

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 4 2012

Appeal from Lexington County

S.C. Supreme Court

Edward W. Miller, Circuit Court Judge

KORRELL BATTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

2012 - 208047

APPENDIX

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VOLUME ONE
PAGES 1-500

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA

6 -vs-

7 KORELL BATTLE,

8 Defendant.
9

)
) TRANSCRIPT OF RECORD
)
)
)
)

07-GS-32-0031, et al

10 May 1-2, 2007
11 Lexington, South Carolina
12
13

14 B E F O R E:

15 HONORABLE R. KNOX MCMAHON, Judge; and a jury.
16
17

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

19 S. JAHUE MOORE, JR., Asst. Solicitor
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STATE'S EXHIBITS

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Date: 5-1-07County: Lexington

VOIR DIRE

Case No: 07-G5-32-0031, et al Judge: McMahonPl./State: StateState/Pl's. Atty: J. Moore / S. MahanDefendant: Korell BattleDefense Atty: Bak / B. FullwoodCourt Reporter: Antonia

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
50	Delphine Frederickson	F	W			✓(1)	
75	Raymond Hunt	M	W				✓(1)
181	Stacey Wengate	F	W				✓(2)
99	Neil Lowri	M	W				✓(3)
123	Paula Purdie	F	B		✓(1)		
103	Sharon McArthur	F	W				✓(4)
89	Lois Reach	F	W				✓(5)
113	Sheila Newton	F	W			✓(2)	
98	Ronald Lorch	M	B				✓(6)
161	Sarah Stewart	F	W				✓(7)
147	Broadus Smith	M	W			✓(3)	
174	Patricia Ward	F	W		✓(2)		
60	Timothy Grimes	M	W			✓(4)	
9	Ruth Besco	F	W		✓(3)		
156	Charles Spies	M	W			✓(5)	
100	Ricky Lucas	M	W			✓(6)	
56	John Goodale	M	W				✓(8)
120	Margaret Powell	F	W				✓(9)

*For the court column, please indicate who made the motion to strike the jurors "for cause"

County: Lexington

Case No: 07-GS-32-0031, et al Judge: McMahon

1. State: State State/Pl's. Atty: J. Moore/S. Graham

Defendant: Korell Battle Defense Atty: A. Bax/B. Fullwood

Court Reporter: Bansari

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[illegible]

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 THE COURT: Solicitor, if you would call your
2 first case for trial.

3 MR. MOORE: Thank you, Your Honor. The State
4 calls true bill indictment 2007-GS-32-0031, the State
5 versus Korell Robert Battle. The charge is armed
6 robbery.

7 The State also calls true bill indictment
8 2007-GS-32-0030, the State versus Korell Battle, the
9 charge is possession of a firearm or knife during the
10 commission of a violent crime.

11 Your Honor, do you have copies of these
12 indictments?

13 THE COURT: I do. Thank you. Thank you,
14 Solicitor.

15 MR. MOORE: Yes, sir.

16 THE COURT: Good morning, ladies and gentlemen
17 of the jury panel. My name is Knox McMahon. I am a
18 resident circuit court judge of the Eleventh Judicial
19 Circuit, which includes Lexington, Edgefield, Saluda,
20 and McCormick County.

21 Madame Clerk, has the jury been sworn?

22 CLERK: Yes, sir, Your Honor.

23 THE COURT: The State has called for trial two
24 indictments. The first is 2007-GS-32-0031. The second
25 indictment is 2007-GS-32-030. Both are true billed.

1 The indictment 31 reads that Korell Robert Battle did in
2 Lexington County, on or about October 13, 2006,
3 knowingly and willfully, while armed with a deadly
4 weapon or while alleging, either by actions or words, he
5 was armed while using a representation of a deadly
6 weapon or any object which a person present during the
7 commission of the robbery reasonably believed to be a
8 deadly weapon, did feloniously take from the person or
9 presence of Sandra Morgan and/or other employees of
10 Kentucky Fried Chicken, by means of force, threats or
11 intimidation, goods or monies, being described as
12 follows, U.S. currency, with the intent to deprive the
13 owner of the use of such property in violation of
14 Section 16-11-330 (a) of the Code of Laws of South
15 Carolina.

16 That is a true bill indictment for armed
17 robbery. The indictment is no more than a notice
18 document. It is the formal document by which a
19 defendant is placed on notice of the charge that is
20 being brought against him; and it is not proof of the
21 allegations contained therein.

22 The next indictment, 0030, reads that Korell
23 Robert Battle did in Lexington County, on or about
24 October 13, 2006, knowingly and willfully possess a
25 firearm or visibly display what appeared to be a firearm

1 during the commission of a violent crime, to wit, armed
2 robbery in violation of 16-23-490 of the Code of Laws of
3 South Carolina.

4 This is a true bill indictment for possession
5 of a firearm or knife during the commission of a violent
6 crime. Again, the indictment is a notice document. It
7 is the formal document by which the Defendant is placed
8 on notice of the charge placed against him; and it is in
9 no way proof of any of the allegations contained
10 therein.

11 Solicitor, would you introduce yourself and
12 any members of the Solicitor's staff that will be
13 assisting you during the prosecution of this case.

14 MR. MOORE: Yes, sir, Your Honor. Folks, my
15 name is Jake Moore. I work in the Lexington County
16 Solicitor's Office. This is Sean Graham, who will be
17 assisting me here today.

18 THE COURT: Thank you, Solicitor Moore,
19 Solicitor Graham. Is any member of the jury panel
20 related by blood or marriage or close personal friends
21 of either Assistant Solicitor Moore, Assistant Solicitor
22 Graham or any employee of the Eleventh Circuit
23 Solicitor's Office or the South Carolina Attorney
24 General's Office? If so, please stand.

25 (There is no response).

1 THE COURT: All right. Neither one of you
2 have any friends. We will move on. The attorneys in
3 this case on behalf of the Defendant are Ms. Fullwood,
4 Beth Fullwood, and Mr. Arie Bax.

5 Ms. Fullwood, would you please introduce
6 yourself and any member of your staff that will be
7 assisting you during the trial of case.

8 MS. FULLWOOD: Yes, sir. I'm Beth Fullwood.
9 I am a lawyer here in Lexington and representing --
10 actually I am assisting Mr. Bax in representing
11 Mr. Battle. This is Arie Bax. We work in the same
12 office.

13 THE COURT: Is any member of the jury panel
14 related by blood or marriage or close personal friends
15 of either Mr. Bax or Ms. Fullwood? If so, please stand.

16 (There is no response).

17 THE COURT: Has any member of the jury panel
18 or any member of your immediate family been represented
19 by either Mr. Bax or Ms. Fullwood? If so, please stand.

20 (There is no response).

21 THE COURT: These indictments allege an
22 incident that occurred on October 13, 2006, at a
23 Kentucky Fried Chicken located in Lexington County in
24 the presence of one Sandra Morgan.

25 Does any member of the jury panel have any

1 knowledge about the facts of this case? If so, please
2 stand.

3 (There is no response).

4 THE COURT: Does any member of the jury panel
5 have any bias or prejudice towards the parties or the
6 subject matter involved in this case? If so, please
7 stand.

8 (There is no response).

9 THE COURT: Has any member of the jury panel
10 heard or know anything about the case from any source
11 whatsoever? If so, please stand.

12 (There is no response).

13 THE COURT: I am going to call a list of
14 witnesses or potential witnesses in the trial of this
15 case. The question, of course, is: Is any member of
16 the jury panel related by blood or marriage or close
17 personal friends of any of these individuals whose names
18 I call.

19 I would ask, if they are present in the
20 courtroom, when I call your name, if you would please
21 stand and face the jury panel. I will tell the jury
22 panel that all the witnesses do not have to be present
23 at this time. So I may call names, and there would be
24 no one standing, no one present.

25 Sandra Morgan. This is Ms. Morgan. Thank

1 you, Ms. Morgan. Brian Majewski. Mr. Majewski, thank
2 you. Courtney Dennis. Ms. Dennis. Jim Crosland.
3 Mr. Crosland, thank you. Scott Franklin. Mr. Franklin,
4 thank you. Nikki Rogers. Sherry Woodward. This is
5 Ms. Woodward. Kelly Olin. Ms. Olin, thank you. Jim
6 Saules. Mr. Saules. Sergeant Nathan. Do we know his
7 first name?

8 MR. MOORE: No, sir, Your Honor.

9 THE COURT: He is with Lexington County?

10 MR. MOORE: Yes, sir.

11 THE COURT: With the Lexington County
12 Sheriff's Department, Sergeant Nathan. Jeremy Vetter.
13 Ernestine McDaniel.

14 Is any member of the jury panel related by
15 blood or marriage or close personal friends of any of
16 those individuals whose names I just called and/or who
17 stood before you? If so, please stand.

18 (There is no response).

19 THE COURT: Mr. Battle, would you please stand
20 and face the jury panel. This is Korell Robert Battle.
21 Thank you, Mr. Battle.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is any member of the jury panel
24 related by blood or marriage or close personal friends
25 of Mr. Battle, the Defendant in this case? If so,

1 please stand.

2 (There is no response).

3 THE COURT: Is any member of the jury panel
4 related by blood or marriage or close personal friends
5 with anyone employed with the Lexington County Sheriff's
6 Department? Are there any other agencies involved?

7 MR. MOORE: Irmo Police Department, Your
8 Honor.

9 THE COURT: Excuse me?

10 MR. MOORE: The Irmo Police Department.

11 THE COURT: Thank you. With the Lexington
12 County Sheriff's Department or the Irmo Police
13 Department? If so, please stand.

14 (There is no response).

15 THE COURT: Close personal friends or related
16 related by blood or marriage.

17 (Juror stands).

18 THE COURT: Your number and name, please?

19 PROSPECTIVE JUROR: 132, Shelley Robinette.

20 THE COURT: Ms. Robinette, are you related or
21 friends?

22 PROSPECTIVE JUROR: I'm related, just second
23 cousins.

24 THE COURT: That's with the Irmo Police
25 Department or --

1 PROSPECTIVE JUROR: Lexington.

2 THE COURT: Ma'am?

3 PROSPECTIVE JUROR: Lexington.

4 THE COURT: Lexington Sheriff?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: The fact that you have a second
7 cousin who is employed with the Lexington County
8 Sheriff's Department, could you still be a fair and
9 impartial juror to both the State and the defense in
10 this case?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you, ma'am. You may be
13 seated. Any others?

14 (Juror stands).

15 THE COURT: Yes, ma'am, your number and name,
16 please?

17 PROSPECTIVE JUROR: Number 86, Audrey Jenkins.

18 THE COURT: Ms. Jenkins, friends or relation?

19 PROSPECTIVE JUROR: Relation. I have an uncle
20 by marriage.

21 THE COURT: With what agency?

22 PROSPECTIVE JUROR: Lexington County.

23 THE COURT: The fact you have an uncle by
24 marriage with the Lexington County Sheriff's Department,
25 could you still be a fair and impartial juror to both

1 the State and the defense in this case?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you, ma'am. You may be
4 seated. Any others?

5 (There is no response).

6 THE COURT: Has any member of the jury panel
7 personally been employed by a State or local or Federal
8 law enforcement agency? If so, please stand.

9 (There is no response).

10 THE COURT: A Federal law enforcement would
11 also include a military law enforcement agency.

12 (There is no response).

13 THE COURT: Thank you. Is any member of the
14 jury panel a member of or contributor to any
15 organization that has as its primary purpose the
16 prevention of crime or advocacy of victims' rights, such
17 as M.A.D.D., S.A.D.D., C.A.V.E. or C.A.D.R.E.? If so,
18 please stand.

19 (There is no response).

20 THE COURT: Does any member of the jury panel
21 have any ownership interest in the Kentucky Fried
22 Chicken located at 7467 Saint Andrews Road or in any
23 other Kentucky Fried Chicken franchise? If so, please
24 stand.

25 (There is no response).

1 THE COURT: Does any member of the jury panel
2 have any significant business relationship with the
3 Kentucky Fried Chicken at 7467 Saint Andrews Road, such
4 that it would prevent you from being a fair and
5 impartial juror to both the State and the defense in the
6 trial of this case?

7 (There is no response).

8 THE COURT: Thank you. Has any member of the
9 jury panel been a victim of or have an immediate family
10 member who was a victim of an armed robbery? If so,
11 please stand.

12 (Juror stands).

13 THE COURT: Your number and name, please
14 ma'am?

15 PROSPECTIVE JUROR: Deborah Craft, GS-31.
16 I've been held up in an armed robbery in 2004 with a
17 gun.

18 THE COURT: It was Ms. Craft?

19 PROSPECTIVE JUROR: Uh-huh. (Indicating
20 affirmative response).

21 THE COURT: Ms. Craft, the fact you were a
22 victim of such a crime in 2004, could you still be a
23 fair and impartial juror to both the State and the
24 defense in the trial of this case?

25 PROSPECTIVE JUROR: Sir, it would be hard.

1 THE COURT: Thank you, Ms. Craft. I will set
2 you aside for the trial of this case. You may be
3 seated.

4 I'm not sure how I worded that question. But,
5 again, has any member of the jury panel been a victim of
6 or had an immediate family member or close personal
7 friend that was a victim of an armed robbery? If so,
8 please stand.

9 (Juror stands).

10 THE COURT: Yes, sir, your number and name,
11 please?

12 PROSPECTIVE JUROR: 151, Richard Smith.

13 THE COURT: Mr. Smith, was it you, a family
14 member, or a friend?

15 PROSPECTIVE JUROR: It was me several years
16 ago, not in this country.

17 THE COURT: When you say several years ago,
18 can you give me a time frame?

19 PROSPECTIVE JUROR: '93, I believe.

20 THE COURT: '83?

21 PROSPECTIVE JUROR: '93.

22 THE COURT: '93. The fact that you were a
23 victim of such a crime, could you still be a fair and
24 impartial juror to both the State and the defense in
25 this case?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you, sir. You may be
3 seated. Any others?

4 (There is no response).

5 THE COURT: Any other requested voir dire from
6 the State?

7 MR. MOORE: No, sir, Your Honor.

8 THE COURT: From the defense?

9 MR. BAX: No more, Your Honor, thank you.

10 THE COURT: Any additional witnesses? I had
11 the one list. Is that the complete list?

12 MR. MOORE: That's complete for the State,
13 Your Honor.

14 THE COURT: Does any member of the jury panel
15 know of any reason whatsoever why you feel like you
16 could not be a fair and impartial juror in the trial of
17 this case to both the State and the defense? If so,
18 please stand.

19 (There is no response).

20 THE COURT: Madame Clerk, please give us a
21 jury. The strikes are?

22 MR. MOORE: Ten and five.

23 THE COURT: Thank you.

24 (The jury is impaneled at 10:32 a.m.)

25 (During the jury selection process, the jurors

1 were called forward and peremptory strikes were
2 exercised as noted by the attached voir dire sheet made
3 a part of this record at page 6).

4 THE COURT: Any motions regarding the jury
5 selection process from the State?

6 MR. MOORE: No, sir, Your Honor.

7 THE COURT: From the defense?

8 MR. BAX: Yes, Your Honor, we would have a
9 motion.

10 THE COURT: Ladies and gentlemen of the jury
11 panel, I am going to ask you to please step to the jury
12 room with our bailiff. Do not discuss the case amongst
13 yourselves at this time. Please go back with the
14 bailiff.

15 (The jury retires to the jury room).

16 THE COURT: The remainder of the panel, I have
17 to take this motion up outside of your presence. So I
18 am going to excuse you and require you to be out of the
19 courtroom during this period of time that I excuse you.
20 I will excuse you for 15 minutes.

21 When you are back in 15 minutes, if the
22 bailiff does not let you back in, that means that I have
23 not yet finished hearing the motion. But at this time
24 you are excused from the courtroom for 15 minutes.
25 Please be back in place, if the bailiff lets you back

1 in, in 15 minutes. Thank you very much.

2 (The jury panel leaves the courtroom).

3 THE COURT: Mr. Bax.

4 MR. BAX: Thank you, Your Honor. At this
5 time we would move under Batson regarding the strike the
6 State exercised on juror 123. She was the only
7 African-American female that was called, and that was a
8 strike that they used.

9 THE COURT: Solicitor Moore.

10 MR. MOORE: Your Honor, it's my understanding
11 now that a Batson motion has been made, it is my
12 obligation to tell the Court exactly why I struck this
13 juror.

14 If that explanation satisfies the Court, it
15 goes back on the defense to make a showing that I
16 somehow struck her based on her sex or her race. I
17 struck this juror because she is unemployed.

18 I don't know necessarily know what that means
19 about a particular person. It could mean that she has
20 fallen on bad times. It could also means that she is
21 just lazy, and she is not going to pay attention today.
22 That's exactly why I struck her. It just sends up a red
23 flag in my mind, and that's why I did it.

24 THE COURT: Thank you, Solicitor. Mr. Bax.

25 MR. BAX: Thank you, Your Honor. As we are

1 all aware, Your Honor, Judge Keesley did the
2 qualifications in this case. But during the
3 qualification of the general jury, in fact, this juror
4 stated that she was employed at Lowe's.

5 So while she may have been unemployed at the
6 time that she gave this return, she is employed
7 currently. Mr. Moore was present at those
8 qualifications as well.

9 In addition to that, Your Honor, I would need
10 to double-check through my list, but I believe there was
11 at least one or two other jurors who were not employed
12 that were put on the jury and were not struck by the
13 State.

14 So for that reason, Your Honor, I don't feel
15 that satisfies the requirement in this case, especially
16 considering that she is actually employed as she stated
17 during the general qualifications, and, in fact, that
18 was not a reason that was used consistently.

19 THE COURT: I'm not aware of any others from
20 just looking at the returns now that were unemployed.
21 If you would direct me to them, Mr. Bax.

22 MR. BAX: Yes, Your Honor, a moment's
23 indulgence.

24 (Pause).

25 MR. BAX: Your Honor, we looked through the

1 list. I was thinking of this particular person. I just
2 didn't remember the number. It was 147, juror number
3 147. That individual lists retired, disabled under the
4 occupation portion of the return.

5 THE COURT: So your position is there are no
6 other jurors that are unemployed? I would take retired,
7 disability very different from unemployment.

8 MR. BAX: I understand, Your Honor. I do
9 think that going back to the fact that she is actually
10 employed, as she stated, does change that argument a
11 bit.

12 THE COURT: I am going to address that. I
13 just wanted to make sure. I didn't see any jurors
14 besides her that were unemployed, and that's why I asked
15 you that question. I wanted to make sure my notes were
16 correct.

17 MR. BAX: Thank you.

18 THE COURT: Thank you. Yes, sir, Solicitor.

19 MR. MOORE: Judge, Monday morning was a very
20 busy day. During the qualification my good friend the
21 bailiff, Mr. Dee, came through at a particular point and
22 whispered a couple of things in my ear, that there were
23 a couple of people waiting on me, things needed to be
24 done.

25 There is a blank in my qualification sheet

1 that I go through where I didn't get hardly any
2 information on anybody. What I went on was the returns
3 that the jurors sent in.

4 When she filled this out, it clearly states
5 unemployed. She is 27 years old. You know, at the time
6 I was under the impression she was unemployed. She is
7 27 years old. No reason why she couldn't have a job.
8 Judge, that's what I went off of.

9 THE COURT: Was Solicitor Graham at the
10 qualifications Monday?

11 MR. MOORE: No, sir, Your Honor.

12 THE COURT: So the question becomes or the
13 question is whether or not that is a race neutral reason
14 for striking the juror with the solicitor's belief that
15 the juror is unemployed, and that belief is obviously
16 reasonable based on her return.

17 There is no requirement that I'm aware of that
18 any attorney has to be at the jury qualification on
19 Monday. I think they should be.

20 MR. MOORE: Not to the mention the fact, Your
21 Honor -- I'm sorry.

22 THE COURT: No, go right ahead.

23 MR. MOORE: I mean, regardless of whether or
24 not she's employed, the reason for the strike is the
25 purpose for the Batson motion. The reason, my

1 reasoning, was that she was unemployed doesn't survive
2 the Batson motion.

3 THE COURT: I understand.

4 MR. MOORE: Yes, sir.

5 THE COURT: Mr. Bax.

6 MR. BAX: Your Honor, just for the record, I
7 would point out some things. I am certainly not in any
8 way trying to impugn the Solicitor's Office in this case
9 and certainly not Mr. Moore, who I greatly respect.

10 However, I think if you look at the totality
11 of the circumstances in Ms. Purdie's case, I see where
12 there is a suspicion that arises. Number one, she's an
13 African-American female under the age of 30. She lists
14 her address at being 2435 Glen Road.

15 You take that as a totality of circumstances.
16 You take all those facts into consideration. It does
17 raise a suspicion about the reason for striking
18 Ms. Purdie.

19 Based on whether or not she is unemployed at
20 the time of the return, she is employed now. The
21 problem arises that she is African-American, she is
22 under the age of 30, and she lives in an area where
23 there is a lot of poverty, and there is a lot of crime
24 in that area.

25 That seems to me kind of a -- if that is the

1 basis, and I'm not saying it is. Obviously they have
2 stated that the unemployment was the only reason. That
3 was the reason for the Batson motion because all those
4 facts taking into totality certainly give rise to the
5 idea that there may have been some other reason, and
6 that's why we made the motion.

7 THE COURT: I respectfully deny your Batson
8 motion, Mr. Bax. Under State versus Martinez, which is
9 362 S.E.2d 641, and that line of cases, including State
10 versus Lewis, obviously Batson only requires a race
11 neutral explanation that need not rise to the level of
12 justification for a challenge for cause.

13 I think the solicitor's explanation is race
14 neutral based on his reasonable belief that juror
15 number 123 was unemployed. I don't really see a date on
16 her return as to when that was filled out, but she
17 clearly indicates unemployment and additionally does not
18 indicate any present or former employer.

19 With that being said, I would respectfully
20 deny your Batson motion.

21 MR. BAX: Thank you, Your Honor.

22 THE COURT: Are there any other motions that
23 we need to take up pretrial, Solicitor?

24 MR. MOORE: Just one thing with regard to this
25 motion, Your Honor. I think just for the record's sake,

1 I would like to introduce the juror return where she
2 marked unemployment.

3 Number two, I would like to point out that
4 juror number 98, just for the record, is an
5 African-American male and is on the jury.

6 (Court's Exhibit Number 1 is marked for
7 purposes of the record).

8 THE COURT: Which he was the only other
9 African-American that was drawn in the entire panel?

10 MR. MOORE: Yes, Your Honor.

11 THE COURT: Perhaps I didn't say that
12 correctly, which was the only other African-American
13 that was selected for presentation from the panel and
14 was seated on the jury. Are there going to be any
15 pretrial motions?

16 MR. BAX: Your Honor, we do have a pretrial
17 motion in this case concerning the stop and search and
18 seizure of materials found within the Defendant's
19 vehicle. There was a traffic stop in this case, and our
20 motion would be based on suppression of the evidence
21 that resulted in that traffic stop.

22 THE COURT: How long do y'all anticipate that
23 would take?

24 MR. BAX: Your Honor, I'm not sure as far as
25 how many witnesses the State intends to call.

1 THE COURT: Solicitor, how long do you think
2 that motion would take?

3 MR. MOORE: I quite honestly do not know.

4 THE COURT: I was trying to get an indication
5 of whether or not we want to leave our jury back there
6 or if we want to bring our jury back at a certain time.

7 MR. GRAHAM: Your Honor, if you can give us
8 one minute, we can probably give you an estimate.

9 THE COURT: Sure.

10 (Pause).

11 MR. GRAHAM: Your Honor, do we just need to go
12 into the officer who stopped the car or do we actually
13 need to go into what was found in the car and who found
14 that?

15 THE COURT: Tell me what again, how much time
16 do you think that will take.

17 MR. GRAHAM: If it's just for the car stop, it
18 would just be one witness. If it's for the finding of
19 the items, then we have to go into probably at least one
20 or two other people, probably two other people.

21 THE COURT: Mr. Bailiff, you can let our jury
22 back in, the balance of the panel.

23 (The jury panel returns to the courtroom and
24 is excused).

25 THE COURT: You have a motion, Mr. Bax?

1 MR. BAX: Yes, Your Honor. At this time we
2 would move to suppress the evidence that was obtained
3 after the Defendant was stopped by Officer Majewski. We
4 would base that on -- we would move that there was a
5 lack of articulable suspicion or probable cause for the
6 initial pull.

7 That initial pull was then kind of the impetus
8 for the officer asking for the driver's license of the
9 driver of that vehicle. That driver's license came back
10 as suspended or at least the dispatch reported to the
11 officers that the license was suspended.

12 At that point the Defendant was placed under
13 arrest and the car was searched, and the evidence was
14 then obtained. We would argue that -- and we would want
15 testimony -- to the effect of what the articulable
16 suspicion or probable cause was that the officer used in
17 initializing the traffic stop.

18 THE COURT: Solicitor.

19 MR. MOORE: Yes, sir, Your Honor. We would be
20 happy to give you that testimony.

21 THE COURT: You may proceed.

22 MR. MOORE: We call Brian Majewski to the
23 stand, please.

24 BRIAN MAJEWSKI, being
25 first duly sworn, testified as follows:

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE 30

1 CLERK: Have a seat in the witness box and
2 state your name for the record.

3 THE WITNESS: Brian Majewski, M-A-J-E-W-S-K-I.

4 IN CAMERA DIRECT EXAMINATION

5 BY MR. MOORE:

6 Q Officer, where do you work?

7 A Irmo Police Department.

8 Q How long have you worked there?

9 A Approximately four years.

10 Q What are your duties there?

11 A I'm a patrolman. I respond to calls for service,
12 do traffic enforcement, and numerous other duties.

13 Q Were you working for the Town of Irmo on
14 October 13, 2006?

15 A Yes.

16 Q On October 13, 2006, did you see a red Cadillac
17 parked at the Circle K.?

18 A Yes, I did.

19 Q Is that Circle K. in Irmo?

20 A Yes, it is.

21 Q What time did you first see this car?

22 A A little bit after 6:00 o'clock in the evening.

23 MR. MOORE: Your Honor, if I could mark this
24 exhibit for identification.

25 THE COURT: Yes, sir.

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE 31

1 (State's Exhibit Number 1 is marked for
2 identification).

3 BY MR. MOORE:

4 Q Officer, why don't you step down.

5 A (Witness leaves the witness stand).

6 Q Officer, let me show you State's for I.D. purposes,
7 State's I.D. Number 1. Where is the 76 Circle K.
8 gas station on this map?

9 A Right here (indicating).

10 Q Now, what time did you first see that Cadillac?

11 A It was approximately a little bit after
12 6:00 o'clock in the evening.

13 Q Where did you see it?

14 A It was pulled into the parking spot on this side
15 (indicating) with the hood up. This section of the
16 building is not lit up, and normally no one parks
17 in there.

18 Q Tell us why is it that you noticed this Cadillac.

19 A It was parked on this side (indicating) of the
20 building with the hood up, and normally no one ever
21 parks there because there is not a street. There
22 was not a street light at the time. So this
23 section of the parking lot is dark.

24 Q After you first saw it, where did you go? Actually
25 where were you when you first saw it?

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE 32

1 A I was passing by on Saint Andrews Road.

2 Q Where did you go?

3 A I went down Saint Andrews Road, continued through
4 town to continue checking property throughout the
5 town.

6 Q Where did you go then?

7 A Came back, circled back around, came up Lake Murray
8 Boulevard and turned left on Saint Andrews Road and
9 observed that the vehicle was not there.

10 Q What time was this?

11 A Approximately 20, 30 minutes later.

12 Q Now, when it wasn't there and you came up Lake
13 Murray Boulevard, where did you go next?

14 A I turned left onto Saint Andrews Road to go down
15 and check the town property on the lower end of
16 Saint Andrews Road.

17 Q Did you do that?

18 A Yes.

19 Q Where else did you go?

20 A I came back Saint Andrews Road and observed that
21 the vehicle -- I came back, and the vehicle was
22 gone at that time.

23 Q All right. Let me ask you this. When you first
24 saw it, how was it positioned in this parking lot?

25 A It was pulled in with the hood up.

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE

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- 1 Q You said you came back this way (indicating),
2 right?
3 A Yes.
4 Q Where did you go then?
5 A At that time I came through and continued on patrol
6 through the town.
7 Q Where on patrol?
8 A Just checking businesses and residences.
9 Q Show me where you went. You are saying you came
10 back this way (indicating)?
11 A Uh-huh. (Indicating affirmative response).
12 Q Where did you go?
13 A Okay. When I came back this way (indicating), I
14 turned right onto Lake Murray Boulevard.
15 Q Then what happened?
16 A I proceeded down Lake Murray Boulevard and at that
17 time got down to -- proceeded down Lake Murray
18 Boulevard and continued checking property at that
19 point.
20 Q Where did you go then?
21 A At that time we got a call for an armed robbery at
22 the K.F.C. and turned back around and headed back
23 towards K.F.C.
24 Q Officer, let's make it very, very clear and very,
25 very simple. Where were you when you got the

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE 34

1 dispatch that the K.F.C. had been robbed?

2 A On Lake Murray Boulevard.

3 Q How far away from this gas station were you when
4 you got that dispatch?

5 A This (indicating) is the 1200 block of Lake Murray
6 Boulevard. I was in approximately the 900 block or
7 thousand block of Lake Murray. This is 1200,
8 between the 900 block and the thousand block of
9 Lake Murray Boulevard.

10 Q Fine. What time were you dispatched to the K.F.C.?

11 A I believe it was 19:10, 19:10 hours, thereabouts,
12 roughly, approximately.

13 Q Tell me what that is in my time.

14 A About 7, 7:10 somewhere around in there.

15 Q When you got the call, when you got the dispatch,
16 where did you go?

17 A I headed up Lake Murray Boulevard toward Saint
18 Andrews Road, turned right onto Saint Andrews Road
19 to head to K.F.C.

20 Q Where is the K.F.C.?

21 A Right here (indicating).

22 Q So you are coming up this way (indicating), take a
23 right. After you make that right, tell me what
24 happens.

25 A I see the Cadillac pull out of the Circle K.

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE 35

1 parking lot at a high rate of speed and come across
2 and come to the turn lane on Saint Andrews to turn
3 left down Lake Murray Boulevard.

4 Q Why didn't you keep going to the K.F.C.?

5 A I knew there was another unit in route. He had
6 arrived on scene before I even got to that point.

7 Q So there was already an officer there?

8 A Yes.

9 Q What did you do after the Cadillac came pulling out
10 at a high rate roof speed like you said?

11 A I made a U-turn and got in behind him and observed
12 him make a left hand --

13 Q Hold on. Did he stop here (indicating)?

14 A Yes.

15 Q What happened next?

16 A He proceeded to make a left-hand turn onto Saint
17 Andrews Boulevard -- I'm sorry -- off Saint Andrews
18 onto Lake Murray Boulevard, and he did not use a
19 turn signal.

20 Q So he didn't use his turn signal?

21 A That's correct.

22 Q Did you pull him over?

23 A Yes.

24 Q Where did you pull him over?

25 A At soon as we got onto Lake Murray Boulevard and

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE

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- 1 cleared this intersection, I activated my blue
2 lights and siren, and he proceeded to do down to
3 the Gaz-bah, the gas station, and pulled over.
- 4 Q After you pulled him over, did you go to the
5 window?
- 6 A Excuse me?
- 7 Q Did you go to the window of his car after you
8 pulled him over?
- 9 A Yes, sir.
- 10 Q What did you do?
- 11 A I asked him for his license, registration, and
12 insurance card.
- 13 Q What happened next?
- 14 A He handed me the information. I ran it through
15 dispatch, and it came back that he was suspended.
- 16 Q What did you do?
- 17 A At that time he was placed under arrest for driving
18 under suspension, and his vehicle was inventoried
19 per policy.
- 20 Q Before we get to that now, did you search him after
21 you arrested him?
- 22 A Yes.
- 23 Q What did you find?
- 24 A In his left front pocket, I found a Crown Royal bag
25 full of ammunition.

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE

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- 1 Q How many bullets were in the bag, do you know?
- 2 A I'm not sure. I didn't count them.
- 3 Q Was it a lot, a little, one or two?
- 4 A It was more than one or two.
- 5 Q Now, after you arrested him, where did you put him?
- 6 A In the back of my patrol car.
- 7 Q What happened after you put him in the back of your
- 8 patrol car?
- 9 A At that time Sergeant Crosland was conducting a
- 10 vehicle inventory, discovered the gun, at which
- 11 time he called Sergeant Franklin, the investigator,
- 12 to come out and process the scene.
- 13 Q Did they do that?
- 14 A Yes, sir.
- 15 Q And what all did they find after they searched the
- 16 car?
- 17 A They found a black bag with a Scream mask, plastic
- 18 latex gloves, a bagful of money, K.F.C. coupons.
- 19 Q You can sit down.
- 20 A (Witness resumes the witness stand).
- 21 Q Officer, I want to make sure we get this straight
- 22 now.
- 23 MR. MOORE: Your Honor, if I could mark this
- 24 document for identification purposes.
- 25 THE COURT: Yes, sir.

BRIAN MAJEWSKI -- IN CAMERA DIRECT -- MR. MOORE

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1 (State's Exhibit Number 2 is marked for
2 identification).

3 BY MR. MOORE:

4 Q Let me show you State's I.D. Number 2. I want to
5 be real clear about this now. I want you to look
6 at that and tell me what that document -- tell me
7 what it is first.

8 A This is what we call an additional narrative. It's
9 a part of the incident report that I typed up.

10 Q Okay. Would it help you refresh your memory as to
11 this incident?

12 A Yes, sir.

13 Q Tell me what time or about what time you stopped
14 the Defendant's car.

15 A I stopped him approximately 9:13, around 9:13.

16 Q What time were you dispatched to the K.F.C.?

17 A Approximately 9:10.

18 Q All right. So between 9:10 and 9:13, that's when
19 you were headed toward the K.F.C.?

20 A That's correct.

21 Q And that's when you turned around on the Defendant?

22 MR. BAX: Objection, leading, Your Honor.

23 THE COURT: Just ask him what happened during
24 that period of time.

25 MR. MOORE: Thank you, Your Honor.

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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1 BY MR. MOORE:

2 Q What happened during that period of time, Officer?

3 A When I was headed towards K.F.C., I observed a
4 vehicle leave the parking lot a high rate of speed.
5 So I turned around on the vehicle.

6 Q Tell us exactly why you stopped that vehicle.

7 A Earlier in the night I observed the vehicle pulled
8 into a parking spot with the hood up, and that area
9 is normally not occupied by any vehicles. I came
10 back later. The vehicle was gone. I came back
11 again on patrol, and the vehicle was backed into
12 the same parking spot and the same section of the
13 parking lot, which there is no lights in that
14 section of the parking lot. No one parks there.
15 Then when he left out at a high rate of speed.

16 MR. MOORE: Nothing further, Your Honor.

17 THE COURT: Thank you, Solicitor. Mr. Bax.

18 MR. BAX: Thank you, Your Honor.

19 IN CAMERA CROSS EXAMINATION

20 BY MR. BAX:

21 Q Officer Majewski, good morning.

22 A Good morning, sir.

23 Q I hope I am pronouncing that right. I think I was
24 saying Majewski (phonetic) before, but you say it's
25 Majewski?

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

1 A It's Majewski, yes.

2 Q I apologize.

3 A It's all right.

4 Q Now, you have testified in the questioning here
5 today in using this map that you were on patrol in
6 that general area that evening; is that correct?

7 A That's correct.

8 Q You testified, I believe, that the first time that
9 you saw this vehicle was while you were on Saint
10 Andrews Road; is that correct?

11 A That's correct, at the corner of Saint Andrews and
12 Lake Murray, yes.

13 MR. BAX: A moment's indulgence, Your Honor.

14 (Pause).

15 BY MR. BAX:

16 Q Let me refer to what has been introduced as State's
17 Exhibit Number 1 that we talked about or that you
18 talked about with Solicitor Moore earlier. This is
19 an aerial view of the Circle K. and the K.F.C.,
20 correct?

21 A That's correct.

22 Q This here (indicating) being the Circle K.,
23 correct?

24 A That's correct.

25 Q You have testified that you were on patrol or you

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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1 were traveling down Saint Andrews. Were you
2 traveling on this map, this direction here
3 (indicating)?

4 A That's correct.

5 Q You have testified that you observed the vehicle in
6 this section (indicating) of the parking lot?

7 A That is correct.

8 Q You may need to step down to see this, I don't
9 know, but I do see where there are actual parking
10 spaces here (indicating) indicated by white lines
11 that are painted on the pavement; is that correct?

12 A That's correct.

13 Q So that is actually a parking lot, right?

14 A That's correct, yes.

15 Q You testified that the first time that you saw this
16 vehicle was a little after 6:00 p.m., correct?

17 A That's correct.

18 Q And what was the date?

19 A It was October 13, 2006.

20 Q In October at that time, was it dark by that point?

21 A Yes.

22 Q Was it dusk/dark or was it pitch black by
23 6:00 o'clock?

24 A Headed towards dark. It wasn't completely dark.

25 Q And let me ask you this. This is something you

1 talked about with the solicitor. Your report
2 indicates a little bit of a different time. Which
3 time is correct? Was it a little after six the
4 first time you saw the car or was it after that?

5 A It would be the time that's on my report. The
6 correct time is on there.

7 Q You indicate in your report, which the solicitor
8 has already referred to, that you observed at
9 approximately 8:30, that you observed a red in
10 color Cadillac pulled into that parking space. Is
11 that the accurate time or is it a little after six?

12 A Like I said, it would be the time that's on the
13 report. The report was typed that day.

14 Q You specifically remember, sitting here right now,
15 what time it was?

16 A Excuse me?

17 Q Can you specifically remember now, sitting here, in
18 your memory what time it was?

19 A No.

20 Q When did you type up this report, Officer Majewski?

21 A That same night of the incident.

22 Q The same night of the incident?

23 A Yes.

24 Q How long after this incident did you type up the
25 report? Can you remember?

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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- 1 A Approximately two to three hours after.
- 2 Q Now, you also testified here today that after you
- 3 passed by the Circle K. at whatever time it was,
- 4 the first time you saw the car, it was parked on
- 5 this side (indicating) the side closest to Saint
- 6 Andrews; correct?
- 7 A That's correct.
- 8 Q I believe you testified that it had its hood up?
- 9 A That is correct.
- 10 Q In your experience have you ever seen any other
- 11 cars at a gas station with their hoods up?
- 12 A Yes.
- 13 Q Do they sell motor oil at this gas station or do
- 14 you know?
- 15 A Yes, they do.
- 16 Q You were headed up Saint Andrews Road past the
- 17 K.F.C. at that time, correct?
- 18 A That's correct.
- 19 Q I believe you testified you circled around
- 20 somewhere that is off the map and came back to this
- 21 area via Lake Murray Boulevard; is that correct?
- 22 A That's correct.
- 23 Q Which side of Lake Murray Boulevard, this side
- 24 (indicating) or this side (indicating) did you come
- 25 up at that time?

- 1 A It would be on the right-hand side.
- 2 Q The right-hand side. So you came up this way
- 3 (indicating)?
- 4 A That's correct.
- 5 Q The I-26 side?
- 6 A That's correct.
- 7 Q About how much time had elapsed between the first
- 8 time that you saw the vehicle and the time that you
- 9 went by Circle K. the second time?
- 10 A Approximately 20 to 30 minutes.
- 11 Q And you testified that the vehicle you have
- 12 described, the Cadillac, was no longer there; is
- 13 that correct?
- 14 A That's correct.
- 15 Q In your testimony here today, you stated that you
- 16 went -- traveled down Lake Murray Boulevard, over
- 17 Saint Andrews in this direction (indicating); is
- 18 that correct?
- 19 A No, sir.
- 20 Q No?
- 21 A It was the opposite direction.
- 22 Q You had come up this way (indicating)?
- 23 A Yes.
- 24 Q And where did you go from here?
- 25 A I turned left onto Saint Andrews Road to check the

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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1 property on the lower end of town.

2 Q So in looking at this left, you turned left here
3 (indicating) and go this way?

4 A That's correct.

5 Q You testified that you went by the Circle K. one
6 more time that night before this incident occurred,
7 correct?

8 A That's correct.

9 Q And you testified here today that you didn't
10 observe the vehicle at that time; is that correct?

11 A When I came back the third time, the vehicle was
12 backed into that parking spot, when I came back
13 from Saint Andrews and turned right onto Lake
14 Murray.

15 Q I misunderstood. I thought you had testified that
16 the vehicle was still not there the third time you
17 went by?

18 A The third time the vehicle was in there. It was
19 backed in.

20 Q You testified that the second time you came through
21 here was about roughly 30 minutes later after the
22 first time, correct?

23 A That's correct.

24 Q When you came back up Saint Andrews and passed the
25 Circle K. the third time, how much time had

1 elapsed?

2 A Approximately another 20 minutes or so.

3 Q But when you came back up Saint Andrews, I believe
4 you testified that you turned back onto Lake Murray
5 Boulevard; is that correct?

6 A That's correct.

7 Q Headed back towards the 26 area, I-26 area?

8 A Yes.

9 Q Officer Majewski, let me ask you, you would have
10 been, to make a right turn off Saint Andrews to
11 Lake Murray Boulevard, were you in the far right
12 lane?

13 A That's correct.

14 Q And the nearest point you would have been would be
15 this little area right here (indicating).

16 Obviously there is a train in this picture. But
17 this little area right here (indicating), that
18 would have been the nearest that you would have
19 been to this Circle K. at that point in time; is
20 that correct?

21 A That is correct.

22 Q Were you able or are you able to testify here today
23 that you are positive it was the same red Cadillac
24 in that parking space from that distance?

25 A Yes, sir.

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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- 1 Q How far is that distance, do you know?
- 2 A I'm not sure, but it's a clear view from there,
- 3 from that section of the parking lot.
- 4 Q Was the vehicle that you saw the second time, was
- 5 it in the same parking spot as the first vehicle
- 6 that you saw?
- 7 A Yes.
- 8 Q Did it have its hood up?
- 9 A No, it was just backed into that parking spot.
- 10 Q So the first time you saw the vehicle, it had its
- 11 hood up, and was it pulled in with the front end?
- 12 A That's correct.
- 13 Q So the front of the Cadillac would have been facing
- 14 these trees (indicating)?
- 15 A That's correct.
- 16 Q And it had its hood up, and you would have gone by
- 17 this side (indicating); correct?
- 18 A Correct.
- 19 Q So you would have seen the back and the right side
- 20 of the vehicle?
- 21 A That's correct.
- 22 Q The second time when you turned here (indicating)
- 23 and looked over, you saw the front of the vehicle;
- 24 is that correct --
- 25 A That's correct.

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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- 1 Q -- since it was backed in?
- 2 A That's correct.
- 3 Q And the hood was down?
- 4 A That's correct.
- 5 Q Now, when you came back for the last time -- when
- 6 you came back for the last time -- this was after
- 7 you had received a call from dispatch that there
- 8 had been an incident, an armed robbery, at the
- 9 Kentucky Fried Chicken; correct?
- 10 A What do you mean? I had already passed.
- 11 Q Certainly, I will rephrase. You had made a right
- 12 turn here (indicating) the last time you saw that
- 13 vehicle before dispatch called?
- 14 A That's correct.
- 15 Q And then you received the dispatch call, you said,
- 16 between the 900 and 1000 block of Lake Murray
- 17 Boulevard; correct?
- 18 A That's correct.
- 19 Q You would have turned around at that point and were
- 20 heading back the way you came, correct?
- 21 A Correct, yes, sir.
- 22 Q You testified that as you came up back to this
- 23 intersection (indicating), that you observed the
- 24 vehicle; correct?
- 25 A That's correct.

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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- 1 Q And dispatch call was for an incident at the
2 Kentucky Fried Chicken, right?
- 3 A Correct.
- 4 Q Did that call involve a description of a vehicle?
- 5 A No, it did not.
- 6 Q Did that call involve a physical description of an
7 individual that was the suspect?
- 8 A Not at that time, no.
- 9 Q Now, you have testified that the vehicle exited at
10 a high rate of speed. Let me ask you this. Which
11 exit out of here, because there's only two exits
12 out of this gas station onto Saint Andrews;
13 correct?
- 14 A That's correct.
- 15 Q There is one right up here (indicating) on the
16 intersection, and there is one a little bit back
17 from the intersection; correct?
- 18 A That's correct.
- 19 Q Which exit out of these two did the vehicle that
20 you stopped come out of?
- 21 A He came out of the second one, away from Lake
22 Murray Boulevard close to K.F.C.
- 23 Q Right here (indicating)?
- 24 A Yes.
- 25 Q Now, do you recall whether or not there were

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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- 1 already any cars in the turning lane, the left
2 turning lane of Saint Andrews? In other words,
3 this lane that you have got these cars in right
4 here (indicating)?
- 5 A No, there was not.
- 6 Q There was not. Do you know the distance between
7 this exit (indicating) from the gas station to this
8 light (indicating)?
- 9 A I have no idea.
- 10 Q Would it be 50-yards?
- 11 A Approximately, I would say, somewhere around in
12 there. I'm not quite sure.
- 13 Q Would it surprise you if it was less than 50-yards?
- 14 A Yes. Like I said, I'm not positive how far a
15 distance it is.
- 16 Q Would it be reasonable if I told you it was about
17 20-yards or 60 feet, however you want to put it?
- 18 A It's more than 60 feet. I know that.
- 19 Q More than 60 feet?
- 20 A Yes.
- 21 Q But it could be less than 50-yards, right?
- 22 A Probably so, yes.
- 23 Q Now, the vehicle as you have testified went from
24 this exit (indicating) to this lane (indicating)
25 and stopped. Was it stopped because there was a

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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1 red light there?

2 A Yes.

3 Q When you describe a high rate of speed, what
4 exactly do you mean? Because you've only got
5 between 20 and 50-yards, somewhere less than
6 50-yards, to get from here to here (indicating).
7 What kind of high rate of speed are we talking
8 about?

9 A It was exiting the parking lot just to the point --
10 just prior to the point where he would be spinning
11 tires, accelerated at a high rate of speed to get
12 out of the parking lot.

13 Q When did you observe this? Were you turning here
14 (indicating) or were you still back here
15 (indicating)? Where were you at?

16 A I was already on Saint Andrews Road.

17 Q So you had already made the right turn onto Saint
18 Andrews Road here (indicating)?

19 A Yes.

20 Q Were you able -- were the tires, did you hear
21 anything? Were they actually squealing?

22 A No.

23 Q How were you able to tell that it was accelerating
24 to that amount?

25 A I'm a certified radar operator, and to become

1 certified, you have to estimate vehicle speed. I
2 estimated the vehicle was traveling at a high rate
3 of speed.

4 Q Let me ask you this. Is the light at the
5 intersection visible from this exit out of the gas
6 station?

7 A Yes.

8 Q So a driver pulling out of that would have been
9 able to see whether the light was green or red; is
10 that correct?

11 A That's correct.

12 Q Were you aware of what color the light was as the
13 car in question was exiting the gas station?

14 A I had the green light. So that one would have been
15 red.

16 Q So it would have been red. So whoever it was that
17 was pulling out of here would have been able to see
18 that it was red as well; correct?

19 A Yes.

20 Q In order to get from this exit out of the gas
21 station to this turning lane (indicating). You
22 have to cover how many lanes of traffic?

23 A It would be three lanes to get to that turning
24 lane.

25 Q Do you recall whether or not there were any cars in

BRIAN MAJEWSKI -- IN CAMERA CROSS -- MR. BAX

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1 the other lanes, the straight lane?

2 A I do not recall.

3 Q So anybody pulling out of there that needed to take
4 a left onto Lake Murray Boulevard would have had to
5 cover at least three lanes of traffic to get there,
6 correct?

7 A That is correct.

8 Q And only had about 20 to 30-yards to get there,
9 correct?

10 A Roughly.

11 Q Do you know the speed limit on this road, on Saint
12 Andrews Road, at that point?

13 A Yes.

14 Q What is that speed limit?

15 A Thirty-five miles an hour.

16 Q To your knowledge did the vehicle ever exceed the
17 speed limit in that little bit of stretch?

18 A To my knowledge, no, it did not.

19 Q Do you think it's even possible in that 30-yards
20 for a vehicle to exceed the speed limit?

21 A Yes, it is.

22 Q You think so?

23 A Yes.

24 Q Would they be able to stop at a stoplight if they
25 exceeded the speed limit?

1 A It all depends on the vehicle. Some would, some
2 would not.

3 Q Now, that turning lane has a light specifically for
4 that lane; correct?

5 A That's correct.

6 Q And that light, the green section of that light, is
7 a green left arrow, correct?

8 A That's correct.

9 Q The traffic coming out of that lane, does it have
10 any choice about where it's going?

11 A No, it has to turn left.

12 Q Has to turn left. You have testified that this
13 vehicle did not use a turn signal; is that correct?

14 A That's correct.

15 Q To your knowledge is it common for vehicles that
16 are in a turning lane where the only direction they
17 can only go is already indicated to always use a
18 turn signal?

19 A To always use one, no.

20 Q Do you pull them each time that you observe someone
21 not using a turn signal in a turn-only lane?

22 A Not always.

23 Q Why not?

24 A I couldn't be enforcing any other laws that are
25 being broken at the time.

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1 Q So you would be pretty busy doing did that in other
2 words?

3 A Yes.

4 Q Is that a law to your understanding that is
5 observed quite a lot or is it something that a lot
6 of people may not pay attention to?

7 A Do a lot of people use their turn signals in the
8 turn-only lane? Is that what you are asking me?

9 Q Yes.

10 A A lot of them do, yes.

11 Q Do a lot of them not do it?

12 A Correct.

13 Q You have testified that when the car in question
14 got through this intersection, that you had
15 actually done a U-turn to get behind the vehicle;
16 correct?

17 A That is correct.

18 Q So you also made a left turn onto Lake Murray
19 Boulevard?

20 A Correct.

21 Q And you initialized a traffic stop, correct?

22 A That's correct.

23 Q Where did you flip on your blue lights, sir?

24 A Right after Woodrow Street.

25 Q Which is this one right here (indicating) that kind

1 of just parallels?

2 A That's correct, right where you see the cars in the
3 picture.

4 Q So before you got here (indicating) or right about
5 here?

6 A Yes. Like I said, right after Woodrow Street
7 there.

8 Q And I believe that's a furniture business here
9 (indicating); is that correct?

10 A That's a bank. The furniture business is on down.

11 Q So it's further down, the furniture business?

12 A It's right on the other side of the bank, right
13 there on the corner of Woodrow and Lake Murray.

14 Q When you initialized the lights, the vehicle in
15 question did pull over; correct?

16 A He did when he got to the Gaz-bah.

17 Q Which is I think right there across from the
18 furniture store, correct?

19 A It's down a ways.

20 Q A little catty-corner to it?

21 A It's on the same side as the furniture store. It's
22 down Lake Murray Boulevard a little bit further.

23 Q I believe, and correct me if I'm wrong, I believe
24 the furniture store is on the right-hand side;
25 correct?

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- 1 A There is another furniture store there.
- 2 Q Oh, there is another one?
- 3 A Yes, sir.
- 4 Q I might be getting them confused. So he pulled
5 into the Gaz-bah, Exxon gas station; is that
6 correct?
- 7 A That's correct.
- 8 Q When you approached the subject's vehicle, you
9 testified that you asked for a driver's license and
10 proof of insurance, registration at that time;
11 correct?
- 12 A That's correct.
- 13 Q Did you state anything else to the person in the
14 car at that time?
- 15 A Yes.
- 16 Q What did you say?
- 17 A I said: We just had an armed robbery with a
18 vehicle matching your description.
- 19 Q Well, in fact, there was not a description of any
20 vehicle that had been put out by dispatch; is that
21 right?
- 22 A That's correct.
- 23 Q And I believe that you had -- the reason that you
24 testified that you pulled this car over was due to
25 the lack of a turn signal, correct?

1 A That is correct.

2 Q Why exactly Officer, did you state to the Defendant
3 at that time that there had been an armed robbery
4 and that his car matched the description when there
5 was no description of a car in this case?

6 A It was the heat of the moment. I observed a
7 suspicious vehicle earlier, saw it leaving at a
8 high rate of speed. It was just a slip-up of
9 words.

10 Q So basically in your work as a police officer and
11 observing the vehicle that you had seen at the
12 Circle K. and then it exiting, you had a feeling it
13 might have something to do with this incident;
14 correct?

15 A That's correct.

16 Q And you were operating under that suspicion,
17 correct?

18 A Yes.

19 Q But that wasn't the reason you pulled the vehicle
20 over, correct?

21 A Correct.

22 Q Because you didn't have a description of the
23 vehicle in this case; is that correct?

24 A That is correct.

25 Q And you didn't have a description of any kind of

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1 suspect physical wise, correct?

2 A Not at that time, no.

3 Q So you were going off a hunch; isn't that right?

4 A Training.

5 Q You have put in or you have testified that -- let
6 me back up. You have put in your report that you
7 advised the Defendant or the subject in this case
8 that he did not use a turn signal; is that correct?

9 A That's correct.

10 Q Do you recall whether or not you actually said that
11 to him?

12 A I advised him that he did not use a turn signal
13 when he was in the back of my patrol car. He asked
14 why, again why he was being stopping and why he was
15 under arrest. I told him he was stopped for not
16 using his turn signal, and he was under arrest for
17 driving under suspension.

18 Q So you advised him of the fact that he did not use
19 a turn signal after you had already ran his
20 license, arrested him for D.U.S., searched the car,
21 put him back in the patrol car; correct?

22 A Prior to searching the vehicle, that's correct.

23 Q So you had already placed him under arrest for
24 driving under suspension, correct?

25 A Correct.

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1 Q You had already searched him and put him in cuffs,
2 correct?

3 A That's correct.

4 Q You had placed him in the patrol unit?

5 A Correct.

6 Q Now, your report does not indicate in here that you
7 had stated to him anything about the robbery or a
8 description of a vehicle. Why is that?

9 A At the time, you know, the report indicates all the
10 facts that occurred.

11 Q Let me ask you this. Your patrol unit that you
12 were driving at that time, was it equipped with any
13 video recording equipment?

14 A Yes.

15 Q Commonly referred to as a dash cam?

16 A Mobile cameras.

17 Q Mobile cameras?

18 A Uh-huh. (Indicating affirmative response).

19 Q Do you know whether or not or that mobile camera
20 was or began to record at any time during this
21 incident?

22 A Yes, it did record.

23 Q Have you had a chance to see that video?

24 A Yes, I have.

25 MR. BAX: A moment's indulgence, Your Honor.

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1 THE COURT: All right.

2 MR. BAX: Your Honor, at this time the defense
3 would like to introduce for Court's exhibit the
4 recording of the dash cam from Officer Majewski's
5 vehicle.

6 THE COURT: That would be defense 1 for I.D.

7 MR. BAX: Yes, Your Honor.

8 (Defendant's Exhibit Number 1 is marked for
9 identification).

10 (During the playing of the videotape,
11 Defendant's Exhibit Number 1 for identification, the
12 following was reported).

13 BY MR. BAX:

14 Q Officer, is that you on the passenger's side or the
15 driver's side of the vehicle?

16 A The driver's side.

17 Q Officer, what's the name of the officer on the
18 opposite side of the vehicle from yourself?

19 A I'm not there at that time.

20 Q Oh, that's right. I apologize. Who is the officer
21 at this time that is on the passenger side of the
22 vehicle?

23 A I'm not sure of his name. He is a Lexington County
24 deputy sheriff.

25 (The videotape was continued, and the

1 following was reported).

2 BY MR. BAX:

3 Q Let me pause it for just a second, Officer, and ask
4 you a question. There is kind of a conversation
5 going on between what sounds like some of the
6 officers. Do you recall that at that time?

7 A Yes.

8 Q And that was a discussion where it's audible that
9 the Kentucky Fried Chicken is being referred to; is
10 that correct?

11 A That's correct.

12 Q So you and the other officers -- or do you remember
13 a conversation discussing the incident at the
14 K.F.C. in relation to this traffic stop at that
15 time?

16 A Yes.

17 Q Were you involved in that conversation?

18 A Yes, I was.

19 Q What were you relaying to the other officers at
20 that time in relation to the Kentucky Fried Chicken
21 incident?

22 A I was describing the vehicle prior to the K.F.C.
23 incident.

24 Q Thank you.

25 (The videotape was continued, and the

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1 following was reported).

2 BY MR. BAX:

3 Q Let me pause it for just a second. Officer
4 Majewski, this is you at this point going up to the
5 passenger side of the vehicle or no?

6 A To the driver's side.

7 Q Excuse me, the driver's side?

8 A Yes.

9 Q And at that time had you gotten information back
10 from dispatch?

11 A Yes, I had.

12 Q What information did you receive from your dispatch
13 officer?

14 A That he was driving under suspension for unpaid
15 traffic ticket and it ended indefinitely.

16 Q I believe you were approaching the car at this
17 point, and you have asked him to step out; is that
18 correct?

19 A That's correct.

20 THE COURT: What time is up there now, can you
21 tell me?

22 THE WITNESS: The time on that clock is wrong
23 from the incident. It was never reset when they had the
24 time change.

25 THE COURT: What time is up there, Mr. Bax?

1 MR. BAX: Your Honor, it says 20:55:2. I
2 don't see -- there is a little bit that is cut off by
3 the side of the screen, Your Honor.

4 THE COURT: So it would be 21:55? Is that
5 what he's saying?

6 MR. BAX: I believe so, Your Honor, but I'm
7 not quite sure. Twenty-one-fifty-five, I'm very bad
8 with military time.

9 THE COURT: It would be 9:55?

10 MR. BAX: Yes, Your Honor, I think that's
11 correct.

12 THE COURT: Would that be correct?

13 MR. BAX: I'm not sure if that was the correct
14 time, but that would have been what it was if it was one
15 hour off. The report indicates a little bit different
16 time, Your Honor.

17 THE COURT: All right.

18 MR. BAX: Thank you.

19 (The videotape was continued, and the
20 following was reported).

21 BY MR. BAX:

22 Q Officer, there are questions being asked of the
23 Defendant. I believe it was yourself asking the
24 question, correct me if I'm wrong, please, about a
25 gun, whether he had a gun. "Where is your gun?"

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1 Was that you, Officer?

2 A That's correct.

3 Q Why were you asking him that question?

4 A After he was placed under arrest, I did a pat down
5 and found a bag full of ammunition in his pocket,
6 left front pocket.

7 Q So you were asking those questions after the pat
8 down and you found ammunition, correct?

9 A That's correct.

10 Q Those questions were in reference to the
11 ammunition?

12 A No, they were in reference to if he had a gun.

13 Q Were you asking those questions -- let me rephrase.
14 Were you asking those questions because you found
15 bullets or were you asking those questioned based
16 on the fact that you knew an armed robbery had just
17 occurred at the K.F.C. two blocks away?

18 A The fact that he had bullets on him.

19 MR. BAX: I apologize, Your Honor. I hit the
20 wrong button. Let me see if I can try and fix this.
21 That was my fault.

22 (The videotape was continued, and the
23 following was reported).

24 BY MR. BAX:

25 Q At this point, Officer, there is another officer

1 who is looking in the car. I believe you testified
2 that one of the officers -- and I forget the
3 name -- was making the inventory search?

4 A That's Sergeant Crosland.

5 Q Sergeant Crosland was making the inventory search
6 at this time. Where were you at this point in
7 time?

8 A I was putting Mr. Battle in the back of the patrol
9 car of a Lexington County deputy.

10 Q Let me ask you this real quick before I start it
11 back. You have testified you were with the Irmo
12 Police Department. How long had you been with law
13 enforcement at that point in time?

14 A Approximately eight years.

15 Q Had all that time been with the Irmo Police
16 Department?

17 A No, it has not.

18 Q How long had you been with the Irmo Police
19 Department at that point in time in October of
20 2006?

21 A At that time approximately three years.

22 Q During those three years, had you been on patrol
23 mostly or had you had other duties?

24 A Patrol.

25 Q Would that patrol involve a lot of traffic stops?

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1 A Yes, it does.

2 Q Is it the practice of the Irmo Police Department to
3 utilize a court summons for D.U.S. firsts at any
4 time or does the Irmo Police Department always
5 conduct arrests on driving under suspensions?

6 A It all depends on what they are driving under
7 suspension for.

8 Q Are there times when a driving under suspension
9 charge is brought or a ticket is issued where the
10 person who is accused of that is not taken into
11 arrest at that time?

12 A Yes.

13 (The videotape was continued, and nothing
14 further was reported).

15 BY MR. BAX:

16 Q A brief final question, Officer. In your time as
17 an officer with the Irmo Police Department at this
18 time, had you conducted a vehicle inventory search
19 every time that you cited someone for driving under
20 suspension?

21 A That is correct.

22 Q You have searched the car every time that you cited
23 someone for driving under suspension?

24 A Yes, sir. We perform a vehicle search for anyone
25 charged with driving under suspension even if they

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1 are field blocked, which means they are issued a
2 courtesy summons.

3 Q Thank you, Officer.

4 MR. BAX: A moment's indulgence, Your Honor.

5 THE COURT: All right.

6 (Pause).

7 MR. BAX: One other brief question, Your
8 Honor, my apologies.

9 THE COURT: Yes, sir.

10 BY MR. BAX:

11 Q Officer, since this incident has occurred, through
12 your investigation or your involvement or even just
13 talking to people involved with the case, have you
14 since learned that the D.M.V. was actually mistaken
15 in having the driver's license listed as suspended?

16 A No, I am not.

17 MR. BAX: No further questions at this time,
18 Your Honor.

19 THE COURT: Thank you, Mr. Bax. Anything on
20 redirect, Solicitor?

21 MR. MOORE: Nothing further, Your Honor.

22 THE COURT: Officer, you may step down. Any
23 other witnesses, Solicitor?

24 MR. MOORE: No, sir, Your Honor.

25 THE COURT: Mr. Bax.

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1 MR. BAX: Briefly, Your Honor. I just wanted
2 to get this out of your way if you would give me a
3 second.

4 (Pause).

5 MR. BAX: Your Honor, at this time the defense
6 would call Mr. Battle to the stand.

7 THE COURT: Mr. Battle, come around, please.

8 KORELL ROBERT BATTLE, being
9 first duly sworn, testified as follows:

10 CLERK: Have a seat and state your name for
11 the record, please.

12 THE WITNESS: My name is Korell Robert Battle.

13 IN CAMERA DIRECT EXAMINATION

14 BY MR. BAX:

15 Q Mr. Battle, let me take you back to October of
16 2006; okay? Do you recall being pulled over by an
17 Irmo police officer on October 13, 2006?

18 A Yes, I do.

19 Q What time of day was that, Mr. Battle?

20 A It was approximately about 9, 9:10.

21 Q Mr. Battle, where were you coming from when you
22 were pulled? Where was the last place you had your
23 vehicle stopped before that?

24 A I was parked at the Circle K. gas station right
25 there on the corner.

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1 Q Now, you have been present in court for the
2 testimony of the officer; correct?

3 A Yes, sir.

4 Q This is an aerial map of the area. This
5 (indicating) is the Circle K., right?

6 A Yes, sir.

7 Q Do you recall where you were parked here in this
8 lot? In fact, I will bring this over to you if I
9 may, Your Honor. Can you point out for us where at
10 the Circle K. you were parked.

11 A Right there (indicating) in the first parking space
12 right by the light there on the side.

13 Q At the time that you were there, this was around --
14 well, let me ask you this. How long after you left
15 the Circle K. were you pulled over by the officer
16 with the Irmo Police Department?

17 A I was parked toward the trees. I had pulled my
18 car --

19 Q Let me stop you for a minute, Mr. Battle. Just
20 time frame wise, between the time you got in your
21 car and drove off to the time you were pulled, how
22 many minutes was that in your estimation?

23 A Probably less than 15 seconds.

24 Q Fifteen seconds?

25 A Yeah, 15 seconds. Because I backed my car up, and

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1 then I pulled out into the traffic.

2 Q And were you pulled on Saint Andrews or were you
3 pulled on Lake Murray Boulevard?

4 A I was pulled after I crossed the railroad tracks
5 and got down to right about here (indicating), and
6 he put on his lights. I couldn't turn on the side
7 of street because there was cars coming and cars on
8 this side (indicating). So I pulled to the nearest
9 place where there was to fix -- to turn in to turn
10 off my car.

11 Q When you pulled out of the Circle K., how fast were
12 you going?

13 A I wasn't going fast at all. It was a car right
14 where that car is right there (indicating). There
15 was a car in front of that one, and then there was
16 a car coming this way (indicating), and I just
17 pulled out in front of the other car. Then I
18 looked in my rear view mirror, and I saw Officer
19 Majewski's car pull out behind me. It was a red
20 light.

21 Q So you were in this far left lane (indicating),
22 correct?

23 A Yes, the far one.

24 Q Were there cars in front of you?

25 A Yes, there was one car.

1 Q One car. Was there a light here at this
2 intersection?

3 A Yeah, right there (indicating).

4 Q Let me ask you this. Are there lights for each
5 lane of traffic that's coming down Saint Andrews?

6 A Yes, there is lights right there (indicating).
7 There's lights at all four sections.

8 Q To your remembrance in that lane, was that a
9 turn-only lane or did you have other options?

10 A I believe I could only make a left turn. I don't
11 think I could have went straight. I could only
12 turn left.

13 Q When you made that left turn, do you recall whether
14 or not you used your turn signal or not?

15 A Yes, sir. Because there was a red light, and there
16 was a car in front of me. It took a few seconds,
17 probably like more than a minute, for the red light
18 to turn green. So I had already turned on my left
19 turn signal, and that's when Officer Majewski had
20 pulled up behind me. So my left turn signal was
21 on.

22 Q Let me ask you this. This was a red in color
23 Cadillac, correct, that you were driving?

24 A Yes, sir.

25 Q And I believe -- well, let me ask you this. Was it

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1 in perfect condition?

