17 THE COURT: WE'LL KEEP THAT IN MIND.

18 THE JUROR: SEVERAL MONTHS LATER THEY CAME AND
19 ARRESTED ME FOR IT AND WHEN WE WENT TO COURT IT WAS
20 DISMISSED. THEY DROPPED THE CHARGE AND DISMISSED IT.

21 THE COURT: ALL RIGHT. THANK YOU, MR. MAYO. YES,
22 MA'AM?

23 THE JUROR: I'M JUROR 111, RUTH PROPER. MY SON WAS
24 HIT BY A DRUNK DRIVER. IT WAS A HIT AND RUN BACK IN '99.

25 THE COURT: DID THEY EVER CATCH THE PERSON WHO DID

1 THAT, MA'AM?

2 THE JUROR: YES, THEY DID.

3 THE COURT: WAS HE PROSECUTED OR SHE?

4 THE JUROR: SHE WAS, YES. SHE WAS.

5 THE COURT: ALL RIGHT. OKAY. WAS THAT HERE IN

6 AIKEN?

7 THE JUROR: NO. THAT WAS IN PENNSYLVANIA.

8 THE COURT: THANK YOU. MS. TEAL?

9 THE JUROR: YES, MY COUSIN WAS A VICTIM OF AN
10 ASSAULT:

11 THE COURT: YOUR HUSBAND?

12 THE JUROR: MY COUSIN.

13 THE COURT: YOUR COUSIN. ALL RIGHT. MR. COON?

14 THE JUROR: SAME THING. IT WAS MY COUSIN, ALSO.

15 THE COURT: AND YOU -- MS. TEAL IS YOUR DAUGHTER?

16 THE JUROR: THAT'S CORRECT.

17 THE COURT: ALL RIGHT. THANK YOU, SIR. YES, MA'AM?

18 THE JUROR: WEATHERSBEE, 169. MY HUSBAND AND MY SONS
19 WORK WITH THE VOLUNTEER RESCUE SQUAD AND THERE ARE LOTS OF
20 TIMES THAT THEY COME IN CONTACT WITH CRIMINAL SITUATIONS.

21 THE COURT: ALL RIGHT. THANK YOU. NOW, FOR THOSE OF
22 YOU WHO HAVE BEEN INVOLVED IN VIOLENT CRIMES AS YOU
23 DESCRIBED IT OR WHO HAVE FAMILY MEMBERS WHO HAVE BEEN
24 INVOLVED, WOULD THAT INTERFERE IN ANY WAY WITH EITHER YOUR
25 WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE

1 DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

2 MS. BOWEN?

3 THE JUROR: NO, SIR.

4 THE COURT: MR. MAYO?

5 THE JUROR: NO, SIR.

6 THE COURT: MS. PROPER?

7 THE JUROR: NO.

8 THE COURT: MS. TEAL?

9 THE JUROR: NO.

10 THE COURT: MR. COON?

11 THE JUROR: NO, SIR.

12 THE COURT: MS. WEATHERSBEE?

13 THE JUROR: NO, SIR.

14 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
15 KNOWS OR WHO HAS HEARD ANYTHING ABOUT THIS CASE OR THE
16 ALLEGATIONS THAT HAVE BEEN MADE IN THIS CASE. I HAVE
17 ALREADY HEARD FROM ONE JUROR WHO SAYS THAT HE SHOPS IN
18 THIS STORE, AND I SUPPOSE THAT THERE ARE OTHERS OF YOU WHO
19 SHOP IN THIS STORE. SO, I WANT YOU -- IF YOU NORMALLY OR
20 REGULARLY SHOP IN THIS STORE OR IF YOU KNOW OR HAVE HEARD
21 ANYTHING AT ALL ABOUT THIS CASE, THEN PLEASE STAND.

22 MRS. TAYLOR?

23 THE JUROR: YES.

24 THE COURT: DO YOU -- TELL ME, PLEASE.

25 THE JUROR: WELL, OF COURSE, I KNOW OF THE INCIDENT

1 AND I'VE HEARD THEM TALK ABOUT IT.

2 THE COURT: OKAY.

3 THE JUROR: I DON'T KNOW A LOT OF DETAIL.

4 THE COURT: WELL, LET ME DO THIS. I AM GOING TO GET
5 YOU TO COME DOWN FRONT IN JUST A SECOND, MS. TAYLOR. NOW,
6 IS THERE ANYBODY ELSE OUT THERE WHO KNOWS ANYTHING ABOUT
7 THIS CASE? IF SO, PLEASE STAND. WHO WAS THE GENTLEMEN
8 WHO SAID HE SHOPS IN THAT STORE? YOU, SIR.

9 THE JUROR: YES, SIR.

10 THE COURT: HAVE YOU HEARD ANYTHING ABOUT ANY TYPE OF
11 ALLEGED ROBBERY IN THE STORE?

12 THE JUROR: NO, SIR.

13 THE COURT: YOU NEVER HEARD ANYTHING ABOUT IT?

14 THE JUROR: NO, SIR. I DON'T TALK TO ANYONE IN
15 THERE.

16 THE COURT: AND YOUR NAME IS?

17 THE JUROR: MIKE BENSON, JUROR NUMBER 6.

18 THE COURT: ALL RIGHT, SIR. THANK YOU. MS. TAYLOR,
19 LET ME ASK YOU TO COME DOWN FRONT, PLEASE. I'LL TELL YOU
20 WHAT. WHILE I AM GETTING READY TO TALK TO MS. TAYLOR LET
21 ME JUST REMIND YOU ALL THAT THIS IS AN EVENT THAT
22 ALLEGEDLY OCCURRED ON NOVEMBER 28, 2005 AT BOBBY'S
23 CONVENIENCE STORE, 3007 PINE LOG ROAD IN WARRENVILLE,
24 SOUTH CAROLINA, AND IF THERE IS ANYBODY WHO KNOWS ANYTHING
25 OR WHO HAS HEARD ANYTHING ABOUT THAT CASE, PLEASE COME TO

1 THE CENTER OF THE COURTROOM AND I'LL SPEAK TO YOU ONE AT A
2 TIME.

3 (WHEREUPON, THE JUROR COMES FORWARD.)

4 THE JUROR: HI.

5 THE COURT: TELL ME HOW YOU HEARD ABOUT IT.

6 THE JUROR: MY HUSBAND IS REAL GOOD FRIENDS WITH
7 ROBBY AND SO IS MY CHILDREN AND MY HUSBAND JUST TOLD ME
8 THAT HE HAD BEEN ROBBED. HE DIDN'T GO INTO ANY BIG
9 DETAILS ABOUT IT AND HAVEN'T SR-PB REALLY DISCUSSED IT
10 WITH ROBBY AT ALL.

11 THE COURT: TELL ME AS MUCH AS YOU CAN RECALL WHAT
12 ARE THE DETAILS ABOUT THE INCIDENT THAT YOUR HUSBAND TOLD
13 YOU.

14 THE JUROR: HE JUST SAID SOMEBODY CAME IN AND ROBBED
15 HIM. I BELIEVE IT WAS HIS A FRIEND OF HIS OR HIS UNCLE OR
16 SOMEBODY. HIS UNCLE -- ROBBY'S UNCLE.

17 THE COURT: WHO WAS ROBBY'S UNCLE?

18 THE JUROR: I AM NOT SURE.

19 THE COURT: THE PERSON WHO DID IT?

20 THE JUROR: NO, THE GUY THAT GOT ROBBED.

21 MS. WILLIS: THE STORE CLERK.

22 THE COURT: OH. WHO IS ROBBY?

23 MS. WILLIS: HE IS THE OWNER AND THIS IS THE
24 SCRIBNER'S -- IT SHOULD BE ROBBY'S CONVENIENCE STORE.

25 THE COURT: OH, I SEE. SO, NOW, THINKING -- TRY TO

1 THINK VERY CAREFULLY IS THERE ANY OTHER DETAIL THAT YOU
2 CAN REMEMBER ABOUT WHAT YOU WERE TOLD OTHER THAN IT WAS
3 ROBBY'S UNCLE WHO GOT ROBBED?

4 THE JUROR: NO. HE JUST SAID SOMEBODY CAME IN AND
5 ROBBED HIM. THAT'S ALL I KNOW.

6 THE COURT: DO YOU RECALL THERE BEING ANY KIND OF
7 DESCRIPTION ABOUT THE PERSON WHO DID THIS? THEY DIDN'T
8 DESCRIBE THE RACE OF THE PERSON?

9 THE JUROR: I HAVE NO IDEA.

10 THE COURT: THE SEX OF THE PERSON?

11 THE JUROR: NO.

12 THE COURT: WELL, DO YOU BELIEVE THAT THE FACT THAT
13 YOU WERE TOLD WHAT YOU WERE TOLD ABOUT THIS INCIDENT,
14 WOULD THAT INTERFERE IN ANY WAY WITH EITHER YOUR
15 WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE
16 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

17 THE JUROR: NO.

18 THE COURT: THANK YOU. YOU CAN STEP BACK OVER THERE.
19 (WHEREUPON, THE JUROR WENT BACK TO HER SEAT AND THE
20 JUDGE CONFERS WITH THE ATTORNEYS.)

21 THE COURT: WE NEED TO PUT THIS ON THE RECORD. THE
22 STATEMENT WAS MADE THAT MR. MAYO DID NOT TELL ME IN
23 RESPONSE TO MY QUESTION ABOUT BEING A VICTIM OF A CRIME
24 THAT HIS WIFE'S STORE HAD BEEN ROBBED. HE DID TELL US
25 THAT IN RESPONSE TO A QUESTION ABOUT WHETHER HE KNEW

1 ANYBODY IN THE SOLICITOR'S OFFICE AND I THINK A LOT OF
2 TIMES IN THE MINDS OF THESE JURORS THEY THINK THAT THAT IS
3 ONE CASE. HE'S ALREADY TOLD ME THAT ONCE, AND, SO, HE
4 DOESN'T HAVE TO TELL ME THAT AGAIN. IF THERE IS ANY
5 FOLLOW-UP QUESTIONING WITH HIM, I WILL. I RECALL THAT
6 WHEN HE REVEALED THAT INFORMATION IN VOIR DIRE IN THE
7 FIRST CASE I ASKED HIM WHETHER OR NOT THE FACT THAT HE HAD
8 BEEN INVOLVED OR HIS WIFE HAD BEEN INVOLVED WITH THAT
9 CRIME WOULD INTERFERE WITH HIS ABILITY TO BE FAIR. HE
10 SAID, NO. I'LL BE HAPPY TO ASK HIM ANYTHING THAT YOU WANT
11 TO ASK HIM.

12 MR. MAULDIN: ASK HIM THE SAME QUESTION AGAIN THAT
13 HIS WIFE'S STORE HAD BEEN -- JUST CALL HIM UP.

14 THE COURT: THERE IS A -- Y'ALL HOLD ON. THERE IS A
15 SCRIBNER'S ERROR, APPARENTLY, IN THE INDICTMENT FOR ARMED
16 ROBBERY AND THE CORRECT NAME OF THE STORE IS ROBBY'S
17 CONVENIENCE STORE, NOT BOBBY'S CONVENIENCE STORE. SO, IF
18 THAT CHANGES WHETHER OR NOT ANY OF YOU REMEMBER HAVING
19 HEARD OR LEARNED ANYTHING ABOUT THIS INCIDENT OR IF THAT
20 CHANGES WHETHER OR NOT ANY OF YOU REGULARLY SHOP IN THIS
21 STORE, THEN IF YOU NOW KNOW THAT YOU HAVE HEARD SOMETHING
22 OR THAT YOU DO SHOP IN THAT STORE, PLEASE STAND.

23 ALL RIGHT. MR. MAYO, I HAVE ONE QUESTION THAT I WANT
24 TO ASK YOU. DO YOU MIND STEPPING DOWN HERE FOR JUST A
25 SECOND?

1 (WHEREUPON, THE JUROR COMES FORWARD.)

2 THE JUROR: YES, SIR.

3 THE COURT: I THINK YOU MENTIONED WHEN YOU WERE
4 TALKING ABOUT IN THE VOIR DIRE THE OTHER DAY THAT YOUR
5 WIFE'S STORE HAD BEEN ROBBED AND YOU NEED TO MENTION THAT
6 AGAIN.

7 THE JUROR: BURGLARIZED. THEY BROKE INTO IT AT
8 NIGHT.

9 THE COURT: MR. WEEKS PROSECUTEED THAT CASE?

10 THE JUROR: UH-HUH.

11 THE COURT: IS YOUR WIFE -- WAS IT SEVERAL DIFFERENT
12 TIMES?

13 THE JUROR: IT'S BEEN BROKE INTO. HE PROSECUTED IT
14 ONE TIME. I DON'T REMEMBER WHO IT WAS, BUT IT'S BEEN
15 BROKE INTO THREE TIMES OVER THE LAST 11 YEARS.

16 THE COURT: OKAY. WELL, WOULD THE FACT THAT YOU AND
17 YOUR WIFE HAVE BEEN INVOLVED IN THAT SITUATION AS VICTIMS
18 OF A CRIME LIKE THAT, WOULD THAT INTERFERE IN ANY WAY
19 EITHER YOUR WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE
20 STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

21 THE JUROR: NO, SIR.

22 THE COURT: THANK YOU.

23 (WHEREUPON, THE JUROR RETURNED TO HIS SEAT.)

24 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
25 HAS ANY PARTICULAR INTEREST IN THE OUTCOME OF THIS CASE?

1 IF SO, PLEASE STAND.

2 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS FORMED
3 OR EXPRESSED ANY OPINION AS TO THE GUILT OR INNOCENCE OF
4 THIS DEFENDANT? IF SO, PLEASE STAND.

5 IS THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS OF
6 ANY REASON WHY YOU COULD NOT GIVE BOTH THE STATE AND THE
7 DEFENDANT A FAIR AND IMPARTIAL TRIAL? IF SO, PLEASE
8 STAND.

9 ANY ADDITIONAL VOIR DIRE FROM THE STATE?

10 MS. WILLIS: NONE FROM THE STATE, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. MAULDIN: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. WE'RE READY TO STRIKE THE
14 JURY. YOU ALL SAW US DO IT ON MONDAY. WE'RE GOING TO
15 FOLLOW THE SAME PROCEDURE TODAY. WHEN YOUR NAME IS CALLED
16 COME UP FRONT. WE'LL SEE WHAT THE STATE SAYS AND SEE WHAT
17 THE DEFENSE SAYS AND WE'LL KEEP GOING UNTIL WE HAVE US A
18 JURY AND A COUPLE OF ALTERNATES.

19 THE CLERK: JUROR NUMBER 73, MICHELE JENKINS. WHAT
20 SAYS THE STATE?

21 MS. WILLIS: PLEASE PRESENT MS. JENKINS.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MR. MAULDIN: PLEASE EXCUSE MS. JENKINS FROM THIS
24 TRIAL.

25 THE CLERK: YOU MAY RETURN TO YOUR SEAT.

1 THE COURT: THE STRIKES ARE 5 AND 10.

2 THE CLERK: JUROR NUMBER 106, CARSON PARSONS. WHAT
3 SAYS THE STATE?

4 MS. WILLIS: PLEASE PRESENT MR. PARSONS.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. MAULDIN: PLEASE SEAT MR. PARSONS.

7 THE COURT: YOU MAY HAVE A SEAT IN THE JURY BOX.

8 JUROR NUMBER 119, RICHARD RYBERG. WHAT SAYS THE STATE?

9 MS. WILLIS: PLEASE PRESENT MR. RYBERG.

10 THE CLERK: WHAT SAYS THE DEFENSE?

11 MR. MAULDIN: PLEASE SEAT MR. RYBERG.

12 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

13 YOUR LEFT. JUROR NUMBER 20, DAVID BUCKNER. WHAT SAYS THE
14 STATE?

15 MS. WILLIS: PLEASE PRESENT MR. BUCKNER.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MR. MAULDIN: PLEASE PRESENT MR. BUCKNER.

18 THE CLERK: YOU MAY HAVE A SEAT IN THE WITNESS BOX.

19 THE COURT: NOW, LET ME SAY THIS. IT'S OFTEN TRUE

20 THAT AS YOU MOVE INTO -- YOU CAN GO AHEAD AND BE SEATED,

21 MR. BUCKNER. AS WE MOVE INTO THE LATTER PART OF THE WEEK

22 AND MEMBERS OF THE JURY BEGAN TO KNOW EACH OTHER A LITTLE

23 BIT BECAUSE YOU'VE BEEN TOGETHER BOTH ON JURIES AND ALSO

24 IN THE JURY ASSEMBLY ROOM THE MOOD TENDS TO LIGHTEN A

25 LITTLE BIT, BUT LET ME REMIND YOU THAT THIS IS NOT AN

1 OPPORTUNITY FOR US TO BE LAUGHING AND CARRYING ON. THIS
2 IS A SERIOUS MOMENT, AND, SO, I EXPECT EVERYBODY TO
3 OBSERVE APPROPRIATE DEemeanOR DURING JURY SELECTION.

4 THE CLERK: JUROR NUMBER 40, JAMES DANDY. WHAT SAYS
5 THE STATE?

6 MS. WILLIS: PLEASE PRESENT MR. DANDY.

7 THE CLERK: WHAT SAYS THE DEFENSE?

8 MR. MAULDIN: PLEASE EXCUSE MR. DANDY.

9 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
10 NUMBER 167, KATRINA TEAL. WHAT SAYS THE STATE?

11 MS. WILLIS: PLEASE PRESENT MS. TEAL.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. MAULDIN: PLEASE SEAT MS. TEAL.

14 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
15 YOUR LEFT. JUROR NUMBER 161, SHANNON OAKES. WHAT SAYS
16 THE STATE?

17 MS. WILLIS: PLEASE PRESENT MS. OAKES.

18 THE CLERK: WHAT SAYS THE DEFENSE?

19 MR. MAULDIN: PLEASE SEAT MS. OAKES.

20 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
21 YOUR LEFT. JUROR NUMBER 39, AMELIA DALTON CARDELI. WHAT
22 SAYS THE STATE?

23 MS. WILLIS: PLEASE PRESENT MS. DALTON.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MR. MAULDIN: PLEASE SEAT HER ON THE JURY.

1 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
2 YOUR LEFT. JUROR NUMBER 91, MICHAEL MAYO. WHAT SAYS THE
3 STATE?

4 MS. WILLIS: PLEASE PRESENT MR. MAYO.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. MAULDIN: PLEASE EXCUSE MR. MAYO.

7 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
8 NUMBER 49, FRANCES DENISE FRYE. WHAT SAYS THE STATE?

9 MS. WILLIS: PLEASE PRESENT MS. FRYE.

10 THE CLERK: WHAT SAYS THE DEFENSE?

11 MR. MAULDIN: PLEASE SEAT MS. FRYE.

12 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
13 YOUR LEFT. JUROR NUMBER 56, TONY HALL. WHAT SAYS THE
14 STATE?

15 MS. WILLIS: PLEASE PRESENT MR. HALL.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MR. MAULDIN: PLEASE SEAT MR. HALL.

18 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
19 YOUR LEFT. JUROR NUMBER 84, PATRICIA MACDONALD. WHAT
20 SAYS THE STATE?

21 MS. WILLIS: PLEASE PRESENT MS. MACDONALD.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MR. MAULDIN: PLEASE SEAT MRS. MACDONALD.

24 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
25 YOUR LEFT. JUROR NUMBER 170, ADDIE QUILLER WRIGHT. WHAT

1 SAYS THE STATE?

2 MS. WILLIS: PLEASE PRESENT MS. WRIGHT.

3 THE CLERK: WHAT SAYS THE DEFENSE?

4 MR. MAULDIN: PLEASE EXCUSE MS. WRIGHT FROM THE TRIAL
5 OF THIS CASE.

6 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
7 NUMBER 4, MICHAEL BARNES. WHAT SAYS THE STATE?

8 MS. WILLIS: PLEASE PRESENT MR. BARNES.

9 THE CLERK: WHAT SAYS THE DEFENSE?

10 MR. MAULDIN: PLEASE SEAT MR. BARNES.

11 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
12 YOUR LEFT. JUROR NUMBER 32, DAVID COON. WHAT SAYS THE
13 STATE?

14 MS. WILLIS: PLEASE PRESENT MR. COON.

15 THE CLERK: WHAT SAYS THE DEFENSE?

16 MR. MAULDIN: PLEASE EXCUSE MR. COON.

17 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THE STATE
18 HAS EXHAUSTED NO STRIKES, THE DEFENSE FIVE. JUROR NUMBER
19 168 ANDREW TEMPLES. WHAT SAYS THE STATE?

20 MS. WILLIS: PLEASE PRESENT MR. TEMPLES.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. MAULDIN: PLEASE EXCUSE MR. TEMPLES.

23 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
24 NUMBER 128, JERRY STEPHENS. WHAT SAYS THE STATE?

25 MS. WILLIS: PLEASE PRESENT MR. STEPHENS.

1 THE CLERK: WHAT SAYS THE DEFENSE?

2 MR. MAULDIN: PLEASE SEAT MR. STEPHENS ON THE JURY.

3 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

4 YOUR LEFT. JUROR NUMBER 77, DONNA CRUZNER.

5 MS. WILLIS: I'M SORRY. WHAT NUMBER?

6 THE CLERK: SEVENTY-SEVEN. WHAT SAYS THE STATE?

7 MS. WILLIS: PLEASE PRESENT MS. CRUZNER.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MR. MAULDIN: PLEASE EXCUSE MS. CRUZNER.

10 THE CLERK: JUROR NUMBER 53, CHRISTINA GREENE. WHAT

11 SAYS THE STATE?

12 MS. WILLIS: PLEASE PRESENT MS. GREENE.

13 THE CLERK: WHAT SAYS THE DEFENSE.

14 MR. MAULDIN: PLEASE EXCUSE MS. GREENE.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR

16 NUMBER 103, ROBIN NUNEZ. WHAT SAYS THE STATE?

17 MS. WILLIS: PLEASE EXCUSE MS. NUNEZ FROM THIS TRIAL.

18 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR

19 NUMBER 28, JUSTIN CLINE. WHAT SAYS THE STATE?

20 MS. WILLIS: PLEASE PRESENT MR. CLINE.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. MAULDIN: PLEASE SEAT MR. CLINE ON THIS JURY.

23 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

24 YOUR LEFT.

25 ALTERNATES, YOUR HONOR?

1 THE COURT: YEA, THE STRIKES ARE ONE AND TWO.

2 THE CLERK: JUROR NUMBER 111, RUTH PROPER. WHAT SAYS
3 THE STATE?

4 MS. WILLIS: PLEASE PRESENT MS. PROPER.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. MAULDIN: PLEASE SEAT MS. PROPER.

7 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
8 YOUR LEFT.

9 TWO ALTERNATES, YOUR HONOR?

10 THE COURT: ONE IS ENOUGH. ANY EXCEPTION TO THE
11 COMPOSITION OR THE MANNER OF SELECTION OF THE JURY?

12 MS. WILLIS: NONE FROM THE STATE, YOUR HONOR.

13 MR. MAULDIN: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE THAT
15 COULD POSSIBLY BE CALLED FOR TRIAL AFTER THIS?

16 MR. GIBBONS: NO, SIR.

17 THE COURT: LADIES AND GENTLEMEN, THOSE OF YOU WHO
18 HAVE NOT BEEN SELECTED FOR THIS JURY I AM GOING TO EXCUSE
19 YOU IN JUST A SECOND.

20 I AM GOING TO SEND YOU ALL BACK TO THE JURY ROOM IN
21 JUST A SECOND, BUT BEFORE ANYBODY GOES I HAVE A FEW THINGS
22 I WANT TO SAY. FIRST OF ALL, WHEN YOU FOLKS GO BACK INTO
23 THE JURY ROOM AND UNTIL I HAVE GIVEN YOU PERMISSION TO
24 BEGIN YOUR DELIBERATIONS, YOU MAY NOT DISCUSS THIS CASE IN
25 ANY WAY. NOW I REALIZE ALL YOU KNOW ABOUT THE CASE IS

1 WHAT I READ TO YOU FROM THE INDICTMENTS, BUT,
2 NEVERTHELESS, YOU MAY NOT DISCUSS THIS CASE, AND, SO --
3 NOW, I AM GOING TO SEND YOU BACK THERE, AND I HAVE A
4 HEARING THAT I HAVE TO CONDUCT THAT IS A NON-JURY LEGAL
5 MATTER THAT IS NOT RELATED TO YOUR WORK IN THIS CASE.
6 IT'S GOING TO TAKE I DON'T KNOW EXACTLY HOW LONG, BUT
7 IT'LL TAKE A LITTLE WHILE.

8 SO, I EXPECT THAT WE SHOULD BE ABLE TO GET IT DONE IN
9 A HALF AN HOUR OR LESS, SHOULDN'T WE?

10 MS. WILLIS: YES, YOUR HONOR.

11 THE COURT: SO, YOU'LL BE BACK THERE FOR 15 TO 30
12 MINUTES WHILE WE DO THIS HEARING.

13 FOR THOSE OF YOU WHO ARE NOT ON THE JURY, YOU'RE
14 EXCUSED AS SOON AS I BREAK EXCEPT THAT I WOULD LIKE TO
15 SPEAK TO THOSE OF YOU WHO WERE ON THE JURY IN THE FIRST
16 CASE. I WOULD LIKE FOR YOU ALL TO COME THROUGH THIS DOOR
17 AND GO BACK INTO ONE OF THE OTHER JURY ROOMS. THE BAILIFF
18 WILL SHOW YOU THAT ROOM. I JUST WANT TO CHAT WITH YOU FOR
19 JUST A FEW MINUTES BEFORE YOU LEAVE. THE REST OF YOU, I
20 ENJOYED WORKING WITH YOU THIS WEEK. I APPRECIATE YOUR
21 SERVICE AS JURORS. AT THIS TIME WE'LL BREAK JUST FOR A
22 FEW MINUTES AND Y'ALL GO TO THE JURY ROOM. THE OTHER
23 MEMBERS -- THE MEMBER OF THE FIRST JURY PLEASE COME BACK
24 INTO THIS OTHER JURY ROOM AND THE REST OF YOU ARE FREE TO
25 GO.

(KEVIN L. LILES-DIRECT BY WILLIS)

38

1 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 10:32.)

2 (WHEREUPON, A BREAK WAS TAKEN.)

3 (WHEREUPON, STATE'S EXHIBIT NOS. 1 - 10 WERE MARKED
4 FOR IDENTIFICATION ONLY.)

5 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 THE COURT: YOU MAY PROCEED.

8 MS. WILLIS: THANK YOU, YOUR HONOR. THE STATE CALLS
9 KEVIN LILES FOR THE JACKSON V DENNO HEARING.

10 KEVIN L. LILES, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
13 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

14 THE WITNESS: MY NAME IS KEVIN LARRY LILES. THE LAST
15 NAME IS SPELLED L-I-L-E-S.

16 IN CAMERA DIRECT EXAMINATION

17 BY MS. WILLIS:

18 Q MR. LILES, WHERE ARE YOU EMPLOYED?

19 A AIKEN COUNTY SHERIFF'S OFFICE.

20 Q DID YOU HAVE AN OCCASION TO MEET WITH THE DEFENDANT?

21 A YES, MA'AM, I DID.

22 Q DID YOU READ THE DEFENDANT THE MIRANDA --

23 A YES, MA'AM.

24 Q --- WARNINGS? IS THAT THEM?

25 A YES, MA'AM, IT IS.

(KEVIN L. LILES-DIRECT BY WILLIS)

39

1 Q OKAY. WOULD YOU GO THROUGH EACH QUESTION AND
2 IDENTIFY IF IT'S BEEN INITIALED AND WHO HAS INITIALED IT
3 AND THE TIME AND DATE?

4 A YOU WANT ME TO READ THEM OR TELL YOU THAT IT'S BEEN
5 DONE?

6 Q READ THEM.

7 A OKAY. IT'S DATED 12/28/05 AT ABOUT 14:15 HOURS.
8 BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR
9 RIGHTS. HE HAS INITIALED THERE.

10 Q WHO IS HE?

11 A BRAHEIM JAMAL HILL.

12 Q OKAY.

13 A WITH A B.H. YOU HAVE THE RIGHT TO REMAIN SILENT --
14 ALSO WITH THE INITIALS B.H.

15 Q OKAY.

16 A ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN
17 A COURT OF LAW. HIS INITIALS B.H. ARE THERE.

18 Q OKAY.

19 A YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY FOR ADVICE
20 BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM OR HER
21 PRESENT DURING QUESTIONING. AGAIN, THE THE INITIALS B.H.
22 IF YOU CANNOT AFFORD AN ATTORNEY, THE COURT WILL APPOINT
23 AND AN ATTORNEY TO REPRESENT YOU WITHOUT COST IF YOU WISH.
24 AGAIN, THE INITIALS ARE B.H. IF YOU DECIDE TO ANSWER ANY
25 QUESTIONS NOW WITHOUT AN ATTORNEY PRESENT YOU WILL STILL

1 HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO
2 HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU
3 TALK TO AN ATTORNEY. HIS INITIALS ARE THERE B.H. AFTER
4 THAT IT SAYS I HAVE READ THIS STATEMENT OF MY RIGHTS AND I
5 UNDERSTAND WHAT MY RIGHTS ARE, AND HIS SIGNATURE FOLLOWS
6 THERE, BRAHEIM HILL.

7 Q OKAY. AND UNDER THAT, WAIVER OF RIGHTS?

8 A UNDER THE WAIVER OF RIGHTS -- I AM WILLING TO MAKE A
9 STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT AN ATTORNEY
10 AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO
11 PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE
12 OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME. HIS
13 INITIALS B.H. HE HAS ALSO SIGNED UNDER THAT BRAHEIM HILL
14 WITH A TIME OF 14:18 AND I WAS A WITNESS RIGHT BELOW THAT
15 WITH MY SIGNATURE.

16 Q OKAY. WHAT TYPE OF ROOM WERE YOU IN WITH MR. HILL?

17 A WE WERE IN THE INTERVIEW ROOM.

18 Q OKAY. AT ANY TIME DID YOU THREATEN MR. HILL?

19 A NO, MA'AM.

20 Q AT ANY TIME DID YOU DENY HIM -- HOW LONG WERE YOU
21 WITH HIM IN THE INTERVIEW ROOM?

22 A NOT VERY LONG. PROBABLY THREE MINUTES, THREE TO FIVE
23 MINUTES, NOT VERY LONG AT ALL.

24 Q OKAY. AND YOU DIDN'T THREATEN HIM IN ANY MANNER?

25 A NO, MA'AM.

(KEVIN L. LILES-DIRECT BY WILLIS)

41

1 Q DID HE MAKE ANY STATEMENTS AT THAT TIME?

2 A HE DID TALK WITH ME BRIEFLY.

3 Q OKAY. WHAT DID HE SAY?

4 A I CONFRONTED HIM WITH SOME INFORMATION THAT WE HAD
5 AND HE STATED THAT IF HE HAD HELD THAT SHOTGUN THE
6 FINGERPRINTS WOULD HAVE BEEN SOMEWHERE ELSE -- NOT WHERE I
7 SAID THEY WERE AT.

8 Q OKAY. WHAT HAPPENED AFTER THAT?

9 A HE THEN SAID THAT HE WANTED AN ATTORNEY.

10 Q SO WHAT DID YOU DO?

11 A WE STOPPED.

12 Q OKAY. AND WHERE DID Y'ALL GO THEN?

13 A WENT DOWN TO INFORM MY LIEUTENANT BILLY FLUERY THAT
14 HE DID NOT WANT TO SPEAK TO US; THAT HE WANTED TO SEE AN
15 ATTORNEY.

16 Q OKAY. WAS MR. HILL STILL WITH YOU THEN?

17 A HE WAS. I BROUGHT HIM DOWN WITH ME FOR SECURITY
18 REASONS, AND HE STAYED WITH ME ALONG WITH STUART JOHNSON.

19 Q OKAY. AND AFTER YOU SPOKE TO YOUR -- IS IT YOUR
20 LIEUTENANT?

21 A YES, MA'AM.

22 Q AFTER YOU SPOKE TO YOUR LIEUTENANT WHAT HAPPENED?

23 A THEY WERE WATCHING A VIDEO -- AT THAT TIME THE VIDEO
24 FROM THE STORE, AND I ADVISED THE LIEUTENANT THAT HE DID
25 NOT WANT TO SPEAK TO US. HE SAID THAT WAS FINE. THE

1 LIEUTENANT MADE THE STATEMENT TO HIM THAT THIS IS YOU ON
2 THE VIDEO AND WE'VE GOT YOUR FINGERPRINTS. IF YOU WANT TO
3 SPEAK TO AN ATTORNEY HE IS GOING TO ESCORT YOU BACK DOWN
4 TO THE JAIL.

5 Q OKAY. SO WHAT DID YOU DO?

6 A STUART JOHNSON ESCORTED HIM BACK OUT THE DOOR AND I
7 FOLLOWED BEHIND HIM FOR SECURITY REASONS UNTIL HE GOT HIM
8 IN THE CAR.

9 Q DID YOU ASK HIM ANY QUESTIONS AT THAT POINT?

10 A NO, MA'AM, I DIDN'T.

11 Q DID HE STATE ANYTHING?

12 A HE DID. WHEN WE GOT OUTSIDE OF THE BACK OF THE
13 BUILDING WE WERE GOING DOWN THE STAIRS TO THE PARKING LOT
14 AND HE MADE THE STATEMENT THAT YOU CAN JUST PUT ON THE
15 PAPER THAT I DID IT.

16 Q YOU STATED THAT YOU DIDN'T ASK ANY QUESTIONS. DID
17 MR. JOHNSON ASK ANY QUESTIONS?

18 A NO, MA'AM.

19 Q SO THIS WAS JUST AN OUT-OF-THE-BLUE?

20 A RIGHT. WHEN WE WERE GOING OUT THE BACK DOOR HE SAID,
21 CAN I TALK TO YOU NOW? I SAID, NO, SIR. I SAID, YOU'VE
22 ASKED FOR YOUR RIGHTS. I SAID, YOU WANT A LAWYER; SO
23 WE'LL TAKE YOU BACK DOWN TO THE JAIL SO YOU CAN ARRANGE
24 FOR THAT, AND THAT'S WHEN HE MADE THAT STATEMENT YOU CAN
25 JUST PUT DOWN THAT I DID IT.

(KEVIN L. LILES-CROSS BY MAULDIN)

43

1 Q DID YOU MAKE HIM ANY OFFERS?

2 A NO, MA'AM.

3 Q AND YOU ALREADY STATED THAT YOU DIDN'T THREATEN HIM
4 IN ANY MANNER?

5 A NO, MA'AM.

6 Q WHEN HE MADE THAT LAST STATEMENT WAS IT IN RESPONSE
7 TO ANY QUESTION?

8 A NO, MA'AM. I DID NOT ASK HIM ANYTHING.

9 MS. WILLIS: WILL YOU PLEASE ANSWER ANY QUESTIONS
10 THAT MR. MAULDIN RIGHT MIGHT HAVE FOR YOU?

11 IN CAMERA CROSS-EXAMINATION

12 BY MR. MAULDIN:

13 Q INVESTIGATOR LILES, WHICH INTERVIEW ROOM WAS THIS AT
14 THE SHERIFF'S OFFICE? THERE IS MORE THAN ONE; ISN'T THAT
15 CORRECT?

16 A NO, SIR. THERE IS ONLY ONE.

17 Q WAS THAT THE INTERVIEW ROOM WITH THE VIDEOTAPING
18 CAPABILITY?

19 A YES, SIR.

20 Q WAS THIS INTERVIEW VIDEOTAPED?

21 A NO, SIR.

22 Q DID YOU AT ANY TIME TELL MR. HILL THAT HE WAS LOOKING
23 AT A LOT OF TIME IN PRISON?

24 A NO, SIR, I DIDN'T.

25 Q DID YOU AT ANY TIME TELL HIM THAT IT WOULD BE TO HIS

1 BENEFIT IF HE COOPERATED WITH Y'ALL TO GIVE Y'ALL A
2 STATEMENT?

3 A NO, SIR.

4 Q AND WAS THE STATEMENT MADE IN THE PARKING LOT OR ON
5 THE STAIRWAY DOWN TO THE PARKING LOT?

6 A STAIRWAY DOWN TO THE PARKING LOT. IT GOES OUT THE
7 BACK OF THE SHERIFF'S DEPARTMENT TO THE PARKING LOT.

8 Q SO, THE INTERVIEW ROOM IS UP ON THE SECOND FLOOR OF
9 THE SHERIFF'S OFFICE; IS THAT CORRECT?

10 A YES, SIR.

11 Q AND YOU HAD DISCUSSED THE PRELIMINARY MATTERS WITH
12 MR. HILL IN THE INTERVIEW ROOM?

13 A CORRECT.

14 Q FOR ABOUT THREE TO FIVE MINUTES OR SO?

15 A YES, SIR.

16 Q AND THEN YOU TOOK HIM TO I GUESS LIEUTENANT FLEURY'S
17 OFFICE?

18 A WELL, I WAS ACTUALLY WALKING TO LIEUTENANT FLEURY'S
19 OFFICE TO LET HIM KNOW THAT HE WAS ASKING FOR AN ATTORNEY
20 AND HE WAS GOING BACK TO JAIL.

21 Q AND YOU TOOK HIM WITH YOU TO LIEUTENANT FLEURY'S
22 OFFICE?

23 A YES, SIR.

24 Q ALL RIGHT. AND THEN YOU TOOK HIM BACK DOWN THE HALL
25 AND HAD DEPUTY JOHNSON START TAKING HIM DOWN THE STAIRS?

(KEVIN L. LILES-CROSS BY MAULDIN)

45

1 A DEPUTY JOHNSON WAS WITH ME WHEN I WENT DOWN TO
2 LIEUTENANT FLEURY'S OFFICE. SO, THE TWO OF US TOGETHER
3 WERE WITH HIM SINCE HE WAS IN CUSTODY.

4 Q HOW LONG WAS THAT BETWEEN THE TIME Y'ALL LEFT THE
5 ROOM TO THE TIME WHEN HE MADE THE STATEMENT ON THE STAIRS?

6 A FROM THE TIME WE LEFT THE LIEUTENANT'S OFFICE AND
7 WENT OUT BACK? IS THAT WHAT YOU'RE ASKING ME?

8 Q UH-HUH.

9 A A MINUTE MAYBE, MAYBE A MINUTE AND A HALF.

10 Q DID YOU EVER SHOW MR. HILL THIS TAPE OF YOUR
11 INTERVIEW?

12 A NO, SIR, I DIDN'T.

13 Q YOU SAY THEY WERE WATCHING IN FLEURY'S OFFICE. DID
14 YOU HAVE HIM WATCH IT THERE?

15 A I DON'T KNOW IF HE SAW IT OR NOT. I AM NOT SURE.

16 Q WAS THAT THE ONLY CONVERSATION THAT YOU HAD WITH
17 MR. HILL AS YOU WERE WALKING DOWN THE HALL TOWARDS THE CAR
18 OR DOWN THE STAIRS TOWARDS THE CAR?

19 A YES, SIR.

20 Q NOTHING ELSE?

21 A NO, SIR.

22 Q AT ALL?

23 A I MAY HAVE MADE THE STATEMENT THAT, YOU KNOW, YOU'RE
24 GOING BACK TO JAIL; YOU CAN SPEAK TO YOUR ATTORNEY. THAT
25 WAS IT.

1 MR. MAULDIN: NO FURTHER QUESTIONS, YOUR HONOR.

2 MS. WILLIS: YOUR HONOR, THE STATE IS GOING TO ALSO
3 CALL MR. JOHNSON WHO WAS WITH HIM AT THE SAME TIME. I
4 DON'T KNOW IF YOU REQUIRE ME TO CALL HIM UP TO THE STAND
5 OR NOT. DO YOU NEED TO HEAR FROM HIM?

6 THE COURT: ARE YOU THROUGH WITH THIS WITNESS?

7 MS. WILLIS: WITH HIM, YES.

8 THE COURT: ALL RIGHT. YOU CAN STEP DOWN, SIR.
9 CALL YOUR NEXT WITNESS.

10 MS. WILLIS: STUART JOHNSON.

11 STUART A. JOHNSON, AFTER BEING DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
14 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

15 THE WITNESS: STUART ANDERSON JOHNSON.

16 IN CAMERA DIRECT EXAMINATION

17 BY MS. WILLIS:

18 Q MR. JOHNSON, WHERE DO YOU WORK?

19 A AIKEN COUNTY SHERIFF'S OFFICE.

20 Q DID YOU HAVE AN OPPORTUNITY TO MEET MR. HILL?

21 A I DID.

22 Q OKAY. AND DESCRIBE -- DO YOU REMEMBER WHAT DATE THAT
23 WAS?

24 A NO, MA'AM, NOT EXACTLY.

25 Q TELL US THE CIRCUMSTANCES SURROUNDING THAT OR HOW YOU

(STUART A. JOHNSON-DIRECT BY WILLIS)

47

1 WERE TRANSPORTING HIM?

2 A I HAD RESPONDED TO A DOMESTIC CALL.

3 Q GO AHEAD.

4 A I HAD RESPONDED TO A CALL, FOLLOWED MY NORMAL
5 PROCEDURES AT THE CALL, RAN BOTH OF MY PARTIES AT THE CALL
6 FOR WARRANTS. THE DEFENDANT DID HAVE A WARRANT FOR ARMED
7 ROBBERY.

8 Q DID YOU ARREST THE DEFENDANT?

9 A I ARRESTED THE DEFENDANT.

10 Q OKAY. DID YOU READ HIM MIRANDA AT THAT TIME?

11 A NO.

12 Q OKAY. THEN YOU GO TO THE SHERIFF'S OFFICE?

13 A YES, MA'AM.

14 Q OKAY. DID YOU TAKE THE DEFENDANT TO THE SHERIFF'S
15 OFFICE?

16 A I DID TAKE THE DEFENDANT.

17 Q OKAY. AND WHO ELSE WAS THERE?

18 A INVESTIGATOR LILES.

19 Q OKAY. WHERE WERE YOU?

20 A WITH INVESTIGATOR LILES.

21 Q UH-HUH.

22 A UPSTAIRS IN THE INTERVIEW ROOM OF THE SHERIFF'S
23 OFFICE.

24 Q OKAY. BEFORE YOU ARRIVED THERE DID YOU THREATEN
25 MR. HILL IN ANY MANNER?

(STUART A. JOHNSON-DIRECT BY WILLIS)

48

1 A NO, MA'AM.

2 Q AND WHAT HAPPENED OR WHAT DID YOU WITNESS IN THE
3 INTERVIEW ROOM?

4 A I WITNESSED NOTHING. I SAT OUTSIDE OF THE INTERVIEW
5 ROOM.

6 Q OKAY. ALL RIGHT. WHAT HAPPENED -- WHEN WAS THE NEXT
7 TIME YOU SAW HIM -- MR. HILL?

8 A WHEN INVESTIGATOR LILES AND MR. HILL EXITED THE
9 INTERVIEW ROOM.

10 Q OKAY.

11 A I FOLLOWED THEM DOWN TO LIEUTENANT FLEURY'S OFFICE.

12 Q OKAY. AND AFTER YOU LEFT LIEUTENANT FLEURY'S OFFICE
13 WHERE DID YOU GO?

14 A I WALKED OUT THE BACK DOOR TO THE SHERIFF'S OFFICE
15 AND DOWN THE STAIRWELL TO TRANSPORT HIM TO MY PATROL
16 VEHICLE.

17 Q OKAY. DID YOU ASK MR. HILL ANY QUESTIONS AT THAT
18 TIME?

19 A NO, MA'AM.

20 Q DID YOU EVER ASK MR. HILL ANY QUESTIONS?

21 A NO, MA'AM.

22 Q DID YOU -- DID MR. LILES ASK HIM ANY QUESTIONS AT
23 THAT TIME?

24 A WALKING DOWN THE STAIRWELL?

25 Q YES.

(STUART A. JOHNSON-CROSS BY MAULDIN)

49

1 A NO, MA'AM.

2 Q OKAY. DID MR. HILL MAKE A STATEMENT AT THAT TIME?

3 A YES, MA'AM.

4 Q WHAT WAS THAT STATEMENT?

5 A SOMETHING ALONG THE LINES THAT HE SAID THAT WE COULD
6 GO AHEAD AND WRITE IT DOWN ON THE PAPER THAT HE DID IT.

7 MS. WILLIS: OKAY. CAN YOU ANSWER ANY QUESTIONS THAT
8 MR. MAULDIN HAS.

9 IN CAMERA CROSS-EXAMINATION

10 BY MR. MAULDIN:

11 Q DEPUTY JOHNSON, DID MR. HILL MAKE ANY OTHER KINDS OF
12 STATEMENTS? IS THAT THE ONLY THING HE SAID?

13 A NO OTHER STATEMENTS.

14 Q HE WASN'T MUTTERING TO HIMSELF OR ANYTHING AS YOU
15 WENT TO FLEURY'S OFFICE AND DOWN OUT THE BACK?

16 A NOT THAT I RECALL.

17 Q SO HE JUST PERKED UP ON THE STAIRS AND SAID GO AHEAD
18 AND PUT ON THE PAPER I DID IT?

19 A YES, SIR.

20 MR. MAULDIN: NO FURTHER QUESTIONS, YOUR HONOR.

21 MS. WILLIS: NO FURTHER QUESTIONS, YOUR HONOR, OF
22 THIS WITNESS.

23 THE COURT: ALL RIGHT. YOU CAN STEP DOWN. ANY
24 FURTHER EVIDENCE FROM THE STATE?

25 MS. WILLIS: NO, YOUR HONOR.

1 THE COURT: ANY EVIDENCE FROM THE DEFENSE?

2 MR. MAULDIN: NO, YOUR HONOR.

3 THE COURT: ANY ARGUMENT?

4 MR. MAULDIN: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. WELL, I FIND THE STATE HAS
6 PROVEN BY THE PREPONDERANCE OF THE EVIDENCE THAT THE
7 DEFENDANT DID MAKE THE STATEMENT AND THAT HE MADE IT
8 VOLUNTARILY. BECAUSE THE STATEMENT WAS NOT MADE IN
9 RESPONSE TO ANY POLICE INTERROGATION IT IS NOT NECESSARY
10 TO FIND THAT HE UNDERSTOOD OR WAIVED HIS MIRANDA RIGHTS.
11 SO, WHEN IT IS -- SO, ON THAT BASIS THE STATEMENT IS
12 ADMISSIBLE.

13 ALL RIGHT. I'LL HAVE TO THINK THROUGH. WHEN IT GOES
14 TO THE JURY I'LL HAVE TO THINK THROUGH WHETHER OR NOT THE
15 JURY CONSIDERS WHETHER OR NOT IT WAS MADE IN RESPONSE TO
16 POLICE QUESTIONING. I GUESS IF THERE IS ANY EVIDENCE
17 OFFERED IN THE TRIAL OF THE CASE THAT THE STATEMENT --
18 THAT HE WAS QUESTIONED BETWEEN THE TIME THEY LEFT THE
19 INTERVIEW ROOM AND THE TIME HE MADE THE STATEMENT, THEN I
20 THINK IT BECOMES A QUESTION OF FACT AS TO WHETHER OR NOT
21 HE WAS -- THE STATEMENT WAS MADE IN RESPONSE TO POLICE
22 QUESTIONING AND THEN IT WOULD -- THEN THE JURY WOULD
23 DECIDE THAT QUESTION OF FACT AND THEN IF THEY FIND THAT IT
24 WAS IN RESPONSE TO POLICE QUESTIONING THEY WOULD HAVE TO
25 DECIDE WHETHER OR NOT HE UNDERSTOOD AND WAIVED HIS MIRANDA

(STUART A. JOHNSON-CROSS BY MAULDIN)

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1 RIGHTS, BUT AT THIS POINT IN THIS HEARING THERE IS NO
2 EVIDENCE THAT THE STATEMENT WAS MADE IN RESPONSE TO POLICE
3 QUESTIONING, AND, SO, THERE WOULD BE NO BASIS ON WHICH FOR
4 ME TO DECIDE WHETHER OR NOT HE WAIVED OR UNDERSTOOD AND
5 WAIVED HIS MIRANDA RIGHTS. ALL RIGHT.

6 MS. WILLIS: THANK YOU.

7 THE COURT: ANYTHING FURTHER BEFORE WE BRING THE JURY
8 IN?

9 MS. WILLIS: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK AND
11 THEN WE'LL BRING THE JURY IN AGAIN.

12 (WHEREUPON, A BREAK WAS TAKEN.)

13 THE COURT: ARE WE READY FOR THE JURY?

14 MS. WILLIS: YES, YOUR HONOR.

15 MR. MAULDIN: YES, YOUR HONOR.

16 THE COURT: BRING THEM IN.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 11:14.)

19 THE COURT: SWEAR THEM IN, PLEASE.

20 (WHEREUPON, THE JURY WAS SWORN AT 11:15.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I AM
22 GOING TO SPEAK WITH YOU FOR A FEW MINUTES BEFORE I TURN IT
23 OVER TO THE LAWYERS ABOUT A COUPLE OF THINGS THAT WILL
24 RELATE TO YOUR SERVICE AS JURORS. WE'RE NOW READY TO
25 BEGIN THE TRIAL IN THE STATE OF SOUTH CAROLINA VERSUS

1 BRAHEIM JAMAL HILL. AS I TOLD YOU EARLIER MR. HILL HAS
2 BEEN INDICTED IN TWO INDICTMENTS. THE FIRST OF THOSE IS
3 2006-GS-2-883 FOR ARMED ROBBERY. IN THAT INDICTMENT IT IS
4 ALLEGED THAT BRAHEIM JAMAL HILL DID IN AIKEN COUNTY ON OR
5 ABOUT NOVEMBER 28, 2005 WHILE ARMED WITH A DEADLY WEAPON
6 OR WHILE ALLEGING EITHER BY ACTION OR WORDS THAT HE WAS
7 ARMED WHILE USING A REPRESENTATION OF A DEADLY WEAPON OR
8 AN OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF
9 THE ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON --
10 TO WIT, A SHOTGUN -- FELONIOUSLY TAKE FROM THE PERSON OR
11 PRESENCE OF WILLIE R. RUTLAND BY MEANS OF FORCE OR
12 INTIMIDATION GOODS OR MONIES OF ROBBERY'S CONVENIENCE STORE,
13 3007 PINE LOG ROAD, WARRENVILLE, SOUTH CAROLINA, SUCH
14 GOODS OR MONIES BEING DESCRIBED AS FOLLOWS: APPROXIMATELY
15 \$300, ALL IN VIOLATION OF SECTION 16-11-330 OF THE SOUTH
16 CAROLINA CODE OF LAWS. IN INDICTMENT NUMBER 2006-GS-2-884
17 MR. HILL HAS BEEN INDICTED FOR AS POSSESSION OF A FIREARM
18 OR KNIFE DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A
19 VIOLENT CRIME, AND IN THAT INDICTMENT IT IS ALLEGED THAT
20 BRAHEIM JAMAL HILL DID IN AIKEN COUNTY ON OR ABOUT
21 NOVEMBER 28, 2005 POSSESS OR VISIBLY DISPLAY A FIREARM OR
22 VISIBLY DISPLAY A KNIFE DURING THE COMMISSION OR ATTEMPTED
23 COMMISSION OF A VIOLENT CRIME -- TO WIT, ARMED ROBBERY --
24 ALL IN VIOLATION OF SECTION 16-23-490 OF THE SOUTH
25 CAROLINA CODE OF LAWS.

(STUART A. JOHNSON-CROSS BY MAULDIN)

53

1 NOW, AS I TOLD YOU EARLIER, LADIES AND GENTLEMEN, THE
2 INDICTMENT THAT I JUST READ TO YOU IS NOT IN ANY SENSE
3 EVIDENCE OF THE ALLEGATIONS THAT ARE CONTAINED WITHIN THAT
4 INDICTMENT. THE INDICTMENT IS SIMPLY THE FORMAL DOCUMENT
5 THAT CONTAINS THE ALLEGATIONS THAT HAVE BEEN MADE AGAINST
6 THE DEFENDANT, AND IT SERVES TO PROCESS THIS CASE AND
7 BRING IT INTO THIS COURT FOR TRIAL. THE DEFENDANT HAS
8 PLEAD NOT GUILTY TO BOTH OF THESE INDICTMENTS AND THE PLEA
9 OF NOT GUILTY CASTS THE BURDEN ON THE STATE TO PROVE THE
10 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND THAT WILL
11 BE YOUR JOB IN THIS CASE, LADIES AND GENTLEMEN, TO
12 DETERMINE WHETHER OR NOT THE STATE HAS MET THAT BURDEN OF
13 PROOF.

14 NOW, IT IS A VERY IMPORTANT RULE OF LAW IN OUR
15 COUNTRY THAT A DEFENDANT IN A CRIMINAL TRIAL IS ALWAYS
16 PRESUMED TO BE INNOCENT OF THE CRIMES WITH WHICH HE HAS
17 BEEN CHARGED UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY
18 EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A
19 REASONABLE DOUBT. NOW, THIS, OF COURSE, IS THE
20 PRESUMPTION OF INNOCENCE, BUT THE PRESUMPTION OF INNOCENCE
21 IS NOT MERELY A LEGAL THEORY. IT IS NOT JUST A LEGAL
22 PHRASE THAT WE USE. IT IS A SUBSTANTIAL CONSTITUTIONAL
23 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED. THE
24 PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM
25 THE TIME HE IS CHARGED THROUGHOUT THE TRIAL AND INTO THE

1 JURY ROOM UNTIL YOU REACH A VERDICT OF GUILT THAT'S BASED
2 ON EVIDENCE THAT HAS SATISFIED YOU OF THAT GUILT BEYOND A
3 REASONABLE DOUBT.

4 NOW, LADIES AND GENTLEMEN, THE TRIAL OF THIS CASE IS
5 IN THE WAY I'M ABOUT TO DESCRIBE JUST LIKE A TRIAL OF ANY
6 OTHER CASE, AND THAT IS THAT IT CAN BE DIVIDED UP IN FIVE
7 BASIC PHASES. THE FIRST PHASE IS THE OPENING STATEMENT
8 WHICH WE'LL HEAR IN JUST A MINUTE WHEN THE LAWYERS WILL
9 STAND BEFORE YOU AND THEY WILL EXPLAIN TO YOU WHAT THIS
10 CASE IS ABOUT. THEY'LL TELL YOU WHAT THE ISSUES ARE IN
11 THE CASE. THEY'LL EXPLAIN TO YOU HOW EACH SIDE STANDS ON
12 THOSE ISSUES. THEY WILL ALSO DISCUSS BEFORE YOU SOME OF
13 THE EVIDENCE THAT YOU CAN EXPECT TO SEE DURING THE COURSE
14 OF THIS TRIAL.

15 THE SECOND PHASE WILL BEGIN RIGHT AFTER THAT, AND
16 THAT'S THE EVIDENTIARY PHASE WHEN WITNESSES WILL COME HERE
17 TO THIS WITNESS STAND. YOU'LL HEAR THEIR TESTIMONY. YOU
18 WILL ALSO SEE, I'M SURE, OTHER EVIDENCE SUCH AS DOCUMENTS,
19 PHOTOGRAPHS, AND THINGS LIKE THAT. ALL OF THAT WILL
20 EVENTUALLY BECOME THE BASIS ON WHICH YOU WILL MAKE YOUR
21 DECISION AS TO WHETHER OR NOT THE STATE HAS MET ITS BURDEN
22 OF PROOF, AND THEN THE THIRD PHASE IS CLOSING ARGUMENTS
23 WHEN THE LAWYERS WILL STAND BEFORE YOU AGAIN, AND THIS
24 TIME THEY WILL ARGUE TO YOU AS TO WHETHER OR NOT THE STATE
25 HAS MET THAT BURDEN OF PROOF. THE FOURTH PHASE IS THE

(STUART A. JOHNSON-CROSS BY MAULDIN)

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1 JURY CHARGE WHEN I WILL EXPLAIN TO YOU THE LAW THAT IS
2 APPLICABLE TO THIS CASE, AND IN THE FIFTH PHASE IS WHEN
3 YOU WILL GO BACK INTO THE JURY ROOM AND YOU WILL
4 DELIBERATE.

5 NOW, IT'S VERY IMPORTANT THAT YOU NOT BEGIN TO MAKE
6 UP YOUR MIND ABOUT WHETHER OR NOT THE STATE HAS MET THAT
7 BURDEN OF PROOF UNTIL YOU HAVE BEEN THROUGH ALL FIVE OF
8 THOSE PHASES INCLUDING THE FIFTH PHASE WHEN YOU'LL HAVE A
9 CHANCE TO GO BACK INTO THE JURY ROOM TO LISTEN TO EACH
10 OTHER DISCUSS THE EVIDENCE BECAUSE ONLY THEN WILL YOU BE
11 IN THE RIGHT POSITION TO BEGIN TO MAKE UP YOUR MIND ABOUT
12 THE FACTS IN THE CASE.

13 NOW, I HAVE ALREADY MENTIONED TO YOU THAT YOU MAY NOT
14 DISCUSS THIS CASE IN ANY MANNER UNTIL I HAVE GIVEN YOU
15 PERMISSION TO BEGIN YOUR DELIBERATIONS. I WILL REMIND YOU
16 OF THAT SEVERAL TIMES DURING THE COURSE OF THE TRIAL, BUT
17 PLEASE KEEP THAT IN MIND AND ALSO DO NOT ALLOW ANYONE TO
18 DISCUSS THIS CASE WITH YOU. WHEN YOU GO TO LUNCH TODAY OR
19 ASSUMING THIS CASE CARRIES OVER UNTIL TOMORROW WHICH I'M
20 SURE IT WILL, WHEN YOU GO HOME TONIGHT SOMEBODY IS BOUND
21 TO SAY TO YOU, WHAT ARE YOU DOING? TELL ME. TELL ME.
22 ABOUT THE CASE. WHAT KIND OF CASE IS IT? DO YOU BELIEVE
23 WHAT THEY'RE TELLING YOU? YOU CAN'T ANSWER QUESTIONS LIKE
24 THAT. YOU CANNOT DISCUSS THAT IN ANY WAY. JUST TELL THEM
25 I'M ON THE JURY; I CAN'T DISCUSS IT. WHEN IT'S OVER, IF

1 YOU WANT TO DISCUSS IT YOU CAN, BUT FOR NOW YOU CANNOT.
2 DISCUSS IT.

3 NOW, LADIES AND GENTLEMEN, AS MEMBERS OF THE JURY YOU
4 ARE THE EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE, AND I
5 AM NOT PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT
6 THE FACTS. SO, IF I SAY ANYTHING OR IF I DO ANYTHING
7 DURING THE COURSE OF THIS TRIAL THAT MIGHT LEAD YOU TO
8 BELIEVE THAT I HAVE AN OPINION ABOUT THE FACTS, THEN YOU
9 MUST DISREGARD THAT, BUT ON THE OTHER HAND I AM THE
10 EXCLUSIVE JUDGE OF THE LAW, AND, SO, IF YOU HAVE SOME IDEA
11 AS TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IF
12 THAT DIFFERS FROM WHAT I WILL TELL YOU THE LAW IS, THEN
13 YOU ARE OBLIGATED UNDER THE OATH THAT YOU HAVE JUST TAKEN
14 AS JURORS TO SET YOUR NOTION OF THE LAW ASIDE AND TO
15 ACCEPT AND APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO
16 YOU.

17 NOW, ONE OTHER ROLE THAT I PLAY IS TO DECIDE ON THE
18 ADMISSIBILITY OF EVIDENCE. FROM TIME TO TIME I EXPECT
19 THAT YOU WILL HEAR THE LAWYERS MAKE OBJECTIONS WHEN THEY
20 FEEL THAT EVIDENCE HAS BEEN OFFERED THAT DOES NOT COMPLY
21 WITH OUR RULES OF EVIDENCE. WHEN THAT HAPPENS THAT'S NOT
22 AN ATTEMPT ON THE PART OF THE LAWYER TO HIDE ANYTHING FROM
23 THE JURY. THAT'S JUST THE WAY OUR SYSTEM OF EVIDENCE
24 WORKS. WHEN AN OBJECTION IS MADE IT THEN BECOMES MY
25 RESPONSIBILITY TO RULE ON THE OBJECTION. IF I SUSTAIN THE

(OPENING STATEMENT BY MS. WILLIS)

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1 OBJECTION, THAT MEANS I BELIEVE THE EVIDENCE IS NOT
2 ADMISSIBLE AND I WILL NOT ALLOW IT IN FOR YOU TO CONSIDER.
3 IF I OVERRULE THE OBJECTION THAT MEANS I BELIEVE THE
4 EVIDENCE IS ADMISSIBLE AND I WILL ALLOW IT IN AND YOU CAN
5 CONSIDER IT.

6 NOW, MOST OF THE TIME I CAN DO THAT JUST AS I'M
7 SITTING HERE. YOU'LL HEAR THE LAWYERS SAY, OBJECTION.
8 THEY MAY BRIEFLY STATE THE GROUNDS FOR THEIR OBJECTION,
9 AND THEN I'LL SAY SUSTAINED OR OVERRULED. SOMETIMES I MAY
10 HAVE TO HAVE A BRIEF CONVERSATION WITH THE LAWYERS UP HERE
11 AT THE BENCH, AND SOMETIMES I ACTUALLY HAVE TO SEND THE
12 JURY OUT INTO THE JURY ROOM SO THAT WE CAN OPENLY DISCUSS
13 THE EVIDENCE QUESTION. SOMETIMES I ACTUALLY HAVE TO
14 LISTEN TO THE TESTIMONY BEFORE I CAN DECIDE WHETHER OR NOT
15 YOU CAN LISTEN TO IT.

16 ALL RIGHT. MA'AM, IF YOU'RE READY TO PROCEED, YOU
17 CAN MAKE YOUR OPENING STATEMENT.

18 OPENING STATEMENT

19 MS. WILLIS: LADIES AND GENTLEMEN OF THE JURY, GOOD
20 MORNING. I DON'T EXPECT THIS TO BE A LONG TRIAL. I DON'T
21 KNOW IF WE'LL FINISH TODAY OR IN THE MORNING. IF I SAY IT
22 IS GOING TO BE FASTER THAN IT IS, I DON'T WANT YOU TO HOLD
23 ME TO THAT, BUT THE EVIDENCE IS GOING TO BE PRESENTED
24 TODAY THROUGH THE TESTIMONY OF THE WITNESSES. AS YOU'VE
25 ALREADY HEARD IT IS AN ARMED ROBBERY OF A CONVENIENCE

1 STORE.

2 MR. RUTLAND RIGHT HERE -- NO, STAY RIGHT THERE -- HE
3 IS GOING TO GET UP HERE. HE WAS THE STORE CLERK THAT
4 NIGHT. HE IS GOING TO SIT ON THIS WITNESS STAND AND HE IS
5 GOING TO DESCRIBE TO YOU WHAT HAPPENED THE NIGHT THAT HE
6 WAS ROBBED -- ROBBED BY GUNPOINT. THE OWNER IS GOING TO
7 GET UP HERE AND KIND OF GIVE YOU A LITTLE IDEA OF HOW THE
8 SURVEILLANCE EQUIPMENT WORKS. DIFFERENT INVESTIGATORS
9 INVOLVED WILL GET UP AND TELL YOU WHAT THEIR PART IS.
10 EACH PERSON HAS DIFFERENT PART OR PIECE OF THE PUZZLE.

11 YOU'RE GOING TO HEAR BURDEN OF PROOF. THE STATE HAS
12 THE BURDEN OF PROOF. WE DO. IT IS A GOOD SYSTEM. WE
13 GLADLY -- I GLADLY TAKE THAT, AND EACH PIECE OF THAT
14 PUZZLE IS A STEP CLOSER TO MEETING THAT BURDEN.
15 REASONABLE DOUBT. AFTER ALL OF THE EVIDENCE IS PRESENTED
16 THE JUDGE WILL CHARGE YOU ON THE LAW, AND LISTEN TO WHAT
17 HE SAYS, BUT, ALSO, WHEN YOU'RE LISTENING, IT'S NOT BEYOND
18 ANY DOUBT. IT IS BEYOND A REASONABLE DOUBT, AND HE'LL
19 DEFINE THAT FOR YOU.

20 SO, IT'S UP TO THE STATE FOR US TO PROVE TO YOU BASED
21 ON THE EVIDENCE THAT WE WILL SHOW YOU THROUGH TESTIMONY
22 AND SOME OTHER THINGS THAT THE DEFENDANT BRAHEIM HILL DID
23 ROB THE CONVENIENCE STORE AND HOLD THAT GUN TO
24 MR. RUTLAND'S FACE. I THINK IT'S EASY WHEN YOU COME IN
25 HERE AND GET IN THIS LARGE COURTROOM -- IT IS FORMAL IN

(OPENING STATEMENT BY MR. MAULDIN)

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1 HERE. SOMETIMES IT'S TEMPTING NOT TO USE YOUR COMMON
2 SENSE. PLEASE USE YOUR COMMON SENSE. YOU MAKE IMPORTANT
3 DECISIONS EVERYDAY BASED ON YOUR LIFE EXPERIENCES AND YOUR
4 COMMON SENSE. SO, DON'T LEAVE THAT COMMON SENSE OUT THE
5 DOOR TODAY. PLEASE USE IT.

6 AFTER ALL OF THE EVIDENCE IS PRESENTED I AM GOING TO
7 ASK YOU TO FIND THE DEFENDANT GUILTY OF ARMED ROBBERY AND
8 POSSESSION OF A VIOLENT -- OF THE WEAPON DURING A VIOLENT
9 CRIME. THANK YOU.

10 THE COURT: MR. MAULDIN?

11 OPENING STATEMENT

12 MR. MAULDIN: THANK YOU, YOUR HONOR. LADIES AND
13 GENTLEMEN OF THE JURY, THE EVIDENCE IS NOT GOING TO SHOW
14 BEYOND A REASONABLE DOUBT THAT MR. HILL COMMITTED THIS
15 ARMED ROBBERY. UNDOUBTEDLY, IT WILL SHOW THAT A ROBBERY
16 WAS COMMITTED ON NOVEMBER 28 OF LAST YEAR AT ROBBY'S
17 CONVENIENCE STORE, AND I THINK WITHOUT A DOUBT IT WILL
18 SHOW THAT A MAN ROBBED A CONVENIENCE STORE, AND I THINK
19 BEYOND A SHADOW OF A DOUBT IT WILL ALSO SHOW THAT A BLACK
20 MAN ROBBED THIS CONVENIENCE STORE, BUT IT WILL NOT SHOW
21 THAT THIS BLACK MAN, MR. BRAHEIM HILL, ROBBED THE STORE.

22 AS THE STATE SAID THEY HAVE WITNESSES AND EVIDENCE TO
23 TESTIFY AND SEVERAL PIECES. THERE IS THE STORE CLERK.
24 THEY HAVE A VIDEO THEY'RE GOING TO SHOW YOU THAT YOU'LL
25 HAVE AN OPPORTUNITY TO REVIEW AGAIN AND AGAIN. THERE WILL

(WILLIE RAY RUTLAND-DIRECT BY WILLIS)

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1 ALSO BE TESTIMONY ABOUT A GUN FOUND AND A FINGERPRINT ON
2 THE GUN, AND THERE ALSO MAY OR MAY NOT BE TESTIMONY ABOUT
3 ANY STATEMENTS THAT MR. HILL GAVE. NOW, HOW THAT PANS
4 OUT, I DON'T KNOW. IT HASN'T BEEN PRESENTED. YOU HAVE TO
5 WEIGH ALL OF THAT, BUT I AM TELLING YOU WHEN YOU USE YOUR
6 COMMON SENSE AND YOU WEIGH THIS EVIDENCE YOU'RE GOING TO
7 FIND THAT THE STATE HAS NOT MET ITS BURDEN BY NOT PROVING
8 HIM GUILTY. THANK YOU.

9 THE COURT: CALL YOUR FIRST WITNESS.

10 MS. WILLIS: THANK YOU, YOUR HONOR. MR. RAY RUTLAND.
11 WILLIE RAY RUTLAND.

12 WILLIE RAY RUTLAND, AFTER BEING DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
15 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

16 THE WITNESS: WILLIE RAY RUTLAND; R-U-T-L-A-N-D.

17 DIRECT EXAMINATION

18 BY MS. WILLIS:

19 Q MR. RUTLAND, WHERE DO YOU WORK?

20 A ROBBY'S CONVENIENCE STORE.

21 Q WHERE IS THAT LOCATED?

22 A PINE LOG ROAD.

23 Q WHAT COUNTY IS THAT?

24 A AIKEN.

25 Q HOW LONG HAVE YOU WORKED THERE?

(WILLIE RAY RUTLAND-DIRECT BY WILLIS)

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- 1 A TWO YEARS EVER SINCE HE PURCHASED IT.
- 2 Q OKAY. WHO IS HE?
- 3 A ROBBY GRANDLE, THE OWNER.
- 4 Q OKAY. AND HOW DO YOU KNOW THE OWNER?
- 5 A HE IS MY -- I MEAN, I'M HIS UNCLE. HE IS MY NEPHEW.
- 6 Q OKAY. LET'S GO BACK TO NOVEMBER 28, 2005. DO YOU
- 7 REMEMBER THAT NIGHT?
- 8 A YES, MA'AM.
- 9 Q WERE YOU WORKING?
- 10 A I WAS.
- 11 Q TELL US WHAT HAPPENED THAT NIGHT.
- 12 A I WAS WORKING IN THE FRONT OF THE STORE, AND THERE IS
- 13 A LARGE WINDOW HERE, AND I WAS WORKING BESIDE OF IT
- 14 PUTTING UP CARTONS OF CIGARETTES ON A RACK WHEN THIS BLACK
- 15 GUY WALKED BY THE WINDOW WHICH I DIDN'T PAY ANY ATTENTION
- 16 BECAUSE WE HAVE, YOU KNOW, BLACKS AND WHITES COME INTO THE
- 17 STORE. I MEAN, I JUST LOOKED AT HIM AND I KNOWED HIM, YOU
- 18 KNOW, AND I DIDN'T THINK NOTHING ABOUT IT, AND I CONTINUED
- 19 TO DO IT WHEN THE DOOR OPENED AND THE BLACK GUY HAD A GUN.
- 20 Q DESCRIBE THE GUN FOR US.
- 21 A IT WAS CAMOUFLAGE AND IT WAS LONG. IT WAS A RIFLE,
- 22 SHOTGUN, WHICHEVER. IT WAS A CAMOUFLAGED GUN.
- 23 Q WHERE DID HE HAVE THE GUN?
- 24 A POINTED AT ME.
- 25 Q AND WHAT DID -- WHAT HAPPENED?

1 A HE ENTERED THE FRONT OF THE DOOR AND HE HAD THE GUN
2 POINTED AT ME. YOU WANT ME TO SAY THE EXACT WORDS HE
3 SAID?

4 Q YES.

5 A AND HE HAD THE GUN POINTED AT ME AND HE SAID, NIGGA,
6 THIS IS A HOLDUP; GIVE ME YOUR MONEY.

7 Q WHAT DID YOU DO?

8 A WELL, I STARTED TO TAKE MY HANDS DOWN, AND I WAS
9 TURNING AROUND. HE SAID, NO, DON'T TAKE YOUR HANDS DOWN.
10 SO, I HELD THEM UP, AND I WALKED OVER TO THE CASH REGISTER
11 AND I OPENED THE REGISTER AND GAVE HIM WHAT MONEY WAS IN
12 THERE.

13 Q ABOUT HOW MUCH MONEY WAS IN THERE?

14 A IT WAS ABOUT 300, 250, 300, 350 BECAUSE I ALWAYS
15 KEEP -- YOU KNOW, WE DON'T KEEP A LOT OF MONEY IN THE
16 DRAWERS.

17 Q SO, WHAT HAPPENED AFTER THAT?

18 A HE WANTED ME TO GIVE HIM THE MONEY UNDER THE DRAWER
19 AND I SAID, WELL, THERE IS NOT ANY UNDER THERE, BUT I HELD
20 IT UP AND SHOWED HIM, AND AT THAT TIME HE TURNED THE
21 WEAPON AND BEHIND OUR COUNTER THERE IS A SAFE SITTING OVER
22 HERE --

23 Q UH-HUH.

24 A -- AND HE POINTED AT THE SAFE AND HE TOLD ME, HE
25 SAID, NIGGA, OPEN THAT SAFE.

(WILLIE RAY RUTLAND-DIRECT BY WILLIS)

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1 Q DID YOU OPEN IT?

2 A I SAID, I CANNOT OPEN THAT SAFE.

3 Q HE SAID, NIGGA, I SAID OPEN THAT SAFE OR I AM GOING
4 TO KILL YOU. AT THAT TIME HE TURNED THE GUN OFF OF THE
5 SAFE AND POINTED IT IN MY FACE AND HE SAID, I SAID OPEN
6 THE SAFE.

7 Q WHAT WAS GOING THROUGH YOUR MIND AT THIS POINT?

8 A WELL, I HAD NO DOUBT IN MY MIND THAT HE WASN'T GOING
9 TO KILL ME. I KNEW HE WAS, AND, SO, I TOLD HIM TO GO
10 AHEAD AND DO IT AND GET IT OVER WITH.

11 Q YOU TOLD US WHAT THE GUN LOOKED LIKE. DO YOU
12 REMEMBER WHAT HE WAS WEARING?

13 A HE WAS WEARING DARK-COLORED PANTS, AND HE HAD ON KIND
14 OF LIKE A WHITE, BAGGY SHIRT. HE HAD A STOCKING CAP THING
15 ON THAT IT HAD A LITTLE BALL RIGHT HERE, AND HE HAD ON
16 SOCKS AND BEDROOM SLIPPERS.

17 Q IS THE MAN THAT HELD THAT GUN TO YOUR HEAD -- IS HE
18 IN THE COURTROOM TODAY?

19 A HE IS.

20 Q WOULD YOU PLEASE IDENTIFY HIM FOR US?

21 A HE IS SITTING RIGHT THERE.

22 Q DESCRIBE WHAT KIND OF SHIRT HE HAS ON.

23 A HE HAS ON A PIN-STRIPED SHIRT.

24 Q ALL RIGHT.

25 A THERE IS NO DOUBT IN MY MIND THAT THAT IS NOT THE

1 GUY.

2 Q OKAY. ALL RIGHT. WAS THERE ANYONE ELSE IN THE STORE
3 BESIDES YOU WORKING?

4 A NO, MA'AM. I WAS ALONE.

5 Q OKAY. ABOUT WHAT TIME OF NIGHT WAS THIS?

6 A IT WAS BETWEEN 8:30 AND 9; SOMEWHERE IN THAT AREA.

7 Q OKAY. HOW LATE DO Y'ALL STAY OPEN?

8 A ELEVEN.

9 Q MR. RUTLAND, THE NIGHT THAT THIS HAPPENED DID YOU
10 KNOW THE DEFENDANT'S NAME?

11 A NO, MA'AM.

12 Q DID YOU RECOGNIZE HIM IN ANY WAY?

13 A I RECOGNIZED HIM WHEN HE WALKED BY THE WINDOW.
14 THAT'S WHY I DIDN'T THINK ANYTHING ABOUT IT BECAUSE HE HAD
15 BEEN IN -- YOU KNOW, IN AND OUT THE STORE AT DIFFERENT
16 TIMES, BUT I NEVER KNEW HIS NAME.

17 Q OKAY. DID YOU GIVE HIM ANYTHING ELSE BESIDES MONEY?

18 A WELL, AFTER I GAVE HIM THE MONEY AND HE SAID THAT
19 ABOUT THE SAFE AND ALL AND HE WAS HOLDING THE GUN ON ME,
20 HE STOOD THERE FOR A FEW MINUTES AND HE LOOKED UP AND
21 THERE IS A RACK OF CIGARETTES -- LOOSE CIGARETTES THAT'S
22 UP HERE --

23 Q UH-HUH.

24 A -- AND HE SAID, GIVE ME A PACK OF NEWPORT 100'S IN
25 THE SOFT PACK. I REACHED UP AND I HANDED HIM THE

(WILLIE RAY RUTLAND-DIRECT BY WILLIS)

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1 CIGARETTES AND HE STOOD THERE FOR A FEW MINUTES.