2 A No, sir.

3 Q Was it a little banged up in the front?

4 A Yes, sir. Probably like a month before that, I
5 had -- I stay in the country where there's a lot of
6 deer, and I had accidentally hit a deer and messed
7 up the front. But other than that, it runs perfect
8 and everything.

9 Q Were you aware of whether or not your turn signals
10 in the back were working?

11 A Yes. Before all this happened, I had stopped at
12 the Auto Zone a couple of days before this and put
13 in brand new lights, my back turning lights and the
14 front. So all the lights on my car was working.

15 Q And you are positive, Mr. Battle, that you had your
16 left turn signal on as you went through that
17 intersection?

18 A Yes, sir.

19 Q Now, you have also been present in the courtroom
20 for the playing of the dash cam video or the mobile
21 camera. When you were pulled over in that gas
22 station, what did the officer state to you when he
23 came to the window of your vehicle?

24 A It's been about six months, but if I remember
25 correctly, he had asked me where did I just come

1 from. I told him I had just came from the Circle
2 K. gas station up there on the corner. Then I had
3 asked him: Sir, was I speeding or what I was being
4 pulled over for? And he asked me, he said
5 something about a robbery just occurred.

6 Q Thank you, Mr. Battle.

7 MR. BAX: A moment's indulgence, Your Honor.

8 THE COURT: All right.

9 (Pause).

10 BY MR. BAX:

11 Q Mr. Battle, at some point during this stop, were
12 you informed that the officers believed your
13 license was under suspension?

14 A Yes, sir, when he came back from his car.

15 Q Did he tell you at that time that he was arresting
16 you for driving under suspension?

17 A I believe so.

18 Q Do you remember what he stated the reason for the
19 suspension was?

20 A He said something about my driver's license being
21 suspended due to me failing to pay a \$100
22 reinstatement fee to the D.M.V. for a traffic
23 ticket.

24 MR. BAX: Approach the witness, Your Honor?

25 THE COURT: Yes, sir.

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1 BY MR. BAX:

2 Q I will hand you something to identify for me. What
3 is that, Mr. Battle?

4 A This is a compliance notice from the City of Forest
5 Acres Municipal Court.

6 Q And at the top, Mr. Battle, I believe there is some
7 handwriting in there right below here (indicating).
8 What does that printed type say right above the
9 signature?

10 A It says: Notice of withdrawal of suspension. A
11 suspension imposed for this violation may be
12 withdrawn. Payment has been made in the amount of
13 \$232.50 covering the fine and costs for the
14 violation described herein, and it was signed by
15 the Clerk of Court on September 1st, 2006.

16 Q Thank you, Mr. Battle.

17 MR. BAX: Your Honor, I would like to move
18 this in as a defense exhibit for identification at this
19 time.

20 MR. MOORE: Your Honor, we would object. A
21 reciprocal Rule 5 was served. This is the first time I
22 have heard about this piece of paper.

23 MR. BAX: Your Honor, this is public record of
24 the D.M.V. which is an entity of the State. I didn't
25 think that it was something that we needed to pass over,

1 as it's a public record.

2 (Pause).

3 MR. MOORE: Judge, this is the first time we
4 have seen this. It's not a certified document.

5 THE COURT: Y'all are objecting to it because
6 of the authenticity of the document?

7 MR. MOORE: Yes, sir, Judge.

8 THE COURT: I will allow it for identification
9 purposes only at this time and give the defense time to
10 subpoena a custodian of that record.

11 MR. BAX: Thank you, Your Honor.

12 (Defendant's Exhibit Number 2 is marked for
13 identification).

14 BY MR. BAX:

15 Q Mr. Battle, this was a ticket that you had received
16 through the Forest Acres jurisdiction of law
17 enforcement; is that correct?

18 A Yes, sir.

19 Q And I believe that you had been given
20 correspondence to -- well, let me ask you this.
21 Were you aware of this ticket?

22 A Yes, sir. Would you like for me to describe what
23 happened?

24 Q We don't really need to go into what happened with
25 the ticket, but after you received the ticket, did

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1 you become aware through correspondence or
2 information from the D.M.V. that you had a certain
3 amount of time to pay said ticket?

4 A Yes, sir.

5 Q To your understanding what was the time that you
6 had to pay the ticket?

7 A I had to pay the ticket before 12:01 a.m. on
8 September 26, 2006.

9 Q And this document that we have looked at that is
10 marked for identification, what you have read out
11 indicates that that was paid on September 1st, I
12 believe you said; correct?

13 A Actually the ticket was paid -- I paid the ticket
14 in the courthouse on August 21st. It was posted on
15 August 22nd, and they issued that compliance notice
16 on September 1st saying that it was paid.

17 Q Mr. Battle, in fact, later on in time did you ever
18 have an occasion to be in the Newberry area of the
19 State of South Carolina?

20 A Yes, sir.

21 Q Do you remember when that was?

22 A It was September 27, 2006.

23 Q At that time were you pulled over for any traffic
24 infractions?

25 A Yes. I was doing 61-miles per hour in a 55 zone,

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1 and the highway patrol officer pulled me over. He
2 ran a dispatch check to see if my license was
3 suspended, and all my paperwork came back clear,
4 and the dispatch said my license was not suspended
5 on September 27, 2006.

6 Q Thank you, Mr. Battle.

7 A And he wrote me a warning ticket.

8 Q Thank you, Mr. Battle.

9 MR. BAX: No further questions at this time,
10 Your Honor.

11 THE COURT: Thank you, Mr. Bax. Solicitor.

12 MR. MOORE: Thank you, Judge.

13 IN CAMERA CROSS EXAMINATION

14 BY MR. MOORE:

15 Q Mr. Battle, you would agree with me that there is
16 probably not much that you and I are going to agree
17 to; is that about right?

18 MR. BAX: Objection, Your Honor, outside the
19 scope.

20 THE COURT: Just move on. It doesn't matter
21 whether he agrees with you or not. I will take judicial
22 notice that he will probably not agree with you.

23 BY MR. MOORE:

24 Q Well, let's talk about some things that we can
25 agree on.

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- 1 A Okay.
- 2 Q That red Cadillac was your car, wasn't it?
- 3 A Yes, sir.
- 4 Q And you were pulling out of the Circle K. gas
5 station, right?
- 6 A Yes, sir.
- 7 Q That's (indicating) the K.F.C., isn't it?
- 8 A I believe so.
- 9 Q You believe so. You were going that way
10 (indicating), weren't you?
- 11 A Yes, sir, I was on my way to Columbia.
- 12 Q You were going away from the K.F.C., weren't you?
- 13 A Yeah, to the highway --
- 14 MR. BAX: Objection, Your Honor, that is
15 outside the scope.
- 16 A -- to go to Columbia.
- 17 THE COURT: No, sir. You referred to State's
18 for identification Number 1. He pointed at various
19 areas. I think the solicitor can cross examine him on
20 that.
- 21 You may proceed, Solicitor.
- 22 MR. MOORE: Thank you judge.
- 23 BY MR. MOORE:
- 24 Q You were going away from the K.F.C., weren't you?
- 25 A Yes, sir, I was going to Columbia.

1 Q But you were going away from it?

2 MR. BAX: Objection, irrelevant, Your Honor.

3 It has no bearing what direction he was going on whether
4 on that was away or towards K.F.C.

5 THE COURT: You have asked him the direction
6 he was going. All he has to do is say he was going away
7 or towards the K.F.C. if he knows the answer to that
8 question.

9 You may answer the question if you know the
10 answer, Mr. Battle.

11 THE WITNESS: Yes, I was going to Columbia.

12 BY MR. MOORE:

13 Q All right. That way (indicating) and that way
14 (indicating) right?

15 A Yes. I had came down from the Chapin area, which
16 is the other way, with a friend. I had stopped
17 into the gas station, and after I checked my oil
18 and stuff at the gas station, I was going the other
19 way. I was originally going down to Columbia.

20 Q Got you. Going the other way?

21 A Yeah.

22 Q The complete opposite way from where the K.F.C. is
23 right here (indicating), right?

24 A Yes, because Columbia is the other way.

25 Q Now, you said that you pulled out right here

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- 1 (indicating), right? You made a right-hand turn,
2 right?
- 3 A Yes, sir.
- 4 Q And you say you weren't going too fast?
- 5 A I wasn't going fast at all. It was a regular turn.
- 6 Q A regular turn. You changed three lanes of traffic
7 and went over right here (indicating), and you
8 stopped; right?
- 9 A Yeah.
- 10 Q You came pulling out of this store, right?
- 11 A No.
- 12 Q No?
- 13 A Not fast.
- 14 Q Not fast?
- 15 A Just a regular turn.
- 16 Q I got you. And you stopped right here (indicating)
17 at the traffic light, right?
- 18 A No. There was -- I stopped at the light, but there
19 was another car in front of me.
- 20 Q Okay. And that's when the officer turned around on
21 you, right?
- 22 A Yes, sir.
- 23 Q And he saw you not use your turn signal?
- 24 A Huh?
- 25 Q Did you use your turn signal?

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1 A Yes, I had my turning signal on before I even saw
2 the car.

3 Q Your right turn signal or your left turn signal?

4 MR. BAX: Your Honor, objection. He's cutting
5 off the witness before he finishes the answer.

6 THE COURT: You may answer fully and
7 completely, Mr. Battle.

8 A My left turn signal, sir.

9 Q Well now, let's talk about some other things that
10 we can agree on. That was your Cadillac, right?

11 A Yes, sir.

12 Q And the stuff found inside: The gun, the mask, the
13 black bag --

14 MR. BAX: Objection, Your Honor, outside the
15 scope.

16 BY MR. MOORE:

17 Q -- the sweatshirt, that was in your car; right?

18 THE COURT: I will allow it.

19 A That was in my car.

20 Q That was in your car.

21 MR. BAX: Your Honor, there is an objection.

22 THE COURT: I said I would allow it.

23 MR. BAX: Sorry, Your Honor, I didn't hear
24 that.

25 THE COURT: That's all right. I was speaking

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1 rather softly at the time, Mr. Bax.

2 MR. MOORE: Thank you, Your Honor.

3 BY MR. MOORE:

4 Q All of that was in your car, wasn't it?

5 A I didn't know all that stuff was in my car.

6 Q That wasn't my question. All of that stuff was in
7 your car, wasn't it?

8 A When the police officer pulled me over, I didn't
9 know that all that stuff was in my car.

10 Q Let me ask it another way, Mr. Battle. Was all of
11 that stuff in your car?

12 A Yes, it was in my car.

13 Q All right. Let me ask you another thing we can
14 agree on.

15 MR. BAX: Your Honor, I will have to inject
16 another objection. This is irrelevant to the issues of
17 this hearing. The hearing here is fairly specific as to
18 the issues that led to the traffic stop.

19 I think we are getting well beyond that, and
20 we are going into areas where the solicitor is trying to
21 elicit information about guilt or innocence, which we
22 are not -- this hearing is not for guilt or innocence.

23 THE COURT: I would agree with that,
24 Solicitor. This is the basis of the officer's stop and
25 the inventory search thereafter, regardless of what the

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1 ownership interest may have been.

2 Although, of course, if it wasn't his car,
3 there wouldn't -- perhaps, there would not be any
4 standing in the matter, but he has already said it was
5 his Cadillac.

6 MR. MOORE: Judge, one thing I would say.

7 THE COURT: All right.

8 MR. MOORE: Is that if Mr. Bax is challenging
9 the actual search of the car, the bullets found in his
10 pocket are certainly relevant to that aspect of it. If
11 he is just challenging the actual traffic stop, that's
12 another thing.

13 THE COURT: Well, I think as I understand some
14 of the cases, obviously the Fourth Amendment is
15 implicated in a traffic stop and then any search
16 thereafter.

17 You have to meet all of those threshold
18 requirements to get to the inventory search. In other
19 words, my basic understanding is you have to have
20 probable cause or reasonable suspicion for the stop and
21 then thereafter the search.

22 Then obviously if an individual is
23 incarcerated at that point, the inventory, I believe,
24 would be appropriate. The actual fruits of the
25 inventory may not -- is not really relevant to the

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1 inventory search itself.

2 MR. MOORE: Yes, sir.

3 THE COURT: I think that was the point of the
4 objection. I'm not exactly sure. I think that was it.

5 MR. MOORE: Thank you, Judge. If I could have
6 this document marked for identification.

7 (State's Exhibit Number 3 is marked for
8 identification).

9 BY MR. MOORE:

10 Q Mr. Battle, do you recognize that?

11 A Yes, I do, sir.

12 Q Did you get that?

13 A Yes, I received it in the mail.

14 MR. BAX: Your Honor, just a moment. Can I
15 see that? I'm not really sure what he is showing him.
16 I want to see it.

17 (Pause).

18 MR. BAX: No objection, Your Honor.

19 BY MR. MOORE:

20 Q Look here in the middle of State's Exhibit
21 Number 3. What does it say as far as your
22 beginning date of driver's license suspension?

23 A It says beginning date 12:01 a.m., 9/26/2006.

24 Q Nine would be September, right?

25 A Yes, sir.

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1 Q And that's right before October, right?

2 A Yes, sir.

3 Q Let's look here (indicating). What does it say
4 when it says ending date?

5 A Ending date, when you receive notice from the
6 Department that this action has been cleared.

7 Q Okay. Sir, is this your handwriting? Is this your
8 note?

9 A Yes, it is, sir.

10 Q That's you down there at the bottom, right, K.B.?

11 A Yes, sir.

12 MR. MOORE: If I could mark this for
13 identification.

14 MR. BAX: If I could see it.

15 MR. MOORE: Sure.

16 MR. BAX: At this point, Your Honor, I'm not
17 sure why this is relevant. This is a letter that the
18 Defendant sent to the prosecutor.

19 THE COURT: What would be the relevance?

20 MR. MOORE: Judge, the relevance is that he
21 basically says, in a letter to Rob Madsen: That while
22 here in jail, the D.M.V. has sent me letters saying that
23 my driving record has been changed effective 11/8/06.

24 The suspension began in September. He is
25 writing a letter saying that he's getting letters in the

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1 jail saying that it's November. So it goes to show that
2 his license was suspended in October.

3 MR. BAX: Your Honor, if I may respond briefly
4 to that. Your Honor, the basis of this motion is
5 basically what reason the officer that has testified
6 today had to pull him over initially.

7 There may be some issue with the D.M.V. I
8 brought that up just basically to answer questions to
9 put on the record as far as what my client had talked to
10 me about. I have told him already that's not really the
11 basis of our motion.

12 The reason I brought it up is because it was
13 articulated that it was going to be -- that the
14 Defendant was going to be placed under arrest at that
15 time for that offense.

16 I wanted to clarify what we talked about, but
17 it's not the basis of our motion, and it's not the basis
18 for any suppression. I have no argument that the
19 officers acted in good faith on that dispatch.

20 THE COURT: While y'all were making that, I
21 looked up State versus Redford. I don't think it
22 matters -- and, of course, I will hear your argument on
23 that, Mr. Bax -- I was looking forward to it.

24 I don't think it matters whether he was or was
25 not under suspension on October 13, 2006. The

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1 officer -- it matters whether or not the officer had
2 probable cause or reasonable suspicion to make the stop
3 and then probable cause to make the arrest.

4 MR. BAX: Yes, Your Honor.

5 THE COURT: If the records are wrong that were
6 provided to the officers, unless you show me otherwise,
7 I don't think that makes the stop wrong. I haven't
8 decided that issue, of course. But I don't think that
9 makes the stop wrong or the search after the stop wrong.

10 MR. BAX: I don't believe so either, Your
11 Honor. I have looked at the same case law that you
12 have.

13 MR. MOORE: If that's the case, Judge, we
14 won't be offering that piece of paper.

15 THE COURT: That would be my position. The
16 officer is obviously acting in good faith. He didn't
17 just stop him and take him out of the car and arrest him
18 for driving under suspension without checking.

19 The information he gets back is he is under
20 suspension. The question, the real question, is whether
21 he could stop him in the first place.

22 MR. BAX: Yes, Your Honor, that's exactly it.

23 THE COURT: All right, sir. Solicitor, are
24 you going to be a while yet?

25 MR. MOORE: No, sir, I am about to finish,

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1 Judge.

2 THE COURT: I am certainly not rushing you.

3 MR. MOORE: Thank you, Judge. There are two
4 prior convictions we would like to ask him about for
5 impeachment purposes.

6 THE COURT: All right.

7 MR. BAX: Your Honor, if I may take a look at
8 them.

9 (Attorneys confer).

10 MR. BAX: Your Honor, I would have two
11 objections, one for each. There is a general conspiracy
12 conviction from Richland County. I believe that is
13 within the ten-year frame.

14 However, Your Honor, as far as the issues
15 here, I don't think it passes the 404 or 403 balancing
16 test. It's just a general conspiracy. It's not
17 something that falls under the crimes of dishonesty
18 definition.

19 In that case Your Honor would have to make a
20 determination of whether or not the probative value
21 exceeded the prejudicial effect. We contend that it
22 doesn't in this case.

23 The conspiracy in this situation is not even
24 relevant really to the issue, and it's not really
25 relevant to what is being alleged in this case. There

1 is not even any codefendants in this case.

2 In addition, Your Honor, as to the second, we
3 would argue that that charge is from 1995 or that
4 conviction is from 1995 out of Colorado. We would argue
5 that that is too remote in time, outside the ten-year
6 limit, and cannot be used.

7 THE COURT: Why wouldn't conspiracy be a crime
8 of dishonesty under the theory that you are conspiring
9 to either commit a criminal or unlawful act or
10 committing a lawful act in an unlawful manner?

11 I'm not sure the specific case. I would have
12 to look it up to see if conspiracy has been held to be
13 or held not to be. I don't know the answer to that
14 question, a crime of moral turpitude.

15 MR. BAX: Your Honor, I was not able to find
16 any case law that was specific as to conspiracy. The
17 reason that I would make the argument is that conspiracy
18 does not necessarily indicate a crime of dishonesty.

19 Because, you know, conspiracy can be
20 conspiring to commit any crime. The underlying crime is
21 unknown. I don't think conspiracy involves dishonesty
22 because two people are talking about doing something.

23 It's the act itself, whatever that act may be,
24 that may involve dishonesty, depending on what crime it
25 is. But I don't think the conspiring to do said act

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1 involves dishonesty or can be defined that way.

2 THE COURT: Well, they don't do it out in the
3 open.

4 MR. BAX: That's true, Your Honor.

5 THE COURT: Conspire out in the open. Do you
6 know what they were conspiring to do, Solicitor?

7 MR. MOORE: Judge, I believe it was an armed
8 robbery.

9 THE COURT: Do you have the indictment?

10 MR. MOORE: I do.

11 THE COURT: Can I see it?

12 MR. MOORE: Yes, sir.

13 (Hands to Court).

14 THE COURT: It does appear on this, Mr. Bax,
15 that they used the same indictment number on the
16 sentencing sheet for general conspiracy that is on a
17 true bill indictment for armed robbery.

18 I think by inference then, he would have
19 conspired with some persons unknown to us, person or
20 person unknown to us, to commit an armed robbery or
21 robbery. Of course, that would obviously be a crime of
22 moral turpitude.

23 MR. BAX: I understand, Your Honor.

24 THE COURT: I would allow the general
25 conspiracy. What is the 1995 one?

1 MR. MOORE: Judge, the 1995 conviction is an
2 attempted burglary. This is a Colorado charge. He also
3 pled to some assault charges. Everything I have on that
4 conviction is in this packet here.

5 He was sentenced in '96, but he got six years
6 in jail and served each and every one of those six
7 years. So the argument that it falls outside the
8 ten-year window fails.

9 THE COURT: I would agree with that, Mr. Bax.
10 It appears under the time limit evidence of a conviction
11 under this rule, it is not admissible if a period of
12 more than ten years has elapsed since the date of the
13 conviction or of the release of the witness from the
14 confinement imposed for that conviction, whichever is
15 the later date.

16 I don't think that falls within that (b)
17 Section.

18 MR. BAX: The (b) Section about?

19 THE COURT: Time limit on 609.

20 MR. BAX: Due to the fact of his release from
21 incarceration, Your Honor?

22 THE COURT: He would not have been released
23 until 2002.

24 THE WITNESS: I was released in 1999.

25 THE COURT: 1999, which is eight years.

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1 MR. BAX: Your Honor, I understand that
2 ruling. Your Honor, we actually received a letter of
3 notice that the solicitor intended to use convictions
4 that occurred outside the ten-year limit on Friday.

5 We did not have the opportunity to investigate
6 any further about that conviction. We knew about the
7 conspiracy conviction; however, we were just looking at
8 the N.C.I.C. reports, which obviously, as you know,
9 don't list release dates from jail.

10 THE COURT: For purposes of this hearing, I
11 will allow the general conspiracy. Obviously that's
12 just in camera. The other I will give you an
13 opportunity to look at that time first.

14 You may use the general conspiracy conviction,
15 Solicitor.

16 MR. MOORE: And this one as well, the
17 attempted burglary from Colorado?

18 THE COURT: No, I will give him an opportunity
19 to look at that. He says he got notice it was outside
20 of the ten years and it was on the N.C.I.C. It did not
21 show the release date. I will give him an opportunity
22 to regroup on that particular one.

23 MR. MOORE: Thank you, Your Honor.

24 BY MR. MOORE:

25 Q Mr. Battle, you were convicted of criminal

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1 conspiracy over in Richland County in 2003; weren't
2 you?

3 A Yes, sir.

4 Q It was a conspiracy to commit armed robbery, wasn't
5 it?

6 A Yes, sir, it was just a conspiracy. It was dropped
7 from armed robbery to a lesser offense of
8 conspiracy.

9 Q I understand.

10 MR. MOORE: That would be all, Your Honor.

11 THE COURT: Anything on redirect?

12 MR. BAX: No, Your Honor.

13 THE COURT: Thank you, Mr. Battle. You may
14 step down. Would you have any other witnesses, Mr. Bax?

15 MR. BAX: No, Your Honor.

16 THE COURT: Do you have anything in reply,
17 Solicitor?

18 MR. MOORE: No, sir, Your Honor.

19 THE COURT: What I think I will do is let the
20 jury go until about 2:00 o'clock. Would 2:00 o'clock be
21 all right for the jury, Solicitor.

22 MR. MOORE: Yes, sir.

23 THE COURT: Are there other motions?

24 MR. BAX: No other motions from the defense,
25 Your Honor.

1 THE COURT: Mr. Bailiff, if you would please
2 bring our jury.

3 (The jury returns to the courtroom).

4 THE COURT: Ladies and gentlemen of the jury,
5 I apologize I have kept you captive for so long. I
6 thought I would be able to hear these motions in a
7 little more timely manner.

8 I am very attuned to time. I just don't seem
9 to manage it very well. I apologize. I certainly will
10 try to be more prompt. I am sure before the trial is
11 over, you will think the first characteristic of a judge
12 is that they not be able to keep up with time and not be
13 prompt.

14 I assure you that we have not left the
15 courtroom, and all the parties have been out here
16 working diligently in your absence. It appears it may
17 take a little while longer.

18 So what I'm going to do is allow you to take
19 your lunch break, your lunch recess. I remind you that
20 during this break and every break, whether it's for
21 lunch or during the course of the trial or the evening,
22 you are not to discuss this case with anyone. This
23 includes your fellow jurors, your lunch mates, your
24 friends, your family, and people involved in the trial
25 or anyone else.

1 If anyone tries to talk with you about the
2 case, please let me know immediately. Do not read,
3 watch or listen to any news reports about the trial.
4 Remember to keep an open mind about the case until I
5 instruct you to begin your deliberations.

6 I will ask you to be back in your jury room at
7 2:00 o'clock, at 14:00 hours, which is a little under an
8 hour and a half. I need a foreperson of the jury. The
9 foreperson generally sits where this gentleman is
10 closest to me in the red shirt.

11 Then I need to keep up with the foreperson,
12 and then the total number of 13, and then the alternate
13 would always keep the same seat. Everyone else can sit
14 wherever you want.

15 If you like me, you are such a creature of
16 habit, you want your own seat. That's fine, too. Y'all
17 can work that among yourselves. That is going to be
18 your first assignment, to select a foreperson.

19 You can do that immediately when you come back
20 from lunch, and just let me know or if you want to wait
21 until later, that's fine. When I start seeing someone
22 consistently and chronically sitting in that chair, I
23 will know you have completed your first assignment as a
24 jury and have selected your foreperson.

25 Obviously the alternate can be included as

1 part of the decision for a foreperson but cannot be
2 appointed as the foreperson of the jury. With that
3 being said, ladies and gentlemen, you are now excused
4 for your lunch break.

5 Please be back in your new temporary home,
6 your jury room at 2:00 o'clock, at 2:00 p.m. You are
7 now excused. Thank you very much.

8 (The jury is excused for lunch at 12:34 p.m.)

9 THE COURT: I understand you have no more
10 witnesses on this matter?

11 MR. MOORE: Yes, Your Honor.

12 THE COURT: Let take about a five-minute
13 recess, and I will come back out and hear this.

14 MR. BAX: Certainly, Your Honor.

15 (Whereupon there was a recess).

16 THE COURT: This is your motion, Mr. Bax?

17 MR. BAX: It was, Your Honor.

18 THE COURT: All right.

19 MR. BAX: Thank you, Your Honor. It's kind of
20 what we have hinted at in the discussions or in the
21 questioning, Your Honor. The premise of this motion is
22 based upon the original traffic pull in the first place.

23 Your Honor, the reason I think that this is a
24 very well supported motion for suppression is because
25 it's clear from what has been presented that the officer

1 in this case, though it was a very wise hunch, was
2 operating on a hunch.

3 He was operating on the basis that he heard
4 through dispatch that there was a crime. He saw a
5 vehicle. He felt like there was some reason why that
6 vehicle might be involved. He pulled that vehicle over.
7 However, Your Honor, that is not -- unfortunately, that
8 is not sufficient reason to pull over someone and
9 initiate a traffic stop.

10 I'm certainly not arguing, as we have talked
11 about the suspension, because obviously if the officer
12 received from dispatch information that the license was
13 under suspension, I have no argument that they wouldn't
14 be acting in good faith at that point because why would
15 they have any reason to distrust what the dispatch
16 officer had relayed to them over the radio.

17 However, it goes back further than that as
18 Your Honor has pointed out. Number one, Your Honor,
19 going back to the very first element of this, the
20 vehicle was seen. However, the vehicle, number one,
21 whatever vehicle it was, was seen in a legal parking lot
22 in a gas station with its hood up.

23 There is nothing about that, Your Honor, that
24 I think can be in any shape or form an articulable
25 reason for suspicion. People go to gas stations when

1 they have car trouble. That's where you go. The first
2 thing you are going to think if you have car trouble,
3 gas station.

4 I think anyone in their common experience
5 could say that it is pretty typical for someone who
6 might need to look at their engine, even if they didn't
7 have to do anything, is going to do it at a gas station.

8 If you find you need oil, if you find you need
9 steering fluid, power steering fluid, wiper fluid,
10 anything, that's where you are going to go, unless you
11 just happen to pass an open auto part's store.

12 In addition, Your Honor, a car in this area,
13 being at that gas station more than once, is also not
14 a basis for an articulable suspicion of criminal
15 activity.

16 I think if you take this all into totality, it
17 also comes in that there was no description of a vehicle
18 in this case, but it is clear from the officer's
19 testimony that he was looking at this car as containing
20 a suspect in a robbery case from the very instant that
21 he saw it pull out of the Circle K.

22 I know the officer's testimony is that in his
23 opinion it came out a high rate of speed. However, we
24 have a situation here where at most there is 30-yards of
25 space.

1 I would submit to Your Honor that's it a very
2 hard assumption to make that one could even reach or
3 even do anything at a high rate of speed in 30-yards and
4 still be able to stop at a stoplight, whether there was
5 a car in front or not.

6 Your Honor, you have heard the testimony from
7 both the officer and the Defendant in this case
8 regarding the turn signal. Your Honor, we would submit
9 that the sworn testimony in this case is that the turn
10 signal was on.

11 I believe this was a pull based on a hunch.
12 It was a very good hunch, but it was still a hunch.
13 Your Honor, it is fruit of the poisonous tree. You have
14 to have an articulable and reasonable suspicion of
15 illegal activity at the time you initiate a traffic
16 stop.

17 That can be based on a traffic infraction or
18 any other type of illegal activity. I don't believe
19 that is the case here. I believe that the proximity of
20 this vehicle to the incident location that had just been
21 reported over the radio and the fact that it was a
22 vehicle that had been seen before during that day were
23 really the only reasons that this car was pulled over.

24 Those are not reasons for articulable
25 suspicion. Those are not the basis for any kind of

1 reasonable suspicion of illegal activity because none of
2 those activities are illegal. None of those activities
3 are even suspicious or even unreasonable for any general
4 citizen to be doing.

5 Based on that, Your Honor, we would argue that
6 the initial traffic pull was illegal and that as a
7 result, all search and seizure that came as fruit of
8 that is thus inadmissible. Thank you.

9 THE COURT: What illegal activity do you think
10 Terry was engaged in in Terry versus Ohio?

11 MR. BAX: I feel like I'm at law school exam,
12 Your Honor. I am trying to remember the facts of Terry
13 versus Ohio.

14 THE COURT: Terry versus Ohio was where a
15 38-year veteran of the Cleveland Police Department,
16 Detective McFadden, kind of a fascinating character in
17 constitutional history, 38 years on the police
18 department, he sees Terry walking up and down the
19 sidewalk engaging in what he thinks to be casing a
20 liquor store, I believe.

21 I have always been amazed that a gentleman --
22 could be a female. I don't remember his first name --
23 was out there after 38 years still policing like that.
24 Of course, he ended up seeing a bulge thereafter. But I
25 was trying to remember the initial illegal conduct that

1 Terry was engaged in, if you remember.

2 MR. BAX: Your Honor, I can't remember exactly
3 what McFadden's articulation was; however, I do know
4 when it comes to a Terry stop that the constitutional
5 backing for that is safety of the officer if I'm not
6 mistaken, which puts Terry in a little bit different
7 light than this case. I don't think there is any
8 testimony that this was a safety issue. This was an
9 inventory.

10 THE COURT: I thought Terry just held for the
11 reasonable articulable suspicion that criminal activity
12 is afoot. That was always my understanding of Terry.
13 Be that as it may, your point is certainly well taken.
14 Solicitor.

15 MR. MOORE: Yes, sir, Your Honor. I think
16 what Mr. Bax says that the officer had a wise hunch,
17 what he really means to say is reasonable suspicion.
18 You know, this officer is patrolling Irmo, South
19 Carolina at night.

20 He sees a suspicious red Cadillac parked on
21 the side of a gas station. At that particular gas
22 station, all the parking spaces are in the front of the
23 store. Usually the employees are parking on either side
24 of it.

25 He just happens to notice this car. He was

1 driving around patrolling, comes back around, sees it
2 again. Then he is dispatched four minutes after the 911
3 call comes in to the K.F.C.

4 He is on his way there, and he sees this red
5 Cadillac that he has been watching all night long
6 hanging around that gas station. He comes pulling out
7 at what he says is a high rate of speed.

8 Instead of going to the K.F.C. where he knows
9 an officer is already there securing the scene, where
10 the robber is obviously not, he turns around on this car
11 who he suspects might have been involved in some sort of
12 criminal activity. But, of course, he gets behind him
13 and doesn't cut on his blue lights.

14 Your Honor, we would argue that at that point
15 he has got reasonable suspicion to pull that car over.
16 However, even if he doesn't, there has been testimony
17 that the Defendant failed to use his left turn signal.

18 So we go from reasonable suspicion to probable
19 cause of a traffic violation happening. You take the
20 reasonable suspicion of a possible criminal with the
21 probable cause for a traffic violation, and that stop is
22 valid. He goes to the window. He gets the license. He
23 comes back suspended. The arrest is made.

24 Your Honor, there is a case that we would
25 offer, Wren versus United States, a Supreme Court case,

1 which basically says that once you have probable cause
2 of a traffic violation, that stop is reasonable,
3 whatever the officer's underlying subjective intentions
4 might be.

5 So, Your Honor, just given the totality of the
6 circumstances, the fact that four minutes prior to the
7 dispatch, there is an armed robbery, and at 9:00 o'clock
8 at night, you've got a strange red car pulling out of a
9 gas station right next door to the K.F.C., we would
10 contend that the stop is valid for multiple reasons.
11 For those multiple reasons, we would submit or ask that
12 the motion be denied.

13 THE COURT: Thank you, Solicitor. Anything in
14 reply, Mr. Bax?

15 MR. BAX: Just briefly, Your Honor. I'd just
16 like to point out a couple of things that I didn't point
17 out initially. This goes specifically to the fact of
18 the solicitor's argument about the suspicious car.

19 However, we cannot just generally in the law
20 refer to something as suspicious without giving reasons
21 why. I think that is the whole basis for this area of
22 the law. You have to have some reason why something is
23 suspicious.

24 There has not been any reason given why this
25 is suspicious. He referred to it as a suspicious red

1 car. Why is it a suspicious red car? What made this
2 particular red car or this particular Cadillac or this
3 particular sedan stand out among other red cars or
4 sedans or Cadillacs that made it suspicious versus
5 others? That has not been articulated.

6 In addition to that, Your Honor, there has
7 been testimony also that this was not a legal turn. In
8 addition to that, Your Honor, he was in a turning lane
9 where the only option is to go left.

10 There has been plenty of testimony that this
11 is a situation where, if officers went around and pulled
12 people over for not using their turn signal in a
13 turn-only lane, they wouldn't have time to do anything
14 else.

15 I submit to Your Honor that even if, even if
16 you believe that Mr. Battle is not being truthful in
17 telling you that he had his turn signal on, and we
18 submit that he is, that is still a situation where this
19 was just a pretext for looking into this hunch, this
20 suspicion, which cannot be articulated.

21 THE COURT: Thank you, Mr. Bax.

22 MR. BAX: Thank you.

23 THE COURT: I am going to allow the traffic
24 stop and the search thereafter under several theories.
25 The first is State versus Jihad, J-I-H-A-D, 553 S.E.2d

1 249, which has had somewhat of a long and twisted
2 history going through the trial and the appellate courts
3 of South Carolina.

4 This is the brake light case where the officer
5 stopped the vehicle for a broken brake light, and
6 thereafter the trial judge ruled that the traffic stop
7 was not supported by probable cause because South
8 Carolina law requires only one brake light to be
9 working.

10 Thereafter, the majority -- and then the Court
11 of Appeals ruled in a two to one decision that the
12 initial stop was not supported by probable cause and
13 confirmed the suppression of the evidence. Our Supreme
14 Court reversed that citing the brake light statute.

15 When I look at 56-5-2150, turning movements
16 and required signals, the (a) Section: No person shall
17 turn a vehicle or move right or left upon a roadway
18 unless and until such movement can be made with
19 reasonable safety nor without giving an appropriate
20 signal as provided for in this section.

21 I am sure there's many broken brake lights out
22 there as there are people who don't use their turn
23 signals appropriately. I think on that ground alone --
24 and our Supreme Court held that there was probable cause
25 for the officer's traffic stop under Jihad.

1 When you look at the totality of the
2 circumstances, what the officer knew or did not know or
3 what the officer articulated, as I understood his
4 testimony, he saw the vehicle in the parking lot in a
5 dark area of the parking lot where there was no light,
6 although there may be a parking space.

7 It planted that view in his mind, but he
8 didn't approach that vehicle at that time. He continued
9 on his patrol. The hood was up. I agree that that is
10 not unlawful conduct.

11 But the officer saw it away from there a
12 second time. Then the final time, he saw it coming out,
13 in his description, at a high rate of speed, which would
14 be an unlawful stop, although I do not have privy to the
15 town ordinances of the Town of Irmo and will not comment
16 whether or not it is or is not a violation of the law.

17 That obviously gives the officer more facts at
18 his command. He's responding to an armed robbery call.
19 He turns around on the vehicle. I find the officer's
20 testimony is credible that the vehicle did not use a
21 turn signal.

22 The officer stops him. The gentleman stopped,
23 I think about the bottom of the hill is where I think
24 the Gaz-bah is. It's off State's I.D. 1. Thereafter
25 the officer does a computer check, finds that he is,

1 according to the records given back to the officer, he
2 is driving under suspension.

3 The officer placed him under arrest for
4 driving under suspension, searches and finds bullets,
5 and thereafter places him under arrest and an inventory
6 search is done.

7 So I think there is probable cause for the
8 stop under Jihad. And if there is not, I think there is
9 a clear, reasonable, and articulable suspicion. The
10 solicitor may be right. A wise hunch may be semantics
11 equal to reasonable suspicion, but I will allow that.
12 Any other motions?

13 MR. MOORE: No, sir, Your Honor.

14 MR. BAX: No, Your Honor.

15 THE COURT: Any other motions, Mr. Bax?

16 MR. BAX: No, Your Honor.

17 THE COURT: Will we be prepared to go forward
18 at 2:00 p.m.?

19 MR. BAX: Yes, Your Honor.

20 THE COURT: Thank you very much.

21 (Whereupon there was a luncheon recess).

22 THE COURT: Anything from the State before we
23 bring in our jury?

24 MR. MOORE: Judge, one brief thing, a couple
25 of witnesses down the road, we are going to introduce a

1 gun into evidence. The gun is locked. One of these
2 officers locked the gun this morning.

3 I just wanted to bring that to the Court's
4 attention, and if Your Honor has any preference as to
5 how we should handle that, we will certainly abide by
6 all of that.

7 THE COURT: There, of course, is an order out
8 on safe handling of firearms in the courtroom. I would
9 be happy to get you a copy of it at the break. It's in
10 my bench book.

11 MR. MOORE: Thank you, Judge.

12 THE COURT: Anything, Mr. Bax?

13 MR. BAX: No, Your Honor, ready to proceed.

14 THE COURT: Mr. Bailiff, if you would bring us
15 our jury, please.

16 (The jury returns to the courtroom at
17 2:06 p.m.)

18 THE COURT: It appears our jury is back in the
19 courtroom.

20 Madame Clerk, will you swear our jury, please.

21 (The jury is duly sworn).

22 THE COURT: I am going to make an assumption
23 you have completed your first assigned task, and you
24 have appointed a foreperson of the jury; is that
25 correct?

1 FOREMAN: Yes, sir.

2 THE COURT: We are off to a great start.

3 Ladies and gentlemen of the jury, the case we are about
4 to try is the case of the State versus Korell Robert
5 Battle. What I now say is intended to serve as an
6 introduction to the trial of this case. These remarks
7 are not a charge on the law in this case.

8 I will instruct you on the law applicable to
9 this case at the end of the trial before you retire to
10 consider your verdict. This is merely an explanation of
11 the procedure that we will follow in the trial of this
12 case so that you may better understand what may be
13 happening.

14 The Defendant is charged by two indictments
15 filed with this Court with the crimes of armed robbery
16 and possession of a firearm during the commission of a
17 violent crime, the elements of which will be explained
18 to you later.

19 The indictments, as I have said before, are
20 simply the charges by which the case is brought into
21 court, and they are not in any sense evidence of any of
22 the allegations they contain.

23 The Defendant has pled not guilty to these
24 indictments. The State therefore has the burden of
25 proving each of the elements of each indictment beyond a

1 reasonable doubt.

2 It will be your duty, ladies and gentlemen, to
3 decide whether the State has met that burden. Your
4 purpose as jurors is to find and determine the facts.
5 You are the sole judge of the facts.

6 If at any time I make any comment regarding
7 the facts, you must disregard it. You are to determine
8 the facts from the testimony you hear and the other
9 evidence introduced in court.

10 It is up to you to determine the inferences
11 which you feel may properly be drawn from the evidence.
12 It is especially important that you perform your duty of
13 determining the facts diligently and conscientiously
14 because ordinarily there is no way to correct an
15 erroneous determination of the facts by a jury.

16 On the other hand and with equal emphasis, the
17 same law that makes you the judges of the facts makes me
18 the judge of the law. The law as given by the Court is
19 the only law you may consider. You must accept and
20 follow it even though you may disagree with it. I
21 cannot tell you what the facts are, and you cannot
22 disagree with me about what the law is or should be.

23 Your job is to take the law as I give it to
24 you and apply it to the facts as you find them from the
25 evidence of the witnesses and any other evidence that is

1 introduced. After doing that you will render your
2 verdict, a true and just verdict, under the solemn oath
3 that you have just taken as jurors.

4 Until I advise you to begin your
5 deliberations, you must not discuss this case with
6 anyone, including your fellow jurors, friends, family
7 members or anyone involved in this case. After the case
8 is submitted to you, you must discuss it only in the
9 jury room with your fellow jurors.

10 The attorneys and parties in this case have
11 been advised that they are not to talk to you at all.
12 So if you see anyone involved in the case and they do
13 not even say hello, they are not being unfriendly they
14 are just following my instructions.

15 During the trial do not read, listen to or
16 watch any news reports about this case. This includes
17 anything that may be in the newspapers or on the
18 internet, radio or television.

19 Do not do any independent investigation. You
20 must not consider anything you may have read or heard
21 about the case outside the courtroom, whether before or
22 during the trial.

23 It is important that you keep an open mind and
24 not decide any issue in the case until all of the
25 evidence has been presented, the parties have made their

1 closing arguments, and I have instructed you on the law
2 in this case.

3 It is your solemn responsibility to determine
4 the guilt or innocence of the Defendant, and your
5 verdict must be based solely on the evidence as it is
6 presented to you in this trial and on the law as I
7 instruct you during and at the close of the trial.

8 In just a moment, the solicitor will make what
9 is called an opening statement in which the solicitor
10 will explain to you the issues in the case or at least
11 what the solicitor thinks the issues are in the case.
12 The attorneys, either Mr. Bax or Ms. Fullwood, for the
13 Defendant may also make an opening statement, although
14 he or she is not required to do so.

15 What the attorneys tell you during their
16 opening statements is not evidence in the case. It is
17 only their contention as to what the issues are. The
18 evidence in this case will be presented to you by the
19 testimony of sworn witnesses from this witness stand
20 and/or by exhibits that may be introduced into evidence.

21 From time to time during the trial, you may
22 hear one of the attorneys say something like: Your
23 Honor, I believe we have a question of law or a matter
24 of law to discuss with you or, Your Honor, may we
25 approach the bench. Or sometime I myself might find it

1 necessary to excuse you from the courtroom for a short
2 while so the attorneys and I can discuss a matter of
3 law.

4 The reason for this is because you are the
5 judges of the facts in this case, and sometimes when I
6 am discussing matters of law with the attorneys, it may
7 be necessary for me to make some comment as to the facts
8 in connection with ruling whether or not a particular
9 law applies.

10 I am not supposed to tell you what I think the
11 facts are. So I will excuse you from the courtroom
12 while we have these discussions so that in no way will
13 you be influenced by anything I might say or do in
14 connection with the facts.

15 In determining what the true facts are in this
16 case, you must decide whether or not the testimony of
17 the witnesses is believable. It will be my
18 responsibility to rule as a matter of law as to whether
19 certain testimony is admissible at all or not, but once
20 the testimony is admitted, whether or not you believe it
21 is solely for you to determine.

22 In deciding whether to believe a witness, you
23 have the right to consider the interest of any witness,
24 the bias of any witness, the prejudice of any witness,
25 the opportunity for the witness to have seen the matters

1 and things about which the witness may testify, and the
2 way the witness acts on the witness stand.

3 You have a right to consider anything that is
4 in the record that will help you evaluate the testimony
5 of the witnesses. That means that it is your duty to
6 pay close attention to these witnesses, to observe the
7 witnesses, to listen to the witnesses, and to pay close
8 attention to the attorneys and to the Court.

9 Don't let your thoughts wander but give strict
10 attention to the testimony in this case so that at the
11 end of all the testimony, after the arguments of
12 counsel, and the charge on the law by the Court, you
13 will then be in a position to determine what the true
14 facts are and to apply the law to those facts and thus
15 render a true and just verdict.

16 Mr. Foreman, it will be your added duty to
17 preside in the jury room, to make sure all members of
18 the jury have the opportunity to speak and state their
19 views, and to be the jury's spokesperson here in court.
20 It will also be your duty to write the verdict, but I
21 will give you further instructions about that at the
22 conclusion of the case.

23 Several other things, particularly for those
24 jurors furthest away from the witness stand. If you
25 cannot hear a particular witness, just please raise your

1 hand, get my attention, the attention of one of these
2 fine bailiffs or the court reporter so that we can have
3 the witness speak up. Obviously if you can't hear them,
4 you will not be able to determine what the true facts
5 are.

6 Also, as I tell juries, if I want to take a
7 break, we take a break. This is not some type of
8 judicial marathon however. If any of you need a break
9 at any time, if you have been sitting there too long,
10 just please raise your hand. We will all take a break.
11 There is no problem with that.

12 Your thoughts will start to wander when you
13 have been sitting and you just get tired and squirming
14 around. Please don't be shy about that. If you need a
15 break, more likely than not, there is someone else on
16 the jury and someone else in the courtroom that needs a
17 break also.

18 Exhibits, when the exhibits, if any are
19 introduced, if I allow them into evidence, you will have
20 those exhibits in your jury room with you during
21 deliberations.

22 So pay close attention obviously to the
23 exhibits when they are introduced; however, you do not
24 have to memorize everything that may be on an exhibit if
25 it's passed about the jury. As I say, they will be in

1 the jury room with you if they are allowed into
2 evidence.

3 We generally run from about 9:15 to 9:30 in
4 the morning until about 5:30, 5:45 in the afternoon,
5 depending on where we are with a particular witness. We
6 take a break midday in the morning and a break midday in
7 the afternoon and obviously a lunch break and an evening
8 break.

9 At the first break this afternoon,
10 Mr. Foreman, if you would check with the jurors. If any
11 of them have commitments and they need to leave earlier,
12 have child care issues, such like that, if you would let
13 me know, we certainly understand that.

14 Any objections to anything I have said to the
15 jury on behalf of the State?

16 MR. MOORE: No, sir, Your Honor.

17 THE COURT: On behalf of the defense?

18 MR. BAX: No, Your Honor.

19 THE COURT: We will now begin the trial.
20 Solicitor, you may address the jury.

21 MR. MOORE: Thank you, Your Honor. May it
22 please the Court.

23 THE COURT: Yes, sir.

24 **OPENING STATEMENT**

25 MR. MOORE: Folks, if you were to leave this

1 courtroom and get in your cars, go down here across the
2 damn, go up Lake Murray Boulevard, you would run into a
3 little town called Irmo, home of the Okra Strut. It's a
4 little town, but it's not what it used to be years and
5 years ago. It's grown.

6 Police officers in Irmo used to write little
7 speeding tickets, help little ladies across the street.
8 But as the town has grown, as more businesses come to
9 the area, as more people have come to the area, Irmo has
10 grown and has suffered the consequences of that growth.

11 Big crime has come to the area. And now
12 instead of traffic tickets, we have something like what
13 we are here for today, an armed robbery. Now, Irmo,
14 just like all the other little towns in this fine
15 county, has people who basically work hard for a living.

16 They get up early in the morning with that
17 alarm clock just screaming. They nail it, get up, put
18 their clothes on, get ready for work, deal with
19 children, go to day care, go to work, and work hard for
20 a living -- work hard for a living -- work all week
21 long.

22 And at the end of that week, they are
23 presented with what they are working for, a paycheck,
24 something they have earned, got it in their hands to put
25 it in their own bank account, working hard for a living.

1 Today you are going to meet a lady named
2 Sandra Morgan, and she works at the Kentucky Fried
3 Chicken in Irmo, South Carolina. She has been working
4 for Kentucky Fried Chicken for over 20 years, not just
5 at that one location, but in all the other little
6 Kentucky Fried Chickens all around the county.

7 Sandra gets up every morning. She goes into
8 work. She's a manager. She manages the people there
9 and cooks chicken, gets her check at the end of the
10 week.

11 Now, the Defendant in this case, Mr. Battle,
12 what we will prove to you today is that he didn't get up
13 in the morning. He didn't hit that alarm clock. No, he
14 waited. He waited until later on in the afternoon until
15 it got dark, and he dressed himself in all black: A
16 black sweatshirt, black pants, black shoes, black
17 gloves.

18 And in October, right around Halloween time,
19 he put a Scream mask on -- don't know if you have seen
20 that movie-- but it's a mask with a white face. You
21 can't see the face. He put all that on, and he drove to
22 a gas station which is right next door to the Kentucky
23 Fried Chicken in Irmo.

24 He parked his car there. He got out and he
25 walked over to the Kentucky Fried Chicken, and he did it

1 about 9:00 o'clock at night. It was dark. It was
2 closing time.

3 It was the time of day where Ms. Morgan is
4 sitting at one of the tables, and she's doing paperwork.
5 She is tired. She has been working all day long. She's
6 getting ready to go home.

7 But on October 13, 2006, her plans were
8 interrupted because of Mr. Battle. Mr. Battle, dressed
9 in all black with the Scream mask, came into the
10 Kentucky Fried Chicken. He didn't just come by himself.
11 He came with a gun, a revolver, a weapon.

12 He came in and he told Ms. Morgan: Get up.
13 Give me the money. He forced her up, made her go behind
14 the counter, over to the drive-through window, made her
15 get the cash, made her go to the safe right there
16 underneath the counter.

17 He shuffled her all around, pointed the gun at
18 her, scared the living daylights out of her. He put all
19 the money he could get into a black bag: Coins, cash,
20 even Kentucky Fried Chicken coupons he put in the bag.

21 Then he left and he went to the Circle K. gas
22 station where his car was. He got in that car and took
23 off, but there was an Irmo police officer on duty that
24 night.

25 He was responding to the 911 call that

1 Ms. Morgan made, and he was responding less than four
2 minutes after the call was made, four minutes. He had
3 noticed the Defendant's car parked at this gas station
4 earlier in the night.

5 It stuck out in his mind for some reason. He
6 was on duty. He was patrolling. He saw it. Then it
7 was gone. Then it was back again. He saw it again. He
8 leaves and comes back.

9 He sees that car pulling out of that gas
10 station, and he turns around and he stops the
11 Defendant's car on the side of the road, the gas station
12 down the street. There is an Exxon Gaz-bah gas station.

13 He stops Mr. Battle's car. Mr. Battle is
14 arrested, and in the back seat of that car is
15 everything, absolutely everything: The money, the
16 coins, the K.F.C. coupons, the gun, the Scream mask, a
17 black sweatshirt, everything sitting right there.

18 Now, folks, K.F.C. didn't have cameras in
19 their restaurant. And even if they did, I couldn't --
20 there is no way I can prove to you or I can show you the
21 Defendant's face in that restaurant. I can't do it,
22 can't somehow magically make it appear.

23 But what I can do is put Ms. Morgan on the
24 stand and get her to tell you exactly what that mask
25 looked like. That was his face on that night, Scream

1 mask, all black.

2 What I can do is I can put some police
3 officers on the stand who work hard for a living who can
4 tell you that they stopped Mr. Battle, and they found
5 all of that stuff in his car, every last drop of it. It
6 is as simple as that.

7 It's a case about some hard-working citizens
8 of Irmo getting taken advantage by a Defendant who was
9 looking for a quick dollar. He almost got it, had it
10 not been for the fine folks at the Irmo Police
11 Department.

12 We are going to put all this evidence in front
13 of you. We are going to show you some maps. We are
14 going to show you the locations of everything. We are
15 going to get you some testimony from the 911 operator
16 who is going to tell you exactly when the call came in,
17 exactly when the dispatch was made, and exactly when the
18 stop was made. We've got a four-minute window.

19 When you take the time in this case and then
20 you look at all the evidence that was found in the
21 Defendant's car less than four minutes after this
22 robbery happened, there will be one verdict at the end
23 of this trial. Folks, that verdict is guilty, guilty,
24 guilty, guilty. Thank you.

25 THE COURT: Thank you, Mr. Moore. Mr. Bax.

1 MR. BAX: Thank you, Your Honor. May it
2 please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 OPENING STATEMENT

5 MR. BAX: Briefly, ladies and gentlemen, my
6 name is Arie Bax. I represent Mr. Battle in this case.
7 I appreciate all your time. The solicitor in this case,
8 Mr. Moore, has talked with you about the facts.

9 You are going to hear from witnesses on this
10 stand. You are going to hear a lot of the things that
11 he has talked about, people telling you about what they
12 observed.

13 We are going to discuss the facts, but I'm not
14 going to talk about those until you have had a chance to
15 see them all. The reason for that is this. You are the
16 deciders of fact in this setting that we are in. The
17 judge is the judge of the law, the decider of the law.
18 You are the judge of the facts.

19 You look at the information, be it through
20 exhibits or through testimony, that is sworn and given
21 to you from that witness stand, and you take all that
22 information. You use your common sense and you use your
23 experience, and you decide what really happened.

24 You decide the truth. Because if the truth
25 was a physical something that we could always have, if

1 the truth was always there like a book or a C.D. case,
2 then we wouldn't need a trial because the truth would be
3 what it was and that would be it.

4 But we all know that in life, you can't go
5 back in the past. You can't travel through time and
6 look and observe to find out exactly what happened.
7 Some people were there, some people weren't there, and
8 we have to determine what happened.

9 The reason we have to do that is for several
10 reasons. Number one, Solicitor Moore talked about it,
11 hard-working people. That's you as well. You and I and
12 the rest of us we get up. We hit that alarm clock also
13 he talked about, and we go to work.

14 During the time we are at work and during the
15 time we are not at work, we are living in this country.
16 We are living in Irmo. We are living in Columbia. We
17 are living wherever we are here in Lexington County.

18 As we do so, we experience the same world as
19 any defendant sitting over there would. That common
20 experience is what helps you be an expert in this
21 situation.

22 Because you are, you guys, are experts at this
23 point in time. You are experts on life, life
24 experiences. We all know that even though we speak
25 words, we talk a language, that there is a lot of other

1 forms of communication.

2 We all know that when we talk to somebody, we
3 don't just hear the words. We look at their faces. We
4 think about how they're moving. We consider their
5 expressions. These are the kind of things that you are
6 already equipped with, and that's why it's so essential
7 to have a jury in any case.

8 Because the second reason -- and in my opinion
9 the more important reason -- is that in our country, we
10 have freedoms. We have rights that we are working
11 really hard all over the world to protect right now.

12 It's extremely important because when the
13 government is talking about taking away the freedom of
14 any individual, that there be a buffer zone between the
15 government and the deprivation of those rights. You are
16 that buffer zone. No one else.

17 You are the wall that stands between freedom
18 and loss of freedom, no matter who is sitting over
19 there. That's why the job is so important. That's why
20 the clerk puts you under oath, and that's why we have a
21 certain procedure.

22 That's why you are going to hear evidence.
23 That's why there is going to be matters of law that we
24 take up with the judge. Because we want only the most
25 relevant and the best evidence to go in front of you, so

1 that when you go in that jury room and you consider
2 everything that you have what is best.

3 You will have nothing that is tainted. You
4 will just have facts, things that you can weigh. You
5 can weigh credibility; that is, when you listen to
6 someone up there talking, you can sit there with your
7 common experiences and say: What are that person's
8 motives for saying what they have said?

9 You can look at their expressions. You can
10 look at the pauses in between the times they answer.
11 You can look at where they are looking when they say it.
12 All these things factor in.

13 Some of you, I'm sure, are parents like I am.
14 It's the same thing when you ask your son or daughter:
15 Did you spill that? Their eyes wander up, no, same
16 thing. You are making a judgment, you know.

17 That's what is going to happen. People are
18 going to say what they say, and they are not always
19 going to say just purely the facts. You have to judge
20 credibility. That is something the judge will instruct
21 you about at the end of the case.

22 In order for you to be a buffer zone and in
23 order for any individual's rights to be protected, there
24 is going to be something talked to you by the judge
25 about the burden of proof in this case.

1 It's extremely important. Every single person
2 in this country has rights. Those rights are inviolate,
3 and that is the reason why the State, if they intend to
4 take away those rights, is held to a high burden.

5 The burden of proof in this is beyond a
6 reasonable doubt. That's the highest burden that you
7 can have in any legal case, be it civil or criminal
8 anywhere, not just this country. It's the highest
9 burden you have got.

10 The reason we have that is a good reason,
11 because we want to make sure that they prove everything
12 before you take away the most important thing that
13 Americans value. Because that's exactly what is on the
14 line.

15 I want you to pay attention to everything that
16 is said in this case, and I want you to realize that --
17 and this is something I didn't even really think about
18 until I became a lawyer and I started doing this work.

19 None of us can see the future unfortunately,
20 and none of us can know when something is going to
21 happen and someone is going to be accused of something.
22 Because if we knew exactly when someone might accuse us
23 of something, we'd all walk around with a video camera
24 and three nuns and a pastor standing next to us.

25 We would have the most credible means of

1 showing what happened. If we knew someone was going to
2 go accuse us of something we didn't do, we would have
3 that there with us.

4 But we can't all walk around with that 24
5 hours a day because we can't tell the future. So when
6 something happens, this is the best and only way for any
7 individual to have his day in court and assert his
8 innocence.

9 He has no burden whatsoever and shouldn't.
10 The State has the entire burden. Remember that. I
11 think that all of you will do excellent. We respect
12 your decision whatever it may be. I think you will all
13 abide by your oath, and we appreciate your time. Thank
14 you.

15 THE COURT: Thank you, Mr. Bax. Solicitor and
16 Mr. Bax, would you approach the bench.

17 MR. BAX: Certainly, Your Honor.

18 (Whereupon there was a bench conference off
19 the record in the presence of the jury but out of the
20 hearing of the jury).

21 THE COURT: Mr. Foreman, ladies and gentlemen
22 of the jury, one further thing I did want to advise you
23 of. In the trial of this case, a firearm may be
24 introduced into evidence.

25 There are certain policies and procedures that

1 are followed by the Court that the solicitor and the
2 defense attorneys are very familiar with on the safe
3 handling of firearms when they are introduced into
4 evidence.

5 I will inform you that the firearm would be
6 unloaded at all times, and it would never be pointed at
7 jurors, at court personnel, at judges, at spectators or
8 anyone.

9 With the Court's permission obviously for
10 demonstrative purposes, a firearm may be pointed at
11 another individual for demonstrative purposes. They
12 are always introduced in an open, safe, unloaded
13 condition.

14 The firearm and any ammunition that may also
15 be offered or introduced are always kept separate and
16 apart from each other at all times. I tell you that
17 only to lessen any apprehension that you may have in
18 that matter.

19 I have directed the solicitor and would ask
20 the first witness that would handle the firearm to
21 advise the Court before so handling it that it is open
22 and has already been cleared before it's presented in
23 court.

24 With that being said, Solicitor, you may --
25 any objection to what I told the jury on that matter?

1 MR. MOORE: Absolutely not, Your Honor.

2 THE COURT: Mr. Bax?

3 MR. BAX: No, Your Honor.

4 THE COURT: Solicitor, you may call your first
5 witness.

6 MR. MOORE: Your Honor, the State calls Sherry
7 Woodward to the stand.

8 SHERRY WOODWARD, being
9 first duly sworn, testified as follows:

10 CLERK: Have a seat and state your full name,
11 spelling your last.

12 THE WITNESS: Sherry Woodward,
13 W-O-O-D-W-A-R-D.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q Ms. Woodward, where do you work?

17 A Lexington County 911.

18 Q How long have you been worked there?

19 A A year and eight months.

20 Q What do you do there?

21 A I'm a 911 dispatcher.

22 Q What does that mean? Do you answer the phone or do
23 you dispatch? What do you do?

24 A Both.

25 Q Both?

SHERRY WOODWARD -- DIRECT -- MR. MOORE

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- 1 A We answer 911 lines and we dispatch for fire,
2 E.M.S., municipals, and Lexington County Sheriff's
3 Department.
- 4 Q Take us through what happens when somebody dials
5 911 in Lexington County. What happens when that
6 call gets to your office?
- 7 A A 911 rings and whoever is available to take a call
8 will answer. Depending on the nature of the call,
9 whether it be E.M.S. or fire or a Sheriff's
10 Department matter or police, will initiate the call
11 card. We have a nature code for a domestic or a
12 fire or E.M.S. call, and it will get shipped to the
13 correct console.
- 14 Q Does the person who takes the telephone call
15 dispatch?
- 16 A No, not usually. If you are sitting on E.M.S.,
17 it's very possible that you get an E.M.S. call or
18 if you are sitting on police, that you get a police
19 call. Depending on the nature of the call, it may
20 sit there and hold while you finishing taking the
21 information or if it's an urgent call, then
22 somebody else will go ahead and dispatch it.
- 23 Q When you are taking these telephone calls, is there
24 anybody else sitting there with you?
- 25 A At specific consoles.

SHERRY WOODWARD -- DIRECT -- MR. MOORE

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1 Q If they are sitting there with you, what are they
2 doing?

3 A If it's the police or the Sheriff's Department
4 console, there is always two people sitting at each
5 one of those consoles.

6 Q Why?

7 A Because there's so many officers to handle. They
8 are separated. The Sheriff's Department channels
9 are separated by regions, and the police channels
10 are separated by their channels.

11 Q Tell me this. Were you working at Lexington County
12 911 on October 13, 2006?

13 A Yes.

14 Q Did you get a call, a 911 call, concerning an armed
15 robbery at the K.F.C. in Irmo?

16 A Yes.

17 (Attorneys confer).

18 MR. BAX: Your Honor, we will have an
19 objection to the introduction of the information.

20 THE COURT: Do you need to be heard outside
21 the presence of the jury, Mr. Bax?

22 MR. BAX: Your Honor, at this point I don't
23 know if it's just going to be an I.D. situation. If
24 it's not something that is going to be introduced,
25 that's not a problem, but I would like to approach at

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1 this point.

2 THE COURT: Yes, sir.

3 (Whereupon there was a bench conference off
4 the record in the presence of the jury but out of the
5 hearing of the jury).

6 THE COURT: If you would mark that for
7 identification purposes only at this time.

8 (State's Exhibit Number 4 is marked for
9 identification).

10 BY MR. MOORE:

11 Q Ms. Woodward, can you take a look at these two
12 documents here and tell me what exactly they are.

13 A One is the original armed robbery call from when
14 Kentucky Fried Chicken originally called us saying
15 they had been held up, and the other is the traffic
16 stop.

17 Q Tell me this. What does it say at the top of that
18 document?

19 A For the armed robbery?

20 Q For either one of them?

21 A It's a C.A.D. report, which is our computer system.

22 Q Tell me what a C.A.D. report is.

23 A Any time anyone calls 911 for any reason at all,
24 whether it be someone unconscious to a barking dog,
25 we get a C.A.D. report, which is an incident

1 report.

2 That's how we generate which officer or which
3 E.M.S. unit, fire, whoever that we are going to
4 send to it. It keeps their times. It keeps the
5 document of us going to that address for whatever
6 purpose.

7 Q Who in your office actually generates those?

8 A Every dispatcher.

9 Q Every dispatcher. Do those two C.A.D. reports
10 correspond with the 911 call and the dispatch in
11 this case?

12 A Yes.

13 Q Do you keep those C.A.D. reports in the ordinary
14 course of your operations as a 911 dispatcher?

15 A They are held in the computer. You can search for
16 them in various ways.

17 Q Now, looking at those C.A.D. reports, can you tell
18 me what time the 911 call came in from the Kentucky
19 Fried Chicken in this case?

20 A I can't tell you the exact time the call came in.
21 I was actually the call taker. The C.A.D. report
22 was initiated at 21:10.

23 Q What time is that?

24 A 9:10.

25 Q 9:10.

SHERRY WOODWARD -- DIRECT -- MR. MOORE

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1 A I would imagine the call came in probably three to
2 five seconds before that.

3 Q All right. Who actually took the call in this
4 case?

5 A I did.

6 Q Do y'all record these telephone calls?

7 A All lines are recorded coming into the 911 center.

8 Q Have you listened to this tape?

9 A I have.

10 Q What's on this tape?

11 A The 911 call and the dispatch for the armed
12 robbery.

13 MR. MOORE: Judge, we would like to have this
14 marked for identification purposes.

15 (State's Exhibit Number 5 is marked for
16 identification).

17 BY MR. MOORE:

18 Q If you say the call came in about 9:10, can you
19 look at those C.A.D. reports and tell me, when was
20 somebody dispatched to the K.F.C.?

21 A On an armed robbery call -- if it's a normal call,
22 like a noise complaint, we will pick one officer
23 and send that one officer to that call. When it's
24 a call like an armed robbery, we just key up on the
25 radio and say: All units be advised that an armed

1 robbery just occurred and give the address and
2 business name.

3 Q How soon from the time the call came in was
4 something generated over the radio to let everybody
5 know that there was an armed robbery at the K.F.C.?

6 A It was instantaneous.

7 Q Instantaneous. Now, can you look at those reports
8 and tell me if a suspect was stopped in connection
9 with this armed robbery?

10 A Yes.

11 Q What time were they stopped?

12 A 21:13.

13 Q What time is that my time?

14 A 9:13.

15 Q Who actually stopped the subject?

16 A Officer Majewski.

17 MR. MOORE: Nothing further, Your Honor.

18 THE COURT: Thank you, Solicitor. Mr. Bax.

19 MR. BAX: No questions, Your Honor.

20 THE COURT: Thank you, Mr. Bax.

21 Ms. Woodward, you may step down. Thank you.

22 Solicitor, you may call your next witness.

23 MR. MOORE: Your Honor, the State calls Sandra
24 Morgan to the stand.

25 THE COURT: Ms. Morgan, if you would come

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1 around, please.