2 Q THEN WHAT DID HE DO?

3 A HE TURNED AROUND AND WALKED OUT THE DOOR AND HE WENT
4 THE SAME WAY HE CAME IN. HE WENT BY THE SAME WINDOW THAT
5 HE CAME BY AND WENT AROUND TO THE BACK.

6 Q ALL RIGHT. WHAT DID YOU DO?

7 A WELL, I IMMEDIATELY GRABBED THE KEYS AND WENT AND
8 LOCKED THE FRONT DOOR AND GRABBED MY CELLPHONE AND --

9 Q WHY DID YOU LOCK THE FRONT DOOR?

10 A I LOCKED THE FRONT DOOR.

11 Q WHY?

12 A I WAS AFRAID HE MIGHT COME BACK.

13 Q OKAY.

14 A AND BEHIND THE COUNTER WHERE THAT WINDOW IS OVER
15 THERE THAT HE WALKED BY THERE'S A BATHROOM GOING IN THERE
16 AND I GRABBED MY CELLPHONE AND STEPPED INTO THERE BECAUSE
17 I DIDN'T DIDN'T KNOW WHETHER HE WOULD COME BACK AND SHOOT
18 THROUGH THE WINDOW OR WHAT, AND THAT'S WHEN I WAS CALLING
19 ROBBY.

20 Q OKAY.

21 A WELL, I PRESSED THE PANIC BUTTON, ALSO.

22 Q OKAY.

23 A THAT WAS THE FIRST THING -- GRABBED THE KEYS.

24 Q WHAT DOES THE PANIC BUTTON DO?

25 A IT GOES TO THE POLICE STATION.

1 Q OKAY. AND YOU STATED YOU CALLED ROBBY, YOUR NEPHEW?

2 A YES, MA'AM.

3 Q THAT OWNS THE STORE?

4 A RIGHT.

5 Q HOW LONG DID IT TAKE THE POLICE TO GET THERE ABOUT?

6 A WELL, NATURALLY, IT SEEMED LIKE AN HOUR, BUT PROBABLY
7 ABOUT 10 MINUTES, 15 MINUTES, SOMETHING LIKE THAT.

8 Q OKAY. BUT THEY DID ARRIVE?

9 A YES, MA'AM.

10 MS. WILLIS: MR. RUTLAND, WILL YOU PLEASE ANSWER ANY
11 QUESTIONS THAT ANY QUESTIONS THAT MR. MAULDIN MAY HAVE FOR
12 YOU?

13 CROSS-EXAMINATION

14 BY MR. MAULDIN:

15 Q MR. RUTLAND, THIS HAPPENED NOVEMBER 28 OF LAST YEAR;
16 IS THAT CORRECT?

17 A RIGHT.

18 Q AND ABOUT HOW LONG DID THE INCIDENT TAKE AS FAR AS
19 THE FELLOW GOING IN THE STORE AND OUT?

20 A HOW LONG DID IT TAKE FROM THE TIME HE CAME IN THE
21 STORE AND WENT OUT?

22 Q YES, SIR.

23 A I GUESS FIVE OR SIX, SEVEN MINUTES. I DON'T REALLY
24 KNOW.

25 Q AND THE STORE HAS A VIDEOTAPE THAT RUNS, DOESN'T IT?

(ROBERT E. GRANDLE, JR.-DIRECT BY WILLIS)

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1 A ABSOLUTELY.

2 Q THAT WOULD SHOW EVERYTHING THAT YOU'RE TALKING ABOUT;
3 IS THAT CORRECT?

4 A SHOW HIM COMING IN THE DOOR AND IN THE BUILDING.

5 Q AND AS PART OF THE INVESTIGATION DID THE POLICE EVER
6 SHOW YOU A SIX-PICTURE LINE-UP FOR YOU TO PICK OUT
7 SOMEBODY?

8 A NO.

9 Q NO? NO FURTHER QUESTIONS.

10 MS. WILLIS: NO FURTHER QUESTIONS, YOUR HONOR, FROM
11 THE WITNESS.

12 THE COURT: ALL RIGHT, SIR. YOU CAN COME DOWN.

13 MS. WILLIS: MR. ROBBY GRANDLE.

14 ROBERT E. GRANDLE, JR., AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 THE CLERK: HAVE A SEAT IN THE WITNESS BOX.

17 THE WITNESS: ROBERT EUGENE GRANDLE, JR.;
18 G-R-A-N-D-L-E.

19 DIRECT EXAMINATION

20 BY MS. WILLIS:

21 Q WHAT DO YOU DO FOR A LIVING, MR. GRANDLE?

22 A I OWN A CONVENIENCE STORE.

23 Q I'M SORRY?

24 A I OWN A CONVENIENCE STORE.

25 Q OKAY. THAT'S ROBBY CONVENIENCE STORE?

- 1 A YES, MA'AM.
- 2 Q WHAT ROAD IS THAT ON?
- 3 A PINE LOG ROAD.
- 4 Q OKAY. HOW LONG HAVE YOU OWNED IT?
- 5 A NOVEMBER WILL BE TWO YEARS. NO, THREE. TWO OR
- 6 THREE.
- 7 Q TWO OR THREE YEARS?
- 8 A TWO OR THREE YEARS.
- 9 Q OKAY. DO YOU ALSO WORK THERE AT TIMES?
- 10 A YES.
- 11 Q HOW MANY EMPLOYEES DO YOU HAVE?
- 12 A OTHER THAN ME, THREE.
- 13 Q ONE OF WHICH IS MR. RUTLAND?
- 14 A ONE IS MR. RUTLAND.
- 15 Q DO YOU HAVE -- IS THE STORE EQUIPPED WITH VIDEO
- 16 SURVEILLANCE?
- 17 A YES, MA'AM. WHEN I BOUGHT IT IT WAS ALREADY THERE.
- 18 Q OKAY. WAS IT WORKING ON NOVEMBER 28?
- 19 A YES, MA'AM.
- 20 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO SEE THE VIDEO
- 21 THAT WAS TAKEN THAT NIGHT?
- 22 A YES, MA'AM.
- 23 Q OF THIS INCIDENT?
- 24 A YES, MA'AM.
- 25 Q IS THAT IT?

(ROBERT E. GRANDLE, JR.-DIRECT BY WILLIS)

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1 A THAT'S IT. WHEN I GOT TO THE STORE I WENT BACK AND
2 WE LOOKED AT IT THEN.

3 MS. WILLIS: OKAY. FOR THE RECORD THIS IS STATE'S
4 EXHIBIT 3.

5 AND YOU'VE SEEN THAT TAPE SINCE THEN; CORRECT?

6 THE WITNESS: YES, MA'AM.

7 Q AND IT IS IN THE SAME CONDITION THAT NIGHT THAT YOU
8 WENT THERE?

9 A YES, MA'AM.

10 Q YOU HAVEN'T CHANGED IT IN ANY WAY?

11 A NONE WHATSOEVER.

12 MS. WILLIS: YOUR HONOR, WE'D LIKE TO MOVE STATE'S
13 EXHIBIT 1 INTO EVIDENCE.

14 MR. MAULDIN: YOUR HONOR, I DON'T KNOW IF THIS
15 WITNESS CAN SAY THAT THE TAPE ACCURATELY REFLECTS WHAT
16 WENT ON THAT NIGHT. SO, I WOULD OBJECT ON THAT BASIS.

17 MS. WILLIS: IT IS THE SAME TAPE, YOUR HONOR, AS HE
18 SAW THAT NIGHT RIGHT AFTER THE INCIDENT.

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I AM
20 GOING TO SEND YOU BACK INTO THE JURY ROOM SO THAT I CAN
21 DISCUSS A MATTER OF LAW WITH THE ATTORNEYS.

22 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 11:40.)

23 THE COURT: I THINK WHEN YOU HAVE A SURVEILLANCE TYPE
24 OF VIDEO SUCH AS THIS YOU HAVE TWO DIFFERENT WAYS OF
25 LAYING A FOUNDATION FOR THE ADMISSION OF THAT TAPE. YOU

1 CAN EITHER PUT UP A WITNESS WHO WAS THERE, WHO SAW WHAT
2 HAPPENED, WHO WATCHES THE TAPE AND SAYS THAT THIS TAPE IS
3 A FAIR AND ACCURATE REPRESENTATION OF THE WAY THE SCENE
4 LOOKED THAT NIGHT AND WHAT HAPPENED THAT NIGHT.

5 MS. WILLIS: OKAY.

6 THE COURT: YOU, ALSO, I BELIEVE CAN PUT UP A WITNESS
7 WHO CAN TESTIFY ABOUT THE WAY THE VIDEO SURVEILLANCE
8 SYSTEM WORKS, HOW THE SYSTEM WAS WORKING THAT NIGHT, HOW
9 THIS PARTICULAR EXHIBIT WAS RETRIEVED FROM THE SYSTEM, AND
10 CAN TESTIFY BASED ON HIS PERSONAL KNOWLEDGE THAT THIS TAPE
11 THAT IS ABOUT TO BE INTRODUCED IS A RECORDING OF WHAT
12 HAPPENED.

13 NOW, YOU'VE CHOSEN TO FOLLOW THAT SECOND OPTION, BUT
14 I DON'T THINK THAT YOU -- I THINK THAT YOU'VE GOT TO BE A
15 LITTLE BIT MORE CAREFUL ABOUT THE DETAILS OF EXPLAINING
16 HOW HE KNOWS OF HIS OWN PERSONAL KNOWLEDGE THAT THIS IS
17 THE TAPE THAT WAS RECORDED AT THE TIME THIS ROBBERY TOOK
18 PLACE. NOW, I'M SURE THAT -- I IMAGINE THAT HE CAN DO
19 THAT.

20 MS. WILLIS: RIGHT.

21 THE COURT: BUT ON THE OTHER HAND, I WILL AFFORD YOU
22 IF YOU WANT IT TO FLEXIBILITY OF PUTTING THE OTHER WITNESS
23 BACK ON THE STAND AND ASKING HIM THE SIMPLE QUESTION OF
24 WHETHER OR NOT IT'S A FAIR AND ACCURATE REPRESENTATION OF
25 THE WAY THE SCENE LOOKED AND WHAT HAPPENED.

(ROBERT E. GRANDLE, JR. - DIRECT BY WILLIS)

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1 SO, WITH THOSE -- WITH THAT STATEMENT, I SUSTAIN THE
2 OBJECTION WITH THE EXPECTATION THAT YOU WILL CONTINUE TO
3 TRY TO LAY THE FOUNDATION FOR THE ADMISSION OF THAT TAPE.

4 MS. WILLIS: THANK YOU, YOUR HONOR.

5 THE COURT: ARE YOU READY TO PROCEED?

6 MS. WILLIS: YES, YOUR HONOR.

7 THE COURT: BRING THE JURY IN.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 11:42.)

10 THE COURT: YOU CAN PROCEED.

11 MS. WILLIS: THANK YOU, YOUR HONOR.

12 MR. GRANDLE, PLEASE EXPLAIN HOW YOUR SURVEILLANCE
13 SYSTEM AT YOUR STORE WORKS.

14 THE WITNESS: I HAVE AN OFFICE IN THE BACK, AND IT
15 STAYS LOCKED. I AM THE ONLY ONE WITH ACCESS.

16 Q WHAT KIND OF LOCK?

17 A IT IS A MASTER LOCK.

18 Q OKAY.

19 A AND IT'S A T.V. MONITOR WITH TWO VIDEO V.C.R.'S AND
20 IT'S BROKEN DOWN TO LIKE FOUR SCREENS. ONE LOOKS OUTSIDE
21 TOWARDS THE GAS PUMPS TOWARDS A FENCE OVER WHERE THE GAS
22 TANKS ARE. ONE IS RIGHT ABOVE THE DOOR LOOKING DOWN AT
23 THE DOOR TOWARDS THE CASH REGISTER. ONE SITS BEHIND THE
24 CASH REGISTER AND THEN ONE LOOKS DOWN AN AISLE ON THE
25 OTHER SIDE OF IT AND I PUT THE TAPES IN EVERYDAY.

1 Q YOU DO THAT YOURSELF?

2 A I DO THAT MYSELF. I TAKE THEM OUT EVERYDAY. I AM
3 THE ONLY ONE THAT DOES IT. I WORK IN THE MORNINGS. I AM
4 THERE FOR THE MORNING AND LEAVE AND THEN THEY ALWAYS COME
5 AND WORK THE AFTERNOON AND NIGHT SHIFT AND I ALWAYS PUT
6 FRESH TAPES IN THEN WHENEVER I LEAVE, AND WHENEVER I GOT
7 DOWN TO THE STORE AND --

8 Q THE NIGHT OF THIS INCIDENT?

9 A THE NIGHT OF THE INCIDENT THEY ASKED IF I HAD THE
10 SURVEILLANCE RUNNING. I SAID, YES. I UNLOCKED THE
11 OFFICE, AND WE ALL WENT IN, AND THAT'S WHEN I PLAYED THE
12 TAPE BACK.

13 Q OKAY. SO, YOU JUST REWINDED UP?

14 A REWIND IT AND PLAYED IT BECAUSE IT WASN'T TOO LONG.
15 I MEAN, IT HAD PROBABLY ONLY BEEN 20 MINUTES PROBABLY BY
16 THE TIME I GOT THERE AND WENT BACK TO GET THE VIDEOTAPES
17 AFTER IT HAPPENED.

18 Q SO, NO ONE COULD HAVE CHANGED ANYTHING?

19 A NOBODY HAS ACCESS TO THE ROOM EXCEPT FOR ME AND THE
20 OFFICER WALKED IN WITH ME.

21 Q OKAY.

22 A WE WERE TOGETHER. I THINK THERE WAS, ACTUALLY, LIKE
23 THREE OR FOUR OF US IN THERE.

24 Q OKAY. AND DID YOU GIVE THAT TAPE TO THE OFFICERS?

25 A YES, I DID.

(ROBERT E. GRANDLE, JR. - DIRECT BY WILLIS)

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1 Q OKAY. AND IT RUNS ON REGULAR EQUIPMENT?

2 A UH-HUH.

3 Q WHEN YOU LOOKED AT IT, IS IT SECTIONED OFF?

4 A YES, MA'AM.

5 Q BECAUSE YOU HAVE HOW MANY CAMERAS?

6 A THERE ARE FOUR.

7 Q OKAY. AND --

8 A ONE SHOWS LOOKING OUT PAST THE FRONT DOOR THERE IS A
9 FENCE OVER THERE BY THE GAS TANKS. THAT'S WHERE THE GUY
10 THAT ROBBED THE STORE STANDS. YOU'LL SEE HIM STANDING
11 THERE FOR A FEW MINUTES. HE'LL WALK BEHIND A BUILDING AND
12 THEN BACK TO THE FENCE AND BACK BEHIND THE BUILDING TO THE
13 FENCE. YOU CAN SEE A CAR PULL UP.

14 Q SO, YOU SAW A BLACK MALE?

15 A RIGHT. CORRECT.

16 Q AND YOU SAW A GUN?

17 A AND YOU DON'T SEE THE GUN AND THEN LIKE A CAR PULLS
18 UP AND KIND OF LOOKS LIKE MAYBE CONVERSATION --

19 Q INSIDE OF THE STORE?

20 A NO. THIS IS OUTSIDE THE STORE --

21 Q OKAY.

22 A -- WHILE HE'S STILL ON THE FENCE AND THEN AFTER THE
23 CAR LEAVES HE KIND OF WALKS TO THE FENCE OVER TO THE
24 BUILDING WHERE THE GUN IS, OBVIOUSLY, LAYING BECAUSE WHEN
25 HE WALKS BACK AROUND HE'S GOT THE GUN IN HIS HAND.

(ROBERT E. GRANDLE, JR.-DIRECT BY WILLIS)

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1 MR. MAULDIN: YOUR HONOR, I WOULD OBJECT.

2 THE COURT: YOU'RE GOING TO HAVE TO ADMIT THE
3 VIDEO --

4 MS. WILLIS: OKAY.

5 THE COURT: -- BEFORE HE CAN TESTIFY TO WHAT THE
6 VIDEO SHOWS.

7 MS. WILLIS: YOUR HONOR, AT THIS TIME I'D LIKE TO
8 INTRODUCE THE VIDEO, STATE'S EXHIBIT 3 INTO EVIDENCE BASED
9 ON THE FACT THAT NO ONE BESIDES MR. GRANDLE, THE OWNER,
10 HAS ACCESS TO IT.

11 THE COURT: ALL RIGHT. ANY OBJECTION TO THE
12 ADMISSION OF THE VIDEO AT THIS POINT?

13 MR. MAULDIN: NOT AT THIS TIME, YOUR HONOR.

14 THE COURT: IT IS ADMITTED.

15 MS. WILLIS: THANK YOU, YOUR HONOR.

16 (WHEREUPON, STATE'S EXHIBIT NO. 3 WAS ADMITTED INTO
17 EVIDENCE.)

18 Q DO YOU KNOW HOW MUCH MONEY WAS TAKEN THAT EVENING?

19 A IT WAS SOMEWHERE LIKE AROUND \$300, A PACK OF
20 CIGARETTES.

21 Q OKAY. AND HOW DO YOU CONTROL THAT?

22 A HOW DO I CONTROL?

23 Q HOW DO YOU KNOW HOW MUCH MONEY YOU HAVE IN A
24 REGISTER?

25 A WELL, I MEAN, THE REGISTER ADDS UP EVERYTHING THAT'S

(ROBERT E. GRANDLE, JR.-DIRECT BY WILLIS)

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1 RUN THROUGH IT, BUT WE HAVE A DROP. IN THE SAFE DRAWER WE
2 DROP THE MONEY. ONCE THEY GET LIKE A CERTAIN AMOUNT OF
3 MONEY THEY DROP IT WHERE WE DON'T HAVE ANY IN THE
4 REGISTER, AND THEN WE HAVE A PIECE OF PAPER THAT THEY KEEP
5 UP WITH THAT SO THAT THEY CAN MATCH UP THE PAPERWORK AT
6 NIGHT.

7 Q OKAY.

8 A THERE IS NEVER -- I MEAN, THERE IS NEVER A LOT OF
9 MONEY IN THE REGISTER --

10 Q OKAY.

11 A -- AT ANY TIME.

12 Q WHAT TIME IN THE MORNINGS DO YOU OPEN?

13 A I'M USUALLY THERE AT 4:30.

14 Q WOW.

15 A OPEN SOMEWHERE AROUND LIKE A QUARTER 'TIL 5.

16 MS. WILLIS: WOULD YOU ANSWER ANY QUESTIONS THAT
17 MR. MAULDIN HAS, PLEASE.

18 MR. MAULDIN: I HAVE NO QUESTIONS FOR THIS WITNESS.

19 THE COURT: YOU CAN STEP DOWN, SIR.

20 MS. WILLIS: THE STATE CALLS MR. CHUCK CAIN.

21 CHARLES CAIN, AFTER BEING DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATE YOUR
24 FULL NAME FOR THE COURT SPELLING YOUR LAST.

25 THE WITNESS: INVESTIGATOR CHARLES CAIN; C-A-I-N.

1 DIRECT EXAMINATION

2 BY MS. WILLIS:

3 Q WHERE DO YOU WORK, MR. CAIN?

4 A AIKEN COUNTY SHERIFF'S OFFICE.

5 Q HOW LONG HAVE YOU BEEN WITH AIKEN COUNTY SHERIFF'S
6 OFFICE?

7 A SIXTEEN YEARS.

8 Q WHAT TYPE OF TRAINING HAVE YOU HAD?

9 A DURING MY TIME AT THE SHERIFF'S OFFICE I'VE BEEN WITH
10 THE PATROL DIVISION, THE DETENTION CENTER, SPECIAL
11 OPERATIONS, AND CRIMINAL INVESTIGATIONS.12 Q OKAY. WHAT ARE YOUR DUTIES AT THIS TIME AT THE
13 SHERIFF'S OFFICE?

14 A INVESTIGATOR, VIOLENT CRIME.

15 Q OKAY. ON NOVEMBER 28 DID YOU RESPOND TO ROBBY'S
16 CONVENIENCE STORE?

17 A I DID.

18 Q WHAT DID YOU DO WHEN YOU GOT THERE?

19 A AS SOON AS I ARRIVED I MET WITH THE PATROL
20 SUPERVISOR. HE GAVE ME A BRIEF OF THE INCIDENT AS TO THE
21 REASON WHY I WAS PAGED OUT. I WENT INSIDE THE CRIME
22 SCENE. I GOT WITH THE REPORTING OFFICER DEPUTY WILLIAMS.
23 HE GAVE ME A BRIEF OF WHAT WAS GOING ON, WHAT HE WAS DOING
24 AT THE TIME. HE INTRODUCED ME TO THE VICTIM, THE CLERK,
25 AND BEGAN TO GET A WRITTEN STATEMENT INTERVIEWING THE

(CHARLES CAIN-DIRECT BY WILLIS)

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1 VICTIM, BEGAN TO GET A WRITTEN STATEMENT FROM HIM. ALSO,
2 WAS AWARE THAT VIDEO -- THAT THERE WAS AN IN-STORE
3 SURVEILLANCE VIDEO OF THE INCIDENT.

4 Q DID YOU GET THAT?

5 A YES, I DID. I COLLECTED THAT MYSELF.

6 Q DO YOU RECOGNIZE THIS VIDEOTAPE AS THE SAME ONE YOU
7 GOT THAT NIGHT?

8 A YES, MA'AM. THAT IS THE ONE THAT WAS DELIVERED TO
9 DEPUTY WILLIAMS FROM THE STORE OWNER AND DEPUTY WILLIAMS
10 GAVE TO ME.

11 Q OKAY. WHAT DID YOU DO NEXT?

12 A IT WAS IMMEDIATELY RIGHT AFTER I FINISHED GETTING MY
13 STATEMENT, IF I RECALL CORRECTLY, I WAS NOTIFIED THAT A
14 CAMOUFLAGED-IN-COLOR SHOTGUN HAD BEEN LOCATED BEHIND THE
15 BUSINESS WITHIN CLOSE PROXIMITY OF THE BUSINESS LYING IN A
16 DITCH.

17 Q OKAY.

18 A AND, ALSO, WE, ALSO, KNEW FROM REVIEWING THE VIDEO
19 THAT A CAMOUFLAGED SHOTGUN HAD BEEN USED IN THE INCIDENT.

20 Q OKAY. WHAT DID YOU DO WHEN YOU HEARD THAT THERE WAS
21 A SHOTGUN FOUND?

22 A I IMMEDIATELY INSTRUCTED EVERYONE -- ALL LAW
23 ENFORCEMENT AT THE SCENE, -- NOT TO TOUCH IT, TO LEAVE IT
24 IN PLACE. I WENT AHEAD AND PUT RUBBER GLOVES ON MY HANDS.
25 I GOT MY DIGITAL CAMERA AND IMMEDIATELY RELOCATED TO THE

1 SHOTGUN.

2 Q UH-HUH.

3 A I PHOTOGRAPHED IT IN PLACE, COLLECTED IT, PRESERVED
4 IT, PLACED IT IN THE BACK SEAT OF MY UNMARKED VEHICLE, AND
5 LOCKED THE DOORS. NO ONE ELSE TOUCHED THAT SHOTGUN BUT
6 MYSELF.

7 Q THIS IS STATE'S EXHIBIT 4. WOULD YOU PLEASE DESCRIBE
8 WHAT THAT IS?

9 A THAT IS THE SHOTGUN, THE CAMOUFLAGE SHOTGUN LYING ON
10 THE GROUND, LYING IN THE DITCH.

11 Q DID YOU TAKE THAT PHOTO?

12 A YES, MA'AM, I DID. I PHOTOGRAPHED IT AND COLLECTED
13 IT.

14 Q BEFORE YOU PICKED UP?

15 A YES, MA'AM, I PHOTOGRAPHED IT IN PLACE, DOCUMENTED IT
16 AS IT WAS BEFORE I PICKED IT UP.

17 MS. WILLIS: OKAY. THE STATE MOVES TO INTRODUCE
18 STATE'S EXHIBIT 4 INTO EVIDENCE.

19 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT IS ADMITTED.

21 (WHEREUPON, STATE'S EXHIBIT NO. 4 WAS ADMITTED INTO
22 EVIDENCE.)

23 Q OKAY. YOU TOOK THE GUN?

24 A THAT'S CORRECT.

25 Q YOU PUT GLOVES ON BEFORE YOU PICKED IT UP?

(CHARLES CAIN-DIRECT BY WILLIS)

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1 A YES, MA'AM.

2 Q WHERE DID YOU SAY YOU TOOK IT?

3 A AFTER I PHOTOGRAPHED IT AFTER I PICKED IT UP -- AND
4 JUST TO LET YOU KNOW, WHEN I PICKED IT UP IT WAS BY THE
5 END OF THE BARREL --

6 Q UH-HUH.

7 A -- AND BY THE BUTT STOCK, THE END OF THE BUTT STOCK.
8 SO, I CARRIED IT IN THIS MANNER. I TOOK IT STRAIGHT TO MY
9 PATROL VEHICLE, PLACED IT IN THE BACK SEAT OF MY PATROL
10 VEHICLE, AND LOCKED THE DOORS.

11 Q I WANT YOU TO LOOK AT STATE'S EXHIBIT 1. I DON'T
12 HAVE A KNIFE TO OPEN IT. WE NEED TO OPEN THAT. SEE IF
13 YOU CAN IDENTIFY WHAT'S IN THERE. DON'T SHOW IT TO THE
14 JURY YET. CAN YOU IDENTIFY THAT?

15 A YES, MA'AM. THAT'S THE CAMOUFLAGE PUMP SHOTGUN I
16 SECURED FROM BEHIND ROBBY'S CONVENIENCE STORE THAT NIGHT.

17 MS. WILLIS: OKAY. AT THIS TIME, YOUR HONOR, WE'D
18 LIKE TO MOVE TO INTRODUCE STATE'S EXHIBIT 1 INTO EVIDENCE.

19 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT IS ADMITTED.

21 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO
22 EVIDENCE.)

23 Q YOU TOOK THE GUN?

24 A YES, MA'AM.

25 Q WHAT DID YOU DO AFTER YOU DID THAT, AFTER YOU SECURED

1 THE WEAPON?

2 A I HAD ALREADY PHOTOGRAPHED THE WEAPON IN PLACE,
3 PHOTOGRAPHED THE CRIME SCENE AS BEST I COULD, COLLECTED
4 THE WEAPON, MADE SURE THAT I HAD THE WRITTEN STATEMENT
5 FROM THE VICTIM AT THE SCENE. I GOT A COPY OF THE
6 INCIDENT REPORT.

7 Q UH-HUH.

8 A THAT WAS PRETTY MUCH -- I SECURED FOR THE REST OF THE
9 EVENING AFTER THAT ONCE I LEARNED THAT THE BLOODHOUND
10 TRACKING TEAM WASN'T ABLE TO TRACK THE SUSPECT ANY
11 FURTHER. THEIR TRAIL HAD ENDED. I RECEIVED INFORMATION
12 THAT A GENTLEMAN BY THE NAME OF MR. SWEARINGEN WHO LIVED
13 MAYBE A MILE AND A HALF DOWN THE ROAD --

14 Q OKAY.

15 A CONTINUE?

16 Q ACTUALLY, I WANTED TO BACK YOU UP JUST FOR A MINUTE.

17 A YES, MA'AM. YES, MA'AM.

18 Q DID YOU GET THE VIDEOTAPE AT THAT TIME?

19 A OH, YES. WHEN I SECURED THE SHOTGUN I SECURED THE
20 VIDEOTAPE ALSO ON THE CHAIN OF CUSTODY AT THE TIME. I
21 DIDN'T LEAVE THE STORE UNTIL I TOOK ALL OF THE EVIDENCE
22 THAT I COULD.

23 MS. WILLIS: OKAY. YOUR HONOR, AT THIS TIME I'D LIKE
24 TO PUBLISH THE VIDEOTAPE TO THE JURY.

25 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

(CHARLES CAIN-DIRECT BY WILLIS)

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1 MS. WILLIS: YOUR HONOR, IS IT OKAY IF THE WITNESS
2 COMES DOWN?

3 THE COURT: CERTAINLY.

4 Q IS THERE ANY AUDIO ON THIS TAPE?

5 A NO, MA'AM; NOT TO MY KNOWLEDGE.

6 (WHEREUPON, THE VIDEOTAPE BEGINS TO PLAY.)

7 MS. WILLIS: CAN EVERYBODY SEE OR IS HE IN YOUR WAY?

8 THE COURT: YOU NEED TO STAND BACK A LITTLE BIT.

9 Q TELL THEM WHAT THEY'RE LOOKING AT.

10 A IT IS CALLED A MULTIPLEX. FOUR CAMERAS AROUND THE
11 BUSINESS ARE ALL FILMING AT THE SAME TIME. CHANNEL FOUR
12 IS THE INITIAL CAMERA THAT PICKED UP THE SUSPECT ACTIVITY
13 ARRIVING TO THE CRIME SCENE. THAT IS WHERE FOR THE NEXT
14 SEVERAL MINUTES THE ACTIVITY WILL BE FOCUSED -- YOUR
15 ATTENTION NEEDS TO BE FOCUSED, AND IF I AM CORRECT I
16 BELIEVE IT'S GOING TO BE CHANNEL ONE IS OUR VICTIM
17 STANDING BEHIND THE COUNTER. THIS IS JUST DOWN THE
18 PASSAGEWAY TO BUY DRINKS. THIS IS THE ACTUAL FRONT OF THE
19 COUNTER WHERE THE SUSPECT WITH THE SHOTGUN STANDS. SO,
20 YOU'LL BE ABLE TO SEE IT FROM HERE AND HERE ONCE HE ENTERS
21 THE STORE. I WILL JUST LET YOU KNOW THAT THE SPAN OF THIS
22 VIDEO OF ACTIVITY WILL LAST FOR ABOUT THE NEXT 10 MINUTES.
23 MS. WILLIS: I THOUGHT WE HAD IT AT THE POINT.
24 THE WITNESS: IT IS COMING IN JUST A SECOND. WE HAD
25 IT PRESTAGED TO GO. WHITE SHIRT, BLUE JEANS, BLACK

1 STOCKING CAP. THIS IS THE SUSPECT ARRIVING TO THE STORE.
2 YOU'LL NOTICE THAT HE LOITERS AROUND THE CORNER OF THE
3 STORE BY THIS WHITE FENCE FOR SEVERAL MINUTES. DURING
4 THAT TIME HE'LL CONSISTENTLY GO BACK FROM THE FENCE TO THE
5 BACK OF THE STORE, TO THE CORNER OF THE STORE, BACK AND
6 FORTH SEVERAL TIMES, AND, ALSO, THAT WAS CONSISTENT WITH
7 THE VICTIM'S STATEMENT OF A BLACK MALE WALKING ACROSS
8 THROUGH THIS WINDOW HERE THAT HE OBSERVED.

9 MR. MAULDIN: YOUR HONOR, I OBJECT. I BELIEVE THAT
10 THE TAPE WILL SPEAK FOR ITSELF.

11 THE COURT: I OVERRULE THE OBJECTION.

12 THE WITNESS: NOW, IF YOU'LL PAY CLOSE ATTENTION TO
13 THE CHANNELS ONE AND CHANNELS THREE WHEN THE BLACK MALE
14 ENTERS THE STORE YOU'LL NOTICE THE CAMOUFLAGE-IN-COLOR
15 SHOTGUN IN HIS HAND. AND AS THE SUSPECT DEPARTS -- BACK
16 TO CHANNEL FOUR -- AROUND THE CORNER OF THE STORE IN THE
17 DIRECTION OF WHERE I EVENTUALLY FOUND THE SHOTGUN LAYING
18 IN THE DITCH. THAT'S THE END OF THE TAPE RIGHT THERE.

19 (WHEREUPON, THE VIDEOTAPE WAS STOPPED.)

20 Q INVESTIGATOR CAIN --

21 A YES, MA'AM.

22 Q -- PLEASE LOOK AT STATE'S EXHIBIT 5 AND TELL ME IF
23 YOU RECOGNIZE IT?

24 A YES, MA'AM. AS YOU WALK INTO THE INCIDENT LOCATION
25 AND IMMEDIATELY LOOK TO YOUR LEFT THAT IS THE FRONT

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1 COUNTER OF THE CHECKOUT WHERE THE CLERK WORKS.

2 Q OKAY. DID YOU TAKE THAT PHOTO?

3 A YES, I DID.

4 Q WHEN?

5 A THAT PHOTOGRAPH WAS TAKEN YESTERDAY BY ME.

6 Q OKAY. HOW ABOUT STATE'S EXHIBIT 6?

7 A THAT IS A PHOTOGRAPH STANDING BEHIND THE CASH
8 REGISTER AT THE INCIDENT LOCATION FACING THE ENTRANCE DOOR
9 AND THAT PHOTOGRAPH WAS ALSO TAKEN BY ME YESTERDAY.

10 Q STATE'S EXHIBIT 7?

11 A THIS PHOTOGRAPH AS YOU'RE STANDING RIGHT ON THE EDGE
12 OF PINE LOG ROAD FACING THE STORE, THE FRONT DOOR OF THE
13 STORE TO INCLUDE THE SIDE OF THE STORE. THAT PHOTOGRAPH
14 WAS TAKEN BY ME, ALSO.

15 Q YESTERDAY?

16 A YES, MA'AM.

17 Q STATE'S EXHIBIT 8?

18 A THAT IS THE ACTUAL SIDE OF THE STORE FROM THE VIDEO
19 AND THE WHITE FENCE WHERE THE SUSPECT CONSISTENTLY
20 LOITERED.

21 Q STATE'S EXHIBIT 9?

22 A THAT IS THE AREA THAT INCLUDES THE WHITE FENCE, THE
23 SIDE OF THE STORE, AND HEADING BACK TOWARDS THE BEHIND THE
24 STORE WHERE KEY PLANTATION ROAD IS IN THE DIRECTION OF
25 WHERE I FOUND THE SHOTGUN.

1 Q IS THERE ANYTHING DIFFERENT ABOUT THAT PHOTO THAN
2 WHEN YOU WERE ON THE CRIME SCENE IN NOVEMBER?

3 A YES, MA'AM. RIGHT NOW THERE IS I BELIEVE IT IS A
4 6-FOOT HIGH CHAIN LINK FENCE SURROUNDING THE BACK OF THE
5 ENTIRE PROPERTY. THE NIGHT OF THE INCIDENT THAT CHAIN
6 LINK FENCE WAS NOT THERE.

7 Q OKAY. AND STATE'S EXHIBIT 10?

8 A THAT IS THE DITCH AREA WHERE I FOUND -- WHERE THE
9 SHOTGUN WAS FOUND LYING ON THE SIDE INSIDE THE DITCH. THE
10 ONLY THING DIFFERENT, ONCE AGAIN, IS THERE IS A FENCE HERE
11 THAT WAS NOT THERE THE NIGHT OF THE INCIDENT.

12 MS. WILLIS: YOUR HONOR, THE STATE WOULD LIKE TO
13 INTRODUCE INTO EVIDENCE STATE'S EXHIBIT 5, 6, 7, 8, 9, AND
14 10.

15 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

16 THE COURT: THEY'RE ADMITTED.

17 (WHEREUPON, STATE'S EXHIBIT NOS. 5 - 10 WERE ADMITTED
18 INTO EVIDENCE.)

19 Q CAN YOU COME DOWN HERE A MINUTE? SHOW THEM WHAT
20 YOU'RE TALKING ABOUT WHEN YOU SAY THE DITCH AND THE WEAPON
21 AND HOWEVER YOU WANT TO DO THESE.

22 A STARTING WALKING THROUGH?

23 Q UH-HUH.

24 A OKAY. THIS IS STANDING BEHIND THE CASH REGISTER
25 ITSELF. THIS IS WHERE THE VICTIM WAS STANDING. THIS IS

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1 THE DOOR LEADING OUT OF THE INCIDENT LOCATION OUTSIDE OF
2 THE BUSINESS.

3 Q STATE'S EXHIBIT 6?

4 A ONCE YOU STEP OUTSIDE THE DOOR THE SUSPECT RAN TO THE
5 RIGHT OF THE BUSINESS GOING BETWEEN THIS WHITE FENCE HERE,
6 THESE TWO TANKS, AND THIS CORNER OF THE BUSINESS, ENTERED
7 THAT GAP AREA RIGHT HERE.

8 Q AND THAT'S STATE'S EXHIBIT 7.

9 A A LITTLE BIT MORE CLARITY IS YOU CAN SEE WHERE THE
10 FENCE ENDS AT THE SIDE OF THE BUILDING. THE SUSPECT RAN
11 THROUGH THIS AREA HEADING BACK TOWARDS THE BACK OF THE
12 BUSINESS.

13 Q STATE'S EXHIBIT 8.

14 A STRAIGHT THROUGH THIS HEADS BACK TO KEY PLANTATION
15 ROAD WHICH CAN BE SEEN HERE. ONE THING AS NOTED BEFORE
16 THERE IS NOW A CHAIN-LINK FENCE SURROUNDING THE BACK OF
17 THE PROPERTY. THAT WAS NOT THERE THAT NIGHT. SO, THERE
18 WOULD HAVE BEEN NOTHING TO STOP THE SUSPECT'S ESCAPE
19 ROUTE.

20 Q STATE'S EXHIBIT 9.

21 A I NEED THIS ONE. HEADING TO KEY PLANTATION ROAD IF
22 YOU CAN SEE THIS WHICH IS THE ACTUAL DITCH. THE SHOTGUN
23 WAS FOUND IN THIS VICINITY OF THIS AREA HERE LYING
24 POINTING TOWARDS THE ROAD. IT WAS IMMEDIATELY SECURED. I
25 SECURED IT MYSELF, AND, ONCE AGAIN, THIS FENCE WAS NOT

1 HERE.

2 Q AND THAT'S STATE'S EXHIBIT 10?

3 A THIS IS THE PHOTOGRAPH OF THE ACTUAL SHOTGUN LYING IN
4 THE DITCH POINTING TOWARDS KEY PLANTATION ROAD. YOU'RE
5 GOING TO NOTICE THAT THERE IS A LOT OF GRASS AND STUFF
6 HERE. THIS HAS ALL BEEN CLEARED OUT TO ALLOW FOR THAT
7 FENCE TO BE PUT UP. IT'S NOT LIKE THAT ANYMORE.

8 Q THANK YOU, INVESTIGATOR CAIN. THAT WAS STATE'S
9 EXHIBIT 4. YOU CAN SIT DOWN. WHAT DID YOU DO WITH THE
10 SHOTGUN?

11 A ONCE I SECURED IT?

12 Q YES. EXPLAIN HOW YOU SECURED IT.

13 A INITIALLY WHEN I REMOVED IT FROM THE GROUND I TOOK IT
14 MYSELF AND PLACED IT IN THE BACKSEAT OF MY UNMARKED PATROL
15 VEHICLE AND I LOCKED THE DOORS. I ALSO LISTED IT ON A
16 STANDARD EVIDENCE RECEIPT AND IT STAYED IN MY POSSESSION
17 UNDER MY CONTROL UNTIL I LEFT THE CRIME SCENE UNTIL AFTER
18 I SPOKE WITH MR. SWEARINGEN AND I IMMEDIATELY WENT FROM
19 THERE TO THE OFFICE AND SECURED IT IN OUR EVIDENCE LOCKER
20 THAT NIGHT.

21 Q OKAY. DID YOU TRY TO DUST THE GUN FOR PRINTS AND, I
22 GUESS, MESS WITH IT IN ANYWAY?

23 A DID I ATTEMPT TO?

24 Q CORRECT

25 A NO, MA'AM. I DID NOT. I LEFT THAT FOR THE FORENSIC

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1 SPECIALIST.

2 Q OKAY.

3 A I JUST WANTED TO PRESERVE IT AS BEST I COULD AS I
4 FOUND IT.

5 Q OKAY. DID YOU CHECK TO SEE IF IT WAS LOADED OR NOT?

6 A YES, MA'AM, I DID. BY POLICY WE HAVE TO CHECK TO SEE
7 IF IT WAS LOADED. WE CANNOT STORE LOADED WEAPONS INSIDE
8 OF THE EVIDENCE LOCKER. I NOTICED THAT IT WAS NOT LOADED.

9 Q OKAY. DID YOU TAKE OR ATTEMPT TO TAKE ANY
10 FINGERPRINTS AT THE STORE?

11 A NO, MA'AM, I DID NOT. I WAS NOTIFIED THAT THE AREA
12 THAT THE SUSPECT WAS SEEN TO HAVE TOUCHED WHICH WAS THE
13 DOOR HANDLE GOING IN AND GOING OUT HAD ALREADY BEEN
14 CONTAMINATED AND MANIPULATED BY SEVERAL PEOPLE GOING IN
15 AND OUT. SO, I DID NOT ATTEMPT IT ON THE DOOR.

16 Q OKAY. DO YOU KNOW WHAT THE DEFENDANT WAS WEARING
17 THAT NIGHT?

18 A THE DEFENDANT IN THE COURTROOM?

19 Q WELL, I'M SORRY. THE SUSPECT.

20 A THE SUSPECT WAS -- TO MY BEST KNOWLEDGE THE SUSPECT
21 WAS WEARING BLUE JEANS, A WHITE SHIRT, AND A BLACK
22 SKULLCAP ON HIS HEAD.

23 Q THE SKULLCAP, IS THAT JUST A CAP OR MASK?

24 A NO, MA'AM. IT IS JUST A SKULLCAP JUST TO THE TOP OF
25 THE HEAD, NOT COVERING THE FACE OR ANYTHING OF THAT

1 NATURE.

2 Q OKAY. INVESTIGATOR CAIN, WILL YOU PLEASE ANSWER ANY
3 QUESTIONS THAT MR. MAULDIN HAS FOR YOU?

4 A YES, MA'AM.

5 CROSS-EXAMINATION

6 BY MR. MAULDIN:

7 Q INVESTIGATOR CAIN, ON THE NIGHT IN QUESTION YOU WERE
8 CALLED OUT AS INVESTIGATOR IN THIS ARMED ROBBERY CASE BY
9 THE RESPONDING OFFICER; IS THAT CORRECT?

10 A YES.

11 Q WERE YOUR ACTIONS YOU FIRST FOUND THIS GUN OR YOU
12 TALKED TO THE CLERK FIRST?

13 A NO. INITIALLY ARRIVING TO THE SCENE I WENT STRAIGHT
14 INSIDE AND MET WITH THE PATROL SUPERVISOR AND MET WITH THE
15 REPORTING OFFICER WITH THE VICTIM. I WAS INSIDE THE STORE
16 WHEN I WAS NOTIFIED THAT A WEAPON HAD BEEN FOUND.

17 Q WHEN DID YOU REVIEW THE VIDEO? IS THAT THE STORE IN
18 THE BACK?

19 A I REVIEWED THE VIDEO IN THE STORE THAT EVENING WITH
20 THE STORE OWNER AND I BELIEVE WITH SERGEANT LUKE
21 WILLIAMSON FROM THE SHERIFF'S OFFICE. THEY WERE OUT AS
22 PERIMETER UNITS.

23 Q ALL RIGHT. AND YOU FILLED OUT A CRIME SCENE CENSUS,
24 DID YOU NOT?

25 A I DON'T BELIEVE I FILLED OUT A CRIME SCENE CENSUS,

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1 BUT I BELIEVE I COLLECTED ONE FROM THE REPORTING OFFICER.

2 Q AND THAT'S WHERE IT IS A TYPICAL FORM THAT Y'ALL HAVE
3 AT THE SHERIFF'S OFFICE; RIGHT?

4 A THAT IS A STANDARD FORM, YES, OF PEOPLE WHO ENTER AND
5 DEPART CRIME SCENES THAT INVOLVES SECURE CRIME SCENES.

6 Q SO, YOU WOULD HAVE HAD A LIST OF PEOPLE WHO WAS WERE
7 AT THE CRIME SCENE?

8 A ENTERING. NOT AT IT, BUT ENTERING INTO THE SECURED
9 AREA.

10 Q AND YOU SAW ON THE VIDEO WHERE THE SUSPECT TOUCHED
11 THE DOOR NOT ONLY ON ENTERING THE PREMISES BUT EXITING IT
12 AS WELL?

13 A WELL, NOT THE ACTUAL DOOR BUT THE METAL HANDLE IS ALL
14 I OBSERVED, BUT NOT THE ACTUAL GLASS DOOR.

15 Q WELL, THE HANDLE ON THE DOOR.

16 A THE HANDLE, YES, SIR.

17 Q AND YOU ELECTED JUST NOT TO TAKE FINGERPRINTS; IS
18 THAT CORRECT?

19 A BASED ON THE INFORMATION I RECEIVED FROM THE CO-OWNER
20 OF THE BUSINESS THAT THERE HAD BEEN TRAFFIC GOING IN AND
21 OUT THAT DOOR PRIOR TO LAW ENFORCEMENT'S ARRIVAL I
22 DETERMINED THAT I WOULD NOT HAVE GOT -- HAD ANY EVIDENCE
23 COLLECTED FROM IT.

24 Q YOU STILL COULD HAVE TRIED; IS THAT CORRECT?

25 A I COULD HAVE ATTEMPTED, BUT I DID NOT. THAT'S

1 CORRECT.

2 Q WERE YOU WORRIED THAT SOMEBODY'S FINGERPRINTS MIGHT
3 TURN UP THAT WEREN'T INVOLVED IN THE CRIME?

4 A NO. I WAS JUST TRYING TO BE EFFICIENT AND EFFECTIVE.

5 Q BY NOT MAKING AN ATTEMPT TO GATHER EVIDENCE?

6 A BY NOT MAKING AN ATTEMPT TO GATHER EVIDENCE WHERE I
7 HAD ALREADY RECEIVED INFORMATION I WOULD NOT HAVE GOTTEN
8 ANY.

9 Q BUT DO YOU KNOW THAT FOR CERTAIN YOU WOULD NOT HAVE
10 GOTTEN ANY?

11 A NO, I DID NOT KNOW THAT FOR CERTAIN.

12 Q ALL RIGHT. TELL ME WHAT A PHOTO LINE-UP IS.

13 A A PHOTO LINE-UP IS A STANDARD SHEET OF PAPER THAT
14 CONTAINS IMAGES OF NORMALLY SIX DIFFERENT PEOPLE THAT ARE
15 SIMILAR IN COMPARISON TO EACH OTHER.

16 Q UH-HUH.

17 A THERE ARE SEVERAL WAYS THEY CAN BE GENERATED, THEY
18 CAN BE DEVELOPED. BUT ON A PHOTO LINE-UP ONE SUSPECT, ONE
19 PERSON OUT OF THOSE SIX IMAGES IS THE PERSON BELIEVED BY
20 LAW ENFORCEMENT TO BE THE PERPETRATOR OF A CRIME. THAT IS
21 PRESENTED TO AN EYE WITNESS AND THEY'RE GIVEN THE
22 OPPORTUNITY TO TRY AND IDENTIFY THE SUSPECT.

23 Q AND WAS A PHOTO LINE-UP EVER PREPARED IN THIS CASE?

24 A NOT TO MY KNOWLEDGE, NO.

25 Q AND YOU MADE AN ATTEMPT TO DISCOVER THROUGH THE

(CHARLES CAIN-CROSS BY MAULDIN)

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1 A.T.F. WHO THE OWNER OF THE GUN WAS; IS THAT CORRECT?

2 A THAT'S CORRECT. THAT'S CORRECT.

3 Q AND, ACTUALLY, WHEN YOU SUBMITTED THE GUN TO BE
4 TESTED IT WAS TESTED BY CLAY ADAMS, WASN'T IT?

5 A WHEN YOU SAY TESTED FOR --

6 Q FOR THE FINGERPRINTS, WHETHER OR NOT THEY WERE --

7 A THAT'S CORRECT. I ENTERED IT INTO EVIDENCE FOR
8 FORENSIC SARGEANT TO ACTUALLY TEST, TO EXAMINE.

9 Q AND YOU WERE PRESENT WHEN THE TEST WAS PERFORMED; IS
10 THAT CORRECT?

11 A I WAS. I WAS.

12 Q AND THAT WAS PERFORMED ON THE SEVENTH OF DECEMBER?

13 A I WOULD HAVE TO REVIEW MY NOTES, BUT THAT SOUNDS --
14 THAT SOUNDS ABOUT RIGHT, BUT I WOULD HAVE TO LOOK AT THE
15 NOTES AS TO ACTUALLY WHEN AND IT IS DOCUMENTED IN MY
16 REPORT THE ACTUAL DATE AND TIME.

17 Q SO, YOU'RE HAVING TROUBLE REMEMBERING THE DATE RIGHT
18 NOW; IS THAT CORRECT?

19 A NO. I JUST DON'T HAVE IT IN FRONT OF ME.

20 Q WELL, IF YOU HAD THE REPORT WOULD IT REFRESH YOUR
21 RECOLLECTION OF WHAT DAY IT WAS?

22 A YES, IT WOULD. YES, IT WOULD. YEA, ON DECEMBER 7 AT
23 1100 HOURS I WAS IN THE FORENSIC LABORATORY WITH SERGEANT
24 ADAMS WHEN HE DEVELOPED THE FINGERPRINT IMPRESSIONS ON THE
25 SHOTGUN.

1 Q AND YOU SAW HIM DEVELOP TWO PARTIAL LATENT
2 FINGERPRINTS; IS THAT CORRECT?

3 A THAT IS WHAT HE TOLD ME. THAT IS WHAT HE TOLD ME.

4 Q AND IN A SHORT TIME SUBSEQUENT TO THIS YOU WENT ON
5 TRAINING; IS THAT CORRECT?

6 A SHORTLY AFTER THAT I WHEN TO CAMP LEJEUNE, NORTH
7 CAROLINA AND ATTENDED A FULL WEEK OF TRAINING UP THERE.

8 Q AND THEN INVESTIGATOR LILES TOOK OVER THE CASE AFTER
9 THAT?

10 A DURING THAT TIME THERE WERE DEVELOPMENTS AND HE WAS
11 ASSIGNED THE CASE IN MY ABSENCE.

12 MR. MAULDIN: I BEG THE COURT'S INDULGENCE. NO
13 FURTHER QUESTIONS, YOUR HONOR.

14 MS. WILLIS: NOTHING FROM THE STATE.

15 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN.

16 MR. MAULDIN: YOUR HONOR, MAY WE APPROACH?

17 THE COURT: SIR?

18 MR. MAULDIN: MAY WE APPROACH FOR A SECOND?

19 THE COURT: YES.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
22 GOING TO BREAK FOR LUNCH RIGHT NOW, AND I AM GOING TO
23 REMIND YOU NOT TO DISCUSS THIS CASE DURING THE LUNCH HOUR.
24 I AM GOING TO START BACK AT 2 O'CLOCK. IT IS A LITTLE BIT
25 OF A LONGER LUNCH HOUR THAN NORMAL, BUT I'VE GOT SOME

(CHARLES CAIN-CROSS BY MAULDIN)

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1 THINGS THAT I HAVE TO TAKE CARE OF THAT THAT DON'T ELECT
2 TO THIS CASE. SO, ENJOY YOUR LUNCH. I'LL SEE YOU AT
3 2 O'CLOCK. REPORT TO THIS JURY ROOM BACK HERE. THANK
4 YOU.

5 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:21.)

6 THE COURT: ALL RIGHT. WE'LL BE IN RECESS UNTIL
7 AFTER LUNCH. LET ME SEE THE LAWYERS UP HERE JUST ONE
8 SECOND, PLEASE. MISS ALVES, WOULD YOU COME, PLEASE?

9 (WHEREUPON, A BREAK WAS TAKEN.)

10 THE COURT: ALL RIGHT. Y'ALL READY?

11 MS. WILLIS: YOUR HONOR, I JUST SENT SOMEBODY TO FIND
12 MY LAW ENFORCEMENT WITNESSES. THEY'RE NEXT. THEY HAVE
13 FOUR WHOLE MINUTES.

14 THE COURT: THREE AND A HALF.

15 MS. WILLIS: THREE AND A HALF.

16 THE COURT: ARE YOU READY?

17 MS. WILLIS: I AM READY.

18 THE COURT: BRING IN THE JURY.

19 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
20 APPROXIMATELY 2:00.)

21 MS. WILLIS: THE STATE CALLS KEVIN LILES.

22 KEVIN L. LILES, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
25 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

1 THE WITNESS: KEVIN L. LILES; LAST NAME IS L-I-L-E-S.

2 DIRECT EXAMINATION

3 BY MS. WILLIS:

4 Q INVESTIGATOR LILES, WILL YOU TELL US WHO YOU WORK
5 FOR?

6 A AIKEN COUNTY SHERIFF'S OFFICE.

7 Q HOW LONG HAVE YOU WORKED FOR THEM?

8 A ABOUT FIVE YEARS.

9 Q DID YOU WORK IN LAW ENFORCEMENT PRIOR TO THAT?

10 A NO, MA'AM. I WAS IN THE MARINE CORPS.

11 Q OKAY. DID YOU HAVE AN OPPORTUNITY TO MEET WITH THE
12 DEFENDANT?

13 A YES, MA'AM, I DID.

14 Q COURT'S EXHIBIT 1, DO YOU RECOGNIZE THAT DOCUMENT?

15 A YES, MA'AM, I DO.

16 Q WILL YOU TELL US WHAT THAT IS?

17 A IT IS THE AIKEN COUNTY SHERIFF'S OFFICE MIRANDA
18 WARNING.

19 Q OKAY. DID YOU READ THAT TO THE DEFENDANT?

20 A YES, MA'AM.

21 Q WOULD YOU PLEASE GO THROUGH THE FORM AND EXPLAIN JUST
22 HOW YOU DO THAT?

23 A I READ EACH ITEM ON HERE INDIVIDUALLY AND AFTER I
24 READ HIS MIRANDA WARNING I HAVE HIM SIGN OR INITIAL BESIDE
25 IT SAYING THAT HE UNDERSTANDS WHAT I READ TO HIM.

(KEVIN L. LILES-DIRECT BY WILLIS)

95

1 Q OKAY. READ EACH ONE, PLEASE, AND THE TIME AND DATE.

2 A OKAY. THE DATE ON THIS IS 12/28/05 AT 14:15 HOURS.

3 THE FIRST IS, BEFORE WE ASK YOU ANY QUESTIONS YOU MUST

4 UNDERSTAND YOUR RIGHTS. HE INITIALED B.H. BESIDE THAT.

5 YOU HAVE THE RIGHT TO REMAIN SILENT. B.H. IS BESIDE THAT.

6 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A

7 COURT OF LAW. HIS INITIALS, AGAIN, B.H. YOU HAVE THE

8 RIGHT TO TALK TO AN ATTORNEY FOR ADVICE BEFORE WE ASK YOU

9 ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT DURING

10 QUESTIONING. HIS INITIALS, AGAIN, B.H. IF YOU CANNOT

11 AFFORD AN ATTORNEY THE COURT WILL APPOINT AN ATTORNEY TO

12 REPRESENT YOU WITHOUT COST IF YOU WISH. HIS INITIALS ARE

13 THERE, B.H. IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW

14 WITHOUT AN ATTORNEY PRESENT YOU WILL STILL HAVE THE RIGHT

15 TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO

16 STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO AN ATTORNEY.

17 HE INITIALLED THERE B.H.

18 JUST BELOW THAT IT HAS, I HAVE READ THIS STATEMENT OF

19 MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. HE SIGNED

20 BELOW THERE BRAHEIM HILL. BELOW THAT IS THE WAIVER OF

21 RIGHTS, AND IT READS, I AM WILLING TO MAKE A STATEMENT AND

22 ANSWER QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS TIME.

23 I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR

24 THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION

25 OF ANY KIND HAS BEEN USED AGAINST ME. HIS INITIALS THERE,

1 B.H. BELOW THERE IS SIGNATURE BLOCK WITH BRAHEIM HILL,
2 AGAIN, AND THE TIME 14:18, AND I SIGNED BELOW THAT AS A
3 WITNESS.

4 Q OKAY. DID YOU MAKE HIM ANY PROMISES?

5 A NO, MA'AM, I DID NOT.

6 Q DID YOU THREATEN HIM IN ANY WAY?

7 A NO, MA'AM.

8 Q DID YOU PUT ANY PRESSURE OR COERCION ON HIM?

9 A NO, MA'AM.

10 Q ABOUT HOW LONG DID YOU MEET WITH HIM?

11 A THREE TO FIVE MINUTES.

12 Q OKAY. AND DURING THAT TIME WERE ANY STATEMENTS MADE?

13 A YES, MA'AM.

14 Q PLEASE TELL US WHAT HE SAID.

15 A I HAD CONFRONTED HIM WITH THE INFORMATION THAT WE HAD
16 A FINGERPRINT THAT WAS ON THE SHOTGUN AND A VIDEOTAPE?

17 MR. MAULDIN: OBJECTION, YOUR HONOR. THAT'S NOT IN
18 EVIDENCE.

19 THE COURT: THAT'S NOT IN EVIDENCE?

20 MR. MAULDIN: THE FINGERPRINT.

21 THE COURT: OVERRULED.

22 THE WITNESS: I HAD CONFRONTED HIM WITH INFORMATION
23 THAT WE HAD AND ASKED IF HE WAS WILLING TO TALK TO US, AND
24 HE MADE THE STATEMENT THAT --

25 THE COURT: LET'S GET SOMETHING STRAIGHT. LET ME SEE

(KEVIN L. LILES-DIRECT BY WILLIS)

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1 THE LAWYERS UP HERE FOR A SECOND. EXCUSE ME JUST ONE
2 SECOND.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I AM
5 GOING TO HAVE TO SEND YOU BACK TO THE JURY ROOM FOR JUST A
6 MINUTE. IT WON'T TAKE BUT JUST A SECOND, AND I'LL HAVE
7 YOU RIGHT BACK OUT HERE.

8 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:06.)

9 MS. WILLIS: WHAT WE WERE SAYING -- AND, STUART,
10 THIS -- ALSO, DON'T TESTIFY AS TO THE DEFENDANT INVOKING
11 RIGHTS. I KNOW WE WERE BACK AND FORTH ON THAT. THE JUDGE
12 HAS ASKED SPECIFICALLY THAT THAT NOT COME IN. SO, JUST
13 SKIP THAT ISSUE AND BE CAREFUL HOW YOU WORD.

14 MR. GIBBONS: YOU WANT TO PROFFER IT?

15 MS. WILLIS: WOULD YOU FEEL BETTER IF WE PROFFER IT?

16 THE COURT: IT'S ALREADY IN THE RECORD FROM HIS
17 JACKSON V DENNO TESTIMONY, BUT, BASICALLY, YOU CAN TESTIFY
18 AS TO WHAT HE DID SAY, BUT NOBODY CAN COMMENT ON THE FACT
19 THAT HE REFUSED TO TALK; AND, SO, WHEN YOU GET TO THE
20 POINT WHERE YOU SAID -- HE SAID SOMETHING ABOUT THE
21 FINGERPRINTS WERE ON THE GUN OR SOMETHING. I FORGOT
22 EXACTLY WHAT IT WAS, AND THEN HE SAID I WANT A LAWYER.
23 JUST -- YOU CAN'T REVEAL THAT HE REFUSED TO GIVE A
24 STATEMENT. BY -- AFTER HAVING GIVEN HIM HIS MIRANDA
25 RIGHTS, WHEN HE ASKED FOR HIS RIGHT TO COUNSEL THAT WAS,

1 BASICALLY, REFUSING TO GIVE A STATEMENT AND TO INTRODUCE
2 EVIDENCE THAT THE DEFENDANT INVOKED HIS RIGHT TO REMAIN
3 SILENT WOULD BE IMPROPER, AND I JUST WAS CONCERNED THAT
4 PERHAPS Y'ALL MIGHT HAVE BEEN MISLED BY THE FACT THAT IT
5 WAS ADMISSIBLE IN THE HEARING THAT WE HAD, BUT IT'S NOT
6 ADMISSIBLE AT THIS POINT.

7 SO, IT IS JUST THAT ONE THING THAT HE WOULDN'T --
8 THAT HE TOLD YOU I -- SOMETHING LIKE, I DON'T WANT TO TALK
9 ANYMORE, I WANT TO INVOKE MY RIGHT TO SILENCE, OR INVOKE
10 MY RIGHT TO HAVE A LAWYER. THAT'S THE ONLY THING I AM
11 SAYING IS NOT ADMISSIBLE.

12 MS. WILLIS: I UNDERSTAND.

13 THE COURT: GOT IT? DOES THAT CREATE ANY PROBLEM FOR
14 YOU?

15 THE WITNESS: NO, SIR.

16 THE COURT: ANY CONFUSION?

17 THE WITNESS: NO, SIR.

18 THE COURT: ALL RIGHT. BRING THEM IN.

19 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
20 APPROXIMATELY 2:08.)

21 Q INVESTIGATOR LILES, DID YOU TALK TO THE DEFENDANT?

22 A YES, MA'AM, I DID.

23 Q OKAY. DID YOU TELL THE DEFENDANT WHAT EVIDENCE YOU
24 HAD AGAINST HIM?

25 A YES, MA'AM, I DID.

(KEVIN L. LILES-DIRECT BY WILLIS)

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- 1 Q DID THE DEFENDANT STATE ANYTHING?
- 2 A YES, MA'AM, HE DID.
- 3 Q WHAT DID HE SAY?
- 4 A HE JUST STATED THAT HIS FINGERPRINT WOULD BE LOCATED
- 5 ON A DIFFERENT PART OF THE SHOTGUN THAN WHAT I CONFRONTED
- 6 HIM WITH.
- 7 Q OKAY. DID THE INTERVIEW END?
- 8 A YES, MA'AM.
- 9 Q AFTER THE INTERVIEW ENDED WHAT HAPPENED?
- 10 A I THEN NOTIFIED MY SUPERVISOR THAT I WAS GOING TO
- 11 TAKE HIM BACK DOWN TO THE JAIL. HE WAS GOING TO BE
- 12 TRANSPORTED BACK DOWN TO THE DETENTION FACILITY.
- 13 Q OKAY. AND DID YOU DO THAT?
- 14 A I DID NOT. STUART JOHNSON, THE OFFICER ON THE ROAD,
- 15 IS THE ACTUAL TRANSPORTING OFFICER.
- 16 Q DID YOU WALK HIM OUT?
- 17 A YES, MA'AM, I DID.
- 18 Q AND WHO WAS WITH YOU?
- 19 A MYSELF AND DEPUTY JOHNSON.
- 20 Q OKAY. DURING THAT WALK DID YOU ASK HIM ANY
- 21 QUESTIONS?
- 22 A NO, MA'AM.
- 23 Q DID THE DEFENDANT STATE ANYTHING AT THAT TIME?
- 24 A NO, MA'AM.
- 25 Q WHEN YOU WERE WALKING DOWN TO THE CAR -- TELL US HOW

1 YOU WALKED DOWN.

2 A WE WALKED DOWN TO MY SUPERVISOR'S OFFICE -- MYSELF,
3 THE DEFENDANT, AND INVESTIGATOR -- I MEAN, DEPUTY JOHNSON.
4 BOTH OF US TOGETHER WALKED HIM DOWN TO LET MY LIEUTENANT
5 KNOW THAT WE WERE GOING TO BE TAKING HIM BACK DOWN TO THE
6 JAIL.

7 Q OKAY.

8 A AND WE WALKED DOWN AND MET WITH THE LIEUTENANT,
9 WALKED BACK OUT OF THE BUILDING COMING OUT THE BACK STAIRS
10 AND THAT'S WHEN HE GOT ESCORTED DOWN TO THE VEHICLE FROM
11 THE BUILDING.

12 Q OKAY. WAS ANYTHING SAID WHEN YOU WERE GOING DOWN THE
13 BACK STAIRS?

14 A YES, MA'AM.

15 Q PLEASE TELL US WHAT HE STATED.

16 A HE STATED THAT HE WOULD -- WE COULD JUST PUT DOWN ON
17 THE PAPER THAT HE DID IT IS HOW HE PHRASED IT.

18 Q I BELIEVE I ALREADY ASKED THIS, BUT WAS THAT IN ANY
19 WAY RESPONSE TO A QUESTION?

20 A I HAD NOT ASKED HIM ANYTHING. . NO.

21 Q SINCE YOU LEFT THE INTERVIEW ROOM?

22 A NO.

23 MS. WILLIS: WILL YOU PLEASE ANSWER ANY QUESTIONS
24 THAT MR. MAULDIN HAS?

25 CROSS-EXAMINATION

(KEVIN LILES-CROSS BY MAULDIN)

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1 BY MR. MAULDIN:

2 Q THANK YOU, INVESTIGATOR LILES. SO, WHEN YOU
3 CONFRONTED MR. HILL WITH THE EVIDENCE YOU WERE TRYING TO
4 GIVE THE OPINION THAT YOU BELIEVE HE DID IT AND HE NEEDED
5 TO GIVE A STATEMENT; IS THAT CORRECT?

6 A NO, SIR.

7 Q THAT'S NOT CORRECT?

8 A I WAS JUST GIVING HIM THE INFORMATION THAT I HAD AND
9 THE EVIDENCE THAT I HAD.

10 Q AND HE INITIALLY DENIED PARTICIPATING IN AN ARMED
11 ROBBERY; IS THAT CORRECT?

12 A YES, SIR.

13 Q AND AFTER THAT INTERVIEW DID YOU AND DEPUTY JOHNSON
14 WALK HIM DOWN PAST BILLY FLEURY'S OFFICE; IS THAT CORRECT?

15 A YES, SIR.

16 Q AND I BELIEVE AT THE TIME INVESTIGATOR FLEURY AND
17 PERHAPS SOME OTHER PEOPLE WERE WATCHING THE VIDEO IN THIS
18 CASE; IS THAT CORRECT?

19 A YES, SIR.

20 Q AND DURING THE TIME WAS ANY OPINION EXPRESSED THAT
21 MR. HILL WAS, IN FACT, GUILTY OF THE ARMED ROBBERY?

22 A NOT BY ME, NO, SIR.

23 Q BY ANYBODY ELSE?

24 A YES, SIR.

25 Q AND THEN SUBSEQUENT TO THAT YOU LEFT THE BUILDING AND

1 WENT DOWNSTAIRS; IS THAT CORRECT?

2 A YES, SIR.

3 Q AND AFTER MR. HILL MADE THE STATEMENT PUT ON THE
4 PAPER I DID IT HE WAS TAKEN BACK TO THE JAIL?

5 A YES, SIR.

6 MR. MAULDIN: NO FURTHER QUESTIONS.

7 MS. WILLIS: NO FURTHER QUESTIONS FOR THIS WITNESS,
8 YOUR HONOR. THE STATE CALLS CLAY ADAMS, YOUR HONOR.

9 M. CLAY ADAMS, AFTER BEING DULY SWORN, TESTIFIED
10 AS FOLLOWS:

11 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
12 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

13 THE WITNESS: MARTIN CLAY ADAMS; A-D-A-M-S.

14 DIRECT EXAMINATION

15 BY MS. WILLIS:

16 Q WHO DO YOU WORK FOR, MR. ADAMS?

17 A AIKEN COUNTY SHERIFF'S OFFICE.

18 Q AS INVESTIGATOR?

19 A YES, MA'AM.

20 Q OKAY... HOW LONG HAVE YOU BEEN WITH THEM?

21 A SIX YEARS...

22 Q WHAT DO YOU DO SPECIFICALLY?

23 A I AM THE SERGEANT OF FORENSIC INVESTIGATIONS FOR THE
24 SHERIFF.

25 Q WHAT TYPE OF TRAINING DO YOU HAVE?

(M. CLAY ADAMS-DIRECT BY WILLIS)

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1 A I'VE HAD LATENT PROCESSING TRAINING, LATENT
2 FINGERPRINT IDENTIFICATION TRAINING, CRIME SCENE
3 INVESTIGATOR TRAINING, DETECTIVE LEVEL ONE IN TRAINING.

4 Q HOW LONG HAVE YOU ACTUALLY BEEN DOING WORK REGARDING
5 FINGERPRINT ANALYSIS?

6 A FOUR YEARS.

7 Q APPROXIMATELY HOW MANY FINGERPRINTS HAVE YOU EXAMINED
8 IN THE PAST?

9 A THOUSANDS A MONTH, TENS OF THOUSANDS A YEAR.

10 Q ARE YOU AN ACTIVE MEMBER OF ANY PROFESSIONAL
11 ORGANIZATIONS?

12 A I AM. I AM A MEMBER OF THE I.A.I. WHICH IS THE --
13 EXCUSE ME.

14 Q I.A.I.?

15 A TONGUE-TWISTER. INTERNATIONAL ASSOCIATION FOR
16 IDENTIFICATION.

17 Q HAVE YOU HAD OPPORTUNITIES TO IDENTIFY PERSONS BY
18 COMPARING LATENT FINGERPRINTS TO INKED FINGERPRINTS?

19 A I HAVE.

20 Q ABOUT HOW MANY TIMES HAVE YOU HAD THAT OPPORTUNITY?

21 A HUNDREDS.

22 Q HAVE YOU TESTIFIED IN GENERAL SESSIONS COURT BEFORE?

23 A I HAVE.

24 Q WERE YOU QUALIFIED AS AN EXPERT WITNESS AT THAT TIME
25 ON FINGERPRINT COMPARISONS?

1 A I WAS.

2 Q ABOUT HOW MANY TIMES?

3 A THREE TIMES.

4 Q I'M SORRY?

5 A THREE TIMES.

6 MS. WILLIS: YOUR HONOR, WE WOULD MOVE THAT
7 INVESTIGATOR ADAMS BE DECLARED AN EXPERT IN FINGERPRINT
8 ANALYSIS.

9 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. HE IS QUALIFIED AS AN EXPERT.

11 Q PLEASE EDUCATE US ON FINGERPRINT ANALYSIS AND HOW --
12 I GUESS, EXPLAIN FIRST DID YOU EXAMINE -- DID YOU HAVE AN
13 OPPORTUNITY TO EXAMINE THIS WEAPON?

14 A MAY I SEE IT?

15 Q YOU HAVE TO LOOK AT IT CLOSER, DON'T YOU?

16 A YES, MA'AM. YES, MA'AM, I HAVE.

17 Q OKAY. AND WITHOUT SHOWING THE JURY LOOK AT STATE'S
18 EXHIBIT 2 AND TELL US IF YOU RECOGNIZE THAT.

19 A YES, MA'AM.

20 Q WHAT IS THAT?

21 A THIS IS A FINGERPRINT COMPARISON THAT I'VE MADE.

22 Q OKAY. WHAT'S -- IS IT TWO DIFFERENT THINGS?

23 A YES, MA'AM. IT'S AN UNKNOWN LATENT PRINT NEXT TO AN
24 INKED FINGERPRINT.

25 Q OKAY. TELL US A LITTLE BIT -- WHAT ARE

(M. CLAY ADAMS-DIRECT BY WILLIS)

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1 DISTINGUISHING CHARACTERISTICS OF FINGERPRINTS AND THAT
2 TYPE OF THING?

3 A WHEN WE DO A FINGERPRINT IDENTIFICATION WE'RE LOOKING
4 FOR WHAT'S CALLED MINUTIAE. IT IS THREE BASIC ELEMENTS
5 THAT WE'RE LOOKING FOR. WE'RE LOOKING FOR RIDGE ENDINGS,
6 BIFURCATIONS AND WHAT WE CALL DOTS OR ISLANDS. THEY ARE
7 THE DISTINGUISHING CHARACTERISTICS IN A FINGERPRINT THAT
8 MAKE THAT FINGERPRINT SPECIFIC TO YOU.

9 Q OKAY. DID YOU FIND THE FINGERPRINT ON THAT WEAPON?

10 A YES, MA'AM.

11 Q OKAY. EXPLAIN HOW YOU DID THAT AND THE PROCEDURE AND
12 EQUIPMENT THAT YOU USED.

13 A I RECEIVED THAT WEAPON FROM OUR EVIDENCE CUSTODIAN.
14 IT WAS TO BE PROCESSED FOR LATENT FINGERPRINTS. IT CAME
15 TO OUR LAB AND I PROCESSED IT WITH WHAT'S CALLED
16 CYANOACRYLATE FUME -- BASICALLY, SUPER GLUE. WE PUT THE
17 WEAPON INTO A CHAMBER AND WE HEAT CYANOACRYLATE WHICH IS
18 SUPER GLUE TO A TEMPERATURE THAT IT CAUSES A VAPOR AND THE
19 VAPOR IN TURN ADHERES TO THE MOISTURE IN THE FINGERPRINT
20 THAT'S LEFT ON THE ITEM.

21 Q OKAY. ARE FINGERPRINTS ALWAYS LEFT ON AN ITEM?

22 A NOT ALWAYS. IT DEPENDS ON THE SURFACE OF THE
23 MATERIAL. IT DEPENDS ON HOW MUCH THE PERSON IS SWEATING,
24 THE TEMPERATURE OUTSIDE, HOW LONG AN ITEM HAS BEEN THERE.
25 THERE IS QUITE A FEW DIFFERENT ELEMENTS THAT ARE THERE

1 THAT WOULD CAUSE A FINGERPRINT TO EITHER NOT ADHERE TO A
2 SURFACE OR TO DEGRADE VERY QUICKLY.

3 Q OKAY. YOU STATED THAT YOU GOT A PRINT -- LATENT
4 PRINT -- OFF OF THE SHOTGUN; CORRECT?

5 A NO, MA'AM. WE ACTUALLY --

6 Q YOU DIDN'T TAKE IT OFF?

7 A RIGHT.

8 Q YOU SUPER-GLUED?

9 A WE DEVELOPED THE PRINT ON THE SHOTGUN AND BY DOING
10 THE CYANOACRYLATE FUMING IT THEN MAKES THE LATENT
11 IMPRESSION PERMANENT SO THAT WE CAN DO DIFFERENT POWDERS,
12 DIFFERENT MEANS OF MAKING IT VISIBLE TO THE NAKED EYE SO
13 THAT WE CAN SEE IT FOR A COMPARISON.

14 Q OKAY. IS IT STILL ON THERE?

15 A YES, MA'AM.

16 Q DID YOU PUT ANY MARKINGS ON THIS WEAPON?

17 A YES, MA'AM.

18 Q WOULD YOU DESCRIBE WHAT YOU DID?

19 A I LOCATED THE LATENT FINGERPRINT JUST MIDWAY OF THE
20 BARREL RIGHT HERE AT THE SCREW AND I HAVE CIRCLED IT WITH
21 PERMANENT MARKER AND PUT MY INITIALS ON IT.

22 THE COURT: LET ME STOP JUST TO GET SOMETHING CLEARED
23 UP. YOU HAVE VERIFIED OR CAN YOU VERIFY THAT THAT WEAPON
24 IS UNLOADED?

25 THE WITNESS: YES, SIR.

(M. CLAY ADAMS-DIRECT BY WILLIS)

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1 THE COURT: ALL RIGHT. WELL --

2 MS. WILLIS: NOW YOU'RE GOING TO SCARE ME.

3 THE WITNESS: THE WEAPON IS UNLOADED.

4 THE COURT: THANK YOU.

5 Q WILL YOU STEP DOWN AND BRING THAT DOWN HERE TO SHOW
6 THEM WHAT YOU'RE TALKING ABOUT? IT IS HARD TO SEE FROM UP
7 THERE WHERE YOU CIRCLED IT.

8 A I HAVE CIRCLED IT RIGHT HERE IF Y'ALL CAN SEE IT WITH
9 MY INITIALS ON IT. RIGHT THERE IT IS CIRCLED WITH A BLACK
10 MAGIC MARKER.

11 Q WAS IT EASY FOR YOU TO SEE THAT OR FIND THAT?

12 A NO, MA'AM.

13 Q WHY IS THAT?

14 A THE CONTRASTING COLORS OF THE METAL ITSELF AND THE
15 FACT THAT THE LOCATION THAT THE LATENT FINGERPRINT IS ON
16 IS ON A CURVED SURFACE.

17 Q OKAY. ALL RIGHT. NOW, AFTER YOU HAD THAT IDENTIFIED
18 THAT THERE WAS A LATENT PRINT WERE YOU ASKED TO COMPARE IT
19 TO ANOTHER PRINT?

20 A YES, MA'AM.

21 Q AND DID YOU -- EXPLAIN TO US -- EXPLAIN WHAT THIS IS.
22 DON'T SHOW IT YET. EXPLAIN IT AND THEN WE'LL INTRODUCE IT
23 IN.