2 SANDRA MORGAN, being
3 first duly sworn, testified as follows:

4 CLERK: Have a seat. State your full name,
5 spelling your last for the record, please.

6 THE WITNESS: Sandra Morgan, M-O-R-G-A-N.

7 DIRECT EXAMINATION

8 BY MR. MOORE:

9 Q Ms. Morgan, how old are you?

10 A Forty-one.

11 Q Where do you live?

12 A 108 Oak Hampton Road.

13 Q How long have you been living there?

14 A Six years.

15 Q Where do you work?

16 A K.F.C. in Irmo.

17 Q How long have you been working there?

18 A At that particular location almost two years.

19 Q How long have you been with K.F.C.?

20 A Twenty-two years.

21 Q Were you working on October 13, 2006?

22 A Yes.

23 Q What was your job title?

24 A I'm a manager.

25 Q What was your shift that day?

- 1 A Fifteen-hour shift, all day.
- 2 Q Fifteen hours?
- 3 A Uh-huh. (Indicating affirmative response).
- 4 Q What is closing time at the Kentucky Fried Chicken
- 5 in Irmo?
- 6 A The actual closing time is ten. The drive-through
- 7 closes at ten, and the lobby closes at 9:30.
- 8 Q On October 13, 2006, what were you doing right
- 9 before closing time?
- 10 A The same thing I do every Friday night. At
- 11 9:00 o'clock I go out into the lobby, and we just
- 12 relax, rewind from the day.
- 13 Q Were there any customers in the store?
- 14 A None.
- 15 Q Where were you sitting?
- 16 A On the left side of the building by the A.T.M.
- 17 machine.
- 18 Q Let me show you this photograph. What is that a
- 19 photograph of?
- 20 A The lobby, the entranceway.
- 21 Q Can you see in that picture where you were sitting?
- 22 A Uh-huh. (Indicating affirmative response).
- 23 Q Can you point it out for me.
- 24 A Right here (indicating) on the other side of the
- 25 A.T.M. machine.

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- 1 Q Okay. What is this a picture of?
- 2 A The booth where I was sitting.
- 3 Q Is that your building, the one you manage?
- 4 A Yeah.
- 5 Q How about this? What is this a picture of?
- 6 A The front counter.
- 7 Q Is that in your building where you manage in Irmo?
- 8 A Yes, it is.
- 9 Q How about this? What is that a picture of?
- 10 A The front register and the cash drawer.
- 11 Q Is that in the Irmo building?
- 12 A Yes, it is.
- 13 Q What is this a picture of?
- 14 A Still the front counter and the safe.
- 15 Q Which side of the counter are we on in that
- 16 picture?
- 17 A We are on the side where the employees work.
- 18 Q Is that the Kentucky Fried Chicken in Irmo?
- 19 A Yes, it is.
- 20 Q What is this a picture of?
- 21 A Drive-through window where the cash register and
- 22 cash drawer is.
- 23 Q Is that the Irmo building?
- 24 A Yes, it is.
- 25 Q What about this picture?

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1 A The same cash drawer at the drive-through.

2 Q Tell me what this is a picture of.

3 A This is a picture of once you come in the door,
4 right behind that door is our warmer, the office,
5 and that fire hydrant extinguisher.

6 Q How about this? Is that your building?

7 A Yes, it is.

8 MR. MOORE: Your Honor, at this time we would
9 offer these photographs into evidence, please.

10 MR. BAX: Your Honor, I don't think I have any
11 objection. I just want to make sure.

12 (Pause).

13 MR. BAX: No objections, Your Honor.

14 (State's Exhibit Number 6-14 are received into
15 evidence).

16 BY MR. MOORE:

17 Q All right. Ms. Morgan, this first bench right here
18 (indicating), is that where you were sitting?

19 A Actually I was sitting on the one across from it.

20 Q So right here (indicating)?

21 A No. You see where the A.T.M. is?

22 Q Right.

23 A There was a bench right behind it on the side of
24 that one.

25 Q Can you see it?

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1 A Right, it's the booth right there.

2 Q Right here (indicating)?

3 A Yeah.

4 THE COURT: What number? If you would say the
5 number, Solicitor.

6 MR. MOORE: I'm sorry, Your Honor, State's
7 Exhibit 7.

8 THE COURT: Thank you.

9 BY MR. MOORE:

10 Q Now, that night you said you were sitting at that
11 bench. Tell me what happened to you that night.

12 A Well, we were robbed. When I was sitting there, I
13 didn't see any cars or anything pull in the parking
14 lot because where I was sitting, I could see the
15 through traffic.

16 So I didn't never see any car come in, but I
17 heard the wind when the door opened. I kind of
18 glimpsed somebody out the side of my face. I
19 turned around and looked.

20 I said it must have got real cold out because
21 they had the hood over their head. I went back to
22 talking to the person I was talking to that was in
23 the lobby, and the person stood in front of the
24 double doors.

25 Q All right. Hold on just one second. Let's take a

1 Look at State's Exhibit Number 6. Can you see in
2 this photograph which door the person came in?

3 A He had to have come through -- okay, there's two
4 sets of doors. The outer set, I had already pulled
5 the flap down on the right side. So he had to come
6 in on the left side, but the two double doors
7 inside the building is open. So he could have
8 pulled either one of those handles and came in.

9 Q Tell me what happened after he came in.

10 A He stood there.

11 Q What did he do next?

12 A He looked around. And as he looked around, I guess
13 he saw me and the other employee in the lobby. He
14 came around, and he said: I want you. Give me the
15 money. Get me the money.

16 Q All right. What happened next?

17 A I sat there for a few minutes.

18 Q Tell me this. Can you describe what he was
19 wearing, how he looked?

20 A He had -- like I said, the hood was over his head.
21 He had this mask on. That's what made me just sit
22 there. I couldn't understand what was going on
23 with his face.

24 Q Okay.

25 A He said again he wanted the money. So I got up and

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1 went behind the counter.

2 Q Let me show you something. If I could mark it
3 first.

4 (State's Exhibit Number 15 is marked for
5 identification).

6 BY MR. MOORE:

7 Q Take a look at State's 15. Is that the mask he was
8 wearing?

9 A That's it.

10 MR. MOORE: Your Honor, at this time we move
11 State's 15 into evidence.

12 MR. BAX: Subject to our prior motion and
13 objection, Your Honor.

14 THE COURT: Subject to previous objections,
15 State's 15 is in evidence.

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

18 BY MR. MOORE:

19 Q Is this the mask?

20 A (Witness nods). (Indicating affirmative response).

21 Q When he was standing there looking at you with this
22 mask on, tell me this, what else did he have on?

23 A He was in all black. He had on a black hoodie. It
24 was zipped completely up. I don't know if they
25 were black jeans or black jogging pants, but they

1 were black, and he had a gun.

2 Q What happened next?

3 A Once I got behind the counter, he told me to go to
4 the safe. As I approached the safe, he told me:
5 No, open the register. So I opened the register,
6 and he told me to give him all the money out the
7 register.

8 Q What did you do?

9 A I opened the register and gave him everything out
10 the register.

11 Q Ms. Morgan, why did you do that?

12 A Because he had a gun. He could have shot me.

13 Q Okay. Tell me this, what happened after that?

14 After you put the money from the cash register in
15 the bag -- what color was his bag?

16 A He had a black bag, a big bag.

17 Q What happened next?

18 A He told me to go to the safe.

19 Q All right.

20 A I opened up the safe.

21 Q Hold on just one second. I want you to take a look
22 at State's Number 10. Can you see your safe in
23 this picture?

24 A Uh-huh. (Indicating affirmative response).

25 Q He took you to the safe. What happened?

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1 A Well, he stayed closer to the door than that first
2 register. When I walked towards the safe, opened
3 it, and I got the bag out, I turned around and I
4 didn't see him.

5 Q What happened next?

6 A I walk back towards the door. I looked around a
7 little corner to see where he was because I didn't
8 know where he went. I was walking back towards the
9 safe, turned around again, and there he was.

10 Q Did you give him anymore money?

11 A He told me to bring him the bag. I went back over
12 to him and dropped the bag that I had inside his
13 bag.

14 Q What do you mean your bag?

15 A Well, every Friday before the weekend, we go get
16 change. I went and got change that Friday for the
17 weekend, and there was roles of quarters, nickels,
18 dimes, and pennies in that bag.

19 Q What color was that bag?

20 A Beige.

21 (State's Exhibit Number 16 is marked for
22 identification).

23 BY MR. MOORE:

24 Q Let me show you State's Exhibit 16 for I.D. Is
25 that your money bag?

- 1 A Yes, it is.
- 2 Q Is that what you put coins in?
- 3 A Uh-huh. (Indicating affirmative response).
- 4 Q And cash?
- 5 A Uh-huh. (Indicating affirmative response).
- 6 MR. MOORE: Your Honor, we move State's 16
- 7 into evidence.
- 8 MR. BAX: Subject to prior motion and
- 9 objection.
- 10 THE COURT: State's 16 is in evidence subject
- 11 to previous objection.
- 12 (State's Exhibit Number 16 is received into
- 13 evidence).
- 14 BY MR. MOORE:
- 15 Q You actually gave him that?
- 16 A Yeah, because it had all the coins in it.
- 17 Q Now, Ms. Morgan, did he ever point the gun at you?
- 18 A When he told me to get up and get him the money.
- 19 Q Now, after you put your money bag into his money
- 20 bag, what happened next?
- 21 A Then he told me to go over to the drive-through.
- 22 Q Let's look here at State's Exhibit Number 11. Is
- 23 that the drive-through?
- 24 A Uh-huh. (Indicating affirmative response).
- 25 Q Did you go over there when he asked you to?

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1 A I did.

2 Q Why did you do that?

3 A Because he was still standing behind me, and I am
4 assuming the gun was still pointed at me.

5 Q What did you do over at the drive-through area?

6 A I opened it up. I got -- since he wasn't
7 completely out. I knew he was still at the door.
8 I didn't get all the money out that drawer. I got
9 some of it out, and I took it back and put it in
10 the bag.

11 Q More money in the bag. After you did that, what
12 happened?

13 A He told me to turn around and he pointed where he
14 wanted me to walk.

15 Q Where did he tell you to walk to?

16 A Back towards my office or towards the kitchen part
17 of the store.

18 Q Let's look at State's 13. Is it in that general
19 area?

20 A Yes.

21 Q He told you to walk over there?

22 A He told me, turn around, because once I put the
23 last of the money in the bag, we were still face to
24 face. So he told me to turn around and walk that
25 way.

1 Q Turn around and walk away from him?

2 A Yes.

3 Q What happened next?

4 A I started walking that way, and I heard the door
5 close. When I heard the door close, I turned
6 around.

7 Q All right.

8 A The girl that was actually in the lobby with me at
9 the time, I asked her: Which way did he go?

10 Q All right.

11 A She told me and then I called 911.

12 (State's Exhibit Number 17 is marked for
13 identification).

14 BY MR. MOORE:

15 Q Let's take a look at State's Exhibit 17 for
16 identification purposes only. When you say this
17 guy had a black hoodie, is this what you mean?

18 A Yep.

19 Q With this (indicating)?

20 A The hood, yes, exactly right.

21 Q Is that why you said hoodie?

22 A Yes.

23 Q And that's what he had on?

24 A That's what he had on.

25 Q Did you get a good look at the gun?

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1 A I got a good look at the gun, yes.

2 Q Ms. Morgan, do you know the difference between a
3 revolver and an automatic pistol?

4 A I know that one has -- I say roller rings around
5 it. That's the one he had. I remember that.

6 MR. MOORE: Your Honor, at this time for
7 identification purposes only, I would move the gun in.

8 THE COURT: Solicitor, as long as the cylinder
9 is open and the weapon is unloaded and not pointed at
10 anyone.

11 MR. MOORE: Yes, sir.

12 THE COURT: You affirm that it is in that
13 condition, that the cylinder is open and is not loaded
14 and is not pointed at anyone?

15 MR. MOORE: Yes, sir, Your Honor.

16 (State's Exhibit Number 18 is marked for
17 identification).

18 BY MR. MOORE:

19 Q Ms. Morgan, I will not hold it too long but is that
20 the kind of gun you were describing?

21 A Yes.

22 Q Is this the gun you saw?

23 A That's the gun I saw.

24 Q About how much money did you give him?

25 A Around about, I think, it might have been like \$968

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1 maybe.

2 Q Did you give him \$900 in cash or was it coins?

3 A A little of both.

4 Q Ms. Morgan, can you give us your best estimate as
5 to how long he was in the store?

6 A No, because to me it seemed like it was forever.

7 Q Why?

8 A It's hard to explain, but it just seemed like it
9 was a long, long time.

10 Q Tell me what you did after he left the store.

11 A I went to the far back portion of the kitchen, told
12 my employees we was just robbed, went back into the
13 office, and dialed 911.

14 Q How long was it between the time he walked out of
15 the store until the time you called 911?

16 A I knew it wasn't -- it seemed like it was a long
17 time, but it wasn't. As soon as he left, I ran to
18 the back, told my employees we was robbed, and I
19 went back to the front, went to the office and
20 dialed 911.

21 Q All right.

22 A Maybe a minute, maybe.

23 Q Maybe a minute. Ms. Morgan, before I do this, did
24 you have an opportunity to see his face?

25 A No.

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1 Q Did you have an opportunity to see his facial
2 region?

3 A No.

4 Q I am talking about the front of him. You said he
5 was wearing a mask. Could you see this clearly?

6 A Yes, I could see the mask, yeah.

7 Q And that's what he was wearing?

8 A Yes.

9 Q Have you listened to State's Exhibit Number 5, this
10 tape?

11 A Yes.

12 Q Do you know what this is a tape of?

13 A Of my 911 call.

14 Q Is that your voice on the tape?

15 A Yes.

16 MR. MOORE: Your Honor, at this time we would
17 offer State's Exhibit 5 into evidence and ask to publish
18 it to the jury.

19 THE COURT: Mr. Bax.

20 MR. BAX: Your Honor, if I may approach
21 briefly.

22 THE COURT: All right.

23 (Whereupon there was a bench conference off
24 the record in the presence of the jury but out of the
25 hearing of the jury).

1 THE COURT: I would allow State's 5 into
2 evidence with the understanding that is the 911 call
3 only.

4 MR. BAX: Yes, Your Honor.

5 THE COURT: You may publish it, Solicitor.
6 State's 5 is in evidence.

7 MR. MOORE: Thank you, Judge.

8 (State's Exhibit Number 5 is received into
9 evidence).

10 (State's Exhibit Number 5 is played for the
11 jury).

12 BY MR. MOORE:

13 Q Ms. Morgan, let me show you what has been marked
14 for identification purposes as State's Exhibit
15 Number 1; okay?

16 A Okay.

17 THE COURT: Mr. Bax, do you have any objection
18 to State's 1?

19 MR. BAX: No, Your Honor, I do not.

20 THE COURT: State's 1 is in evidence without
21 October.

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

24 BY MR. MOORE:

25 Q Do you have any idea where the K.F.C. is on this

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1 map?

2 A Right there (indicating).

3 Q Where are you pointing? I will let you do that.

4 A Right there (indicating).

5 Q Are you familiar with this area?

6 A Yes.

7 Q Okay.

8 MR. MOORE: Your Honor, nothing further.

9 THE COURT: Thank you, Solicitor. Mr. Bax.

10 MR. BAX: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. BAX:

13 Q Good afternoon, Ms. Morgan.

14 A Good afternoon.

15 Q Good to see you again. Just a few quick questions
16 for you, Ms. Morgan. You testified that this
17 occurred October 13th?

18 A Correct.

19 Q It was Friday the 13th, wasn't it?

20 A It sure was.

21 Q It was, wasn't it. You have testified that you
22 were actually sitting on break when the individual
23 came in, correct?

24 A Correct.

25 Q And based on the photographs that have been shown,

1 the individual that came in would have been kind of
2 to your back when he first came in; correct?

3 A He would have, depending on how I was sitting. I
4 was sitting with my legs out of the booth.

5 Q So you were sitting with your -- well, let's get
6 that picture here. You were sitting with your back
7 to the wall and your legs stretched out?

8 A My legs were in front of me this way (indicating).

9 Q Okay.

10 A So my shoulder was up against this cushion right
11 here (indicating). So I was like -- if I was
12 sitting this way (indicating), I was like this
13 (indicating), talking to the girl in the lobby.

14 Q And I believe in this photograph it appears that
15 there is a window?

16 A Right.

17 Q That actually shows through to that little entry
18 area?

19 A Uh-huh. (Indicating affirmative response).

20 Q I believe you testified it was in the corner of
21 your eye you saw someone coming through there.

22 A Right.

23 THE COURT: What number is that photograph,
24 Mr. Bax?

25 MR. BAX: Certainly, Your Honor. This is

SANDRA MORGAN -- CROSS -- MR. BAX

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1 State's Number 7.

2 THE COURT: Thank you.

3 BY MR. BAX:

4 Q You have testified that this individual had the
5 mask on that is marked up here as State's
6 Number 15, correct?

7 A Correct.

8 Q And you've testified that you did not at any time
9 see his face or anything that could give you a
10 physical description, correct?

11 A Correct.

12 Q Did the individual have on gloves?

13 A I believe so, yeah.

14 Q You have also testified that whoever this was told
15 you to get money. At any time did that firearm go
16 off at any time?

17 A No.

18 Q Did he ever -- did this individual ever hit anybody
19 while he was there?

20 A No.

21 Q I know you have already testified it's hard for you
22 to tell how long the whole thing occurred because
23 it seems like it would be a very stressful
24 situation, right?

25 A The only time I'm really sure on is what time I

1 went into the lobby.

2 Q That was what time?

3 A At 9:00 o'clock.

4 MR. BAX: A moment's indulgence, Your Honor.

5 (Pause).

6 MR. BAX: No further questions.

7 THE COURT: Anything on redirect?

8 MR. MOORE: Nothing, Your Honor.

9 THE COURT: Thank you, Ms. Morgan. You may
10 step down.

11 Solicitor, call your next witness.

12 MR. MOORE: Thank you, Judge. The State would
13 call Brian Majewski to the stand.

14 BRIAN MAJEWSKI, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOORE:

18 Q Officer, where do you work?

19 A Irmo Police Department.

20 Q How long have you worked there?

21 A Approximately four years.

22 Q What are your duties there?

23 A I'm a patrolman, which I do traffic enforcement,
24 answer calls for service, and other community
25 service events.

BRIAN MAJEWSKI -- DIRECT -- MR. MOORE

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1 Q How long have you been with Irmo?

2 A Approximately four years.

3 Q How long have you been in law enforcement?

4 A Eight years.

5 Q Tell me this, were you working for Irmo on
6 October 13, 2006?

7 A Yes, I was.

8 Q What were your duties then?

9 A Patrolman, traffic enforcement, calls for service.

10 Q Tell me this, on October 13, 2006, did you see a
11 red Cadillac parked at the Circle K. in Irmo?

12 A Yes, I did.

13 Q Let's look at State's Exhibit Number 1. I will get
14 the easel. Where is the Circle K. in this picture?
15 You can come down if you would like.

16 A (Witness leaves the witness stand). This
17 (indicating) is the Circle K.

18 THE COURT: Officer, you need to keep your
19 voice up when you are away from the microphone.

20 THE WITNESS: I'm sorry, Your Honor.

21 THE COURT: It's quite all right.

22 BY MR. MOORE:

23 Q Show me again, where was it?

24 A The Circle K. is right here (indicating).

25 Q Where did you first see this red Cadillac?

- 1 A Parked on the side of the building over here
2 (indicating).
- 3 Q How was it parked in there?
- 4 A It was parked face in with the hood up. There was
5 no light reflecting on this side of the parking lot
6 at the time.
- 7 Q Tell me this, what time did you first see it?
- 8 A Approximately 8:30 in the evening.
- 9 Q Where were you when you first saw it?
- 10 A I was headed up Saint Andrews Road passing the
11 Circle K. when I observed it.
- 12 Q Where were you going?
- 13 A To patrol the rest of the town. New Friarsgate and
14 areas around in there.
- 15 Q Did you do that?
- 16 A Yes, sir.
- 17 Q Tell me this, where did you go after you patrolled
18 this area in new Friarsgate?
- 19 A Came back down Broad River Road and came up Lake
20 Murray Boulevard.
- 21 Q Did you notice anything in that parking lot then?
- 22 A No.
- 23 Q Where did you go next?
- 24 A I turned left on Saint Andrews Road to patrol the
25 lower end of the town.

BRIAN MAJEWSKI -- DIRECT -- MR. MOORE

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1 Q About what time you the go this way (indicating)?

2 A Approximately 8:50.

3 Q Tell me this, when you drove by the first time and
4 saw the car, why is it that a car like that parked
5 in a parking lot with the hood up would stick out
6 in your mind?

7 A Because usually most people just park underneath
8 the canopy or in front of the store. Since they
9 didn't have a street light lighting this area, no
10 one usually ever parked there.

11 Q So you went this way (indicating) what time?

12 A Approximately 8:50.

13 Q And where were you going?

14 A Down to the lower end of Saint Andrews Road to
15 patrol a couple of businesses we have down there.

16 Q What happened after you got down there?

17 A I headed back up Saint Andrews Road, back towards
18 the Circle K. and K.F.C.

19 Q Did you notice anything in the parking lot of the
20 Circle K.?

21 A Yes. When I came up the intersection of Lake
22 Murray Boulevard and Saint Andrews Road, I observed
23 the same vehicle in the same parking spot backed in
24 at that time.

25 Q Backed in?

- 1 A Yes, sir.
- 2 Q Do you remember which parking space it was?
- 3 A The one right in the center of the parking lot.
- 4 Q You were coming back up this way (indicating)?
- 5 A Yes, sir.
- 6 Q Where did you go?
- 7 A I turned right onto Lake Murray Boulevard.
- 8 Q What time did you make your right-hand turn?
- 9 A Approximately 9:00 o'clock, a little bit after
- 10 9:00 o'clock.
- 11 Q You went down here (indicating). What happened
- 12 next?
- 13 A As I was heading down Lake Murray Boulevard towards
- 14 I-26, we had a dispatch of an armed robbery in
- 15 progress at the K.F.C.
- 16 Q How far down were you when you got that call?
- 17 A I was approximately between the 1900 block of Lake
- 18 Murray Boulevard, and this is the 1200 block right
- 19 in this area (indicating).
- 20 Q When you got that dispatch, what did you do?
- 21 A I turned around and headed back up towards K.F.C.
- 22 Q Where is the K.F.C.?
- 23 A K.F.C. is up in this section of the picture right
- 24 here (indicating).
- 25 Q Now, did you come back up this road (indicating)?

BRIAN MAJEWSKI -- DIRECT -- MR. MOORE

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1 A That's correct, Lake Murray Boulevard.

2 Q Tell me what happened on your way to the K.F.C.

3 A As I was coming towards K.F.C. off Lake Murray
4 Boulevard, I turned right onto Saint Andrews Road.
5 As I turned right on Saint Andrews Road, Officer
6 Dennis was on the radio and said he was on the
7 scene at the K.F.C.

8 As I was approaching to set up a perimeter, I
9 observed the subject vehicle exit the parking lot
10 at a high rate speed. I made a U-turn behind the
11 subject, got behind him and he stopped at the red
12 light at Lake Murray Boulevard and Saint Andrews.
13 He proceeded to turn left without using a turn
14 signal. I got behind him past Woodrow Street, and
15 I initiated a traffic stop on him.

16 Q Tell me this Officer, this K.F.C. here, is it in
17 Lexington County?

18 A Yes, sir.

19 Q You stopped this red Cadillac?

20 A That's correct.

21 Q Whose car was it?

22 A Mr. Battle's car.

23 Q Is Mr. Battle here today?

24 A Yes, he is.

25 Q Can you point him out for us.

1 A Yes, he is sitting over there.

2 MR. MOORE: Your Honor, if the record would
3 please reflect that the witness has identified the
4 Defendant.

5 THE COURT: Where is he sitting over there,
6 Officer?

7 THE WITNESS: He is the Defendant, Your Honor.

8 THE COURT: Thank you. The record so
9 reflects.

10 BY MR. MOORE:

11 Q Officer, I believe you can step back down -- or sit
12 down.

13 A (Witness resumes the witness stand)..

14 Q Tell me this, where exactly did you stop him?

15 A He pulled into the Gaz-bah, the gas station on Lake
16 Murray Boulevard.

17 Q When you stopped him what did you do?

18 A I approached the vehicle, asked him for his license
19 and registration and insurance card.

20 Q What happened next?

21 A He asked why he was being pulled over, if he was
22 speeding. I advised him no. I said: We just had
23 an armed robbery with a vehicle matching your
24 description.

25 Q Why did you tell him that?

BRIAN MAJEWSKI -- DIRECT -- MR. MOORE

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1 A It was just the heat of the moment, the subject
2 exiting the parking lot. I just spurted (sic) that
3 out. Just like I said, adrenalin was pumping, just
4 a slip of the tongue.

5 Q Why was your adrenalin pumping?

6 A I just had a call for an armed robbery in the
7 general area. I saw the suspect's vehicle exiting
8 at a high rate of speed. I thought he could have
9 been involved in it as either the subject or as a
10 potential witness.

11 Q Tell me this, how long was it from the time you
12 were dispatched to the K.F.C. until the time you
13 pulled over the Defendant at the Gaz-bah gas
14 station?

15 A Approximately three to four minutes, I believe.

16 Q Now, Officer, you arrested the Defendant that
17 night; correct?

18 A That's correct.

19 Q Did you search him?

20 A Yes, I did.

21 Q Did you find anything in his pockets?

22 A Yes, I did.

23 Q What did you find?

24 A I found a purple in color Crown Royal bag in the
25 subject's left front pocket with ammunition in

BRIAN MAJEWSKI -- DIRECT -- MR. MOORE

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1 it.

2 (State's Exhibit Number 20 is marked for
3 identification).

4 BY MR. MOORE:

5 Q Officer, take a good hard look at State's Exhibit
6 Number 20 for identification purposes. Is that the
7 bag you pulled off the Defendant?

8 A Yes, it is.

9 Q Take a look inside.

10 A (Witness complies).

11 Q What's inside there?

12 A Ammunition.

13 Q Can you pull one of them out for me.

14 A (Witness complies).

15 Q Is that what you found inside that bag?

16 A Yes.

17 Q And tell me exactly where you took -- where did you
18 get that bag from?

19 A It was in the subject's left front pants pocket.

20 MR. MOORE: Your Honor, we offer State's
21 Exhibit Number 20 into evidence.

22 MR. BAX: Subject to prior objection, Your
23 Honor.

24 THE COURT: State's 20 is in evidence subject
25 to previous objection.

BRIAN MAJEWSKI -- CROSS -- MR. BAX

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1 (State's Exhibit Number 20 is received into
2 evidence).

3 MR. MOORE: No further questions, Your Honor.

4 THE COURT: Thank you, Solicitor. Mr. Bax.

5 MR. BAX: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BAX:

8 Q Good afternoon, Officer Majewski.

9 A Good afternoon.

10 Q A couple of quick questions for you. You have
11 already testified kind of generally about State's
12 Exhibit Number 1, which is an aerial photograph of
13 the K.F.C. and the Circle K.; correct?

14 A That's correct.

15 Q And this is kind of the general area where you were
16 patrolling at that time; is that correct?

17 A That is correct, yes.

18 Q This is the intersection of Saint Andrews Road and
19 Lake Murray Boulevard, correct?

20 A That is correct, yes.

21 Q Now, you have testified that you observed this red
22 in color Cadillac the first time around 8:30. Does
23 that sound about right?

24 A That's correct, approximately 8:30.

25 Q And you have testified that it was in one of these

1 parking spots (indicating) along the side of the
2 Circle K.; correct?

3 A That's correct.

4 Q And you testified that that area is kind of dark.
5 Why is it kind of dark?

6 A The streetlight -- they did not have a streetlight
7 at the time in that section of the parking lot.

8 Q Did the store have any lights that lit that area?

9 A That's what I meant by streetlight. There is no
10 light in that corner of that building or on the
11 store either.

12 Q Now, that area of the parking lot, was it so dark
13 to where you couldn't really see what you were
14 doing if you were doing engine work or looking at
15 your oil?

16 A You would need a flashlight, yes.

17 Q You were driving by on Saint Andrews Road at that
18 time, correct?

19 A That's correct.

20 Q But you were able to see this car in the dark,
21 correct?

22 A Yes.

23 Q Did you have a spotlight on your car?

24 A Yes.

25 Q Did you flash it over at that car?

BRIAN MAJEWSKI -- CROSS -- MR. BAX

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1 A No, I did not.

2 Q But you were able to tell that it was a red in
3 color Cadillac?

4 A Yes.

5 Q Even though it's so dark that someone would have to
6 use a flashlight to do engine work or check the
7 oil?

8 A Yes. When they are pulled in with the hood up, the
9 back of the car is illuminated from the lights from
10 the canopy.

11 Q So the back rear of the car was lit up?

12 A Yes, the engine compartment would be dark, but the
13 back of the car was illuminated.

14 Q So there is enough light to see, maybe not to do
15 delicate work in; right?

16 A That's correct.

17 Q Skipping ahead, you also testified that when you
18 returned to this area after getting the dispatch
19 call about this armed robbery, that you observed
20 that same vehicle exiting the Circle K.; correct?

21 A That's correct.

22 Q How could you tell it was the same vehicle?

23 A It was the same color, make, model, same dents and
24 scratches on the vehicle.

25 Q So you could see, when you went past it that first

1 time from across -- because you were in the
2 opposite lane from the Circle K., correct, when you
3 past that car the first time?

4 A That's correct.

5 Q So you were looking across three lanes of traffic
6 and at least a couple of parking spots, correct?

7 A Correct.

8 Q Into a dark area of the parking lot?

9 A That's correct.

10 Q But you saw the scratches and dents on the car?

11 A Yes.

12 Q You also testified that when he was exiting, you
13 referred to it as having left the parking lot at a
14 high rate speed; correct?

15 A Correct.

16 Q But you also testified that it stopped at the red
17 light for the turn lane here (indicating), right
18 here where this white car is in this picture;
19 correct?

20 A That's correct.

21 Q Could you guesstimate for us the distance between
22 this exit out of the gas station and this stoplight
23 right there?

24 A Judging off that picture, I would say probably a
25 couple hundred feet.

BRIAN MAJEWSKI -- CROSS -- MR. BAX

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- 1 Q A couple hundred feet. Would it seem unrealistic
2 to you if I told you it was between 20 and
3 30-yards?
- 4 A No, that wouldn't be too far off, I imagine.
- 5 Q Now, the vehicle in question was able to stop at
6 this light without a problem; is that right?
- 7 A That's correct.
- 8 Q Didn't squeal on it brakes?
- 9 A No, sir.
- 10 Q Didn't hit any other vehicles?
- 11 A No.
- 12 Q Did it cross the white line into the intersection
13 in trying to stop?
- 14 A No, it did not.
- 15 Q But your testimony is that it exited with a high
16 rate speed.
- 17 A That is correct.
- 18 Q Now, moving ahead, you have testified that you
19 pulled the vehicle over, and I believe at that
20 point that vehicle and yourself had gotten onto
21 Lake Murray Boulevard at that time; is that
22 correct?
- 23 A That's correct, yes.
- 24 Q So there had been a left turn?
- 25 A That's correct.

1 Q And this looks like when the satellite went over,
2 they got a train, but you guys would have gone
3 across these train tracks; correct?

4 A That is correct, yes.

5 Q When you initiated your blue lights, where were you
6 at?

7 A We were on Lake Murray Boulevard just past Woodrow
8 Street. You can see where all the cars are stopped
9 for the train on the right-hand side. That's where
10 the lights and sirens were initiated.

11 Q So your car would have been right about here
12 (indicating) when the lights went on?

13 A That's correct.

14 Q And the vehicle that you were pulling over was a
15 little ahead of you?

16 A Yes.

17 Q Did that vehicle pull over?

18 A Yes, he did.

19 Q Now, you also testified that you asked the driver
20 of that vehicle for his identification, all the
21 normal kind of paperwork, license, proof of
22 insurance and registration; correct?

23 A That's correct.

24 Q Did he cooperate and provide that information?

25 A Yes, he did.

BRIAN MAJEWSKI -- REDIRECT -- MR. MOORE

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1 MR. BAX: A moment's indulgence, Your Honor.

2 THE COURT: Yes, sir.

3 (Pause).

4 MR. BAX: No further questions, Your Honor.

5 Thank you.

6 THE COURT: Solicitor, anything on redirect?

7 REDIRECT EXAMINATION

8 BY MR. MOORE:

9 Q Officer, when you got that license and you ran it,
10 tell me why the Defendant was arrested.

11 A Because we were advised by dispatch that the
12 subject was driving under suspension for an unpaid
13 traffic ticket.

14 Q Thank you.

15 MR. MOORE: Nothing further.

16 THE COURT: Anything on recross, Mr. Bax?

17 MR. BAX: One question.

18 RECROSS EXAMINATION

19 BY MR. BAX:

20 Q You testified just now that you pulled him over,
21 and he was arrested for suspended license. When
22 you first pulled him over, I believe you testified
23 here in your direct testimony that you stated to
24 him that there had been an armed robbery in the
25 area; correct?

1 A That's correct.

2 Q You also testified or you testified that you stated
3 to him that his car matched the description given
4 in that case, correct?

5 A Correct.

6 Q Was there any description of any vehicle in this
7 case that had been put out on dispatch?

8 A No, there was not.

9 MR. BAX: No further questions.

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

12 Mr. Foreman, ladies and gentlemen of the jury,
13 we are now going to take an afternoon recess for 15
14 minutes. I remind you that during this recess, you are
15 not to discuss the case with anyone. This includes your
16 fellow jurors, people involved in the trial or anyone
17 else.

18 If anyone tries to talk with you about the
19 case, please let me know immediately. Remember to keep
20 an open mind about this case until I instruct you to
21 begin your deliberations.

22 With that, Mr. Foreman, ladies and gentlemen
23 of the jury, you may go with our bailiff to your jury
24 room. Thank you very much.

25 (The jury retires to the jury room).

1 THE COURT: Court will be in recess 15
2 minutes.

3 (Whereupon there was a recess).

4 THE COURT: Anything from the State before we
5 bring in the jury?

6 MR. MOORE: No, sir, Your Honor.

7 THE COURT: From the defense?

8 MR. BAX: No, Your Honor.

9 THE COURT: If you will bring our jury,
10 Mr. Bailiff.

11 (The jury returns to the courtroom).

12 THE COURT: Our jury is back present in the
13 courtroom. We are continuing with the case with the
14 presentation of the testimony by the State.

15 Solicitor, you may call your next witness.

16 MR. MOORE: Thank you, Your Honor. The State
17 calls Jim Crosland to the stand.

18 THE COURT: If you will come around, please,
19 sir.

20 JIM CROSLAND, being
21 first duly sworn, testified as follows:

22 CLERK: State your name and spell your last
23 for the record.

24 THE WITNESS: My name is Jim Crosland,
25 C-R-O-S-L-A-N-D.

1 DIRECT EXAMINATION

2 BY MR. MOORE:

3 Q Officer, where do you work?

4 A The Irmo Police Department.

5 Q How long have you been working there?

6 A Approximately since 2000, so a little over seven
7 years.

8 Q How long have you been in law enforcement?

9 A Since 1997.

10 Q What are your duties with the Irmo Police
11 Department?

12 A I'm a shift patrol sergeant.

13 Q Were you working on October 13, 2006?

14 A Yes, sir, I was.

15 Q Did you go to the Gaz-bah in Irmo with Officer
16 Majewski?

17 A Yes, sir.

18 Q Why did you go there?

19 A At the time when the dispatch came out with the
20 armed robbery, basically it's kind of like a shift
21 policy where one officer will operate on what we
22 call a code two/code three run, which is lights and
23 siren.24 One officer in the closest vicinity will head
25 to that location so they can get the pertinent

JIM CROSLAND -- DIRECT -- MR. MOORE

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1 information out over the air. So I knew Officer
2 Dennis was already at the location, and Officer
3 Majewski had just put out that he was on a traffic
4 stop. So I immediately went over to Officer
5 Majewski to back him up.

6 Q What did you do as far as backing him up that
7 night?

8 A Once I arrived at the scene, the scene was pretty
9 much secure. Officer Majewski already obtained
10 Mr. Battle's information, driver's license
11 information, and was running it through dispatch at
12 the time. I talked to Officer Majewski, just small
13 pertinent information, why the traffic stop was
14 conducted, and what we were going to do from there.

15 Q What did you do?

16 A At the time when the information came back that
17 Mr. Battle was driving under suspension for an
18 unpaid traffic ticket, we already knew that we were
19 going to go 1067, an arrest was going to be made.
20 I was going to stand by until that arrest was
21 effected.

22 Q Tell me this, after the arrest was made, did you
23 search Mr. Battle's car?

24 A The vehicle was searched incident to an arrest.

25 Q What kind of car was it?

JIM CROSLAND -- DIRECT -- MR. MOORE

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1 A It was -- I'm not particularly sure of the year. I
2 remember it was a red Cadillac.

3 Q What did you find when you searched it?

4 A I immediately opened up the driver's door and
5 observed a black sweatshirt sitting on top of a
6 black bag. I picked up the sweatshirt, and when I
7 picked it up, a .38 revolver, black in color, fell
8 out onto the floorboard. I picked up the revolver,
9 opened it up to secure the weapon, and it was
10 loaded.

11 Q Officer, let me show you what has been marked for
12 identification purposes as State's Exhibit
13 Number 18. Is this the gun you found in the
14 Defendant's car --

15 A Yes, it was.

16 Q -- that night.

17 MR. MOORE: Your Honor, at this time we would
18 move State's 18 into evidence.

19 MR. BAX: Subject to prior objection.

20 THE COURT: State's 18 is in evidence subject
21 to prior objection.

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

24 BY MR. MOORE:

25 Q Officer, let me show you State's 17 for

JIM CROSLAND -- DIRECT -- MR. MOORE

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1 identification. Is this the sweatshirt that the
2 gun was wrapped in?

3 A Yes, sir.

4 MR. MOORE: Your Honor, at this time we would
5 move State's 17 into evidence.

6 MR. BAX: Subject to the same objection.

7 THE COURT: State's 17 in evidence subject to
8 previous objection.

9 (State's Exhibit Number 17 is received into
10 evidence).

11 BY MR. MOORE:

12 Q Officer, when you pulled the gun out, was it
13 loaded?

14 A Yes, it was.

15 Q What did you do with it?

16 A I opened it up, and I pulled out the rounds that
17 were in it to securely -- make sure it wasn't
18 accidentally going to go off. I placed the firearm
19 on the driver's seat.

20 (State's Exhibit Number 21 is marked for
21 identification).

22 BY MR. MOORE:

23 Q Officer, let me show you State's Number 21 for
24 identification.

25 A Yes, sir.

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1 Q What's this?

2 A It's appears to be like a black laundry bag.

3 Q Do you recognize that bag?

4 A Yes, I do.

5 Q How do you recognize it?

6 A The sweatshirt was sitting on top of this bag, and
7 all of it was behind the driver's seat. When I
8 opened up the bag, I observed the contents inside.

9 Q What was inside?

10 A I observed money, loose change, K.F.C. coupons, and
11 also observed the mask.

12 MR. MOORE: Your Honor, at this time we move
13 State's 21 into evidence.

14 MR. BAX: Subject to the same, Your Honor.

15 THE COURT: State's 21 is in evidence subject
16 to previous objection.

17 (State's Exhibit Number 21 is received into
18 evidence).

19 BY MR. MOORE:

20 Q Officer, tell me this, why didn't you go through
21 the bag?

22 A At that time I knew that there was a good
23 possibility that we had a crime scene. The crime
24 scene had moved from the Kentucky Fried Chicken
25 over to the Gaz-bah.

JIM CROSLAND -- CROSS -- MR. BAX

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1 What I did was notified the sergeant of
2 investigations of what we had and for him to see if
3 he would respond to process the scene, further
4 process the scene.

5 MR. MOORE: Nothing further, Your Honor.

6 THE COURT: Thank you, Solicitor. Mr. Bax.

7 MR. BAX: A moment, Your Honor.

8 (Pause).

9 MR. BAX: Briefly, Your Honor.

10 CROSS EXAMINATION

11 BY MR. BAX:

12 Q Officer Crosland, you were the officer that
13 conducted the search incident to arrest in the
14 Cadillac in question?

15 A Yes, sir.

16 Q When you looked in the vehicle, I believe you
17 testified that you saw a black sweatshirt or some
18 black piece of cloth on top of a black bag;
19 correct?

20 A Yes, sir.

21 Q When you looked back there at that black cloth and
22 the bag, was State's Exhibit Number 20, the Smith
23 and Wesson revolver, was it visible to the eye?

24 A No.

25 Q So it was somehow concealed within all that stuff?

SCOTT FRANKLIN -- DIRECT -- MR. MOORE

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1 A It was wrapped up in the sweatshirt.

2 MR. BAX: No further questions at this time.

3 THE COURT: Anything in redirect, Solicitor?

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

5 THE COURT: Thank you, Officer. You may step
6 down. You may call your next witness, Solicitor.

7 MR. MOORE: Thank you, Your Honor. The State
8 calls Officer Scott Franklin to the stand.

9 THE COURT: Officer Franklin.

10 SCOTT FRANKLIN, being
11 first duly sworn, testified as follows:

12 CLERK: State your name, spelling your last
13 for the record, please.

14 THE WITNESS: Scott Franklin, F-R-A-N-K-L-I-N.

15 DIRECT EXAMINATION

16 BY MR. MOORE:

17 Q Officer Franklin, where do you work?

18 A I'm employed with the Irmo Police Department.

19 Q What are your duties there?

20 A I am the sergeant over the investigations division,
21 as well as the evidence and property room
22 custodian.

23 Q What all does that mean?

24 A I supervise the day-to-day activities of the
25 investigations division, while also working a

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1 caseload and log and inventory all property and
2 evidence that is submitted by officers into the
3 department for holding.

4 Q How long have you been in law enforcement?

5 A Been in law enforcement for 13 years.

6 Q Were you working for the Irmo Police Department on
7 October 13, 2006?

8 A Yes, I was.

9 Q Were you called to the Gaz-bah gas station?

10 A Yes. A little after 9:00 o'clock that evening, I
11 received a call from Sergeant Crosland asking me to
12 respond to the scene.

13 Q Why did you go there?

14 A Per our phone conversation, Sergeant Crosland told
15 me that the Kentucky Fried Chicken had just been
16 robbed, and they believed they had stopped the
17 subject at the Gaz-bah who was responsible. They
18 found some of the property that they believed was
19 from the Kentucky Fried Chicken in his vehicle.

20 Q When you got there, what did you do?

21 A I got there, just briefly talked with Sergeant
22 Crosland, found out exactly what they had, all the
23 circumstances surrounding the stop. He showed me
24 the inside of the vehicle.

25 The gun was laying on the seat. There was a

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1 large black bag sitting behind the driver's seat at
2 that time. When I looked in it, I could see a mask
3 and money and coupons from the Kentucky Fried
4 Chicken.

5 Q What type of search did you do in this car?

6 A What type of search?

7 Q Yes.

8 A It was an inventory search of the vehicle based on
9 the subject's arrest.

10 Q Do you know whose car it was?

11 A What I was told by Officer Majewski and Sergeant
12 Crosland on the scene was the car was registered to
13 Mr. Battle.

14 Q Let's go through some of this stuff. State's
15 Number 16.

16 A Yes.

17 Q Did you find that in the black bag?

18 A Yes, I did.

19 Q State's Number 15, did you find that in the black
20 bag?

21 A That was in the bag also.

22 Q State's Number 21, is this the black bag?

23 A That is the black bag, yes.

24 Q Officer, look at State's 18. Is that the gun you
25 saw at the scene?

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1 A That is the weapon that was in the car, yes.

2 Q Officer, look at State's 17. Is that what you
3 found there, too?

4 A That's correct.

5 Q Officer, did you find anything else?

6 A In addition to the items there, I believe there was
7 five rounds also found that Sergeant Crosland said
8 he had taken out of the weapon. There was a
9 substantial amount of money, rolled change, loose
10 change, bills.

11 Like I said, there were some K.F.C. coupons
12 as well. There was also a bag, for lack of a
13 better term, a bag that the black bag was
14 originally in when it was purchased that was in the
15 car also.

16 (State's Exhibit Number 22 is marked for
17 identification).

18 BY MR. MOORE:

19 Q Look at State's I.D. Number 22. What is in that
20 bag?

21 A Five bullets.

22 Q Where did you get those bullets?

23 A These were the bullets given to me by Sergeant
24 Crosland that he had stated that he had removed
25 from the gun.

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1 (State's Exhibit Number 23 is marked for
2 identification).

3 BY MR. MOORE:

4 Q Officer, look in this envelope, State's I.D.
5 Number 23. Can you tell us what is in there.

6 A Approximately five Kentucky Fried Chicken coupons.

7 Q Did you find those that night?

8 A Yes, sir, they were in the black bag also with the
9 money.

10 (State's Exhibits Number 24-26 are marked for
11 identification).

12 BY MR. MOORE:

13 Q Officer, take a look at State's 24 for I.D.
14 purposes. Did you find that in the car?

15 A Yes, that was in the rear seat of the vehicle.

16 Q How about State's I.D. 25 and 26, what are these?

17 A A pair of gloves that were found inside the bag
18 containing the money and the mask.

19 MR. MOORE: Your Honor, at this time we would
20 move State's 25, 26, 24, 23 and 22 into evidence.

21 THE COURT: Mr. Bax.

22 MR. BAX: I need to take a look at them, Your
23 Honor.

24 THE COURT: All right.

25 (Pause).

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1 MR. BAX: Subject to prior motion, Your Honor.

2 THE COURT: That's State's 22, 23 24, 25, and
3 26 in evidence subject to previous objection.

4 MR. MOORE: Thank you, Judge.

5 (State's Exhibits Number 22-26 are received
6 into evidence).

7 (State's Exhibit Number 27 is marked for
8 identification).

9 BY MR. MOORE:

10 Q Officer, let's look at State's 27 for
11 identification. What is all that?

12 A That's all the money that we removed from the bag,
13 the black bag.

14 Q About how much is it?

15 A If I'm not mistaken, I believe it was right at or
16 just a little over a thousand dollars.

17 Q Can you pick that bag up for me, please.

18 A (Witness complies).

19 Q How heavy is it?

20 A It's pretty heavy.

21 (State's Exhibit Number 28 is marked for
22 identification).

23 BY MR. MOORE:

24 Q Officer, look at State's 28 for identification.
25 What is that a picture of?

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1 A Once we got -- once we were finished with
2 everything at the scene, we brought everything back
3 to the police department. As we inventoried
4 everything individually, we sat it out on a table
5 and took a photograph of everything: The gloves,
6 mask, money, bullets, gun.

7 Q Is that a picture of all the money in that bag?

8 A Yes, it is.

9 MR. MOORE: Your Honor, we would move State's
10 28 into evidence.

11 MR. BAX: Your Honor, that would be subject to
12 the prior objection as well.

13 THE COURT: May I see 28.

14 MR. MOORE: Yes, sir.

15 (Hands to Court).

16 THE COURT: You are moving 27 and 28?

17 MR. MOORE: No, sir, Your Honor, just the
18 picture.

19 THE COURT: State's 28 is in evidence subject
20 to previous objection.

21 (State's Exhibit Number 28 is received into
22 evidence).

23 BY MR. MOORE:

24 Q Officer, you stated you were an investigator?

25 A Yes, sir.

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1 Q As part of your work as an investigator, do you
2 take fingerprints?

3 A Yes, sir.

4 Q Did you take or try to get any fingerprints in this
5 case?

6 A Once we got all the evidence back into the office,
7 I attempted to check the bullets that were removed
8 from the weapon for latent prints, with no luck
9 with that. The gloves were taken for latent print
10 examination, as well as the Scream mask and the
11 plastic bag that once contained the dark bag there.

12 Q Officer, is the art of taking fingerprints kind of
13 like what we see on T.V.?

14 A No.

15 MR. BAX: Objection, Your Honor. This witness
16 has not been entered or offered up as an expert. I
17 think he is about to testify to opinion testimony that
18 would be within the purview of an expert.

19 THE COURT: I would sustain the objection.

20 BY MR. MOORE:

21 Q Officer, what kind of training do you have as far
22 as fingerprint analysis?

23 A I have been to numerous crime scene processing
24 classes sponsored both by the Criminal Justice
25 Academy, as well as private individuals and

1 corporations.

2 Q Where did you go to school?

3 A I have got a bachelor's degree from Limestone
4 College and a master's degree in criminal justice
5 behavioral science from Nova Southeastern
6 University Fort Lauderdale, Florida.

7 Q Explain to us what y'all do in these classes that
8 you just described to us.

9 A Normally the first part of these classes are theory
10 based and then how to. The second half is usually
11 hands on where you get to practice different means
12 of trying to lift latent prints off different type
13 items.

14 Q How exactly do you get a fingerprint off a
15 particular object?

16 A It really depends on the object. There are several
17 different chemicals or agents, depending on what
18 you are processing --

19 MR. BAX: Objection, Your Honor. I can
20 understand voir dire as to his qualifications, but we
21 are getting into the essence of opinion, and we have not
22 yet had the opportunity to enter him as an expert or
23 not.

24 THE COURT: All right. If you would proceed
25 with his qualification as an expert in the field,

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1 Solicitor.

2 BY MR. MOORE:

3 Q Officer, are you certified by any organization in
4 this State as a fingerprint analysis person?

5 A There is no State certification for fingerprint
6 analysis.

7 Q How many hours of training do you have in
8 fingerprint analysis?

9 A I guess we ought to clarify. The analysis of the
10 actual fingerprint is different from the processing
11 of the fingerprints. I have gotten well over a
12 hundred-plus hours in the development and crime
13 scene processing to lift fingerprints.

14 As far as analyzing the fingerprints and
15 matching them to a person, that's done by somebody
16 else. That's done through S.L.E.D. usually, the
17 actual analysis.

18 Q Do you have any training in analysis?

19 A No.

20 Q But do you have training in processing?

21 A Crime scene processing and lifting.

22 MR. MOORE: Your Honor, at this time we would
23 offer Officer Franklin as an expert in the field of
24 fingerprint processing.

25 THE COURT: Mr. Bax, any voir dire?

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1 MR. BAX: Yes, Your Honor, briefly.

2 THE COURT: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. BAX:

5 Q Officer Franklin.

6 A Yes, sir.

7 Q I believe you've testified that you have received
8 some training in processing, as far as collecting
9 fingerprint evidence; correct?

10 A That's correct.

11 Q What training has that been?

12 A I received training, as I said before, both through
13 the Criminal Justice Academy and through private
14 corporations, private trainers of law enforcement.
15 All those classes have been certified through the
16 academy but not actually taught by the academy.

17 Q And how many hours were these classes in total?

18 A Geez, like I said, at least a hundred-plus hours.
19 I've been to many in the past ten years, many.

20 Q Are you aware of any proficiency tests that are
21 given by State Law Enforcement Division on its
22 examiners and processors?

23 A Not on processing. On analysis they do, but not on
24 processing. I don't know of any.

25 Q You are not aware of any?

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1 A No.

2 Q Officer, have you ever been qualified as an expert
3 in evidence processing or collection in court
4 before?

5 A No.

6 MR. BAX: A moment's indulgence, Your Honor.

7 THE COURT: All right.

8 (Pause).

9 BY MR. BAX:

10 Q Real briefly before I finish up here, Officer
11 Franklin. At the Irmo Police Department, do they
12 have any written protocols that outline procedures
13 for collecting evidence?

14 A There is evidence collection and handling
15 procedures in our policy manual, yes.

16 Q Do those procedures outlined in your manual, are
17 they -- number one, are they specific as to the
18 collection of fingerprint evidence?

19 A They are not specific to fingerprint evidence, no.
20 It's just evidence in general, how it should be
21 handled and packaged type thing. As far as the
22 actual fingerprint evidence, that's just -- the way
23 you handle it is determined by what type of object
24 it is, how easily destroyed it might be, things of
25 that nature.

1 Q So the portions that discuss evidence collection in
2 your Irmo Police Department manual of procedures,
3 does that have to do with chain of custody and
4 collection of evidence --

5 A Yes.

6 Q -- or does that have to do with the actual
7 technique that one would have to employ in order to
8 develop ridge detail on a fingerprint on various
9 surfaces?

10 A It's just evidence in general related to chain of
11 custody, how it should be handled, things of that
12 nature. Nothing addresses specifically how to, how
13 a fingerprint should or shouldn't be lifted and
14 documented.

15 Q So there's no protocols as to procedures that are
16 approved or disapproved by the Irmo Police
17 Department about developing fingerprints on various
18 surfaces --

19 A That's correct.

20 Q -- ridge detail that is required for analysis,
21 anything like that?

22 A That's correct.

23 Q Are you aware of the fact that there are protocols
24 in place at the State Law Enforcement Division on
25 specific procedures for collecting and developing

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1 fingerprint evidence on different surfaces, ridge
2 detail, the nature of the fingerprint? Either you
3 use -- excuse me for using layman's terms -- but
4 there is a way to bring out fingerprints with
5 different kinds of fumes versus powders?

6 A Yeah, I am sure their forensic person has strict
7 guidelines about what they use on what type of
8 things.

9 Q In the past have you ever submitted any evidence to
10 the State Law Enforcement Division for testing as
11 far as fingerprints?

12 A Yes, we submit evidence, fingerprints and others
13 stuff, to S.L.E.D. on a regular basis.

14 MR. BAX: No further questions at this time.

15 THE COURT: Do you have any objections,
16 Mr. Bax?

17 MR. BAX: Your Honor, I would have an
18 objection. As the officer has stated, there is no
19 protocol in place for the collection of evidence. The
20 procedures that are outlined for the Irmo Police
21 Department entail collection of evidence for chain of
22 custody.

23 In addition to that, Your Honor, Mr. Franklin
24 has never testified as an expert in court before.
25 Especially considering the fact there are proficiencies

1 and quality control procedures in place at S.L.E.D. for
2 this very purpose, we would object to him being
3 qualified as an expert.

4 THE COURT: Mr. Foreman, ladies and gentlemen
5 of the jury, if you would step momentarily to your jury
6 room, please. Do not discuss the case amongst
7 yourselves.

8 (The jury retires to the jury room).

9 THE COURT: I wanted to make sure I understood
10 your objection. One of your objections about protocols
11 and procedures at the Irmo Police Department seems to go
12 to the Dolbert or Jones issue, as opposed to whether or
13 not Detective Franklin is or is not going to be
14 qualified as an expert.

15 I didn't quite understand that issue about the
16 protocols because that didn't seem to me to be relevant
17 to whether I do or do not qualify him as an expert.

18 MR. BAX: Your Honor, the reason I brought
19 that up is because of the fact that those protocols also
20 entail proficiency and knowledge testing, the argument
21 being from the defense's standpoint that despite the
22 fact the officer has taken however number of hours in
23 classes does not show the level -- it does not qualify
24 him as an expert based on the fact there is no showing
25 of how well he has absorbed the knowledge.

1 I am sure he has done great with those
2 classes, but one of the things that I have gone into
3 many times before in court with experts offered through
4 S.L.E.D. and some of the other labs is that not only do
5 they take their classes, but they then have to take
6 proficiency tests and competency tests to show how well
7 they absorbed said knowledge.

8 Nothing like that is in place at this time,
9 which I think is probably one of the reasons why -- this
10 is probably a novel thing for the officer at this
11 point -- but I think you run into a problem on a legal
12 argument that he is an expert when you do not have any
13 procedures set in place to maintain quality control with
14 the procedures that he has used.

15 THE COURT: Well, how could they -- if there
16 is no certification in this particular field of
17 expertise, are you then saying that this is just not a
18 field of expertise?

19 Again, I know I'm circling back on you, but
20 the officer has testified that there is no certification
21 for fingerprint processing and collection, and that's
22 what he was offered for, fingerprint processing and
23 collection, not for the analysis, not for the
24 comparisons, but just whether or not he is an expert.

25 I take it that would mean the processing of

1 items of evidence for the collection of latent prints
2 that could thereafter be sent to the State Law
3 Enforcement Division or whoever for analysis.

4 He also testified that: I have submitted or
5 we submit items of evidence regularly to S.L.E.D.,
6 fingerprints and other items of evidence. I'm
7 assuming -- well, I am making an assumption.

8 MR. BAX: Your Honor, my understanding is that
9 it may not be called certification; however, the quality
10 control procedures, including the competency and
11 proficiency testing, they have a specific body, the
12 American Association of Criminal Lab Directors. I may
13 not be giving that in the right terms, but I think it's
14 something to that effect. They have an acronym for it.

15 These tests are actually in place for the
16 development and processing of evidence, just as much as
17 it is for the analysis of it. It may not be called
18 certification, but if you don't pass the test, you don't
19 get to collect the evidence.

20 In addition, it's my understanding that when
21 items are sent to S.L.E.D. for fingerprinting, there is
22 not an attempt most of the time -- and there may be
23 additional voir dire that is needed -- but most of the
24 time it's not a situation where the local agency
25 attempts to develop the fingerprints and then sends them

1 on.

2 It's usually a situation where they send the
3 items along and allow S.L.E.D. to develop, if any, any
4 ridge details and any fingerprints present on the
5 surfaces submitted.

6 THE COURT: Solicitor.

7 MR. MOORE: Yes, Your Honor. Officer Franklin
8 has specialized knowledge in the field of processing
9 crime scenes. Perhaps the reason that he's not required
10 to take a test is because you either get the
11 fingerprints or you don't.

12 There is somebody down the line who analyzes
13 these fingerprints to determine whether or not there is
14 a match. You know, there really -- once he finds a
15 fingerprint, he doesn't do anything with it. He just
16 basically tries to find one.

17 Judge, he has testified that he has been
18 through hours and hours of classes in raising
19 fingerprints. I understand he has never been qualified
20 as an expert in this field.

21 Obviously he's a young fellow. There has got
22 to be a first time for everybody. But in this narrow
23 field of processing for fingerprints, Judge, I think he
24 is certainly qualified as an expert.

25 THE COURT: What is the testimony going to be.

1 offered for?

2 MR. MOORE: Judge, all he is going to say is
3 that he tried to process several items for fingerprints
4 and didn't find anything. That's it.

5 MR. BAX: Your Honor, just in brief response.
6 That's specifically why I feel it's important to have
7 this objection. Because it can be a situation where if
8 there is someone attempting to collect a certain kind of
9 evidence, such as fingerprints; and that person has not
10 been submitted to quality and proficiency controls, it
11 is possible -- and I'm not saying it's the case here --
12 that actual fingerprints may be missed, and those
13 fingerprints may have been exculpatory in a situation.
14 We'll never know. That's not there.

15 But to go up there and testify there is no
16 fingerprints because we didn't find any fingerprints
17 gives the impression that we didn't find anything
18 because there wasn't anything there. I don't think that
19 that information is within the purview of his knowledge.

20 MR. MOORE: Judge, certainly that's something
21 that can be brought out on cross examination. This
22 witness will testify he didn't find anything. If
23 Mr. Bax wants to cross examine him all day long on why
24 he's not certified, why he didn't have to take a test,
25 this, that, and the other, you know, Judge, this is

1 something he can bring out on cross.

2 THE COURT: I am going to qualify the officer
3 as an expert in the field of what he was offered for,
4 fingerprint processing and collection, under State
5 versus Goode, 406 S.E.2d 391, and also State versus
6 Myers, 391 S.E.2d 551.

7 There was a blood splatter or spatter, I think
8 is the way you actually say it, an expert by the defense
9 in that case that was not allowed to testify. That was
10 found to be an abuse of discretion.

11 Although the witness testified that she had
12 only attended a one-week seminar on characteristics of
13 blood stain evidence and never testified in court before
14 on blood pattern interpretations, the witness'
15 qualifications went to the weight of her testimony, not
16 it's admissibility. I think that's the same case in
17 this particular situation.

18 Mr. Bailiff, if you would bring our jury,
19 please.

20 (The jury returns to the courtroom).

21 THE COURT: Our jury is back present in the
22 courtroom.

23 Mr. Foreman, and ladies and gentlemen of the
24 jury, normally a person cannot give opinion testimony.
25 Normally when a person testifies, they must testify as

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1 to what they either saw, heard or sensed by smell or
2 something of that nature.

3 However, there is an exception when someone is
4 qualified because of education, training or experience.
5 They are permitted to give their opinion in certain
6 areas if the Court qualifies them that way.

7 This witness, Officer Franklin, will be
8 qualified in the area of fingerprint processing and
9 collection to give opinion testimony in that area. That
10 does not mean that you must accept the opinion, but it
11 is evidence for you to use anyway you see fit.

12 Solicitor, you may proceed.

13 MR. MOORE: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q Officer, did you try to take some fingerprints in
17 this case?

18 A Yes, sir.

19 Q Where did you try to get the fingerprints from?

20 A I stated earlier from the bullets that were removed
21 from the gun, the plastic bag that originally
22 appeared to have contained the larger black bag,
23 the mask itself, and there was one pair of ripped
24 rubber gloves in the bag with the other gloves.
25 They had been stripped off from somebody's hand.

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1 Q Were you successful in lifting any fingerprints
2 from this stuff?

3 A The bullets, the mask, the plastic bag, we weren't
4 able to find anything. On the inside of the pair
5 of ripped gloves, there was portions of ridge
6 detail but not enough that would be suitable for
7 analysis.

8 Q Officer, take a look at State's Exhibit Number 22.
9 What did you say these were again?

10 A These were the bullets which were handed to me by
11 Sergeant Crosland, saying that he had removed them
12 from the gun.

13 Q You've been in here when we introduced State's
14 Exhibit Number 22?

15 A Yes.

16 Q You know what that is?

17 A Yes.

18 Q What's that?

19 A That's a Crown Royal bag containing the bullets
20 removed from Mr. Battle's pocket by Officer
21 Majewski.

22 Q Can you tell us anything about the bullets found in
23 this bag and the bullets you pulled out of the gun?

24 A They appear to be the same caliber and
25 manufacturer.

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1 Q Officer, are you familiar with the Kentucky Fried
2 Chicken in Irmo?

3 A Yes, I am.

4 Q Is that location in Lexington County?

5 A Yes, it is.

6 Q Are you familiar with the Circle K.?

7 A Yes.

8 Q Let me show you some pictures. What is that a
9 picture of?

10 A It's a picture, if you were looking at the Circle
11 K., it's a picture of the left-hand side of the
12 parking lot beside the building next to the
13 carwash.

14 Q What about this picture?

15 A That's a straight on view of the front of the
16 building underneath the awning for the gas pumps at
17 Circle K.

18 Q What are we looking at here?

19 A This looks like the wooded area behind the Circle
20 K. which leads down to the driveway leading into
21 the Kroger shopping center.

22 Q What about this one?

23 A The same thing, it's just a close-up view of one of
24 the paths from the shopping center driveway up to
25 the back of the Circle K.

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1 Q What about this one?

2 A That's the driveway between the back of the Circle
3 K. and the side of the Kentucky Fried Chicken,
4 looking down at the Kroger.

5 Q Can you show me on State's Exhibit Number 1 where
6 that road is.

7 A (Witness leaves the witness stand). This
8 (indicating) is the driveway or road that is
9 pictured right here (indicating), from the back of
10 this (indicating) down one of these little paths
11 into this driveway (indicating).

12 Q Can you show us where the Kentucky Fried Chicken
13 is.

14 A The Kentucky Fried Chicken is right here
15 (indicating).

16 Q What about Circle K.?

17 A Right here (indicating).

18 Q What are we looking at here?

19 A This is taken from that driveway between the
20 Kentucky Fried Chicken and Circle K. of the back of
21 the Circle K. restaurant through the trees.

22 Q What are we looking at here?

23 A The end of the row of trees at the driveway facing
24 the side of the Kentucky Fried Chicken across the
25 little grassy yard for lack of a better term.

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1 Q What about here?

2 A This is the side parking lot of the Kentucky Fried
3 Chicken looking towards that same grassy yard and
4 the trees just before the driveway.

5 Q All right. What about here?

6 A That's in the front of the Kentucky Fried Chicken
7 standing closer to Kroger in the parking lot.

8 (Attorneys confer).

9 MR. BAX: No objection, Your Honor.

10 MR. MOORE: We offer these pictures into
11 evidence.

12 (State's Exhibits Number 31-39 are received
13 into evidence).

14 BY MR. MOORE:

15 Q Officer, let's look at State's Exhibit Number 31.

16 A Okay.

17 Q Where is the Kentucky Fried Chicken?

18 A Standing in this picture, it would be to your left.

19 Q Where is the Circle K.?

20 A Also to your left, more diagonally behind that
21 cluster of trees.

22 Q Look at State's Exhibit 32. What are we looking at
23 here?

24 A That's from the side door, side parking lot of the
25 Kentucky Fried Chicken looking towards the

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- 1 Circle K. and the driveway leading into the Kroger
2 shopping center.
- 3 Q Let's look at State's Exhibit Number 34. Where is
4 the Circle K. here?
- 5 A That's the driveway leading into Kroger. The
6 Circle K. is visible just through those trees at
7 the top of that hill.
- 8 Q Let look at State's Exhibit 35. Again, what are we
9 looking at?
- 10 A The back of the Circle K. would be on your left
11 standing in the driveway leading down to Kroger,
12 and the Kentucky Fried Chicken would be on the
13 right behind the trees.
- 14 Q Let's look at State's Exhibit 37. What is that?
- 15 A That's standing at the back area of the Circle K.
16 looking down one of the paths to that driveway that
17 leads down into the Kroger shopping center.
- 18 Q Did you say path?
- 19 A A little pathway through the woods.
- 20 Q Let look at State's Exhibit 36. What is that?
- 21 A That appears to be a close-up photograph of that
22 little foot path that leads down to the driveway.
- 23 Q Let look at State's Exhibit 39. What is that?
- 24 A Looking at the Circle K., that's the left-hand side
25 normally where I believe mostly the employees would

1 park beside the sign for the car wash on the far
2 left.

3 Q Where's the Kentucky Fried Chicken?

4 A If you walk straight through that parking lot to
5 those trees, it's right behind there.

6 Q Thank you.

7 MR. MOORE: Your Honor, I have nothing
8 further.

9 THE COURT: Thank you, Solicitor. Mr. Bax.

10 MR. BAX: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. BAX:

13 Q Officer Franklin, you have testified that as part
14 of your duties, you are the evidence custodian for
15 the Irmo Police Department; correct?

16 A That's correct.

17 Q As a result of that assignment, when you responded
18 to the scene, in this case to the Gaz-bah where the
19 Defendant had been pulled over, were you the one
20 that took the evidence into custody at that time?

21 A Yes, I was.

22 Q Can you tell us what you did in taking those pieces
23 of evidence into custody.

24 A First and foremost, we photograph everything before
25 we actually collect it. Then we get some paper

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1 bags. We put the bag containing the money into the
2 paper bag with the sweatshirt on top of it like it
3 was found in the back of the car.

4 We packaged the gun and the bullets that were
5 in it in a separate bag. The bullets went in
6 another bag. Everything that was in the black bag
7 stayed in it until we got it up to the police
8 department, and we inventoried the whole thing up
9 there.

10 Q At the Irmo Police Department, do you employ
11 anything similar to or the same as what's called
12 best kits?

13 A Yes.

14 Q Were any of those used on the scene here at the
15 Gaz-bah, Exxon station?

16 A Best kits?

17 Q Yes, sir.

18 A Best kits are used for narcotics, to send narcotics
19 off to be tested. So, no, we didn't.

20 Q You didn't?

21 A No.

22 Q That's fine. Are you aware of the fact that best
23 kits can be used for things other than narcotic
24 evidence?

25 A They can be. Our protocol is use them and submit

1 them only to S.L.E.D. for narcotics testing.

2 That's the only thing we use them for.

3 Q You have testified that -- and, in fact, I think
4 you can kind of see it here. These gloves, you
5 made an attempt to find some latent prints on these
6 gloves; correct?

7 A That's correct.

8 Q Is that why there is that kind of black?

9 A That's the black stuff. That is left over
10 fingerprint powder.

11 Q In order to do that, you have to inside those out;
12 correct?

13 A Yes.

14 Q Now, Officer, is it possible that -- let me back
15 up. Strike that. You have testified that you were
16 not able to get any prints of a quality to which
17 analysis would be of any use?

18 A That's correct. The portions were too small.

19 Q Too small.

20 MR. BAX: A moment's indulgence, Your Honor.

21 THE COURT: All right.

22 (Pause).

23 MR. BAX: No further questions. Thank you,
24 Officer.

25 THE COURT: Thank you, Mr. Bax. Anything on

1 redirect?

2 MR. MOORE: No, sir, Your Honor.

3 THE COURT: Solicitor, you may call your next
4 witness.

5 MR. MOORE: Your Honor, I have a matter of law
6 to take up.

7 THE COURT: Sir?

8 MR. MOORE: I have a matter of law, Your
9 Honor.

10 THE COURT: Can you give me an idea how long
11 that will take.

12 MR. MOORE: Five minutes, less than five
13 minutes, I hope.

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 I am going to allow you to step back to your jury room.
16 If I see it will take over about ten minutes or so, I
17 will probably bring you back out and release you for the
18 day. Give me a few minutes. Do not discuss the case
19 with each other.

20 (The jury retires to the jury room).

21 THE COURT: Solicitor.

22 MR. MOORE: Judge, our next and final witness
23 will be Jim Sauls who basically served the arrest
24 warrants on the Defendant at the jail two days after his
25 arrest.

1 When he served those warrants, he had no
2 intention of interviewing the Defendant, talking to him
3 at all. But while he was serving those warrants, the
4 Defendant asked him about two things.

5 Number one, I believe he asked about his car.
6 Officer Sauls told him it would be taken care of. Then
7 he asked about his wallet. Officer Sauls basically said
8 that the wallet would be placed in a locker with the
9 jail and they would keep it, at which time the Defendant
10 basically said: There's \$80 in that wallet. That's
11 mine, not K.F.C.'s.

12 We would attempt to offer that statement into
13 evidence with this next witness and thought we should
14 bring it to the Court's attention before we put this
15 witness up.

16 THE COURT: Mr. Bax.

17 MR. BAX: Your Honor, two objections to that.
18 Number one, we have had no notice of that that I know
19 of. I haven't seen that in any of the discovery.

20 Number two, Your Honor, basically I think on a
21 balancing test, that's not necessarily an inculpatory
22 statement, him just saying that that was his money. He
23 certainly knew at that point what they were accusing him
24 of.

25 It's not necessarily an admittance of guilt.

1 So it wouldn't necessarily be a statement against
2 interest, and its prejudicial effect would certainly far
3 outweigh its probative value in that situation because
4 we know exactly what it will be argued as. However,
5 that is taken very much out of context at the very
6 least.

7 THE COURT: Under what rule do you think you
8 have to receive notice of this, Mr. Bax?

9 MR. BAX: Well, Your Honor, under Rule 5,
10 number one, and also under Brady actually. For one
11 thing under 5: Any statements made by the accused. The
12 substance of oral arguments (sic) which the prosecution
13 intends to offer in evidence at the trial made by the
14 Defendant, whether before or after arrest, in response
15 to interrogation by any person then known to the
16 Defendant or to the prosecution or an agent of the
17 prosecution. That's Rule 5 (a) (1), subsection (a).

18 THE COURT: I agree with that. But where is
19 it in response to interrogation in this scenario? Of
20 course, I haven't heard the testimony. Let's do this.
21 Let's let the jury go. I haven't heard the testimony.
22 Based on the representation of the solicitor, I don't
23 want to rule on it. It doesn't appear that's it in
24 response to interrogation.

25 MR. MOORE: Your Honor, as far as the

1 discovery matter; we have Officer Sauls' report here
2 with the statement in it. It's stamped by our office
3 where we stamped it and sent it out.

4 THE COURT: May I see that, Solicitor?
5 (Hands to Court).

6 MR. BAX: If I may ask, what is the date on
7 the stamp?

8 MR. GRAHAM: April 24th.

9 THE COURT: 4/24/2007.

10 MR. BAX: If I may ask, does that stamp have
11 an indication of a page number? I know usually stamps
12 have a date and year and then usually a four-digit page
13 number. Does that have that on there?

14 THE COURT: 0091.

15 MR. BAX: 0091, thank you, Your Honor.

16 (Pause).

17 MR. BAX: Your Honor, I have found it in the
18 packet. I withdraw that aspect of my objection. We did
19 receive it. It was actually hidden -- not hidden. It
20 was not hidden. It was in between some letters that my
21 client had sent to Mr. Madsen. It's my mistake I didn't
22 find it. I have it now.

23 THE COURT: Do you have any motion in regard
24 to the statement then, Mr. Bax?

25 MR. BAX: Your Honor, we would still move to

1 exclude it based on the fact that I feel that it would
2 not fall under -- generally statements made by a
3 defendant would come in under statements against
4 interest.

5 However, this statement, as I argued before, I
6 do not think is necessarily inculpatory and as a result
7 would be hearsay that I don't think would fit into any
8 exception.

9 In addition to that, Your Honor, under a
10 balancing test here, under 401, Your Honor, I don't
11 think that it would fall within relevant evidence.

12 THE COURT: All right. I would deny your
13 motion, and I would allow the testimony in this regard.
14 Would you please mark this as a Court's exhibit's,
15 Solicitor, or a copy of it.

16 MR. MOORE: Yes, sir.

17 THE COURT: "This" being it looks like
18 Investigator Sauls' statement. Anything -- yes, sir,
19 I'm sorry.

20 MR. BAX: Thank you, Your Honor. I respect
21 your ruling. I would like to point out if I could,
22 this statement does contain a section at the very
23 beginning where it says: I was instructed to serve 15
24 warrants. I would certainly ask for that section to be
25 redacted.

1 THE COURT: I assume you are not going into
2 that.

3 MR. MOORE: Absolutely not.

4 THE COURT: You are not going into anymore
5 than that, what you have advised the Court you were
6 going into?

7 MR. MOORE: Right, Your Honor.

8 THE COURT: Thank you for pointing that out,
9 Mr. Bax. Anything before we bring back in our jury?

10 MR. MOORE: No, sir.

11 MR. BAX: No, Your Honor.

12 THE COURT: Mr. Bailiff, you may bring our
13 jury.

14 (The jury returns to the courtroom).

15 THE COURT: Our jury is back present.
16 Mr. Foreman, I didn't inquire earlier if anyone had any
17 child care issues.

18 FOREMAN: No, sir, no one does.

19 THE COURT: With that being said, I think we
20 will press on a few more minutes.

21 Solicitor, you may call your next witness.

22 MR. MOORE: Thank you, Your Honor. The State
23 calls Officer Jim Sauls to the stand.

24 JIM SAULS, being
25 first duly sworn, testified as follows:

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1 CLERK: State your name and spell your last
2 for the record, please.

3 THE WITNESS: Jim Sauls, S-A-U-L-S.

4 DIRECT EXAMINATION

5 BY MR. MOORE:

6 Q Mr. Sauls, where do you work today?

7 A I work for Costner Legal Services as a process
8 server.

9 Q Where did you work back in October of 2006?

10 A I worked for the Irmo Police Department.

11 Q What were your duties then?

12 A I was a corporal at the time on the road, my normal
13 road duties for patrol and such.

14 Q On October 14, 2006, did you speak with the
15 Defendant?

16 A Yes, I did. I was serving warrants on him.

17 Q Where did you speak to him?

18 A At the Lexington County Detention Center.

19 Q Tell me what he said.

20 A Basically after I served the warrants on him, I
21 asked him if he had any questions. He inquired
22 about his vehicle, where it was towed to and how he
23 could get it out. I told him how he could.

24 Then he asked about his wallet, and I said it
25 should be in his property. After I told him that,

1 he said: What about the \$80? That's mine, not
2 K.F.C.'s.

3 Q Thank you, Mr. Sauls.

4 MR. MOORE: Nothing further, Your Honor.

5 THE COURT: Thank you, Solicitor. Mr. Bax.

6 MR. BAX: One question, Your Honor.

7 CROSS EXAMINATION

8 BY MR. BAX:

9 Q Officer Sauls, these warrants were in reference to
10 the incident at the Kentucky Fried Chicken;
11 correct?

12 A Yes.

13 MR. BAX: No further questions, Your Honor.

14 THE COURT: Anything on redirect, Solicitor?

15 MR. MOORE: No, sir, Your Honor.

16 THE COURT: Thank you, Officer Sauls. You may
17 step down.

18 Solicitor, you may call your next witness.

19 MR. MOORE: Your Honor, that would be our
20 case.

21 THE COURT: The State rests.

22 MR. MOORE: Yes, sir, Your Honor.

23 THE COURT: Normally at this stage of the
24 proceedings, I have certain matters of law that I have
25 to take up. So I will excuse y'all momentarily for your

1 evening recess.

2 Again, ladies and gentlemen, I remind you that
3 during the break you are not to discuss the case with
4 anyone. This includes your fellow jurors, your friends,
5 your family, people involved in the trial or anyone
6 else.

7 If your home is anything like mine used to be
8 when my chaps were still at home, every time you come
9 home in the afternoon, they'd say: What did you do
10 today, daddy, or what did you do today, momma?

11 Obviously you can respond to your spouses or
12 children that you have been selected for a jury, and you
13 are sitting as a juror, but you cannot discuss the facts
14 of the case with your family.

15 I tell people that I miss having my children
16 home like that, but I haven't quite gotten them all off
17 the payroll, but they are no longer around the house
18 when I get home, and I kind of miss that.

19 Be that as it may, you cannot discuss it with
20 your family, friends, people involved in the trial or
21 anyone else. If anyone tries to talk with you about
22 this case, please let me know immediately.

23 Remember do not read, watch or listen to any
24 news reports about this trial. Do not watch it, whether
25 it's newspaper, television, radio or anything on the

1 internet. Do not do any independent investigation.

2 Remember to keep an open mind about the case
3 until I instruct you to begin your deliberations. I
4 would ask that you please be back in your jury room at
5 9:30, 09:30 hours in the morning.

6 We will try to get started promptly
7 thereafter. Have a pleasant evening. Thank you very
8 much. You are now excused.

9 (The jury is excused for the day at 5:12 p.m.)

10 THE COURT: Mr. Bax.

11 MR. BAX: Thank you, Your Honor. I can do
12 motions now or if you would rather do them in the
13 morning, either way.

14 THE COURT: I would prefer doing them now.

15 MR. BAX: That's fine. Your Honor, due to the
16 fact the State has rested, at this point in time, the
17 defense would move for a directed verdict in favor of
18 the Defendant on both counts.

19 We would base that motion on the argument that
20 the State has not presented competent evidence to prove
21 as a matter of law that the jury could find the
22 Defendant guilty of these charges.

23 We base that argument on the fact that there
24 has been no one to testify that the Defendant in this
25 case was the one who was in the store. There is no

1 description of him. That person was completely covered.
2 There is a jump between there and where he is pulled
3 over. That would be the basis of our motion on that,
4 Your Honor.

5 THE COURT: Thank you, Mr. Bax. Solicitor.

6 MR. MOORE: Thank you, Judge. Your Honor,
7 there are a couple of key pieces of evidence in this
8 case. Number one, the location, State's Exhibit
9 Number 1, you've got an armed robbery happening a matter
10 of feet from where the Defendant was basically and
11 ultimately pulled over.

12 The time frame, you've got four minutes from
13 the dispatch to the time the Defendant was pulled over.
14 Your Honor, you have a table full of competent evidence
15 to go forward to the jury with this case.

16 THE COURT: Thank you, Solicitor. Anything in
17 reply to that, Mr. Bax?

18 MR. BAX: No, Your Honor.

19 THE COURT: I would respectfully deny your
20 motion. I think there is sufficient circumstantial
21 evidence and some direct evidence. At this stage of the
22 proceeding, the standard I must apply is whether or not
23 there exists evidence as opposed to the amount or
24 quality.

25 However, I think there is a very high quality

1 of circumstantial evidence in this case, and I would
2 respectfully deny your motion. Any other motions?

3 MR. BAX: No, Your Honor.

4 THE COURT: My preference would be to question
5 the Defendant now regarding his right to testify and
6 give him an opportunity to think about it overnight.

7 MR. BAX: That's fine by us, Your Honor.

8 THE COURT: Mr. Battle, would you please
9 stand.

10 Madame Clerk, would you place Mr. Battle under
11 oath, please.

12 KORELL BATTLE is first duly
13 sworn.

14 THE COURT: Mr. Battle, I need to go over some
15 things with you. I do this with everyone who is on
16 trial. That's why I place you under oath, as I do with
17 everyone at this stage of the proceeding.

18 We have reached the stage of the trial where
19 the State has rested. Your side, the defense, now has
20 the opportunity to present evidence for the jury to
21 consider. Do you understand where we are in the trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: In that regard, you may call
24 witnesses to testify. If you choose to testify
25 yourself, you may do so. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: No one can force you to testify.
3 You have an absolute right to remain silent. If you
4 choose not to testify, I will tell the jury that they
5 cannot hold your silence against you in any way. I will
6 tell them that they are not to discuss that in the jury
7 room. Do you understand?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: If your side offers no evidence at
10 all, in other words, if neither you nor anyone on your
11 behalf testifies or offers any exhibits, then your
12 attorney will get to make the last argument to the jury.
13 Otherwise the prosecutor gets to make the last argument.
14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: As far as your record is
17 concerned, I understand you have a 2002 conviction for
18 general conspiracy; is that correct? Was that the
19 correct date?

20 MR. MOORE: 2003, Your Honor.

21 THE COURT: 2003 for criminal conspiracy, and
22 I don't recall the other charge, nor that we resolved
23 that issue.

24 MR. MOORE: Judge, the other charge was a 1996
25 attempted burglary third and an accompanying assault

1 charge. We would use the attempted burglary. I believe
2 when the Defendant testified earlier, he basically said
3 he went to jail on this charge and got out in '99. So
4 that would be the basis for using this.

5 THE COURT: Do you intend to use that,
6 Solicitor?

7 MR. MOORE: Yes, Your Honor.

8 THE COURT: Do you have a position, Mr. Bax?

9 MR. BAX: Your Honor, we have gotten a copy of
10 the materials that the solicitor had as far as the
11 Colorado conviction, that being a burglary conviction,
12 if I'm not mistaken; correct?

13 MR. MOORE: Yes.

14 MR. BAX: We haven't had a chance to review
15 that yet, Your Honor. If you would give us the
16 opportunity just to hold off on that until tomorrow
17 morning to let you know, I would appreciate it. We just
18 had to rush back here.

19 THE COURT: All right. I will give you the
20 opportunity. We must settle his record in the morning.
21 At this point I would withhold my ruling on the
22 attempted burglary from 1996, for which I understand you
23 were incarcerated until 1999.

24 However, if you do testify, the law allows the
25 prosecutor to ask you in front of the jury about whether

1 you have been convicted of certain offenses in the past.
2 They cannot go into the details of the prior offenses,
3 but they can ask you -- right now I am ruling they can
4 ask you if you have been convicted of criminal
5 conspiracy.

6 If that happens I would then tell the jury
7 that they can only consider that evidence against you,
8 if they consider it against you at all, on the issue of
9 whether your testimony is believable and for no other
10 purpose. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you understand at this
13 time, I will withhold my decision on the attempted
14 burglary at your attorney's request?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The decision about whether you
17 testify or not is your decision to make and yours alone.
18 I expect you may confer with your attorney or others.
19 Perhaps you have conferred with others in the past whose
20 opinion you value on important decisions. But the
21 decision about whether you testify or not is your call,
22 your decision. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, nobody can twist
25 your arm to make you testify or to make you choose not

1 to testify. Do you understand that, Mr. Battle?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone exercised any undue
4 influence over you to get you to choose to testify or
5 not to testify?

6 THE DEFENDANT: No, sir.

7 THE COURT: Today are you under the influence
8 of any drug, alcohol, medication or anything that
9 affects your thinking ability?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you suffer from any physical,
12 mental or emotional problem that affects your thinking
13 today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Whatever decision you make about
16 whether you testify or not testify, is that decision
17 being made of your own free will and accord?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I find that he knowingly and
20 intelligently understands his right to testify or not to
21 testify. I will give him the opportunity over the
22 evening to discuss that further with his attorney and
23 ask him his decision in the morning once we have his
24 record settled.

25 Anything further? Yes, sir, do you have a

1 question?

2 THE DEFENDANT: Yes, I got one question for
3 you, sir. In the beginning you said I have the right to
4 call witnesses?

5 THE COURT: Yes.

6 THE DEFENDANT: I am making sure I heard that.

7 THE COURT: You have a right to call -- at
8 this stage you have a right to call witnesses and
9 present a defense. You have a right to testify. You
10 can call witnesses and you can testify. That's not a
11 choice between the two.

12 THE DEFENDANT: Okay.

13 THE COURT: You can call witnesses and you can
14 testify or you cannot call any witnesses and not testify
15 or any combination of that. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any other questions?

18 THE DEFENDANT: No, I don't, sir.

19 THE COURT: Thank you. Anything further,
20 Solicitor?

21 MR. MOORE: No, sir, Your Honor.

22 THE COURT: Court will be in recess until 9:30
23 in this trial.

24 (Whereupon the proceedings were concluded for
25 May 1, 2007).

1 (The following proceedings were reported on
2 May 2, 2007).

3 THE COURT: Solicitor, anything before we
4 bring in our jury?

5 MR. MOORE: No, sir, Your Honor.

6 THE COURT: Mr. Bax?

7 MR. BAX: Your Honor, I don't know if you want
8 to go through the colloquy with him about his decision
9 to testify.

10 Also, Your Honor, we have some things to put
11 on the record about some potential witnesses that we had
12 looked into that we were informed of through our client.
13 If you would like us to put that on the record now, we
14 can do that.

15 THE COURT: Yes, if you would. Who are the
16 potential witnesses?

17 MR. BAX: Thank you, Your Honor. Yesterday
18 evening in the afternoon, I believe after testimony
19 was finished and the State had rested, Your Honor, we
20 were informed by our client that there were two
21 witnesses that he wished for us to have brought to
22 court if possible and to possibly put them forward as
23 witnesses.

24 One of the gentlemen was a gentleman by the
25 name of Marcus Prielou. That gentleman is currently in

1 the Lexington County Detention Center. My understanding
2 is that he is facing one count of failure to stop for a
3 blue light.

4 They did transport him. He had a hold by the
5 federal marshals, but they were able to transport him.
6 We discovered that he was represented on that pending
7 charge by Sarah Hahn, who is with our office.

8 We notified Ms. Hahn, who is down in family
9 court, and she graciously came upstairs, talked to him
10 and asked him, based on what our client has told us, if
11 he had any information related to what Mr. Battle felt
12 was relevant to this case.

13 He informed Ms. Hahn that he did not have any
14 memory of that. He did not have any knowledge. Then
15 also he decided he was not going to testify. Ms. Hahn
16 informed us of that. Then we informed our client of
17 that.

18 It's my understanding that he has been
19 transported back or he is sitting down on the third
20 floor waiting for transport back. But that's not, at
21 this point, something we will offer. I do want to put
22 it on the record.

23 The other gentleman, there was one other
24 gentleman that Mr. Battle informed us of. That
25 gentleman's name was Glenn Matteer. My understanding is

1 his last name is spelled M-A-T-T-E-E-R. First name,
2 Glenn, G-L-E-N-N.

3 We have since found out that Mr. Matteer is in
4 the Lexington County Detention Center; however, he is in
5 the detention center on federal charges. He is a
6 federal pretrial detainee.

7 As we discussed with Your Honor and as I have
8 discussed with the Solicitor's Office, it's a lengthy
9 and quite complicated process to get someone who is in
10 exclusive federal custody up to the courthouse, even
11 though it's a four-minute drive.

12 We are all aware of the facts those are
13 complications that the Federal Government adheres to
14 quite strictly. As a result, we cannot have him
15 present, nor have we had the opportunity to talk to him.

16 As a result, Your Honor, I would ask for
17 permission just to proffer through my own description of
18 what my client has told me what we think it is possible
19 he would be able to testify to.

20 THE COURT: All right. Yes, sir.

21 MR. BAX: Thank you, Your Honor. Based on the
22 information I have gotten from my client, we believe
23 that, if possible, Mr. Matteer, if he remembers the
24 incident, will be able to proffer testimony to the
25 effect that Mr. Battle and himself were hanging out in

1 the Colony Apartments in Richland County, a place where
2 they had resided or had friends that resided there.

3 They were on a porch on the first floor of one
4 of the Colony Apartment buildings. At that time it was
5 the 1st or 2nd of October, sometime in the first week of
6 October prior to this incident.

7 A gentleman my client only knows by the street
8 name of Jay came up to them, actually was chasing some
9 kids around. He was wearing a Scream mask that appears
10 to be the same mask as is in evidence at this time, and
11 he was chasing some kids around. It was dark at night.

12 When he saw them sitting on the porch,
13 Mr. Battle and Mr. Matteer, he doffed the mask and
14 approached them, had a conversation because they knew
15 each other.

16 During that conversation he attempted to sell
17 one of the individuals there, because there were several
18 individuals there, a firearm that Mr. Battle believes is
19 the same firearm that has been introduced into evidence
20 here. Those would be the facts that Mr. Matteer might
21 or might not be able to corroborate based on the
22 information that Mr. Battle has given me.

23 Your Honor, based on that proffer, based on
24 that information that has been provided, I have informed
25 my client, Your Honor, that he informed myself and

1 Ms. Fullwood about these witnesses and about the
2 information that they may be able to provide to the
3 Court and to the jury yesterday evening, as I have
4 stated.

5 I told him that that puts his attorneys in a
6 very awkward position. It's put them in a position of
7 having to investigate a case while also trying a case.
8 We obviously do not have the kind of time or the
9 resources to be able to jump out of the trial and take
10 care of these kind of issues with this kind of late
11 notice.

12 I have informed him that any representation,
13 regardless of who the attorney may be, is only as good
14 as the information given to that attorney in a timely
15 fashion in which that information is given. We would
16 put that on the record, Your Honor. He has been
17 informed of that. He understands that.

18 Based on the information that he has given, in
19 order to protect our client's interests, as well as our
20 jobs as his defense attorneys, I feel I must move for a
21 continuance at this point in time in order to allow us
22 to explore what information Mr. Matteer may or may not
23 have, and I wanted to put that on the record, Your
24 Honor.

25 I think that would complete everything I need

1 to put on the record concerning the witnesses and what
2 is going on here this morning. If I might have a
3 moment's indulgence to make sure I haven't missed
4 anything.

5 THE COURT: All right.

6 (Pause).

7 MR. BAX: Thank you, Your Honor.

8 THE COURT: How long have you represented
9 Mr. Battle?

10 MR. BAX: Your Honor, the case was originally
11 assigned to the Public Defender's Office in October. We
12 opened the file October 24, 2006. Your Honor, at that
13 time he was represented by Ms. Sally Henry. He was
14 visited by Ms. Henry on November 3rd of 2006. There are
15 quite a few notes in here from that visit.

16 Your Honor, I was assigned to the case based
17 on some events that occurred that affectively conflicted
18 Ms. Henry out of the case. I was reassigned the case
19 shortly after that November 3rd visit.

20 But, Your Honor, before I was able to look at
21 this file, I was in a death penalty case before Judge
22 Jefferson here in this courtroom, and as a result I had
23 to deal with that.

24 I have looked through the discovery and talked
25 to Mr. Robert Madsen with the Solicitor's Office about

1 this case a couple of times, even during the death
2 penalty case of State versus Jeffrey Jones.

3 However, I was not able to see my client until
4 April, but I saw him the beginning of April and have
5 seen him a couple of times since then. So I have
6 represented him basically since about mid November up
7 until this point.

8 THE COURT: And you have had conversations
9 with him throughout April?

10 MR. BAX: Yes, I have, Your Honor.

11 THE COURT: And he has never advised you of
12 either Mr. Prielou or Mr. Matteer until last evening
13 after court?

14 MR. BAX: That is correct, Your Honor.

15 THE COURT: I am going to deny the motion for
16 continuance based on the fact that you have been
17 representing him since November 3rd of '06, had meetings
18 with him.

19 He has failed to disclose any names of any
20 witnesses to you prior to trial and then did not
21 disclose these two names to you until after court
22 yesterday, which was after the State had rested as a
23 matter of fact. Anything further on that issue,
24 Mr. Bax?

25 MR. BAX: No, Your Honor. I believe the only

1 thing left would be for Your Honor, the Court, to
2 question my client about his decision as to testimony.

3 THE COURT: Mr. Battle, would you please
4 stand.

5 Madame Clerk, would you place him under oath.

6 KORELL ROBERT BATTLE is first
7 duly sworn.

8 THE COURT: Mr. Battle, you have heard your
9 attorney relate to me to begin with the information
10 concerning Mr. Matteer. Was it yesterday evening after
11 court that you advised your attorney of this
12 information?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And that was the first time you
15 advised your attorney of that information?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, yesterday when we were
20 discussing your right to testify, I took under
21 advisement whether or not I would allow the State to use
22 the attempted burglary charge from 1996 for which you
23 received a sentence, and you served three years and were
24 released in 1999. Do you recall that discussion?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I am ruling that the State would
2 be allowed to use that. So now the State can use two
3 prior convictions if you take the witness stand, general
4 conspiracy from 2002 and attempted burglary from 1996,
5 for which you served until 1999.

6 They cannot go into the details of the prior
7 offenses, but they can ask you if you have convictions
8 for those two prior offenses. Again, if that happens I
9 would tell the jury that they can only consider that
10 evidence against you, if they consider it at all, on the
11 issue of whether your testimony is believable and for no
12 other purpose. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions you
15 would like to ask me about your right to testify or not
16 testify?

17 THE DEFENDANT: No, I don't.

18 THE COURT: What is your decision? Are you
19 going to testify or not testify?

20 THE DEFENDANT: I am going to testify.

21 THE COURT: And that decision is made of your
22 own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you need anymore time to talk
25 with your attorney about that decision?

1 THE DEFENDANT: No, I don't.

2 THE COURT: I find the Defendant's decision to
3 testify is his own decision made freely, knowingly, and
4 voluntarily. Thank you. You may be seated, Mr. Battle.

5 Anything further, Mr. Bax?

6 MR. BAX: No, Your Honor.

7 THE COURT: Mr. Bailiff, if you would bring us
8 our jury, please.

9 (The jury returns to the courtroom at
10 10:50 a.m.)

11 THE COURT: Good morning, ladies and gentlemen
12 of the jury. I apologize for the delay. I had
13 additional matters to take up this morning. Hopefully
14 the decks are now cleared where we can move along. I
15 hope you all had a pleasant evening.

16 The State has rested. We are now continuing
17 with the trial of the case. Again, the State has the
18 burden of proving the case beyond a reasonable doubt.
19 The Defendant never has to prove his innocence.
20 However, the Defendant can present testimony if he
21 chooses to do so.

22 With that being said, Mr. Bax.

23 MR. BAX: Thank you, Your Honor. At this
24 time, Your Honor the State would call Mr. Korell Battle
25 to the stand.

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1 KORELL ROBERT BATTLE, being
2 first duly sworn, testified as follows:

3 CLERK: State your name and spell your last
4 for the record, please.

5 THE WITNESS: My name is Korell Battle. The
6 last name is B-A-T-T-L-E.

7 DIRECT EXAMINATION

8 BY MR. BAX:

9 Q Good morning, Mr. Battle.

10 A Good morning.

11 Q Let's just get some general information,
12 Mr. Battle. You are a resident of where? Where do
13 you live?

14 A In Peak, South Carolina.

15 Q Peak, South Carolina. Where is Peak, South
16 Carolina at?

17 A Right next to Chapin.

18 Q Small area?

19 A Yes, sir, country.

20 Q Do you reside there with any family or do you
21 reside by yourself?

22 A I stay in an area right around my grandparents and
23 uncles and cousins.

24 Q So you have family here in South Carolina?

25 A Yes, sir.

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1 Q Now, Mr. Battle, have you always resided in South
2 Carolina?

3 A No, sir, I'm originally from Newark, New Jersey. I
4 was raised in Colorado, been out here since 1999.

5 Q Mr. Battle, when you were in Colorado, let me ask
6 you this. Were you convicted of an attempted
7 burglary charge and put in jail for an amount of
8 time?

9 A Yes, I was.

10 Q And were you released from that in 1999?

11 A Yes, sir.

12 Q At what point after that, did you come here to
13 South Carolina, Mr. Battle?

14 A After I was immediately released, around
15 September of 1999.

16 Q Have you been here in South Carolina continuously
17 since then?

18 A Yes, sir.

19 Q Now, Mr. Battle, let me ask you this. In 2003 here
20 in South Carolina, were you convicted of criminal
21 conspiracy?

22 A Yes, I was.

23 Q Thank you, Mr. Battle.

24 THE COURT: Let me stop you there just a
25 moment, Mr. Bax.

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1 MR. BAX: Certainly, Your Honor.

2 THE COURT: Mr. Foreman, and ladies and
3 gentlemen of the jury, you have heard evidence that the
4 Defendant has been convicted of a crime other than the
5 one for which the Defendant is now on trial.

6 This evidence may be considered by you, if you
7 conclude it is true, only in deciding whether the
8 Defendant's testimony is believable and for no other
9 purpose.

10 You must not consider the Defendant's prior
11 record as any evidence of the Defendant's guilt of the
12 charge we are trying today.

13 Thank you. You may proceed, Mr. Bax.

14 MR. BAX: Thank you, Your Honor.

15 BY MR. BAX:

16 Q Now, Mr. Battle, let's just get right to the point;
17 okay? Let me ask you this. Where were you on
18 October 13, 2006, Mr. Battle?

19 A October 13, 2006, I was up in the Chapin area.

20 Q Mr. Battle, do you own a car or did you own a car
21 at that time?

22 A Yes, I have a 1990 Eldorado Cadillac.

23 Q What color is that Cadillac, Mr. Battle?

24 A Red.

25 Q Mr. Battle, on October 13, 2006, were you anywhere

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1 around the Irmo area of South Carolina?

2 A Yes, sir.

3 Q Can you tell the jury a little bit about what you
4 were doing that day that had you in the Irmo area
5 of South Carolina.

6 A Well, I travel back and forth from Columbia to
7 Chapin continuously. I was up in the Chapin area
8 at the Mr. Lucky's gas station, and I had picked up
9 a friend named Jay.

10 Q Let me stop you right there. About what time of
11 day was it that you were at the Mr. Lucky's gas
12 station?

13 A It was still daytime, about to turn dark, probably
14 around 7, 7:30, somewhere around there.

15 Q The individual that you just talked about, how do
16 you know him?

17 A I know him from the Colony Apartments down in
18 Columbia on West Beltline.

19 Q You referred to him as Jay; is that correct?

20 A Yeah, that's what the people I hang with normally
21 calls him, Jay.

22 Q Do you know anything else about him, about his
23 name?

24 A I didn't know his first name when I first met him.
25 I didn't know his complete name at all when I first

1 met him. I just recently found out last year that
2 I think his real name is Mark Wilson.

3 Q That's not information that you got from him, is
4 it?

5 A No, sir.

6 Q We are about 7, 7:30 on the 13th at Mr. Lucky's.
7 Tell for us exactly how you met this Jay fellow at
8 that time.

9 A I was at the gas pump pumping my car, and he was
10 hanging on the side by the window, by the window
11 smoking a cigarette. He saw me. He was like:
12 Hey, what's up, man? How you doing?

13 So he come over and talked to me and stuff.
14 He said he needed a ride back down to Columbia. So
15 since I was already heading down that way anyway,
16 it wasn't out of my way to give him a ride, plus he
17 offered me a couple of dollars for gas. That's how
18 I met him that day.

19 Q Tell the jury how this Jay was dressed at that time
20 if you can remember.

21 A He had on a pair of black Timberland boots, a pair
22 of black pants, and a black hoodie.

23 Q Let me ask you this, Mr. Battle, how were you
24 dressed that day?

25 A I had on a red hat, a red jersey, some Nikes, and

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1 some black pants.

2 Q Describe for us the jersey. Was it an athletic
3 jersey?

4 A Yeah, a football jersey with a number on it.

5 Q How did you respond to this Jay fellow's request
6 for a ride?

7 A I'm the type of guy if I know somebody, I don't
8 mind giving them a ride, especially if it's not out
9 of the way. That's the type of person I am.

10 Q So that was fine by you to give him a ride?

11 A Yeah.

12 Q Now, at that point in time, did this individual
13 have anything with him? Was he carrying anything?

14 A I didn't know right off the bat when he got in my
15 car, but as we was going through the Chapin and
16 White Rock and Ballentine area on our way into
17 Irmo, he had asked me if I wanted to buy some guns
18 from him.

19 I asked him what kind he had, and he pulled
20 out a hollow-point black nine millimeter
21 semiautomatic, and he pulled out a .38-caliber
22 revolver pistol.

23 Q Let me stop you right there. Before he had gotten
24 in the car and you guys were driving towards
25 Columbia or wherever you were going, did you see

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1 any weapons or anything else on him?

2 A No.

3 Q In response to this, what did you say, Mr. Battle?

4 A I just looked at the guns and stuff, and I knew
5 that it was against the law for me to possess a
6 firearm. So I told him no, I didn't want no guns
7 or anything like that.

8 Plus he had showed me -- he said if I bought
9 the guns, each gun would cost \$170. Then he told
10 me he would throw in some free bullets. So he
11 pulled out a purple sack of bullets he kept inside
12 the purple sack.

13 Q Thank you, Mr. Battle. Let me back you up a little
14 bit in time. You have stated for the Court in your
15 testimony here today that you have known this Jay
16 fellow from the Colony Apartments. Had there ever
17 been a time in the past where something similar to
18 this has occurred?

19 A One time I remember during the first week of
20 October 2006, around the third parking lot --
21 Colony Apartment's got different parking lots -- we
22 was in the third parking lot at a friend's house.
23 We were sitting on her porch just having a good
24 time drinking beer and stuff.

25 It was about 8:00 o'clock, around nighttime,

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1 and Jay come running. Around the Colony
2 Apartments, kids stay out 9 or 10, 11:00 o'clock at
3 night. Jay came running from around the side
4 chasing some kids having a good time, and he had on
5 the Scream mask, white and black Scream mask.

6 Q When you saw him, did he have an opportunity to
7 speak to you or did you have an opportunity to
8 speak to him?

9 A Yeah. He had -- I guess he had knew one of the
10 people I was with, and he had came over to them and
11 he was like: What's up? How you doing? What's
12 going on?

13 He sat down on the porch, drunk a brew with us
14 and stuff. He had asked the guy that I was with
15 did he want to buy -- this time he only pulled out
16 one gun. He had a .38-caliber pistol which he said
17 he was selling for \$170.

18 Q What color was that or do you recall?

19 A Black.

20 Q And was it a short or long barrel revolver?

21 A A small barrel.

22 Q At that time did he sell that gun or not?

23 A No.

24 Q Now, let me ask you this. Between the time in
25 early October and this date that we're talking

1 about, October 13, 2006, did you see this Jay
2 fellow again?

3 A Can you repeat the question?

4 Q Certainly. Between the time that you saw Jay that
5 night chasing those kids and the time you saw him
6 at the Mr. Lucky's gas station where he asked for a
7 ride, had you seen him or talked to him any time in
8 between that?

9 A I didn't talk to him. But from that time when I
10 used to go down to the Colony Apartments, I might
11 see him on the street walking with some friends,
12 but I didn't talk to him or nothing.

13 Q So you had never spoken to him in between those
14 times?

15 A No.

16 Q Let's kind of fast forward in time again. This Jay
17 fellow is in your car, the Cadillac, and you guys
18 were driving around. He had offered to sell you
19 those guns, correct?

20 A Yes, sir.

21 Q You have testified that you knew it was illegal for
22 you to have those guns based on what happened in
23 Colorado and here, correct?

24 A Yes, sir.

25 Q So you decided not to get involved with that,

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1 correct?

2 A Yes, sir.

3 Q I'm sure you since thought about the fact you
4 probably should have kicked him out of the car at
5 that point, right?

6 A The type of people that I hang around with usually
7 have guns on them, and I just come from -- I don't
8 live in a rich area of South Carolina, whatever.
9 The people I hang around with is from a poor
10 section of town: Lattimer Manor Apartments, Colony
11 Apartments, Ashley apartments. You know, a lot of
12 people that I hang around with just have guns.

13 Q So has that kind of become a fact of life for you,
14 a daily occurrence?

15 A Not really because everybody that I hang around
16 with don't have guns on them. Some do, some don't.

17 Q Let's continue on with what happened that day.
18 After you and Mr. Jay or the Jay individual was in
19 the car with you, where did you go?

20 A We past through -- we was entering the side section
21 of Irmo, and we stopped off at the Dollar General,
22 which is right across from the Bi-Lo. Then we
23 traveled down to Irmo on I think it's Lake Murray
24 Boulevard.

25 As we was passing the Kroger center on the

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1 right side, Jay told me he had needed to stop at a
2 pay phone to call his girlfriend. So I knew that
3 the closest pay phone was right there at the Circle
4 K. I had been there before numerous times and I
5 stopped.

6 When I pulled into the Circle K. gas station,
7 there's a side of the Circle K. gas station where
8 people can park their cars at. It was dark by that
9 time. I pulled into the first parking lot because
10 there was a light right there on the side of the
11 building that illuminates the parking lot.

12 The type of car that I have, it was a good
13 running car. But probably back in September I had
14 gotten into an accident in the country where I hit
15 a deer, and my radiator was messed up. So if I am
16 driving in traffic, it tends to overheat.

17 That's another reason why I had pulled over,
18 to let my car cool down. I had pulled over and I
19 popped my hood, put my hood up. Jay went to go use
20 the telephone, and I went to the gas station and
21 bought me something to eat, bought some motor oil
22 and stuff and came back out.

23 Q About what time was it in your memory? About what
24 time was it that you had pulled into that Circle K.
25 and put your hood up?

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1 A Probably about 8, 8:40, 8:45, somewhere around
2 there.

3 Q I think you've already testified that it had gotten
4 dark or was starting to get dark at that point?

5 A Yes, it was dark.

6 Q After you made your purchases of snacks, drinks,
7 and some things for the car, what did you do?

8 A I was in the store for about four or five minutes.
9 I went back to my car, and as I was taking the cap
10 off to put the oil in, Jay had came back over. He
11 asked me how long I was going to be there.

12 I told him about 15, 20 minutes, whatever and
13 stuff. He said okay. Well, he told me he was
14 going to run down to the Kroger center real quick
15 to go get some groceries. I was like: All right.
16 Just be back in 15 or 20 minutes. Because I had
17 other things to do. So he went behind the store
18 and took off down through the woods and went down
19 to the Kroger which is right behind the Circle K.

20 Q What did you do during this time, Mr. Battle?

21 A I put the oil in my car, checked my transmission
22 oil, put some antifreeze in my reservoir, and
23 checked my tires and stuff. Then after I got done,
24 I got in my car, ate my food, and smoked a Newport.

25 Q After you had checked the engine and put whatever

1 fluids in there, did you put the hood back down? I
2 think you might have said that.

3 A No, I had left it up because there was steam coming
4 out the reservoir part. So I had left it up so the
5 air can circulate and cool the engine down.

6 Q You have testified that this individual went down
7 through the woods. Let me show you what has been
8 marked as State's Exhibit Number 1. This is an
9 aerial photograph of the area in question, okay?
10 What is that here (indicating)?

11 A That's the Circle K. gas station right there on the
12 corner.

13 Q And this right here (indicating), do you know what
14 that is?

15 A I've been told that's the Kentucky Fried Chicken.

16 Q Had you ever been there before?

17 A No.

18 Q Now, we are looking straight down. This is a
19 satellite photograph. So we are kind of looking
20 down straight down on the top of the roof. Can you
21 point out to the jury which parking spot your car
22 was in.

23 A When I pulled in, I was coming down this way
24 (indicating) from Chapin. When I pulled into the
25 Circle K. the entrance right there (indicating),

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1 there's only two entrances, one right there
2 (indicating) -- no, three: One right there
3 (indicating), one right there (indicating) and one
4 right there (indicating).

5 Q Actually four?

6 A Four. One right there (indicating), I'm sorry.

7 Q So which one of the spots, because there's some
8 spots painted here (indicating) and there's some
9 spots painted here (indicating), which one did you
10 pull your car into if you can remember?

11 A I had pulled into this entrance right there
12 (indicating), and I pulled into the first parking
13 space right there (indicating) with my car facing
14 the trees.

15 Q Okay.

16 A Because right there on the side of the store is a
17 light, right there on the side, and I guess they
18 turn it on at nighttime.

19 Q Was the rest of these spots, was it darker over
20 here (indicating) on these other spots?

21 A I don't know. I don't remember. I don't remember.

22 Q All right. I appreciate it. You have stated that
23 you were in this spot with your hood up. After you
24 got done looking at the engine, you said you got
25 into your vehicle; correct?

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1 A Yes, sir.

2 Q And it was still in this spot right here
3 (indicating), correct?

4 A Yes, sir.

5 Q Thank you. Now, Mr. Battle, if you can tell us
6 between the time that the individual Jay went to go
7 get some groceries and the time -- well, strike
8 that. Let me back up. When this individual left
9 to go get groceries or do whatever he was going to
10 do, did you maintain visual contact with him?

11 A No, I didn't.

12 Q You couldn't see him?

13 A No, because it was dark and the trees is right
14 there in the back.

15 Q So he kind of went into that back area, and you
16 didn't see him?

17 A Yeah.

18 Q Now, you have testified that you got in your car,
19 eating chips or whatever, and sat to have a
20 cigarette. How long were you in that vehicle at
21 that time just sitting there?

22 A Probably about 10 to 15 minutes.

23 Q And how long, backing up a little bit, how long did
24 it take you to deal with the engine and deal with
25 the oil and transmission fluid, so on and so forth?

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1 A Probably about ten minutes.

2 Q Okay. Now at the end of this time frame, 10
3 minutes outside the car, about 10 to 15 minutes
4 inside the car, about what time was it at that
5 point?

6 A Probably like around 9, 9:10, somewhere around
7 there.

8 Q Obviously you didn't stay there all night. What
9 happened at that point after you had been sitting
10 there for about 15 minutes in the car?

11 A I was sitting there with my music on, and I'm
12 looking directly into the woods, and I see Jay come
13 up from the side, on my left side. He comes around
14 to the passenger side and he opens up the door.

15 He tossed the purple sack that he kept his
16 bullets in onto the passenger seat. Then he got in
17 the car with a black bag. So he put the black
18 bag -- I thought he put it on the back seat. He
19 either put on the back seat or the floor, I don't
20 know. But he was like: Come on, man, let's go.
21 Let's get on out of here.

22 Q Did you ask him any questions at that time,
23 Mr. Battle?

24 A I don't remember.

25 Q What happened after that?

1 A It wasn't even a few seconds after he got in, it
2 wasn't a few seconds after he got in the car, I
3 heard all kinds of sirens. I don't know if they
4 were ambulances or police cars or whatever and
5 stuff. It sounded like it was coming from the back
6 of us. I looked and I see a police car go down the
7 street right by the trees right in front of me.

8 Q Uh-huh.

9 A As soon as that police car went down the street,
10 Jay, he was looking like he was nervous or
11 something. Without a word, he just opened up the
12 car door and gets out. He run around to the side
13 to the back of the Circle K.

14 I am like: Where you going at? He was like:
15 I can't tell you right now. Just meet me down at
16 the Colony Apartments in an hour. So the next
17 thing I know he just vanish off into the woods and
18 was gone.

19 Q At that point what did you do, Mr. Battle?

20 A I backed my car up, backed my car up towards the
21 store, and then I put on my right turn signal. A
22 truck was passing, so I waited for the truck to
23 pass. I took a right turn and got behind the
24 truck, and there was a red light right there. I
25 got in the left lane.

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1 Q Now, let me refer back to State's Exhibit Number 1
2 here if I can so we can show the jury exactly what
3 we are dealing with here. Which exit -- this
4 (indicating) is Saint Andrews Road, okay? Which of
5 these two exits here onto Saint Andrews Road did
6 you take when you were exiting the Circle K.?

7 A When I pulled out of that first parking space, I
8 backed my car up. Then I came out and the truck
9 was passing, just like them cars right there
10 (indicating). A truck was passing.

11 I waited for the truck to pass. My right
12 turning signal was on. I took a right turn and
13 came into the lane right where them cars are right
14 there (indicating). That's a four-way section.
15 Each section has got stoplights and stuff.

16 Q Were you the first car in line in that turning lane
17 or was there anybody in front of you or what?

18 A Just like you see them two cars right there
19 (indicating), there was a truck right in front of
20 me right there. That would be my car right there
21 (indicating).

22 As soon as I got behind that truck right
23 there, I saw a police car go up this way
24 (indicating) and turn right around behind me. He
25 got behind me. By the time he had already got

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1 behind me, I had already put on my left turn signal
2 to make that left turn right there (indicating)
3 across the railroad tracks.

4 Q In this lane is there any other way you can go but
5 make a left turn out of that lane?

6 A I don't believe so.

7 Q So you were the second car in line and this police
8 car made a U-turn and got behind you; is that
9 correct?

10 A Yes, sir.

11 Q Did that police car turn on its blue lights when it
12 got behind you in that lane?

13 A No, he didn't.

14 Q Now, what happened after the light turned green,
15 Mr. Battle?

16 A After the light turned, it look like the lights
17 right there (indicating). After the light turned
18 green, I made a left turn and crossed the railroad
19 tracks.

20 I was driving down this lane (indicating), one
21 of them lanes right there. I was driving right
22 down there (indicating), and he put on his lights
23 like right around here (indicating).

24 Q Okay.

25 A Then there is a gas station. I think the gas

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1 station is like right around here (indicating). I
2 was looking for a place to turn into where it's
3 lighted to where I could turn in and turn my car
4 off. I turned into the Gaz-bah Exxon, which is on
5 your left side. I made sure to put on my left
6 turning signal to turn into the gas station.

7 Q So you pulled over as soon as you could when you
8 saw the blue lights?

9 A Yes, sir.

10 Q All right. Mr. Battle, when you were pulled over
11 by the police into that gas station, did the
12 officer approach your car?

13 A Yes, he did.

14 Q He approached you on your side, the driver's side
15 of the car?

16 A Yes, the driver's side.

17 Q What happened at that point?

18 A The officer came up to my side, on the driver's
19 side. I had asked the officer: What's the
20 problem, Officer? Was I speeding? He was like no.

21 Q Did he ask you for your license and those kind of
22 things at that point?

23 A No, he had asked me where did I just come from. I
24 told him I just came from the Circle K. gas station
25 up the street.

1 Q And what did he say after that or what did you say
2 after that?

3 A After he had asked me that, he say -- I think I
4 asked him again: What's the problem? He was like:
5 We just got a description of your car from an armed
6 robbery, something about my car being described
7 being in the armed robbery or something.

8 Q Did you respond to that at all?

9 A I told him I didn't know what he was talking about.

10 Q Did he at that point -- what did he do at that
11 point after he had said that to you?

12 A He had asked me for my proof of insurance,
13 registration, and my driver's license.

14 Q Did you provide that documentation and that license
15 to him?

16 A Yes, sir.

17 Q After you provided that to him, did he go back to
18 his patrol unit?

19 A Yes, he did.

20 Q Were you in the car at that point? Did you remain
21 in your car?

22 A Yes, sir, I remained in the driver's seat.

23 Q About how long if you can remember did you sit in
24 your car before the officer or any officer came
25 back to speak with you again?

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1 A Probably about four or five minutes. I had looked
2 to my right side, and I saw officers shining their
3 lights. There was an officer on this side
4 (indicating) and an officer on this side
5 (indicating) shining their lights in my car. It
6 was probably about four or five minutes.

7 Q Was it the same officer that returned to speak with
8 you that had taken your license?

9 A I don't remember.

10 Q Whichever officer it was, when they came back to
11 talk to you, what did they tell you?

12 A I believe it was the same officer that had came to
13 my driver's side, which is Mr. Majewski. He had
14 told me to get out my car. He say my driver's
15 license had been suspended due to me failing to pay
16 a hundred dollar reinstatement fee to the
17 Department of Motor Vehicles.

18 Q Let me just ask you briefly. Had you received any
19 traffic tickets in the past couple of months before
20 this incident?

21 A I was pulled over October 13, 2006. Two months
22 before all this happened on August 1st, I had
23 received a ticket, a traffic ticket. I had paid
24 the traffic ticket, \$232.50, to the Irmo -- no, to
25 the City of Forest Acres Municipal Court.

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1 Q Were you made aware by the City of Forest Acres or
2 anyone else about what time frame you had to pay
3 that ticket?

4 A The next month in September, the Department of
5 Motor Vehicles had sent me a notification saying
6 that if I didn't pay that traffic ticket, they
7 would suspend my driver's license by September 26th
8 of 2006.

9 Q Now, you have testified that you paid that ticket
10 in the amount of \$232.50 if I am remembering that
11 number correctly? Do you remember --

12 MR. MOORE: Objection, Your Honor. We would
13 object to the relevancy of this portion of the
14 testimony.

15 THE COURT: I will allow it. You may proceed.
16 I overrule the objection.

17 MR. BAX: Thank you, Your Honor.

18 BY MR. BAX:

19 Q You have stated for us that you paid that amount.
20 Do you remember when you paid that amount?

21 A I got pulled over for that ticket August 1st. My
22 court date was supposed to be August 10th. I went
23 into court on August 10th, and they say I had 14 --
24 they said they give me a two-week period to pay it
25 from August 10th.

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1 I paid it. I paid it in full on August 21st,
2 and it was posted on August 22nd. On September 1st
3 they officially gave me a compliance notice signed
4 by one of the clerk of courts at the City of Forest
5 Acres.

6 Q Did you receive that notice of compliance in the
7 mail?

8 A Yes, I did.

9 Q Let's fast forward back to the night in question
10 here October 13th, okay?

11 A Yes, sir.

12 Q They informed you that they need you to get out of
13 the car and that your license has come back
14 suspended, correct?

15 A Yes, sir.

16 Q Did you at that time get out of the vehicle?

17 A I was trying to get out my car. Like I said, I had
18 hit a deer, and it had messed up my front a little
19 bit and my side door. So I was trying to open up
20 my door, and it took me about almost a minute to
21 open up my side door.

22 The cop was standing right there (indicating)
23 and another one was standing right here
24 (indicating). I was trying to get out my door and
25 probably about a minute later, it opened up and I

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1 got out.

2 Q At that time, Mr. Battle, did they place you under
3 arrest?

4 A He told me to turn around -- yes, he did. He said
5 I was under arrest for driving under suspension.
6 He told me to turn around --

7 Q Let me stop you right there. I need to back up a
8 little bit, okay, Mr. Battle? I apologize. At
9 the time you were pulled over, let me ask you this.
10 At any time -- scratch that. I'm sorry. I
11 apologize.

12 You have testified here today that when this
13 individual that you knew by the name of Jay had
14 gotten into the car back at the Circle K., one of
15 the first things that you said to us was that he
16 tossed down that purple bag; correct?

17 A Yes, he did.

18 Q When he left after he heard those sirens, did he
19 take that bag with him?

20 A No, he didn't. I had reached over and put it in my
21 pocket.

22 Q When did you reach over and put it in your pocket?

23 A When I was at -- when I went out the Circle K. gas
24 station and got behind the truck, I had saw the
25 police car come behind me. That's when I had put

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1 it in my pocket.

2 Q Why, Mr. Battle, did you put that bag in your
3 pocket?

4 A I just put it in my pocket, you know.

5 Q Were you scared at that point a little bit?

6 A I wasn't scared, but whenever -- you never know
7 what to expect these days in America. Whenever a
8 police car gets behind you, you don't know what's
9 going to happen.

10 Q Okay. Now, fast forwarding, when the officers got
11 you out of the car and they had you turn around,
12 did they search you?

13 A Yes, he did.

14 Q Do you recall whether they found anything?

15 A I told the officer I didn't have no weapons on me,
16 and he patted me down. He found the purple sack in
17 one of my pockets. I don't know which pocket it
18 was.

19 MR. BAX: A moment's indulgence, Your Honor.

20 THE COURT: All right.

21 (Pause).

22 MR. BAX: Thank you, Your Honor.

23 BY MR. BAX:

24 Q Mr. Battle, did you at any time after this incident
25 become aware of the fact that Officer Majewski's

1. patrol unit had a dash cam or a recording device in
2. it?

3. A I didn't find out about that until days later.

4. Q In the last couple of days, have you had an
5. opportunity to view the contents of that recording?

6. A I been locked up about six and a half months, and
7. yesterday was the first time I actually got to view
8. it.

9. Q But you have seen it, correct?

10. A Yes, sir.

11. Q Does that accurately depict what you described to
12. us today as what happened on that traffic stop?

13. A Yes, sir.

14. MR. BAX: Your Honor, at this time the defense
15. would offer the video into evidence. I think it's been
16. previously marked as a Court's exhibit, but we would
17. offer that in as Defendant's Exhibit 1.

18. MR. MOORE: No objection, Your Honor.

19. THE COURT: Defense 1 is in evidence without
20. objection.

21. (Defendant's Exhibit Number 1 is received into
22. evidence).

23. MR. BAX: Permission to publish at this time,
24. Your Honor.

25. THE COURT: All right.

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1 (Defendant's Exhibit Number 1 is played for
2 the jury).

3 (During the playing of the videotape,
4 Defendant's Exhibit Number 1, the following was
5 reported).

6 BY MR. BAX:

7 Q I will pause it right here real quick. Mr. Battle,
8 is that the red Cadillac that you own?

9 A Yes, sir.

10 Q And I believe it's kind of hard to see, but is this
11 the Gaz-bah Exxon gas station?

12 A Yes, it is, sir.

13 Q Thank you.

14 (The videotape was continued, and the
15 following was reported).

16 BY MR. BAX:

17 Q Let me pause it just for a second, Mr. Battle. As
18 you can see, another officer has come up to the
19 driver's side, and it looks like they are speaking
20 to you. Do you recall what the substance of that
21 conversation was?

22 A No, sir.

23 Q Thank you.

24 (The videotape was continued, and the
25 following was reported).

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1 BY MR. BAX:

2 Q Mr. Battle, you can see on there where you were
3 having trouble with that car door. That's what you
4 were referring to earlier?

5 A Yes, sir.

6 (The videotape was continued, and nothing
7 further was reported)..

8 BY MR. BAX:

9 Q Now, fast forwarding a little bit, there has been
10 some testimony in the State's case about a time
11 when an officer came to serve you warrants about
12 these charges that you are dealing with here today.
13 Do you recall when that officer, Officer Sauls,
14 gave you that paperwork?

15 A I believe it was the very next day on October 14th,
16 2006.

17 Q Do you recall talking to that officer or telling
18 that officer anything?

19 A Well, to back on up, when I was sitting in the back
20 of the police car, I saw one of the officers --
21 well, to back all the way up, when the police
22 officer first pulled me over and he asked for my
23 driver's license and all that stuff, I had my
24 wallet in the back of my pocket.

25 So I had took my belt off, took my belt off,

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1 and I reached into my back pocket, and I pulled my
2 driver's license out. I sat my wallet on the
3 passenger seat, and I gave him my driver's license
4 and all my other papers.

5 I didn't want to put the wallet back into my
6 back pocket because they might have been suspicious
7 of me trying to do something funny, and I probably
8 could have got shot or something.

9 So I left my wallet on the passenger seat. So
10 when he placed me under arrest, I was sitting in
11 the back of the patrol car. I saw one of the
12 officers come out the car with my wallet.

13 He took my money out of my wallet and placed
14 it on the back of the trunk with some other stuff
15 they had pulled out my car. So when the officer
16 served me with the warrants on October 14, 2006, I
17 had asked Mr. Sauls what happened to my wallet.

18 He had told me, he said my wallet was still in
19 the car with the rest of my stuff, and I said:
20 What happened to my money? He was like: Your
21 money has been placed in evidence with the other
22 money from the K.F.C.

23 When he was reading me the warrants that he
24 was serving me with, he say: On this so and so
25 date, you went into the K.F.C. and did this and did

1 that. So that's why I asked him, I said: That's
2 my money, not K.F.C. money.

3 Q So that was in response to information that you
4 already had of what they were accusing you of,
5 correct?

6 A Yes, reading the warrants.

7 Q One final question, Mr. Battle. You know that you
8 are under oath, correct? You were placed under
9 oath to tell the truth, correct?

10 A Yes, sir.

11 Q Did you rob the K.F.C. on October 13, 2006?

12 A No, I didn't.

13 Q Thank you, Mr. Battle.

14 MR. BAX: No further questions at this time,
15 Your Honor.

16 THE COURT: Thank you, Mr. Bax. Solicitor.

17 CROSS EXAMINATION

18 BY MR. MOORE:

19 Q Sir, you have been convicted in Colorado of
20 attempted burglary; right?

21 A Yes, sir.

22 Q And you have been convicted over here in Richland
23 County, just right across the river, of criminal
24 conspiracy; haven't you?

25 A Yes, sir.

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1 Q And you said you put your wallet in the passenger
2 seat that night?

3 A Yes, sir.

4 Q You had some pretty full pockets that night, didn't
5 you?

6 A I only had \$80 in my wallet. I worked from
7 January 1st all the way up to the time I was
8 arrested and got my W-2 forms here in the
9 courtroom.

10 Q I'm not just talking about the money. You had
11 other things in your pockets, didn't you?

12 A The only thing I had in my pockets were the bullets
13 that was in the thing that I had picked up off the
14 seat after Jay left and put in my pocket, and I had
15 my wallet and that's it. That's all I had in my
16 pockets.

17 Q That was the only thing you had in your pockets was
18 just bullets?

19 A Yeah.

20 Q Just bullets. Tell me this. What is Jay's last
21 name?

22 A When I first met him, I didn't know his first name
23 or last name.

24 Q Uh-huh.

25 A But a few days after I was arrested, I had saw on

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1 the news that him and another dude and a female had
2 got shot and stabbed down in --

3 Q Mr. Battle, my question was simply, what is his
4 last name?

5 MR. BAX: Objection, Your Honor. I feel he
6 has an opportunity to explain his answer.

7 THE COURT: Just a minute.

8 THE WITNESS: I believe his name was Mark
9 Wilson.

10 THE COURT: Mr. Battle, just a minute. Your
11 answer must be responsive to the question that is asked.

12 THE WITNESS: I'm sorry.

13 THE COURT: You can certainly explain your
14 answer as Mr. Bax has said, but you say you learned his
15 last name and when you learned it, not how you learned
16 it. Listen to his question and respond to his question,
17 all right?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you. You may proceed,
20 solicitor.

21 MR. MOORE: Thank you, Judge.

22 BY MR. MOORE:

23 Q What is Jay's last name?

24 A Marcus Wilson.

25 Q Marcus Wilson is his last name?

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- 1 A Yeah.
- 2 Q What a minute. Marcus is a first name, isn't it?
- 3 A Yes, sir.
- 4 Q I thought you said his first name was Jay.
- 5 A No, that's his nickname.
- 6 Q His nickname. Oh, well tell me this. What's his
- 7 birthday?
- 8 A I have no idea.
- 9 Q What's his favorite color?
- 10 A Blue and black.
- 11 Q Blue and black?
- 12 A That's why we call him jay bird because a jay bird
- 13 is blue and black.
- 14 Q How long have you known him?
- 15 A About one year.
- 16 Q Where does he live?
- 17 A In Colony Apartments.
- 18 Q Where is he now?
- 19 A Dead.
- 20 Q Where?
- 21 A He's dead.
- 22 Q Dead?
- 23 A Yeah.
- 24 Q How did he die?
- 25 A It was on the news and in the newspaper about a

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1 girl name Charlene Octavia Yarborough who had got
2 stabbed down in Colony Apartments, and two dudes
3 had got shot by a guy named Charles Gable. All
4 this happened days after my arrest.

5 Q Oh, so he is no longer with us?

6 A No.

7 Q Okay. Well, this is the type of person that you
8 said you hang around; right?

9 A Yes, sir.

10 Q The kind of person that brings you scream masks,
11 wants to sell you guns; right?

12 A Not everybody, just certain individuals.

13 Q What about him? He wanted to sell you guns, right?

14 A Yes, sir.

15 Q As a matter of fact, he was going to make you a
16 sweet deal. He was going to give you some free
17 bullets?

18 A Yeah.

19 Q Free bullets.

20 A It was only a couple of bullets in the purple sack.

21 Q Let's look at some pictures. I will dump all this
22 out again.

23 (Pause).

24 Q Tell me this. Where were y'all coming from that
25 night?

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- 1 A From the Chapin area.
- 2 Q Where were you going?
- 3 A To Columbia.
- 4 Q Columbia?
- 5 A Yeah, Columbia, South Carolina.
- 6 Q So on the way from Chapin to Columbia, y'all
- 7 stopped in Irmo?
- 8 A Yeah, because there is a road going from the Chapin
- 9 area. If you travel from Chapin, you can go down
- 10 through Irmo straight into Columbia.
- 11 Q And you can go down the interstate, too; can't you?
- 12 A Yes, you can.
- 13 Q Y'all didn't just stop in Irmo. Y'all went down
- 14 this way (indicating) to the Dollar General by the
- 15 Bi-Lo. Dollar General is way down Saint Andrews
- 16 Road isn't it?
- 17 A I'm not talking about that one.
- 18 Q Which one?
- 19 A I'm talking about the one that's going all the way
- 20 up that way (indicating) by Chapin.
- 21 Q I got you, okay. Y'all made a little stop on the
- 22 way. Y'all didn't make a little purchase, did you?
- 23 A He had bought some items from the Dollar General.
- 24 Q I got you. You said you stopped to use the pay
- 25 phones, but you parked right here (indicating).

1 Show me the pay phones right there.

2 A I can show you the pay phone on the picture.

3 Q The pay phones are all the way over here

4 (indicating), aren't they?

5 A Yeah.

6 Q Yeah. Not even close to where you parked, are

7 they?

8 A May I show you on the map?

9 Q Sure, sure.

10 A This (indicating) is where I parked at and the pay
11 phone is right there (indicating).

12 Q Yeah. They got a little spot where you can park
13 your car right there, don't they?

14 A Yeah, because that right there is like a vacuum
15 cleaner where you can vacuum your car out.

16 Q Absolutely.

17 A The pay phones is right there (indicating), and my
18 car was right there (indicating).

19 Q Got you. So you could have stopped right there by
20 the pay phone but no, no, no, you went right here
21 (indicating); right?

22 A The picture of this map right here is in the
23 daytime. At nighttime on that day, Friday the
24 13th, there was so many cars in that gas station
25 coming in and out.

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1 Q So many cars?

2 A Yeah, there was a lot of cars.

3 Q Nine o'clock at night?

4 A Yeah, that's a four-way section.

5 Q In Irmo?

6 A Yeah.

7 Q Let's talk about what they did pull out of your
8 car. First of all, the red Cadillac is yours;
9 right?

10 A Yes, sir.

11 Q No doubt about that. Take a look at State's 15.
12 They pulled that out of your car, didn't they?

13 A I believe they did.

14 Q How about State's 24? They pulled that out of your
15 car, didn't they?

16 A I didn't see any of the items that they pulled out
17 of my car.

18 Q You just testified about this stuff that was in
19 your car that Jay put in there.

20 A No, I didn't. I said that when he came back from
21 the Kroger, he had put the black bag on the back of
22 my seat or either on the floor. I thought he had
23 food inside the black bag. I didn't know what he
24 had in the black bag.

25 Q Do you recognize State's 20?

- 1 A Yes, that's what I had in my pocket.
- 2 Q You recognize he put that in your car?
- 3 A The police did not get that out the car. They got
- 4 that out of my pocket.
- 5 Q You said it was in your car.
- 6 A It was in my car, but the police did not get that
- 7 out of my car. They got that out of my pocket when
- 8 I got out when he patted me down.
- 9 Q I understand. So what you are telling me is that
- 10 Jay, A/K/A Marcus Williams, A.K.A. not here
- 11 anymore --
- 12 A Marcus Wilson.
- 13 Q Wilson. Put this on your passenger seat, and he
- 14 got in the car, too?
- 15 A Yes, he did.
- 16 Q Where did he get in?
- 17 A When did he get in?
- 18 Q Where? How did he get in if this was laying on the
- 19 seat?
- 20 A He opened up the door and got in and put the
- 21 bullets on the seat.
- 22 Q A two-door car, right?
- 23 A Yeah.
- 24 Q Where was he sitting?
- 25 A On the passenger seat.