24 A IN ORDER TO CAPTURE THE FINGERPRINT SO THAT IT CAN BE
25 VIEWED BY THE NAKED EYE I HAD TO USE PHOTOGRAPHY --

1 DIGITAL PHOTOGRAPHY -- TO ENHANCE THE FINGERPRINT SO YOU
2 COULD SEE IT AND SIDE-BY-SIDE IS TO THE PRINT THAT I'VE
3 IDENTIFIED IT TO.

4 MS. WILLIS: YOUR HONOR, WE'D LIKE TO MOVE STATE'S
5 EXHIBIT 2 INTO EVIDENCE.

6 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

7 THE COURT: IT IS ADMITTED.

8 (WHEREUPON, STATE'S EXHIBIT NO. 2 WAS ADMITTED INTO
9 EVIDENCE.)

10 Q INVESTIGATOR ADAMS, WILL YOU COME DOWN HERE AND
11 EXPLAIN TO US HOW THIS WORKS?

12 A LIKE I SAID, THE ACTUAL IMAGE ITSELF WAS ON A CURVED
13 SURFACE, AND IT'S IN A HARD PLACE TO SEE WITH A NAKED EYE.
14 SO, I HAD TO TAKE A DIGITAL PHOTOGRAPH TO ENHANCE IT.
15 WHAT I'VE DONE IS I'VE GONE THROUGH AND I'VE MARKED ALL OF
16 THE POINTS OF THE MINUTIAE, THE RIDGE ENDINGS, AND THE
17 BIFURCATIONS AND THE DOTS THAT MAKE THIS FINGERPRINT A
18 MATCH TO THIS FINGERPRINT. NOTICEABLY ITEM NUMBER FOUR
19 WHICH POINTS TO THIS DOT RIGHT HERE CAN BE SEEN RIGHT HERE
20 AS THE RIDGE ENDING NUMBER FIVE COMES UP TO IT TO RIGHT
21 THERE. AS WELL AS NUMBER SIX IS A RIDGE ENDING THAT COMES
22 TO RIGHT THERE. I'M SORRY. Y'ALL CAN'T SEE IT. NUMBER
23 SEVEN, IN TURN, IS A RIDGE ENDING, AND I JUST WENT TO
24 EVERYONE THAT I COULD VISIBLY SEE TO POINT OUT TO SHOW
25 THAT IT IS A MATCH AND IN THIS IS THE FRAME THAT I HAVE

(M. CLAY ADAMS-DIRECT BY WILLIS)

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1 FOURTEEN POINTS.

2 Q HOW MANY POINTS DO YOU NEED TO MAKE IDENTIFICATION?

3 A THERE IS NO SET NUMBER IN AMERICA. IT'S ALL UP TO
4 WHAT THE EXAMINER IS COMFORTABLE BY SAYING. NOW, WE CAN
5 USE THE BIFURCATIONS. WE CAN USE THE RIDGE-ENDINGS. WE
6 CAN USE THE DOTS, BUT WE CAN ALSO USE RIDGE THICKNESS. WE
7 CAN USE PORE PLACEMENTS THAT ARE ACTUALLY IN THE
8 FINGERPRINT. SO, THERE ARE MANY VARIABLES, BUT IT ALL
9 BOILS DOWN TO WHAT MAKES ME FEEL COMFORTABLE SAYING THAT
10 THERE IS NO DOUBT THAT THIS FINGERPRINT IS THE SAME AS
11 THIS FINGERPRINT.

12 Q OKAY. AND BASED ON YOUR EXPERTISE IN THE FIELD OF
13 FINGERPRINT ANALYSIS AND THE POINTS YOU COMPARED ON THE
14 LATENT FINGERPRINT TO THE INKED FINGERPRINT WERE YOU ABLE
15 TO MAKE A JUDGMENT IF IT WAS A MATCH OR DETERMINE IF IT
16 WAS A MATCH?

17 A I WAS. THIS FINGERPRINT IS THE SAME AS THIS
18 FINGERPRINT AND IT IS THE NUMBER ONE FINGER WHICH IS THE
19 RIGHT THUMB FINGER BELONGING TO THE DEFENDANT.

20 Q AND YOU SAID THAT THE ONE THAT YOU COMPARED IT TO IS
21 WHOSE FINGERPRINT?

22 A IT IS IDENTIFIED AS THE NUMBER ONE WHICH IS THE RIGHT
23 THUMB FINGER OF THE PERSON WHOSE PRINTS APPEAR ON THE
24 FINGERPRINT CARD OF THE CARD BEARING THE NAME OF BRAHEIM
25 JAMAL HILL.

1 Q OKAY. IS IT POSSIBLE FOR A PERSON TO TOUCH A SURFACE
2 AND NOT LEAVE A FINGERPRINT?

3 A YES, MA'AM.

4 Q HOW MANY FINGERPRINTS DID YOU SAY THAT YOU FOUND ON
5 THAT WEAPON?

6 A I HAVE FOUND ONE IDENTIFIABLE FINGERPRINT.

7 Q EXPLAIN TO US A LITTLE BIT MORE THE DIFFERENCE IN AN
8 IDENTIFIABLE PRINT AND WHY SOME PRINTS AREN'T
9 IDENTIFIABLE.

10 A WHEN A PERSON GRABS AN OBJECT IT'S TYPICALLY IN
11 MOTION. SO, WE CALL IT BASICALLY CALLED SMUDGES, STREAKS.
12 ANY PLACE THAT THE PERSON HANDLES AN OBJECT IF THEY'RE
13 SWEATING, THEY'RE GOING TO LEAVE SWEAT MARKS. THERE'S
14 MANY DIFFERENT VARIABLES AS TO WHY A FINGERPRINT CANNOT BE
15 IDENTIFIABLE BUT WE CAN STILL TELL THAT THE ITEM HAD BEEN
16 TOUCHED. THERE IS JUST NOT ENOUGH DETAIL IN THE RIDGES
17 EITHER IN THE PALM OR ON THE FINGERTIPS ITSELF TO MAKE AN
18 IDENTIFICATION.

19 Q AND I MAY NOT HAVE BEEN PAYING ATTENTION, BUT WHEN
20 YOU WERE SHOWING THE JURY THIS CHART DID YOU EXPLAIN TO
21 THEM HOW OR WOULD YOU -- WHAT YOU LOOK FOR SPECIFICALLY?

22 A THE ACTUAL RIDGES ARE WHAT WE LOOK FOR, ANY KIND OF
23 DETAIL LIKE THAT I POINTED OUT WITH THE DOT AND THE RIDGE
24 ENDINGS.

25 Q ON THIS WEAPON, INVESTIGATOR, THE LOCATION OF IT,

(M. CLAY ADAMS-CROSS BY MAULDIN)

111

1 COULD YOU EXPLAIN THAT? YOU SAID IT WAS THE -- WHICH
2 FINGER?

3 A NUMBER ONE, THE RIGHT THUMB.

4 Q THAT'S THE RIGHT THUMB?

5 A RIGHT THUMB.

6 Q AND WAS IT UP OR DOWN?

7 A IN COMPARISON WITH THE SHOTGUN ITSELF --

8 Q SHOW US BECAUSE -- I'M SORRY.

9 A THIS BEING THE AREA OF THE LATENT PRINT NUMBER ONE
10 RIGHT THUMB PRINT IS UPSIDE DOWN.

11 Q CAN MORE THAN ONE PERSON HAVE THE SAME FINGERPRINT?

12 A NO, MA'AM.

13 MS. WILLIS: WILL YOU ANSWER ANY QUESTIONS THAT MR.
14 MAULDIN HAS?

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q INVESTIGATOR ADAMS, YOU TOOK THE GUN OUT OF STORAGE
18 AND CONDUCTED THIS SUPER-GLUE TEST ON IT; IS THAT CORRECT?

19 A IT WAS BROUGHT TO US FROM THE EVIDENCE CUSTODIAN,
20 YES, SIR.

21 Q WHAT DAY DID YOU DO THAT?

22 A I AM NOT QUITE SURE OF THE DATE THAT THE TEST WAS
23 PERFORMED.

24 Q AND WHAT DAY DID YOU PERFORM THE COMPARISON?

25 A THE IDENTIFICATION WAS MADE ON DECEMBER 13, 2005.

1 Q WOULD IT BE FAIR TO SAY THAT YOU CONDUCTED THE
2 SUPER-GLUE TEST AND FOUND THIS FINGERPRINT OR THUMBPRINT
3 ON THE GUN SEVERAL DAYS AFTER THE ALLEGED INCIDENT?

4 A I AM NOT QUITE SURE WHEN THE INCIDENT WAS.

5 Q HOW LONG CAN A FINGERPRINT STAY ON AN ITEM?

6 A THERE IS NO DETERMINANT TIME.

7 Q SO, YOU CAN'T TELL HOW LONG THAT FINGERPRINT HAS BEEN
8 ON THAT GUN AT ALL?

9 A NO, SIR.

10 Q AND HOW MANY POINTS OF COMPARISON COULD YOU POSSIBLY
11 MAKE BETWEEN AN UNKNOWN FINGERPRINT?

12 A I DON'T UNDERSTAND.

13 Q HOW MANY POINTS OF COMPARISON ARE THERE BETWEEN --
14 YOU KNOW, HOW MANY POSSIBLY COULD BE DONE?

15 A AS MANY AMOUNTS OF MINUTIAE AS DETECTABLE.

16 Q HAVE THEY COME UP WITH A NUMBER? DOES IT GO INTO THE
17 THOUSANDS?

18 A THAT I AM NOT AWARE OF.

19 Q DOES IT GO INTO THE HUNDREDS?

20 A I DON'T THINK I AM QUITE SURE WHAT YOUR QUESTION IS.

21 Q YOU SAID THAT YOU MADE 14 POINTS OF COMPARISON
22 BETWEEN THE UNKNOWN LATENT AND THE KNOWN?

23 A YES, SIR.

24 Q HOW MANY COULD BE POSSIBLY MADE? THAT'S 14 OUT OF
25 HOW MANY POSSIBLE?

(M. CLAY ADAMS-REDIRECT BY WILLIS)

113

1 A EACH PERSON IS DIFFERENT. THERE IS NO SET NUMBER.

2 Q BUT COULD ONE PERSON HAVE HUNDREDS?

3 A I GUESS IT'S POSSIBLE.

4 Q IN YOUR -- AND YOUR TESTIMONY IS THAT YOU VIEWED THIS
5 PRINT ON THE RIFLE AND THE KNOWN PRINT AND YOU LOOKED AT
6 THE PRINT ON THE RIFLE; IS THAT CORRECT?

7 A SAY THAT AGAIN.

8 Q THE PRINT -- YOU DIDN'T LIKE LIFT THE PRINT OFF THE
9 RIFLE AND PUT IT ON A CARD?

10 A NO, SIR.

11 Q YOU EYEBALLED IT ON THE RIFLE?

12 A YES, SIR. I EXAMINED IT STRAIGHT TO THE WEAPON.

13 Q AND THAT'S DONE UNDER AN ALTERNATE LIGHT SOURCE OR
14 WHATEVER THAT SHOWS THE CYANIDE -- I MEAN, THE -- HOWEVER
15 THE FINGERPRINT APPEARS MAGICALLY?

16 A NO, SIR. NONE OF THOSE WERE DONE DURING THE
17 COMPARISON.

18 Q I MEAN, CAN YOU SEE THE FINGERPRINT ON THE GUN NOW?

19 A YES, SIR.

20 Q AND YOU SAID IT WAS ORIENTED DOWNWARD?

21 A YES, SIR.

22 MR. MAULDIN: I BEG THE COURT'S INDULGENCE. NO
23 FURTHER QUESTIONS, YOUR HONOR.

24 REDIRECT EXAMINATION

25 BY MS. WILLIS:

1 Q INVESTIGATOR ADAMS, IS THERE ANYTHING INCONSISTENT
2 WITH THE INK CARD WHEN YOU LOOKED AT IT AND COMPARED IT TO
3 THE LATENT PRINT?

4 MR. MAULDIN: OBJECTION, LEADING, YOUR HONOR.

5 Q IS THERE ANYTHING INCONSISTENT IN YOUR ANALYSIS?

6 A NO, MA'AM. IT'S A MATCH.

7 THE COURT: ALL RIGHT. SHE REPHRASED THE QUESTION.
8 YOU DIDN'T HAVE AN OBJECTION TO THE SECOND QUESTION. IF
9 YOU DID, I OVERRULE IT.

10 Q IS THERE ANY WAY YOU CAN MAKE A FINGERPRINT OFF OF AN
11 INK CARD AND PUT IT ON SOMETHING?

12 A IT HAS BEEN DONE.

13 Q HOW? OR IS THAT GOING TO BE LONG?

14 A I AM NOT QUITE SURE OF THE EXACT MEANS THAT IT HAS
15 BEEN DONE. I HAVE SEEN REFERENCE TO IT IN THE I.A.I.
16 MANUAL REMOVING INK FROM A CARD TO AN ITEM.

17 Q DID YOU HAVE THAT INK CARD WHEN YOU FIRST EXAMINED
18 THAT WEAPON?

19 A WHEN I FIRST EXAMINED THE WEAPON?

20 Q CORRECT.

21 A YES, MA'AM.

22 Q YOU HAD AN INK CARD -- THAT SAME INK CARD?

23 A YES, MA'AM. I HAD THE 10-PRINT CARD.

24 Q WHEN YOU FIRST TOOK -- GOT THIS WEAPON AND WAS TOLD
25 TO SEE IF YOU COULD FIND A PRINT ON IT --

(M. CLAY ADAMS-RECROSS BY MAULDIN)

115

1 A YES, MA'AM.

2 Q -- DO YOU DO THAT FIRST?

3 A YES, MA'AM. WE PROCESS THE ITEMS FIRST.

4 Q OKAY. AND YOU DON'T -- SO, WHEN YOU'VE GOT AN ITEM
5 YOU DON'T HAVE ANYTHING TO COMPARE WITH IT AT THAT TIME?

6 A NOT AT THAT TIME.

7 Q OKAY. SO, IT'S A PROCESS?

8 A YES, MA'AM. WE PROCESS AN ITEM. IF A LATENT IS
9 DEVELOPED, WE WILL RUN IT THROUGH A SYSTEM CALLED THE
10 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM. IF WE HAVE A
11 PERSON THAT WE CAN COMPARE DIRECTLY TO THEN WE WILL PULL A
12 A 10-PRINT CARD IF THEY HAVE ONE ON FILE AND THEN WE CAN
13 MAKE THE THE COMPARISON.

14 Q YOU DIDN'T RUN THIS THROUGH A.F.I.S., DID YOU?

15 A NO, MA'AM.

16 Q YOU USED THE FINGERPRINT CARD?

17 A YES, MA'AM.

18 MS. WILLIS: NO FURTHER QUESTIONS.

19 RECROSS-EXAMINATION

20 BY MR. MAULDIN:

21 Q INVESTIGATOR ADAMS, ON, I GUESS, PAGE TWO OF YOUR
22 EXAMINATION -- DO YOU HAVE YOUR REPORT IN FRONT OF YOU?

23 A THE LATENT EXAMINATION?

24 Q YES.

25 A YES, SIR.

1 Q WHERE YOU CHECKED THAT YOU PROCESSED IT FOR LATENT
2 FINGERPRINTS AND THAT SUCH THING? YOU'VE GOT A COPY OF
3 THAT?

4 A THE LAB REPORT?

5 Q UH-HUH.

6 A YES, SIR.

7 Q AND YOU CHECKED THAT YOU DID FORWARD IT TO A.F.I.S.;
8 IS THAT CORRECT?

9 A YES, SIR, WE FORWARDED IT TO A.F.I.S.

10 Q BUT IT WAS NOT RUN THROUGH A.F.I.S.?

11 A NO, SIR.

12 MR. MAULDIN: NO FURTHER QUESTIONS.

13 THE COURT: YOU CAN STEP DOWN, SIR.

14 I AM GOING TO LET YOU ALL TAKE A SHORT BREAK AND HAVE
15 YOU BACK OUT HERE IN JUST A FEW MINUTES.

16 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:36.)

17 MS. WILLIS: YOUR HONOR, I JUST WANTED TO DOUBLECHECK
18 AND MAKE SURE I INTRODUCED ALL OF THE EVIDENCE -- ALL OF
19 THE EXHIBITS INTO EVIDENCE BEFORE WE REST.

20 THE COURT: OKAY. LET ME ASK A QUESTION. NORMALLY
21 WHEN YOU INTRODUCE THE OPINION OF A FINGERPRINT EXPERT YOU
22 HAVE GOT TO LAY A FOUNDATION AS TO WHAT IT IS THAT HE IS
23 COMPARING THE LATENT FINGERPRINT TO. IN OTHER WORDS,
24 YOU'VE GOT TO PROVE THAT THE CARD THAT HE COMPARED IT TO
25 ACTUALLY CAME FROM THE DEFENDANT AND YOU DIDN'T DO THAT,

1 AND I AM ASSUMING THAT THE DEFENSE DOES NOT CONTEST THAT
2 THE FINGERPRINTS THAT WERE ON THE CARD THAT HAD THE
3 DEFENDANT'S NAME ON IT ARE ACTUALLY THE FINGERPRINTS OF
4 THE DEFENDANT. IS THAT TRUE?

5 MR. MAULDIN: YES, YOUR HONOR. I THOUGHT ABOUT
6 OBJECTING TO THAT, BUT THAT WOULD LEAD INTO TOO MANY
7 PITFALLS ABOUT THEM MAYBE HAVING A PRIOR FINGERPRINT OF
8 HIM ON RECORD.

9 THE COURT: THAT'S WHY IT DOESN'T COME UP THIS WAY,
10 AND I AM SITTING HERE GOING WHAT IN THE WORLD ARE Y'ALL
11 DOING BECAUSE THAT IS NOT THE WAY YOU PUT IN FINGERPRINT
12 EVIDENCE. YOU CAN'T DO THAT. YOU CAN'T BRING A CARD IN
13 HERE AND IMPLY TO THE JURY THAT THIS CARD WAS TAKEN THE
14 LAST TIME THAT THE DEFENDANT WAS ARRESTED. THAT'S EXACTLY
15 THE IMPRESSION THAT THEY GET. IT'S AN IMPROPER WAY TO
16 INTRODUCE FINGERPRINT TESTIMONY, BUT THERE WAS NO
17 OBJECTION TO IT, AND, SO, FROM THE FACT THAT THERE WAS NO
18 OBJECTION I AM ASSUMING THAT THERE IS NO OPPOSITION OR NO
19 DISAGREEMENT WITH THE FACT THAT THE PRINTS THAT ARE ON
20 THAT CARD ARE, IN FACT, THE PRINTS OF THE DEFENDANT. IS
21 THAT TRUE?

22 MR. MAULDIN: THAT'S CORRECT, YOUR HONOR, AND I WAS
23 SAYING THAT DID NOT COME UP AT ALL WHETHER IT WAS A PRINT
24 TAKEN PRIOR TO HIM BEING ARRESTED FOR THIS OR AFTER HIM
25 BEING ARRESTED FOR THIS. I THOUGHT GOING INTO THAT WOULD

1 BRING UP THAT ISSUE TOO MUCH.

2 THE COURT: SO, JUST OUT OF CURIOSITY, HOW DO YOU
3 KNOW THAT THOSE PRINTS ARE FROM YOUR CLIENT?

4 MR. MAULDIN: I HAVE LOOKED AT THE CARDS BASED ON A
5 PRIOR ARREST THAT HE HAD THAT I REPRESENTED HIM ON.

6 THE COURT: OKAY.

7 MS. WILLIS: YOUR HONOR, WE DID DISCUSS THAT, AND WE
8 TALKED ABOUT HOW TO HANDLE THAT. MAYBE WE DID IT WRONG,
9 BUT WE DID DISCUSS TO TRY TO MAKE SURE IT DID NOT COME OUT
10 THAT IT WAS FROM A PRIOR ARREST.

11 THE COURT: OKAY. ALL RIGHT. IS THERE GOING TO BE
12 ANYTHING FURTHER FROM THE STATE?

13 MS. WILLIS: NO, YOUR HONOR. I JUST WANTED TO
14 DOUBLECHECK AND MAKE SURE ALL OF THE EXHIBITS WERE
15 INTRODUCED INTO EVIDENCE.

16 THE REPORTER: YES.

17 MS. WILLIS: LISA SAID YES.

18 THE COURT: ALL RIGHT.

19 THE REPORTER: NOW THE MIRANDA WARNING -- SINCE YOU
20 ASKED, THE MIRANDA WARNING WAS MARKED AS A COURT'S
21 EXHIBIT. I DON'T KNOW IF THAT'S...

22 MR. GIBBONS: THAT'S FINE.

23 THE COURT: ANY MOTIONS?

24 MR. MAULDIN: YES, SIR, YOUR HONOR. AT THIS TIME I
25 WOULD MOVE FOR A DIRECTED VERDICT ON BEHALF OF MR. HILL

1 TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
2 STATE THAT THEY HAVE NOT PRESENTED A CASE TO PRESENT TO
3 THE FINDER OF FACT FOR THE ULTIMATE DECISION.

4 THE COURT: DENIED. NOW, IF YOU -- DO YOU INTEND TO
5 PUT UP ANY EVIDENCE OTHER THAN POSSIBLY YOUR DEFENDANT --
6 YOUR CLIENT TESTIFYING?

7 MR. MAULDIN: NO, YOUR HONOR.

8 THE COURT: MR. HILL, BOTH OF YOU PLEASE STAND.
9 MR. MAULDIN, HAVE YOU DISCUSSED WITH MR. HILL NOT ONLY
10 TODAY BUT, ALSO, BEFORE TODAY YOUR CLIENT'S RIGHT TO
11 REMAIN SILENT AND THE FACT THAT NO ONE CAN MAKE HIM
12 TESTIFY IN THE TRIAL OF THIS CASE?

13 MR. MAULDIN: YES, I HAVE, YOUR HONOR.

14 THE COURT: DOES HE UNDERSTAND THAT?

15 MR. MAULDIN: YES, SIR, HE DOES.

16 THE COURT: HAVE YOU, ALSO, DISCUSSED WITH HIM THE
17 FACT THAT HE HAS THE RIGHT TO TESTIFY IF THAT'S WHAT HE
18 CHOOSES TO DO?

19 MR. MAULDIN: YES, SIR.

20 THE COURT: AND HE UNDERSTANDS THAT?

21 MR. MAULDIN: YES, SIR, HE DOES.

22 THE COURT: NOW, WHEN YOU HAD THESE DISCUSSIONS WITH
23 HIM, WERE YOU ABLE TO COMMUNICATE WITH HIM WELL? DID YOU
24 UNDERSTAND THE QUESTIONS THAT HE ASKED AND DID HE
25 UNDERSTAND THE ANSWERS THAT YOU GAVE?

(BRAHEIM J. HILL-QUESTIONS BY THE COURT)

120

1 MR. MAULDIN: YES, SIR, YOUR HONOR.

2 THE COURT: ARE YOU SATISFIED THAT HE UNDERSTANDS
3 BOTH HIS RIGHT TO REMAIN SILENT AND HIS RIGHT TO TESTIFY?

4 MR. MAULDIN: YES, SIR.

5 THE COURT: NOW THAT THE STATE HAS RESTED AND THE
6 TIME HAS COME FOR YOUR CLIENT TO MAKE A DECISION ABOUT
7 WHETHER OR NOT HE WISHES TO TESTIFY, I AM ASSUMING THAT
8 YOU WOULD LIKE TO TALK TO HIM FOR A MINUTE OR TWO ABOUT
9 THAT DECISION BEFORE HE MAKES IT?

10 MR. MAULDIN: CERTAINLY, YOUR HONOR.

11 THE COURT: WE'LL TAKE A SHORT BREAK. LET ME KNOW
12 WHEN YOU'RE READY.

13 (WHEREUPON, A BREAK WAS TAKEN.)

14 THE COURT: ALL RIGHT. PLEASE STAND, MR. HILL.

15 BRAHEIM J. HILL, AFTER BEING DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 THE COURT: ALL RIGHT. NOW YOU CAN PUT YOUR HAND
18 DOWN. YOU'LL HAVE TO SPEAK UP SO THAT I CAN HEAR YOU. I
19 AM GOING TO TALK TO YOU ABOUT YOUR RIGHT TO REMAIN SILENT
20 AND ALSO YOUR RIGHT TO TESTIFY. NOW, I WANT TO MAKE SURE
21 THAT NOT ONLY AM I SURE THAT YOU DO UNDERSTAND THIS BUT
22 THAT THE RECORD REFLECTS THAT YOU UNDERSTAND THIS.

23 THE DEFENDANT: YES, SIR.

24 THE COURT: NOW, HAVE YOU TALKED TO YOUR LAWYER ABOUT
25 YOUR RIGHT TO REMAIN SILENT, YOUR RIGHT NOT TO TESTIFY,

(BRAHEIM J. HILL-QUESTIONS BY THE COURT)

121

1 AND THEN ON THE OTHER HAND YOUR RIGHT TO TESTIFY?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: HAVE YOU TALKED TO HIM ABOUT IT JUST
4 TODAY OR HAVE YOU TALKED TO HIM ABOUT IT BEFORE TODAY?

5 THE DEFENDANT: BEFORE TODAY AND TODAY.

6 THE COURT: BEFORE TODAY AND TODAY?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: NOW, OVER THIS TIME THAT YOU'VE BEEN
9 TALKING TO HIM ABOUT THE DECISION THAT YOU MUST MAKE ABOUT
10 WHETHER TO TESTIFY HAVE YOU UNDERSTOOD THE THINGS THAT
11 HE'S TOLD YOU ABOUT THIS?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: HAVE YOU HAD QUESTIONS THAT YOU'VE HAD TO
14 ASK HIM?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: AND HE ANSWERED THE QUESTIONS
17 SATISFACTORILY?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: NOW AS YOU STAND HERE NOW ARE YOU
20 SATISFIED THAT YOU UNDERSTAND BOTH YOUR RIGHT TO TESTIFY
21 AND YOUR RIGHT TO REMAIN SILENT?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: ALL RIGHT. I AM GOING TO GO OVER IT WITH
24 YOU ANYWAY. YOU HAVE THE RIGHT TO REMAIN SILENT. THAT
25 RIGHT COMES TO YOU BY WAY OF THE FIFTH AMENDMENT TO THE

1 UNITED STATES CONSTITUTION AND WHAT THAT MEANS IS THAT NO
2 ONE CAN COMPEL YOU, NO ONE CAN MAKE YOU TO TESTIFY IN THE
3 TRIAL OF THIS CASE. IF YOU CHOOSE NOT TO TESTIFY, THEN I
4 WILL EXPLAIN TO THE JURY VERY CLEARLY THAT YOU HAVE THIS
5 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THAT THE
6 EXERCISE OF THAT RIGHT CANNOT BE HELD AGAINST YOU. BUT ON
7 THE OTHER HAND, YOU HAVE THE RIGHT TO TESTIFY IF THAT'S
8 WHAT YOU CHOOSE TO DO, AND IF YOU DO CHOOSE TO TESTIFY
9 JUST LIKE ALL THE OTHER WITNESSES WHO HAVE TESTIFIED HERE
10 YOU BECOME SUBJECT TO CROSS EXAMINATION ON ANY SUBJECT
11 THAT MIGHT BE RELEVANT TO THIS CASE. DO YOU UNDERSTAND
12 ALL OF THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: NOW, EVEN THOUGH YOU SHOULD LISTEN VERY
15 CAREFULLY TO YOUR ATTORNEY AND LISTEN TO THE ADVICE THAT
16 HE GIVES YOU ABOUT THE PROS AND THE CONS OF TESTIFYING ON
17 THE ONE HAND OR NOT TESTIFYING ON THE OTHER HAND, IN THE
18 END IT IS YOUR DECISION AND YOU MUST MAKE THE DECISION.
19 YOUR LAWYER CANNOT DECIDE FOR YOU WHETHER OR NOT YOU'RE
20 GOING TO TESTIFY. DO YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: NOW, BEFORE YOU TELL ME WHAT YOUR
23 DECISION IS LET ME ASK YOU A COUPLE OF MORE QUESTIONS.
24 HAVE YOU HAD ALL OF THE TIME YOU NEED TO MAKE UP YOUR MIND
25 AS TO WHETHER OR NOT YOU'RE GOING TO TESTIFY?

(BRAHEIM J. HILL-QUESTIONS BY THE COURT)

123

1 THE DEFENDANT: YES, SIR.

2 THE COURT: HAVE YOU UNDERSTOOD EVERYTHING THAT YOU
3 AND YOUR LAWYER HAVE DISCUSSED?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: DO YOU NEED TO TALK TO YOUR LAWYER OR DO
6 YOU WANT TO ASK ME ME ANYMORE QUESTIONS NOW BEFORE YOU
7 DECIDE?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: WHAT IS YOUR DECISION?

10 THE DEFENDANT: I WILL NOT TAKE THE STAND.

11 THE COURT: YOU'RE NOT GOING TO TESTIFY?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: THAT'S RIGHT?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: ALL RIGHT. YOU CAN BE SEATED.

16 MR. MAULDIN, IS THEN THE DEFENSE GOING TO OFFER ANY
17 EVIDENCE?

18 MR. MAULDIN: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. ARE YOU READY FOR CLOSING
20 ARGUMENTS?

21 MS. WILLIS: YES, YOUR HONOR.

22 THE COURT: ARE THERE ANY SPECIAL REQUESTS FOR
23 CHARGE?

24 MS. WILLIS: MAYBE CIRCUMSTANTIAL EVIDENCE.

25 THE COURT: ANY SPECIAL REQUESTS FOR CHARGE?

(CLOSING STATEMENT BY MS. WILLIS)

124

1 MR. MAULDIN: NO, YOUR HONOR.

2 THE COURT: BRING IN THE JURY.

3 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
4 APPROXIMATELY 2:46.)

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU
6 HAVE NOW HEARD ALL OF THE TESTIMONY AND THE EVIDENCE THAT
7 YOU'LL HEAR IN THIS CASE AND WE'RE READY FOR CLOSING
8 ARGUMENTS.

9 MR. MAULDIN: YOUR HONOR, MAY WE APPROACH?

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

11 THE COURT: ALL RIGHT. JUST TO MAKE IT CLEAR BOTH
12 THE STATE AND THE DEFENSE HAVE RESTED IN THIS CASE. SO
13 YOU'VE NOW HEARD ALL OF THE TESTIMONY AND THE EVIDENCE
14 THAT YOU WILL HEAR. WE'RE READY FOR CLOSING ARGUMENTS.

15 MS. WILLIS?

16 MS. WILLIS: THANK YOU, YOUR HONOR.

17 CLOSING STATEMENT

18 MS. WILLIS: SEE? WE FINISHED IN A DAY. WE STARTED
19 OFF THIS MORNING TALKING ABOUT BURDEN OF PROOF AND
20 REASONABLE DOUBT, AND I TOLD YOU THAT YOU WERE GOING TO
21 HEAR, SEE EVIDENCE FROM DIFFERENT PIECES. WE'VE DONE
22 THAT. LET'S GO THROUGH THEM. YOU SAW THE VIDEO OF THE
23 STORE AND YOU CAN TAKE THESE PHOTOS BACK WITH YOU, BUT AS
24 YOU SAW THE VIDEO IN THE STORE YOU CAN SEE WHERE THE
25 DIFFERENT PLACES ARE -- THE SIDE OF THE STORE WHERE YOU

(CLOSING STATEMENT BY MS. WILLIS)

125

1 SAW HIM HANGING OUT, HOW HE CAME IN THE FRONT DOOR, AND
2 WHERE HE RAN AFTER HE FINISHED. THE EVIDENCE SHOWED WHEN
3 HE CAME OUT HE RAN THAT WAY. THERE IS A PHOTO OF THE GUN
4 THAT WAS FOUND ON THE SIDE OF THE ROAD WHICH IS CONSISTENT
5 WITH THE WAY THE SUSPECT RAN.

6 IT IS HARD TO TELL ON A VIDEO. I MEAN, THE VIDEO
7 TECHNOLOGY IS GOOD, BUT IT'S NOT THAT GOOD. IT IS HARD TO
8 SAY, OKAY, THIS IS SUCH AND SUCH. BUT IT WAS ALL
9 CONSISTENT. MR. RUTLAND GOT UP HERE AND TOLD YOU, THAT'S
10 THE MAN. THAT'S THE MAN THAT HELD THAT SHOTGUN TO MY FACE
11 AND DEMANDED MONEY FROM ME. THAT'S HIM. AND IF THAT'S
12 NOT ENOUGH, THE GUN IS RECOVERED, AND, OH, MY GOODNESS,
13 GUESS WHOSE FINGERPRINTS ARE ON THAT GUN? INVESTIGATOR
14 ADAMS EXPLAINED AND IT'S ABOVE MY UNDERSTANDING AND HE
15 TRIES TO EXPLAIN TO ME EACH TIME, BUT 14 POINTS. HE
16 TESTIFIED THAT IS A MATCH. THAT PRINT ON THAT GUN BELONGS
17 TO THAT MAN SITTING RIGHT THERE. THE STORE CLERK
18 IDENTIFIED THAT MAN SITTING RIGHT THERE AS THE MAN WHO
19 ROBBED HIM. HE IS WALKING OUT THE SHERIFF'S OFFICE AND
20 LOOKS AT ONE OF THE INVESTIGATORS AND SAYS, AW, JUST PUT
21 ON THE PIECE OF PAPER I DID IT.

22 BURDEN OF PROOF. THE STATE HAS MET ITS BURDEN OF
23 PROOF. EACH PIECE FITS INTO THE PUZZLE. AS I SAID, THE
24 JUDGE IS GOING TO EXPLAIN OR GIVE INSTRUCTIONS ON THE LAW
25 AND HE IS GOING TO TELL YOU REASONABLE DOUBT. REASONABLE

(CLOSING STATEMENT BY MR. MAULDIN)

126

1 DOUBT, REASONABLE DOUBT. I'M SURE THE DEFENSE WILL GET UP
2 HERE AND TALK ABOUT THAT, AND HE GETS TO TALK LAST. SO,
3 THIS IS MY ONLY CHANCE TO SPEAK TO YOU. SO, I HAVE TO
4 KIND OF THINK OF WHAT HE IS GOING TO SAY.

5 REASONABLE DOUBT. IT'S NOT BEYOND ANY AND ALL DOUBT.
6 IT IS BEYOND A REASONABLE DOUBT. AND DON'T GO THROUGH
7 THIS, WELL, WHAT IF THEY WOULD HAVE DONE THIS, WHAT IF
8 THEY WOULD HAVE FINGERPRINTED THE DOOR, WHAT IF THEY HAD
9 HAD A BETTER SURVEILLANCE CAMERA. WHAT IF, WHAT IF, WHAT
10 IF. YOU KNOW, IT IS SO EASY TO LOOK BACK AND WHAT IF,
11 WHAT IF, WHAT IF. THERE IS ALWAYS SOMETHING. BUT I
12 SUBMIT TO YOU THE VIDEOTAPE, THE IDENTIFICATION OF THE
13 VICTIM OF THAT MAN SITTING RIGHT THERE, AND THAT MAN'S
14 FINGERPRINT FOUND ON THE WEAPON THAT HE HELD UP THE STORE
15 WITH, WE HAVE MET OUR BURDEN OF PROOF, AND I ASK THAT YOU
16 FIND HIM GUILTY -- GUILTY OF ARMED ROBBERY AND GUILTY OF
17 POSSESSION OF A FIREARM DURING A VIOLENT CRIME.

18 THE FIREARM DOESN'T HAVE TO BE LOADED. IT'S GOOD
19 THIS ONE WASN'T LOADED. THAT MAN RIGHT THERE DIDN'T KNOW
20 IT WASN'T LOADED. HE TOLD YOU HE THOUGHT HE WAS GONNA
21 DIE. HE THOUGHT HE WAS GONNA DIE. THANK YOU.

22 CLOSING STATEMENT

23 MR. MAULDIN: LADIES AND GENTLEMEN OF THE JURY, THE
24 STATE HAS PRESENTED EVIDENCE, BUT THAT EVIDENCE SHOULD NOT
25 LEAVE YOU FIRMLY CONVINCED THAT MR. BRAHEIM HILL IS GUILTY

(CLOSING STATEMENT BY MR. MAULDIN)

127

1 OF THIS CRIME. THERE ARE THREE THINGS THAT LINK HIM TO
2 THIS CRIME AS FAR AS WHAT THEY'VE PRESENTED TODAY AND TWO
3 OF THEM I BELIEVE YOU SHOULD DISCOUNT ALTOGETHER.

4 THE FIRST IS THE IDENTIFICATION OF MR. HILL MADE BY
5 MR. RUTLAND. THIS EVENT HAPPENED OVER EIGHT MONTHS AGO.
6 MR. HILL WAS ARRESTED SOMETIME SUBSEQUENT TO THAT, AND
7 THEY MADE NO EFFORT TO PUT HIS PICTURE IN ANY KIND OF
8 PHOTO LINE-UP TO SHOW HIM TO BE ABLE TO PICK HIM OUT OF
9 OTHER PEOPLE THAT LOOK THE SAME. IF YOU LOOK ON THAT TAPE
10 THERE IS A BLACK MAN ABOUT 6 FEET TALL, INDESCRIPT BUILD,
11 INDESCRIPT SIZE -- NOTHING PECULIAR ABOUT HIM OTHER THAN
12 HE IS WEARING THIS HAT AND THESE PARTICULAR CLOTHES AND HE
13 IS GOING TO COME IN THE COURTROOM EIGHT MONTHS LATER AFTER
14 THEY'VE ARRESTED A GUY THAT THEY PROBABLY TOLD HIM, WELL,
15 WE FOUND A SINGLE PRINT ON THE GUN HE IS GOING TO COME IN
16 THE COURTROOM AND WHO IS HE GOING TO PICK OUT? THAT MAN
17 SITTING OVER THERE AT THE DEFENSE TABLE.