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- 1 Q On top of the bullets?
- 2 A Yeah.
- 3 Q How did you know they were there if he was sitting
- 4 on top of them?
- 5 A I had saw him put it on the passenger seat.
- 6 Q And you just happened to reach across there -- you
- 7 learned they were there, and you just picked these
- 8 things up and put them in your pocket?
- 9 A No, I didn't put them in my pocket until I was at
- 10 the stoplight, and I saw the offer get behind me.
- 11 Q Ah. Can you see through this bag?
- 12 A No.
- 13 Q Did you have any idea what was inside?
- 14 A Yeah, he had told me what was inside.
- 15 Q You knew they were the free bullets, right?
- 16 A Yeah.
- 17 Q So right when you saw that police officer, that's
- 18 when you put them in your pocket?
- 19 A Yes, I did.
- 20 Q Were you trying to hide them?
- 21 A No, I just put them in my pocket.
- 22 Q I got you. Why did you do it then? If you weren't
- 23 trying to hide them, why did you do that?
- 24 A It was just an instinct to put them in my pocket.
- 25 Q You know that (indicating) was pulled out of your

- 1 car, right?
- 2 A I didn't see any of the items that they pulled out
- 3 my car, beside my wallet.
- 4 Q What about this, State's 21, did you see that?
- 5 A I didn't see any of the items that they pulled out
- 6 my car, beside my wallet.
- 7 Q Did you see Jay/Marcus put this in your car?
- 8 A Yeah, that's the black bag --
- 9 Q I got you?
- 10 A -- that he had when he came from the Kroger center.
- 11 Q And he just threw it in there, right?
- 12 A Yes, he got in the car and put it on the back seat
- 13 or the back floor.
- 14 Q Let me ask you something, sir. How much do you
- 15 weigh?
- 16 A When I was arrested, about 215.
- 17 Q How many do you weigh now?
- 18 A About 220.
- 19 Q Take a look at State's 17. Is this yours?
- 20 A No, it's not.
- 21 Q Can you hold it up to you.
- 22 A (Witness complies).
- 23 Q You can put it down now. Since you want to look at
- 24 State's Exhibit 1, let's look at it some more. You
- 25 would agree with me that you were stopped going

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1 away from the K.F.C., right?

2 A Yes, I was stopped right around here (indicating).

3 Q That's (indicating) the K.F.C., isn't it?

4 A That is the K.F.C. right there.

5 Q And at the time of the robbery or after the
6 robbery, you were going that a way (indicating);
7 right?

8 A Yeah, because I was --

9 Q Let me ask you this.

10 MR. BAX: Objection, Your Honor. He can't
11 interrupt the witness. Let him answer.

12 THE COURT: You can answer the question
13 Mr. Battle.

14 A As I told you earlier, sir, I was coming from the
15 Chapin area going down to Columbia. There are many
16 ways that you can travel from the Chapin area to
17 Columbia. You can go down all the way this way
18 (indicating) or you can go this way (indicating).
19 There's many ways to get to Columbia from there.

20 Q If you go down this way (indicating), what are you
21 trying to hit to go to Columbia?

22 A Either you can turn on a side road which takes you
23 directly onto Harbison Boulevard or you can go down
24 that way (indicating), which exits off I-26 which
25 takes you directly into Columbia.

1 Q Harbison Boulevard ain't going to get you downtown.

2 A If you take the side road, which is right there --

3 I don't know the name of the road, but you can get

4 on that road and take the side road, and it will

5 take you straight onto Harbison Boulevard right by

6 the super Wal-Mart. You can cross over and get

7 onto I-26 or you can take another back road.

8 Q I see. I see. So you can take the long back road

9 route to get to the interstate or you can just keep

10 doing down Lake Murray Boulevard and hit the

11 interstate to go downtown; right?

12 A There are many ways that you can get to Columbia,

13 sir.

14 Q I know there are many ways. But the way you were

15 going toward was to hop on the interstate to go to

16 Columbia; isn't that right?

17 MR. BAX: Objection, asked and answered, Your

18 Honor.

19 THE COURT: I haven't heard the answer.

20 A Yes, I was.

21 Q So if you were going to get on the interstate to go

22 to Columbia from Chapin, tell me, sir, why didn't

23 you get on the interstate at the start of your

24 journey up there in Chapin? It would have been a

25 whole lot faster, wouldn't it?

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1 A I wasn't in no rush to get to Columbia.

2 Q That's because you were robbing the K.F.C., isn't
3 it?

4 A No, I wasn't.

5 Q Of course, you weren't in a rush.

6 MR. MOORE: Let me get this marked, please.

7 (State's Exhibit Number 40 is marked for
8 identification).

9 BY MR. MOORE:

10 Q Take a look at State's I.D. 40.

11 MR. BAX: Your Honor, I would like to object
12 and have a matter of law at this point in time.

13 THE COURT: Mr. Foreman, and ladies and
14 gentlemen of the jury, if you would please step to your
15 jury room momentarily. Do not discuss the case amongst
16 yourselves during this brief recess. Thank you very
17 much.

18 (The jury retires to the jury room).

19 THE COURT: Yes, sir, Mr. Bax.

20 MR. BAX: Thank you, Your Honor. The reason I
21 raise this was it appears that the solicitor has marked
22 a letter that my client sent to Solicitor Madsen
23 sometime prior to this trial.

24 The reason I would be objecting, Your Honor, I
25 would be objecting on the basis of relevance, the

1 relevance being this is not a prior inconsistent
2 statement. This is a prior consistent statement of my
3 client.

4 He has testified already about his version of
5 events, and I would object to them asking him about this
6 letter unless they can show that there is something
7 inconsistent in what he said today versus what was in
8 that letter.

9 THE COURT: Solicitor.

10 MR. MOORE: Judge, one of the major things I
11 want to ask him about is the fact that Jay is mentioned
12 nowhere in this letter.

13 Number two, he basically explains or tries to
14 explain to Mr. Madsen why it's not him. His number one
15 reason is that they didn't have consent to search the
16 car. All he is basically talking about is his driver's
17 license and his turn signal.

18 He basically also says in the letter -- well,
19 he also says that if it were him, he would have sped off
20 and shot the police, shot at the police. Your Honor, if
21 he didn't know anything about a gun being in his car,
22 how is he going to shoot up the police?

23 He says: I'm just so thankful that the robber
24 was decent enough to show mercy. How does he know if he
25 wasn't there? I just --

1 THE COURT: May I see it? I didn't mean to
2 interrupt you, Solicitor. I didn't know you weren't
3 finished.

4 MR. MOORE: Judge, I am just with this letter
5 attempting to impeach him. There are several
6 inconsistencies in that statement. Nowhere in the
7 letter is Jay mentioned.

8 THE WITNESS: I don't think I mentioned --

9 MR. BAX: Mr. Battle.

10 THE COURT: No, sir.

11 (Pause).

12 THE COURT: All right. The objection is
13 relevancy?

14 MR. BAX: Yes, Your Honor, briefly in response
15 to some of the points that have been brought up by
16 Solicitor Moore. As you can see from the letter,
17 basically he does refer to the fact on one of the pages
18 that he has been caught up in someone else's stuff, I
19 will say.

20 Basically, Your Honor, I don't feel this is a
21 situation where he has given an inconsistent statement.
22 He says he didn't do it. He says someone else did it.
23 It's perfectly his right not to divulge, if he thinks he
24 knows the identity of that person, to the prosecuting
25 body.

1 That does not make it an inconsistent
2 statement. In addition, Your Honor, pretty much all
3 this letter is inconsistent. His opinions on the law
4 are irrelevant. I meant to say relevant, not
5 inconsistent, Your Honor.

6 Pretty much all this letter is irrelevant,
7 Your Honor, his opinions on the law and what the law is.
8 The penalties are irrelevant. His explanation of what
9 happens on the show Cops, all these things are
10 irrelevant, Your Honor.

11 In addition, his discussion about what he
12 would have done if he was the one who did it is
13 completely irrelevant. It's obvious, if you look at
14 this, that he was trying to give some reason why he
15 should not be prosecuted.

16 It may not have been the smartest move, but
17 it's obviously not an admission of guilt, and it's
18 certainly not inconsistent with his story. It just
19 doesn't have the details given that he is giving here.

20 He certainly has the right not to give details
21 because it's his right not to divulge that information
22 to the State. I don't think in any way, just because
23 the term Jay is not used in here, that that makes it an
24 inconsistency and that makes it admissible.

25 It's not admissible. It's irrelevant, and it

1 certainly does not pass any kind of balancing test when
2 it comes to hearsay under 403. The prejudicial effect
3 of this, I don't think there is any doubt that it would
4 be far in excess of any probative value.

5 This is basically kind of the mental
6 meanderings of someone who is trying to convince a
7 prosecutor not to prosecute him, someone who does not
8 have a law degree, and feels he's pointing out things
9 that are relevant, but in fact he is not.

10 Your Honor, it is basically the equivalent
11 of a statement made during the course of plea
12 negotiations, and as Your Honor is well aware, those are
13 not admissible.

14 THE COURT: Thank you, Mr. Bax. Yes, sir.

15 MR. MOORE: Judge, it doesn't have to be
16 inconsistent, first of all, to be relevant. But, I
17 mean, you take his conclusions on the law, the D.M.V.
18 stuff, I objected when Mr. Bax was examining his own
19 witness about the D.M.V. and his license and all that.

20 They have opened the door to that. I feel I
21 can ask him all about it. You know, you are right, he
22 doesn't have to give specifics to the Solicitor's Office
23 about his case, but that's exactly what he did. He
24 wrote this letter to the Solicitor's Office, and, Your
25 Honor, we are entitled to cross examine him about it.

1 THE COURT: Let me get this straight. You
2 want to cross examine him about the D.M.V., and that's
3 the first almost two pages? The search issue is not an
4 issue for the jury.

5 In other words, whether he gave consent to
6 search or whether there is a search warrant or not, I
7 think I am confusing the jury if I allow that issue to
8 go to them because then they could decide the officer
9 shouldn't have searched that car. He was right, there
10 is no consent shown on that tape.

11 So they could decide the case based on an
12 issue that is not a jury issue. That concerns me,
13 number one. Number two, the punishment. You want me to
14 tell this jury that I can sentence him to 30 years, and
15 you don't want me to?

16 MR. BAX: I certainly don't.

17 THE COURT: That's how this thing is falling
18 down. You don't want me to tell them I can give him 30
19 years, not that I'm going to tell them, but this letter
20 is going to tell them.

21 MR. BAX: Your Honor, I certainly don't want
22 those in. For one thing, that's his opinion.
23 Obviously, Your Honor, is going to instruct them on the
24 law, which doesn't usually contain a penalty, which I'm
25 not going to want.

1 THE COURT: The point I am inartfully trying
2 to make is the jury may say: Well, we're not going to
3 find him guilty because we don't want him to get 30
4 years. So then they could be making a decision based on
5 something that's not in their province either.

6 That's the point I was trying to make, that
7 they may say: I would find him guilty, but I'm not
8 going to find him guilty if that judge is going to give
9 him 30 years.

10 I'm not saying I am going to give him 30
11 years, but that is the way the jury could be reasoning
12 if the letter comes in. The other parts of the letter,
13 I take it this letter is written after he has seen
14 discovery?

15 MR. BAX: Yes, Your Honor. He refers to
16 discovery in that letter.

17 THE COURT: That could be readily explained of
18 how he knew about written statements and maybe he was
19 originally charged with kidnapping. I don't know. I
20 didn't know that until I read the letter.

21 He talks about being a Christian. I don't
22 know the relevancy of that. That interjects a whole new
23 issue to the jury. Obviously I have no problem with
24 questioning that he wrote a five-page letter.

25 Nowhere in that letter does he mention the

1 name Jay, but I think you are opening a can of worms
2 with this letter to allow that jury to base a verdict on
3 something other than the facts.

4 MR. MOORE: Yes, sir, Judge.

5 THE COURT: That's not to say it's not fertile
6 ground for cross examination by referring to the
7 document, but I don't think in its entirety that it's
8 admissible.

9 MR. MOORE: Judge, we will not be attempting
10 to introduce it in evidence. What I want to do -- maybe
11 I can make it really simple. I just want to ask him one
12 question, if he wrote it -- well two -- and if he
13 mentioned Jay or Marcus anywhere in that letter to the
14 Solicitor's Office.

15 THE COURT: I think that's appropriate. I
16 just think it opens too many avenues for a jury to go
17 down that are not jury issues.

18 MR. MOORE: Yes, sir, I completely understand.

19 THE COURT: You can obviously refer to the
20 letter, that he has written a five-page letter, and
21 nowhere in there did he mention Jay or Marcus, if that's
22 his answer. I didn't see it.

23 MR. MOORE: Judge, I may ask him what the
24 purpose of the letter is, too. That would be three
25 questions.

1 MR. BAX: Your Honor, I would have to object
2 to a question about what the purpose of the letter is.
3 That calls into question his mental state, and that
4 really gets into, like you said, under Rule 410. I
5 don't think that is a permissible question.

6 I don't have an objection to him asking why he
7 didn't divulge that name. I see where the relevance is
8 of that, and I don't think I have a defensible position
9 against that. But as far as the second question, I do.

10 THE COURT: My reading of the letter, why he
11 wrote the letter, that's the same thing as what his
12 purpose was. He was trying to get his charges
13 dismissed.

14 Quite frankly, if I was over there at the
15 Lexington County Detention Center, and I thought if I
16 wrote a letter I could get my charges dismissed, I'd
17 write a letter every day. I agree that could open the
18 door. Let's take just a few minutes recess.

19 (Whereupon there was a recess).

20 THE COURT: Are we ready for the jury?

21 MR. BAX: Yes, Your Honor.

22 THE COURT: Mr. Bailiff.

23 (The jury returns to the courtroom).

24 THE COURT: It appears our jury is back
25 present in the courtroom. We are continuing with the

1 cross examination of the Defendant by the solicitor.

2 Solicitor, you may proceed.

3 MR. MOORE: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. MOORE:

6 Q Sir, you were just telling us about Marcus, Jay,
7 whatever he is called. You told us about the story
8 about him basically leaving you, coming back with
9 something, throwing it in your car, throwing his
10 bullets in the car, and you putting the bullets in
11 the car and then getting arrested a couple of feet
12 from where the gas station was; right?

13 A Something to that effect.

14 Q All right. Who all did you tell about this story?

15 A Who all have I told about this story?

16 MR. BAX: Objection, Your Honor, approach?

17 THE COURT: All right.

18 (Whereupon there was a bench conference off
19 the record in the presence of the jury but out of the
20 hearing of the jury).

21 THE COURT: Thank you very much. You may
22 proceed, Solicitor.

23 MR. MOORE: Thank you, Your Honor.

24 BY MR. MOORE:

25 Q Sir, did you tell your family about Jay?

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- 1 A No, I didn't, sir.
- 2 Q Did you tell your friends about Jay?
- 3 A None in the county jail.
- 4 Q Did you tell your family about Marcus?
- 5 A No.
- 6 Q What about your friends about Marcus?
- 7 A What do you mean?
- 8 Q Did you tell your friends anything about Marcus,
- 9 what he had done to you?
- 10 A I haven't told nobody about my case in the county
- 11 jail, and I don't frequently call nobody over the
- 12 phone.
- 13 Q Okay. Let's look at State's I.D. Number 40. Is
- 14 that your handwriting?
- 15 A Yes, sir.
- 16 Q Did you write that letter?
- 17 A Yes, I did.
- 18 Q Who is it addressed to?
- 19 A It is not addressed to any of my friends and
- 20 family. It is addressed to the head solicitor,
- 21 Mr. Robert Madsen.
- 22 Q Would you be so kind as to turn to the page in that
- 23 document where you talk about Jay or Marcus?
- 24 A I don't remember when I wrote this letter. I would
- 25 have to read the letter in order to know.

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- 1 Q Take your time, please. Read the letter, please.
- 2 A It doesn't have a date, so I don't remember when I
- 3 wrote this.
- 4 Q How about this, do you recognize this handwriting?
- 5 MR. MOORE: Mark this, please.
- 6 (State's Exhibit Number 41 is marked for
- 7 identification).
- 8 BY MR. MOORE:
- 9 Q Take a look at State's I.D. Number 41. Do you
- 10 recognize that handwriting?
- 11 A Yes, sir. That's my handwriting to the Solicitor
- 12 of Lexington County.
- 13 Q What's the date on that envelope?
- 14 A The date says December 4, 2006.
- 15 Q Please take a second if you would be so kind, read
- 16 that letter, and tell me when you are addressing
- 17 the head solicitor, Rob Madsen, where you mention
- 18 Jay or Marcus?
- 19 A Well, this is a five-page letter that I wrote to
- 20 the head solicitor last year. It says --
- 21 Q No, no.
- 22 MR. BAX: Objection.
- 23 BY MR. MOORE:
- 24 Q Just read it to yourself.
- 25 A Oh.

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1 Q Just read it to yourself.

2 THE WITNESS: I can't read it out loud?

3 THE COURT: No, sir.

4 (Pause).

5 A On the first page, I referred to the person that
6 I'm talking about, but I did not mention his name.

7 Q Show me the name Jay or Marcus anywhere in that
8 document.

9 A I just referred to the person that I was talking
10 about, but I did not write his name in the letter.

11 Q Let me ask it another way. Is the name Jay
12 anywhere in that letter?

13 MR. BAX: Objection, Your Honor. He just
14 answered that question quite clearly.

15 THE COURT: No, sir, I will allow him to
16 answer the question. Overruled.

17 A From what I just read, no, I did not mention Jay or
18 his real name in the letter.

19 Q Thank you. Sir, your Cadillac is two door?

20 A Yes, it is, sir.

21 MR. MOORE: No further questions, Your Honor.

22 THE COURT: Thank you, Solicitor.

23 Anything in redirect, Mr. Bax?

24 MR. BAX: No further questions, Your Honor.

25 Thank you.

1 THE COURT: Thank you. Thank you, Mr. Battle.
2 You may step down.

3 Mr. Bax, you may call your next witness.

4 MR. BAX: Your Honor, a moment's indulgence.
5 (Pause).

6 MR. BAX: Your Honor, at this time the defense
7 would rest.

8 THE COURT: Thank you. Solicitor, anything in
9 reply?

10 MR. MOORE: No, sir, Your Honor.

11 THE COURT: Mr. Foreman, ladies and gentlemen
12 of the jury, all of the evidence has been presented that
13 is going to be presented in this case. I have some
14 matters of law to take up with the attorneys at this
15 time. What I think I will do, I understand your lunch
16 should be here at?

17 CLERK: Probably about quarter till.

18 THE COURT: About 12:45. Yes, sir.

19 FOREMAN: I'm sorry, we can't hear you.

20 THE COURT: I'm sorry, excuse me. Thank you.
21 You have heard all the testimony that is going to be
22 presented by the parties in this case. I understand
23 that your lunch should be here about 12:45.

24 I have some legal matters to take up with the
25 attorneys. So momentarily I am going to ask you to step

1 to your jury room, and you can have your lunch break at
2 that time also.

3 Once you are finished your lunch, if you will
4 knock on the door, we will be ready to reassemble,
5 however long that takes. You don't have to hurry at
6 all, but whenever you finish, if you would just knock on
7 the door, all the parties will still be here. We will
8 start right back at that time.

9 With that being said, again, do not discuss
10 the case with your fellow jurors or with anyone during
11 this luncheon recess. Remember to keep an open mind
12 about the case until you have been instructed to begin
13 your deliberations. Thank you very much. You may now
14 go with our bailiff.

15 (The jury retires to the jury room).

16 THE COURT: Mr. Bax, we had a bench
17 conference. Is there something you need to put on the
18 record?

19 MR. BAX: Yes, Your Honor. Just for the
20 record I would just like to note my objection to the
21 questions about who Mr. Battle discussed -- I guess for
22 lack of a better -- his defense with. I respect the
23 Court's ruling. I just wanted to put that on the record
24 for preservation purposes, Your Honor.

25 THE COURT: All right. I ruled to limit the

1 solicitor's cross examination along that line to where
2 he could not question the Defendant concerning his post
3 arrest silence to law enforcement.

4 I authorized the solicitor to ask questions of
5 his family and friends, if he advised his family and
6 friends. I have looked at some of the cases up here
7 since our bench conference.

8 It appears that it's post arrest and post
9 Miranda. I'm not sure there is any testimony in the
10 record that he was ever Mirandized because the theory
11 seems to be that once they are Mirandized, you have a
12 right to remain silent. Then that would carry with it
13 the inference that exercising that right wouldn't be
14 used against him.

15 I don't know that there is any testimony in
16 the record that I'm aware of, that I recall, that he was
17 ever given his Miranda warnings anyway. So it may be
18 moot in this particular issue is all I'm saying.

19 I will say there are some cases that appear to
20 state that the State may cross examine a defendant about
21 his post arrest, post Miranda silence when he offers an
22 exculpatory story at trial and claims he told the police
23 the same version, which is not the claim in this case
24 either. You are certainly protected on the record.

25 MR. BAX: Thank you, Your Honor. Just for the

1 record as far as that goes, I don't think it's going to
2 impact anything, and I don't plan on putting anything
3 back up, but I do believe that he was Mirandized. I
4 guess it's just a moot point, as you said, at this
5 point.

6 THE COURT: It may be. Do you have motions?

7 MR. BAX: Yes, Your Honor. At this time we
8 would renew our motion for directed verdict, and I would
9 renew that on the same grounds as I previously stated
10 yesterday on the record at this time.

11 THE COURT: I would respectfully deny your
12 motion. I think there is substantial evidence in the
13 record, both direct and circumstantial at this stage of
14 the proceeding. I would deny your motion for directed
15 verdict on both charges. Anything further?

16 MR. BAX: No, Your Honor.

17 THE COURT: Solicitor?

18 MR. MOORE: Nothing.

19 THE COURT: I assume we would be ready for
20 closing whenever the jury is ready, I would imagine
21 around 1:30. If y'all could make yourselves available
22 at least by then. I would imagine by then they would be
23 ready.

24 MR. BAX: Thank you, Your Honor.

25 THE COURT: Thank you. Court will be standing

1 by for 1:30.

2 (Whereupon there was a luncheon recess).

3 THE COURT: Anything before we bring in the
4 jury from the State?

5 MR. MOORE: No, sir, Your Honor.

6 THE COURT: From the defense?

7 MR. BAX: Your Honor, just for the record I
8 believe the solicitor already stated to me he is going
9 to waive opening on the law. I have no problem with
10 that just for Your Honor's information.

11 THE COURT: On the charge and the conversation
12 the Defendant had with Officer Sauls, what is your
13 position on whether or not I charge statement of the
14 Defendant?

15 MR. BAX: Your Honor, we would request that
16 Your Honor not charge on the Defendant and the
17 statement. I think at this time it's before the jury.
18 I have made, you know, my point to Your Honor that I
19 don't feel it's an inculpatory statement. He made that
20 statement on the record. I don't feel anything else was
21 needed.

22 THE COURT: That was actually my reasoning.
23 We had it included in the charge. As I thought back
24 through it, I wasn't sure. There is no reason to charge
25 any identification either.

1 MR. BAX: No, I do not believe so.

2 THE COURT: Mr. Bailiff, if you would bring
3 our jury, please, sir.

4 (the jury returns to the courtroom at
5 1:48 p.m.)

6 THE COURT: It appears our jury is back
7 present in the courtroom.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 we are now at the stage of the trial where all the
10 testimony has been presented to you. All the witnesses
11 have testified that are going to testify. All the
12 exhibits that have been introduced or were going to be
13 introduced have been introduced.

14 The attorneys now will make their closing
15 arguments to you. These are very different from the
16 opening statements, because they are, in fact, true
17 arguments.

18 They may comment on the facts, the inferences
19 to be drawn from the facts; and they may also comment on
20 the law and how the law may apply to those facts and
21 inferences.

22 It will thereafter be my duty to charge you
23 the law that applies in this case, and after I do that,
24 the case will be submitted to you for your
25 deliberations and for your verdict.

1 I would ask that you please give the attorneys
2 your complete and undivided attention as you have given
3 both the attorneys and all the witnesses and the Court
4 throughout the course of this proceeding.

5 With that being said, Mr. Bax, you may address
6 the jury.

7 MR. BAX: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, sir.

10 CLOSING ARGUMENT

11 MR. BAX: Good afternoon, ladies and
12 gentlemen. I want to start out by thanking each and
13 every one of you for the close attention you have paid
14 to the case, both the State's and ours. I appreciate
15 that.

16 I have been watching. You guys have really
17 been paying close attention to everything that has been
18 said, absorbing it, and I feel you will be well equipped
19 to make a decision in this case.

20 It's my job at this point in time to sum up in
21 argument the defense's position and to point out some
22 things that I think as an attorney are relevant.
23 Obviously it's argument. You can agree or disagree with
24 me. I have no problem with that.

25 When you go back in that jury room, you make

1 whatever deliberations you feel are relevant. The one
2 thing I have got to say and the best way to say it:
3 When it comes to jury duty, be true to yourself. First
4 and foremost, be true to yourself.

5 It is perfectly normal for two people
6 listening to the same set of facts to have two different
7 opinions about what those facts mean. We all have
8 different lives. We've all had different life
9 experiences, and it all gives us a different
10 prospective.

11 But that is why we have a jury of 12 people,
12 not a jury of one person. Because different
13 prospectives make for better observation. Each one of
14 you may have seen different things or focused on
15 different things, and that's great. Be true to yourself
16 though.

17 If someone makes a very cogent argument that
18 changes your mind, that's fine. But if you have your
19 mind set, you have very good reasons why and you haven't
20 heard anything to change that opinion that you have,
21 then don't change your opinion.

22 The judge will talk to you about the law, and
23 the judge will talk to you about deliberations. If
24 anything I say is different from what he says, take what
25 he says.

1 That's where the buck stops when it comes to
2 the law, the guy in the black robe. We certainly trust
3 his judgment, but I say that to give context to what you
4 are about to go through.

5 I think it's important to remember those
6 things. Be yourself. Be true to yourself. Remember
7 what you remember and make decisions that are based upon
8 logic and reason and life experience and do not make
9 decisions based on passion or prejudice or anything
10 else.

11 The thing is we all know and sometimes it's
12 hard to realize when we make decisions based on passion
13 or prejudice, because it don't float to the top of your
14 mind with a label on it. Emotions and opinions,
15 sometimes they are there, and you have to kind of
16 examine them to realize where they are coming from
17 sometimes.

18 I think everybody can say there have been
19 times when they have spoken or expressed an opinion
20 before they fully thought it out. It happens to
21 everybody. It's just nature. It's just the way it is.
22 That's why we call it deliberations because it's
23 deliberate.

24 Because you will sit in there and you will
25 think about it. Not only are you going to examine the

1 things the other people in the jury room say, but you
2 will examine the things that you're saying. That's
3 good. That's what you need to do.

4 In this case basically you want to take a look
5 at these facts. I look at it and I think: Man, you
6 know, you hear sayings. You hear kind of folksy
7 sayings. People use sayings everyday, and you don't
8 really think about them until you get in a situation
9 where you really see where the truth of that came out
10 of.

11 An example of that is I heard before: Man, I
12 got left holding the bag. Ladies and gentlemen, this is
13 an example of where that came out of. My client was
14 left holding the bag.

15 Now, obviously you've heard contradictory
16 stories according to the evidence. You know what the
17 solicitor's position is going to be. He is going to
18 stand up and argue it to you.

19 Credibility is certainly central to this
20 issue. I don't deny that. It will be up to each one of
21 you to decide what parts of all the testimony you
22 believe or do not believe and what reasons you may or
23 may not have for that.

24 As the judge is going to instruct you, you can
25 take, part or whole or none of any witness's testimony.

1 You don't have to express an opinion about why. It's
2 just your personal feeling that you accept this part of
3 the testimony or not this part. That's fine. That is
4 within your purview as jurors, each one of you
5 individually.

6 So credibility is a central part, but I will
7 point out some things that I think go to credibility.
8 Now, before I get to that, I want to return a little bit
9 to what we talked about at the start of this trial
10 yesterday morning.

11 Once again, this is something you will hear
12 from the judge, but the judge is going to talk to you
13 about the burden of proof. He is going to talk to you
14 about the burden of proof in this case lies with the
15 State, with the Solicitor's Office.

16 Solicitor Moore has a job that he has to
17 achieve. I think he has done a very commendable job,
18 but regardless he can only do what he can with the facts
19 that he has. He cannot make things up, nor can we. We
20 have to put what we have up, and we have to deal with
21 the facts as they are.

22 That burden of proof is in there for a reason.
23 I talked to you about it at the beginning of this trial.
24 If we didn't have that level of proof, I think none of
25 us would sit as comfortable tonight in our chairs at our

1 home with the T.V. on as we would otherwise.

2 Because it's one of the reasons why our
3 founding fathers put that specifically in the
4 Constitution. They put the burden of proof on the
5 State. They made it to where you are protected against
6 search and seizure that is illegal, all those kinds of
7 things.

8 They want all people in this country -- the
9 reason why we started this country was to have freedom,
10 and freedom is not worth it if you don't have anything
11 protecting that freedom because that would be a real
12 nervous thing.

13 If freedom could be taken away at any time
14 with no proof, we would all be sitting around a little
15 bit more nervous right now than we are, but that's not
16 the case, and that's why you are here.

17 So there has been many times I have made
18 analogies to what the burden of proof is. The one that
19 I like the most is the burden of proof in this case is
20 like a wall. It's not a low wall. It's not a fence.
21 It's not knee high. It is over our heads. It's a high
22 wall.

23 Beyond a reasonable doubt. The judge is going
24 to talk to you about what reasonable doubt is. He is
25 going to tell you that reasonable doubt is -- evidence

1 beyond a reasonable doubt is where you feel or you have
2 been firmly convinced that a set of events has happened,
3 firmly convinced.

4 If there is a reasonable doubt, if there is
5 another course of action that you feel reasonably could
6 have happened and there has not been proof offered to
7 specifically disprove that other reasonable alternative
8 to the Defendant's guilt, whether or not you know what
9 really happened, you must acquit the Defendant.

10 That's the law. The reason I said a wall is
11 because each piece of information that they talk about
12 and each piece of information that we talk about, their
13 information is like bricks. They will try to build that
14 wall up.

15 But information that we offer that refutes
16 that, that's like knocking a brick out of the wall. If
17 all the bricks aren't in the wall, that means they
18 haven't gotten that wall high enough to go over.

19 They have got to build that wall all the way
20 up to its full height. It's like that wall has got to
21 go to the ceiling. If it doesn't go to the ceiling,
22 there is daylight showing through that wall. If there
23 is daylight showing through that wall to you, you must
24 find the Defendant not guilty.

25 Now, in this particular case, I want to talk a

1 little bit about the facts in this case. You have seen
2 it all. I know you have been paying very close
3 attention.

4 I just want to point some things out. You
5 guys are going to make your decision based on what you
6 know from your life experience, what your common sense
7 is, and what you have seen on the stand. You are going
8 to make a judgment of credibility.

9 In this case you have heard testimony from the
10 officers. You have heard testimony from the victims in
11 this case. I don't think anybody disputes that a
12 robbery occurred here. We are certainly not disputing
13 it. That's a bad thing.

14 No one should have to go to work and
15 experience what Ms. Morgan experienced. She's a very
16 nice lady, and I personally am very sad that she had to
17 go through that.

18 I have looked at the pictures. You have
19 looked at the pictures. She runs a great store. That's
20 the cleanest K.F.C. I've ever seen. If I ever go to
21 one, that's where I am going to go.

22 But regardless of how bad a crime is or how
23 much it offends your sensibilities, it is still your job
24 to make a decision about who did that crime, whether
25 it's the Defendant or not the Defendant.

1 You don't have to solve the crime, but it goes
2 against every grain of what we stand for as United
3 States citizens to put someone in jail who didn't do
4 something.

5 That is the whole concept. We want to make
6 sure the right person is getting punished for a crime.
7 The wrong person invalidates the whole system. That's
8 why you hear on the news people talking about wrong
9 convictions. We don't like to hear about those kind of
10 things because we want to have faith in the system, but
11 I do have faith in the system because of you.

12 There were things that the officers talked
13 about. You can ask to hear the testimony over again if
14 you need to. Officer Majewski talked about the fact he
15 saw this car and that it was suspicious. He talked
16 about the fact that it was a dark area, but he could see
17 the car.

18 Those are things you need to look at. What
19 motives do people have? In addition to that, kind of in
20 this situation it looks like they came upon somebody,
21 they found some evidence, and that was it. The search
22 was over.

23 But ask yourselves, just because you found
24 evidence, just because you found things that are
25 obviously relating to this crime, does that end the case

1 per se?

2 Or do you need to look -- you don't just stop
3 and pat yourself on the back and say: Good job. We are
4 done. I think you need to know what happened. Think
5 about those things when you are back there in that jury
6 room. Think about the testimony you have heard.

7 Now, I also want to talk to you about
8 Mr. Battle. Mr. Battle is here. He's the Defendant.
9 This is his day in court. This is his trial. He has a
10 lot riding on the line, no argument from us.

11 But there's plenty of different courses that
12 he could have took. He decided to get on that stand,
13 despite the fact that he well knew that we would have to
14 talk to him about his convictions in the past, because
15 he wanted to tell his side of the story.

16 You get to make a judgment as to his
17 credibility, but I think there's things that support
18 that. One of the reasons why I introduced that video is
19 because I want you to be able to look at that video. If
20 you need to play it back in the jury room, you can.

21 But everything he has told you is on that
22 video. He pulled over when the lights went on him,
23 didn't make a fuss, asked a few question, had a little
24 trouble getting out of his door, but there was not one
25 single example of resistance.

1 In fact, if you look at his demeanor as he
2 walked to that car, I submit to you, ladies and
3 gentlemen, it does not look like somebody who knows
4 there is a parcel of evidence in the back seat of his
5 car that is about to get him thrown away for a long
6 time.

7 That did not look like a man that felt like he
8 had just been caught, but that's for you to look at.
9 You decide. You look at the evidence and you make the
10 decision.

11 Now, finally ladies and gentlemen, and I think
12 I spoke about this a little bit at the beginning of the
13 trial, unfortunately for all of us there's limitations.
14 We are all human beings. We all have to kind of abide
15 by the rules of physics and science and just reality in
16 general.

17 Like I said before, you cannot -- none of us
18 can -- see into the future as much as we would like to
19 sometimes. I know there's times when I look in the
20 past, and I wish I could go back there and tell myself:
21 Hey, don't do that. That's stupid. Or hey, you are
22 going to get in trouble. You better have a witness
23 standing there. Or hey, you better have a video camera
24 so you don't get in trouble.

25 Those are the kind of things we can't tell the

1 future about, otherwise we wouldn't have trials like
2 this. Everybody would know because they would all have
3 it on video or they would all have their three nuns
4 standing there to say: No, little Johnny didn't do
5 that.

6 That's not the case. Basically what I am
7 trying to tell you, ladies and gentlemen, and this is a
8 reality of life, and common sense will confirm this for
9 you, anyone that gets accused of a crime has to go to
10 trial not with the best possible defense but with the
11 best available defense.

12 I am sure that any defendant, and this one
13 included, wishes they had a better defense than they
14 had, unless they actually have the video camera and
15 those priests or those wonderful people standing next to
16 them.

17 I bet they all wish that unless they've got
18 it -- and there's very few, trust me, in my experience
19 that had ever had that -- but you can't go back in time
20 and change things.

21 All we are asking is you give him a fair
22 shake, ladies and gentlemen. We will respect any ruling
23 or any verdict that you give. Thank you for your time
24 and your attention.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Bax. Solicitor.

2 MR. MOORE: Thank you, Your Honor. May it
3 please the Court.

4 THE COURT: Yes, sir.

5 CLOSING ARGUMENT

6 MR. MOORE: Folks, I want to, just like
7 Mr. Bax did, thank you so very much for coming. I know
8 you didn't have much of a choice, but we certainly
9 appreciate you being here. This is the best judicial
10 system in the entire world, and it doesn't work unless
11 we have fine folks like yourselves.

12 Just like Mr. Bax, there are a few things I
13 want to talk with you about concerning this case. You
14 know, this morning the Defendant took the stand, and you
15 heard from an individual who has been convicted of
16 criminal conspiracy and attempted burglary, a criminal.

17 He got up on that witness stand, and he threw
18 some smoke and mirrors at you. He wants you to believe
19 that a man named Jay or Marcus, whoever that is, he is
20 the one responsible for this. He is the one.

21 Mr. Battle gave him a ride from Chapin. They
22 didn't take the interstate. They took back roads, and
23 they found themselves in Irmo, South Carolina of all
24 places.

25 They parked at the Circle K. gas station, and

1 it was Jay who did this. It was Jay who got out of the
2 car. It was Jay who went through all the trouble of
3 robbing a store and then taking the fruits of his labor
4 and putting them in Mr. Battle's car and then running
5 away.

6 He had taken all that money and was putting it
7 into Mr. Battle's car and then leaving. Folks, if you
8 are going to go through the trouble of robbing a store,
9 don't you think you might have taken that money with
10 you?

11 It's absolutely amazing. And, again, this is
12 coming from a convicted felon. He is telling you this
13 story, hoping that you will believe it. It doesn't make
14 any sense whatsoever.

15 He has no idea really what this guy's name is,
16 and he is dead. How convenient. You heard him. He
17 didn't tell his friends about Jay after he was arrested.
18 He didn't tell his family about Jay after he was
19 arrested. He wrote the Solicitor's Office a letter,
20 didn't mention that in there.

21 But Jay is dead, if Jay even in fact exists.
22 You won't be able to hear from Jay, if he is a real
23 person. Don't believe it, folks. Don't believe this
24 convicted felon. Don't do it. Don't do it.

25 Look at the time. A 911 call comes in from

1 Sandra Morgan working at the K.F.C. for 20 some-odd
2 years, and she calls immediately. You can listen to
3 that 911 tape if you want to. She couldn't even
4 remember her own name.

5 Because that man right over there walked into
6 that store with a mask on, scared the living daylight
7 out of her, and robbed her, but she called. She was
8 able to get it together and make a telephone call.

9 Now, the call goes in. Here (indicating) is
10 the K.F.C. Here (indicating) is the gas station. Less
11 than four minutes later, you have got one of Irmo's
12 finest positioned right behind the Defendant's red
13 Cadillac.

14 He pulls him over and he arrests him for a
15 suspended driver's license and proceeds to search that
16 car. Folks, what did he find? He found this
17 sweatshirt. Take this back with you. It looks like a
18 blanket. It's huge.

19 It's his. Don't believe him. Don't believe
20 this felon. This is his, just like Ms. Morgan described
21 to you. This sweatshirt was on top of that black bag
22 and wrapped inside this thing was that gun.

23 You saw him get out of the car on the video
24 with a red shirt on. What do you think he had on over
25 that? This. Let me ask you this. Did Jay just take

1 his clothes off and just leave?

2 After he went to the trouble of robbing the
3 K.F.C. and bringing all the loot back to the Defendant's
4 car and putting it in there and running way, he started
5 taking his clothes off, too? No.

6 It doesn't make any sense. Of course, wrapped
7 inside this you have got a gun. You've got the black
8 bag. You've got the mask. Everything is there. Every
9 single thing is there, coupons from the restaurant,
10 money, everything.

11 It's all there in the black bag behind the
12 driver's seat. This is a two-door car. You open the
13 car to get in. You push your seat up. You put your
14 loot there. You put the seat back, and you get in.
15 There is one item really that was not found in that
16 black bag, one, and that's this right here, the bag with
17 the bullets in it.

18 Folks, you go back there and you look at
19 State's Exhibit Number 22, which are the bullets from
20 the gun, the loaded gun that he went in there with. You
21 take that bullet, and then you take this bag, and you
22 put those two bullets next to each other. It's the same
23 thing.

24 Don't believe the story about Jay putting the
25 bag -- why would he do that? He put the separate bag in

1 the passenger's seat? What kind of sense does that
2 make? None. Absolutely none.

3 He's got a huge black bag. Why didn't he dump
4 that in there, too? It doesn't make any sense. But
5 what it does do is that it shows that he knew about the
6 black bag.

7 He has got bullets in his pocket that match
8 the very same gun that was used, pointed and presented
9 at that fine lady right over there, the same bullets.
10 It was less than four minutes.

11 Of course, he is not going this way
12 (indicating). He is going that way (indicating), away
13 from the K.F.C. Of course, he is. He's scared out of
14 his mind. He just had to run through the woods. Look
15 at these pictures. Take these pictures back with you.
16 What a perfect location. What a perfect location.

17 You know, he told you that he was up there in
18 Chapin, and he stopped at a gas station up there.
19 That's where he picked up Jay, if Jay even exists. Why
20 didn't he change the oil in his car up there?

21 Why didn't he do all this maintenance up there
22 before his trip? Why did he wait until he got here, to
23 Irmo, South Carolina before he started messing with his
24 car?

25 You want to know why? Because it didn't

1 happen that way. What a perfect location. He parked
2 right here (indicating). Now, the officer told you that
3 he noticed the car earlier in the day or actually
4 earlier in the evening, around 8:30.

5 He saw it right here (indicating) with the
6 hood up. What a decoy. Put that hood up. Scope out
7 the area. Woods. But there are pictures of little
8 trails. You can get down here (indicating). Woods here
9 (indicating). You can go through here (indicating).
10 It's dark.

11 This (indicating) is a hill. This is a hill,
12 a very, very steep hill. You will have the pictures
13 back there. You can see it. You can see it. But he
14 has got all this cover, trees everywhere.

15 This restaurant sits in a basin almost. It's
16 perfect. It's perfect. All he has got to do is get in
17 around closing time, and he has got to get the money,
18 and he has got to sneak out.

19 He can't put his car there. He doesn't want
20 anybody to see that. But what he is able to do is sneak
21 off, retreat into the woods. That's exactly what he
22 did.

23 It took him about three minutes to do it. He
24 crawled up that hill and he got in his car. Of course,
25 the officer told you the car didn't have its hood up the

1 second time. It was backed in. Why do you think it was
2 backed in? It was ready to go. It was ready to go, had
3 to get out of there.

4 Smoke and mirrors, folks. It is smoke and
5 mirrors. You are going to have to believe a convicted
6 felon. Jay, where in the world is Jay? It's less than
7 four minutes.

8 He's got everything, every single item in that
9 restaurant sitting in his car right behind his seat, and
10 he's got the very same bullets that match that gun in
11 his pocket. Folks, don't believe this man. He is a
12 convicted felon.

13 The evidence is there. It's right in front of
14 you. Believe these folks. Believe the 911 dispatcher
15 who goes to work and works 12-hour shifts and sits there
16 and answers the telephone and types while she works and
17 documents exactly when those calls come in. They can
18 tell you exactly when the person was dispatched and tell
19 you exactly when the stop was made.

20 Believe these officers who put on that uniform
21 everyday, and they go to work. They put on bullet-proof
22 vests. Why? Because it's dangerous. It's dangerous in
23 Irmo, South Carolina, a tiny little town. It didn't
24 used to be that way.

25 Believe Ms. Morgan, a 20-year old -- a 22-year

1 veteran of K.F.C., cooks chicken for a living, scared
2 out of her mind. You know, in most -- actually in
3 some -- armed robbery cases, the Defendant isn't as
4 smart, doesn't go to the time to come up with this
5 elaborate scheme.

6 MS. FULLWOOD: Objection, Your Honor, outside
7 the evidence and his personal opinion as far as other
8 armed robbery cases.

9 THE COURT: Yes. You have to limit yourself,
10 Mr. Moore, to the facts and inferences in this case.

11 MR. MOORE: Yes, sir.

12 THE COURT: Thank you.

13 MR. MOORE: Ms. Morgan got a look at his face.
14 Ms. Morgan got a look at his face. Folks, here
15 (indicating) it is. Here it is. How are you going to
16 forget something like that, something as terrifying as
17 that? This mask, his face on that particular evening,
18 was sitting in a black bag right behind him.

19 I don't know what else to say. Please don't
20 believe him. He is guilty, folks. It's right there in
21 front of you. It's right there in front of you. It was
22 right behind him on October 13, 2006.

23 There are two charges here, possession of a
24 firearm during the commission of a violent crime and
25 armed robbery. Folks, you can convict him of both of

1 them. He's guilty. Thank you.

2 THE COURT: Thank you, Solicitor.

3 (Whereupon the Court charged the jury as
4 follows).

5 THE COURT: Mr. Foreman, and ladies and
6 gentlemen of the jury, the indictments in this case
7 charge the Defendant with armed robbery and separately
8 with possession of a firearm during the commission of a
9 violent crime.

10 I remind you that the fact the Defendant was
11 arrested, charged, and indicted in the case is not
12 evidence in this case and cannot be considered by you as
13 evidence of guilt in this case, nor does it create any
14 presumption or inference of guilt.

15 These documents are simply the formal written
16 instruments which contain the charges made against the
17 Defendant. They are the formal documents by which this
18 case is brought into court.

19 Each indictment contains a separate and
20 distinct offense. You must decide each indictment
21 separately on the evidence and the law applicable to it,
22 uninfluenced by your decision as to any other
23 indictment.

24 The Defendant may be convicted or acquitted on
25 each indictment. However, he may only be convicted of

1 possession of a firearm during the commission of a
2 violent crime if you have first convicted him of
3 committing a violent crime, to wit armed robbery. I
4 will explain more to you about that momentarily. You
5 will be asked to write a separate verdict of guilty or
6 not guilty for each indictment.

7 The Defendant has pled not guilty to these
8 indictments, and that plea puts the burden on the State
9 to prove the Defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent.

12 I charge you that it is an important rule of
13 the law that the Defendant in a criminal trial, no
14 matter what the seriousness of the charge may be, will
15 always be presumed to be innocent of the crime for which
16 the indictments were issued until guilt has been proven
17 by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 This presumption of innocence does not end
20 when you begin your deliberations, but it accompanies
21 the Defendant throughout the trial until you reach a
22 verdict of guilt based on evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 Defendant which remains with the Defendant until it has
2 been stripped from the Defendant by evidence satisfying
3 you of the Defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not mere legal
5 theory. It is not just a legal phrase. It is a
6 substantial right to which every defendant is entitled
7 unless you the jury are satisfied from the evidence of
8 the Defendant's guilt beyond a reasonable doubt.

9 The State has the burden of proving the
10 Defendant guilty beyond a reasonable doubt. Some of you
11 may have served as jurors in civil cases where you were
12 told that it is only necessary to prove that a fact is
13 more likely true than not true, such as by the greater
14 weight or preponderance of the evidence.

15 In criminal cases the State's proof must be
16 more powerful than that. It must be beyond a reasonable
17 doubt. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the Defendant's guilt.

19 There are very few things in this world that
20 we know with absolute certainty, and in criminal cases
21 the law does not require proof that overcomes every
22 possible doubt.

23 If based on your consideration of the evidence
24 you are firmly convinced that the Defendant is guilty of
25 the crimes charged, you must find the Defendant guilty.

1 If, on the other hand, you think there is a real
2 possibility that the Defendant is not guilty, you must
3 give the Defendant the benefit of the doubt and find him
4 not guilty.

5 I remind you that during this trial, you and I
6 have certain duties to perform. As the trial judge, it
7 is my responsibility to preside over the trial of this
8 case, and I also have the duty to rule on the
9 admissibility of the evidence offered during the trial.

10 You are to consider only the competent
11 evidence before you. If there was any testimony ordered
12 stricken from the record in this case during the trial,
13 you must disregard that testimony.

14 You are to consider only the testimony which
15 has been presented from this witness stand and any
16 exhibits which have been made part of the record in this
17 case.

18 I have the additional duty to charge you the
19 law applicable to the case. As the presiding judge, I
20 am the sole judge of the law of this case, and it is
21 your duty as jurors to accept and apply the law as I now
22 state it to you.

23 If you already have any idea as to what the
24 law is or what the law ought to be, and it does not
25 agree with what I now tell you the law is, you must

1 abandon this idea because you are sworn to accept the
2 law and apply the law exactly as I state it to you.

3 In every case tried in this court before a
4 jury, the jury becomes the sole and exclusive judge of
5 the facts in a case. A trial judge cannot intimate,
6 state, comment on or make any statement to a trial jury
7 about the facts in a case.

8 Since you the jury are the sole judge of the
9 facts in this case, you are not to infer from what I
10 have said during the progress of this trial, in ruling
11 upon the admissibility of evidence or otherwise or
12 anything that I say now during the course of this
13 instruction to you, that I have any opinion about the
14 facts in this case.

15 The law does not allow me to have an opinion
16 about the facts in this case. This is a matter solely
17 for you the jury to determine. As jurors it is your
18 duty to determine the effect, the value, the weight, and
19 the truth of the evidence presented during the trial.

20 There are two types of evidence which are
21 generally presented during a trial, direct evidence and
22 circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual
24 knowledge of a fact, such as an eyewitness. It is
25 evidence which immediately establishes the main fact to

1 be proved.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a
4 fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred.

7 Circumstantial evidence is based on inference
8 and not on personal knowledge or observation. The law
9 makes absolutely no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence, nor is a great degree of certainty required of
12 circumstantial evidence than of direct evidence.

13 You should weigh all of the evidence in the
14 case. After weighing all the evidence, if you are not
15 convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find him not guilty. If
17 after weighing all the evidence, you are convinced of
18 the guilt of the Defendant beyond a reasonable doubt,
19 you must find him guilty.

20 Necessarily you must determine the credibility
21 of witnesses who have testified in this case.
22 Credibility simply means believability. It becomes your
23 duty as jurors to analyze and to evaluate the evidence
24 and determine which evidence convinces you of its truth.

25 In determining the believability of witnesses

1 who have testified in this case, you may believe one
2 witness over several witnesses or several witnesses over
3 one witness.

4 You may believe a part of the testimony of a
5 witness and reject the remaining part of the testimony
6 of that same witness. You may believe the testimony of
7 a witness in its entirety or reject the testimony of a
8 witness in its entirety.

9 You may consider whether any witness has
10 exhibited to you any interest, bias, prejudice or other
11 motive in this case. You may also consider the
12 appearance and manner of the witness while on the
13 witness stand.

14 You have heard evidence that the Defendant was
15 convicted of a crime, other than the one for which the
16 Defendant is now on trial. This evidence may be
17 considered by you, if you conclude it is true, only in
18 deciding whether the Defendant's testimony is believable
19 and for no other purpose. You must not consider the
20 Defendant's prior record as any evidence of the
21 Defendant's guilt of the charge we are trying today.

22 The rules of evidence ordinarily do not permit
23 witnesses to testify to opinions or conclusions. An
24 exception to this rule exists for witnesses we call
25 expert witnesses.

1 A witness, who by education and experience,
2 has become an expert in some art, science, profession or
3 calling may state an opinion as to relevant and material
4 matter in which the witness claims to be an expert and
5 may also state the reasons for the opinion.

6 You should consider any expert opinion
7 received in evidence in this case and like any other
8 evidence give it the weight you think it deserves. If
9 you decide that the opinion of an expert witness is not
10 based on sufficient education and experience or if you
11 conclude the reasons given in support of the opinion are
12 not sound or that the opinion is outweighed by other
13 evidence, you may disregard the opinion entirely.

14 An expert witness' testimony is to be given no
15 greater weight than that of other witnesses simply
16 because the witness is an expert. Further, you are not
17 required to accept an expert's opinion even though it is
18 not contradicted.

19 In order to establish criminal liability,
20 criminal intent is required. For example, the mental
21 state required to be proven by the State for a
22 particular crime might be purpose, intent, knowledge,
23 recklessness or criminal negligence.

24 Criminal intent must be proven by the State
25 beyond a reasonable doubt. Criminal intent is always a

1 matter that must be determined by the jury from the
2 circumstances surrounding the situation.

3 There is no way to prove intent to a
4 mathematical certainty. There is no way medical science
5 can dissect a person's brain and determine what the
6 person had in mind.

7 So the law says that criminal intent may be
8 inferred from the circumstances shown to have existed.
9 This is how you make a determination of whether or not
10 the element requiring intent was present.

11 It is not necessary to establish intent by
12 direct and positive evidence, but intent may be
13 established by inference in the same way as any other
14 fact, by taking into consideration the acts of the
15 parties and all the facts and circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based on the circumstances
19 shown to have existed.

20 Criminal intent can arise from action or a
21 failure to act. It may arise from negligence,
22 recklessness or an indifference to duty or to
23 consequences that are considered by the law to be the
24 equivalent of criminal intent.

25 The Defendant, as to the first indictment, is

1 charged with armed robbery. In order to prove this
2 offense, the State must first prove beyond a reasonable
3 doubt that the Defendant took personal property from the
4 person or presence of another.

5 Property is in the presence of a person if it
6 is within the person's reach, inspection, observation or
7 control so that the person could, if not overcome with
8 violence or prevented by fear, keep possession of the
9 property.

10 The State must also prove beyond a reasonable
11 doubt that the Defendant carried the property away,
12 intending to permanently deprive the owner of the
13 property and to keep the property for the Defendant's
14 own use.

15 The slightest removal of the property or the
16 complete possession of the property, even for an instant
17 by the Defendant, is sufficient to show a taking and
18 carrying away of the property.

19 The taking and carrying away of the property
20 must have been done with violence or by putting the
21 owner of the property in fear of violation. Finally,
22 the State must prove beyond a reasonable doubt that the
23 Defendant was armed with a deadly weapon during the
24 robbery.

25 A deadly weapon is any article, instrument or

1 substance which is likely to cause death or great bodily
2 harm. Whether an instrument has been used as a deadly
3 weapon depends on the facts and circumstances of each
4 case.

5 The following are examples of instruments
6 which may be deadly weapons: A pistol, a shotgun, a
7 rifle, a knife, a dagger. A gun may be a deadly weapon
8 even if it is not operating. That is the charge on
9 armed robbery.

10 As to the second indictment, possession of a
11 firearm during the commission of a violent crime, the
12 Defendant is also charged with the possession of a
13 weapon during the commission of a violent crime.

14 The State must prove beyond a reasonable doubt
15 that the Defendant was in possession of a firearm or
16 visibly displayed what appeared to be a firearm during
17 the commission of a violent crime.

18 A firearm under this statute, under this
19 particular section, means any machine gun, automatic
20 rifle, revolver, pistol or any weapon which will or is
21 designed to or may be readily converted to expel a
22 projectile.

23 I am going back to the beginning of my charge.
24 I will repeat, in order to find the Defendant guilty of
25 possession of a weapon during the commission of a

1 violent crime, you must first find the Defendant guilty
2 of committing a violent crime. Armed robbery is a
3 violent crime.

4 Mr. Bailiff, Mr. Corley, would you hand that
5 to our foreperson, please.

6 BAILIFF: Yes, sir.

7 THE COURT: Mr. Foreman, I will allow you to
8 look at this as I explain it to you. This is entitled
9 verdict form. It's got the caption of the case, the
10 indictment numbers and such, and I will explain it to
11 you.

12 There are two possible verdicts which you may
13 find in this case as to each indictment. As I say, you
14 will have this form in the jury room with you. There is
15 absolutely no significance whatsoever in the order in
16 which I have listed the possible forms of verdict as to
17 each indictment, nor in the order in which I explain
18 them to you. It is simply that one must be stated
19 first.

20 Ladies and gentlemen, your verdict must be a
21 unanimous verdict as to each indictment. If after your
22 deliberations and your determination of the facts and
23 the inferences drawn therefrom, your weighing of the
24 evidence, applying it to the law as I have told you the
25 law is, if you determine that the State has met its

1 burden and proved the Defendant guilty of armed robbery
2 beyond a reasonable doubt, I would ask you, Mr. Foreman,
3 to please check to the left: As to the charge of armed
4 robbery, we the jury by unanimous consent find the
5 Defendant -- check to the left -- guilty, and circle
6 that line and that word.

7 If based on your deliberations and the facts
8 and inferences drawn therefrom and applying those to the
9 law as I have stated it to you, you find the State has
10 failed to meet its burden of proving its case beyond a
11 reasonable doubt as to the armed robbery and you find
12 the Defendant not guilty, I'd ask you to check to the
13 left of not guilty and again circle both the line and
14 the words not guilty.

15 As to the charge of possession of a firearm
16 during the commission of a violent crime, again, if you
17 reach your unanimous verdict and that verdict is guilty,
18 check to the left of guilty and circle it. If that
19 verdict is not guilty, check to the left of not guilty
20 and circle it.

21 Once the jury has reached a unanimous verdict
22 as to both indictments, Mr. Foreman, if you would please
23 date it today's date if you reach your verdict and then
24 sign your name to the right.

25 Again, you cannot find the Defendant guilty of

1 possession of a firearm during the commission of a
2 violent crime unless you find the Defendant guilty of
3 committing the violent crime of armed robbery. Your
4 verdict cannot be based on sympathy, passion, prejudice,
5 emotion or any other consideration not in evidence in
6 this case.

7 Once you have reached those verdicts, whatever
8 your verdicts may be, Mr. Foreman, a unanimous verdict,
9 if you would then knock on the jury room door and inform
10 the bailiff that you have reached a verdict, at that
11 time we will receive you back into the courtroom.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 I have allowed into evidence both a firearm and
14 ammunition. Those will not be in the jury room at the
15 same time.

16 What I will do, when the exhibits are checked,
17 I will send in the firearm initially. Y'all will
18 certainly have the opportunity to examine that firearm.
19 I note for the record it is locked.

20 Once you have completed your examination of
21 that firearm, if you would let the bailiff know and send
22 that out, I will then be glad to send in the ammunition.
23 I am required not to have those two items in the jury
24 room at the same time.

25 So if you'd just let me know that, I will be

1 glad to do that. Also, if you need anything, if you
2 need any equipment to play either the 911 tape or I
3 don't know if you call that a C.D. or what, the video,
4 just let me know, and we will make arrangements.

5 If you need anything else, if you have any
6 questions, just write them out for me or have any needs,
7 just write it out and give it to the bailiff, and he
8 will get them to me.

9 What I have to do now is I have to confer with
10 the attorneys outside of your presence prior to
11 submitting the case to you for your deliberations. I
12 will ask you momentarily to leave the form up on the
13 corner.

14 One further thing, Mr. Foreman, I meant to
15 mention this earlier, as far as note taking, and I did
16 notice that you took notes, I don't know if any of the
17 other individuals on the jury did. There is absolutely
18 nothing wrong with doing that. I perhaps should have
19 addressed it earlier.

20 Some of us are better note takers than others.
21 Remember that one individual juror's notes or any
22 jurors' notes are no better than the memory or the
23 recollection of a juror compared to those notes. Just
24 keep that in mind during your deliberations.

25 With that being said, if you would please go

1 with our bailiff. Do not begin your deliberations until
2 you are instructed to do so. Thank you very much.

3 (The jury retires to the jury room).

4 THE COURT: Any exceptions from the State?

5 MR. MOORE: No, sir, Your Honor.

6 THE COURT: From the defense?

7 MR. BAX: A moment, Your Honor.

8 (Pause).

9 MS. FULLWOOD: Your Honor, we don't have any
10 exceptions, but we would ask, in light of Mr. Battle's
11 testimony, that Your Honor charge the jury on alibi.

12 THE COURT: Solicitor, do you have a position?

13 MR. MOORE: We would oppose it.

14 THE COURT: Sir?

15 MR. MOORE: We would oppose a charge on alibi.

16 I don't think there is enough to charge it. I think,
17 Your Honor, you have to have an alibi witness, and the
18 Defendant is the only one who testified.

19 (Pause).

20 THE COURT: When I look at State versus
21 Robbins, it says: A charge on the defense of alibi is
22 not required when an accused person merely denies
23 committing the criminal act.

24 Alibi means elsewhere, and the charge should
25 be given when the accused submits that he could not have

1 performed the criminal act because he was in another
2 place at the time of its commission.

3 The subject is treated in 21 Am Jur 2nd,
4 Criminal Law Section 136. Section 136, alibi, what
5 constitutes purpose and effect. The literal
6 significance of the word alibi is elsewhere.

7 As used in criminal law, it indicates that
8 line of proof by which an accused undertakes to show
9 that because he was not at the scene of the crime at the
10 time of its commission, having been at another place at
11 the time, he could not have committed the crime.

12 In other words, by an alibi the accused
13 attempts to prove that he was at a place so distant that
14 his participation in the crime was impossible. To be
15 successful, his alibi must cover the entire time when
16 his presence was required for accomplishment of the
17 crime.

18 To establish an alibi, the accused must show
19 that he was at another specified place at the time the
20 crime was committed, thus making it impossible for him
21 to have been at the scene of the crime.

22 It is not enough for the accused to say that
23 he was not at the scene and must therefore have been
24 elsewhere. The latter statement does not constitute an
25 alibi.

1 Since an alibi derives its potency as a
2 defense from the fact that it involves a physical
3 impossibility of the accused's guilt, a purported alibi
4 which leaves it possible for the accused to be the
5 guilty person is no alibi at all.

6 What do you think about that, Mr. Bax,
7 Ms. Fullwood?

8 MR. BAX: I think that's a great case you
9 found there, Judge. Could you repeat the name of that
10 case?

11 THE COURT: I'll have to tell Mr. Justice so
12 and so who wrote it your opinion.

13 MR. BAX: I am sure they will find my opinion
14 very --

15 THE COURT: Well, no, I hope I don't get to
16 tell him. It's Justice Ness. I don't want to be
17 talking with him any time soon.

18 MR. BAX: I hope not either.

19 THE COURT: It's Robbins, R-O-B-B-I-N-S, 271
20 S.E.2d 319. I have two concerns. I didn't consider
21 that obviously in my initial charge. I have a concern
22 in bringing the jury out now and highlighting that
23 particular area. But anyway, what was your position,
24 Mr. Bax?

25 MR. BAX: Your Honor, based on the reading of

1 the case that you have stated, Your Honor, our position
2 would still be that we would request the alibi based on
3 the fact that he has testified he was in a different
4 location. I understand the ruling of the Court.

5 THE COURT: Thank you. Thank you, Mr. Bax.

6 MR. BAX: Thank you, Your Honor.

7 THE COURT: Solicitor.

8 MR. MOORE: Judge, I think the case speaks for
9 itself, not to mention the fact that we never really
10 received -- we served a reciprocal Rule 5 and never
11 received any notice of an alibi witness.

12 I don't know if the Defendant would
13 necessarily count as an alibi witness for himself, but
14 for that reason and the Robbins case, Your Honor, we
15 certainly agree with you, bringing them out now and
16 highlighting it would just be improper.

17 THE COURT: I am not going to charge alibi.
18 You are protected on the record, Mr. Bax.

19 MR. BAX: Thank you, Your Honor.

20 THE COURT: Would y'all get the exhibits
21 straight, please.

22 (Pause).

23 THE COURT: Solicitor, have y'all checked the
24 exhibits?

25 MR. MOORE: Yes, Your Honor.

1 THE COURT: Are you satisfied with what has
2 been checked?

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

4 THE COURT: And Mr. Bax?

5 MR. BAX: Your Honor, we looked at the
6 exhibits. I just wanted to take one look at the verdict
7 form before we send it back.

8 THE COURT: Certainly.

9 MR. BAX: No problems from us on the verdict
10 form, Your Honor.

11 THE COURT: If you would bring the alternate
12 out.

13 (The alternate returns to the courtroom and is
14 excused).

15 (The jury commenced its deliberation at
16 3:05, p.m.)

17 (The following occurred at 4:00 p.m.).

18 THE COURT: I understand we have a verdict.
19 Is the State ready to receive the verdict?

20 MR. MOORE: Yes, sir, Your Honor.

21 THE COURT: Defense?

22 MR. MOORE: Yes, Your Honor.

23 THE COURT: Mr. Bailiff, if you would bring us
24 the jury in State versus Battle, please.

25 (The jury returns to open court to report its

1 verdict).

2 THE COURT: Mr. Foreman, has the jury reached
3 a verdict?

4 FOREMAN: We have, Your Honor.

5 THE COURT: Would you pass it to the bailiff,
6 please.

7 (Hands to Court).

8 THE COURT: Madame Clerk, the verdict appears
9 to be in the proper form. If you would publish our
10 verdict, please.

11 Mr. Battle, would you please stand.

12 (Whereupon the verdicts of the jury are
13 published as follows).

14 CLERK: On Indictment 2007-GS-32-0030 and
15 0031, the State versus Korell Robert Battle, as to the
16 charge of armed robbery, we the jury by unanimous
17 consent find the Defendant guilty.

18 As to the charge of possession of a firearm
19 during the commission of a violent crime, we the jury by
20 unanimous consent find the Defendant guilty. It is so
21 signed May 2, 2007, by our foreperson.

22 THE COURT: Thank you, Madame Clerk.
23 Solicitor, anything additional for the jury?

24 MR. MOORE: No, sir, Your Honor.

25 THE COURT: Mr. Battle, you may be seated.

1 Mr. Bax, anything additional for the jury?

2 MR. BAX: We would request that the jury be
3 polled, Your Honor.

4 THE COURT: Ladies and gentlemen, the clerk
5 will poll you. She will ask you two questions: Is this
6 your verdict and is it still your verdict? If you would
7 identify yourself by raising your hand when she calls
8 your names and respond to these questions.

9 Madame Clerk.

10 CLERK: As I call your name, if you will hold.
11 your hand up so I can recognize you. Please respond at
12 the end of the question: As to the verdicts, were they
13 your verdicts and are they still your verdicts and then
14 respond, please.

15 Raymond Hunt, as to the verdicts, were these
16 your verdicts and are they still your verdicts?

17 FOREMAN: Yes.

18 CLERK: Stacey Wingate, as to the verdicts,
19 were these your verdicts and are they still your
20 verdicts?

21 JUROR: Yes, ma'am.

22 CLERK: Neal Lown, as to the verdicts, were
23 these your verdicts and are they still your verdicts?

24 JUROR: Yes.

25 CLERK: Sharon McArthur, as to the verdicts,

1 were these your verdicts and are they still your
2 verdicts?

3 JUROR: Yes.

4 CLERK: Lois Keach, as to the verdicts, were
5 these your verdicts and are they still your verdicts?

6 JUROR: Yes.

7 CLERK: Ronald Lorick, as to the verdicts,
8 were these your verdicts and are they still your
9 verdicts?

10 JUROR: Yes.

11 CLERK: Sarah Stewart, as to the verdicts,
12 were these your verdicts and are they still your
13 verdicts?

14 JUROR: Yes.

15 CLERK: John Goodale, as to the verdicts, were
16 these your verdicts and are they still your verdicts?

17 JUROR: Yes.

18 CLERK: Margaret Powell, as to the verdicts,
19 were these your verdicts and are they still your
20 verdicts?

21 JUROR: Yes.

22 CLERK: Robert Hale, as to the verdicts, were
23 these your verdicts and are they still your verdicts?

24 JUROR: Yes.

25 CLERK: Shelley Robinette, as to the verdicts,

1 were these your verdicts and are they still your
2 verdicts?

3 JUROR: Yes.

4 CLERK: Rupert Godshall, as to the verdicts,
5 were these your verdicts and are they still your
6 verdicts?

7 JUROR: Yes.

8 CLERK: All jurors are polled, Your Honor.

9 THE COURT: Thank you, Madame Clerk. Anything
10 additional for the jury, Mr. Bax?

11 MR. BAX: No, Your Honor.

12 THE COURT: Thank you very much.

13 Mr. Foreman, and ladies and gentlemen of the
14 jury, I never commend nor criticize a jury for their
15 verdict. However, I will say if you ever find yourself
16 part of the system, by way of witness or otherwise, that
17 the jury selected in that matter would be as focused and
18 deliberate and pay as close attention as y'all have to
19 all of the parties, all of the witnesses, all the
20 evidence during the trial of this case.

21 We could not be about the very important
22 duties and responsibilities we have down here in
23 functioning in our judicial justice system without
24 y'all's input.

25 I realize y'all are not volunteers. I said

1 that before. It's probably the last bastion of draftees
2 in America. However, it's very important service that
3 you render to your community, to your county, and to
4 your State. I salute you for it, and we all appreciate
5 it very much.

6 With that being said, you have a protection
7 from jury service for the remainder of this calendar
8 year in a State circuit court of record. It doesn't
9 protect you from magistrate's court, federal court, city
10 court, and the various other courts that need jurors.

11 You have an additional two years which you
12 have an exemption if you wish to exercise it. In other
13 words, if you are called jury service next year in a
14 State circuit court of record, you can exercise an
15 exemption by saying: I served within the last three
16 years or whatever, whatever period of time.

17 Lastly I am going to release y'all for the
18 remainder of the work. Although we have other cases to
19 try, you have been here throughout this week.

20 Madame Clerk, I take it the check is in the
21 mail?

22 CLERK: Oh, yes, sir, most definitely.

23 THE COURT: The check is in the mail. It is
24 not enough to pay you for the service, the value
25 service, you render. I always tell people: Don't go

1 home tonight and get on the internet and book a cruise
2 or anything. The check won't even get you to Shull
3 Island. Keep that in mind.

4 It has been my pleasure and privilege to serve
5 with y'all this week. You may now be excused for the
6 remainder of the week. Thank you very much.

7 (The jury is excused).

8 THE COURT: Solicitor, do you have a
9 sentencing sheet?

10 MR. MOORE: No, sir, I do not. It will take
11 me about two seconds to get one.

12 THE COURT: All right.

13 (Pause).

14 THE COURT: Mr. Bax, do you have any motions?

15 MR. BAX: Yes, Your Honor.

16 THE COURT: All right, sir.

17 MR. BAX: Your Honor, at this time we would
18 renew all motions made during the trial, including the
19 directed verdict motion. We also move for a new trial,
20 and as a basis would be all motions and exceptions taken
21 during the course of this trial, Your Honor.

22 THE COURT: I would respectfully deny your
23 motions, and I would reaffirm all my trial rulings
24 during the course of the trial.

25 MR. BAX: Thank you, Your Honor.

1 THE COURT: Mr. Battle, if you would come
2 around, please.

3 (Pause).

4 THE COURT: What is the potential punishment
5 on the possession of a firearm during the commission of
6 a violent crime?

7 MR. BAX: Zero to five years, Your Honor.

8 THE COURT: Does that have to be consecutive?

9 MS. FULLWOOD: Not anymore.

10 MR. BAX: Not anymore.

11 THE COURT: I thought it was five years. I
12 was not sure about consecutive or concurrent.

13 Solicitor, anything additional prior to
14 imposition of the sentence?

15 MR. MOORE: Just briefly, Your Honor. The
16 Defendant is 32 years old. He's old enough to
17 understand the consequences for his actions. You are
18 very familiar with his prior record.

19 Now, after being convicted of an extremely
20 serious crime where he basically pointed a gun at
21 another human being and demanded money from her, not to
22 mention the fact the gun was loaded, Your Honor, we
23 would recommend the maximum sentence in this particular
24 case.

25 THE COURT: Thank you. Thank you, Solicitor.

1 Did the victim want to speak? Is she still present?

2 Yes, I see Ms. Morgan. Did she want to address the
3 Court?

4 MR. MOORE: Yes, she does.

5 THE COURT: You may come around, Ms. Morgan.
6 State your full name for the record again.

7 MS. MORGAN: Sandra Morgan.

8 THE COURT: Ms. Morgan, I would be glad to
9 hear from you.

10 MS. MORGAN: On that night when he came into
11 the store, he changed my world. It is scary now. I'm
12 always looking over my shoulder, where I wasn't doing
13 that before.

14 I am still -- sometimes I still get kind of
15 afraid at night when I'm at work, and I shouldn't have
16 to feel that way. So I do believe that he needs to have
17 the maximum sentences allowed for what he done to me.

18 THE COURT: Thank you, Ms. Morgan. Thank you
19 for being here.

20 Anything further, Solicitor?

21 MR. MOORE: No, sir, Your Honor.

22 THE COURT: Thank you. Mr. Bax.

23 MR. BAX: Thank you, Your Honor. As this is
24 following a jury trial, I know Your Honor is well aware
25 of the facts in this case and have heard from both

1 sides.

2 As you know, Your Honor, my client contends
3 that he is not guilty of this, but we respect the jury's
4 verdict and the process in getting to that point.

5 As the solicitor has stated, my client is 32
6 years old. Your Honor, he does have family here in
7 South Carolina. So there are people that help him and
8 support him when they can.

9 We were not able to get anybody up here.
10 That's more my fault than his as far as time wise.
11 There wasn't a lot of time to contact them because I was
12 busy doing these investigations on this case. I don't
13 want Your Honor to think that he doesn't have people out
14 there who care about him though.

15 In addition, Your Honor, I think this is worth
16 noting just from a practical standpoint. Prior to this
17 trial, Your Honor, I was actually at the Lexington
18 County Detention Center, was discussing the case with
19 co-counsel.

20 Federal agents of the Alcohol, Tobacco, and
21 Firearms heard me discussing the case and told me at
22 that time, just as a matter of courtesy, that U.S.
23 attorneys and federal prosecutors, as well as their
24 agency, were considering Mr. Battle for federal
25 prosecution.

1 I have discussed that with the solicitor in
2 this case, Mr. Moore. They discussed that with
3 Mr. Moore. Mr. Moore decided that he wanted to try this
4 case, and there have been no indictments.

5 But I do want to point it out to Your Honor
6 that in my discussions with Mr. Long with the federal
7 Public Defender's Office, he is still exposed to that,
8 regardless of a conviction on a gun charge here.

9 That is just to point out Your Honor that he
10 is still exposed to federal time. As Your Honor knows,
11 if he is serving an active State sentence, any sentence
12 that he may receive in federal court has to be run
13 consecutive based on the rules that the federal court
14 follows. So that's just something I think I should
15 point out for you to keep in mind.

16 Your Honor, we would ask for whatever leniency
17 Your Honor sees fit that is appropriate in this case.
18 We feel terrible about what has happened to the victims
19 in this case.

20 Myself and co-counsel spoke to Ms. Morgan when
21 we went by, just to look at the business and do part of
22 our job. She is just the nicest person in the world.
23 So we express our sympathies absolutely and completely
24 to the victims in this case.

25 That would be my presentation. I would ask

1 the Court to ask if my client wants to address the Court
2 at all.

3 THE COURT: Mr. Battle, I would be glad to
4 hear from you. Is there anything you would like to say?

5 THE DEFENDANT: No, I have nothing to say at
6 this time, Your Honor.

7 MR. BAX: Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Battle.

9 (Pause).

10 THE COURT: On Indictment 2007-GS-32-31,
11 Korell Battle, the jury having returned a verdict of
12 guilty of armed robbery, the Defendant is committed to
13 the State Department of Corrections for a determinate
14 term of 30 years.

15 On Indictment 2007-GS-32-30, Korell Battle,
16 the jury having returned a verdict of possession of a
17 firearm during the commission of a violent crime, the
18 Defendant is committed to the State Department of
19 Corrections for a determinate term of five years,
20 concurrent.

21 Good luck to you, Mr. Battle.

22 MR. BAX: Thank you, Your Honor.

23 (Pause).

24 THE COURT: Solicitor, do you want to make a
25 motion concerning the actual money in this case?

1 MR. MOORE: I do, Your Honor. We would move
2 at this time that the money be released to the custody
3 of the Irmo Police Department based upon the fact that
4 the money was simply marked for identification purposes
5 and not actually introduced into evidence.

6 THE COURT: Do you have any objection to that,
7 Mr. Bax?

8 MR. BAX: I have no objection, Your Honor.

9 MS. FULLWOOD: None, Your Honor.

10 THE COURT: Thank you. So ordered.

11 MR. MOORE: Thank you, Your Honor.

12 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 1st and 2nd days of May, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 10, 2007

L. Coconut Pantsari

Court Reporter

WITNESSES

IRMO
Franklin, S.

DOCKET NO. 2007-GS-32-0231

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2007

THE STATE
vs.
Korell Robert Battle

A-2006-32-02727

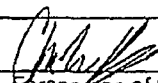
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ARREST WARRANT NUMBER

I206144

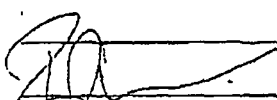
TRUE BILL

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date: 1-8-07

VERDICT

Guilt


Foreperson of Petit Jury

5/2/07
Date:

CDR# 0139

Indictment for
Armed Robbery
§16-11-330(A)

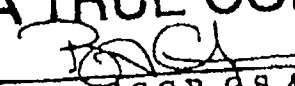
DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

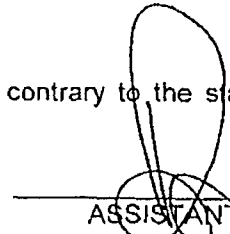
INDICTMENT FOR
Armed Robbery
§16-11-330(A)

At a Court of General Sessions, convened on January, 2007, the Grand Jurors of Lexington County present upon their oath:

That Korell Robert Battle did in Lexington County on or about October 13, 2006, knowingly and willfully while armed with a deadly weapon or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did feloniously take from the person or presence of Sandra Morgan and/or other employees of Kentucky Fried Chicken, by means of force, threats or intimidation goods or monies being described as follows: US Currency, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.O.

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



ASSISTANT SOLICITOR

WITNESSES

IRMO
Franklin, S.

DOCKET NO. 2007-GS-32-0030

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2007

THE STATE

vs.

Korell Robert Battle

A-2006-32-02727

11/28/2006 3:21 PM

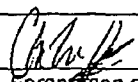
ARREST WARRANT NUMBER

1206148

TRUE BILL

ACTION OF GRAND JURY

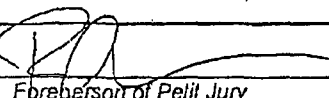
CDR# 0549


Foreperson of Grand Jury

Date: 1-8-07

VERDICT

Guilty


Foreperson of Petit Jury

5/2/07
Date:

Indictment for

Possession of Firearm or Knife during
Commission of Violent Crime

§16-23-490

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of Firearm or Knife during Commission
of Violent Crime

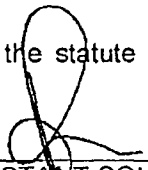
§16-23-490

At a Court of General Sessions, convened on January, 2007, the Grand Jurors of Lexington County present upon their oath:

That Korell Robert Battle did in Lexington County on or about October 13, 2006, knowingly and willfully possess a firearm, or visibly display what appeared to be a firearm, during the commission of a violent crime, to wit: Armed Robbery, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

AA TRUE COPY
JUL 13 2007
LEX. CO. C.C.C.P., U.S. S. C.D.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.AKA: Knoll Kettle

Race: _____ Sex: _____ Age: _____

DOB: _____ SS# _____

Address: _____

City, State, Zip: _____

DL# _____ SID# SC01473910INDICTMENT/CASE# 07-GS-32-31AW#: 1206144Date of Offense: 10-12-06S.C. Code §: 11-11-330(A)CDR Code #: 139

SENTENCE SHEET

A TRUE COPY

Lex Co. C.C.P., G.S. & P.C.

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Dennis Kettlein violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 139☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)☐ §17-25,45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$
\$	\$125.00

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: 2111415Sentence Date: 2 MAY 2007Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

Korell Battle vs State

AKA:

Race:

Sex:

Age:

DOB:

SS#

Address:

City, State, Zip:

DL#

SID# SC01473910

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

07-GS-32-30

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Poss of a Firearm During Com of Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 549☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ 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	\$100.00
\$100	\$100.00
\$12	\$12.00
\$500	\$500.00
\$25	\$25.00
\$100	\$100.00
\$50	\$50.00
\$40/ea	\$40.00
\$	\$

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.

[Signature]
Clerk of Court, Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
2111415
2 MAY 2007

ORIGINAL

FORM 5

RESCANNED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Lexington

FILED

TRUE COPY

Korell Battle #292294

Full name and prison number (if any) of Applicant

2010 MAY 19 4:28

Lex. Co. C.C.P., G.S. & E.O.

v.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

State of South Carolina

POST-CONVICTION RELIEF

2010CP3202120

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 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS -
LIEBER CORRECTIONAL INSTITUTION.
2. Name and location of Court which imposed sentence LEXINGTON COUNTY JUDICIAL
CENTER 205 EAST MAIN STREET
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) TRUE BILL INDICTMENT 2007-GS-32-0031 "ARMED ROBBERY"
(b) TRUE BILL INDICTMENT 2007-GS-32-0030 POSSESSION OF
A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME.

closed CA file #20074193; 354; 80019

11
AWL

ATTORNEY GENERAL'S OFFICE

RECEIVED 06/09/2010

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END
HAVE COPIES MADE
ROUTE TO
ORDER TRANSCRIPT
PEN RECORDS CLERK RECORDS
OTHER

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) MAY 2, 2009 - Armed robbery - 30 YEARS
 (b) MAY 2, 2009 - Possession of Firearm - 5 YEARS Concurrent.

2010-MAY-19 3:428

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
 (b) after a plea of not guilty 1 Plead Not guilty, Later found guilty.
 (c) after a plea of nolo contendere

BETH A. CARRIGG
CLERK OF COURT

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. THE SOUTH CAROLINA COURT OF APPEALS - Direct Appeal.

(b) the result in each such Court to which you appealed:

- i. AFFIRMED - MAY 27, 2009

(c) the date of each such result:

- i. MAY 27, 2009.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. AFFIRMED Pursuant to Rule 220B, SCACR. CITED: STATE V JOHNSON 381 SE 2d 732.
CITED: STATE V JACKSON 613 SE.2d

9. If you answered "no" to (7), state your reasons for not so appealing:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: FILED

- (a) THE TRIAL COURT ERRED IN RULING THAT THERE WAS NO BATSOD VIOLATION
 (b) I WAS DENIED A PRELIMINARY HEARING IN A CARRIAGE
 (c) THE TRIAL COURT ERRED IN ALLOWING SOMEONE TO BE BATSOD CONVICTED
FOR IMPROPER PURPOSES?

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) BATSOD V KENTUCKY 106 S Ct 1712 (1986) PROHIBITS THE USE OF. (CONTINUE)...
 (b) I WAS ARRESTED FOR DVS ON 10/13/2000. NEXT DAY ON 10/14/2000 (CONTINUE)...
 (c) IN 1996 IN COLORADO STATE I WAS CONVICTED OF ATTEMPTED RAPE (CONTINUE)...

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" in any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____

10. STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY:

FILED

(D). I received INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN THAT COUNSEL FAILED TO CROSS EXAMINE ALL DISPATCHES MS. OFFICER 2010 MAY 19 WARD 4288T WHETHER OR NOT IF SHE TOLD OFFICER MURKOWSKI THAT MY LICENSE WAS SUSPENDED. BETH A. CARRAGG CLERK OF COURT LEXINGTON SC

(E). I received INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN THAT COUNSEL FAILED TO OBJECT TO EVIDENCE THAT WAS OFFERED INTO EVIDENCE INSPITE OF REQUEST UNDER BRADY V. MARYLAND 83 S Ct 1194

(F). THE TRIAL COURT ERRED IN ALLOWING A INADVERTENT STATEMENT PERTAINING TO \$800.00 OF MY MONEY INTO EVIDENCE WHICH ONLY SOUGHT TO PREJUDICE ME IN FRONT OF JURY AND WHICH MADE PREJUDICIAL EFFECT OUTWEIGHED ITS PROBATIVE VALUE.

(G). THE TRIAL COURT ERRED IN VIOLATING MY RIGHT TO CALL WITNESSES, AND ERRED IN GRANTING REQUEST FOR A CONTINUANCE THUS VIOLATING MY DUE PROCESS RIGHTS UNDER S.C. CODE OF LAW 17-23-60 / S.C. CONSTITUTION ARTICLE 1 § 14 / 14TH AMENDMENT TO U.S. CONSTITUTION.

(H). THE TRIAL COURT ERRED IN ALLOWING SOLICITOR TO QUESTION ME ON WHY I DID NOT MENTION JAY OR MURKOWSKI IN A LETTER TO SOLICITOR JUDGE CENSORED MY LETTER AND VIOLATED MY RIGHT TO FREE SPEECH AND EXPRESSION IN NOT LETTING ME SEND LETTER IN WHOLE.

(I). THE TRIAL COURT ERRED IN FAILING TO INSTRUCT JURY ON MY DEFENSE OF AUBI INSTRUCTION

(J). THE TRIAL COURT ERRED IN FAILING TO INSTRUCT JURY ON MY DEFENSE OF LARCENY AND CONSPIRACY INSTRUCTION AND POSSESSION OF WEAPON DEFINITION INSTRUCTION; AND ATTORNEY WAS INEFFECTIVE IN NOT REQUESTING CONSPIRACY/LARCENY INSTRUCTIONS

K. I received Ineffective Assistance of counsel at trial in that counsel failed to object to solicitors closing argument comments in reference of ~~efforts~~ calling me criminal/convict continually which was done only to inflame the passions or prejudices of the jury.

L. Trial court Erred in denying Pretrial motion Based on suppression of the Evidence that resulted from Arrest

M. Trial court Erred in denying motion for Direct Verdict?

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

FILED

2010 MAY 19 P 4:28

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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?

nb

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

Table of Authorities

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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Summer v State 439 SE 2d 842 (SC 1994)

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3J

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3Q

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3R

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3S/3T

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3T

3T

3U

3U

3W/3H

3W

3W

II.

(A).... continue... Peremptory strikes in a racially discriminatory manner. In my case, solicitor Moore struck Juror 123 a Black female name Paula Purdie. My attorney Mr. Bax moved under Batson regarding the strike the 20th day of February 1987. He said she was the only African-American female that was called, and that was a strike that they used, (see pg 21 of transcript). ^{BETH A. CARRIG} ^{CLERK OF COURT} ^{LEAFLETION} say he struck this juror because she is "Unemployed." My attorney Mr. Bax stated Judge Keesley did the qualifications of the general jury, which in fact this juror stated that she was employed at Lowe's. He said while she may have been unemployed at the time that she gave this return, she is employed currently, and that Mr. Moore was present at those qualifications as well, (pg 22). My attorney Mr. Bax argued that there was 1 or 2 other jurors not employed that were put on the jury and were not struck by the state. He said he don't feel that satisfies the requirement in this case, for that reason, especially since she is employed as she stated during the general qualifications. The judge asked Mr. Bax to direct him to the other jurors unemployed. Mr. Bax stated Juror 147 who lists "retired, disabled" under the occupation portion of the return. The judge said take "retired, disabled" very different from unemployment, (pg 23). Solicitor Moore say during qualifications he was informed that a couple people were waiting on him and things needed to be done and there is a Black in his qualification sheet where he didn't get hardly any information on anybody, and that what he went on was the returns that the jurors sent in. The judge said the question becomes or the question is whether or not that is a race neutral reason for striking the juror with the solicitor's belief that the juror is employed, and that belief is obviously reasonable based on her return. My attorney Mr. Bax stated, "He think if you look at the totality of the circumstances in Ms. Purdie's case, he see where there is a suspicion that arises. Number 1, she's an African-American female under the age of 30 and she lists her address at Bldg 2435 Gled Road. You take that as a totality of circumstances, all those facts into consideration, it does raise a suspicion about the reason for striking Ms. Purdie. Based on whether or not she is unemployed at the time of the return, she is employed now. The problem arises that she is African American, she is under the

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	3XX
	3YY

Age 30, and she lives in an area where there is a lot of poverty and there is a lot of crime in that area. That was the reason for the Batson motion because all those facts taking into totality certainly give rise to the idea that there may have been some other reason, and that's why we made the motion." The judge denied Batson motion under state v martinez 362 SE.2d 641, and state v Lewis.

In state v Smith 464 SE.2d 57 (S.C. App 1996) court said if the proffered reason is facially valid, the challenging party has the burden of showing race was the real reason for the strike and the reason was mere pretext. State v Byar - SC - 452 SE.2d 603 (1994). One means of demonstrating pretext is to show the allegedly neutral reason was not applied in a neutral manner. Sumpter v State 439 SE.2d 842 (1994).

I argue that solicitor Moore's reason for striking Juror 123 for being unemployed was nothing but a pretext for his real reason which was a racial one. As my attorney Mr. Box correctly pointed out, there was another Juror number 149 named Mr. Broadus Smith, a white European-American male who listed "retired, disabled" under the "occupation" portion of the return. "Occupation" means a type of job a person is employed at, and this Juror return lists only 2 scenarios and that is either you're employed or you're not employed. There is no 3rd scenario. This Juror did as his occupation he is "retired/disabled". This is equivalent and synonymous to "unemployed". He is not employed no where and was still allowed to sit on the jury. Ms. Purdie was employed and was not allowed to sit on jury. This is clearly a racial discriminatory strike. If solicitor Moore's reason for striking Ms. Purdie cause she listed "unemployed" under occupation section, then he should've struck the white man Mr. Broadus Smith for he also listed he was "unemployed" under occupation but he simply phrased his unemployment as "retired/disabled". So I believe the judge erred in denying this motion. The solicitor's reason was not race neutral, it was a pretext (lie) to cover up his true reason for striking Ms. Purdie, because she was a dark-skinned Black female. If my attorney knew from looking at the qualification of the general jury that she was employed at Lowe's, then why didn't solicitor Moore know? And as my attorney stated

"Based on whether or not she is unemployed at the time of the return, she is employed now!"

FILED

NOTE: AFTER THE JURY DELIBERATED OR WAS DELIBERATING IN MY CASE IN JURY ROOM. ANOTHER CASE WAS GETTING STARTED OF PICKING JURY 2009 MAX WHITE 4/28 ACCUSED OF A SEXUAL CRIME. HE HAD A PAID ATTORNEY WHO WAS ~~WELL KNOWN~~ ^{STANISH} THE SOLICITORS WERE 2 WOMEN. NO PURDIE, THE BLACK FEMALE ^{CLERK OF COURT} ~~DESK~~ ^{CLERK OF COURT} FROM MY JURY WAS ALLOWED TO SIT ON THE WHITEMAN'S JURY! THIS CLEARLY SHOWS RACIAL DISCRIMINATION AND UNEQUAL TREATMENT, AND DEPRIVED ME OF A RACIALLY BALANCED JURY. FOR THE FOREGOING REASONS THIS RACIAL VIOLATION SHOULD WARRANT REVERSAL OF MY CONVICTION. THANK YOU.

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(B)... CONTINUE... I WAS SERVED MULTIPLE FELONY CHARGES, ON 10/15/2006 I WENT BEFORE A BOND HEARING AND WAS GIVEN A FORM I SIGNED TITLED "Preliminary Hearing / Statement of Rights Form". This form says I am entitled to a Preliminary Hearing, and I must request Preliminary Hearing within 10 days of this notice or lose my right to such hearing, and I may request such hearing by completing the lower section of that notice and returning it to the court either in person or by mail to the same municipal court address.

I filled out lower left section by writing my name / Jail Address and said I did not have an attorney yet. I kept the pink copy and since I was new in jail and all my money was seized that I did not have an envelope to put form in and mail to court, and jail officers would not give me an envelope. They told me to fold it in half and write address on it and it would go out to court that way.

Well I never receive no Preliminary Hearing! I still have my pink copy I filled out, I did not get to cross examine state witnesses / officers.

The DVS charge I was originally arrested for was later dismissed on 10/22/2009. This could have been dismissed at the preliminary hearing which could have given me arguable grounds for felony charges. I did not waive my right to preliminary hearing.

I believe I should be entitled to appropriate relief for this denial.

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(C)... CONTINUE... and given 6 Years non-violent sentence. Under mandatory Parole Law of Colorado I was released on Parole after 1/2 sentence served and let out of Prison 1999, and in 2002 finished sentence on streets.

The SC. Court of Appeals in 1994 of State v Jarvis 450 SE2d 606 say A Prior conviction for Moral Turpitude may be used to impeach the credibility of a witness if the conviction is not too remote in time, citing Horton v State 411 SE2d 223 (1991); State v Johnson 248 SE2d 313 (1998). They say in State v Hill, our Supreme Court Affirmed the Trial Court decision to exclude a 10 year old conviction, noting that the previous conviction was too remote to possess the requisite value for admission. State v Hill 234 SE2d 219 (1997) 98 SC 211 Hill v SC (1997).

However, the court found no error in admitting evidence of a conviction over 10 years old, when only 4 had elapsed since the defendant's release.

In BATES case, I argue that the attempted Burglary from Colorado Jurisdiction is too remote in time for impeachment purposes in that from 1996 of conviction year to 2006 is 10 years! And since I was released from confinement in 1999 on that conviction then from 1999 to 2006 is 8 years! The SC. Court of Appeals say in State v Jarvis 450 SE2d 606 (1994) that there is no fixed time in this state after which a conviction becomes too remote.

My conviction is over 10 years old at time of Trial in 2006 and 8 years had elapsed since my release from confinement.

In State v Jarvis the court of Appeals said in reference to State v Hill 234 SE2d 219 (1997) that court found no error in admitting evidence of a conviction over 10 years old when only 4 years had elapsed since the defendant's release.

So if you compare my case to that case - 8 years, not 4 years, have elapsed since my release from confinement in 1999. This conviction became too remote after 8 years of me being released from confinement to be relevant and should not have been used.

As for other case of "General Conspiracy". In 2003 in South Carolina I plead guilty to General Conspiracy and the original charge I was charged with of Armed Robbery was dropped. ~~General Conspiracy was dropped because it was a lesser offense than Armed Robbery, and the court found me guilty of Armed Robbery.~~ General Conspiracy, and Armed Robbery under 16-11-330, are 2 totally separate and distinct crimes. Armed Robbery might be considered Moral Turpitude, but I argue General Conspiracy is not Moral Turpitude. In South Carolina state v Ball 354 SE.2d 906 (SC 1987) court say a "crime of Moral Turpitude is an act of baseness, villainess or depravity in the private and social duties which man owes to his fellow man or to society in general, contrary to the customary and accepted rule of right and duty between man and man." There are many different types of conspiracy laws in S.C. code of laws but all are not the same. General Conspiracy is a crime alone and separate by itself. It is called "General Conspiracy", not "General Conspiracy to commit Armed Robbery". So I believe if General Conspiracy under 16-17-410 is not Moral Turpitude then it should never have been used to impeach me. (SEE PAGES 89-94 of Trial Transcript).

Also in error is what the court said ... Court say "It does appear on this, Mr. BAX, that they used the same indictment number on the sentencing sheet for general conspiracy that is on a True Bill indictment for Armed Robbery." Firstly of the True Bill indictment for Armed Robbery the Docket Number is 2002-GS-40-0422. I was not convicted of this crime, nor plead guilty to Armed Robbery. Instead I ~~was~~ was offered a Plea Bargain. I Plead Guilty to General Conspiracy and received 4 years non-violent sentence. Now on the indictment for General Conspiracy this was never presented to the Grand Jury for a True Bill, but they still typed the Docket Number of 2002-GS-40-0422 on that indictment which is same Docket Number as for the Armed Robbery indictment which is same Docket Number used on sentencing sheet. They did this simply because both Armed Robbery and General Conspiracy were both under same docket. But just because they were under the same Docket Number that doesn't make General Conspiracy under 16-17-410

a crime of Malice Turpitude, or crime of Dishonesty

(ii). state concisely and in the same order the facts which support each of the grounds set out in (i):

(D) on 10-13-2006 OFFICER MAJEWSKI did a license check on my Drivers license. HE say the Dispatcher told him that my Drivers license was suspended for me failing to pay a fine. He charged me for that and did Max search my car and found Evidence of Armed Robbery crime. At my trial during suppression hearing "I saw camera direct, MAJEWSKI say I wanted him my information and he ran it through Dispatch and it came back suspended (Pg 36 Transcript). And "I saw camera direct MAJEWSKI say that information he got from Dispatch was that I was driving under suspension for unpaid traffic ticket and it ended in definitely. (See Pg 63 Transcript). Then later on "ReDirect Examination" MAJEWSKI say Dispatch advised him I was driving under suspension for an unpaid traffic ticket. (Pg 171 Transcript). MAJEWSKI Additional Narrative "He say Dispatch told him I was Div. 8 for an unpaid traffic ticket. I asked my attorney to question the Dispatcher on whether or not it was really told MAJEWSKI my license was suspended. Ms Sherry Wood-ward the Dispatcher got on stand and was questioned by Solicitor, but not one time did he ask her about whether or not if she told MAJEWSKI

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my license was suspended. After he rested, ~~the judge asked my attorney MR~~
~~Bay~~ He say ... "No questions your Honor."
 The Judge say ... "Thank you, solicitor, MR BAY." My attorney say ...
 "No questions your Honor," (Pg 136 TRANSCRIPT) 2010 MAY 19 P 4:29-

My argument is that the information from Dispatcher that ~~matlewski~~ say
 he received of my license being suspended ^{BEYOND A REASONABLE} testimony coming
 from matlewski. He's telling us that this is what he heard. I wanted
 to hear from Dispatcher myself say out of her mouth that she told
 matlewski my license was suspended, but when it came time for MR
 BAY to question her he say "no questions your Honor." The 2 Prong Test
 for ineffective assistance of counsel is ... (1) that counsel's representation
 fell below an objective standard of reasonableness; and (2) that but
 for counsel's error, there is a reasonable probability the result would
 have been different. *Martinez v State* 403 SE2d 113 (1991)

A reasonable probability is a probability sufficient to undermine confidence
 in the outcome. *Martinez v State*; *Supra* [quoting *Strickland v Washington*
 104 S Ct 2052 (1984)].

If the Dispatcher would have got on that stand and would have said
 "No" she did not tell matlewski my license was suspended or that my
 license was ~~suspended~~ not suspended then that would have probably
 got all the evidence suppressed or other outcome in my favor, this could
 have possibly got the case dismissed! My attorney just "assumed" that
 matlewski was being truthful. I do not believe matlewski, and I believe
 he was lying. I believe the Dispatcher never told him my license
 was suspended. And to prove this there was only one way to find
 out and that is to ask the Dispatcher. But my attorney did not do this.
 I believe my attorney representation fell below an objective standard of
 reasonableness and if it was not for his error on the issue that there
 is a reasonable probability the result would have been different. I was
 severely prejudiced by counsel's failure to question Dispatcher. Also, the
 South Carolina rules of evidence define Hearsay as a statement, other than one
 made by the declarant, while testifying at the trial or hearing, offered
 in evidence to prove the truth of the matter asserted. Rule 801(c) S.C.R.E.
 In *State v Williams* 331 SE2d 354 (S.C. App 1985) the rule against Hearsay
 prohibits the admission of Testimony (or written evidence) of a statement

MADE OUT OF COURT, OFFERED IN COURT TO PROVE THE TRUTH OF THE MATTER.
EXCEPTED, UNLESS AN EXCEPTION TO RULE 15 IS APPLICABLE.
11 STATE V BULLEN 510 SE.2d 226 THE COURT SAY THIS WAS ERROR IN
ADMITTING HEARSAY TESTIMONY OF POLICE OFFICER AND OBTAINED MATCH WITH A SUSPENDED
NAME AND DATE OF BIRTH TO DISPATCHER AND TESTIMONY OF STAFF AND IN REPORT IS
LICENSE. THIS PROVES THAT MATJEWski WAS NOT SUSPENDED ON 10/4/2006, SO IF IT
HEARSAY. ANOTHER REASON WHY I BELIEVE MATJEWski WAS NOT SUSPENDED ON 10/4/2006, SO IF IT
PERRY COUNTY WAS PULLED OVER FOR SPEEDING ON 10/4/2006 BY HIGHWAY
PATROL OFFICER MR GENTRY COLUMBUS UNIT 2299 WAS DISPATCHER WAS CHECKED
MY DRIVER'S LICENSE FOR HIM AT 19:56:58 WAS KymcBRIE, INCIDENT NUMBER
GWT00BCAD035939, SHE TOLD HIM MY LICENSE WAS "NOT SUSPENDED"
BUT "CLEAR" MEANING VALID! SO THIS PROVES BY CLEAR AND CONVINCING
EVIDENCE THAT MY LICENSE WAS NOT SUSPENDED ON 10/4/2006, SO IF IT
WASNT SUSPENDED ON 10/4/2006 THAT WOULD MEAN IT COULD HAVE BEEN
SUSPENDED ON THE "PROPOSED SUSPENSION DATE" OF 9/26/2006, CAUSE IT
IT WAS SUSPENDED ON 9/26/2006 THEN WHY WOULD DISPATCHER SAY IT WAS
SUSPENDED ON 10/4/2006 IN NEWBERRY?? BUT HERE IS BROWN MATJEWski
IN IRMO ON 10/13/2006 SAYING THE "DISPATCHER" SHERRY WOODWARD TOLD
HIM MY LICENSE WAS SUSPENDED FOR AN UNPAID FINE. THIS UNPAID FINE
WAS A CHARGE HE CHARGE ME WITH ALONG WITH D.U.S. BUT BOTH OF THESE
CHARGES WAS LATER DISMISSED ON 8/22/2007 BY HONORABLE MR JOE EPPS
IN TOWN OF IRMO COURT. REASON WHY THEY WERE DISMISSED IS BECAUSE I
HAD IN FACT "PAID" THE FINE TO CITY OF FOREST ARRES COURT ON 9/1/2006!
9/1/2006 IS 1 MONTH AND 13 DAYS BEFORE MATJEWski WAS ARRESTED ME
ON 10/13/2006, BUT YET HE SAY DISPATCHER TOLD HIM IT WAS UNPAID?
I BELIEVE IT WAS SERIOUS ERROR FOR MY ATTORNEY TO NOT QUESTION
SHERRY WOODWARD, FOR THE FOREGOING REASONS I ASK FOR APPROPRIATE RE-
LIEF RELATING TO THIS CLAIM, OR REVERSAL

11.
(E).

I receive ineffective assistance of counsel at trial in that counsel
failed to object to figures that was offered into evidence which was
inappropriate.
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11.

(E)... CONTINUE... offered into evidence during middle of Trial. Attorney Bax
I Believe Filed a motion for Discovery and disclosure of Evidence, and
I Believe He requested Information of "PHOTOGRAPHS" WITHIN Possession, custody
or control of the PROSECUTION WHICH are material ^{WITH THE PROSECUTION} to the PROSECUTION of the defense
or are Intended for use by the PROSECUTION as evidence ^{CLERK OF COURT} at the trial.

This information should've been requested pursuant to rules 5 and 6 SCR crim P.,
Prady v Maryland 83 SC 1194 (1963). This information in particular
requested was essential to insure the defendant's right to a fair trial
and due process of law and fundamental fairness guaranteed by the South
Carolina Constitution Art 1 ss 3 and 14, and 14 amendment to US Constitution.

In my case the solicitor office did produce certain information prior to
trial, but did not produce at 1 photo prior to trial. Now all through
out the trial the PROSECUTION chief witness officer Brian Majewski swore
under oath that there was no light on the side of the store. on Pg 31
He say, "It was pulled into the parking spot on this side with the hood up.
This section of the building is not lit up, and normally no one parks
in there" and "normally no one ever parks there because there is
not a street there was not a street light at the time, so this section
of the parking lot is dark," (on Pg 3a transcript), He say... "which
there is no lights in that section of the parking lot. no one parks there."
Then on Pg 15a of transcript he say, "since they didn't have a street
light lighting this area, no one usually ever parked there."

He actually had the jury believing he was telling the truth of there
being no light there. During direct cross of Scott Franklin, solicitor
offered pictures into evidence of state's exhibits number 31-39
(Pg 20a transcript) my attorney asked to look at the pictures and he
got up from table walked over to prosecutor and looked at pictures, he
didn't let me look at them. After attorneys conferred he say "No
objection your Honor". I heard my attorney Mr Bax whisper
to his partner Mr Beth followed that there was a light in the parking
lot by trees where my car was parked. The solicitor put pictures on
a projector and there was in fact a huge light there. so this
35

Contradicts majewski testimony and shows he had no reason to be suspicious of my car which was legally parked in public parking lot of a gas station. I was not violating the law being parked there as my attorney mr Bax did correctly point out during the pretrial motion ... ~~PROSECUTOR'S REQUEST~~ "I believe this was a pull based on a hunch. It was a very good hunch, but it was still a hunch ... those are not reasons for articulable suspicion. Those are not the basis for any kind of reasonable suspicion of illegal activity because none of those activities are illegal. None of those activities are even suspicious of even unreasonable for any federal citizen to be doing (eg 10/10 transcript). Then he say ... "However, we cannot just generally in law refer to some thing as suspicious without giving reasons why I think that is the what basis for this area of the law. You have to have some reason why some thing is suspicious. There has not been any reason given why this is suspicious. He referred to it as a suspicious red car. Why is it a suspicious red car? What made this particular red car or this particular cadillac or this particular sedan stand out among other red cars or sedans or cadillacs that made it suspicious versus others? That has not been articulated" (pg 101/103 transcript).

I applaud mr Bax in some of his arguments, but this is one particular issue I feel his representation fell below a an objective standard of reasonableness and there is a reasonable probability the result would have been different if he would have pointed to the pictures and showed the jury that the officer was lying. During my trial the state elicited uncontested testimony which created an inference that my car was sitting in a dark parking lot on side of gas station with hood up where there was no light, thus was suspicious. The pictures which mr Bax requested contained evidence of a light in the parking lot. Although someone had the pictures, counsel never received them and did not learn of their existence until trial. These requested pictures if disclosed might have affected the outcome of the trial, and the generally requested pictures, if disclosed might have created a reasonable doubt that did not otherwise exist. I feel counsel was ineffective in not objecting to pictures and not pointing the evidence of light out to jury. I request

Appropriate Relief for His Denial of Due Process.

FILED

2010 MAY 19 P 4:29

11.

(F), ON 10-13-2006 K.F.C. WAS ROBBED BY A GUY ^{CLERK OF COURT} WHO GAVE ME A RIDE TO. HE LEFT THE BAG WITH MONEY IN BACK OF MY CAR. ^{CLERK OF COURT} I WAS ARRESTED FOR D.V.S. MY CAR WAS SEARCHED AND MONEY OF K.F.C. WAS FOUND. MY WALLET CONTAINED \$800.00 OF CASH IN IT OF MY OWN MONEY WHICH POLICE SEIZED. OFFICER MAJOWSKI TOLD ME THAT K.F.C. WAS ROBBED AND THAT THE MONEY IN MY CAR WAS K.F.C. SO I HAD KNOWLEDGE OF THIS FROM HIM BEFORE BEING TRANSPORTED TO JAIL. ON 10/14/2006 OFFICER SARK JIM SAULS CAME TO THE JAIL AND SERVED ME FELONY WARRANTS FOR ARMED ROBBERY/ETC. I ASKED HIM ABOUT MY CAR WHICH WAS TOWED, AND I ASK ABOUT MY WALLET WHICH I SAW POLICE TAKE OUT OF MY CAR AND SIT ON TRUNK AND THEY TOOK MONEY OUT OF MY WALLET AND PUT IT NEXT TO THE MONEY OF K.F.C. AND YUP, ETC. SO I ASKED HIM "WHAT ABOUT MY \$800 THAT WAS IN MY WALLET?" HE SAID IT WAS SEIZED AS EVIDENCE UNTIL FURTHER INVESTIGATION. I SIMPLY TOLD HIM "THAT'S MY MONEY AND NOT K.F.C. MONEY AND HOW COULD I GET IT BACK?" THAT'S WHAT I SAID! JIM SAULS ASKED ME IF I HAD ANY QUESTIONS AND I ASKED 2 SIMPLE QUESTIONS ABOUT MY CAR AND MY MONEY. I WAS TAKEN TO JAIL AND I NEEDED MY MONEY WHILE I WAS THERE TO BUY HYGIENE/PEN/PAPER/ENVELOPES/FOOD AND WITHOUT MONEY. THEN I CANT DO THAT. DURING MY TRIAL THE SOLICITOR CALLED JIM SAULS AS A WITNESS TO OFFER HIS STATEMENT INTO EVIDENCE OF WHAT I SAID TO HIM AT JAIL ABOUT MY CAR AND MONEY. MY ATTORNEY MR. BAX OBJECTED BUT JUDGE ALLOWED IT AND DENIED MY ATTORNEY MOTION. JIM SAULS TESTIFIED AND MY ATTORNEY CROSS EXAMINED HIM AND ASKED HIM "OFFICER SAULS, THESE WARRANTS WERE IN REFERENCE TO THE INCIDENT AT THE K.F.C. CORRECT?" JIM SAULS SAID "YES".

NOW AS MY ATTORNEY ARGUED HE SAID HE JUST THINK ON A BALANCING TEST, THAT'S NOT NECESSARILY AN "INCULPATORY STATEMENT" OF ME SIMPLY SAYING THAT WAS MY MONEY, AND THAT I CERTAINLY KNEW AT THAT POINT WHAT THEY WERE ACCUSING ME OF AND IT'S NOT NECESSARILY AN ADMITTANCE OF GUILT. SO IT WOULDN'T NECESSARILY BE A STATEMENT AGAINST INTEREST, AND ITS

Prejudicial Effect would certainly far outweigh its probative value in that situation because we know exactly what it will be argued as. However, that is taken very much out of context at the very least, (Pg 30-31). And later he say ... "Your Honor we still would still move to exclude it based on the fact that I feel that it would not fall under -- general statements made by a defendant would come in under statements against interest. However, this statement as I argued before, I do not think is necessarily inculpatory and as a result would be hearsay that I don't think would fit into any exception. In addition to that, your Honor under a balancing test here under 401, your Honor, I don't think that it would fall within relevant evidence." The judge deny ed the motion.

Now as my attorney correctly stated above the Prejudicial effect would certainly far outweigh its probative value in that if submitting this statement only serves to prejudice me and raise risk of a guilty verdict. That's the only reason why solicitor submitted it. It served no purpose except to sway the jury.

Now even though I've been found guilty and convicted of Armed Robbery / gun charge and K.F.C. retrieved its money back stolen, the \$80.00 I said "was mine and not K.F.C." is indeed mine! The \$80.00 is at the Icm Police Department right now waiting to be released to me. I'm locked up in prison so what no way I can simply walk out of here and go get it. But my point is the money of \$80.00 was mine, I have a right to freedom of speech to say "That's my \$80.00 and not K.F.C." That's my property in which I have a constitutional interest under 14th Amendment. I believe it was error for Judge to allow this non-relevant evidence into evidence against me. I ask for appropriate relief for this error.

II.
(G). During Trial the Judge said to me ... "In that regard, you may call witnesses to testify", (Pg 200 Transcript). I asked the Judge ... "Yes, I got 1 question for you sir. In the beginning you said I have

"The right to call witnesses?" Judge said "YES". I said "... I am making sure I heard THAT!" Judge said "... You HAVE a right to call -- at this stage you HAVE a right to call witnesses and present a defense. You HAVE a right to testify. You HAVE witnesses 19 and 29 can testify. That's not a choice between the two." (pg 225/228 transcript).

Now at the Lexington county Jail there is a ^{BETHA LARRIGG} ^{CASEY COURT} ^{LEXINGTON JAIL} so I had no knowledge of rules of court or laws. So when I asked Judge "Do I have a right to call witnesses during middle of trial and he said 'yes' then I thought it did not matter if I told my attorney about witnesses during or after trial. How was I was I suppose to know I should have told him sooner?? After court rested, I informed attorney of 2 possible witnesses name "marcus frielov" who was in Lexington Jail on one count of failure to stop for a blue light. He was transported to court and had a hold on him by federal marshals, but they still transported him. At the court house, he caught a case of amnesia and said he had no knowledge or memory of that and refused to testify. Other witness was "glenn matter" who was also at jail on pending federal charges he had just got locked up on that same year of march 2002, a month and a few days before my trial. Now all of us were in different units during my trial. On the day I went to trial I saw both of them in the holding cell. I asked them real names and told them I was gonna call them to my trial to testify about a day when we was all together in colony ATO and they saw Jay with the scream mask chasing kids around and saw him with a gun he was trying to sell. I did not know my 2nd witnesses full names until the day of trial! All three of us are in Richard county-columbia area. But here we were way out in Lexington county on pending charges in jail, in different units, so how was I suppose to know their names and provide my attorney with names in advance?? I provided him the names once I discovered their names. My attorney moved for a "continuance" in order to explore what information mr matter may or may not have, ~~and~~ ^(pg 230 transcript) the judge asked my attorney how long he represented me and attorney

Told him my case was opened with Public Defender office, October 24, 2006. At first Sally Henry was on case, but a situation occurred which conflicted her out of the case and Mr Box was re-assigned to the case, but before he could look at my file, he was in a death penalty case and he was not able to see me from October 2006 up to April 2007, in which I saw him 3 times in April, prior to trial, but I had no knowledge of my 2 witnesses names during that time. The Judge denied motion for continuance based on the fact that he'd been representing me since November 3rd of 2006, and had meetings with me, and that I failed to disclose any names of any witnesses prior to trial, and then did not disclose names until after court yesterday. Now my argument is that the Judge first tell me I got a right to call witnesses, then when I bring forth my witnesses or potential witnesses he deny my right. South Carolina code of Law 17-23-bw/sc const- itution Article 1, §14 / and 14th Amendment of US Constitution were all violated by Judge denying motion for continuance. I have a right to defend myself and right to produce witnesses in my favor. I believe I am entitled to appropriate relief, for this error.

II.
(H). While I was in jail I ~~was visited~~ was visited by Ms Sally Henry on November 3rd. I disclosed to her that I gave a ride to a guy name "J" (Jay) but that I did not know his real name. On December 4, 2006 I wrote solicitor Robert Madsen a 5 page letter. I was basically trying to get him to drop the charges! Nobody in their sane and rational mind enjoys jail or losing their freedom and time, so I was logically doing what millions of citizens do in my position, which was pleading to let me go! Now I realize I probably said a few things in a unorthodox manner but as a US citizen of America I have the constitutional right to freedom of speech and freedom of expression, so everything in that letter was my way of expressing my thoughts. In that letter I did not once say I loved KFE. In the letter I did not

mentioned the guy name I gave a ride to. I did mention his nickname of "J", or his real name of Marcus W. [unclear] I felt that I did not have to say his name since it was simply a ordinary letter. I was not being interrogated by police so I did not have to consider the letter as even being a statement. On page 1 of the letter I stated... "A guy from chapel I gave a ride, Robbed [unclear] about me knowing and he left that gun bag, and other stuff in my car" when he jumped out my car and ran. Then on page 4 I say "But like I say, I did not do this. I got caught up in somebody's else's bull crap."

In both of these ~~same~~ sentences I was referring to "J" (Marcus). If the solicitor really wanted to know the identity of this person I gave a ride to all he had to do was come to the jail and interrogate/question me and maybe I would've told him once I conferred with my attorney, but the solicitor asked me about the letter at jail. So at my trial the solicitor used the letter to impeach me, saying there was several inconsistencies in my statement, and nowhere in the letter is "Jay" mentioned. (Pg 279, 280, 281 Transcript), (Pg 279-282 Transcript) my attorney said I have the right not to give details because it's my right not to divulge that information to the state, he say just because the term Jay is not used in letter, ~~that~~ he don't think in any way that that makes it an inconsistency. He say it's not admissible, not relevant and doesn't pass any balancing test when it comes to hearsay under 403. He say the prejudicial effect would be far in excess of any probative value. He say my letter is the equivalent to a statement made during the course of plea negotiations, and those are not admissible, (Pg 283, 282 Transcript).

I totally agree with him! Now the judge had certain problems with the letter of search issues, and time of 30 years I mention, and that I was a Christian and etc.... (Pg 284/285/286 Transcript).

Solicitor said letter would not be introduced as evidence, but yet I was still questioned about it. The judge put a limitation on as to what solicitor could ask me about letter. (Pg 286 Transcript).

Now when I got up on the stand I wanted to read the entire letter to jury so they could get an overall total picture and not just a fraction of the total letter. I asked could I read it out loud, (Pg 284 Transcript).

Judge say "no", (Pg 291 transcript).

Now since this letter was not introduced into evidence I feel it should have been inadmissible. Plus I feel ~~my~~ Judge violated my right to freedom of speech and expressed in not letting me read entire letter. I feel he censored my speech and I feel this fractionality of the letter and dissecting it apart seriously prejudiced me in front of jury. They had no true understanding of the very essence of why I wrote the solicitor the letter in the first place! All they saw was me on the stand requesting my right to read a letter and that being denied that right. They had to wonder something of that.

In PASCHAL v. State 345 SE.2d 5 (3A App 1987) this is a similar issue. Case say During cross examinations of Appellant, trial court over objections allowed by the prosecutor to ask several times why the Appellant had never mentioned his alibi defense to police after his arrest but before trial. This constituted harmful error, necessitating a new trial. Clark v. State 230 SE.2d 277 (1976).

In my case I think the same similar analogy applies and that it was harmful error for Judge to allow solicitor to question me on why I did not mention name "Joy or Marcus" in letter, this was not a ^{faller} ~~inconsistent~~ statement. I feel appropriate should be a new trial, for harmful error.

II.
(1). (Pg 333 transcript) my attorney requested Judge "change the jury on AUBI". Solicitor opposed it. Judge cited ~~Robbins~~ ^{Robbins} state: Robbins 271 SE.2d 319 (Pg 335 transcript). After citing case, he asked my attorneys what was their position. My attorney stated he still request the alibi based on the fact that I testified I was in a different location. Solicitor stated his proposition and Judge said he was not going to change AUBI, (Pg 336 transcript).

I argue this was error, under Parker v. State 447 SE.2d 62 (1990). Case say Failure to instruct the jury on a defendant's sole defense is reversible error, even when the defendant does not request the charge. Parker v. State 447 SE.2d 62.

Therefore under this case I believe the Judge's failure to instruct the jury on my alibi defense is reversible error, I request appropriate relief.

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(3) In state v. Hassley 354 S.E.2d 77 (S.C. 1987) the Supreme Court of South Carolina said a trial judge is required to charge the jury on a lesser included offense if there is evidence from which the jury could infer that a defendant committed the lesser offense rather than the greater. This is a due process issue. In state v. White 354 S.E.2d 324 (N.C. App. 1987), the appeals court said, "Larceny is the felonious taking and carrying away of the personal property of another without his consent and with the intent to permanently deprive the owner of his property", in that case the indictment for armed robbery alleged in part that he did unlawfully, willfully, and feloniously, steal, take, and carry away another's personal property by means of an assault with a firearm. Court said, "all of the essential elements of larceny would be proved by proof of allegations in the indictment". Court said, "the judge must instruct the jury and refusal to instruct on misdemeanor larceny was prejudicial error." The N.C. court said that "larceny" is a lesser included offense of common law robbery and that both are the lesser included offenses of armed robbery. And that larceny is not a separate and distinct offense but is subsumed within the crime of armed robbery. In state v. Austin 385 S.E.2d 830 (S.C. 1989) it says larceny is a lesser included offense within robbery.

In state v. Jarrett 527 S.E.2d 643 (N.C. App. 2000) court said possession of an article may be "actual or constructive".

criminal conspiracy in South Carolina is defined under 16-17-410.

In my case 2 main critical factual issues was whether I was the armed robber or was Jay the armed robber; and 2nd was I in possession of the firearm. If the jury had believed me in that I was not the one who robbed KFE but was "J" who did it and that

The FBI Black Bag In Back of my car on Floor In which I did not have. No Knowledge of what was in the Bag... They could have concluded there was a "Conspiracy", and that I did not have actual possession of the gun on me. I was not aware of its presence and did not have the power and intent to control its use; and that I did not have constructive possession of it.

I've indeed I owned the car but that doesn't mean anything! This is the U.S.A. where we have over 250,000,000 people. Every single day there are incidents where a driver of a vehicle is framed or set up by a passenger in the front seat or back seat who bring into the car and into the car and when they see police they either throw the contraband under their seat or under driver seat or stick down in between seats or they may be so paranoid that they leave contraband in car and get out and run. This is reality of the real world! In United States v. Wright 24 F.3d 732, 734 (5th Cir 1994) Lord said...

While dominion over the vehicle will certainly help. The Stokard case, it alone cannot establish constructive possession of contraband found in the vehicle...

The state simply concludes that since it was my car, and contraband was found in it and since they did not catch any other person that contraband must be mine.

I believe the ~~prosecutor~~ jury also could have concluded that I did not commit the armed robbery and found me guilty of Larceny. Therefore the trial judge erred in not instructing the jury on my sole defenses of "conspiracy", "Larceny" and "possession of weapon" definition of actual/constructive instruction.

And I believe counsel was ineffective in not requesting the the Larceny conspiracy instruction as I requested him to. It is possible jury could have found me guilty of Larceny or conspiracy.

II
(K). In US Ex Rel Robinson v Chant 660 F. Supp 241, the issue was prosecutorial misconduct, court said the standard for determining whether prosecutorial comments during closing argument violated a defendant's due process rights was set forth by the Supreme Court in Darden v Wainwright 106 S.Ct 2464

... It is not enough THAT THE PROSECUTOR'S REMARKS WERE UNDESIRABLE OR EVEN UNIVERSALLY CONDEMNED". DARBY V. WAINRIGHT 184 F.2d 1031, 1036 (1951).
 THE RELEVANT QUESTION IS WHETHER THE PROSECUTOR'S COMMENTS "INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULT A DENIAL OF DUE PROCESS". DONNELLY V. DECHRISTOFORO 44 S.Ct. 1402 (1960).
 IN U.S. V. HALL 984 F.2d 711 THE COURT SAID ^{1992 MAY 19} ~~IT~~ ^{THE} COURT SAID ^{DO NOT HAVE FRIGG} ^{CLERK OF COURT} ^{LEIMPTROSE} SUGGESTIONS INSINUATIONS, AND ESPECIALLY ASSERTIONS OF PERSONAL KNOWLEDGE ARE NOT TO CARRY MUCH WEIGHT AGAINST THE ACCUSED WHEN THEY SHOULD PROPERLY CARRY NONE. ABA STANDARDS FOR CRIMINAL JUSTICE 3-5.6 (c) (JULY 1968).
 THE PROSECUTOR SHOULD NOT USE ARGUMENTS CALCULATED TO INFLAME THE PASSIONS OR PREJUDICES OF THE JURY. CITED WITH APPROVAL BY THE SUPREME COURT IN UNITED STATES V. YOUNG 105 S.Ct. 1038, 1042 (1985).

NOW IN MY CASE THE SOLICITOR STARTED OUT IN A CALM AND RELAXED NICE TONE OF VOICE AS IF ~~NOT~~ BUTTERING UP TO THEM. THEN HE MADE A COMMENT WITH GREAT EMPHASIS AND HE CALLED ME "CRIMINAL" (Pg. 31 Transcript). THEN HE KEPT ON THEN HE SAID WITH GREAT EMPHASIS AND CALLED ME A "CONVICTED FELON". BY SAYING, IT'S ABSOLUTELY AMAZING. AND, AGAIN THIS IS COMING FROM A "CONVICTED FELON!". THEN HE SAID LATER WITH GREAT EMPHASIS, "DON'T BELIEVE THIS CONVICTED FELON!". (Pg. 31 Transcript). THEN HE KEPT ON AND SAID WITH GREAT EMPHASIS AGAIN "DON'T BELIEVE THIS - FELON!". (Pg. 31 Transcript). THEN HE KEPT ON AND SAID WITH GREAT EMPHASIS "FOLKS - DON'T BELIEVE THIS - MAN! HE IS A CONVICTED - FELON!".

NOW THE JURY ALREADY HEARD ABOUT ME HAVING BEEN CONVICTED OF ATTEMPTED BURGLARY AND CONSPIRACY, SO THEY WERE CONSCIOUSLY AND MENTALLY AWARE OF THAT. SO WHAT THE PROSECUTOR CONTINUED TO DO WAS CONTINUALLY COMPOUND THAT FACT INTO THEIR HEADS NOT ONCE, NOT TWICE, BUT A TOTAL OF 6 TIMES!! NOW I UNDERSTAND HOW SOME OF THE COURT RULES OPERATE, BUT LET ME TELL YOU HOW HUMANS OPERATE. HERE IN THIS COUNTRY CITIZENS ARE SEPARATED INTO 2 CLASSES OF EITHER "NON-FELONS" AND "FELONS". I AM CONSIDERED TO BE IN THE CLASS OF THE "FELONS" BECAUSE OF MY 2 FELONY CONVICTIONS. HERE IN THIS NATION OF U.S.A THERE ARE MULTIPLE LAWS SET UP THAT PURPOSELY DISCRIMINATE AGAINST FELONS IN JOB EMPLOYMENT, RIGHT TO CARRY ARMS, VOTING, BUSINESS LICENSES AND ETC... THE PUBLIC WHO WATCHES

TV, listened to radio, read books, read newspapers, eat continually, see daily crime reports and also have a discriminatory mentality toward people with felons. If a person on that jury who is in the class of "non-felons" find out that a person like me has felons, (especially felons similar to the ones I'm on trial for) that in the back of their mind and sub-consciousness that the first natural human thought their gonna think is "oh, that person has got to be guilty, cause he got priors." Even if the judge tells the jury that "my convictions should only be used only as evidence in deciding whether my testimony is believable and for no other purposes, and that they must not consider my prior record as any evidence of my guilt of the charge I'm on trial for" (see pg 324 transcript),... regardless of what the judge may tell them these jurors are not robots, they are human beings! And in the nature of human beings these jurors already have some type of pre-conceived prejudices about people with felons like the rest of mainstream America and that is, "If he did it once or twice or a couple times then hell do it again!" So by the solicitor continually to bombard this ~~group~~ fact of me being a "convicted felon" into their heads "6" times! Then his arguments ~~were~~ relating to me being a criminal/convicted felon was calculated for 1 purpose and 1 purpose only... and that was to inflame the passions or prejudices of the jury. Everytime he called me a "criminal/convicted felon" he did not simply "speak it" he put so much emphasis on it that he literally "yelled it!" His comments on that infected my trial with so much unfairness that I knew I was going to get convicted.

In U.S. v. Singer 660 F.2d 1344 (9th, 102 S.Ct. 1030, it was ruled that reference to "crooks" was improper. In my opinion a "convicted felon" is ~~not~~ a "crook", and a "crook" is a "criminal". All 3 words are synonymous basically meaning ~~the same thing~~ ^{same thing}. So if it was ruled improper ~~of~~ ^{of} references to "crooks" in "U.S. v. Singer" then it should be ruled improper in my case of solicitor continually making references to me being a "criminal/convicted felon". Also in Hall v. U.S. 419 F.2d 582 it was ruled that reference to "hoodlums" improper. I believe this was prosecutorial misconduct which my attorney should have objected to and since

He did not I believe he was ineffective. I ask for appropriate relief for
 this error
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2010 MAY 19 P. 4:29

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11
 L. My counsel Mr. BAX made a pretrial motion to suppress evidence found
 in my car ~~temporary~~ after police stop me, arguing that there was a lack
 of articulable suspicion or probable cause for the initial pull. He
 said that the initial pull was then kind of the impetus (pretext)
 for the officer asking me for my drivers license, which came
 back as suspended or at least the dispatch reported to the officer
 my license was suspended, (pg 29 transcript).
 Now officer Matlewski testified he on Oct 13, 2006. He saw my car ^(endline) parked
 at circle K gas station in Imao. He say the 1st time he saw my car
 was about 6:00 PM pulled into parking spot on side of gas station with
 the hood up, and that that section of building is not lit up, and as we
 normally park there. He was asked by solicitor why is it that he noticed
 my cabllac? He said "It was parked on side of building with hood up
 and normally no one ever parks there because there is not a street, and
 there was not a street light at the time, so this section of the parking
 lot was dark," (pg 31 transcript). Now before I go on I'd like to point out some
 facts. 1stly he was incorrect as to the time. on that date of 10/13/2006
 at "6:00 PM" it was bright as day, sun was still out, and wasn't dark, (he
 later testified it was 8:30 PM that he saw my car and it was dark - pg 158
 transcript). The correct time he saw my car was around "8:30 PM" which was
 pulled into the "legal" parking lot of circle K with my hood up. My car was
 over heating so I had to let it cool off and for 25/30 minutes before adding
 antifreeze in the radiator. He is incorrect in that there was no light there,
 there was in fact a light there in that parking lot which is in a place that
 prosecutor later showed to the jury, so he was lying about no light
 34

Beldy Thier. Now at this time I was parked in a legal parking lot. There was no reports of any drug dealing or disturbances or crimes in relation to my car being there so he had no reasonable suspicion to suspect my car involved in any type of criminal activity. In US v Ilexco 182 F.3d 517 (9th Cir) court say "Reasonable suspicion has been defined as some objective manifestation that the person stopped is, or is about to be engaged in criminal activity",... While reasonable suspicion requires something less than what is necessary to show probable cause it requires more than a mere hunch". In Rogers v. State 426 SE2d 209 (Ga. App 1992) court said something similar... They say, "under Terry v. Ohio 392 US 196 (1968) A police officer even in the absence of probable cause may stop persons, detain them briefly, and frisk them for the officer's safety where there is a 'reasonable suspicion' that such persons are involved in criminal activity. The officer's action must be justified by specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion. A reasonable suspicion is more than a subjective, unparticularized suspicion or hunch". In State v. Hill 509 SE2d 701 (Ga. 1998) the court added that, "Investigative stops of vehicles are more analogous to Terry stops, and are invalid if based on only unparticularized suspicion or hunch".

Now as I say, when officer saw my car the 1st time, he had no "reasonable suspicion" of any criminal activity and for that reason he kept on driving. Solicitor asked him "where did he go after wards?" officer say: He went down Saint Andrews road and later came back a 2nd time and observed my car was not there which he say was about 2/30 minutes later. He say he kept going and later observed vehicle gone at that time. (Pg 32 Transcript).

3rd time
Officer say he later got a call for armed robbery and headed toward KFC and saw my car pull out of the circle K parking lot at a high rate of speed and saw my car come to turn lane on St Andrews to turn left on Lake Murray Boulevard. His stated reason for not continuing to KFC is cause there was already another car there. He then made a U Turn and got in behind my car and he say he observed me make a left hand turn onto Lake Murray Boulevard and that I did not use a left turn signal (Pg 35 Transcript). He say he then pulled me over as soon as we got onto Lake Murray Boulevard and Daniel Intersection, and he then activated:

Blue lights and siren and pulled me over, came to my car, got license registration and insurance card, and that he checked it, and license came back suspended, and that he placed me under arrest for ~~driving~~ ^{driving} ~~with~~ ^{with} ~~out~~ ^{out} ~~license~~ ^{license}, and that he searched me and found a bag of bullets, and ~~that he found~~ ^{that he found} ~~evidence in~~ ^{evidence in} my car during search.