18 IF YOU LOOK AT THE TAPE AND YOU LOOK AT HIS HAIR NOW,
19 HIS HAIR IS, OBVIOUSLY, LONGER AND WE HAVEN'T HEARD ANY
20 EVIDENCE OF ANY OPPORTUNITY THAT MR. RUTLAND HAS HAD TO
21 VIEW MR. HILL AT ALL SINCE WHENEVER TO COMPARE EXCEPT
22 TODAY. IF HIS HAIR WAS SHORT OR HIS FACIAL HAIR WAS SHORT
23 JUST LIKE THAT, IT IS DIFFERENT NOW. HE DIDN'T TAKE ANY
24 TIME AT ALL TO SIT THERE AND LOOK AT HIM AND EXAMINE HIM
25 TO MAKE SURE THAT THAT IS THE SAME PERSON.

(CLOSING STATEMENT BY MR. MAULDIN)

128

1 IT IS A GREAT DRAMATIC MOMENT TO HAVE SOMEONE SIT ON
2 THIS STAND AND POINT OUT SOMEBODY. THEY'RE GOING TO POINT
3 OUT THE ONE THAT THE POLICE TOLD THEM THEY ARRESTED.
4 THEY'RE GOING TO POINT OUT THE GUY THAT'S ON TRIAL.
5 THAT'S NOT A SURPRISE, OKAY? I THINK YOU SHOULD DISCOUNT
6 THAT EVIDENCE BECAUSE OF THAT. HE'S NOT GOING TO POINT TO
7 MR. ANDERSON SITTING OVER THERE OR MS. SMALLS SITTING OVER
8 THERE OR MISS ALVES. HE IS GOING TO POINT TO THE
9 DEFENDANT.

10 THE SECOND PIECE OF EVIDENCE THAT YOU SHOULD REALLY
11 DISCOUNT IS THIS STATEMENT, GO AHEAD AND PUT ON THAT PAPER
12 I DID IT. HE WAS UP AT THE SHERIFF'S OFFICE. HE IS
13 DENYING IT. LILE SAYS HE DIDN'T GIVE HIM AN OPINION HE
14 DID IT, BUT WE'VE GOT YOUR FINGERPRINT ON THE GUN. WE'VE
15 GOT THIS VIDEOTAPE. YOU KNOW YOU DID IT. JUST ADMIT IT.
16 HE IS SAYING, NO, I DIDN'T DO IT. SO, HE MARCHES HIM DOWN
17 PAST HIS SUPERVISOR'S OFFICE AND, APPARENTLY, THERE IS A
18 LITTLE PEANUT GALLERY AROUND THERE WATCHING THIS VIDEO.
19 OH, COME ON, YOU KNOW IT'S YOU. YOU KNOW IT'S YOU. AND
20 HE GOES DOWN AND SAYS, JUST PUT ON THAT PAPER I DID IT.

21 IT WASN'T SERIOUS WHEN HE SAID THAT AND THEY DIDN'T
22 TAKE IT SERIOUS WHEN HE SAID THAT. YOU KNOW WHY? BECAUSE
23 IF HE WAS SERIOUS WHEN HE SAID THAT THEY WOULD HAVE
24 MARCHED HIM BACK UP THE STAIRS, GOT HIM IN THE INTERVIEW
25 ROOM, AND HAD HIM SIGN A STATEMENT SAYING HE DID IT, HAVE

(CLOSING STATEMENT BY MR. MAULDIN)

129

1 HIM GIVE MORE DETAILS ABOUT WHERE HE GOT THE GUN, WHAT DID
2 HE DO WITH THE MONEY, HOW DID HE GET AWAY. BUT THAT
3 WASN'T DONE BECAUSE THEY DIDN'T TAKE THAT STATEMENT
4 SERIOUSLY BECAUSE IT WASN'T MADE SERIOUS. THAT'S NOT A
5 CONFESSION. THAT IS JUST B.S., YOU GUYS THINK I DID IT
6 ANYWAY, YOU MIGHT AS WELL GO AHEAD AND PUT DOWN I DID IT.

7 THAT ONLY LEAVES THIS THUMBPRINT ON THE GUN. IF YOU
8 WATCH HOW THE GUN IS HANDLED IN THE STORE AND HANDLED IN
9 THE VIDEO, IT'S NEVER HANDLED LIKE THIS IN THE VIDEO.
10 THAT'S NOT TO SAY THAT HE COULDN'T HAVE HANDLED -- THAT IT
11 COULDN'T HAVE BEEN HANDLED LIKE THAT ANY OTHER TIME, BUT
12 THERE IS NO FINGERPRINT HERE. THE GUN WAS CARRIED INTO
13 THE STORE LIKE THIS. THERE ARE NO FINGERPRINTS HERE, NO
14 FINGERPRINTS ANYWHERE WHERE YOU SEE THAT GUY HOLDING THE
15 GUN IN THE STORE.

16 DON'T WORRY, CHIPLEY, IT IS UNLOADED.

17 ALL THAT SHOWS IS THAT MR. HILL HANDLED THAT GUN AT
18 ONE POINT IN TIME. INVESTIGATOR CAIN TESTIFIED THAT THAT
19 SUPER-GLUE TESTING OR WHATEVER WAS DONE ON THE 7TH AND THE
20 ROBBERY OCCURRED ON THE 28TH. THAT'S ABOUT EIGHT DAYS.
21 THAT FINGERPRINT LASTED ON THAT GUN EIGHT DAYS AFTER THAT
22 ROBBERY. HOW LONG COULD IT HAVE BEEN ON THAT GUN BEFORE
23 THE ROBBERY? AND IT'S NOT JUST WILD SPECULATION TO SAY
24 THAT HE MAY HAVE HANDLED THE GUN ANYTIME BEFORE THE
25 ROBBERY. HE COULD HAVE HAD A FRIEND THAT BROUGHT IT OVER

1 AND SHOWED HIM. THE FRIEND COULD HAVE GONE AND DONE THE
2 ROBBERY, ANOTHER BLACK MALE, INDESCRIPT SIZE, INDESCRIPT
3 HEIGHT, AND HE MAY NOT EVEN BE THAT INNOCENT. IT COULD BE
4 SOMEBODY ON CRACK OR SOMETHING WANTING TO SELL THE GUN
5 SHOWING IT AROUND TO PEOPLE IN THE NEIGHBORHOOD. HE MIGHT
6 HAVE TAKEN A LOOK AT IT, HANDED IT BACK, I DON'T WANT TO
7 BUY THAT GUN. THERE ARE PLENTY OF REASONABLE EXPLANATIONS
8 ON HOW HIS THUMBPRINT GOT ON THE GUN RIGHT THERE. IT DOES
9 NOT SHOW THAT BEYOND A REASONABLE DOUBT THAT HE HAD THAT
10 GUN AND HE WAS IN THAT STORE WITH IT THAT NIGHT.

11 I DON'T THINK THAT FINGERPRINT SHOULD FIRMLY CONVINCE
12 YOU OF HIS GUILT. THINGS THAT COULD FIRMLY CONVINCE YOU
13 OF HIS GUILT IN ADDITION TO THE FINGERPRINT COULD BE IF
14 YOU COULD SEE WHO THAT WAS ON THAT VIDEO. YOU CAN'T SEE
15 THAT WAS. THAT VIDEO WASN'T TAKEN TO ANY EXPERT TO BLOW
16 UP THE PICTURE OR DO ANY RESOLUTION. YOU'VE HAD A CHANCE
17 TO LOOK AT THAT. YOU'VE HAD A CHANCE TO LOOK AT HIM ALL
18 DAY TODAY. YOU CAN MAKE THE DECISION IN THAT REGARD.

19 TAKING FINGERPRINTS ON THE DOOR -- IT WASN'T DONE.
20 WELL, I MIGHT NOT HAVE FOUND ANYTHING. WELL, COULD'VE.
21 IF THEY HAD TAKEN THE FINGERPRINT AND FOUND BRAHEIM'S
22 FINGERPRINT ON THE DOOR IN ADDITION TO THIS, WOULD THAT
23 LEAVE YOU A LITTLE BIT MORE FIRMLY CONVINCED? IF THEY HAD
24 SHOWN A LINE-UP SOON AFTER THE INCIDENT, SOON AFTER HIS
25 ARREST TO MR. RUTLAND AND HE HAD PICKED ONE OUT OF SIX

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1 PEOPLE AND SAID, THAT'S THE MAN, INSTEAD OF THE ONE MAN
2 SITTING THERE IN THE DEFENDANT'S CHAIR. WOULDN'T THAT IN
3 ADDITION TO THAT LEAVE YOU FIRMLY CONVINCED? IT WOULD.

4 ALL THEY'VE GOT IS THIS PRINT. THEY HAVE OTHER
5 EVIDENCE, BUT IT'S NOT STRONG EVIDENCE, AND I SAY YOU
6 SHOULD DISCOUNT IT, BUT THAT'S ALL THERE IS, BASICALLY.
7 JUST ONE PRINT ON THIS ONE GUN. IS THAT ENOUGH WHEN YOU
8 DON'T KNOW HOW LONG IT HAD BEEN THERE? IT COULD BE THERE
9 EIGHT DAYS AFTER SOMETHING HAPPENS. WHY CAN'T IT BE THERE
10 EIGHT DAYS BEFORE? INVESTIGATOR ADAMS TOLD YOU THERE IS
11 NO TELLING HOW LONG THAT PRINT COULD HAVE BEEN ON THAT
12 GUN.

13 SO, YOU NEED TO TAKE THAT WITH YOU BACK IN THE JURY
14 ROOM BECAUSE, BASICALLY, THAT'S THE ONLY CREDIBLE
15 EVIDENCE. THAT'S THE ONLY DAMNING EVIDENCE AGAINST HIM IS
16 THAT ONE PRINT. LADIES AND GENTLEMEN, THAT SHOULD NOT
17 LEAVE YOU FIRMLY CONVINCED OF HIS GUILT BEYOND A
18 REASONABLE DOUBT.

19 JURY CHARGE

20 THE COURT: LADIES AND GENTLEMEN, NOW THAT YOU HAVE
21 HEARD ALL OF THE EVIDENCE AND THE ARGUMENTS OF THE LAWYERS
22 IT IS MY RESPONSIBILITY TO EXPLAIN TO YOU THE LAW THAT IS
23 APPLICABLE TO THIS CASE. AS I MENTIONED TO YOU EARLIER
24 TODAY UNDER OUR CONSTITUTION AND CODE OF LAWS HERE IN
25 SOUTH CAROLINA ONLY THE JURY CAN MAKE THE FINDINGS OF FACT

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1 IN THIS CASE AND I AM NOT PERMITTED TO INDICATE TO YOU HOW
2 I MIGHT FEEL ABOUT THE FACTS. SO, IF I HAVE SAID ANYTHING
3 OR IF I HAVE DONE ANYTHING THAT LEADS YOU TO BELIEVE THAT
4 I HAVE AN OPINION ABOUT THE FACTS, THEN YOU MUST DISREGARD
5 THAT BECAUSE THIS JURY MUST INDEPENDENTLY WEIGH THE
6 TESTIMONY AND THE EVIDENCE THAT HAS BEEN PRESENTED BEFORE
7 YOU AND RENDER A VERDICT THAT'S BASED SOLELY ON THAT
8 TESTIMONY AND THE EVIDENCE IN LIGHT OF THE LAW AS I NOW
9 EXPLAIN IT.

10 TO DETERMINE THE FACTS IN THIS CASE YOU WILL
11 NECESSARILY HAVE TO EVALUATE THE CREDIBILITY WHICH, OF
12 COURSE, MEANS THE BELIEVABILITY OF THE WITNESSES WHO HAVE
13 BEEN CALLED ON TO TESTIFY. SOME OF THE THINGS THAT YOU
14 MIGHT WISH TO CONSIDER AS YOU DECIDE WHETHER OR NOT TO
15 BELIEVE A WITNESS' TESTIMONY ABOUT A PARTICULAR MATTER
16 INCLUDE THE FOLLOWING: THE MANNER AND APPEARANCE OF THE
17 WITNESS WHO TESTIFIED, WAS HE OR SHE STRAIGHT-FORWARD OR
18 HESITANT IN ANSWERING QUESTIONS, IS THE TESTIMONY OF A
19 WITNESS CONSISTENT OR INCONSISTENT, HOW DID THE WITNESS
20 COME TO KNOW THE FACTS THAT HE OR SHE IS TESTIFYING TO,
21 AND WHAT IS THAT WITNESS' ABILITY TO KNOW THOSE FACTS, IS
22 THERE SOME REASON THAT A WITNESS MIGHT WANT TO GIVE
23 TESTIMONY THAT WOULD HELP OR HURT ONE SIDE OR THE OTHER,
24 IS THE TESTIMONY OF A WITNESS STRENGTHENED OR WEAKENED BY
25 OTHER TESTIMONY IN EVIDENCE?

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1 AS MEMBERS OF THE JURY YOU CAN BELIEVE AS MUCH OR AS
2 LITTLE OF EACH WITNESSES' TESTIMONY AS YOU THINK IT IS
3 APPROPRIATE TO DO. YOU CAN BELIEVE THE TESTIMONY OF ONE
4 WITNESS AGAINST ALL OF THE REST OF THEM OR YOU CAN DO JUST
5 THE OPPOSITE AND YOU ARE NOT REQUIRED TO ACCEPT TESTIMONY
6 AS TRUE EVEN IF IT IS UNCONTRADICTED.

7 YOU HAVE HEARD THE TESTIMONY OF AN EXPERT WITNESS.
8 EXPERT WITNESSES ARE THOSE WITNESSES WHO HAVE SPECIAL
9 KNOWLEDGE, SKILL, EXPERTISE, TRAINING, OR EDUCATION IN A
10 PARTICULAR PROFESSION OR OCCUPATION AND BECAUSE OF THOSE
11 SPECIAL QUALIFICATIONS EXPERTS ARE ALLOWED TO GIVE THEIR
12 OPINIONS AS TO MATTERS WITHIN THEIR AREA OF EXPERTISE. IN
13 DETERMINING THE WEIGHT TO BE GIVEN TO THE OPINIONS GIVEN
14 BY EXPERTS YOU SHOULD CONSIDER THE REASONS GIVEN FOR THE
15 OPINION AND THE QUALIFICATIONS AND THE CREDIBILITY OF THE
16 EXPERT. YOU ARE NOT BOUND BY THE OPINIONS GIVEN BY
17 EXPERTS. GIVE THE OPINION THE WEIGHT, IF ANY, THAT YOU
18 BELIEVE IT SHOULD RECEIVE.

19 NOW, THE SAME CONSTITUTION AND CODE OF LAWS THAT MAKE
20 YOU THE EXCLUSIVE JUDGES OF THE FACTS ALSO MAKE ME THE
21 EXCLUSIVE JUDGE OF THE LAW. SO, IF YOU HAVE SOME IDEA AS
22 TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IF THAT
23 WERE TO DIFFER FROM WHAT I AM NOW TELLING YOU THE LAW IS,
24 THEN YOU ARE OBLIGATED UNDER THE OATH THAT YOU HAVE TAKEN
25 AS JURORS TO SET YOUR NOTION OF THE LAW ASIDE AND TO

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1 ACCEPT AND APPLY THE LAW PRECISELY AS I EXPLAIN IT TO YOU.

2 THE FACT THAT THE DEFENDANT WAS ARRESTED AND CHARGED

3 AND INDICTED IN THIS CASE IS NOT EVIDENCE AND CANNOT BE

4 CONSIDERED BY YOU IN ANY WAY AS EVIDENCE OF THE

5 DEFENDANT'S GUILT, NOR DOES IT CREATE ANY PRESUMPTION OR

6 INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL,

7 WRITTEN DOCUMENT THAT CONTAINS THE ALLEGATIONS THAT HAVE

8 BEEN MADE AGAINST THE DEFENDANT AND IT SERVES TO PROCESS

9 THESE CASES AND BRING THEM INTO THIS COURT FOR TRIAL.

10 THE DEFENDANT HAS PLEAD NOT GUILTY TO THIS

11 INDICTMENT, AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON

12 THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A

13 REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A

14 CRIME IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE

15 THEMSELVES INNOCENT.

16 LADIES AND GENTLEMEN, I INSTRUCT YOU NOW AND I

17 EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT DID NOT

18 TESTIFY IN THIS TRIAL CANNOT BE CONSIDERED BY YOU IN ANY

19 WAY DURING YOUR DELIBERATIONS. THE DEFENDANT HAS A

20 CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE EXERCISE OF

21 THAT RIGHT CANNOT AND MUST NOT BE HELD AGAINST THE

22 DEFENDANT. UNDER THE OATH THAT YOU HAVE TAKEN AS JURORS

23 YOU ARE TO DRAW NO INFERENCE AND NO CONCLUSION WHATSOEVER

24 FROM THE FACT THAT THE DEFENDANT DID NOT TESTIFY. DO NOT

25 EVEN DISCUSS THIS IN THE JURY ROOM. THE DEFENDANT IS NOT

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1 REQUIRED TO PROVE ANYTHING. THE BURDEN OF PROOF REMAINS
2 ON THE STATE.

3 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
4 SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE
5 CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT
6 MUST, THEREFORE, BE PROOF OF SUCH A CONVINCING CHARACTER
7 THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY ON IT
8 AND ACT ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN
9 AFFAIRS. PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE
10 DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
11 DEFENDANT'S GUILT.

12 NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
13 KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE
14 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
15 DOUBT. IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU
16 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
17 CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY, BUT ON THE
18 OTHER HAND IF YOU THINK THERE IS A REAL POSSIBILITY THAT
19 HE IS NOT GUILTY, THEN YOU MUST GIVE HIM THE BENEFIT OF
20 THE DOUBT AND FIND HIM NOT GUILTY.

21 I HAVE ADMITTED INTO EVIDENCE IN THIS CASE A
22 STATEMENT. IT IS ALLEGED TO HAVE BEEN MADE BY THE
23 DEFENDANT. BEFORE YOU MAY CONSIDER THIS STATEMENT AS
24 EVIDENCE FOR ANY PURPOSE YOU MUST CONSIDER TWO QUESTIONS.
25 THE STATE MUST HAVE PROVEN BEYOND A REASONABLE DOUBT THAT

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1 THE ANSWER IS YES TO BOTH OF THESE QUESTIONS BEFORE YOU
2 CAN CONSIDER THE STATEMENT AS EVIDENCE FOR ANY PURPOSE.
3 IF THE STATE HAS FAILED TO PROVE THAT BOTH OF THE ANSWERS
4 IS YES, THEN YOU MAY NOT CONSIDER THE STATEMENT FOR ANY
5 REASON.

6 THE QUESTIONS ARE DID THE DEFENDANT MAKE THE
7 STATEMENT, AND, SECONDLY, WAS THE STATEMENT MADE
8 VOLUNTARILY? THE FIRST QUESTION IS WHETHER THE DEFENDANT
9 MADE THE STATEMENT, AND YOU MAY CONSIDER THE STATEMENT
10 ONLY IF YOU FIND THAT THE STATE HAS PROVEN BEYOND A
11 REASONABLE DOUBT THAT THE DEFENDANT DID, IN FACT, MAKE THE
12 STATEMENT. THE SECOND QUESTION IS DID THE DEFENDANT GIVE
13 THE STATEMENT VOLUNTARILY? THE WORD VOLUNTARILY, OF
14 COURSE, MEANS THAT HE FREELY CHOSE TO MAKE THE STATEMENT;
15 THAT IT WAS NOT INDUCED BY PRESSURE OR FORCE OR
16 INTIMIDATION. IF THE STATEMENT WAS VOLUNTARILY GIVEN, IT
17 MAY BE USED AGAINST HIM. IF THE STATEMENT IS NOT
18 VOLUNTARY, IT CANNOT BE USED AGAINST HIM. IN DETERMINING
19 WHETHER OR NOT THE STATEMENT OF THE DEFENDANT WAS
20 VOLUNTARY YOU MAY AND SHOULD CONSIDER ALL OF THE FACTS AND
21 CIRCUMSTANCES SURROUNDING THE STATEMENT.

22 NOW, IT SHOULD BE OBVIOUS AND IT CERTAINLY IS THE LAW
23 THAT IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME OR
24 THESE CRIMES THE STATE MUST PROVE BEYOND A REASONABLE
25 DOUBT THAT IT WAS THIS DEFENDANT WHO COMMITTED THE CRIME.

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1 IN OTHER WORDS, THE STATE MUST PROVE BEYOND A REASONABLE
2 DOUBT THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME.

3 THE DEFENDANT HAS BEEN CHARGED WITH ARMED ROBBERY.
4 IN ORDER TO CONVICT THE DEFENDANT OF ARMED ROBBERY THE
5 STATE MUST PROVE FIVE ESSENTIAL ELEMENTS, EACH BEYOND A
6 REASONABLE DOUBT. FIRST, THE STATE MUST PROVE THAT THE
7 DEFENDANT TOOK PERSONAL PROPERTY FROM THE PERSON OR
8 PRESENCE OF ANOTHER PERSON. SECOND, THE STATE MUST PROVE
9 THAT THE DEFENDANT CARRIED THE PROPERTY AWAY. THIRD, THE
10 STATE MUST PROVE THAT THE DEFENDANT INTENDED TO
11 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP
12 THE PROPERTY FOR THE DEFENDANT'S OWN USE. FOURTH, THE
13 TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN
14 DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE PROPERTY
15 IN FEAR OF VIOLENCE. FINALLY, THE STATE MUST PROVE BEYOND
16 A REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A
17 DEADLY WEAPON DURING THE ROBBERY.

18 NOW, PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS
19 WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION, OR
20 CONTROL SO THAT THE PERSON COULD IF NOT OVERCOME WITH
21 VIOLENCE OR PREVENTED BY FEAR KEEP POSSESSION OF THE
22 PROPERTY. THE SLIGHTEST REMOVAL OF THE PROPERTY OR THE
23 COMPLETE POSSESSION OF THE PROPERTY EVEN FOR AN INSTANT BY
24 THE DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND A
25 CARRYING AWAY OF THE PROPERTY.

1 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
2 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
3 HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY
4 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH
5 CASE.

6 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A
7 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. IN
8 ORDER TO PROVE THE DEFENDANT GUILTY OF THIS CRIME THE
9 STATE MUST FIRST HAVE PROVEN THAT THE DEFENDANT WAS GUILTY
10 OF ARMED ROBBERY WHICH IS A VIOLENT CRIME UNDER SOUTH
11 CAROLINA LAW. IN ADDITION TO PROVING THE DEFENDANT GUILTY
12 OF ARMED ROBBERY, THE STATE MUST ALSO PROVE BEYOND A
13 REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A
14 FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM
15 AT SOME POINT DURING THE COMMISSION OF THE CRIME.

16 NOW, LADIES AND GENTLEMEN, YOUR VERDICT IN THIS CASE
17 MUST BE UNANIMOUS. ALL TWELVE OF YOU MUST AGREE BEFORE
18 YOU CAN WRITE A VERDICT. IN JUST A SECOND I AM GOING TO
19 SEND YOU BACK INTO THE JURY ROOM, BUT I AM GOING TO ASK
20 YOU NOT TO BEGIN YOUR DELIBERATIONS BECAUSE I MAY HAVE
21 SOME MATTERS OF LAW THAT I NEED TO TAKE UP WITH THE
22 LAWYERS. WHILE I AM DOING THAT I WOULD LIKE FOR YOU ALL
23 TO SELECT A FOREPERSON TO SERVE THE JURY. THE JOB OF THE
24 FOREPERSON IS TO PRESIDE OVER THE DELIBERATIONS AND THEN
25 WHEN IT BECOMES NECESSARY TO COMMUNICATE WITH THE COURT

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1 AND THOSE COMMUNICATIONS WILL HAVE TO BE IN WRITING.

2 NOW, ONE OF THE TIMES THAT YOU'LL HAVE TO COMMUNICATE
3 WITH ME IS WHEN YOU HAVE REACHED A VERDICT, AND WHEN THE
4 JURY HAS UNANIMOUSLY REACHED A VERDICT THE FOREPERSON
5 WOULD WRITE THAT ON THE BACK OF THE VERDICT FORM AND YOU
6 WILL SEE IN THE LOWER LEFTHAND CORNER ON THE BACK OF THE
7 INDICTMENT THE WORD VERDICT AND BELOW THAT ARE FOUR BLANK
8 LINES. THE FOREPERSON WOULD WRITE OUT THE VERDICT THAT
9 THE JURY HAS UNANIMOUSLY REACHED, SIGN IT, DATE IT, AND
10 NOTIFY THE BAILIFF THAT YOU HAVE REACHED A VERDICT AND
11 WE'LL GET YOU BACK OUT HERE IN THE COURTROOM TO RECEIVE
12 YOUR VERDICT.

13 NOW, YOUR VERDICT OPTIONS ARE TWO FOR EACH OF THE
14 INDICTMENTS. FIRST IS -- THE FIRST OPTION IS GUILTY AND
15 THE SECOND OPTION IS NOT GUILTY. NOW, EACH OF THESE
16 INDICTMENTS MUST BE SEPARATELY CONSIDERED WITH ONE
17 EXCEPTION. YOU CONSIDER THE ARMED ROBBERY INDICTMENT
18 FIRST. IF YOU FIND THE DEFENDANT NOT GUILTY OF ARMED
19 ROBBERY, THAT'S THE END OF YOUR DELIBERATIONS. YOU WOULD
20 HAVE BY NECESSITY FOUND THE DEFENDANT NOT GUILTY OF
21 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
22 CRIME. ON THE OTHER HAND, IF YOU FIND THAT THE STATE HAS
23 PROVEN ALL OF THE FIVE ESSENTIAL ELEMENTS OF ARMED ROBBERY
24 BEYOND A REASONABLE DOUBT AND YOU FIND THE DEFENDANT
25 GUILTY OF ARMED ROBBERY, YOU WOULD MOVE ON TO CONSIDER

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1 WHETHER OR NOT THE STATE HAS PROVEN THE DEFENDANT GUILTY
2 OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A
3 VIOLENT CRIME.

4 MS. PROPER, WOULD YOU PLEASE REMAIN IN YOUR SEAT?
5 THE REST OF YOU MAY GO BACK IN THE JURY ROOM. AS SOON AS
6 YOU HAVE TOLD US WHO THE BAILIFF (SIC) IS, I WILL SEND
7 BACK TO YOU THE EVIDENCE AND THE INDICTMENTS.

8 NOW, LET ME CLEAR UP ONE MORE THING. AND, FIRST, LET
9 ME ASK THIS QUESTION OF THE STATE AND LAW ENFORCEMENT
10 OFFICERS. I HAVE NOT HEARD ANY DISCUSSION OF ANY
11 AMMUNITION THAT GOES WITH THIS SHOTGUN. THERE IS NONE IN
12 EVIDENCE; IS THAT CORRECT?

13 MS. WILLIS: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT. WHEN -- THE SHOTGUN IS GOING
15 TO BE BACK THERE WITH YOU. EVEN THOUGH WE HAVE VERIFIED
16 THAT IT IS UNLOADED AND EVEN THOUGH IN ITS UNLOADED STATE
17 IT IS NOT A THREAT TO ANYONE, IT IS STILL A FIREARM AND IT
18 NEEDS TO BE HANDLED WITH CARE. YOU KNOW, THIS IS GOING TO
19 SOUND RIDICULOUS EVEN AS I SAY IT, BUT, NEVERTHELESS, IF
20 ANYONE WERE TO POSSIBLY HAVE IN THEIR POSSESSION ANY
21 AMMUNITION FOR THAT FIREARM IT, OBVIOUSLY, IS NOT TO BE
22 TESTED IN ANY WAY. I MEAN, I SAY THAT, AND Y'ALL ARE
23 LAUGHING, BUT I SAY IT OUT OF A SORT OF URGENT SENSE OF
24 CAUTION.

25 ALL RIGHT. I AM GOING TO SEND YOU BACK INTO THE JURY

1 ROOM NOW, AND YOU'LL HAVE TO EXHIBITS DELIVERED TO YOU
2 ALONG WITH THE INDICTMENTS. I AM NOT GOING TO SEND YOU A
3 WRITTEN COPY OF THE JURY CHARGE AS I DID IN THE CASE THAT
4 SOME OF YOU WORKED ON EARLIER THIS WEEK.

5 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 3:13.)

6 THE COURT: WOULD YOU PLEASE TAKE MS. PROPER BACK AND
7 PUT HER IN A DIFFERENT JURY ROOM?

8 MA'AM, DO YOU HAVE ANYTHING IN THE JURY ROOM THAT
9 Y'ALL WERE USING?

10 THE JUROR: JUST MY SWEATER.

11 THE COURT: OKAY. ONE OF THE BAILIFFS WILL GET THAT
12 FOR YOU AND BRING IT TO YOU. EVEN THOUGH YOU'RE NOT GOING
13 TO BE PART OF THE JURY AT LEAST FOR NOW, IT IS POSSIBLE
14 THAT SOMETHING COULD HAPPEN AND I COULD PUT YOU ON THE
15 JURY. SO, IF YOU DON'T MIND, I AM GOING TO LET YOU SIT IN
16 ONE OF THE OTHER JURY ROOMS. DO NOT DISCUSS THIS CASE IN
17 ANY WAY. THEY'LL GIVE YOU SOMETHING TO READ. THEY'LL
18 GIVE YOU SOME DRINKS, WHATEVER IT IS THAT YOU WOULD LIKE.
19 OKAY?

20 THE JUROR: OKAY.

21 THE COURT: THANK YOU, MA'AM.

22 (WHEREUPON, THE ALTERNATE JUROR EXITED THE COURTROOM
23 AT 3:14.)

24 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

25 MS. WILLIS: YOUR HONOR, I MAY NOT HAVE HEARD IT ON

1 YOUR CHARGE. MAYBE I OVERLOOKED IT, BUT DID YOU STATE
2 THAT IT'S ALSO AS FAR AS ARMED ROBBERY HE WAS ARMED WHILE
3 USING A REPRESENTATION OF A DEADLY WEAPON OR ANY OBJECT
4 WHICH A PERSON PRESENT DURING THE COMMISSION OF A ROBBERY
5 REASONABLY BELIEVED TO BE A DEADLY WEAPON?

6 THE COURT: I DON'T BELIEVE I DID. BUT ON THE FACTS
7 OF THIS CASE WHOEVER COMMITTED THE ROBBERY WALKED IN THERE
8 WITH A SHOTGUN IN THEIR HANDS... SO, IT'S NOT NECESSARY TO
9 CHARGE THINGS THAT DON'T RELATE, NOR IS IT NECESSARY TO
10 PUT STUFF IN THE INDICTMENT THAT DOESN'T RELATE TO THE
11 FACTS OF THE CASE.

12 MS. WILLIS: I DIDN'T WANT THE JURY TO THINK IT
13 NEEDED TO BE LOADED. THAT'S MY CONCERN.

14 THE COURT: I NEVER TOLD THEM THAT IT HAD TO BE
15 LOADED. ANY OTHER EXCEPTIONS?

16 MS. WILLIS: NO, YOUR HONOR.

17 THE COURT: ANY EXCEPTIONS FROM THE DEFENSE?

18 MR. MAULDIN: NO, YOUR HONOR, BUT SINCE WE HAD THE
19 OPPORTUNITY TO REST I WOULD TAKE THE OPPORTUNITY TO RENEW
20 MY MOTION FOR A DIRECTED VERDICT ON THE GROUNDS --

21 THE COURT: MOTION IS DENIED. Y'ALL COME UP HERE AND
22 MAKE SURE THAT YOU AGREE ON THE PROPER SET OF EXHIBITS
23 THAT GOES BACK TO THE JURY, AND AS SOON AS THEY'VE AGREED
24 ON THAT YOU CAN TAKE THE INDICTMENTS AND THE EXHIBITS AND
25 SEND THEM BACK AND LET THEM TELL YOU WHO THE FOREPERSON IS

1 BEFORE YOU ACTUALLY GIVE THEM THE EXHIBITS.

2 (WHEREUPON, THE ATTORNEYS COMPILED THE EXHIBITS.)

3 THE COURT: ALL RIGHT. YOU CAN SEND IT ALL BACK AND
4 LET THEM BEGIN.

5 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 3:16.)

6 (WHEREUPON, A BREAK WAS TAKEN.)

7 THE COURT: BRING IN THE JURY.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 3:41.)

10 THE COURT: MR. FOREMAN, HAS THE JURY REACHED A
11 VERDICT?

12 THE FOREPERSON: YES, WE HAVE.

13 THE COURT: PASS IT TO THE BAILIFF, PLEASE.

14 THE CLERK: YOUR HONOR, WE HAVE 2006-GS-02-883, STATE
15 OF SOUTH CAROLINA, COUNTY OF AIKEN, VERSUS BRAHEIM JAMAL
16 HILL INDICTED FOR ARMED ROBBERY. WE, THE PETIT JURY, FIND
17 BRAHEIM JAMAL HILL GUILTY OF ARMED ROBBERY.

18 YOUR HONOR, WE HAVE 2006-GS-02-884, STATE OF SOUTH
19 CAROLINA, COUNTY OF AIKEN, VERSUS BRAHEIM JAMAL HILL
20 INDICTED FOR POSSESSION OF A FIREARM OR A KNIFE DURING THE
21 COMMISSION OF A VIOLENT CRIME OR ATTEMPT TO COMMIT A
22 VIOLENT CRIME. WE, THE JURY, FIND THE DEFENDANT BRAHEIM
23 JAMAL HILL GUILTY.

24 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IS
25 THIS YOUR VERDICT? IF SO, INDICATE BY RAISING YOUR RIGHT

1 HAND. IS THIS STILL YOUR VERDICT? ALL HANDS ARE RAISED.

2 THE COURT: PASS ME THE INDICTMENTS, PLEASE.

3 ANYTHING BEFORE WE MOVE INTO SENTENCING?

4 MS. WILLIS: NOTHING FROM THE STATE, YOUR HONOR.

5 MR. MAULDIN: NO, YOUR HONOR.

6 THE COURT: BRING HIM AROUND. BRING THE DEFENDANT UP
7 TO THE BAR. I AM WAITING ON THE SENTENCING SHEETS, I
8 SUPPOSE.

9 MR. GIBBONS: JUDGE FEW, DO YOU REQUIRE THEM TO SIGN?

10 THE COURT: MR. MAULDIN, I'LL GIVE YOU AND YOUR
11 CLIENT AN OPPORTUNITY TO LOOK OVER THE INFORMATION THAT
12 THE SOLICITOR HAS PUT ON THE SENTENCING SHEET ABOVE THE
13 LINE THERE AND VERIFY ITS ACCURACY. IF AFTER HAVING
14 VERIFIED THE ACCURACY IF YOU WOULD LIKE TO SIGN THE
15 SENTENCING SHEET AND IF YOUR CLIENT WOULD LIKE TO, YOU'RE
16 WELCOME TO DO SO.

17 DOES THE DEFENDANT HAVE A PRIOR RECORD?

18 MS. WILLIS: NO, YOUR HONOR, NO CONVICTIONS.

19 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE STATE?

20 MS. WILLIS: NOTHING FROM THE STATE, YOUR HONOR.

21 THE COURT: IF ANYONE FROM THE STORE, THE VICTIMS
22 WOULD LIKE TO SAY ANYTHING I'LL BE HAPPY TO HEAR FROM YOU.

23 MR. MAULDIN?

24 MR. MAULDIN: THANK YOU, YOUR HONOR. MR. HILL IS 22
25 YEARS OLD. HE IS FROM THE AIKEN AREA. HE HAS A 9TH GRADE

1 EDUCATION. HE WENT TO MIDLAND VALLEY HIGH SCHOOL. HE'S
2 WORKED IN THE PAST AT A CARWASH IN WILLISTON AS WELL AS
3 DOING CONSTRUCTION WORK FOR AN APARTMENT HERE ON THE
4 SOUTHSIDE. HE IS SINGLE, BUT HE HAS TWO CHILDREN -- A
5 GIRL THAT'S ONE YEAR OLD AND A CHILD THAT WAS BORN IN
6 MARCH WHILE HE WAS STILL IN THE DETENTION CENTER AWAITING
7 TRIAL ON THIS CHARGE. THEY BOTH LIVE WITH HIS GIRLFRIEND
8 IN CLEARWATER.

9 HE DOES NOT HAVE ANY PRIOR RECORD, YOUR HONOR.
10 TAKING HIS AGE AND LACK OF PRIOR RECORD, WE WOULD HOPE
11 YOUR HONOR WOULD IMPOSE THE MINIMUM SENTENCE OF 10 YEARS.

12 THE COURT: MR. HILL, IS THERE ANYTHING YOU WANT TO
13 SAY?

14 THE DEFENDANT: NO, SIR.

15 THE COURT: HE'S BEEN IN JAIL SINCE HE WAS ARRESTED?

16 MR. MAULDIN: THAT'S CORRECT, YOUR HONOR, I BELIEVE
17 IT'S 211 DAYS.

18 THE COURT: ANYTHING FURTHER?

19 MR. MAULDIN: NOT FROM THE DEFENSE, YOUR HONOR.

20 THE COURT: MR. HILL, THE SENTENCE ON THE ARMED
21 ROBBERY IS 30 YEARS. THE SENTENCE ON THE POSSESSION OF A
22 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME IS FIVE
23 YEARS. THOSE ARE TO BE SERVED CONCURRENTLY. GOOD LUCK TO
24 YOU, SIR.

25 MR. MAULDIN: THANK YOU, YOUR HONOR. AT THIS TIME

1 I'D LIKE TO MAKE A MOTION FOR NEW TRIAL BASED ON ALL PRIOR
2 MOTIONS AND OBJECTIONS.

3 THE COURT: WELL, THE GROUNDS THAT I HAVE AS YOU
4 MIGHT NOT KNOW TO GRANT A NEW TRIAL DO NOT INCLUDE AFTER
5 THE VERDICT HAS BEEN RENDERED ANYTHING THAT HAPPENED
6 DURING THE COURSE OF THE TRIAL, BUT, NEVERTHELESS, ON
7 WHATEVER GROUNDS THAT YOU MIGHT POSSIBLY HAVE RAISED FOR
8 YOUR MOTION FOR A NEW TRIAL I DENY THE MOTION.

9 MR. MAULDIN: YES, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
11 GOING TO ASK YOU FOLKS TO STEP BACK TO YOUR JURY ROOM FOR
12 A FEW MINUTES AND I'LL SPEAK TO YOU BACK THERE.

13 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 3:53.)

14 (END OF TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

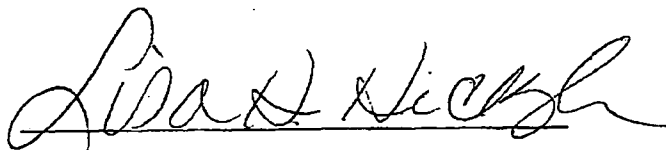
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF JULY, 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 10, 2007



LISA H. HICKLIN, COURT REPORTER

2009 JP-02-103
2006 GS-02-884

Filed 1-26, 2009

C.C.P. & G.S. - Aiken County
Shannon Jones 100
Deputy Clerk John F. W.
Trial Judge: David Maudin
Trial Atty.: Lisa Maudin
Court Reporter: Lisa Maudin
Sec: PCR Petitioner
General Sessions Atty. Gen.
Appointed Atty.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Aiken)Braheim Hill # 316768)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Aiken County detention Center
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions, Aiken S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Armed Robbery - 16-11-330(A) 2006-GS-02-883
 - (b) Possession of a Weapon during the Commission of Violent Crime - 16-23-1
 - (c) 2006-GS-8
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 26, 2006 / 30 years
 - (b)
 - (c)

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ Yes.

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of appeals.

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. August 7, 2008

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UNPUBLISHED OPINION No. 2008-UP-452

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of Counsel

(b) The trial Judge's failure to grant direct Verdict, where evidence fails to support elements of the crime of which applicant was convicted.

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Please See attached Memorandum of law.

(b) _____

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No.

(d) any other petitions, motions or applications in this or any other Court?

No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) P.C.R. Proper Forum for claims
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes.
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. David Mauldin

ii. Robert M. Pachak / S.C. Commission of Appellate defense P.O. Box 11589
Columbia S.C.
2921

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. On Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

"Reverse" to the Aiken County Court of General Sessions
for New trial.

19. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

COUNTY OF Aiken)

VERIFICATION

I, Braheim Hill, 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.

Braheim Hill

Sworn to and subscribed before me

This 09 day of January, 2009.

Franklin S.
Notary Public for South Carolina

My Commission Expires 01-31-2010

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Braheim Hill, 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 or 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 proceeding or give security therefor.

Braheim Hill

Applicant

Sworn to and subscribed before me

This 09 day of January, 2009.

Franklin S.
Notary Public for South Carolina

My Commission Expires: 01-31-2010

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Braheim Hill, #316768,

Applicant,

v.

State of South Carolina,

Respondent.

2009-CP-02-0103 3-10-10

FILED

Ch. H. H. H.
Anita Knesele
Deputy Clerk 830

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 26, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. Applicant was indicted at the June 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-0883) and Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime (2006-GS-02-0884). David Mauldin, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable John C. Few on July 26, 2006. Applicant was found guilty and sentenced to thirty (30) years for Armed Robbery and to a concurrent term of five (5) years for Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Hill, Op. No. 2008-UP-452 (S.C. Ct. App. filed Aug. 7, 2008).

records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "The trial judge's failure to grant direct verdict, where evidence fails to support elements of the crime of which applicant was convicted."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. See S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that

counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's second allegation is a direct appeal issue, and is not appropriate for PCR. The Respondent submits that this allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's second allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Moreover, upon submission of an Anders brief, the appellate court conducts a review of the record to determine if there are any issues of arguable merit to be found. See State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991); State v. Lyles, 673 S.E.2d 811, 813 (2009). Such a review was conducted in this case, and no issues of arguable merit were found.

The Applicant could have raised this issue on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 13, 2009

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2009-CP-02-0103

BRAHEIM HILL, 316768

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

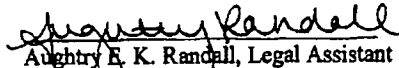
STATE OF SOUTH CAROLINA,

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:

Patricia T. James, Esquire
Post Office Box 1739
Aiken SC 29802

DATED this 14th day of May, 2009.


Aubrey E. K. Randall, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2009-CP-02-00103

3
4 BRAHEIM HILL,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Friday, January 29, 2010

11 Aiken, South Carolina

12 BEFORE:

13 THE HONORABLE W. JEFFREY YOUNG
14

15 APPEARANCES:

16 Counsel on Behalf of the Applicant:
17 Patricia James, Esq.

18 Counsel on Behalf of the Respondent, State of SC:
19 Mary S. Williams, Esq.
20
21

22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 1154
25 Aiken, SC 29802-1154

EXAMINATION INDEX

BRAHEIM JAMAL HILL

DIRECT BY MS. JAMES 5

CROSS BY MS. WILLIAMS 9

DAVID MICHAEL MAULDIN

DIRECT BY MS. WILLIAMS 12

CROSS BY MS. JAMES 19

REDIRECT BY MS. WILLIAMS 23

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON FRIDAY, JANUARY 29, 2010 AT 10:33 A.M.:

2 MS. WILLIAMS: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. WILLIAMS: This is Braheim Hill. It's case Number
5 2009-CP-02-0103. Mr. Hill was charged with armed robbery
6 and possession of a firearm during the commission of a
7 violent crime. And he was represented on that charge by
8 David Mauldin.

9 He did proceed to a jury trial before the Honorable
10 John Few on July 26, 2006. He was sentenced to 30 years
11 for armed robbery and a five-year concurrent term for
12 possession of a weapon.

13 He did file an appeal. An Anders brief was submitted
14 on his behalf. The appeal was dismissed.

15 His application was timely filed on January 26th of
16 2009, and he's represented today by Patricia James.

17 He's alleged ineffective assistance of counsel, no
18 real specifics there, and a second allegation that the
19 trial judge's failure to grant a directed verdict was
20 incorrect.

21 And the State's position is that's a direct appeal
22 issue, but I will let him bring up all these issues today.

23 THE COURT: Well, I mean, I'm not supposed to go into
24 whether a judge didn't grant --

25 MS. WILLIAMS: Yes, sir. Anything that could have

BRAHEIM JAMAL HILL - DIRECT

1 been raised on direct appeal because the motion for
2 directed verdict was made, and that would have to be a
3 direct appeal issue and is inappropriate for PCR.

4 THE COURT: Right. Okay. Ms. James, are you ready to
5 proceed?

6 MS. JAMES: Yes, Your Honor.

7 THE COURT: You may call your first witness.

8 MS. JAMES: Mr. Hill, please go up and sit beside His
9 Honor and be sworn in.

10 BRAHEIM JAMAL HILL, having been duly sworn, was
11 examined and testified as follows:

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

14 THE APPLICANT: Braheim Hill. Braheim Jamal Hill.

15 THE COURT: Ms. James, are you ready to proceed?

16 MS. JAMES: Yeah.

17 THE COURT: You may be seated if you'd like because of
18 your knees.

19 MS. JAMES: I may have to. Thank you, Your Honor.

20 THE COURT: I'll let you be the judge of that.

21 MS. JAMES: Thank you.

22 DIRECT EXAMINATION

23 BY MS. JAMES:

24 Q. Mr. Hill, be sure and speak up so I can hear you,
25 please.

BRAHEIM JAMAL HILL - DIRECT

1 You alleged in your post conviction appeal that --
2 post conviction relief petition, rather, that you had
3 ineffective assistance of counsel during your trial.

4 What do you base that on? What do you think your
5 attorney did wrong?

6 A. He failed to object to the fingerprint testimony that
7 was brought up in the trial.

8 Q. So there was testimony that was presented by the State
9 in regard to fingerprints. Is that -- do I understand
10 you?

11 A. Yes, ma'am.

12 Q. Did he fail to object to that when that was
13 introduced?

14 A. Yes, ma'am.

15 Q. Okay. And do you specifically recall what the problem
16 might have been in regard to that fingerprint?

17 A. Well, Investigator Clay Adams, he failed to lay a
18 foun -- he laid a foundation down wrong. He didn't lay
19 the foundation down right, and Mauldin failed to object to
20 it.

21 Q. I'm sorry. I don't know that I understood what you
22 said. You said they were saying that it was your print
23 without proving it. Is that what you said?

24 A. Yes, ma'am.

25 Q. Okay. And your attorney didn't object to that?

BRAHEIM JAMAL HILL - DIRECT

1 A. Yes, ma'am.

2 Q. Okay. Was there anything else in regard to your, what
3 your attorney did or didn't do that you think was wrong?

4 A. Well, the lineup. He failed, you know, to ask for a
5 lineup.

6 Q. Okay. So, do you recall between the time of when you
7 were, or the commission of the crime and when you were
8 arrested and the date of your trial, about how long a
9 period was that?

10 A. Nine months.

11 Q. Nine months?

12 A. Yes, ma'am.

13 Q. Okay. And was there ever any kind of a lineup during
14 that time?

15 A. No, ma'am.

16 Q. Okay. And what would have been the purpose of a
17 lineup?

18 A. It probably would have made a different outcome on the
19 trial, but nine months later after I'm in court, you know,
20 the only one at the defense table with a green suit on, he
21 points me out. But I figured if he would have did a
22 lineup, it would have been more, a whole more lot easier
23 instead of bringing me in court nine months later.

24 Q. So if I understand you, you're saying that you were
25 identified during the trial?

BRAHEIM JAMAL HILL - DIRECT

1 A. Yes, ma'am.

2 Q. And you were the only one in the courtroom dressed as
3 a jail prisoner --

4 A. Yes, ma'am.

5 Q. -- when you were identified?

6 A. Yes, ma'am.

7 Q. And you were never put in any lineup previous to that?

8 A. No, ma'am.

9 Q. And you feel like your attorney maybe should have
10 asked for a lineup prior to that time?

11 A. Yes, ma'am.

12 Q. Okay. Did you have any other concerns about what your
13 attorney might have done such as calling in any witnesses
14 or anything?

15 A. No, ma'am. He didn't call any witnesses.

16 Q. Were there any witnesses he could have called? Did
17 you tell him about any, like an alibi witness?

18 A. I talked about it, but he didn't want to dig deep into
19 it.

20 Q. But you did talk with him about it? Did you have an
21 alibi witness that you talked to him about?

22 A. Yes, ma'am.

23 Q. And this was a person who said you were someplace else
24 at the time the crime was committed?

25 A. Yes, ma'am.

BRAHEIM JAMAL HILL - CROSS

1 Q. Okay. And who was this?

2 A. My baby mama.

3 Q. Anybody else beside her at that time?

4 A. Her mom.

5 Q. Her mother?

6 A. Yes, ma'am.

7 Q. Okay. Prior -- at the time of your trial, did you
8 have any prior criminal arrest record, any convictions?

9 A. No, ma'am.

10 Q. Did you ever discuss your prior record with your
11 attorney?

12 A. We did in the county but we ain't talk much about it.

13 Q. Okay. Did you discuss with your attorney about
14 whether you would testify or not?

15 A. Yes, ma'am.

16 Q. Okay. Did he give you advice in regard to that?

17 A. Yes, ma'am.

18 Q. Okay. Was there anything else? This is your day in
19 court to state any concerns, any other concerns you might
20 have in regard to your petition and your request that your
21 conviction be reversed and for a new trial.

22 A. No, ma'am.

23 MS. JAMES: Okay. Thank you, Your Honor.

24 THE COURT: Yes, ma'am. Ms. Williams?

25 CROSS-EXAMINATION

BRAHEIM JAMAL HILL - CROSS

1 BY MS. WILLIAMS:

2 Q. Mr. Hill, how many times would you estimate that you
3 met with Mr. Mauldin?

4 A. Where? In the county?

5 Q. Uh-huh.

6 A. Twice.

7 Q. And did he --

8 MS. JAMES: I beg your pardon. I didn't hear that.

9 MS. WILLIAMS: I'm sorry. I asked how many times did
10 he meet with Mr. Mauldin.

11 MS. JAMES: And his answer was?

12 MS. WILLIAMS: Twice.

13 MS. JAMES: Twice. Thank you.

14 BY MS. WILLIAMS:

15 Q. And did he discuss with you the evidence that would be
16 presented at your trial?

17 A. Yes, ma'am.

18 Q. Did he share with you the video from the store?

19 A. Yes, ma'am.

20 Q. The gun?

21 A. Yes, ma'am.

22 Q. The fingerprint?

23 A. Yes, ma'am.

24 Q. The statement that the police would say you gave?

25 A. Yes, ma'am.

1 Q. Okay. And was it your testimony earlier that you were
2 in prison clothing or were you in street clothing at your
3 trial?

4 A. I was in jail clothing.

5 Q. Similar to what you're wearing today?

6 A. No, ma'am. Green suit. County clothes.

7 MS. WILLIAMS: Thank you. I don't have any more
8 questions.

9 THE COURT: I do. What was the question -- you said
10 about his testifying. What was the complaint about his
11 testifying or not testifying?

12 MS. JAMES: He didn't have thorough discussion to get
13 good advice about it. He had no prior record.

14 THE COURT: He talked to the judge about it, though,
15 didn't he?

16 MS. JAMES: Yes, he did.

17 THE COURT: I mean, Mr. Hill, the Judge went over with
18 you as to whether you wanted to testify or not and you
19 said you did not want to testify. Is that correct?

20 THE APPLICANT: Yes, sir.

21 THE COURT: Okay. All right. Thank you. You may
22 step down, unless you have any redirect.

23 MS. JAMES: No, I have nothing else, Your Honor.
24 Thank you.

25 THE COURT: Thank you. Ms. Williams?

DAVID MICHAEL MAULDIN - DIRECT

1 MS. WILLIAMS: Your Honor, the State would call David
2 Mauldin.

3 DAVID MICHAEL MAULDIN, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please take a seat in the witness box and
6 state your full name for the Court.

7 THE WITNESS: David Michael Mauldin. M-A-U-L-D-I-N.

8 DIRECT EXAMINATION

9 BY MS. WILLIAMS:

10 Q. Mr. Mauldin, can you tell me where you're currently
11 employed?

12 A. At the Lexington County Public Defender's Office.

13 Q. And prior to that, where were you at?

14 A. I was at the Aiken County Public Defender's Office.

15 Q. So how long have you been practicing criminal law?

16 A. A little over 10 years.

17 Q. And is it in your capacity as a public defender that
18 you came to represent Mr. Hill?

19 A. Yes, ma'am.

20 Q. Can you review with me, do you have any recollection
21 of the evidence that the State would be presenting at this
22 trial?

23 A. Yes, ma'am. There was a gun with fingerprints on it.
24 There was a statement that Mr. Hill had made to the
25 officers saying, yeah, I did it. It was a very limited

DAVID MICHAEL MAULDIN - DIRECT

1 statement. That was basically it.

2 And I believe the store owner, the victim of the armed
3 robbery identified him off the stand.

4 Q. Now the store owner had not been shown a lineup; is
5 that correct?

6 A. No.

7 Q. So there was no basis for you to challenge that as a
8 tainted identification; is that correct?

9 A. No, ma'am.

10 Q. Mr. Hill has stated today that he was in prison
11 clothing. Is that your recollection?

12 A. No, ma'am.

13 Q. Can you tell me the clothing that you recall him being
14 in during the trial?

15 A. I can't remember exactly what the clothing is. I know
16 I've tried over 30 trials in general sessions and I don't,
17 I haven't had a single client that went to trial in jail
18 clothing. I would have remembered that.

19 Q. Now, Mr. Hill has also discussed today that he wanted
20 you to call some witnesses. Can you tell me what sort of
21 investigation you did in preparation for the trial?

22 A. Yes. We had met with Mr. Hill after he had rejected
23 the State's plea offer. I met with him and my
24 investigator. He gave us the names of several people that
25 he believed would help him out in this case to include, I

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1 believe, his girlfriend and a grandmother as well as
2 another individual.

3 He had said that he had indeed touched the gun and
4 that's why his fingerprints were on it, but he had touched
5 it because someone was trying to sell it to him. And so
6 he gave us the names of some people that were there when
7 he touched it, and we tried to find those people as well.

8 Q. As a result of your investigation, did you find any
9 witnesses that you felt you could call at trial?

10 A. No, ma'am. After my investigator reported back to me
11 and what his grandmother, Lena May Sapp, and what his
12 girlfriend, Brittany Williams, had to say, I did not
13 believe that they would be witnesses that would aid him at
14 trial.

15 Q. And did you discuss the outcome of the investigation
16 with Mr. Hill?

17 A. Yes, we did. At a subsequent meeting Mr. Anderson and
18 I went to the jail and discussed that with him.

19 Q. And so he understood the status of your investigation
20 prior to trial?

21 A. That's correct.

22 Q. Okay. Now, he has recalled that he only met with you
23 twice. Can you tell me what your recollection is in terms
24 of your meetings with Mr. Hill?

25 A. Well, it's kind of difficult. Mr. Hill had been

DAVID MICHAEL MAULDIN - DIRECT

1 arrested on various, a number of charges. He had a
2 burglary second that he was in jail initially for. And I
3 saw him on that. And then he was re-arrested for this as
4 well as a criminal domestic violence, high and aggravated.

5 My notes have kind of been tore up since the file has
6 been in storage. I noticed that I did meet with him that
7 second time with the investigator after we had went and
8 tried to talk to his witnesses.

9 We had met the time before that for him to provide us
10 the witnesses. I met with him a time before that to relay
11 the plea offer from the State. I know I met him initially
12 in the jail when he was re-arrested and put back in.

13 I believe we had a preliminary hearing on the case
14 while he was in jail. And I probably spoke to him several
15 times on the telephone regarding his case status.

16 Q. And is the telephone -- is there a way for you to
17 speak with him regularly on the telephone from the jail
18 there?

19 A. Well, it's a free call from the jail. Normally calls
20 out of the jail are collect, but it's a free call to our
21 office. If I'm in and he called I would talk to him, if I
22 was not in a meeting or something like that.

23 Q. Okay. And were you representing him on these other
24 charges as well?

25 A. Yes, I think I failed to mention it was a possession

DAVID MICHAEL MAULDIN - DIRECT

1 of crack cocaine in there somewhere.

2 Q. Okay. Mr. Hill has also said -- raised an issue
3 regarding his testimony at trial. Tell me about your
4 recollection of discussions about Mr. Hill offering
5 testimony.

6 A. I don't recall too much about it. He didn't have very
7 much of a prior record. And I basically left it up to
8 him. I let him know that the solicitor would try to
9 cross-examine him about certain things.

10 And he didn't want to face cross-examination is my
11 best recollection of why he chose not to testify.

12 Q. So this was a decision that you made in conjunction
13 with Mr. Hill?

14 A. I think I pretty much left it up to him. I gave him
15 the pros and cons of it and he made his decision.

16 Q. The cons being?

17 A. The -- subject to cross-examination.

18 Q. Okay.

19 A. Having the solicitor trip him up.

20 MS. WILLIAMS: Beg the Court's indulgence for just one
21 moment.

22 THE COURT: Yes, ma'am. (Pause.)

23 BY MS. WILLIAMS:

24 Q. All right. I want to try to review some of the themes
25 just to get an idea of what your themes were in the

DAVID MICHAEL MAULDIN - DIRECT

1 defense. Can you tell me, do you recall arguing about the
2 identification?

3 A. Yes. I did cross-examine the witness on the fact that
4 it had been a period of time between the actual event and
5 his testimony in court. And that he was in fact pointing
6 out -- the only man seated in the courtroom was the
7 Defendant.

8 And I believe I expounded upon that in my closing
9 argument; that the identification would not be reliable.

10 Q. All right. And then the statement that he made, can
11 you tell me a little bit more about your recollection of
12 the statement to the police?

13 A. Well, from what I recollect, it was presented at the
14 pretrial hearing and then at trial was that they went to
15 interview him regarding it and informed him of the
16 fingerprint evidence. And he asserted his right to an
17 attorney and they marched him out. As they did, a chief
18 investigator said, that's fine, we don't need you to
19 talk. We got you anyway.

20 They let him out behind the police station. As he was
21 going down the stairs, one of the officers said he turned
22 to him and said, I did it.

23 Q. So you made a remark that that wasn't a very serious
24 statement?

25 A. That's correct.

DAVID MICHAEL MAULDIN - DIRECT

1 Q. And the fingerprint, did you compare how the
2 fingerprint appeared on the gun, and to the video, the way
3 the gun was handled?

4 A. I don't know if I compared it to the video. I had
5 spoken with the fellow that does the fingerprint analysis
6 beforehand and he had showed me the arrest card for the
7 possession of crack cocaine that he had compared it to.
8 And he showed me the points of comparison.

9 I may have had -- I'm not absolutely positive, but
10 there's an investigator in our office that does the
11 fingerprints. I don't know if I had him double-check that
12 or not.

13 However, when the fingerprints were produced at trial,
14 I was going to stipulate anyway because that was his
15 arrest card. And he had provided the story that he had
16 indeed handled the gun, and if he had changed his mind and
17 decided to testify and presented that story...

18 Q. So this was because you knew the fingerprint
19 investigator, familiar with his work?

20 A. Well, yes, ma'am. And also I kind of wanted to gloss
21 over the fact that there had been a prior arrest.

22 Q. Okay.

23 A. And I didn't want the jury to know that there had been
24 a prior arrest and that's how they obtained the
25 fingerprint on the card.

DAVID MICHAEL MAULDIN - CROSS

1 Q. And then you wanted to --

2 A. I thought it would be better to go that way rather
3 than having detrimental evidence, perhaps, presented to
4 the jury.

5 Q. And then wanted to leave it open in case he wanted to
6 testify?

7 A. That's correct.

8 Q. The video, was that a very clear depiction to your
9 recollection?

10 A. I can't recall. I don't know if you could identify an
11 individual off the video. An individual -- it just merely
12 depicted the events. I don't know if it would have been
13 good for identification purposes.

14 MS. WILLIAMS: I believe that's all the questions I
15 have for Mr. Mauldin.

16 THE COURT: Thank you.

17 MS. JAMES: Yes. Just briefly.

18 CROSS-EXAMINATION

19 BY MS. JAMES:

20 Q. In regard to that fingerprint introduction, you said
21 you failed to object to the proper foundation for it?

22 A. That's correct. The solicitor and I actually
23 discussed stipulating to that before the trial. I guess
24 she forgot, but that was my plan to stipulate to avoid any
25 kind of mention of a prior arrest or any insinuation of a

DAVID MICHAEL MAULDIN - CROSS

1 prior arrest.

2 Q. Well, if it had been introduced and they'd stated it
3 had been from a -- they obtained it at a prior arrest, at
4 that point did he have any prior convictions?

5 A. No, he did not have any prior convictions.

6 Q. So couldn't you have made the State admit that there
7 were no convictions? Even though there had been an
8 arrest, that there was no conviction?

9 A. Perhaps so, but I just wanted to limit any knowledge
10 of contact, prior contact with law enforcement in a
11 negative nature..

12 Q. So you made a decision that that was more important
13 than putting in that he had no prior record, no
14 convictions, no criminal convictions at that time?

15 A. I don't know if I necessarily could have put that in.
16 I might could have, but I just wanted to limit the jury's
17 knowledge of his prior involvement with law enforcement
18 even if it was just an arrest.

19 Q. Did you personally ever talk to any of the people he
20 told you might be witnesses for him?

21 A. No, ma'am. I did not. I sent my investigator to do
22 that.

23 Q. And did he specifically tell you that at the time the
24 crime was committed that he was someplace else, he was at
25 his girlfriend's house?

DAVID MICHAEL MAULDIN - CROSS

1 A. Yes, ma'am.

2 Q. And you never talked to the girlfriend?

3 A. No. I sent my investigator to do that.

4 Q. In regard to him testifying, isn't it -- usually you
5 don't want your client testifying, the defendant/client
6 testifying, because then it can come in about prior, his
7 prior record or of convictions?

8 A. That is one concern, yes, but I understand that
9 Mr. Hill did not have any at the time.

10 Q. I'm sorry?

11 A. But I do understand that Mr. Hill did not have any at
12 the time.

13 Q. Okay. So he didn't have any record that they could --
14 any convictions they could say against him --

15 A. That's correct.

16 Q. -- or point out? Okay. So, but you said you just
17 left it up to him?

18 A. Yes, ma'am.

19 Q. Is that what you usually do?

20 A. Normally, yes. That's generally what I do. If
21 somebody has -- I just advise them of the pros and cons of
22 it. I tell them that it may be important for you to rebut
23 this evidence, or -- it's just my recollection that
24 Mr. Hill didn't want to be subject to cross-examination by
25 the solicitor..

DAVID MICHAEL MAULDIN - CROSS

1 Q. Did he say why he didn't want to be subject to cross-
2 examination if he had told you he had an alibi witness and
3 that he was at another place and that he had no prior
4 record?

5 A. I don't think he believed that he would perform well
6 on the stand.

7 Q. Oh?

8 A. That's my recollection; that he wouldn't do well under
9 cross. That's what I remember.

10 Q. Did you and he ever discuss prior to trial about the
11 lack of any identification, a lineup of any kind, a photo
12 lineup or any lineup?

13 A. Well, obviously there wasn't any. So if there was
14 one, I would have discussed it with him, but I did discuss
15 the relevant merits of the case including the fingerprints
16 and the statement. But since there was no lineup, I did
17 discuss the fact that probably that there was no
18 identification prior to trial.

19 Q. Did you think about maybe requesting some kind of a
20 lineup?

21 A. No, I did not.

22 Q. Is that something you ever do?

23 A. I can't recollect ever having done that, no.

24 Q. Okay. And who was it that identified him, was it the
25 clerk?

DAVID MICHAEL MAULDIN - REDIRECT

1 A. Yes. I can't remember his name right offhand. It was
2 the man that was robbed.

3 Q. I'm sorry?

4 A. It was the alleged victim in the case. The man was
5 robbed. I don't recollect his name.

6 Q. Okay. It was the clerk in the store?

7 A. Yes, ma'am.

8 Q. That's who made the identification?

9 A. That's correct. He identified him in the courtroom.

10 Q. And was it made as Mr. Hill said, that during trial
11 and he was sitting at the defendant's table and he was the
12 only prisoner in the room?

13 A. Well, he was the only defendant at the defense table,
14 yes. I was there. I don't recollect if my investigator
15 was there. There was probably another lawyer there
16 assisting me, but he was the only one to point out in the
17 courtroom, yes.

18 Q. Okay. So it's not likely there's any chance the man
19 would have been identifying anybody else except for the
20 Defendant sitting at defense table?

21 A. Not in the courtroom, probably not.

22 MS. JAMES: I have nothing further. Thank you.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Anything further from the State?

25 REDIRECT EXAMINATION

1 BY MS. WILLIAMS:

2 Q. Were you able to argue about the accuracy of that
3 identification given the circumstances of the courtroom?

4 A. Yes. I think I mentioned that before; that I did
5 cross-examine him about the length and time between the
6 events and the fact that he had no chance to see Mr. Hill
7 or his picture at any time in the intervening time. And I
8 believe I did expound upon that in my closing argument.

9 Q. Would requesting a lineup be anything that you would
10 want to do? Would you have any concerns if that had been
11 asked of you?

12 A. Well, I don't know. I guess it could have been done
13 but it's speculative at this point to what would have
14 happened if this man had been shown a lineup.

15 MS. WILLIAMS: I think that's all.

16 THE COURT: Thank you. You may step down. Anything
17 further?

18 MS. WILLIAMS: No further witnesses from the State.
19 Thank you.

20 THE COURT: Do you have any reply testimony?

21 MS. JAMES: No, Your Honor.

22 THE COURT: I'm going to read over the transcript.
23 I'll take this under advisement. And I'll let Sharon --
24 excuse me -- Shannon know when I make my ruling who will
25 then inform the attorneys. Thank you.

1 MS. JAMES: Thank you, Your Honor.

2 END OF PROCEEDINGS: 11:05 A.M.

3 * * * *

4 CERTIFICATE OF REPORTER

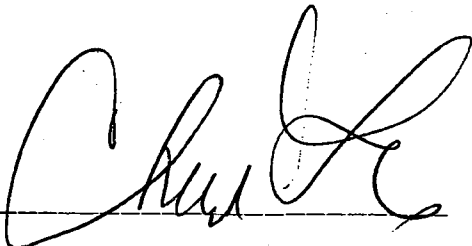
5 STATE OF SOUTH CAROLINA

6 COUNTY OF AIKEN

7 I, Cheri L. Young, Registered Professional Reporter,
8 and Official Court Reporter for the State of South
9 Carolina, Second Judicial Circuit-At Large, do hereby
10 certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and
12 evidence introduced in the hearing of the captioned case,
13 relative to appeal, in the Court of Common Pleas for Aiken
14 County, South Carolina, on Friday, the 29th day of
15 January, 2010.

16 I do further certify that I am neither of kin,
17 counsel, nor interest to any party hereto.

18 I have hereunto set my hand this Saturday, the 22nd
19 day of September, 2012.

20
21
22
23
24
25

Cheri L. Young, RPR
Official Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

Braheim Hill

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP0200103

South Carolina, State of

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 30th day of March, 2010.

Court Reporter:

PRESIDING JUDGE:

This judgment was entered on the 30th day of March, 2010, and a copy mailed first class this 30th day of March, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Thomas James Attorney at Law P.O. Box 1739
Aiken, SC 29802

Mary Shannon Williams Attorney General Po Box 11549
Columbia, SC 29211
G.S.
Solicitor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Barbara Riggs etc
Liz Godard - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Braheim Hill, #316768,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-02-0103

H874403

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 26, 2009. The Respondent made its Return on or about May 13, 2009. An evidentiary hearing into the matter was convened on January 29, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Patricia James, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was David Mauldin, Esquire ("Counsel"). This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. Applicant was indicted at the June 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-0883) and Possession of Firearm or Knife During Commission of or

1 of 8

FILED 3-30-2010
[Signature]
 H.C.P. & G.S. 9307m
[Signature]
 Deputy Clerk

Attempt to Commit a Violent Crime (2006-GS-02-0884). David Mauldin, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable John C. Few on July 26, 2006. Applicant was found guilty and sentenced to thirty (30) years for Armed Robbery and to a concurrent term of five (5) years for Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Hill, Op. No. 2008-UP-452 (S.C. Ct. App. filed Aug. 7, 2008). The remittitur was sent on August 25, 2008.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "The trial judge's failure to grant direct verdict, where evidence fails to support elements of the crime of which applicant was convicted."

At hearing, Applicant asserted that Counsel was ineffective in failing to object to fingerprint testimony, allowing him to appear in prison clothing, failing to call witnesses, and advising him not to testify.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). 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).

Summary of Trial Testimony

Robby's Convenience Store was robbed on November 28, 2005. A man walked in with a long, camouflage gun while clerk Willie Ray Rutland ("Rutland") was stocking cigarettes. Rutland described the robber as a black male wearing dark pants, a white baggy shirt, a stocking cap, socks, and bedroom slippers. Rutland identified Applicant in court as the perpetrator; Rutland was never shown a photo lineup. A videotape of the robbery was introduced. Approximately \$300.00 and a pack of cigarettes were taken from the store.

A long, camouflage gun was found behind the store, in the direction the perpetrator had fled. Applicant's fingerprint was found on the gun. Police officers also testified that Applicant was interviewed upon his arrest. Officers testified that Applicant made a comment that his print would be on a different place on the gun from what the officers indicated. Officers further testified that while Applicant was being escorted from the police station he remarked that they could just put down on paper that he did it.

Fingerprints

Applicant next asserts that Counsel failed to challenge the admission of fingerprint evidence. Counsel testified that he had spoken with the investigator who did the fingerprint analysis. Counsel stated that the fingerprint card that was compared to the fingerprint on the gun was a card from Applicant's prior drug arrest. Counsel stated at trial and at PCR hearing that he had seen Applicant's fingerprint card before because he had represented him previously. Counsel stated that he planned to stipulate to the fingerprint card to avoid mention of Applicant's prior arrest. Even though Applicant was not convicted of the offense he was arrested for, Counsel felt it best to limit the jury's knowledge of prior contact with law enforcement.

Where counsel articulates a reasonable strategy, he will not be deemed ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). I find that Counsel articulated a reasonable strategy in his decision to stipulate to the authenticity of the fingerprint card. Since Applicant may have testified, Counsel was especially aware of making sure that the jury was not aware of any law enforcement contact. Counsel also took independent steps to ensure the authenticity of the fingerprint card before entering the stipulation. Further, Applicant has failed to demonstrate prejudice in this regard. The only evidence before this court as to the authenticity of the fingerprint comparison card is Counsel's testimony that it was indeed a card containing Applicant's fingerprints. For these reasons, I find that Applicant has failed to carry his burden in this regard.

Clothing

Applicant asserts that he was dressed in prison clothing during his trial. Counsel testified that he was certain that Applicant did not wear prison clothing at trial as he had never allowed a defendant to do so. I find Counsel's testimony to be credible in this regard. Moreover, even if Applicant had been wearing such clothing, Applicant has failed to demonstrate prejudice. also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) (prejudice not presumed where applicant proceeded to trial in readily identifiable prison clothing).

Failure to Investigate

Applicant further asserts that counsel failed to adequately investigate. Applicant testified that his child's mother and her mother could have provided testimony that would have been helpful to the defense. Applicant stated that he met with Counsel only twice. Counsel testified that he met with Applicant several times, including an initial meeting, at a preliminary hearing, and a meeting to discuss a plea offer. Counsel testified that he had the assistance of an investigator in this case, and



Counsel recalled that his investigator had spoken to Applicant's girlfriend.

I find that counsel's performance was not deficient under these circumstances. Moreover, Applicant has failed to demonstrate prejudice in this regard. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). For these reasons, I find that counsel was not ineffective with regard to her investigation.

Lineup

Applicant further asserts that Counsel should have requested that a lineup be shown to the store clerk, Rutland, prior to trial. Counsel explained that Rutland identified Applicant in court. To this end, Counsel cross-examined Rutland in order to emphasize that Rutland predictably identified the only person at the defense table as the perpetrator. The record further reflects that Counsel argued the issue in his closing argument, noting that the incident occurred months prior, that no lineup had been done, and that Rutland would of course choose any person seated at the defense table. Counsel added that he does not recall in his approximately ten (10) years of experience ever asking for a lineup; such a request could just as likely be inculpatory as exculpatory. I find that Counsel's failure to request a lineup was not unreasonable under professional norms. Counsel further articulated a reasonable approach to the topic in his approach to cross-examination and argument regarding the in-court identification. Further, there has been no showing of prejudice in this regard. It is unknown whether Rutland would have selected Applicant from a lineup or not. For these reasons, I find that Applicant has failed to carry his burden in this regard.

Advice Regarding Defendant's Testimony

Applicant asserts that Counsel dissuaded him from testifying in his own defense. Applicant

asserts that this was error given his lack of criminal record. Counsel testified that he discussed with Applicant both positive and negative aspects of Applicant taking the stand. Counsel confirmed that prior record was not a concern, but Counsel testified that he and Applicant had some concerns about Applicant being subjected to cross-examination. Counsel's recollection was that Applicant was concerned that he would not do well on cross-examination. Counsel testified that while he discusses the "pros and cons" of testifying, he leaves the decision whether to testify up to the defendant.

The trial transcript reflects that the court made inquiry of both Counsel and Applicant regarding Applicant's decision whether to testify. (Tr. pp. 119-123.) A break was observed before Applicant made his decision on the record. During the court's inquiry, Applicant stated that he had discussed his right to testify with Counsel "before today and today." (Tr. p. 121.) The trial court clearly explained to Applicant while his attorney could provide advice, that the choice whether to testify was entirely his own.

I find Counsel's testimony to be credible. I find that Counsel's advice in this regard was within reasonable professional norms. The decision whether to testify is a decision that must be made by the defendant, and a criminal defendant is not required to present evidence. In this case, Counsel explained this, and Counsel provided Applicant with the positive and negative aspects of testifying in his case. Applicant informed the trial court that the decision not to testify was his own, and I find no evidence of any circumstance which should allow Applicant to depart from the truth of the statements made to the trial court. Moreover, Counsel noted concerns with Applicant's performance on cross-examination. This was a reasonable concern. I further find no evidence of prejudice such that the outcome of trial would have been different but for any alleged misadvice not to testify.



Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

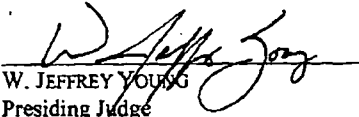
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

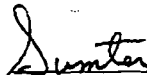
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR,¹ for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of March, 2010.


W. JEFFREY YOUNG
Presiding Judge
Second Judicial Circuit

 , South Carolina.

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

H874396 2006-65-02-00883
H874403 2006-65-02-00884

FORM 5

STATE OF SOUTH CAROLINA)

County of Aiken)Braheim J Hill)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

C.C.C.P. & G.S. - Aiken County)

Deputy Clerk) Time)

Trial Judge))

Trial Atty: David Mardian)Court Reporter: LISA HICKIN)

Sec: PCR Petitioner) Solicitor)

General Sessions) Atty. Gen.)

Appointed Atty.)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
386 Redemption Wg, McCormick, SC 29899
2. Name and location of Court which imposed sentence In Court of General
Session, Aiken County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery / 883. H874396 2006-65-02-00883
 - (b) Poss of weapon during a violent crime / 884. H874403

2006-65-02-00884

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 26, July, 2006.
- (b) I Received 30 years armed robbery.
- (c) I Received 5 years Poss of weapon Ran Concurrent.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate Court.
- ii. P.C.R. Court.
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied.
- ii. Denied.
- iii. _____
- (c) the date of each such result:
- i. August, 7, 2008.
- ii. March 30 2010.
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A.
- ii. N/A.
- iii. N/A.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A.
- (b) N/A.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) P.C.R Counsel Patricia T James was ineffective in failing to
- (b) Seek appellate review of the denial of P.C.R.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) 5th Amendment was denied.
- (b) 6th Amendment was denied.
- (c) 14th Amendment was denied.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? NO.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Filed p.c.r Application January, 26, 2009.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The Court of Common Pleas.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. March, 30, 2010 order of ~~dismissal~~ Dismissal.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. March, 30, 2010.

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A.

ii. N/A.

iii. N/A.

iv. N/A.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A.

ii. N/A.

iii. N/A.

(b) the proceedings in which each ground was raised:

i. N/A.

ii. N/A.

iii. N/A.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I wasn't aware of counsel ~~was~~ not filing my appeal.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes.
 (c) your sentencing? yes.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. ~~David Mauldin~~ / South Carolina Bar.
David Mauldin
 ii. ~~David Mauldin~~ / South Carolina Bar.
David Mauldin
 iii. Patricia T James / 137 York St SE Aiken SC 29801.
 (b) the proceedings at which each such attorney represented you:
 i. Trial.
 ii. Sentencing.
 iii. P.C.R.