Now later my attorney Mr Bax 1st camera cross ^{BETH A. CARRIGE} ~~examined~~ ^{examined} ~~discovered~~ ^{discovered} ~~Wski~~ ^{Wski} ~~musow~~ ^{musow} ~~ski~~ ^{ski} said the 1st time he saw my car was while he was on St Andrews Road and Lake Murray and that he observed my car in the parking lot of circle K. my attorney pointed out that he do see actual parking spaces there indicated by white lines that are painted on the pavement. matusewski said "that's correct" (Pg 41 Transcript). Mr Bax pointed out that matusewski just testified he saw my car a little after 6:00 PM and matusewski said "correct" matusewski said it was headed towards dark, but wasn't completely dark, which is a lie! It was dark! Mr Bax pointed out that matusewski report had a different time and he asked matusewski which time was correct, was it a little after 6:00 PM the 1st time he saw my car or was it after that? matusewski then said it would be the time that's on his report. my attorney asked him do he specifically remember while sitting at stand there what time it was? matusewski said "no". Mr Bax asked him when did he type the report up, matusewski said same night of incident about 2 or 3 hours later, (Pg 42/43 Transcript). matusewski testified that after he saw my car 1st time he kept going which proves he had no "reasonable suspicion" to suspect any criminal activity of my car. He say about 20/30 minutes elapsed between 1st time he saw my car and time he went by circle K the 2nd time and that he ^{saw} my car was not longer there. He then say he left and came by circle K one more time that night before incident occurred. my attorney asked him "and you testified here today that you didn't observe the vehicle at the time; is that correct?" matusewski said "when I came back the 3rd time the vehicle was backed into that parking spot, when I came back from St Andrews and turned onto Lake Murray." my attorney said "I misunderstood. I thought you testified that the vehicle was still not there the 3rd time you went by?" matusewski said

"The 3rd time the vehicle was in there. It was backed in." (He had said it was not 3rd)
 Later Mr Bax asked him, "And dispatch call was for an Incident at the K.F.C., right?" Matlewski said "Correct." Mr Bax said "Did that call involve a description of a vehicle?" Matlewski said, "No it did not." Mr Bax said, "Did that call involve a physical description of an individual that was the suspect?" Matlewski said, "No, not at that time, no." (Pg 43). Mr Bax asked Matlewski, "Did he recall whether or not there were already any cars in the turning lane of St Andrews?" Matlewski said "No there was not." Attorney Bax told him that the distance between exiting the Circle K parking lot and to the light was roughly about less than 20 yards or 10 feet, Matlewski said more than 10 feet, attorney said, "But it could be less than 50 yards?" and Matlewski agreed, (Pg 50 transcript). Matlewski said when my car left exit and got in left turn lane, it stopped cause there was a red light there. Attorney asked Matlewski to describe a "High rate of speed" and what exactly do he mean cause there is only 20 to 50 yards from circle K parking lot to light, so he wanted to know what kind of high rate of speed is he talking about? Matlewski that made up a incredible lie, and say "my car was exiting the parking lot just to the point -- just prior to the point where my car would be spinning tires, accelerated at a high rate of speed to get out of the parking lot." Mr Bax asked him "Were you able to -- were the tires, did you hear anything? Were they actually squealing?" He said "No." Mr Bax asked him "How was he able to tell my car was accelerating to that amount?" Matlewski say "Was a certified radar operator and to become certified you have to estimate vehicle speed, and he estimated I was traveling at a high rate of speed." (Pg 51 transcript). Mr Bax pointed out that anyone pulling out of circle K parking lot would have had to cover at least 3 lanes of traffic to get to the traffic light, and Matlewski agreed, and agreed I only had about 20 to 30 yards to get there. Mr Bax asked him if knew what the speed limit on Saint Andrews was? Matlewski said "35 miles an hour." Mr Bax asked him, "Did I ever exceed the speed limit?" Matlewski said "No." (Pg 53 transcript). Now I'd like to state that I did not come out of parking lot at a high rate of speed, nor was speeding. When

I came out of parking lot the 1st thing I did as a responsible cautious driver was put my right turn signal on and looked both ways. I saw it was safe for me to turn and I pulled in a normal drive and pulled into the left turn only lane. Now my car is ²⁰⁰¹ old, and goddam, beat up, and my brakes are bad. In order for me to stop I have to press down real hard on my brakes and even when I do ^{ETHA CARRIGG} ^{LEXINGTON SC} the car continues to roll. Now I've put new brakes on car, but for that type of car, the it has a Hydraulic ABS (air brake system), and the other cadillacs have a non-ABS system. For cadillacs with a non-ABS system it only cost less than \$150.00 to replace the brake thing in the engine compartment. But for my Cadillac which has a "ABS" system it cost over \$2,000 to replace the Hydraulic ABS. I've priced this at autozone, Napa, etc... ~~and what about my~~ ABS on my car was not operating properly from the 1st day I bought the car from a friend. When I drive I have to slow down way in advance before approaching any lights or any cars or any people. Cause if I don't, the car will keep rolling. Now I should have mentioned this ABS problem at trial but I simply did not. Now majewski says my car came out at a high rate of speed which is a lie! If I would have came out at a high rate of speed then once I tried to stop at light my car would have kept rolling past the stop marker at light which would have caused me to get in a wreck with other cars in other lanes. So this proves majewski is lying! And he even admits I was not violating no speeding laws under SC code of law 56-5-1520, (and I was not charged).

Now, Mr Bax then asked him does the left turning lane I pulled into does it have a traffic light specifically for that lane, and majewski said "yes", and that it was a GREEN Left Arrow light = 56-5-9701(a). Mr Bax asked him, does the traffic coming out of that lane, does it have any choice about where it's going?" majewski said, "No, it has to turn left." Mr Bax asked him did he testify to my car not using a turn signal and majewski said "yes", (Pg 54 transcript).

~~and what about my~~ Mr Bax asked him is it common for cars in the left turn only lane where the only direction they can only go is already indicated to always use a turn signal? majewski said "No". Mr Bax asked him "Does he pull them each time he observe someone

Not using a Turn signal in a Left Turn-only Lane? Maszowski said "Not always." Maszowski testified that alot of people ~~obviously~~ Do use their Turn signals in a Left Turn Lane and he said alot of them do not, (Pg 55 Transcript). Maszowski testified that when my car got through this intersection he had done U-Turn to get Behind my car. Now let me stop here, my attorney missed something, firstly when I came out of Circle-K parking lot exit and got into "Left Turn only Lane" Maszowski was coming from the opposite direction, and that's when he got Behind my car by doing a U-Turn, the Traffic Light was Red at that time. This light was "Red" for at least 80 to 100 seconds! Now during this 80 to 100 seconds "Red Light" I saw him in my rearview mirror, ~~and I made 100% certain to put my left signal on.~~ ~~Now I argue that at this specific point, the reason why Maszowski got Behind my car by doing a U-Turn is because he had just received a Armed Robbery call of a KFC, and as he stated later the reason why he got Behind me is he just got a armed Robbery call and he saw my car coming out of parking lot and he thought I could have been involved in it as "either" the subject or as a potential witness, (Pg 163 Transcript). So at this point as he did a U-Turn and got Behind me his purpose for encountering me was related to his subjective suspicions of my car "Possibly" being connected with "The KFC Robbery". He did not get Behind me cause of no other reason or no type of Traffic violation. Now once he got me ^{BEHIND} if he had ~~any~~ "Reasonable suspicion" to suspect me of criminal activity in relation to KFC Robbery then he could have flashed his lights and siren while Behind me while we were at a red light for 80 to 100 seconds and he could have conducted a Brief Investigative detention stop for Terry stop. Now I argue that he did not have any "specific and articulable facts" sufficient to give rise to a reasonable suspicion of criminal conduct to reasonably warrant a intrusion. So what he did was wait, he waited for me to make a left turn. And once I made this left turn and drive pass the~~

rail road crossings He initialized his lights/gear, cause He later say in
 His Incident report that He ... [Officer majewski ~~at the~~ ^{at the} ~~of~~ Lake Murray
 Boulevard When county Dispatch Advised that the Kentucky Fried chicken had just
 been robbed. Officer majewski turned around and drove towards the Kentucky
 Fried chicken. As officer majewski was passing the circle K, the listed
 vehicle was observed exiting the circle K ^{BETH A. CARRIGG} ^{SPRINGFIELD, MO} a high rate
 of speed. Officer majewski turned around ^{ON THE VEHICLE} just as officer
 C. Dennis advised he was on scene at the K.F.C. The subjects vehicle
 made a left turn onto Lake Murray Boulevard from St Andrews Road without
 using a turn signal. Officer Dennis advised that the subject had run out
 of the K.F.C. towards St Andrews Road by the circle K.

So the reason why he stopped me is not because he had "reasonable
 suspicion or probable cause" for the armed robbery, he stop me because
 he say he observe me make a left turn with no left signal.

~~now I argue that this officer is lying about~~
 me making a illegal left turn and I will prove this by his conflicting story
 he fabricated, plus I will prove I did violate the law of 56-S-2150 (B).

firstly when officer majewski pulled me over and put on his siren/lights
 for me to stop I was "Arrested-sized". When he came to my car he did not
 make no inquiry or investigation concerning the illegal left turn. The
 video tape in his patrol car recorded the entire conversation. Later when he
 wrote his printed report he say 2 things. He say (1) The subjects vehicle
 made a left turn onto Lake Murray Boulevard from St Andrews Road without
 using a turn signal. (2) officer majewski asked the driver for his license
 Registration, and Proof of Insurance which he provided. The subject asked why
 he was pulled over, and officer majewski advised the subject that he did
 not use his turn signal.

Now in His 2nd statement above it must be noted that I was sitting in
 my car when he asked me for my paperwork. so in his statement above he
 basically saying I asked him why he pulled me over, and that he had say
 he told me for not using a turn signal, and that I was in my car when I
 asked him and he told me this. He then in his report say he had
 dispatched run my license and say it was suspended for not paying a Traffic
 Ticket, and that he then placed me under arrest for DWI and that he put
 me in cuffs, searched me, and then placed in back seat of his car.

In his report he is not saying that he put me in the back of his car and then I asked him why he pulled me over and that he told me I did not use my turn signal. He is not saying that!

Now on the video tape it does in fact show him getting my pagerbook from me while I was in my car, and he walked to his car and came back and arrested me for D.V.B., and then put me in back of his car.

Now when he got up on the stand and testified under oath, this man perjured himself on the stand! He violated South Carolina code of law 16-9-10 of [perjury and subornation of perjury] Part (A)(1). Which says it is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath or in any court of record, judicial, administrative, or regulatory proceeding in this state.

Now on the stand this is how he perjured himself, my attorney Mr. Bax asked him ... "You have put in or you have testified that -- let me back up. You have put in your report that you advised the defendant or the subject in this case that he did not use a turn signal; is that correct?"

Matkowski said, "That's correct." Mr. Bax asked him ... "Do you recall whether or not you actually said that to him?" Matkowski said ... "I advised him that he did not use a turn signal when he was in the 'back' of my patrol car. He asked why, again why he was being stopped and why he was under arrest. I told him he was stopped for not using his turn signal and he was under arrest for D.V.B."

Now in this above statement Matkowski statement conflicts with his statement in his written report. In his report he is saying I was in my car when he got license, registration, insurance and that when I asked him why I was pulled over and he told me for a left turn, but on stand he is saying I was in the "back of his patrol car" when he told me I did not use signal. When I was in back of his car I was already arrested for D.V.B. So this proves this officer lied!

Now Mr. Bax then said ... "So you advised him of the fact that he did not use a turn signal after you had already ran his license, arrested him for D.V.B., searched his car, put him back in the patrol car; correct?" Matkowski said ... "Prior to searching the vehicle, that's correct." Mr. Bax then said ... "So you had already placed him under arrest for

D.V.S. correct?" Majewski said, "correct." Mr. Bax Thed said, "You had already searched him and put him in cuffs, correct?" ED Majewski said, "That's correct." Mr. Bax Thed said, "You had placed him in the patrol unit?" Majewski said, "correct."

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I do not believe the court should view his ^{BEING HELD IN STATEMENTS AS} more error or accident. Majewski is a ^{NEW ALEXANDRIA COURT NO CHRG AND} LEANINGTON SC
If he's been caught lying then that's how the court should view it.
This is my life and freedom of the life here!

Now, there is 2 state laws comparable to each other one is under South Carolina code of Law 56-5-2150, the other is under Georgia law of DC GA 40-6-123. Below are comparisons of each law

SOUTH CAROLINA 56-5-2150

Turning movements and Required Signals

(A) No Person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety or without giving an appropriate signal as provided for in this section.

(B) A signal of intention to turn or move right or left "when required" shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(C), (D) etc...

Georgia 40-6-123

(A) No Person shall turn a vehicle from a direct course or change lanes or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate and timely signal in the manner provided in this code section.

(B) A signal of intention to turn right or left or change lanes "when required" shall be given continuously for a time sufficient to alert the driver of a vehicle proceeding from the rear in the same direction or the driver of a vehicle approaching from the opposite direction.

Now I would like to present 4 cases from Georgia that specifically relate

To the LAWS 40-6-123. All of these cases have been before the High Georgia of Appeals Court and that court HAS ruled against the state in all these cases.

The case was in CLARK v State 432 SE.2d 226 (Ga App 1973).

affirmate about that Sgt Boley's stop of Thunderbird was made without a valid independent reason, and therefore pretextual. They base their contention on the wording of 40-6-123 and argue that it does not require the use of a turn signal in the present circumstances, citing 40-6-123.

The trial court determined that a violation of OCGA 40-6-123 had occurred because the driver failed to give a turn signal when exiting. This determination was erroneous. It is clear from the face of the statute that the legislature anticipated occasions when a signal was not required. A lane change must be made with "reasonable safety" and in some instances, reasonable safety requires giving a turn signal. 40-6-123 (A). Subsection (B) sets forth the manner and purpose of signaling one's intention to change lanes at times when such a signal is "required". The legislature's concern was plainly the presentation of the safety of others by requiring sufficient notice of the driver's intent to turn or change lanes. Their use of the term "when required" in subsection (B) clearly indicates that they anticipated times when use of a signal was not required for the safety of others. Under the present facts, notice of intent to change lanes not necessary.

Trial court ruled that violation of 40-6-123 gave Boley an independent valid reason to stop the Thunderbird. However, because this court finds that 40-6-123 was not violated, Boley stop of car was invalid unless supported by specific and articulable facts sufficient to give rise to a reasonable suspicion that the occupants of the car were, or were about to be engaged in criminal activity. Terry v Ohio 392 US 196, 1983. Facts before us do not create any basis for reasonable suspicion of criminal conduct; therefore sergeant's Boley stop of car cannot be upheld.]

[2nd] case was in State v Jones 448 SE.2d 496 (Ga App 1994).

officers observed vehicle do a wide U-turn without giving a signal, no other vehicles were on the road at the time. officer [illegible] stopped the appellee for failing to signal. officer detected odor of alcohol, appellee failed sobriety tests. The appellee was cited May 20, 1994. Later charged with making an improper turn. The trial court found the initial stop was not justified by an articulable suspicion of a crime because the appellee violated no law by failing to signal his turn when no other drivers on the roadway. Accordingly, the court granted the appellee's motion to suppress evidence concerning the field sobriety tests. The state contends that the initial stop was rendered invalid because the appellee's failure to signal was later determined to be illegal. We cannot agree. [Citing 40-6-123 (A) (B)]. Because no other drivers were not on the road, the appellee was "not required" to signal his intention to turn, *Clarke v. State* 432 S.E.2d 230 (1993). The officer's stop of the appellee was not justified in that the officer did not observe him commit any crime before the stop, and the officer did not testify to any facts which would indicate the appellee was about to violate the law in any manner. The officer's "hunch" that the appellee turned around to escape police detection of wrongdoing is an insufficient basis for an investigative stop. *Terry v. Ohio*.

[3RD CASE WAS *Bowers v. State* 473 S.E.2d 201 (Ga. App 1996).

The arresting officer testified that he initially stopped Gilliam for changing lanes without using a turn signal. The officer testified that he observed Gilliam Van from a distance of approximately 100 yards behind the van and there were no other vehicles in the area. There was no evidence that the lane change made by Gilliam was not accomplished with reasonable safety. After the stop he detected no alcohol or drugs, and paper work was in order. Gilliam was made to stand in chilly weather for 20 minutes. He gave Gilliam an oral warning about changing lanes without using a signal, returned license and included investigation. Used dog to find drugs. The officer testified that the defendants were pulled over for making an improper lane change in violation of O.C.G.A. 40-6-123 [Citing 40-6-123]. It is clear from this statutory language that the

INTENTION of the Legislature was that no turn signal is required as long as a lane change can be made with reasonable safety. OTHERWISE THE USE of the PHRASE "WHEN required" would be rendered meaningless and the stated purpose of the statute is to alert other drivers. Clearly there is no need to alert other drivers when there is none present.

THIS purpose gives meaning to the "when required" PHRASE contained in the statute, [Citing CLARK v STATE 432 SE.2d 330 (1973) and Jones v STATE 449 SE.2d 446]. There was no objective basis for a reasonable suspicion that the defendants were or were about to be engaged in criminal activity. No other ground for the stop was provided. Therefore there was no violation of 42-6-123 and no basis for the initial stop by officer Tisd. Thus the stop was unauthorized.

THIS case is in STATE v GOODMAN 469 SE.2d 327 (GA APP 1986). Defendant charged with D.V.I., making a Improper Left Turn, and violating Urban Container ordinance moved to suppress evidence resulting from Traffic stop. The state court granted motion. State appealed. The court of Appeals, Ruffin J. held that: (1) motion adequately stated facts showing that seizure was unlawful; (2) statute did not require left turn signal in left turn only lane; and (3) Traffic stop was not supported by reasonable suspicion that defendant was or was about to be engaged in criminal activity.

on 1/14/1945 at 4:30 pm Goodman car stopped at a "Red Light" in a "Left Turn only lane" at a "Intersection". He was awaiting a "Green Arrow signal" when officers stopped "drove up behind him" and advised that he had not activated his turn signal. When the "Arrow" turned green, he turned "left" into a V-Turn; officer followed him and stopped him, suspecting he was D.V.I. and drugs because he failed to use a turn signal. However, officer also admitted that from Goodman position in the "Left Turn only lane", his sole legal option was to turn left; that the V-Turn was not illegal; and further that if Goodman had gone straight at the Intersection, he would have committed an improper lane change. O.C.G.A. 17-5-30 (5) requires making to suppress state facts showing that the search and seizure were unlawful. Thereafter, the state has the burden of proving that the search and seizure were unlawful. We construe the evidence most favorably to uphold the findings and judgment and the trial court's findings on disputed facts and credibility must be adopted unless they are clearly erroneous. Although an officer may conduct a brief investigative

ACTUABLE FACTS SUFFICIENT TO GIVE RISE TO A REASONABLE SUSPICION OF CRIMINAL
 CONDUCT... THIS SUSPICION NEED NOT MEET THE STANDARD OF PROBABLE CAUSE
 BUT MUST BE MORE THAN MERE "CAPRICE" OR A "HUNCH" OR AN "INTELLUCTION"
 STATE V JONES 448 SE 2D 496 (1994). 2010 MAR 19 STATE 4-29 CONTENDS THAT
 WHEN ALL OF THE EVIDENCE IS VIEWED IN THE PROPER CONTEXT, IT IS APPAR-
 ENT THAT OFFICER CONDUCT WAS NEITHER ARBITRARY NOR DISCRETIONARY, NOR
 PRETEXTUAL. "WE DISAGREE!" BECAUSE THE EVIDENCE DOES NOT SHOW THAT
 GOODMAN VIOLATED 40-6-123 IN OFFICER'S PRESENCE NOR WOULD A REASONABLE
 OFFICER CONCLUDE THAT GOODMAN WAS INTOXICATED SOLEY BECAUSE HE FAILED TO
 USE A TURN SIGNAL, [CITING 40-6-123 (A) (B) - WHEN REQUIRED].
 THE FACTS IN THESE INSTANCES IN WHICH A TURN ON A ROADWAY

USE a turn signal, [Citing 40-6-123 (a) (1) when required]
THUS THE statute contemplates instances in which a turn on a roadway
can be made with reasonable safety without the use of a turn signal
I.E., where a signal is not necessary to alert other drivers of a motor-
ist intention to turn. other than officers car, there was no evidence
of any other vehicles in the vicinity at the time of goodmans turn. conse-
quently, HE must EXAMINE WHETHER SAFETY dictated the use of a signal to
alert officer of goodmans intention to make a u-turn. officer admitted
that ^{from} goodmans position in the left turn only lane, his sole legal option
was a left turn and that goodmans u-turn at the intersection was
legal. UNDER these circumstances, officers stopping could not reasonably
maintain that HE WAS unaware of goodmans intention to turn. Therefore,
a left turn signal was not necessary, and there was no violation of
40-6-123 committed in officers presence which alone justified the stop.
Furthermore the traffic stop was not supported by a reasonable suspicion
or an objective manifestation that goodman was or was about to be
engaged in criminal activity.]

The 4 cited CASES I just listed from Georgia are from another state jurisdiction, BUT those cases are directly on point, I related to my CASE, especially the 4TH CASE of State v Goodman 469 SE.2d 329 WHICH SPECIFICALLY relate to the ISSUE of the LEFT TURN ONLY lane and LEFT GREEN Arrow signal. I apply those same standards or rulings from that CASE of State v Goodman to my CASE and I state that the evidence in my CASE does not show that I violated S.C. Code of LAW 56-5-2150 (B). The evidence shows that I WAS at a Red Light in a Left Turn ONLY lane.

of a Intersection with a car in front of my lane or back of me and
 then officer madsowski did a u-turn and got behind me. Now madsowski
 argues that I did not use a left turn signal, and I argue that I did
 but for argument sake let's say for example hypothetically speaking that I
 did not use my signal. Then I argue that that still don't matter.
 Because as the court said in *State v. Goodman* (which relates to South
 Carolina law 56-5-215, (b)), even so. Under S.C. Code of Law 56-5-215
 that statute contemplates instances in which a turn or a roadway can
 be made with reasonable safety without the use of a turn signal, i.e.,
 where a signal is not necessary to alert other drivers of a motorist's
 intention to turn. Other than madsowski's car, there is no evidence
 of any other vehicles in the vicinity at time of my left turn and
 as madsowski testified he do not recall whether or not there were any
 cars in the other lanes, (pg 53/54 transcript). As court examined in *State v.*
Goodman as applied to my case. Safety does not dictate the use of a left
 signal to alert officer madsowski of my intention to make a left turn from
 a left turn only lane. madsowski admitted that from my position, in the
 left turn only lane, my sole legal option was a left turn being
 directed by a left green arrow signal. Under these circumstances, officer
 madsowski could not reasonably maintain that he was unaware of my
 intention to turn. Therefore, a left turn signal was not necessary, and
 and there was no violation of 56-5-215 (b) committed in officer
 madsowski's presence which justified the stop. The judge ruling that officer
 testimony is credible that vehicle did not use left signal is clearly erroneous and reversible.
 Now, I also clarify something which later applies to the solicitor's
 arguments to July motion to suppress and to the court's ruling against motion.
 Firstly, in *U.S. v. Espinosa* 782 F.2d 888 the court described 3 (three)
 categories of police citizen encounters: (1) consensual police-citizen
 encounter, encounter is characterized by voluntary cooperation of citizen in
 response to non-coercive questioning. A consensual encounter is not a seizure. (2)
 this category is referred to as **investigative detention** or a **Terry stop**. *Terry v.*
Ohio Dec 1968. While an investigative detention (investigative stop) is a
 seizure within the meaning of the 4th Amendment, it need not be supported
 by probable cause. It is justified where specific and articulable facts
 and rational inferences from those facts give rise to **reasonable suspicion**
 that a person has committed or is committing a crime. (3) The category
 an "Arrest" is a seizure characterized by highly intrusive or lengthy
 contact or detention. An arrest is justified only when there is probable

To Believe That A Person is committing or has committed a crime.

In US v. 444, 905.50 182 F.3d 445 (1st Cir. 2000), "A Police Officer who personally observes a traffic violation has probable cause to stop the vehicle and offending driver. On the other hand, when police have ^{probable cause} to stop for traffic violation a purely investigative stop must be based upon at least a reasonable suspicion that either the automobile or its occupants are subject to seizure under the applicable criminal laws."

The court says, "A Traffic stop is not investigative; it is a form of arrest based upon probable cause that a penal law has been violated."

Now I allege in my case that majewski Traffic stop of me allegedly not using my left turn signal is a traffic violation of 56-5-2150 and under 56-1-920 turning unlawfully is 4 points, and failing to give the proper signal for stopping, turning or suddenly decreased speeds, is 4 points.

The Traffic Violation majewski says he observed me commit is not based upon the standard of "reasonable suspicion", but is based upon the standard of "probable cause". The standard for "Arrest" is "probable cause" not reasonable suspicion! Therefore I allege I was "arrested" for Traffic Violation when majewski pulled me over.

For the left turn violation majewski never served me with a uniform Traffic ticket (summons) under 56-7-10/56-7-15. But regardless if he did not issue me citation, I was still "arrested" for the Traffic Violation he says I committed. Now there is different levels to an arrest, there is a simple arrest of informal nature which does not involve a technical custodial arrest, and then there is the formal custodial arrest. Some traffic stops based upon probable cause do not involve custodial arrest, but it is still a arrest (seizure or forcible restraint).

Now that it is established I was "arrested" for the alleged Traffic Violation;

I now allege majewski violated South Carolina Code of Law 23-6-150 of "summons". This law says "When any person is apprehended by a officer upon a charge of violating any laws of the state relative to Highway Traffic motor vehicles, or commercial motor carriers such person shall immediately be served with an official summons." Etc.

Majewski apprehended me by accusing (charging) me of violating a Traffic law but he failed to immediately serve me with an official summons or a uniform Traffic Ticket. This is not something that is "discretionary" this is a mandatory duty for him to do by state law. By him not charging me this

Amounted to 2 more violations. I feel he violated my Due Process rights by not charging me through a summons because by him not charging me this did not get courts with jurisdiction to hear and dispose of the alleged traffic charge, this deprived courts of jurisdiction. I could've went to court on this alleged random traffic violation and courts could've found me NOT GUILTY! And therefore the trial court in my armed robbery trial could not have found material testimony "Credible".

Now under Tort Law it could include there are laws against libel and slander and under state law 16-7-150 slander and libel are criminal laws! I allege Matewski imputed the crime of either sexual violation or turning unlawfully upon me which was false statement. He just can't go around falsely accusing me of committing crimes I did not commit, but that's exactly what he did.

Now after the judge heard Matewski and me testify, Mr. Box and Solicitor argued some points. My attorney Mr. Box did in fact present a good motion that adequately stated facts showing that seizure (stop) was unlawful. The solicitor jumbled things around to sound convincing. (pgs 102/103/104 transcript) and he mentioned *Whren v United States*. In

U.S. v. Whren 53 F.3d 371, 375 court say officers cannot make a "Traffic stop" unless they have "Probable cause" to believe a traffic violation has occurred, or a reasonable suspicion of unlawful conduct based upon articulable facts. So the solicitor was correct in stating that *Whren v U.S.* does basically says that once a officer have probable cause of a traffic violation, that stop is reasonable, whatever the officers underlying subjective intentions might be.

However there is a area of law called a "Pretextual stop". Black Law Dictionary define it as "... An arrest of a person for a minor offense for the opportunity to investigate the persons involvement in a more serious offense for which there are no lawful grounds to make an arrest." In *U.S. v. Bruns* 902 F. Supp 1410 (Kad 1995) court say, "The classic example of a pretextual stop occurs when an officer stops a driver for a minor traffic violation in order to investigate a 'hunch' that the driver is engaged in illegal drug activity." In *U.S. v. Escalante* 239 F.3d 678 (7th Cir 2001) The traffic stop may have been pretextual but under *Whren v U.S.* 116 Sd 1964, a traffic stop even if pretextual, does not violate the 4th Amendment if the officer making the stop has probable cause to believe that a traffic violation has occurred. This is an objective test based on the facts known to the officer.

At the time of the stop, not on the motivation of the officer in making the stop. On the other hand, if it is clear that what the officer observed did not constitute a violation of the cited traffic law, there is no "probable cause" for the stop, and the stop is illegal. ^{2010 MAY 19 4:49 PM} ^{CLERK OF COURT} ^{MAY 19 2010} ^{146 F.3d 294, 299 (5th Cir 1998)}, see also ^{198 F.3d 1283, 1286 (5th Cir 1999)} ^{US v Lopez-Valdez}. In ^{US v Lefkowitz} 52 Fed 42, 424 (1932) (An arrest may not be used as a pretext to search for evidence).

In my case I argue that this was a pretextual stop in which majewski stopped (arrested) me for the minor traffic violation of illegal left turn in order to investigate his undifferentiated suspicion or hunch of my involvement in a more serious offense for which there were no lawful grounds to make an arrest for armed robbery.

The judge cited state v Jihad 553 S.E.2d 249 which was a Brake light case. In that case the appeals court of South Carolina say "It is uncontested in this case that respondent was actually driving with a non-functioning brake light which satisfies the higher standard of 'Probable cause' if such conduct is in fact a traffic violation." The appeals court was correct that was a traffic stop based upon probable cause, "NOT REASONABLE SUSPICION!" But I argue that state v Jihad has no bearing on my case because that traffic stop for the Brake light is totally different from my traffic stop of making a unlawful turn in which I have already explained. In my case I was not required to use a left turn signal in a left turn only lane so there is no probable cause, but in Jihad he was required to have 2 functioning brake lights, but since he only had one, there was probable cause so these are 2 different cases.

And to prove my point even further that majewski was lacking specific and articulable facts to necessarily to establish reasonable suspicion or probable cause to make stop (arrest) for the Armed Robbery, is what he said to me when he came to my car. When he came to my car he had his hand on his gun. All other officers had surrounded my car with their guns out. I rolled down my window and turned engine off. I asked majewski "What's the problem officer was I speeding or something?" He said "No". He

He asked me where did I just come from? I told him I just came from the Circle-K gas station up the street. I then asked him again "What the problem officer?" (See my testimony by JSS/256 Transcript). Now this is testimony of stand to offer I asked him the 2nd time of "What's the problem officer?" He say... He said "We just had an armed robbery with a vehicle matching your description." My attorney then say... "Well in fact there was not a description of any vehicle that had been put out by dispatch; is that right?" Majewski said "correct." Mr Fox said... "And I believe that you had -- the reason that you testified that you pulled this car over was due to lack of a turn signal, correct?" Majewski said "correct." Now let me pause here for 1 second to clarify facts. 1st fact is, is in his testimony of "We just had an armed robbery with a vehicle matching your description" this was correct. In that there was a K.F.C. robbery, but what he did was combine that truth with a "pretextual lie", because no body at K.F.C. saw my car anywhere near K.F.C., my car was 1/2 a block away at Circle-K gas station, so nobody there who witnessed the crime relayed any facts to the 911 dispatcher Jerry Woodward, and therefore dispatcher did not relay any specific and articulable facts to Majewski of any description of my car. Now if the dispatcher would have relayed facts of a description of my car to Majewski then "yes" he then would have had specific and articulable facts to form a "reasonable suspicion" or even "probable cause" to stop my car for armed robbery, so his statement proves he was lying about my vehicle matching a description in armed robbery. And by him saying "correct" to my attorney question of there being no description of any vehicle put out by dispatch this confirms and support my argument here. 2nd fact is my attorney Mr Fox pointed out that the given reason why he pulled me over is due to lack of a turn signal, and Majewski said "correct" to that question. He did not say he pulled me over for no armed robbery, he specifically say it was for the traffic violation. So this confirms and supports my argument here of Majewski not having a particularized and objective basis for suspecting my car (or me) of any criminal activity in relation to K.F.C. robbery, he had no specific and articulable facts sufficient to give rise to a reasonable suspicion, or probable cause to stop me for armed robbery.

might have something to do with the incident. This feeling of his was not a particularized suspicion or hunch. And as the court in U.S. v. Ienco, 182 F.3d 511, even inspired hunches do not invest the police with the authority to stop people at will, U.S. v. Shabla, 124 F.3d 812, 812, 2000 MAY 19 P 4:29. "Why exactly, now continuing on... my attorney Mr. Bax then asked him... 'Why exactly, officer, did you state to the defendant at that time that there had been an armed robbery and that his car matched the description of the car in this case?' " Majewski said... "It was just the heat of the moment. I observed a suspicious vehicle earlier, saw it leaving at a high rate of speed. It was just a slip of words."

I argue this man is trying to cover up his lie. He told of this Baldy a description of my vehicle, so now he's trying to cover that lie up by saying "It was just the heat of the moment and it was just a slip of words." (Pg 58 Transcript). Mr. Bax kept on questioning him and Bax says... "So basically in your work as a police officer and observing the vehicle that you had seen at the circle K and then exiting, you had a feeling it might have something to do with this incident; correct?" Majewski said... "That's correct." And you were operating under that suspicion (hunch) correct?" Majewski says, "Yes". Mr. Bax says... "But that wasn't the reason you pulled the vehicle over, correct?" Majewski says... "Correct". Mr. Bax says... "Because you didn't have a description of the vehicle in this case; is that correct?" Majewski says... "That is correct". Mr. Bax says... "And you didn't have a description of any kind of suspect, physical wise, correct?" Majewski says... "Not at that time, no". Mr. Bax says... "So you were going off a hunch; is that right?" Majewski says... "That's right".

(Pg 58/59 Transcript). Mr. Bax later asks him... "How your report does not indicate in here that you had stated to him anything about the robbery or a description of a vehicle, why is that?" Majewski says... "At the time, you know, the report indicates all the facts that occurred." Mr. Bax then played the dash cam/mobile camera that was in Majewski's car, (Pg 60-61 Transcript). Now as Mr. Bax correctly pointed out, Majewski's report did not say anything about him telling me about the robbery or a description of a vehicle where as the mobile camera does! But here he is saying, "At the time, you know, the report indicates all the facts that occurred." I argue he is lying! Because

if the report indicates all the facts that occurred, then his report would have indicated him telling me what he told me on the video which was "we just had an armed robbery with a vehicle matching your description"

Now after masewski check my license my attorney ask him "what information did you receive from your dispatch officer?" masewski say... "that he was driving under suspension for unpaid Traffic Ticket and it ended indefinitely." I was then searched and arrested for D.U.S and failure to pay fine. (1963 transcript)

my attorney later ask him... "is it the practice of the Iroquois Police Department to utilize a court summons for D.U.S firsts at any time or does the Iroquois Police Department always conduct arrests on driving under suspensions?" masewski say... "it all depends on what they are driving under suspension for." mr. [unclear] say... "Are there times when a driving under suspension charge is brought or a ticket is issued where the person who accused of that is not taken into arrest at that time?" masewski say "Yes". (1966 transcript)

Now there are serious issues surrounding my license which I will later explain but first I'd like to argue that above testimony by masewski proves that for D.U.S 1st Iroquois Police officers do not always issue a ticket and does not always conduct arrest for D.U.S. As masewski said... "it all depends on what they are D.U.S for." And above testimony also establishes pressure times when a person is charged for D.U.S and is not arrested. So now the question is, "what type of D.U.S falls into the category in which a person is not arrested."

Well there are numerous of violations which cause a person license to be suspended and 1 of those is for failure to pay a fine, which is in violation of Failure to surrender surrender license under 56-1-350, which suspends a persons license to drive. If a person is driving while his license is suspended then he would be violating 56-1-460 (D.U.S LAW).

Now I recently had a civil action in state court and I did a interrogatory in which city of Iroquois answered. I asked "State the procedure in effect during 12/13/2000 at Iroquois Police Department in city of Iroquois for liability of D.U.S in violation of 56-1-460 / and failure to surrender suspended D.L (56-1-350). City of Iroquois Answer... "Typically, persons

Driving under suspension and failing to surrender their drivers license are Arrested. There are EXCEPTIONS including the statutory exception when the suspension is for failure to pay a fine, (SEE ANSWERS TO INTERROGATORIES).

This information is from a attorney for city 240 MAY 19 2014 who gave me this information April 2010. This attorney from the state (city of) proves that for the DVS LAW UNDER SECTION 14-2-29 there is exception to being arrested under DVS LAW and that includes the statutory exception when the suspension is for failure to pay a fine.

Well that is the exact reason why officer say my license was suspended is cause of Failure to pay a fine!

So I argue that because of this statutory exception that I should not have been arrested!

Now there is a CASE from Virginia Appeals court 201 called West V. Com. 549 SE.2d 605 This case is controlled by the U.S. supreme court case of Knowles V Iowa 119 Sct 404 (1993). In West V. Com a officer saw car turn twice without signaling. officer Polak approached car and ask Appellant for his license and stated he did not have a license and provided a I.D. officer Polak informed him he was under arrest for driving without a license. He was filling out a summons for driving without a license and failing to signal a turn when he noticed a bulge in Appellant's right shoe. Polak looked under the flap of shoe and found bag of crack cocaine. He testify he was in process of determining when Appellant had any history of failure to appear in court when he noticed the bulge. He said he normally he would issue summons for the 2 initial offenses but he was going to the magistrate to get a warrant for the felony and the magistrate would decide whether to release Appellant on summonses. The court say the General Assembly expressed its preference for the issuance of a summons in lieu of an arrest warrant for most misdemeanor cases by Exacting Code 19.2-74, Code 46.2-436 Paralle Code 19.2-74 in Reiterating the preference for issuance of a summons with a regard to violations of the motor vehicle code. Code 46.2-436 directs that "for purposes of arrest, traffic infractions shall be treated as misdemeanors. Code 19.2-74 and 46.2-436 mandate the arresting officer shall issue a summons in the absence of an express Exception to the statutes, or a reasonable belief that the person arrested,

Will fail to appear in court on his or her promise or fails to discontinue the unlawful act. Police stopped Appellant for failing to signal a turn in violation of code § 19-2-240, A Traffic Infraction, and subsequently discovered he also was in violation of code § 19-2-300, for driving without a valid operators license, a class 2 misdemeanor. Neither of these offenses fall under any exception directing a suspect to be taken directly to a magistrate. The court say in Knowles v Iowa the Supreme Court decided to expand the "Search Incident to Arrest" Exception to the Warrantless Provision against the Warrantless Searches, unless either of the 2 Historical rationales for the exception arise in a specific situation, i.e. (1) The need to disarm the suspect in order to take him into custody and (2) The need to preserve evidence for later use at trial. The court held there is no Search Incident to citation exception, see Lovelace v Commonwealth 522 SE.2d 856, 860 (1999) after Knowles, An arrest that is effected by issuing a citation or summons rather than taking the suspect into custody does not by itself justify a full field type search. code § 19-2-236 specifically require the issuance of a custodial arrest regardless of the classification of the misdemeanor offense. The officer is directed to take the name and address of the suspect, obtain his promise to appear and release the suspect unless the facts warrant otherwise. In the absence of a particularized concern about a weapon or need to collect evidence for the charged offenses, the officer was not authorized to conduct a full search incident to the arrest by summons or citation. see Farrar v Commonwealth 525 SE.2d 1113 (2000). In Farrar v Commonwealth officer morton arrested defendant for probation in public, a class 3 misdemeanor, issued him a summons and searched him and found cocaine on him. In support of his contention that the search was in violation of the 4th Amendment, requiring suppression of the related evidence, defendant asserted that a brief detention incidental to the issuance of a summons for a class 3 misdemeanor does not give rise to a custodial arrest or otherwise justify a search of the accused, he further contended that he was subjected to a custodial arrest in violation of code § 19-2-24 (1)(2), a circumstance that he maintains also requires suppression of the evidence. Court said it is well established that following a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the 4th Amendment, but is also a reasonable search under that amendment. U.S. v Robinson 414 U.S. 218 (1973). However, the U.S. Supreme Court has refused to extend this Bright Line rule to a routine traffic stop, citing Knowles v Iowa, subsequently in Lovelace v Commonwealth 522 SE.2d 856 (1999) the Supreme Court of Virginia guided by the

Attitude of Knowles, concluded that class 3 and class 4 misdemeanors were similar in nature and duration to a routine traffic stop and did not contemplate a custodial arrest. Thus an arrest that is effected by issuing a citation or summons rather than taking the suspect into custody was not by itself, justify a full field type search. The trial court erroneously denied the motion to suppress and reversed and remanded for further proceedings.

CLERK OF COURT
WINSTON SE

Now under South Carolina code of laws 56-25-30/56-25-30/56-25-40 the South Carolina General Assembly (like the Virginia General Assembly in West v. Conley 519 S.E.2d 605) expressed its preference for the issuance of a summons in lieu of an arrest warrant for most misdemeanor cases. By Exemption Code 56-25-30, 56-25-30 mandate the arresting officer shall issue a summons in the absence of an express exception to the statutes. This law says... "56-25-30 [RELEASE of violator on PR; Release of Non-Resident Licensed by Compact Jurisdiction]. Any Law Enforcement officer who issues to a person a uniform traffic citation may, in addition to any other action authorized by law and subject to the exceptions noted in this section, allow the person to proceed without first either having to post bond or appear before a magistrate. Recorder or other judicial officer if the person accepts the citation, such acceptance shall constitute the persons recognizance to comply with the terms of the citation. When issuing a citation for a traffic violation to a non-resident who is licensed by a compact jurisdiction, if the law enforcement officer receives the persons recognizance as above described, the officer shall not, subject to the exceptions noted below, require the person to post bond but shall allow the person to proceed."

Under this law I never mentioned. Was only authorized by code 56-25-30 to only issue me a summons for the failure to pay fine/failure to surrender license, and D.V.S. The state has offered no evidence of a need to disarm me in order to take me into custody for the failure to surrender license and D.V.S. violations, following the non-custodial detention, and he could not search me without to arrest. He conducted a "search incident to citation (search incident to summons)" which in the absence of one of the 2 historical rationales was unreasonable under the 4th amendment, this violation of Knowles v. Iowa and S.C. state laws requires case to be reversed and dismissed!

Now the last thing I would like to point out is the exhibit number

3 That is marked for Identification which is A "Impending Notice of suspension" From DMV, (p 95/97 Transcript). The solicitor basically asked me what was beginning date of of my drivers license suspension? I said beginning date was 12:01 Am 4/21/2006. and HE ASK ME WHAT DOES IT SAY WHEN IT'S ENDING DATE? I said, "Ending date: When you receive Notice From The Department That This action Has Been cleared". (p 96 Transcript). My lawyer did not object to the questioning, but when solicitor asked me about a letter. Which I initialed "K.B." my attorney asked to see it and what is the relevance? Solicitor said that it is a letter to Robert Madison the head solicitor, that while in jail I said the DMV sent me letters saying my driving record has been changed effective 11/8/2006. solicitor say suspension began in September, and that I'm saying I'm getting letters in the jail saying that it's November, and so it goes to show that my license was suspended in October. My attorney responded by pointing out that the basis of the pretrial suppression motion is basically what reason the officer that was testified today had to pull me over initially. The court say he was looking up state v Redford and that he don't think it matters whether I was or was not under suspension on 10/13/2006, and that it matters whether or not he had probable cause or reasonable suspicion to make the stop and then Probable cause to make the arrest. The court say, "If the records are wrong that were provided to the officers, unless you show me otherwise, I don't think that makes the stop wrong, I haven't decided that issue, of course but I don't think that makes the stop wrong or the search after the stop wrong."

Now in response to what the Judge say above of "and then Probable cause to make arrest," I argue that the DVS and failure to surrender license charges which gave officer probable cause to arrest me, was in fact procured upon FALSE probable cause. And also in response to what court say of records wrong provided to officers, then I argue I can prove otherwise.

Firstly From Beginning, on August 1, 2006 I WAS on my way to work and I accidentally ran a stop sign and was charged by city of forest acres officer and he cited me a ticket #12804 DK. I accidentally was late for my court date at 4:30 AM cause I could not find court, when I did find it.

Court was over. The court officials told me to sit in court room and they was gonna call the charging officer to see what to do. A Agreement was made and it was established that I got 1 month to pay fine or penalties would be entered against me. So I had by 2/10/2006 to pay fine. I repaid \$85.00 same day. I paid other \$137.50 by 9/1/2006 and on 9/1/2006 the clerk of court issued me a RECEIPT ^{CLERK OF COURT} as a compliance notice, which proves I paid the full fine of \$222.50 to court. on 9/1/2006 I took a copy of that to D.M.V.

[Note: Now recently on March 13, 2009 (which is 3 years later after my arrest and after my conviction) D.M.V. told me through discovery papers, that city of forest acres court issued a "Notice of suspension", and that court sent it to D.M.V. to initiate suspension of my drivers license for failing to pay remaining fine of \$147.50. In the discovery papers on 3/13/2009, D.M.V. claim they received the notice of suspension from city of forest acres court on 9/5/2006, (which is 4 days after I paid total fine to court). To this very day and year in 2010 D.M.V. has not told me what date city of forest acres court mailed this "alleged" notice of suspension to D.M.V., nor have they presented a copy of envelope it came it to them. The city of forest acres court never informed me of any fine not paid or any "alleged" notice of suspension. They sent to D.M.V. on 9/5/2006. From 2006 to 2009 I had no knowledge of this alleged notice of suspension from court to D.M.V. This was concealed from me until 3-13-2009]

On 9-6-2006, D.M.V. claim they mailed me a "official notice" form of a impending suspension telling me to pay fine (232.50) by 9/26/2006 or my license would be suspended.

Now this "official notice" is not a "Actual notice of suspension" or "Final notice of suspension", it is a "impending suspension" (or rather a Proposed suspension as described in state law 56-1-463). This "official notice" relates to notice "Prior" to the proposed suspension date of 9/26/2006, not notice that ones license has been suspended, (see Barrett v state 326 SE.2d 816 (Ga. App. 1985)). on the impending suspension date of 9/26/2006 I never received no type of notification of any actual or final notice of suspension from D.M.V. Letting me know that license "has been suspended" or after words. Now D.M.V. violated south carolina notification of laws of 56-1-350 / 56-1-360 / 56-1-465 / 56-1-810 by not notifying me my license has been suspended and this is mandatory by law to do, not discretionary! 56-1-350 / 56-1-610 / 56-1-810 all have the statutory phrases of "license has been suspended". This means that once the impending date of 9/26/2006

Called around then by law if they took Affirmative action of suspending my license on 9/26/2006 then they were mandatorily required to notify me of this suspension. Notice is a due process requirement. 56-1-350 say D.M.V shall notify me as prescribed in 56-1-360. / 56-1-360 say Notice must be given by U.S. mail Postage Prepaid and certification by the D.M.V Director is presumptive proof that requirement as to notice of suspension have been met even if not received by licensee. / 56-1-465 say licensee shall be notified of suspension under 56-1-460 and same is required when suspension is due to loss of points as provided in 56-1-810. / 56-1-810 say D.M.V shall notify licensee in writing return receipt requested that licensee has been suspended, (return receipt requested means use of certified mail under 2-9-90). Now under all these laws D.M.V did not comply by notifying me.

Now I have recent new evidence proving this allegation! on February 18 2009 D.M.V answered my request for admissions in a civil action. My 10th request for admission in civil case 08-CR-32-4159 request: From September 20th to October 13th 2006 D.M.V did not mail me any final notices of suspension.

Response: The defendant admits that "No final Notices of suspension" were mailed to the Plaintiff.

Now, I paid the fine within 1 month, provided D.M.V with a copy of compliance notice on 9/1/2006. So when impending suspension date of 9/26/2006 rolled around and I did not hear anything of my license being suspended, then I reasonably concluded that D.M.V processed the compliance receipt by 9/26/2006 and therefore everything was OK in order and that it was OK for me to drive. Any motorist in my situation would have also concluded the same exact logical conclusion!

Now 9 days later after 9/26/2006 I was pulled over in Newberry County by Highway Patrol officer MC GENTRY COLUMBUS UNIT 1277. He stopped me for speeding. He checked my license / registration / Insurance / (tag and) Dispatcher KymcBride told him my license was "clear", meaning "not suspended". He came back to my car and told me my license was not suspended and he wrote me a warning ticket. So from this encounter I also reasonably concluded it was OK for me to drive. Warning ticket he wrote is W079548.

Now I'd like to point out an important fact. If my license was in fact suspended on 9/26/2006 then on 10/4/2006 when officer Gentry saw my license the dispatcher KymcBride would have told him it was suspended and I would have been charged for DVS / failure to surrender my license but this never happened. Hence my license was "valid". 9 days later after 10/4/2006 I was

pulled over by Brian Majewski in Ima for alleged illegal left turn and KFC robbery HUNCH. He ran my license and ~~Ma Eby~~ Dispatcher (Sherry Woodward) told him my license was suspended for unpaid Traffic Ticket (Ticket I was accused of not paying is the ticket from MAY 19 of 2006 for \$232.50, which I did in fact pay 43 earlier on 4/1/2006). He accused me for DUS/ Failure to Surrender license. BETH A. SAMPSON
CLERK OF COURT
LEXINGTON SC

Now the "official notice" of impending suspension D.M.V. claim they sent me on 9/26/2006 say under "Reinstatement Fee" section: [You must pay a \$100.00 Reinstatement fee if your Compliance Notice shows payment on or after the suspension date].

The compliance notice issued to me by city of forest acres court does not show payment on or after the suspension date of 9/26/2006. It shows payment on 4/1/2006, so the \$100.00 Reinstatement fee does not apply to me!

8 days after my arrest D.M.V. claim they received proof that fine was in fact paid on 4/1/2006, they later say they cleared all suspensions off my record. After I was convicted on May 2, 2007 for KFC Armed robbery, my 2 traffic charges were still pending in another court. On 8-22-07 I had a bench trial before Honorable Mr. Joseph M. Eppling of Ima Municipal Court. Majewski argued his case, I argued mine and I read a state law of 56-1-463 to judge which basically say the DUS = 56-1-463 does not apply if and when the proposed suspension is based solely on lack of notice being given to D.M.V. when the person has in fact paid any fines or penalties due to court.

Mr. Eppling found me Not guilty of DUS/ and Not guilty of Failure to Surrender license and dismissed both charges on 8/22/2007.

Now even though I was not guilty of both traffic charges there are 2 more points I missed and will explain and prove to show that I was arrested upon false probable cause.

On the "Notice of suspension" that D.M.V. claim they supposedly received on 9/5/2006 from city of forest court, is a section labeled court information section, which list name of court/ address/ phone number/ date official. Last section has "Authorized By", which is blank. It has no signature of any judge or clerk authorizing that order of notice of suspension. In order

For this form to be legally authorized or valid, it has to be endorsed by a Judge or Clerk, and since it is not endorsed or signed that it is not authorized and is illegal. Under 56-25-20 it says when a South Carolina "Court" or the Driver Licensing Authority of a compact jurisdiction notifies the Department that a resident of South Carolina or person possessing a valid S.C. Driver License has failed to comply with the terms of a traffic citation issued in this or any compact jurisdiction the Department shall suspend the persons driver's license ... etc.

Under this section 56-25-20 D.M.V. can only suspend my license if they receive a notice of suspension from the court that is furnished with a signature.

I have now discovered evidence from City of Forest Acres Court. After I had found out from D.M.V. that they say that the City of Forest Acres Court sent them a notice of suspension on 4/5/2006, I investigated this by writing court. On August 11, 2009 I discovered through a letter from clerk Ms Michelle Morrison the following. She says... "It don't show in the computer where there was any form sent to Highway Department letting them know you don't pay ticket."

This is clear and convincing evidence that the City of Forest Acres Court did not notify D.M.V. on 4/5/2006 of me failing to comply with ticket. The court never sent D.M.V. no notice of suspension form; so D.M.V. is lying about this! Introduction of a false notice of suspension in itself violates due process! D.M.V. is not privileged to make up a false notice of suspension. In the Black Law Dictionary "Unauthorized to... Done without authority; specifically (of a signature or endorsement) made without actual, implied, or apparent authority."

The last thing I'm pointing out is the elements of DUB and some cases. In BUMGARDNER V SOUTH CAROLINA DEPARTMENT OF HIGHWAY 331 SE 2d 981 (SC App 1985) in this case he was cited for speeding. He chose to default and was convicted of charge. North Carolina "Notified" S.C. Highway Dept. that he failed to appear or pay fine on charge, upon receiving notification the Department suspended his license under 56-25-20. In accordance with 56-1-360 the Department gave him notice of suspension by letter which he admittedly received. In that case every requirement was met by law. But if you compare that case to my case you will see D.M.V. did not meet none of the requirements such as (1) City of Forest Acres Court did not

Notify DMV of the failure to pay fine through a notice of suspension under 56-25-20 and 56-1-360, (3) DMV never gave full official notice of suspension under 56-1-350/56-1-360.

2010 MAY 19 4:29

In Buckley v State 540 SE2d 292 (GA App 2000) she was found guilty of DWS at bench trial. She appealed. ^{BETH A. CARRIGLE} ^{STATE OF GEORGIA} ^{LEXINGTON, SC} The Georgia Court of Appeals agreed and reversed. Trooper stopped her for speeding 7/20/1999, ran a computer check and it showed license had been suspended on 3/8/1999, for driving with no proof of insurance, he cited her with a suspended license. Buckley denied she was aware of any suspension, and she claimed she was issued a renewal license after the alleged suspension date. The state gave trial court a copy of Buckley license history report showing her license had in fact been suspended but the report was not admitted into evidence, (just like in my case the "official" notice solicitor questioned me about was not admitted into evidence nor was a final notice of suspension admitted into evidence in my trial to prove my license was suspended). The court in Buckley engaged in an extended colloquy with attorneys/trooper/Buckley as to reason for suspension which was not clear from the history report. The court stated: Based on the evidence, Mr. Buckley I'm going to determine that technically you were DWS at the time, although there was a great amount of confusion about it. Buckley case say that in order to establish the offense of driving with a suspended license the state must show that the accused ~~was driving~~ ^{was (1) driving (2) that her} license was suspended, (3) and that the accused had received actual or legal notice of the suspension. Here, the state failed to prove her license was suspended. The state notes that (a Georgia crime info center) re drivers history was provided for the judge. Such history is admissible to show the fact of suspension, but only if the state tenders a "certified copy of a department of public safety record", or proves that the driving record was obtained from a computer terminal lawfully connected to the G.A.I.C. computer. The record does not show that the state satisfied this foundational requirement or that even offered Buckley's driving history into evidence. Trooper statement at trial that her computer check of Buckley revealed a suspended license also fails to establish the fact of suspension. This upward representation as to the contents of her driving record does not qualify as evidence. To hold otherwise would vitiate the foundational requirement outlined above for properly admitting a driving record into evidence. Finally the uniform traffic

... citation and which trooper wrote that her license was suspended cannot be used as any evidence that her license was suspended, Buckley conviction was reversed).

THIS CASE I JUST CITED APPLIES TO MY CASE! I ARGUE THAT ALL ELEMENTS OF D.V.S. MUST BE MET. IN MY CASE THE STATE CANNOT PROVE I RECEIVED ACTUAL OR LEGAL NOTICE OF SUSPENSION TELLING ME MY LICENSE HAS BEEN SUSPENDED. PLUS, D.M.V. HAVE ALREADY ADMITTED TO THE FACT THAT NO FINAL NOTICE OF SUSPENSION WERE MAILED TO ME. THEREFORE, IT CANNOT BE ESTABLISHED THAT I COMMITTED THE OFFENSE OF DRIVING WITH A SUSPENDED LICENSE. IT DOESN'T MATTER WHAT TYPE OF INFORMATION MATKOWSKI CLAIM HE RECEIVED FROM DISPATCHER, MATKOWSKI STATEMENTS AT TRIAL DOES NOT ESTABLISH THE FACT OF SUSPENSION. THE UNIFORM TRAFFIC TICKET WHICH MATKOWSKI WROTE THAT MY LICENSE WAS SUSPENDED CANNOT BE USED AS EVIDENCE OF MY GUILT, NO DRIVERS LICENSE HISTORY OF ANY CERTIFIED COPY OF A DEPARTMENT OF PUBLIC SAFETY RECORD WAS SUBMITTED TO JUDGE, NO DRIVING RECORD WAS OBTAINED FROM A COMPUTER TERMINAL LAWFULLY CONNECTED THE SOUTH-CAROLINA I.S. COMPUTER.

NOW THERE I WANT TO POINT OUT. UNDER 56-1-350 THERE IS AN ATTORNEY GENERAL OPINION WHICH SAY ... [WHEN SUSPENSION OF LICENSE FOR DRUNK DRIVING BEGINS] - "SUSPENSION OF DRIVER LICENSE OF A PERSON CONVICTED OF DRUNK DRIVING DOES NOT BEGIN UNTIL AFFIRMATIVE ACTION IS TAKEN BY THE HIGHWAY DEPARTMENT NOTIFYING EACH PERSON OF THE SUSPENSION. (1970-71 OF ATTY GEN NO 3107 P4)"

THIS OPINION OF ATTORNEY GENERAL APPLIES TO MY CASE! NOW THE IMPENDING SUSPENSION DATE IN MY CASE WAS 9/26/2006. BUT THAT DOES NOT MEAN D.M.V. TOOK "AFFIRMATIVE ACTION" ON THAT DATE IN SUSPENDING MY LICENSE. THE SUSPENSION OF MY LICENSE DOES NOT BEGIN UNTIL AFFIRMATIVE ACTION IS TAKEN BY THE HIGHWAY DEPARTMENT NOTIFYING ME OF THE SUSPENSION. IN MY CASE, I HAVE PROVEN D.M.V. NEVER NOTIFIED ME OF THE SUSPENSION, THEREFORE, ON THE IMPENDING SUSPENSION DATE OF 9/26/2006 THAT IS NOT THE REAL BEGINNING OF SUSPENSION OF MY LICENSE. BY ME BEING PULLED OVER IN NEWBERRY ON 10/14/2006 BY OFFICER GENTRY WHO SAID MY LICENSE WAS NOT SUSPENDED, THIS PROVES THAT D.M.V. DID NOT TAKE AFFIRMATIVE ACTION IN SUSPENDING MY LICENSE ON 9/26/2006.

IN STATE V. ORR. 276 SE 2D 346 THE GEORGIA COURT OF APPEALS SAY THAT CODE 16-3131(D) G.A.L. 1976, 1977, 1979 PROVIDES THAT "ALL REVOCATIONS AND SUSPENSIONS PROVIDED FOR IN THIS TITLE SHALL BE EFFECTIVE ON THE DAY THE DRIVER RECEIVES ACTUAL KNOWLEDGE OR LEGAL NOTICE THEREOF, WHICHEVER OCCURS FIRST."

THIS PRETTY MUCH APPLIES TO MY CASE IN ANALOGY BECAUSE I ALLEGE THAT REGARDLESS

of the impending suspension date was scheduled for the suspension of my license does not become effective until the day I receive actual or legal notice that license has been suspended. I did not know my license was suspended until I was arrested on 10/13/2006 for DUS. From 4/11/2006 to 10/13/2006 I had no actual or legal notice of suspension. NOTE: LETTER FROM DMV DATED 11/13/2006 PROVES DMV DID NOT NOTIFY ME THAT LICENSE HAS BEEN SUSPENDED ON 4/11/2006. NOW I HAVE A PERSONAL THEORY BASED ON LOGIC WHICH NOT ALL COURTS MAY NOT AGREE WITH ME UPON, AND IT DEALS BASICALLY WITH THE SEQUENCE OF EVENTS FROM BEGINNING TO END, SORT OF LIKE A HIERARCHY OF EVENTS. AND I ALLEGE THAT IF THE BEGINNING OF THE EVENTS IS NOT LEGAL THEN EVERYTHING AFTER IS ILLEGAL.

- 1). If a person fails to comply with a citation or pay fine the South Carolina court must notify the DMV by sending DMV a notice of suspension to initiate action to suspend driver's license.
- 2). DMV receives notice of suspension and processes it.
- 3). DMV sends driver a official notice of proposed suspension to comply before suspension date.
- 4). Officer mustawski arrest me for DUS/failure to surrender license.
- 5). mustawski search my car find evidence, and take me to jail.

NOW THIS NOT A DETAILED SEQUENCE OF EVENTS, BUT IT BASICALLY SUMS UP EVERYTHING FROM BEGINNING TO END. NOW I ARGUE THAT IF THE FIRST STEP IN THIS SEQUENCE IS NOT VALID, THEN THERE IS NO WAY THAT STEP 2/3/4/5 IS VALID. IN ORDER FOR 2-5 TO BE VALID, THE FIRST STEP MUST BE VALID. AS I ALREADY EXPLAINED, THE CITY OF FOREST ACRES COURT NEVER SENT DMV NO NOTICE OF SUSPENSION TO SUSPEND MY LICENSE, SO STEP 1 IN THIS SEQUENCE ABOVE IS INVALID AND EVERYTHING THEREAFTER IS INVALID.

IF THE COURT DOES NOT AGREE WITH THIS THEORY THEN I STILL ARGUE THAT FOR FOREGOING REASONS ALREADY EXPLAINED THAT THE JUDGE ERRED IN DENYING MY LAWYERS PRETRIAL TRIAL MOTION FOR SUPPRESSION AND THAT: (1) MY LAWYERS MOTION ADEQUATELY STATED FACTS SHOWING THAT SEIZURE WAS UNLAWFUL; (2) STATUTE SB-5-2150 (B) DID NOT REQUIRE LEFT TURN SIGNAL IN LEFT TURN ONLY LANE; (3) MUSTAWSKI UNPARTICIPALIZED SUSPICION (HUNCH) DOES NOT CONSTITUTE REASONABLE SUSPICION AND THEREFORE TRAFFIC STOP WAS NOT SUPPORTED BY REASONABLE SUSPICION THAT I WAS OR WAS ABOUT TO BE ENGAGED IN CRIMINAL ACTIVITY OF ARMED ROBBERY NOR WAS TRAFFIC STOP SUPPORTED BY PROBABLE CAUSE TO ARREST FOR ARMED ROBBERY; (4) TRAFFIC STOP FOR MINOR OFFENSE OF ILLEGAL LEFT TURN WAS DONE IN ORDER TO INVESTIGATE A HUNCH THAT DRIVER WAS INVOLVED IN ARMED ROBBERY FOR WHICH THERE WAS NO LAWFUL GROUNDS TO MAKE AN ARREST THUS WAS A PRETEXTUAL STOP; (5) STOP WAS IN VIOLATION OF KNOWLES V LOWE (6) ARREST FOR DUS/FAILURE TO PAY FINE PROCURED UPON FALSE PROBABLE CAUSE

For my relief, I ask that Court Grant motion to suppress all evidence that was discovered after the illegal stop or all evidence discovered after the arrest for D.V.S./ Failure to surrender license and Dismissal of Indictments or reversal and dismissal

II.

(M): (Pg 245 Transcript) my attorney had a motion and asked to renew motion for Direct Verdict and renew on same grounds previously stated Jay before. The Judge Denied motion based on his thought of there being substantial evidence in the record both direct and circumstantial. I believe this Denial was erroneous based on all previous arguments of mine in section II(L) of this P.C.R. and I hereby renew and incorporate all arguments from II(L) into this section and ask for relief of reversal, suppression of all evidence and dismissal of case or dismissal of Armed Robbery / Gun Charge Indictments

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 have only had a Direct Appeal filed, 2008 MAY 19 4:29 PM, will not submit other claims,

(b) _____

(c) _____

BETH A CARRIGG
CLERK OF COURT
LEXINGTON SC

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? None at arraignment / Did not 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?

only thing filed so far after my conviction is the Direct Appeal.

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. ARIE BAX / ELIZABETH FULLWOOD.
11TH CIRCUIT PUBLIC DEFENDER OFFICE, 409 1/2 West Main St Lexington, MA 01850
- ii. ELEANOR CLEARLY / LANELLE C. DURANT.
SCCID, DIVISION OF APPELLATE DEFENSE, P.O. Box 11589, Columbia S.C. 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. ARIE BAX / ELIZABETH FULLWOOD represented at Trial / Sentencing.
- ii. ARIE BAX Filed Notice of Appeal
- iii. ELEANOR CLEARLY Filed original Appeal on 1/16/2008,
She no longer work there, LANELLE C DURANT WAS THEN ASSIGNED

ORIGINAL

19. State clearly the relief you seek in filing this application:

BASICALLY I WANT 2 THINGS: (1) I WANT THIS CONVICTION TO BE ERASED FROM MY RECORD BY VACATING, REVERSING, OR OVERTURNING IT AND (2) I WANT IMMEDIATE RELEASE FROM CUSTODY.

20.

(3) I WANT STOP RULED ILLEGAL AND ALL EVIDENCE SUPPLIED UNDER THE FRUIT OF THE TREE DOCTRINE TO BE DISMISSED.

-NO-

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010CP3202120

STATE OF SOUTH CAROLINA

County of LEXINGTON

VERIFICATION

I, Korell Battle

, 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.

Korell Battle

SWORN to and subscribed before me this 23
day of April, 2010.

Reginald W. Boy (L.S.)
Notary Public

My Commission Expires: 5 April 2010

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010 MAY 19 3:42 PM

FILED

(3) of The PoissonvTree doctrine, that would not have come to light but for the illegal stop, which was exploited by that illegality, suppress discovery of evidence, possibly suppressed and all evidence found afterwards upon me and in my car. State v. Jinn 536 SE 2d 79

(4) Ruling that law enforcement adequately stated facts showing that seizure (arrest) for traffic stop was unlawful.

(5) Ruling that officers unarticulated suspicion or hunch that car contained either possible suspect or a witness does not rise to reasonable suspicion or probable cause to make arrest for armed robbery, and that stop was made for traffic stop violation and unlawful left turn and not for armed robbery.

Revised 3/2003

Back

- (6) Rule criminal Arrest for D.U.I. for failure to pay fine was in violation of Knowles v Iowa.
- (7) Ruling Arrest for D.U.I. failure to pay fine was procured upon false probable cause of a false, totally defective, unauthorized, illegal notice of suspension from court.
- (8) Ruling that statute did not require left turn signal in left turn only lane; AND therefore there was no violation of 56.5-2 also committed in officer's presence and was no basis for initial stop, thus the stop was unauthorized.
- (9) Ruling that Judge erred in denying Batson motion.
- (10) Ruling that I was denied preliminary hearing.
- (11) Ruling that attempted Burglary from Colorado was too remote in time to be used for impeachment purposes since conviction was over 10 years old and 8 years elapsed since release; AND ruling that general conspiracy under 16-17-410 is not a crime of moral turpitude and should not have been used for impeachment purposes.
- (12) Ruling that counsel was ineffective at trial in failing to cross examine all dispatches about whether or not it she told motorcycle license was suspended.
- (13) Ruling that counsel was ineffective at trial in failing to object to pictures offered into evidence which was not received by defense in spite of request under Brady v Maryland.
- (14) Ruling that trial court erred in allowing statement into evidence relating to 80.
- (15) Ruling that trial court erred in denying continuance request and right to call witnesses.
- (16) Ruling that trial court erred in allowing solicitor to question me on why I did not mention Jay and violated my freedom of speech in not letting me read letter to jury.
- (17) Ruling that trial court erred in failing to instruct jury on alibi instruction.
- (18) Ruling that trial court erred in failing to instruct jury on larceny and conspiracy instruction and possession of weapon instruction; AND attorney was ineffective in not requesting conspiracy/larceny instructions.
- (19) Ruling that counsel was ineffective in failing to object to solicitor comments.
- (20) Ruling that trial court erred in denying pretrial motion of suppression.
- (21) Ruling that trial court erred in denying motion for direct verdict.

ORIGINAL

FILED

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2010 MAY 19 12 4 30

I, Korell Battle, 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.