19. State clearly the relief you seek in filing this application:

I would like to continue my appeal process.

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Braheim Hill, 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.

Braheim Hill

SWORN to and subscribed before me this

day of March, 2011

James L. Young (L.S.)
Notary Public

My Commission Expires: 8-28-2011

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Braheim Hill, 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.

Braheim Hill
Applicant

SWORN or affirmed to and subscribed before me this

17 day of March 2011.

Joseph L. Young
Notary Public

My Commission Expires: 8 28 2011

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-02-0659

Braheim J. Hill, #316768,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Counsel Has Already Been Appointed)

In response to the post-conviction relief application filed March 24, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Aiken County. The Applicant was indicted at the June 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-0883) and Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime (2006-GS-02-0884). David Mauldin, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable John C. Few on July 26, 2006. Applicant was found guilty and sentenced to thirty (30) years for Armed Robbery and to a concurrent term of five (5) years for Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. *State v. Hill, Op.* No. 2008-UP-452 (S.C. Ct. App. filed Aug. 7, 2008).

State v. Hill, Op.
RECEIVED
Clerk of Court
Aiken County, SC

The Applicant subsequently filed an application for post-conviction relief (PCR) on January 26, 2009 (2009-CP-02-0103). The Applicant raised the following issues in his first PCR application:

1. Ineffective assistance of counsel.
2. "The trial judge's failure to grant direct verdict, where evidence fails to support elements of the crime of which applicant was convicted."

The State made its Return on May 13, 2010. An evidentiary hearing was convened on January 29, 2010, before the Honorable W. Jeffrey Young. The Applicant was present at the evidentiary hearing and represented by Patricia James, Esquire. By written order dated March 24, 2010, and filed March 30, 2010, Judge Young dismissed the application with prejudice.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. PCR Counsel Patricia T. James was ineffective in failing to seek appellate review of the denial of first PCR.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the relevant records from the Applicant's prior PCR proceeding. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss any additional allegations brought forth herein or at an evidentiary hearing because they would be successive to the previous application for post-

conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised the allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980). Accordingly, Respondent will move for a summary dismissal of any additional grounds brought forth by Applicant at an evidentiary hearing because they would be successive in nature.

VI.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

[Signature on Next Page]

ROBERT D. CORNEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
September 22²⁰¹¹

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2011-CP-02-0659
	)	
BRAHEIM J. HILL, 316768,	)	
	)	
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:

Todd J. Johnson, Esquire
Johnson Johnson Whittle & Snelgrove
Post Office Box 2619
Aiken, SC 29802-2619

DATED this 22nd day of September, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2011-CP-02-00659

3
4 BRAHEIM J. HILL,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent.

8 Post Conviction Relief Hearing
9 Heard on Friday, January 27, 2012
10 Aiken, South Carolina
11

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON
14
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
John Andrew Donsbach, Sr., Esq.
18

19 Counsel on Behalf of the Respondent, State of SC:
Mary S. Williams, Esq.
20
21

22 Cheri L. Young, RPR
Circuit Court Reporter
23 P O Box 5232
Aiken, SC 29803-5232
24
25

EXAMINATION INDEX

BRAHEIM HILL

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MAR ADM

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BRAHEIM HILL - DIRECT

1 ON FRIDAY, JANUARY 27, 2012 AT 9:59 A.M.:

2 MS. WILLIAMS: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. WILLIAMS: This is the case of Braheim Hill.

5 Mr. Hill was convicted of armed robbery and possession of
6 a firearm or a knife during the commission of a violent
7 crime. And he was sentenced to 30 years for armed
8 robbery, concurrent term of five years for the possession
9 of a weapon charge.

10 In 2006, he did have an appeal from that conviction
11 and his conviction and sentences were affirmed. He then
12 filed an application for post conviction relief in January
13 26, 2009, and he was represented at that hearing by
14 Ms. Patricia James.

15 The case was dismissed in an order dated March 24th,
16 2010, and filed March 30th, 2010, by Judge Jeffrey Young.
17 Mr. Hill today is seeking a belated appeal from that
18 order. And he's represented today by Mr. Donsbach and
19 we're ready to proceed on that matter.

20 THE COURT: Thank you. Mr. Donsbach?

21 MR. DONSBACH: Your Honor, I'd like to call Mr. Hill
22 to the stand, please.

23 THE COURT: Mr. Hill, if you'd come on up.

24 BRAHEIM HILL, having been duly sworn, was examined and
25 testified as follows:

BRAHEIM HILL - DIRECT

1 THE CLERK: Please have a seat on the witness box and
2 state your full name for the Court.

3 THE APPLICANT: Braheim Hill.

4 THE COURT: Mr. Donsbach, your witness.

5 DIRECT EXAMINATION

6 BY MR. DONSBACH:

7 Q. Mr. Hill, how old are you?

8 A. Twenty-seven.

9 Q. And how far did you go in school?

10 A. Ninth grade.

11 Q. And you have previously been before this Court on a --
12 on the charges that this attorney set out; is that
13 correct?

14 A. Yes, sir.

15 Q. And you filed a PCR on those charges; did you not?

16 A. Yes, sir.

17 Q. You were represented by Mrs. Patricia James?

18 A. Yes, sir.

19 Q. And she discussed the PCR charges with you?

20 A. Yes, sir.

21 Q. What was the result of your PCR application?

22 A. Denied.

23 Q. Okay. When it was denied, what discussions did you
24 have with Ms. James?

25 A. None.

BRAHEIM HILL - CROSS

1 Q. She didn't have any further discussions with you?

2 A. No, sir. After it was denied it was --

3 Q. Any written communications with you?

4 A. No, sir.

5 Q. At any time, did she tell you you had the right to
6 appeal from that PCR application that was denied?

7 A. No, sir.

8 Q. What would you have done if she told you you had the
9 right to appeal it?

10 A. Appealed it within the time limit.

11 MR. DONSBACH: I have no further questions, Your
12 Honor.

13 THE COURT: All right. Ms. Williams, anything on
14 cross?

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Mr. Hill, how did you come to learn that your
18 application had been denied?

19 A. Which application?

20 Q. Your PCR application.

21 A. Oh. A letter in the mail.

22 Q. Who sent you that letter?

23 A. The Court.

24 Q. The Court sent a letter straight to you?

25 A. Yes, ma'am. And verified my family.

1 Q. Pardon?

2 A. And verified my mother.

3 Q. The Court sent a letter to your mother?

4 A. Sent a letter to me, told me I was denied and they
5 also called my mother and told her that I was denied. So
6 I got an answer from her and the letter.

7 Q. The Judge told somebody that? Or who from the Court
8 did that?

9 A. I don't know who called and told her.

10 MS. WILLIAMS: Okay. Thank you, Mr. Hill.

11 THE COURT: Anything on redirect?

12 REDIRECT EXAMINATION

13 BY MR. DONSBACH:

14 Q. When you received that letter, had your time for
15 appeal expired?

16 A. Yes, sir.

17 MR. DONSBACH: No further questions, Your Honor.

18 THE COURT: All right. Anything on recross?

19 Ms. Williams?

20 MS. WILLIAMS: No. No, Your Honor.

21 THE COURT: Okay. All right. Mr. Hill, you may step
22 down. Thank you, sir.

23 All right. Mr. Donsbach, call your next witness.

24 MR. DONSBACH: We have no further witnesses, Your
25 Honor.

PATRICIA JAMES - DIRECT

1 THE COURT: Mr. Donsbach, just so I'll know, do you
2 have anything in your file to indicate when the letter was
3 sent to your client?

4 MR. DONSBACH: I do not, Your Honor. Only my client's
5 testimony that he received it after the date.

6 THE COURT: Okay. Thank you, sir. Appreciate it.
7 Ms. Williams?

8 MS. WILLIAMS: Your Honor, the State will call
9 Ms. Patricia James.

10 THE COURT: Ms. James. You need to be sworn in first
11 please, ma'am.

12 THE WITNESS: Yes.

13 PATRICIA JAMES, having been duly sworn, was examined
14 and testified as follows:

15 THE CLERK: Please have a seat in the witness box.
16 State your name for the Court.

17 THE WITNESS: Hi. Patricia James.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Ms. James, were you appointed to represent Mr. Hill in
21 this PCR matter?

22 A. I was.

23 Q. And did that matter come to an evidentiary hearing
24 with Judge Young here in Aiken?

25 A. Yes.

PATRICIA JAMES - DIRECT

1 Q. And, can you tell me what the results of that hearing
2 was?

3 A. His PCR was denied and dismissed.

4 Q. And did you receive a copy of that order at any time?

5 A. I did.

6 Q. Can you tell me if you have any idea when you received
7 that?

8 A. I received it on April 1st, 2010.

9 Q. Did you provide a copy to your client at any time?

10 A. I did. On that same day I mailed a copy to him.

11 Q. And you have a copy of the letter which you sent to
12 Mr. Hill?

13 A. I do.

14 MS. WILLIAMS: I should have made a copy of this, Your
15 Honor, but I will -- if I can retrieve it from her, I'll
16 show it to defense counsel.

17 THE COURT: If you want to, go ahead. She's
18 identified that. You can mark that as an exhibit and
19 we'll make a copy later.

20 MS. WILLIAMS: Okay.

21 (Thereupon State's Exhibit No. 1, letter dated
22 04-01-2010, was marked for identification.)

23 THE COURT: Let Mr. Donsbach see it.

24 MS. WILLIAMS: (Complies.)

25 Q. Other than that letter, did you have any further

PATRICIA JAMES - DIRECT

1 communications with Mr. Hill following the denial of his
2 PCR application?

3 A. I did the following year after I received a notice
4 from -- or a letter from Mr. Shearhouse at the Supreme
5 Court, sending me a letter saying they had received a
6 letter from Mr. Hill dated February 17th, 2010. He sent
7 me a copy of it and he asked me to respond to it, and --
8 which I did.

9 Q. That was February 17th of 2010, prior to receiving --
10 I'm sorry. The letter from Mr. Shearhouse, what was the
11 letter, date of that?

12 A. To me, it was dated February 25th, 2011.

13 THE COURT: Going back to State's One, any objection?

14 MR. DONSBACH: No objection.

15 THE COURT: Then State's One is in evidence.

16 (Thereupon, State's Exhibit No. 1, letter dated
17 04-01-2010, was received into evidence..)

18 BY MS. WILLIAMS:

19 Q. And did you respond to Mr. Hill as a result of this
20 letter from Mr. Shearhouse?

21 A. I did.

22 Q. And do you have a copy of that letter in your file as
23 well?

24 A. I do.

25 Q. Okay.

PATRICIA JAMES - DIRECT

1 (Thereupon, State's Exhibit No. 2, letter from SC
2 Supreme Court dated 02-25-11, and State's Exhibit No. 3,
3 letter of 05-12-2011, were marked for identification.)

4 THE COURT: Mr. Donsbach, any objection to the letter
5 from the Supreme Court or the letter in response?

6 MR. DONSBACH: No objection, Your Honor.

7 THE COURT: That would be State's Two and Three?

8 MS. WILLIAMS: Two and Three; yes, Your Honor. Thank
9 you.

10 THE COURT: All right.

11 Thereupon, State's Exhibit No. 2, SC Supreme Court
12 letter dated 02-25-2011, and State's Exhibit No. 3, letter
13 dated 05-12-2011, were received into evidence.)

14 BY MS. WILLIAMS:

15 Q. So you had no communication from your client after
16 mailing him a copy of the order until you get the letter
17 from Mr. Shearhouse; is that correct?

18 A. None whatsoever.

19 MS. WILLIAMS: Thank you, Ms. James.

20 THE COURT: All right. Any -- Mr. Donsbach, anything
21 on cross?

22 MR. DONSBACH: Yes, Your Honor.

23 THE COURT: All right. Your witness.

24

25

PATRICIA JAMES - CROSS

CROSS-EXAMINATION

BY MR. DONSBACH:

Q. Did you have any verbal communication with your client after you sent those letters?

A. After I sent the letter, no. I had communication -- well, we talked at the end of the trial. The PCR hearing, rather. We did have a conversation.

Q. But you sent the letter. You're saying you sent the letter notifying him of his appellate rights.

And the dates were a little confusing. I want to make sure I've got those right. April 1st of 2010 is the date on the first letter, State's One; is that correct?

A. Yes. April 1st is when I received the order and I forwarded it on to Mr. Hill.

Q. You didn't follow up with a telephone call to him?

A. No, I didn't.

Q. So you have no way of knowing whether he got that letter or not; do you?

A. You're right. I assumed he received it. He had received all other communications.

Q. So you have no way of being certain that he was notified of his appellate rights?

A. Well, when I heard from, from the -- Mr. Shearhouse, I was certain he had received it. Mr. Shearhouse had forwarded on a letter from Mr. Hill that he had received

PATRICIA JAMES - CROSS

1 and, in which he had -- he indicated he had received it.

2 At first he indicates he hadn't and then on the bottom
3 of it, though, he's got a date of denial March 30th. In
4 this letter to Mr. -- to the Supreme Court, Mr. Hill does
5 say that he was, he had not been notified until after my
6 30 days, or have I received any disposition from my lawyer
7 of why I was denied in my PCR and what steps I'm further
8 advised in seeking further appeal.

9 He dated this February 17th, 2010. It's confusing
10 because the order wasn't issued until the end of March.
11 So, I'm at a loss here. But the reference is, till after
12 my 30 days. So that, when he writes that I think that
13 indicates I had told him he had 30 days. And I did.
14 After our hearing, I told him he had 30 days if we lost.
15 We didn't know. It was taken under advisement. I told
16 him if he lost then he had 30 days to appeal it.

17 And he makes reference to that in his letter of
18 February 17th.

19 So, perhaps he was confused at that time as to
20 whether -- if 30 days had run after the date of the PCR.
21 Maybe he didn't have -- his time for appeal had run, but I
22 think it indicates that I had told him he had 30 days.

23 And not only that, the order states he has 30 days.

24 MR. DONSBACH: Your Honor, may I approach?

25 THE COURT: Yeah, yeah. Examine that letter.

PATRICIA JAMES - CROSS

1 MR. DONSBACH: I just wanted to get State's Three, I
2 think it was.

3 THE WITNESS: I'm sorry. This had come apart. This
4 was part of it. This was stapled onto that.

5 MR. DONSBACH: This is not -- this is what she showed
6 me. So you're saying this should be part of this letter?

7 THE WITNESS: Yeah. I'm sorry. It came apart in my
8 file evidently, but that's what he sent.

9 THE COURT: Which one is that?

10 MR. DONSBACH: This is the letter to -- from the
11 Supreme Court. She's saying there's a letter from
12 Mr. Hill that should have been attached to it.

13 THE COURT: And that is?

14 MR. DONSBACH: State's Two.

15 THE COURT: State's Two. Any objection to that?

16 MS. WILLIAMS: No. Certainly it's a part of it.

17 THE COURT: If you get that stapled together, we'll
18 note on the record.

19 MS. WILLIAMS: We'll staple them after we make the
20 copies.

21 THE COURT: We'll do that.

22 BY MR. DONSBACH:

23 Q. I'm going to show you what's been marked as State's
24 Two. Doesn't the letter from the Supreme Court very
25 clearly say that the letter from Mr. Hill was dated

PATRICIA JAMES - CROSS

1 February 17th, 2011?

2 A. It does.

3 Q. And we can all agree, it does say 2010 but it's very
4 likely that's a typographical on his letter?

5 A. I haven't a clue. I didn't second-guess any of it.

6 Q. Okay. Now, but you have no way of knowing when he
7 actually received your letter of April 1st; do you?

8 A. No, I don't.

9 Q. Because if his letter was written February 17th, 2011,
10 that was almost a year after the actual judgment was
11 entered on his PCR; is that correct?

12 A. Yes.

13 Q. And so what he's telling this Court could very likely
14 be true, that he did not receive the letter until after
15 his 30 days ran; correct?

16 A. I have no way of knowing.

17 Q. And you had no other communications with him to
18 discuss his appellate rights and didn't follow up, as
19 we've discussed before, other than those letters?

20 A. No. Other than I told you, we discussed it at the
21 time of the PCR after, just after it had concluded and it
22 was taken under advisement. He said, you know, what's
23 happening? What was the result? And I said, we don't
24 know.

25 MR. DONSBACH: Okay. I have no further questions,

1 Your Honor.

2 THE COURT: All right. Thank you, Mr. Donsbach.
3 Anything on Redirect?

4 MS. WILLIAMS: Just briefly.

5 REDIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Ms. James, you had communicated with Mr. Hill via
8 letters prior to the hearing, the PCR hearing?

9 A. Yes.

10 Q. And you had responses from him back and forth before
11 the hearing?

12 A. I don't think so.

13 Q. Or he had received communications from you?

14 A. Yes.

15 Q. Prior to the hearing by mail?

16 A. I mean, I had written and said I was going to come up
17 to McCormick Institution and meet with him and talk with
18 him. And he was aware of that. And he was aware, he had
19 received that communication and was aware of that. Was
20 certainly prepared and ready to go when I arrived. And
21 we, we met in preparation for the PCR.

22 MS. WILLIAMS: Thank you. I have no further
23 questions. Thank you.

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

1 THE WITNESS: Thank you.

2 THE COURT: You didn't have any other questions?

3 MR. DONSBACH: No, Your Honor.

4 MS. WILLIAMS: There are no further witnesses from the
5 State.

6 THE COURT: All right. And Mr. Donsbach, do you
7 have -- you've gotten a copy of the, or seen, I believe
8 it's State's One?

9 MR. DONSBACH: Yes, Your Honor. The letter from
10 Mrs. James dated April 1st.

11 THE COURT: Including a copy of the order.

12 MR. DONSBACH: I did, Your Honor.

13 THE COURT: Is that the address that Mr. Hill was at
14 or had he moved to another --

15 MR. DONSBACH: Can I see the actual address, Your
16 Honor? I've seen the letter.

17 THE COURT: If you don't mind, step up and look at it
18 for us, please, and show it to Mr. Hill so I'll know.

19 MR. DONSBACH: (Complying.) I have spoken with my
20 client and he has expressed to me that this was not -- I
21 do not have in my files an exact address as of April 1st
22 of that year. Obviously could get it, I'm sure.

23 He was telling me that he was in lockup and not at
24 this particular address at that time.

25 THE COURT: Can you get me any verification of that?

1 MS. WILLIAMS: I would point to the SCDC records which
2 would indicate that he has been at McCormick since
3 returning from his PCR hearing on February 1st, 2010.
4 These are part of the packet.

5 THE COURT: Oh they're part of the packet? Okay.

6 MR. DONSBACH: Your Honor, this record doesn't have the
7 actual address in it. It does show where he was in
8 McCormick in 2010, and then back in McCormick -- the
9 printout is hard to read, but that he was released to
10 Aiken County and has been in McCormick.

11 I have to confirm the address or whether it was
12 delivered properly. I have no way of --

13 THE COURT: How much time are you asking for to send
14 me something?

15 MR. DONSBACH: Fifteen days.

16 THE COURT: Okay. All right, sir. I'll allow you 15
17 days to get me that information.

18 MR. DONSBACH: Okay. Thank you.

19 THE COURT: If you'll send that to my Orangeburg
20 address. All right.

21 And if y'all could make copies of those exhibits for
22 me, I'd appreciate it.

23 MS. WILLIAMS: Yes, sir.

24 THE COURT: And then I'll give you my decision after
25 I've received that information. Okay.

1 Thank y'all very much.

2 END OF PROCEEDINGS: 10:20 A.M.

3 ***

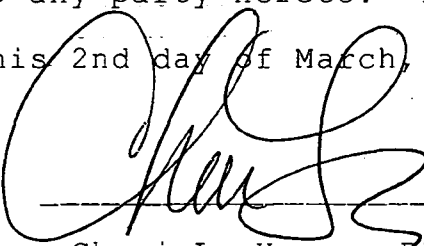
4 CERTIFICATE OF REPORTER

5
6 STATE OF SOUTH CAROLINA)

7
8 COUNTY OF AIKEN)

9
10 I, Cheri L. Young, Registered Professional Reporter
11 and Official Court Reporter for the State of South
12 Carolina, Second Circuit-At Large, do hereby certify that
13 the foregoing is a true, accurate and complete transcript
14 of record of the proceedings had and evidence introduced
15 in the hearing of the captioned case, relative to appeal,
16 in the Court of Common Pleas for Aiken County, on the 27th
17 day of January, 2012.

18 I do further certify that I am neither of kin,
19 counsel, nor interest to any party hereto. I have
20 hereunder set my hand this 2nd day of March, 2013.

21
22 
23 Cheri L. Young, RPR
24 Official Court Reporter
25

PATRICIA T. JAMES
ATTORNEY AT LAW
137 York Street SE
Aiken, SC 29801
Phone and Fax 803-648-6730

FILED 27 Jan 2012
Angel Muler
C.C.C.P. & G.S.
Angel Muler 10:15 am
Clerk

STATE'S
EXHIBIT

[Braheim Hill #316768]
[McCormick Correctional Institution]
[Dorm F2, Room 152X]
[386 Redemption Way]
[McCormick, SC 29899]

April 1, 2010

DOCUMENTS ENCLOSED

The following documents are forwarded for action indicated by the check mark below. I am sorry your application was denied.

RE: Braheim Hill v. State of South Carolina

1. Certified copy of Order of Dismissal

- [] File
- [] Sign and return
- [X] Read and note
- [X] For your records
- [] Per your request
- [] Reply requested
- [] Review and advise
- [] Fill out the Financial Declaration and return it with a recent paycheck stub
- [] Other:



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1090
FAX: (803) 734-1499

February 25, 2011

**STATE'S
EXHIBIT**

Mr. Braheim J. Hill, #316768
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Hill:

FILED 27 Jan 2012
[Signature]
C.C.P. & G.S.
Angel Miles 10:15 am
Deputy Clerk

This responds to your letter dated February 17, 2011, which was received by this Court on February 24, 2011. This office can find no record of a notice of appeal being filed on your behalf in any PCR case.¹ If you want to appeal, you will need to timely serve and file a notice of appeal as required by Rules 243 and 203 of the South Carolina Appellate Court Rules (SCACR). A copy of the SCACR should be available to you in your prison library.

Since you indicate that Patricia T. James, Esquire, represented you in the PCR case, I am forwarding a copy of your letter to her so that she can be aware of your desire to appeal. Rule 71.1(g), SCRCP ("A final decision entered under the Act shall be reviewed according to the procedure specified by Rule 243, SCACR. If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").

Sincerely,

[Signature]
Daniel E. Shearouse

cc: Patricia Thomas James, Esquire (with copy of letter)
Office of the Attorney General

¹ It appears that the PCR case you are referring to is Hill v. State, 2009-CP-02-00103.

Barbara Hill
386 Redington
Mearns, S.C.
29819

February 17, 2010

I Barbara J. Hill have been denied on my p.c.r. based on circumstances unknown. Inquest for answers dealing with my p.c.r. dismissal. I am Inquest of my state appointed Council. In which have not been notified full after my 30 days or have I received any disposition from my lawyer of why I was denied on my p.c.r. and what steps am I further advised in seeking a further appeal to the State Supreme Court and how must I seek new Council at this information is vital at this point and need immediate attention. Thank you Lucoid appreciate your help in this matter

Single Appointed lawyer name: Patricia Jones

in which represented upon request of

P.c.r. Appeal

~~RECEIVED~~
FEB 24 2011
S.C. SUPREME COURT

Date of P.c.r. Jan 24, 2010

Date of denied March, 30, 2006

~~RECEIVED~~
FEB 24 2011

S.C. SUPREME COURT

15/ Barbara Hill

PATRICIA T. JAMES
ATTORNEY AT LAW
 137 York Street SE
 Aiken, South Carolina 29801
 Phone and Fax (803) 648-6730

FILED 27 Jan 2012
[Signature]
 C.C.P. & G.S.
 May 12, 2011 *Angel Miles 10:15*
 Deputy Clerk 9m

Mr. Braheim J. Hill, #316768
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

**STATE'S
 EXHIBIT**

3

Re: Hill v. State, 2009-CP-02-00103

Dear Mr. Hill:

Mr. Shearouse, Clerk of Court for the Supreme Court of South Carolina, forwarded to me a copy of his response to your letter date February 17, 2010.

As you know, when I received the Judge's order, Order of Dismissal dated March 24, 2010, after your PCR hearing on January 29, 2010, at which I represented you, I forwarded the order to you. It appears that was more than a month after the date of your letter, February 17, 2010, but before you mailed it to the Supreme Court as your letter seems to indicate you received notice of the denial of your PCR petition on March 30, 2010.

I told you after the hearing on January 29, 2010, that in the event the PCR was not granted, and as is stated in the final paragraph of the judge's order, that you "must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review." Since you didn't file notice of intent to appeal within the required thirty days, the time expired in which to do so. Further, since you didn't notify me within the required thirty days of a desire to appeal the order from the PCR hearing, my responsibility as your attorney ended, and I was automatically relieved under the *South Carolina Appellate Court Rules* from further representation of you. However, I believe that you may have the option of filing another Post Conviction Relief petition.

Sincerely,

Patricia T. James
 Attorney at Law

PTJ/bk
 Enc: Order of Dismissal dated 3/24/10
 cc: Janet Johnson

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Braheim Hill, #316768,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2011-CP-02-0659

AMENDED
ORDER OF DISMISSAL

(Granting Austin v. State belated appeal) 12

~~11/20/12~~*L. J. G. G.*

S.C.C.P. & G.S.

Sharon J. G. G.

Deputy Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 24, 2011. An evidentiary hearing into the matter was convened on January 27, 2012, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by John Donsbach, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Patricia James, Esquire ("Counsel"). This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, the prior PCR records, and the Applicant's records from the South Carolina Department of Corrections.

Following the hearing, the court informed counsel for both parties that it would grant Applicant relief pursuant to Austin v. State. This court permitted Respondent to submit an order denying relief in order to preserve its objections for appeal. This court inadvertently signed the order denying relief on March 21, 2012, and the order was filed on March 28, 2012. Counsel for the Applicant brought this matter to the court's attention, and this order is substituted in place of the

order filed March 28, 2012.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Aiken County. The Applicant was indicted at the June 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-0883) and Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime (2006-GS-02-0884). David Mauldin, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable John C. Few on July 26, 2006. Applicant was found guilty and sentenced to thirty (30) years for Armed Robbery and to a concurrent term of five (5) years for Possession of Firearm or Knife During Commission of or Attempt to Commit a Violent Crime.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Hill, Op. No. 2008-UP-452 (S.C. Ct. App. filed Aug. 7, 2008).

The Applicant subsequently filed an application for post-conviction relief (PCR) on January 26, 2009 (2009-CP-02-0103). The Applicant raised the following issues in his first PCR application:

1. Ineffective assistance of counsel.
2. "The trial judge's failure to grant direct verdict, where evidence fails to support elements of the crime of which applicant was convicted."

The State made its Return on May 13, 2010. An evidentiary hearing was convened on January 29, 2010, before the Honorable W. Jeffrey Young. The Applicant was present at the evidentiary hearing and represented by Patricia James, Esquire. By written order dated March 24, 2010, and filed March 30, 2010, Judge Young dismissed the application with prejudice.

In this current application for post conviction relief the Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. PCR Counsel Patricia T. James was ineffective in failing to seek appellate review of the denial of first PCR.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony, the documentary evidence presented and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of fact and conclusions of law:

This Court further finds that the Applicant's allegation that he is entitled to a belated appeal due to his prior PCR attorney's failure to perfect an appeal on his behalf is meritorious. Where a post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991); See also King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court finds that the Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his second PCR application. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant's denial of a direct appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State, *supra*.

III. CONCLUSION

The Applicant has proven by a preponderance of evidence that he did not knowingly and

¹Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition the Supreme Court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

voluntarily waive the direct appeal of the denial of his first PCR application. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR for the appropriate procedure for a belated appeal.

2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22nd day of May, 20 12.



EDGAR W. DICKSON
Presiding Judge
Second Judicial Circuit

5/21, South Carolina



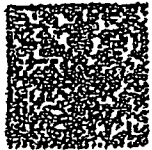
First Class Mail

DONSBACH & KING, LLC
P.O. Box 212139
MARTINEZ, GA 30917-2139
TELEPHONE (706) 650-8750

TO:

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

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J. Fine



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAHEIM HILL,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991) 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge's jury charge on reasonable doubt violated due process?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery and possession of a firearm after a jury trial held before the Honorable John C. Few in Aiken County on July 26, 2006. Respective sentences of thirty (30) years and five (5) years were imposed.

This appeal follows.

ARGUMENT

The trial judge's jury charge on reasonable doubt violated due process.

The trial judge gave the following reasonable doubt charge to the jury:

A reasonable doubt is a doubt which makes an honest sincere, conscientious juror in search of the truth in the case to hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely on it and act on it in the most important of his or her own affairs. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the defendant's guilt. (Tr. p. 135, lines 3-11)

In State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991) our Supreme Court observed that the "Due Process Clause of the Fourteenth Amendment safeguard[s] against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." (Citation omitted). The court went on the note that the following jury instruction on reasonable doubt was acceptable:

"A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act."

Because the trial judge failed to give this charge he violated due process.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2007.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAHEIM HILL,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Braheim Hill states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge John C. Few, which was held on July 26, 2006, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Braheim Hill.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2007.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAHEIM HILL,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire trial transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

June 14th, 2007

Robert M. Pachak
Appellate Defender

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

Attorney for Appellant

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Braheim Hill, Appellant.

Appeal From Aiken County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2008-UP-452
Submitted August 1, 2008 – Filed August 7, 2008

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Solicitor Barbara R. Morgan, of
Aiken, for Respondent.

PER CURIAM: Braheim Hill appeals his convictions for armed robbery and possession of a firearm. He argues the trial court's jury charge on reasonable doubt violated due process. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss^[1] Hill's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

KONDUROS, J., CURETON, A.J., and GOOLSBY, A.J., concur.

^[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

K. Liles, A.C.S.O.

DOCKET NO. 2006-GS-02 - 883

The State of South Carolina

County of Aiken

FILED

June 15, 2006

Greg Hodland

J. Liles, A.C.S.O.

Deputy Clerk

COURT OF GENERAL SESSIONS

June 19, TERM 2006

ARREST WARRANT NUMBER

H-874396

THE STATE

vs.

BRAHEIM JAMALL HILL

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: June 15, 2006

Freddie L. Richard

VERDICT

Guilty Carson, D. Carson

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A (V)

Foreperson of Petit Jury

Date:

7-26-06

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on June 19, 2006, the Grand Jurors of Aiken County present upon their oath:

ARMED ROBBERY

That BRAHEIM JAMALL HILL did in Aiken County on or about November 28, 2005, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: shotgun, feloniously take from the person or presence of Willie R. Rutland by means of force or intimidation goods or monies of Bobby's Convenience Store, 3007 Pine Log Road, Warrenton, South Carolina, such goods or monies being described as follows: Approximately Three Hundred and No/100 Dollars (\$300.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTORNEY:

Solicitor

Defendant

Attorney for Defendant

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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

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)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$3.73

\$128.73

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

2006-02-02-883

ARREST WARRANT

H- 874396

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
AIKEN COUNTY

THE STATE 05-059609
against

BRAHEIM JAMAL HILL

SC 29822

Address: _____
Phone: _____ SSN: _____
Sex: M Race: B Height: 5'8" Weight: 150
DOB: _____ Agency # 0200
Prosecuting Agency: SHERIFF DEPT
Prosecuting Officer: DEPT. K. LILES
Offense: ARMED ROBBERY
Offense Code: 0139

Code/Ordinance Sec. 0139 Offense Code: 0139

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____ The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this warrant was delivered to
defendant BRAHEIM JAMAL HILL
on 12/28/05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO
MAGISTRATE TO
420 HAMPTON AVENUE NE
AIKEN SC 29801

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
AIKEN COUNTY

AFFIDAVIT

Personally appeared before me the affiant DEPT. K. LILES who
being duly sworn deposes and says that defendant BRAHEIM JAMAL HILL
did within this county and state on 11/28/05 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: ARMED ROBBERY
16-11-330 (A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

UPON INFORMATION AND BELIEF THAT ON NOVEMBER 28, 2005 THE
DEFENDANT, BRAHEIM JAMAL HILL, DID TAKE WITH THE INTENT TO
DEPRIVE CURRENCY IN THE APPROXIMATE AMOUNT OF \$300.00 FROM THE
CLERK, WILLIE R. RUTLAND OF BOBBY'S CONVENIENCE STORE WHILE ARMED
WITH A SHOTGUN, A DEADLY WEAPON. THIS INCIDENT OCCURRING AT 3007
PINE LOG ROAD, WARRENVILLE, AIKEN COUNTY, SOUTH CAROLINA.
THIS BEING IN VIOLATION OF SECTION 16-11-330 OF THE S.C.
CODE OF LAWS.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
AIKEN COUNTY

Affiant's Address 420 HAMPTON AVE
AIKEN SC 29801
Affiant's Telephone 803-642-1752

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS STATE OR MUNICIPALITY
It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/28/05 defendant BRAHEIM JAMAL HILL
did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY
16-11-330 (A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to before me
on 12/28/05

Judge's Address 420 HAMPTON AVENUE
AIKEN SC 29801

Signature of Issuing Judge (L.S.)
Judge Code 055
Judge's Telephone 803-642-7552
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Rodger E. Edmunds
Original

BAIL set by

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

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WITNESSES

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CODEFENDANTS

PRELIMINARY HEARING held by

Name of Surety _____

Address _____

Telephone _____

Name _____

Address _____

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Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

DISPOSITION before

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

JURORS

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

WITNESSES

K. Liles, A.C.S.O.

DOCKET NO. 2006-GS-02 -

884

The State of South Carolina

County of Aiken

FILED

June 15, 2006

W. Hodand

Deputy Clerk

Deputy Clerk

COURT OF GENERAL SESSIONS

JUNE 19, TERM 2006

ARREST WARRANT NUMBER

H-874403

THE STATE

VS.

ACTION OF GRAND JURY

BRAHEIM JAMALL HILL

True Bill

Foreperson of Grand Jury

Freddie L. Liles

VERDICT

Guilty Lawrence D. Brown

Indictment for
POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT
CRIME

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

Foreperson of Petit Jury

Date: 7-26-06

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Aiken

VS.

Braheim Jamall Hill

AKA:

Race:

B

Sex:

M

Age:

21

DOB:

SS#:

Address:

City, State, Zip

Clearwater, SC

DL#

SID#

INDICTMENT/CASE#:

7006

-GS-

02

884

A/W#:

H-874403

Date of Offense:

11-28-05

S.C. Code §:

16-25490

CDR Code #:

0151417

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Poss Firearm Violent Crime (0-5-1)

In violation of § 16-25490 of the S.C. Code of Laws, bearing CDR Code #

0151417

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$3.75 \$3.75

TOTAL \$128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Lisa Becklin

PTUP _____

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21

Sentence Date: 7/26/06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF AIKEN)

At a Court of General Sessions, convened on June 19, 2006, the Grand Jurors of Aiken County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT CRIME**

That BRAHEIM JAMALL HILL did in Aiken County on or about November 28, 2005, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

2006-02-2884

Form Approved by
SC Attorney General
April 2, 2004
SCAG 610

ARREST WARRANT

H- 874403

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
AIKEN COUNTY

 THE STATE 05-059609
against

BRAHEIM JAMAL HILL

RETURNED

SC 29802

 Sex: M Race: B Height: 5 9 Weight: 150
DL State: SC
DOB: 11/28/05 Agency ORI: 0200Prosecuting Agency: SHERIFF DEPT
 Prosecuting Officer: DEPT. K. LILES
Offense: WEAPON POSSESSION DURING
VIOLENT CRIME Offense Code: 0549
Code/Ordinance Sec. 16-23-490
 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____ The accused

 is to be arrested and brought before me to be
dealt with according to law.

Date: _____ Signature of Judge _____ (L.S.)

RETURN

 A copy of this warrant was delivered to
defendant BRAHEIM JAMAL HILL
on 11/28/05

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO
MAGISTRATE TO
420 HAMPTON AVENUE NE
AIKEN SC 29801

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
AIKEN COUNTY

AFFIDAVIT

 Personally appeared before me the affiant DEPT. K. LILES who

 being duly sworn deposes and says that defendant BRAHEIM JAMAL HILL

 did within this county and state on 11/28/05 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

in the following particulars:

 DESCRIPTION OF OFFENSE: WEAPON POSSESSION DURING VIOLENT CRIME
16-23-490

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

UPON INFORMATION AND BELIEF THAT ON NOVEMBER 28, 2005 THE
DEFENDANT, BRAHEIM JAMAL HILL, DID TAKE WITH THE INTENT TO
DEPRIVE CURRENCY IN THE APPROXIMATE AMOUNT OF \$300.00 FROM THE
CLERK, WILLIE R. RUTLAND OF BOBBY'S CONVENIENCE STORE WHILE ARMED
WITH A SHOTGUN, A DEADLY WEAPON. THIS INCIDENT OCCURRING AT 3007
PINE LOG ROAD: WARRENVILLE, AIKEN COUNTY, SOUTH CAROLINA.
THIS BEING IN VIOLATION OF SECTION 16-23-490 OF THE S.C.
CODE OF LAWS.

Signature of Affiant

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
AIKEN COUNTY

 Affiant's Address 420 HAMPTON AVE
AIKEN SC 29801
Affiant's Telephone 803 642-1752

ARREST WARRANT

 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/28/05 defendant BRAHEIM JAMAL HILL did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:

 DESCRIPTION OF OFFENSE: WEAPON POSSESSION DURING VIOLENT CRIME
16-23-490

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

 on 11/28/05
Signature of Issuing Judge _____ (L.S.)
Judge Cdey _____
Rodger J. Edmonds

 Judge's Address 420 HAMPTON AVENUE
AIKEN SC 29801

 Judge's Telephone 803 642-7552
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

RAIL set by

Judge

on

Type and Amount

12.8.9-05
415,000

Name of Surety

PRELIMINARY HEARING held by

Judge

on

Defence Attorney

Prosecution

DISPOSITION before

Judge

on

by

(insert name of trial judge, plea, etc.)

Disposition

Defence

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

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CODEFENDANTS