Korell Battle
Applicant

SWORN or affirmed to and subscribed before me this

23 day of April, 2010.

Ronald W. Ser
Notary Public

My Commission Expires: 5 Apr 1 2016

PRELIMINARY HEARING / STATEMENT OF RIGHTS FORM

OF SOUTH CAROLINA)

Y OF LEXINGTON)

UNIFORM WARRANT NUMBERS:

1. 20111111 2. 20111111 3. 20111111
 4. 20111111 5. FILED 6. 20111111
 7. 20111111 8. 20111111 9. 20111111 -153
 you are charged with 20111111

and you may be entitled to a Preliminary Hearing. You must request a Preliminary Hearing within ten (10) days of this notice or lose your right to such hearing. You may request such hearing by completing the lower left section of this notice and returning it to the Court either in person or by mail to the following address:

IRMO MUNICIPAL COURT
 7300 WOODBOW STREET
 P.O. BOX 406
 IRMO, SC 29063

I request a Preliminary Hearing.

Defendant: NoneAddress: L.C.D.C.P.O. Box 2019Lexington, SC. 29071

My Attorney is:

HAVE NONE YET

Notice Given By:

Summary Court Judge

Date: 11/1/11

FOR COURT USE ONLY

Date Request Received:

By: _____

STATEMENT OF THE RIGHTS OF AN ACCUSED

YOU HAVE BEEN ARRESTED AND CHARGED WITH THE ABOVE CRIME(S).

YOU ARE ADVISED:

- (A) YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.
 (B) IN THE EVENT YOU ARE FINANCIALLY UNABLE TO EMPLOY COUNSEL, THE STATE WILL PROVIDE YOU WITH COUNSEL BY APPOINTMENT OR WITH THE SERVICES OF THE PUBLIC DEFENDER OF THIS COUNTY. IF YOU DESIRE THE STATE TO PROVIDE YOU WITH COUNSEL, YOU MUST CONTACT THE LEXINGTON COUNTY CLERK OF COURT'S OFFICE WITHIN TEN (10) DAYS OF YOUR ARREST. THE TELEPHONE NUMBER FOR THE CLERK OF COURT IS (803) 359-8549.
 (C) YOU MUST EMPLOY COUNSEL OR HAVE COUNSEL APPOINTED TO YOU, BEFORE YOUR ASSIGNED COURT DATE. IF YOU DO NOT DO SO, YOU MAY LOSE YOUR RIGHT TO COUNSEL. COUNSEL MUST BE PRESENT AT YOUR ASSIGNED COURT DATE.

THIS FORM HAS BEEN READ TO THE ACCUSED IN MY PRESENCE,

AT 1 O'CLOCK PM / AM, THIS 1 DAY OF 10 2011.

DEFENDANT

PRESIDING COURT OFFICIAL

WHITE COPY - CLERK OF COURT
 YELLOW COPY - TO JUDGE FOR PRELIMINARY HEARING
 PINK COPY - DEFENDANT

PRELIMINARY HEARING / STATEMENT OF RIGHTS FORM

STATE OF SOUTH CAROLINA)

UNIFORM WARRANT NUMBERS:

COUNTY OF LEXINGTON)

1. 10206144 2. 10206145 3. 10206146
 4. 10206147 5. 10206148 6. 10206149
 7. 10206150 8. 10206151 9. 10206152 10. 10206153 11. 10206154 12. 10206155 13. 10206156 14. 10206157 15. 10206158

Mr. Korrell Battleyou are charged with AR, AHA, Poss

Pistol Int., Ping Firearm, Poss Weapon During Violent Crime
Kidnapping (x10)

and you may be entitled to a Preliminary Hearing. You must request a Preliminary Hearing within ten (10) days of this notice or lose your right to such hearing. You may request such hearing by completing the lower left section of this notice and returning it to the Court either in person or by mail to the following address:

IRMO MUNICIPAL COURT
7300 WOODROW STREET
P. O. BOX 400
IRMO, SC 29063

I request a Preliminary Hearing.

Defendant: _____

Address: _____

My Attorney is: _____

Notice Given By: _____

Summary Court Judge

Date: 10/15/06

FOR COURT USE ONLY

Date Request Received: _____

By: _____

STATEMENT OF THE RIGHTS OF AN ACCUSED

YOU HAVE BEEN ARRESTED AND CHARGED WITH THE ABOVE CRIME(S).

YOU ARE ADVISED:

- (A) YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.
 (B) IN THE EVENT YOU ARE FINANCIALLY UNABLE TO EMPLOY COUNSEL, THE STATE WILL PROVIDE YOU WITH COUNSEL BY APPOINTMENT OR WITH THE SERVICES OF THE PUBLIC DEFENDER OF THIS COUNTY. IF YOU DESIRE THE STATE TO PROVIDE YOU WITH COUNSEL, YOU MUST CONTACT THE LEXINGTON COUNTY CLERK OF COURT'S OFFICE WITHIN TEN (10) DAYS OF YOUR ARREST. THE TELEPHONE NUMBER FOR THE CLERK OF COURT IS (803) 359-8549.
 (C) YOU MUST EMPLOY COUNSEL OR HAVE COUNSEL APPOINTED TO YOU, BEFORE YOUR ASSIGNED COURT DATE. IF YOU DO NOT DO SO, YOU MAY LOSE YOUR RIGHT TO COUNSEL. COUNSEL MUST BE PRESENT AT YOUR ASSIGNED COURT DATE.

THIS FORM HAS BEEN READ TO THE ACCUSED IN MY PRESENCE,
 AT 10 O'CLOCK PM (AM) THIS 5 DAY OF 10 2006.

Korrell Battle
 DEFENDANT

[Signature]
 PRESIDING COURT OFFICIAL

WHITE COPY - CLERK OF COURT
 YELLOW COPY - TO JUDGE FOR PRELIMINARY HEARING
 PINK COPY - DEFENDANT

LINA

md

e

M Age: 28

148-62-5187

Quarters Rd

SC

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

02 GS- 40 - 927 FILED

A/V#: H087429

Date of Offense: 1/23/02

S.C. Code §: 16-17-410

CDR Code #: 0101419

BETH A. CARR
CLERK OF COURT
LEXINGTON S

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: General Conspiracy

in violation of § 16-17-410

of the S.C. Code of Laws, bearing CDR Code # 0101419

☒ 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:

Sally Justice
SolicitorX Kinell
DefendantPaula Ly
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 4 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.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on.

SPECIAL CONDITIONS:

☐ PESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: S

§14-1-206 (Assessments 100%)... S

§14-1-211(A)(1) (Surcharge)... S

§14-1-211(A)(2) (Surcharge)... S

§36-5-2295 (DUI Assessment)... S

3% to County (if paid in installments)... S

TOTAL.....S

Barbara Scott
Clerk of Court/Deputy ClerkCourt Reporter: McCuray

White - Clerk

Green - Corrections

Cyan - Probation

Pink - Defendant

PRESIDING JUDGE Robert Kinell

Judge Code:

Sentence Date: 4/27/03

DOCKET NO. 2002-GS-40-0927

The State of South Carolina

County of Richm. J

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2002

102

THE STATE

vs.

KORELL BATTLE

Indictment for

ARMED ROBBERY

SC Code: 16-11-325

CDR Code: 0137

Class FEL-D

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

WITNESSES

(S) EP SMITH CPD

2010 MAY

BETH

ARREST WARRANT NUMBER

H087429

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

WITNESSES

FILED

200 MAY 19 4:30

BETIL A. CAFRIPP
CLERK OF COURT
LEXINGTON, SC

ARREST WARRANT NUMBER

H087429

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. ²⁰⁰² 2000-GS-40-927The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

FEB. 2002
APRIL TERM 2003

102

THE STATE
vs.

KORELL BATTLE

Indictment for
CRIMINAL CONSPIRACY, C/L
CONSPIRACY DEFINED
SC Code: 16-17-410
CDR Code: 049
Class FEL-FAfter being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

To Solicitor,

FILED

12/3/06

15 Korell Battle "Hello!" Hope all is well with you today. My name is Korell Battle. I was arrested for a 3rd degree murder of a K.F.C. on October 13th, 2006. I have MR Toly Fox for a Attorney from P.D. office. I have not spoken to him yet. I only But He's Busy. I've asked 2 times for my "motion of discovery".

BETH A. CARRIGG
CLERK OF COURT
JANUARY 2007

Please release A copy of the motion of discovery to me of all Evidence the state is using against me. I am requesting your office to

Warrant Ticket Number is 1-0206144/1-0206145/1-0206146/1-0206147/1-0206148/1-0206149/1-0206150/1-0206151/1-0206152/1-0206153/1-0206154/1-0206155/1-0206156/1-0206157/1-0206158

Please send Entire motion of Discovery of All Evidence. Thank you and Have a Blessed day

Korell Battle
P.O. Box 2019
Lexington SC
29041

11(E)
pg 31/32

Form 5-432
REV. 10-82STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Irmo VERSUS
FIRST NAME Robert MIDDLE NAME Floyd LAST NAME BATTLE
STREET AND NO. 124 River St CITY Peck STATE SC
STATE LICENSED SC DRIVER'S LICENSE NO. 011415751 DRL LIC. CLASS D
VEH. LIC. NO. 536-TY6 STATE SC MAKE OF VEH. CAD YEAR 90 COMM. VEH. HAZ. MT. AUTO HAZ. MT. TRUCK HAZ. MT. COMB. HAZ. MT.
HAZ. MT. HAZ. MT. MOPEL HAZ. MT. MTRCYCL HAZ. MT. OTHER HAZ. MT.

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER CITY STREET AND NO. 7300 Woodrow
DATE OF TRIAL 11/1/86 TIME OF TRIAL 4PM CITY Irmo STATE SC ZIP CODE 29063

VIOLATION - COURT APPEARANCE REQUIRED YES NO YES VIOLATION SECTION NO. 56-1-460

OWNER OF VEHICLE DUS DATE OF ARREST 10/13/86

ADDRESS OF OWNER 1013 1206 DATE OF VIOLATION 10/13/86

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER MATEWICKI RANK PTC

PRESENT THIS SUMMONS TO THE
TRIAL OFFICER SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE.

FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET
VIOLATOR'S COPY

COUNTY Lex NUMBER 32
BADGE 31 DISTRICT OT
D S M T W T F S
A Y 1 2 3 4 5 6 7
TIME OF VIOLATION 2:13 PM WEATHER CLR
DISTANCE IN FEET FROM INTERSECTION 1100
OF 611
AND LT MARY
MILES 1 H E S W
1 2 3 4
HWY. NO. 1 CITY Irmo
OFFENSE CODE 9-6 S.A. LEVEL 91377 DU

Form 5-432
REV. 10-82STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Irmo VERSUS
FIRST NAME Robert MIDDLE NAME Floyd LAST NAME BATTLE
STREET AND NO. 124 River St CITY Peck STATE SC
STATE LICENSED SC DRIVER'S LICENSE NO. 011415751 DRL LIC. CLASS D
VEH. LIC. NO. 536-TY6 STATE SC MAKE OF VEH. CAD YEAR 90 COMM. VEH. HAZ. MT. AUTO HAZ. MT. TRUCK HAZ. MT. COMB. HAZ. MT.
HAZ. MT. HAZ. MT. MOPEL HAZ. MT. MTRCYCL HAZ. MT. OTHER HAZ. MT.

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER CITY STREET AND NO. 7300 Woodrow
DATE OF TRIAL 11/1/86 TIME OF TRIAL 4PM CITY Irmo STATE SC ZIP CODE 29067

VIOLATION - COURT APPEARANCE REQUIRED YES NO YES VIOLATION SECTION NO. 56-1-350

OWNER OF VEHICLE Failure to Surrender DL DATE OF ARREST 10/13/86

ADDRESS OF OWNER 1013 1206 DATE OF VIOLATION 10/13/86

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER MATEWICKI RANK PTC

PRESENT THIS SUMMONS TO THE
TRIAL OFFICER SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE.

FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET
VIOLATOR'S COPY

COUNTY Lex NUMBER 32
BADGE 31 DISTRICT OT
D S M T W T F S
A Y 1 2 3 4 5 6 7
TIME OF VIOLATION 2:13 PM WEATHER CLR
DISTANCE IN FEET FROM INTERSECTION 1100
OF 611
AND LT MARY
MILES 1 H E S W
1 2 3 4
HWY. NO. 1 CITY Irmo
OFFENSE CODE 9-7 S.A. LEVEL 91378 DU

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET
VIOLATOR'S COPY

864750

822250

ADDITIONAL NARRATIVE

FILED

cy Name:	Imo Police Department	ORI #:	SC0320700	Report Date/Time:	10/13/2006 9:00:00 PM	OCA #:	05-1308

TRAFFIC STOP

WHILE ON PATROL ON 10/13/2006 AT APPROXIMATELY 8:30 PM, OFFICER B. MAJEWSKI OBSERVED A RED IN COLOR CADILLAC PULLED INTO A PARKING SPACE ON THE SIDE OF THE CIRCLE K WITH THE HOOD UP. WHEN OFFICER MAJEWSKI WENT BY THE CIRCLE K A SHORT TIME LATER AT APPROXIMATELY 8:50 PM, HE OBSERVED THAT THE VEHICLE WAS NO LONGER THERE. REPORTING OFFICER PASSED THE CIRCLE K AGAIN AT APPROXIMATELY 9:10 PM AND OBSERVED THE CADILLAC BACKED INTO A PARKING SPACE ON THE SIDE OF THE CIRCLE K.

OFFICER MAJEWSKI WAS ON PATROL ON LAKE MURRAY BOULEVARD WHEN COUNTY DISPATCH ADVISED THAT THE KENTUCKY FRIED CHICKEN HAD JUST BEEN ROBBED. OFFICER MAJEWSKI TURNED AROUND AND HEADED TO THE KENTUCKY FRIED CHICKEN. AS OFFICER MAJEWSKI WAS PASSING THE CIRCLE K, THE LISTED VEHICLE WAS OBSERVED EXITING THE CIRCLE K PARKING LOT AT A HIGH RATE OF SPEED. OFFICER MAJEWSKI TURNED AROUND ON THE VEHICLE JUST AS OFFICER C. DENNIS ADVISED HE WAS ON SCENE AT THE KENTUCKY FRIED CHICKEN. THE SUBJECT'S VEHICLE MADE A LEFT TURN ONTO LAKE MURRAY BOULEVARD FROM ST. ANDREWS ROAD WITHOUT USING A TURN SIGNAL. OFFICER DENNIS ADVISED THAT THE SUBJECT HAD RUN OUT OF THE KENTUCKY FRIED CHICKEN TOWARD ST. ANDREWS ROAD BY THE CIRCLE K.

OFFICER MAJEWSKI ACTIVATED HIS BLUE LIGHTS AND SIREN FOR THE SUBJECT TO PULL OVER, WITH LEXINGTON COUNTY DEPUTY LAROSA AS BACKUP. THE SUBJECT PULLED INTO THE GAZ-BAR AT 1174 LAKE MURRAY BOULEVARD. OFFICER MAJEWSKI ASKED THE DRIVER FOR HIS LICENSE, REGISTRATION, AND PROOF OF INSURANCE WHICH HE PROVIDED. THE SUBJECT ASKED WHY HE WAS PULLED OVER, AND OFFICER MAJEWSKI ADVISED THE SUBJECT THAT HE DID NOT USE HIS TURN SIGNAL.

OFFICER MAJEWSKI HAD COUNTY DISPATCH RUN THE SUBJECT'S DRIVER'S LICENSE AND WAS ADVISED THAT THE SUBJECT WAS DRIVING UNDER SUSPENSION FOR AN UNPAID TRAFFIC TICKET. THE SUBJECT WAS PLACED UNDER ARREST FOR DRIVING UNDER SUSPENSION, TICKET # 91377DU. THE SUBJECT WAS HANDCUFFED IN THE REAR WITH THE CUFFS DOUBLE-LOCKED AND CHECKED FOR PROPER TIGHTNESS, AND HE WAS PATTED DOWN FOR WEAPONS. REPORTING OFFICER DISCOVERED A PURPLE IN COLOR CLOTH CROWN ROYAL BAG WITH LOOSE AMMUNITION INSIDE THE BAG. THE SUBJECT WAS THEN PLACED IN THE BACK SEAT OF OFFICER MAJEWSKI'S VEHICLE.

SERGEANT J. CROSLAND PERFORMED THE VEHICLE INVENTORY PRIOR TO TOWING THE VEHICLE TO SUMMIT PAINT & BODY SHOP. DURING THE VEHICLE INVENTORY SERGEANT CROSLAND DISCOVERED A BLACK IN COLOR 38 CALIBER HANDGUN WRAPPED IN A BLACK SWEATSHIRT BEHIND THE DRIVER'S SEAT, SITTING ON TOP OF A LARGE BLACK LAUNDRY BAG. SERGEANT CROSLAND OPENED THE LAUNDRY BAG AND OBSERVED A LARGE QUANTITY OF CASH AND A MASK. SERGEANT CROSLAND THEN CALLED SERGEANT S. FRANKLIN, THE ON-CALL INVESTIGATOR, WHO RESPONDED TO THE SCENE AND PROCESSED THE VEHICLE.

SPECIAL NOTE: \$1,052.11 WAS RECOVERED FROM THE LAUNDRY BAG LOCATED IN THE SUBJECT'S VEHICLE.

THE SUBJECT WAS TRANSPORTED TO THE LEXINGTON COUNTY DETENTION CENTER WITHOUT FURTHER INCIDENT. THE SUBJECT WAS ALSO ISSUED TICKET # 91378DU FOR FAILURE TO SURRENDER SUSPENDED DRIVER'S LICENSE.

Both charges I was arrested for
was dismissed on 8-22-2007

11 (L)

Pg 3 BB / Pg 3 CC

04-24-2007 0003

I was never even
charged with any
illegal left turn!

This car is a liar!
Video tape shows
He never came to
my car and told me
I violated any left
turn law.
This was a pretextual
stop.

FILED

SECTION 56-1-350. Notice of cancellation, suspension or revocation of license; surrender of license.

In all cases of cancellation, suspension, or revocation of drivers' licenses, the Department of Motor Vehicles shall notify the licensee as prescribed in Section 56-1-360 that his license has been canceled, suspended, or revoked, and such licensee shall within ten days after notice of cancellation, suspension, or revocation return his license to the department. Any person wilfully failing to return his license as required by this section may, on conviction thereof, be fined one hundred dollars or imprisoned for thirty days.

56-1-140 Insurance of license fee signature written!

11(L) / Pg 3-00 / Pg 311
Pg 300

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Korell Battle,)

Plaintiff,)

v.)

City of Irmo and Brian Majowski,)

Defendants.)

FILED
IN THE COURT OF COMMON PLEAS

2010 MAY 19 P 4:30

C/A #: 08-CP-32-4339

BETH A. CARRIGG

CLERK OF COURT

LEXINGTON SC

ANSWERS TO INTERROGATORIES

The Defendant, Town of Irmo, answers Plaintiff's interrogatories as follows:

1. State the procedure in effect during 10/13/2006 at Irmo Police Department in city of Irmo for penalty of driving under suspension in violation of S.C. statue 56-1-460/ and failure to surrender suspended D.L. (56-1-350).

Answer: Typically, persons driving under suspension and failing to surrender their driver's licenses are arrested. There are exceptions including the statutory exception when the suspension is for failure to pay a fine.

2. State the procedure and policy in effect during 10/13/2006 at Irmo Police Department in city of Irmo for operation of video dash cam recorder. For example, how does it start operating...like is it automatically operating by itself when police officer is driving? Or does it begin operating automatically by itself when officer switch on blue lights and siren?

Answer: Different vehicles are equipped differently. Malfunctions occur in older equipment as well. Upon information and belief, Officer Majowski was using a vehicle with older equipment and it malfunctioned. In some vehicles the camera comes on when the lights are engaged. In others, the camera comes on manually.

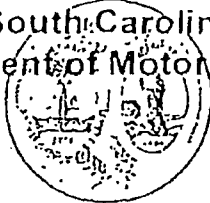
3. State the procedure in effect during October 13, 2006 at Irmo Police Department in City of Irmo for observing and charging only motorist who commits a crime in officers presence of making a left turn in a "intersection" without left turn signal on?

Answer: There is no specific policy on that particular issue. That is up to the officer's discretion. In some instances, when there is a more serious offense discovered, such as here, the underlying charge will not be asserted because it would add nothing to the more serious charge.

11(L)

Pg 3-00/Pg 3-PP

South Carolina
Department of Motor Vehicles



FILED

09/06/2006

2010 MAY 19 P 4:30

BATTLE, KORELL ROBERT FLOYD
P O BOX 5
PEAK, SC 29122-0000

BETH A. CARRIGG
CLERK/CUSTOMER SERVICE NO: 22209282
LI 41100006 4839521
DL NO: 11415751

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO PAY TRAFFIC TICKET SECTION OF LAW: 56-25-10

VIOL DATE	TICKET#	VIOLATION
08/01/2006	128040K	Disregard Sign or Signal

COURT:
CITY OF FOREST ACRES
5205 NORTH TRENHOLM ROAD
FOREST ACRES, SC 29206
803 790 5947

BEGINNING DATE: 12:01 AM 09/26/2006

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until you have done the following:

COMPLIANCE:

Pay the fine for the ticket to the court. When the fine is paid, the court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. You must bring this compliance to your local DMV Office or mail it to Driver Records, Post Office Box 1498, Blythewood, SC 29016-0028. Note: It is your responsibility to give the Department proof that this ticket has been paid.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card online at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Your license must be returned to any DMV Office or mailed to Driver Records if this suspension is not cleared before the suspension date listed above.

THIS NOTICE CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Driver Records Manager

11(L)

P3 3-SS/P3 3IV/P3 3-VV

THIS IS COMPLIANCE NOTICE.

STATE OF
SOUTH CAROLINA



NOTICE OF WITHDRAWAL OF SUSPENSION

To have this suspension withdrawn, you must take this form to the local DMV office. For mailing instructions, please see the back of this form.

PAYMENT HAS BEEN MADE IN THE AMOUNT OF	
\$ 232.50	COVERING THE FINE AND COSTS FOR THE VIOLATION DESCRIBED HEREIN.
AUTH SIGNATURE: <i>[Signature]</i> DATE: 09-01-06	

CITATION NO 12804DK	DATE OF VIOLATION 08/01/2006	LOCATION OF VIOLATION BRIARFIELD / SATCHELFORD	BETH A. C. SECTION VIOLATED CLERK OF 56:05:2740
DESCRIPTION OF VIOLATION DISREGARD SIGN SIG		FINE AND COSTS ON \$ 232.50	TRIAL DATE 08/10/2006
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 011415751		STATE SC	DATE OF BIRTH 02/24/1975	
NAME LAST BATTLE, KORELL ROBERT FLOYD	FIRST ROBERT	MIDDLE FLOYD	SEX M	
STREET ADDRESS 124 RIVER ST				
CITY PEAK	STATE SC	ZIP CODE 29122		
REGIS. (TAG) NO. 536T	STATE SC	YEAR 1990	MAKE CADI	MODEL

NAME OF COURT CITY OF FOREST ACRES		
MAILING ADDRESS 5205 NORTH TRENHOLM ROAD		
CITY FOREST ACRES	STATE SC	ZIP CODE 29206
TELEPHONE AREA CODE (803) NUMBER 790-5947		
AUTHORIZED BY		DATE 08/10/2006

FORM DL-53

#3 HOME JURISDICTION (SUSPENSION WITHDRAWAL)
(SEE INSTRUCTIONS ON REVERSE SIDE)

11(L)

Pg 3T/Pg 3VV

TRIAL OFFICER INSTRUCTIONS: Upon the defendant complying with the citation, the top portion of Form DL-53 (blue & pink) copies are completed and the blue copy is forwarded to the defendant.

IMPORTANT DRIVER INSTRUCTIONS

SOUTH CAROLINA DRIVERS: DMV MUST RECEIVE THIS FORM. You may take this blue form to a DMV office or mail it to the address below. If this form is not received, your driving privilege will remain suspended. If this fine is paid on or after the beginning date of the suspension, a \$100 reinstatement fee must also be paid before the suspension is withdrawn.

MAILING INSTRUCTIONS: This form and reinstatement fee, if required, must be mailed to:
South Carolina Department of Motor Vehicles
Driver Record
Post Office Box 1498
Blythewood South Carolina 29016-0028

OUT-OF-STATE DRIVERS: YOU must present or mail this blue copy of Form DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any question you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

THIS IS THE FORM THAT D.M.V. CLAIM THAT CITY OF FOREST ACRES COURT SENT TO D.M.V.

STATE OF
SOUTH CAROLINA



★ NOTICE OF SUSPENSION
(FAILURE TO RESPOND TO CITATION, APPEAR IN COURT, OR PAY FINE)

THE DEFENDANT HAS FAILED TO RESPOND TO A CITATION OR PAY A FINE FOR THE VIOLATION DESCRIBED HEREIN WITHIN THE PRESCRIBED TIME LIMIT. INITIATE ACTION TO SUSPEND THE DEFENDANT'S DRIVER'S LICENSE IN ACCORDANCE WITH THE LAWS OF THIS STATE OR THE PROVISIONS OF THE NONRESIDENT VIOLATOR COMPACT.

2010 MAY 19 7 4:30

CITATION NO. 12804DK	DATE OF VIOLATION 08/10/2006	LOCATION OF VIOLATION BRIARFIELD / SATCHELFORD	DOCKET NO. CARRIGG	SECTION VIOLATED CLERK OF COURT 156-05-2740
DESCRIPTION OF VIOLATION DISREGARD SIGN SIG			FINE AND COSTS 147.50	TRIAL DATE 08/10/2006

DRIVER'S LICENSE NO. [REDACTED]		STATE SC	DATE OF BIRTH 02/24/1975
NAME LAST BATTLE, KORELL ROBERT FLOYD	FIRST [REDACTED]	MIDDLE [REDACTED]	SEX M
STREET ADDRESS [REDACTED]			
CITY [REDACTED]	STATE SC	ZIP CODE [REDACTED]	
REGIS. (TAG) NO. [REDACTED]	STATE SC	YEAR 1990	MAKE CADI

NAME OF COURT CITY OF FOREST ACRES		
MAILING ADDRESS 5205 NORTH TRENHOLM ROAD		
CITY FOREST ACRES	STATE SC	ZIP CODE 29208
TELEPHONE [REDACTED]		
AREA CODE ('803) NUMBER 790-5947		DATE 08/10/2006
AUTHORIZED BY [REDACTED]		

FORM DL-53

#2 HOME JURISDICTION COPY

No signature

THIS IS NOT SIGNED BY JUDGE
CLERK

COURT CLERK SNT. IT DOESNT SHOW
IN COMPUTER WHERE THEY SENT
THIS FORM TO D.M.V

SINCE THIS WAS NEVER AUTHO
THEN IT IS UNAUTHORIZED &
illegal right?

★ MAIL THIS COPY TO:

S.C. DEPT. OF HWYS. & PUBLIC TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PO BOX 1498
BLYTHEWOOD, S.C. 29016-1498
ATTENTION: MANAGER, DRIVER RECORDS

11(L)
Py 3T/3VV

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

Of Counsel
Kenneth P. Woodington

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

FILED

4:30

RECEIVED
CLERK OF COURT
LEXINGTON SC

Matthew B. Rosbrugh
Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

* Also admitted in North Carolina
† Certified Mediator

February 18, 2009

Korrell Battle, #292294
Leiber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

RE: Korell Battle v. South Carolina Department of Motor Vehicles
Civil Action Number: 08-CP-32-4159
Claim Number: 50759
Date of Incident: August 6, 2006
Our File Number: 103.8004

Dear Mr. Battle:

Please find enclosed and hereby served upon you the Defendant's Responses to Plaintiff's Request for Admissions and a Certificate of Service regarding the above-referenced matter.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.

Daniel C. Plyler

DCP:ses
Enclosure

11(L)
Pg 300

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Korell Battle,

Plaintiff,

v.

South Carolina Department of Motor
Vehicles,

Defendant.

IN THE COURT OF COMMON PLEAS

FILED

Civil Action Number: 08-CP-32-4159

2010 MAY 19 2 4:30

BETH A. CARRIGG
CLERK OF COURTDEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUEST FOR
ADMISSIONSTO: KORELL BATTLE, *PRO SE* PLAINTIFF:

Pursuant to Rule 34, SCRCF, Defendant responds to Plaintiff's First Request for Admission as follows:

REQUEST # 1:

"1. On August 1, 2006 Plaintiff was cited a ticket #12804DK in City of Forest Acres."

RESPONSE # 1:

The Defendant admits that the Plaintiff was issued ticket 12804DK on August 1, 2006 by the Forest Acres Police Department.

REQUEST # 2:

"2. On September 1, 2006 City of Forest Acres municipal court issued a compliance certifying that they recorded this fine paid in full on 9/01/06."

REQUEST # 9:

FILED

"9. In September 29th or October 4th 2006, between times of 6:00 pm and 10:00 pm I was pulled over for speeding in Prosperity County or Newberry and cited a warning ticket after dispatchers confirmed that driver's license was valid."

2010 MAY 19 P 4:31
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

RESPONSE # 9:

The Defendant lacks sufficient information upon which to form a belief as to the veracity of the factual statements contained in this request, and therefore denies same as stated.

REQUEST # 10:

"10. From September 20th to October 13th 2006 D.M.V. did not mail me any final notices of suspension."

* RESPONSE # 10: TRUE

The Defendant admits that no "final notices of suspension" were mailed to the Plaintiff.

REQUEST # 11:

"11. On October 13, 2006 did D.M.V. post my license as suspended or no?"

RESPONSE # 11:

The Defendant objects to this request on the grounds that it is not properly formulated as a request for admission under the applicable rules of civil procedure.

REQUEST # 12:

"12. Did the dispatcher misread information on computer as D.M.V. posting my license as being suspended or did they read information correct?"

RESPONSE # 12:

The Defendant objects to this request on the grounds that it is vague and that it is not properly formulated as a request for admission pursuant to the applicable rules of civil procedure.

[Handwritten signature]



South Carolina Department of Public Safety

FILED

January 8, 2010

2010 MAY 19 P 4:31

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Leiber Correctional Institute
Korell Battle #292294
Post Office Box 205
Ridgeville, South Carolina 29472

Dear Mr. Battle,

This letter is in response to your latest Freedom of Information Act request in which you asked for a copy of the dispatch call, CAD report or a copy of the warning ticket issued to Korell Battle during the time period of September 27, 2006, through October 4, 2006.

Please find attached the CAD report for the time frame you have requested showing your stop. Also, please note that dispatch tapes are only retained by the South Carolina Department of Public Safety for 180 days.

If you have any questions please feel free to write me again at Post Office Box 1993, Blythewood, South Carolina 29016.

Sincerely,

Leigh Watkins
FOIA Coordinator
Office of General Counsel

11 (L)
Pg 344

Babbitt, David J.

From: Yongue, David W.
Sent: Friday, January 08, 2010 9:49 AM
To: Babbitt, David J.
Subject: Warning

FILED

2010 MAY 19 P 4:31

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Cpl. Babbitt.

In response to your request for a copy of Warning Ticket W079548 that was issued in 2006, it has met its retention period and has been destroyed.

South Carolina Highway Patrol
Troop Two Headquarters
Lt. D.W. Yongue
1801 Bypass 25 SE
Greenwood, SC 29646
Telephone: (864) 227-6115
Fax: (864) 227-3079
dw Yongue@schp.org

SOUTH CAROLINA HIGHWAY PATROL CALL HISTORY RECORD

FILED

Page 1 of 2
Printed By:
WRHORTON
Printed On:
01/07/2010 09:45:37

DISPATCH TO LOCATION									
Address US76E @ FAST STOP NEWBERRY COUNTY Cross Street					Apt / Lot 2010 MAY 19 P 4:31				
City					Incorporated? No	State	County	Zip Code	
AREA T02A	County 36	Post A	Zone	Troop	Municipal	SpclEvent	Sector	Grid	SubGrid
LOCATION OF OCCURRENCE									
Address					Apt / Lot				
Cross Street									
City					Incorporated? No	State	County	Zip Code	
AREA	County	Post	Zone	Troop	Municipal	SpclEvent	Sector	Grid	SubGrid
Complaint Type / Call Nature TRAFFIC STOP				Priority 2	Weapon	Complainant		Phone Number	Ext
Contact				911					
Primary Unit 2277 SCHP					BackUp Units		Dispatcher KYMCBRIDE		Disposition Codes (1) 38 (4)
							Call Taker KYMCBRIDE		(2) (5) (3) (6)
Incident Number GWTC06CAD035739		CALL DATES & TIMES (Note: Individual Unit Times & Close/Code Times are listed after the Call Notes)							
Received 10/04/2006 19:56:58		Shipped 10/04/2006 19:56:58		Dispatched		Enroute		Onscene Closed 11/09/2006 10:50:48	
CALL STATISTICS		Create Time 00:00:00		Hold Time -935837:56:58		Rollout Time 00:00:00		Enroute Time 00:00:00	
				Dispatch Time -935837:56:58		Response Time 00:00:00		Onscene Time **50:48	
								Total Call Time **53:50	

SOUTH CAROLINA HIGHWAY PATROL

CALL HISTORY RECORD

Page 2 of 2

Printed By:
WRHORTONPrinted On:
01/07/2010 09:45:37

FILED

VEHICLE RECORD

Date Added 10/03/2006 Time Added 19:55:58 Added By

2010 MAY 19 P 4:31

State SC Tag Number 536TYG Tag Year Description

BETH A. CARRIGG
CLERK OF COURT
LLEXINGTON SC

VIN Year Make CADI Model Color RED

Vehicle Type Vehicle Activity Crash Type

☐ Towed? ☐ Rotation? ☐ Requested? ☐ Other Tow Type

Description of Other Tow Type

☐ Abandoned? ☐ Cleared?

Abandoned On Date/Time: Removal Due On Date/Time:

UNIT / CALL TIMES

DATE	TIME	CALLNO	AGENCY	DESCRIPT	DISPATCHER
10/04/2006	19:56:59	2277	SCRP	SCENE	KYMCBRIDE
10/04/2006	19:56:59	2277	SCRP	REPORTING	KYMCBRIDE
10/04/2006	20:04:24				KYMCBRIDE
10/04/2006	20:04:25				
10/04/2006	10:47:40			UNCLOSE	TATULLIS
10/04/2006	10:46:43				TATULLIS
10/04/2006	10:50:50				

END OF CALL HISTORY RECORD

Tour Confirmation

Tour Of Duty - You entered the following Information

* Name: Gentry, Columbus Patrol Hrs: 10 Sick Leave Hrs: 0
 * Tour Date: 10/4/2006 Court Hrs: 0 **FILED**
 Accident Inv. Hrs: 2 **2006 MAY 9 P 4:31**
 Troop: 2 Safety Ed. Hrs: 0 Worker Comp: 0 **CARRIG**
 # Motorists Assisted: 3 Admin. Hrs: 0 Follow Up Hrs: 0 **CLERK OF COURT**
 Start Time: 1900 (Military) Supervisory Hrs: 0 Special Duty Hrs: 0 **LEXINGTON SC**
 End Time: 0700 (Military) Annual Leave Hrs: 0 Additional Hrs: 0
 Meal Hrs: 0 Insurance Enforcement: 0
 Patrol Vehicle Inspected: No

Amend

Warnings Issued - You issued the following Warnings

Warning ID	Date Issued	Violation(s)
Amend V101951	10/4/2006	Turning Violation
Amend V101952	10/4/2006	Drivers License Violation
Amend V101953	10/4/2006	Speeding Violation
Amend V101954	10/4/2006	Speeding Violation
Amend W079546	10/4/2006	Other Violation
Amend W079547	10/4/2006	Improper Lights
* Amend W079548	10/4/2006	Speeding Violation
Amend W079549	10/4/2006	Improper Lights
Amend W079550	10/4/2006	Speeding Violation

Tickets Issued - You issued the following Tickets

Ticket ID	Date Issued	Sec. Num	Off. Code	Trial Date	Court Type
Amend C683401	10/4/2006	56-10-270	17	11/10/2006	Magistrate
Amend C683402	10/4/2006	56-5-6520	94	11/10/2006	Magistrate
Amend C683403	10/4/2006	56-5-1520	21	11/10/2006	Magistrate
Amend C683404	10/4/2006	56-5-1520	21	11/10/2006	Magistrate

Collisions Investigated - You investigated the following Collisions

Unit ID	Date	Type	Location
Amend V574137	10/4/2006 1:00:00 AM	Property Damage	SC-395

Warnings

FILED

Related Contact:
DL #: 11415751
DL State: SC
Race: B
Sex: Male
DOB: 2/24/1975

Edit

* Warning ID: W079548	
* Issued Date: 10 / 4 / 2006	
Select Warning Type(s)	
Contact Only ☐	Right Of Way Viol. ☐
* Speeding Viol. ☒	Defective Equip. ☐
Failure To Dim Lights ☐	Passing Viol. ☐
Backing Viol. ☐	No DL In Possession ☐
Improper Lights ☐	Drivers License Viol. ☐
Turning Viol. ☐	Vehicle Viol. ☐
Disregarding Stop Sign ☐	Other Viol. ☐
Disregarding Traffic Signal ☐	

2010 MAY 19 P 4: 31

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Save Cancel



SOUTH CAROLINA HIGHWAY PATROL
COMMUNICATIONS RADIO LOG

2010 MAY 19 PM 4:31

Channel 17

STATION: Laurens/Newberry OPERATOR:

DATE 11/1/71
BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

[illegible]

Kevin M. O'Neil

8:07-cv-00466-GRA-BHH

Date Filed 08/16/2007

Entry Number 33-3

Page 11 of 27

South Carolina
Department of Motor Vehicles

FILED

2010 MAY 19 P 4:31

11/08/2006

BATTLE, KORELL ROBERT FLOYD
P O BOX 5
PEAK, SC 29122-0000BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
CUSTOMER NO: 22209282
FILE NO: 5183490
DL NO: 11415751

AMENDED NOTICE OF DRIVING STATUS

DEAR CUSTOMER:

This is official notification that the information on your driving record has changed effective 11/09/2006.

* → The Department has cleared your pending suspension(s) and your driving privileges will not be suspended.

AND/OR

* → The Department has cleared your suspension(s) and your driving privileges have been restored.

If your driver's license has been lost, misplaced or expired, you may make application for a driver's license at your local DMV Office. A vision test is required.

Driver Records Manager

11/11
pg 3VV

Violation Status Maintenance

Options Help



Citation # 091378DU Viol # 1 ** Comments **

Violator Name BATTLE, KORELL ROBERT

* Adult *

FILED

091378DU01

Age at time of Violation 31

B.M. 2/24/1975, 0011415751-SC

2010 MAY 19 2 4:31

Violation | Fees | History | Clerk Comments | Docket Comments | Judgment |

Status	☒ DX	FOUND NOT GUILTY	Date	8/22/2007	☒ Wed	Time	04:00	PM
Alt. Status #1	☐		Date		☐	Time	12:00	AM
Alt. Status #2	☐		Date		☐	Time	12:00	AM
Plea	☒ NG	NOT GUILTY	Date	8/22/2007	☒ Wed			
Judge	☒ JME	JOSEPH M EPTING						
Court Location	☒ UPG	INCORPORATE Upgrade Location						
Type of Trial	by Judge							
Conviction Date	8/22/2007							
Attorney	☒ LEXPD	PUBLIC DEFENDER, LEXINGT	X					
County	☒ 32	LEXINGTON						
Review Attorney	☐	<none>						

BETH A. CARRIGG
CLERK OF COURT

Bonds

Bond Set Override ☐

Set 0.00 Posted 0.00

Fine/Costs

Fine 0.00

Fees 0.00

Toll 0.00

Credits

Cash 0.00

NCsh 0.00

Pend 0.00

Bal 0.00

Collect Fees Only ☐

Offense FAIL SURRENDER D/L 10 DAYS

Exit

View

Klovelace

11/1/09 3:44

A TRUE COPY
 JAMES L. CARRIGG
 CLERK OF COURT
 LEXINGTON, VIRGINIA
 LEXINGTON MUNICIPAL COURT

Violation Status Maintenance

Options Help

Citation # 0913770U Viol # 1 ** Comments **

Violator Name BATTLE, KORELL ROBERT

* Adult *

Docket # FILED

0913770U01

Age at time of Violation 31

B, M, 2/24/1975, 0011415751-SC

2010 MAY 19 4:31

Violation Fees History Clerk Comments Docket Comments Judgment Variables

BETH A. CARRIG

Status	DX	FOUND NOT GUILTY	Date	8/22/2007	Wed	Time	04:00	PM
Alt. Status #1			Date			Time	12:00	AM
Alt. Status #2			Date			Time	12:00	AM
Plea	NG	NOT GUILTY	Date	8/22/2007	Wed			
Judge	JME	JOSEPH M. EPTING						
Court Location	UPG	INCODE Upgrade Location						
Type of Trial	by Judge							
Conviction Date	8/22/2007							
Attorney	<no Attorney>							
County	32	LEXINGTON						
Review Attorney	<none>							

Bonds

Bond Set Override ☐

Set 0.00 Posted 0.00

Fine/Costs

Fine 0.00

Fees 0.00

Total 0.00

Credits

Cash 0.00

NCsh 0.00

Pend 0.00

Bal 0.00

Collect Fees Only ☐

Offense DUS 1ST

Exit

View

klovelace

A TRUE COPY

LEXINGTON, VIRGINIA

JRMO MUNICIPAL COURT

Westlaw.

Code 1976 § 56-1-463

FILED

Page 1

Code of Laws of South Carolina 1976 Annotated Currentness

Title 56. Motor Vehicles

Chapter 1. Driver's License

Article 1. General Provisions

→ § 56-1-463. Inapplicability of penalty provision when suspension based on lack of notice of payment of fines.

2010 MAY 19 P 4:31

BETH A. CARRIGG
CLERK OF COURT

Section 56-1-460 specifically does not apply if and when the proposed suspension is based solely on lack of notice being given to the Department of Motor Vehicles when the person has in fact paid any fines or penalties due to the court.

CREDIT(S)

HISTORY: 1987 Act No. 84 § 3; 1993 Act No. 181, § 1322; 1996 Act No. 459, § 95.

LIBRARY REFERENCES

Automobiles 326.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1422 to 1432, 1524 to 1527, 1541, 1544.

Code 1976 § 56-1-463, SC ST § 56-1-463

Current through End of 2009 Reg. Sess.

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END OF DOCUMENT

11(L)
Pg 3VV

City of Forest Acres

MUNICIPAL COURT
5205 N. Trenholm Road FOREST ACRES, S.C. 29206 803/782-9444



FILED

2010 MAY 19 2 431

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

August 18, 2009

Korell Battle #242294
Lieber CI
P O Box 205
Ridgeville, SC 29472

Mr. Battle:

I am sending you a copy of the suspension withdrawal. There is no back to this form. I don't show in the computer where there was any form sent to the highway department letting them know you didn't pay the ticket. As far as the documents from DMV that you are referring to, you would have to have someone from DMV explain their documents.

Sincerely,
Michelle Morrison

11(L)/PJ 3 WW

Mark Sanford
Governor



FILED
M. S. Adams
Director

State of South Carolina

Department of Motor Vehicles

2010 MAY 19 4:31

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

November 13, 2006

Korell Robert Floyd Battle PF-16
PO Box 2019
Lexington, South Carolina 29071-2019

Re: Driver's License: 11415751

Dear Mr. Battle:

At your request, we have reviewed your South Carolina driving record.

Our records indicate the following:

You were issued ticket number 12804DK, for Disobeying an Official Traffic Device on August 1, 2006. The court date for this ticket was August 10, 2006.

On September 6, 2006, this department notified you by mail of the pending Failure to Pay Traffic Ticket suspension to begin on September 26, 2006.

* → The department received proof of compliance on October 20, 2006 showing the ticket was paid September 1, 2006.

* → We have included in our mail a copy of the September 6, 2006 suspension notice and Failure to Pay Traffic Ticket clearance letter.

I hope this information is helpful to you. Should you have any additional questions, please contact my office.

Sincerely,

Annie L. Phelps

Annie L. Phelps
Compliance and Oversight Administrator

061109-1480
/jsw

11(L) Pg 3ZZ

PLEA LIST FOR THURSDAY, MAY 27, 2010

THE HONORABLE CLIFTON NEWMAN PRESIDING AT 10:00 A.M.

SIC: Mike Ross

CM: Elaine Shirley

LCDC

	<u>Name</u>	<u>SOL</u>	<u>Attorney</u>	<u>Plea/Motion</u>	<u>Victim</u>
1.	Olbin Noel Banegas-Maldonado	DSG	Beth Fullwood	Plea	Yes
2.	Jose Padilla	DSG	Beth Fullwood	Plea	Yes
3.	Brandon Vencill	JAG	Theo Williams	Plea	?
4.	Carlton Hair	DEM	Ed Boggs	Motion	Yes?
5.	Derrick Pue	DEM	Ed Boggs	Motion	Yes?
6.	Clarence Boykin	DMS	Matt Buchanan	Attorney matter	No
7.	Lorenzo West	DBM	Beth Fullwood	Motion/Plea?	No
8.	Rakim Thompson	EBH	Sarah Hahn	Plea	No
9.	Tallion Wood	MDR	Bennett Casto	Plea	No
10.	Alexi Ruiz (*translator)	DBM	Rob Madsen	Plea	No
11.	Nicole Peacock	EBH	Sarah Hahn	Plea	No
12.	Thomas Spires	MDR	David Mauldin	Bond	No
13.	Melissa Kyzer	MDR	Pro Se	Plea	No
14.	Deonte Williams (P.M.)	MDR	Calvin Hastie	Plea	No

WALK INS

1.	Raymond Robinson	DSG	Sally Henry	Plea	Yes
2.	Iyesha Miller	CED	David Mauldin	Plea	No
3.	Jennifer Hagins	EBH	Matt Buchanan	Plea	No
4.	C. Brooks Graham	DMS	Theo Williams	Plea	No
5.	Warren Nelson	MDR	Pro Se	Attorney issue	No
6.	Rachel Hobson	MDR	Pro Se	Attorney issue	No
7.	John Capps	EBH	Sally Henry	Plea	No
8.	Tommy McKnight	DMS	Max Singleton	Plea	No
9.	Christopher Beyerbach	DBM	Theo Williams	Plea	No
10.	Sharon Pace	MDR	Matt Buchanan	Plea	No
11.	Tremayne Cunningham	DMS	David Mauldin	Plea	No
12.	Tamara Stone	MDR	Beth Fullwood	Plea	No
13.	Cody Shealy	MDR	Bennett Casto	Plea	No

[C] COPY

State of South Carolina

In the Court of Common Pleas
FILEDCounty of Lexington
Korell Battle #292294

Amended Application filed Feb 25 A 9:13

P. U. R.

BETH A. GARNISS
CLERK OF COURT
LEXINGTON SCSTATE
SOUTH CAROLINA

CASE No: 201 CP 320120

Petitioner Korell Battle, Pursuant to Rules S.C.R.C.P. 15 (A)(C)

Requests Leave to file an Amended Application adding 5 claims
of Ineffective Assistance of Counsel on different issues, at: N/O/P/O/R.

①. The Plaintiff in his original application on Page 3 V at 311 to
Page 344 wrote a long section of various arguments under 1 claim
of → L. Trial Court Erred in denying Petition motion based on suppression of the
evidence that resulted from arrest

②. Since filing of the application the Petitioner has determined that the
section "L" is not a good issue after talking to attorney, so I have
broken that section down into different Ineffective of Assistance of Counsel
claims.

③. This court should grant leave freely to amend ~~original~~ application. (Foman
v DAVIS. 83 S.E. 222 (1912)).

Korell Battle / Korell Battle
2/21/2011

N I received ineffective assistance of counsel at trial in that trial counsel was inadequately prepared for trial and failed to investigate or discover cases state v. judman and U.S. v. King as evidence to be used in my defense at suppressed hearing.

O I received ineffective assistance of counsel at trial in that counsel was inadequately prepared for trial and failed to investigate whether or not I could be subjected to a full custodial arrest for D.V.S. 1st and failure to surrender license for failure to pay a fine.

P I received ineffective assistance of counsel at trial in that trial counsel was inadequately prepared for trial by not investigating if D.V.S. records were being provided to officers, and failed to discover evidence of statutes and records to be used in my defense and failed to object to officer notice being used to prove license was suspended.

Q I received ineffective assistance of counsel at trial in that trial counsel failed to object to the inadmissible hearing testimony from me, which testified that information he received from dispatcher that my license came back suspended.

R I received ineffective assistance of appellate counsel in that she failed to present significant and relevant issues on appeal by not raising issues that were stronger than those raised on appeal.

(N)

Ineffective Assistance of Counsel

I received Ineffective Assistance of Counsel at Trial. In that time counsel was inadequately prepared for trial, and failed to investigate or discover cases state v. Johnson and vs. King as evidence to be used in my defense at Suppression Hearing.

At Trial I could not access a Law Library to do legal research. I was depending on counsel to investigate a defense that I was not required to use my left turn signal in a left turn only lane directed by a green arrow signal. The evidence produced at trial was testimony from officer that he observed me commit a traffic violation in his presence of making a left turn without using a left signal. I alleged I did use my signal. Counsel presented a pretty good suppression motion on trying to get evidence found in my car suppressed that resulted from the traffic stop. The judge chose to believe the officer in that he did observe me make a left turn with no signal and denied suppression motion.

Counsel did not do investigation of critical evidence of my supporting case law to support my defense.

I was committed on May 2, 2001 and came to prison on May 4, 2001 while in prison I discovered state law case citations that counsel could have discovered and used in my defense.

The cases he could have discovered and he presented are:

US Letter 102 F.3d 519

Rogers v State 436 S.W.2d 304

State v Hill 504 S.E.2d 901

US v Espinoza 972 F.2d 888

US v Holt 405 137 F.3d 643

US v Wilson 53 F.3d 371 375

US v Brown 902 F. Supp 1410

US v Escalante 239 F.3d 678

Wren v US 116 Sd 1764

US v Lopez Valdez 178 F.3d 382, 388

US v Lat Kowitz 52 Sd 420, 424

State v Tullad 553 S.E.2d 249

A CASES HE COULD BE DISCOVERED HAD HE RESEARCHED ARE RELATING TO LEFT TURN
ISSUE ARE

Clarke v State 432 SE 2d 220

State v Jones 448 SE 2d 496

Powers v State 493 S.E.2d 201

State v Goodman 469 SE 2d 389

US v King 244 F.3d 936

US v Twilley 222 F.3d 1092

THE STATE STATUTES HE COULD BE DISCOVERED HAD HE RESEARCHED ARE

56-5-1520 - Speeding Law

56-5-470 (A)(2) - Green Left Arrow Signal Light

56-5-2150 (B) - Required signal law

16-9-10 - Perjury Law

56-1-920 - 4 Point Violation for Turning Violently

4 Point Violation for Failing to give the proper signal for turning.

56-7-1/56-7-15 - (Properly) Uniform Traffic Ticket

23-6-150 - Summons Law

16-7-150 - Subpoena Law

THE PETITIONER ALLEGES HIS ATTORNEY WAS INEFFECTIVE FOR FAILING TO RESEARCH RELEVANT
CASE LAWS AND STATE LAWS TO SUPPORT MY DEFENSE THAT I WAS NOT REQUIRED TO
USE A LEFT SIGNAL IN LEFT TURN ONLY LAWS TO SUPPORT MY ARGUMENT ARE

Counsel suppression motion sounded pretty good! I give him credit for presenting a good argument. However, his motion was lacking 3 major points, AND THAT IS HE DID NOT PRESENT EVIDENCE OF ANY CASE LAWS OR STATE LAWS, NOR DID HE PRESENT EVIDENCE OF STATE V GOVERNMENT NOR DID HE PRESENT EVIDENCE OF

LAW / ANALYSIS

(1) must show that counsel performance was deficient, meaning that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the 6th amendment

(2) must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose results is reliable.

(1) Deficient Performance.

Counsel has had a duty to undertake a reasonable investigation which at a minimum includes RESEARCHING relevant state laws / relevant case citings / and making an independent investigation of the facts and circumstances of the case. ARIZ V CAFFE 642 SE2D 590 (Good) / MCKNIGHT V STATE 661 SE2D 354, 360 (2000) (a criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigated evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the state).

Counsel has did not conduct No type of independent legal research investigation ~~for any case laws relating to the left turn signal issue~~, when it was reasonable for him to do so, and since he did all his performance was deficient.

His failure to research and discover critical evidence of case laws relating to the left turn signal establishes inadequate preparation. This failure

EVIDENCE WHICH COULD HAVE SUBSTANTIALLY BENEFITED THE PETITIONER
HIS DECISION AT TO RESEARCH THIS ISSUE WAS NOT REASONABLE AND WAS
OF A GREAT VALUE LOSS TO MY CASE.

NOT ONLY THAT THERE IS A AREA OF LAW HE NEVER TOLD ME ABOUT WHICH I
DISCOVERED ON MY OWN HERE IN PERSON CALLED A

"MISTAKE OF FACT" AND "MISTAKE OF LAW".

IN U.S. KING 244 F.3D 736 (9TH CIR 2001/11/11) PG 739 SAY

THIS APPEAL BOILS DOWN TO WHETHER OFFICER HAD REASONABLE SUSPICION THE STOP
WAS UNLAWFUL SEIZURE IN VIOLATION OF THE 4TH AMENDMENT. SEE TWILLEY 222 F.3D
AT 116 A FACTUAL BELIEF THAT IS MISTAKEN, BUT HELD REASONABLY AND IN GOOD
FAITH, CAN PROVIDE REASONABLE SUSPICION FOR A TRAFFIC STOP. THE DISTINCTION
BETWEEN A MISTAKE OF FACT AND MISTAKE OF LAW IS CRUCIAL TO DETERMINING
WHETHER REASONABLE SUSPICION EXISTS TO STOP A VEHICLE.

~~IMPROPERLY~~ IN U.S. V WALLACE 213 F.3D 1216, 1090 (9TH CIR) 121 SET 418

IT HOWEVER AN OFFICER MAKES A TRAFFIC STOP BASED ON A "MISTAKE OF LAW"
THE STOP VIOLATES THE 4TH AMENDMENT. TWILLEY 205 F.3D 1096 ACCORD
LOPEZ V. SOTO 205 F.3D AT 116 (CONCLUDING THAT A MISTAKE OF LAW CANNOT JUSTIFY
THE STOP UNDER THE 4TH AMENDMENT). EVEN A GOOD FAITH MISTAKE OF A LAW BY AN
OFFICER CANNOT FORM THE BASIS FOR REASONABLE SUSPICION BECAUSE THERE IS
NO GOOD FAITH EXCEPTION TO THE EXCLUSIVE RULE FOR POLICE WHO DO NOT ACT IN
ACCORDANCE WITH GOVERNING LAW. LOPEZ V. SOTO 205 F.3D AT 116.

IN U.S. V TWILLEY 222 F.3D 1092 (9TH CIR 2001)

IN THIS CIRCUIT A BELIEF BASED ON MISTAKEN UNDERSTANDING OF THE LAW CANNOT
CONSTITUTE THE REASONABLE SUSPICION REQUIRED FOR A CONSTITUTIONAL TRAFFIC STOP.

IN THIS CASE THE INTERROGATION AND SEARCH WERE A DIRECT RESULT OF THE
ILLEGAL STOP. U.S. V MILLAN 36 F.3D 886-890. WHEN ILLEGAL TRAFFIC STOP IS DIRECTLY
FOLLOWED BY INTERROGATION, INCONSISTENT ANSWERS, AND CONSENSUAL SEARCH EVIDENCE
SUPPRESSED. SEE ALSO U.S. V VALDEZ 431 F.2D 1448, 1451/1452. THIS IS A
CLASSIC EXAMPLE OF OBTAINING EVIDENCE THROUGH THE EXPLOITATION OF AN
ILLEGAL STOP. IF THE DEFENDANT COULD ESTABLISH THAT THE INITIAL STOP

of the car violated the 4th Amendment the evidence that was seized as a result of the stop would be subject to suppression as fruit of the poisonous tree."

Ex. 15 - m. 10/10/70 F.33 At 1163-64 see US v Kimball 25 F.33 1,5

Prejudice

Counsel's performance was deficient, and I suffered prejudice. Counsel's errors had an effect on the judgment against me. There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

I allege I was prejudiced because if the judge during the suppression hearing motion would have heard counsel's presentation the case citing State v. Goodman and the left turn signal not being required in a left turn only lane that is directed by a left turn green arrow signal that that would have grabbed the judge's attention and would have maybe convinced the judge that "No! I did not violate No. 56-5-2150 Required signal law and was not required to use a left signal in a left turn only lane being directed by a green arrow signal. Most likely I believe the judge would have suppressed all evidence, not only that but if the counsel had would have presented U.S. v King and U.S. v Willey.

That speak of "mistake of law" that the judge would have seen that what the officer m. 10/10/70 observed of me turning in a left turn only lane directed by a green arrow signal was in fact a "mistake of law," and would have suppressed all evidence, so there is a reasonable

PROBABILITY THAT THE JUDGE WOULD HAVE SUPPRESSED ALL EVIDENCE HAS COUNSEL BEEN
PREPARED AND PRESENTED EVIDENCE AT THOSE 2 CASE LAWS.

I BELIEVE I HAVE ESTABLISHED THE REQUISITE PREJUDICE FOR A CLAIM OF
INEFFECTIVE ASSISTANCE AT COUNSEL.

~~Not to be used for any purpose other than for the purpose of the~~
~~State of Illinois~~

2010 MAY 19 4 29

CLERK OF COURT

My counsel Mr. BAX made a Pretrial motion to suppress evidence found in my car ~~anyway~~ After Police stop me, arguing that there was a lack of articulable suspicion or probable cause for the initial pull. He said that the initial pull was that kind of the Impetus (Pretext) for the officer asking me for my drivers license, which came back as suspended or at least the dispatch reported to the officer my license was suspended, (pg 29 transcript). Now officer Malowski testified he on Oct 13, 2006 He saw my car ^(evident) parked at circle K gas station in Iroquois. He says the 1st time he saw my car was about 6:00 PM. Pulled into parking spot on side of gas station with the hood up, and that that section of building is not lit up, and no one normally parks there. He was asked by solicitor why is it that he noticed my Cadillac? He said "It was parked on side of building with hood up, and normally no one ever parks there because there is not a street, and there was not a street light at the time, so this section of the parking lot was dark," (pg 31 transcript). Now before I go on I'd like to point out some facts. 1stly he was incorrect as to the time. On that date of 10/13/2006 at "6:00 PM" it was bright as day, sun was still out, and wasn't dark, (he later testified it was 8:30 PM that he saw my car and it was dark - pg 158 transcript). The correct timing he saw my car was around "8:30 PM" which was pulled into the "legal" parking lot of circle K with my hood up. My car was over heating so I had to let it cool off for 25/30 minutes before adding antifreeze in the radiator. He is incorrect in that there was no light there. There was in fact a light there in that parking lot which is in a place that prosecutor later showed to the jury, so he was lying about no light.

Betty Miller. Now at this time I was parked in a legal parking lot. There was no reports of any drug dealing or disturbances or crimes in relation to my car being there so he had no reasonable suspicion to suspect my car involved in any type of criminal activity. In *US v Ilexco* 182 F.3d 519 (9th Cir) court say "Reasonable suspicion has been defined as some objective manifestation that the person stopped is, or is about to be engaged in criminal activity", ... While reasonable suspicion requires something less than what is necessary to show probable cause it requires more than a mere hunch". In *Rogers v. State* 426 S.E.2d 209 (Ga. App 1992) court said something similar ... They say, "Under *Terry v. Ohio* 382 U.S. 1 (1965) A police officer even in the absence of probable cause may stop persons, detain them briefly, and frisk them for the officer's safety where there is a 'reasonable suspicion' that such persons are involved in criminal activity. The officer's action must be justified by specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion. A reasonable suspicion is more than a subjective, unparticularized suspicion or hunch". In *State v. Hill* 504 S.E.2d 701 (Ga. 1998) the court added that, "Investigative stops of vehicles are more analogous to *Terry* stops, and are invalid if based on only unparticularized suspicion or hunch".

Now as I say, when officer saw my car the 1st time, he had no "reasonable suspicion" of any criminal activity and for that reason, he kept on driving. Solicitor asked him "where did he go after wards?" officer say he went down Saint Andrews road and later came back a 2nd time and observed my car "was not there" which he say was about 2/30 minutes later. He say he kept going and later observed vehicle going at that time. (Pg 32 transcript).

3rd time
officer say he later got a call for armed robbery and headed toward KFC and saw my car pull out of the circle K parking lot at a high rate of speed and saw my car come to turn lane on St Andrews to turn left on base Murray Boulevard. His stated reason for not continuing to KFC is cause there was already another car there. He then made a U turn and got in behind my car and he say he observed me make a left hand turn onto base Murray Boulevard and that I did not use a left turn signal (Pg 35 transcript). He say he then pulled me over as soon as he got out.

Blue lights and siren and pulled me over, came to my car, got license-
Registration- and insurance card, and that He checked it, and license came
back suspended, and that He place me under arrest for 1st D.F.S., and that He
searched me and found a bag of bullets, and then found a evidence in
my car during search.

my car during search.

Now later my attorney Mr Bax IN camera cause subpoenaed Officer WSKI. Matuski said the 1st time he saw my car was while he was on St Andrews Road and Lake Murray and that he observed my car in the parking lot of circle K. My attorney pointed out that he do see actual parking spaces there indicated by white lines that are painted on the pavement. matuski said "that's correct". (By H transcript). Mr Bax pointed out that matuski just testified he saw my car a little after 6:00pm and matuski said "correct". matuski said it was headed towards Jack, but wasn't completely Jack, which is a lie! It was Jack! Mr Bax pointed out that matuski report was at a different time and he asked matuski which time was correct, was it a little after 6:00 pm the 1st time he saw my car or was it after that? matuski then said it would be the time that's in his report. My attorney asked him do he specifically remember while sitting or stand there what time it was? matuski said "No." Mr Bax asked him when did he type the report up, matuski said same night of incident. About 2 or 3 hours later, (By H transcript). matuski testified that after he saw my car 1st time he kept going, which proves he had no reasonable suspicion to suspect any criminal activity of my car. He say about 20/30 minutes elapsed between 1st time he saw my car and time he went by circle K the 2nd time and that he my car was not longer there. He then say he left and came by circle K one more time that night before incident occurred. My attorney asked him ... "and you testified here today that you didn't observe the vehicle at the time; is that correct?" matuski said ... "When I came back the 3rd time, the vehicle WAS backed into that parking spot, when I came back from st andrews and turned onto lake murray." My attorney said ... "I misunderstood. I thought you testified that the vehicle was still not there the 3rd time you went by, ?" matuski said

"The 3rd time the vehicle was in there. It was backed in." (He said later Mr Bax asked him, "And dispatch call was for an incident at the K.F.C., right?" Matewski said "Correct". Mr Bax said "Did that call involve a description of a vehicle?" Matewski said, "No it did not." Mr Bax said, "Did that call involve a physical description of an individual. That was the suspect?" Matewski said, "No not at that time, no." (q11). Mr Bax asked Matewski, "Did he recall what or not there were already any cars in the turning lane of St Andrew?" Matewski said "No there was not." Attorney Bax told him that the distance between exiting the circle K parking lot and to the light was roughly about less than 20 yards or 60 feet, Matewski said more than 60 feet, attorney said, "But it could be less than 50 yards" and Matewski agreed, (pg 50 transcript). Matewski said when my car left exit and got in left turn lane, it stopped cause there was a red light there. Attorney asked Matewski to describe a "high rate of speed" and what exactly do he mean cause there is only 20 to 50 yards from circle K parking lot to light, so he wanted to know what kind of high rate of speed is he talking about? Matewski that made up a incredible lie! and say "my car was exiting the parking lot just to the point -- just prior to the point where my car would be spinning tires, accelerated at a high rate of speed to get out of the parking lot." Mr Bax asked him "were you able to -- were the tires, did you hear anything? were they actually squealing?" He said "No." Mr Bax asked him "How was he able to tell my car was accelerating to that amount?" Matewski say "I'm a certified radar operator and to become certified you have to estimate vehicle speed, and he estimated I was traveling at a high rate of speed," (pg 51 transcript). Mr Bax pointed out that anyone pulling out of circle K parking lot would have had to clear at least 3 lanes of traffic to get to the traffic light, and Matewski agreed, and agreed I only had about 20 to 30 yards to get there. Mr Bax asked him if knew what the speed limit on Saint Andrew was? Matewski said "35 miles an hour." Mr Bax asked him, "did I ever exceed the speed limit?" Matewski said "No" (pg 53 transcript). Now I'd like to state that I did not come out of circle K at a high rate of speed nor was squealing wheel

I came out of parking lot the 1st thing I did as a responsible cautious driver was put my right turn signal on and looked both ways. I saw it was safe for me to turn and I pulled in a normal drive and pulled into the left turn only lane. Now my car is a 2010 Cadillac, beat up, and my brakes are bad. In order for me to stop I have to press down real hard on my brakes and even when I do, the car continues to roll. Now I've put new brakes on car, but for that type of Cadillac it has a Hydraulic ABS (Air Brake system), and the other Cadillacs have a non-ABS system. For Cadillac with a non-ABS system it only cost less than \$150.00 to replace the brake thing in the engine compartment. But for my Cadillac which has a "ABS" system it cost over \$2,000 to replace the Hydraulic ABS. I've priced this at autozone, Jappa, ect... So what happened my ABS on my car was not operating properly from the 1st day I bought the car from a friend. When I drive I have to slow down way in advance before approaching any lights or any cars or any people cause if I don't, the car will keep rolling. Now I should have mentioned this ABS problem at trial but I simply did not. Now majewski says my car came out at a high rate of speed which is a lie! If I would have came out at a high rate of speed then once I tried to stop at light my car would have kept rolling past the stop marker at light which would have caused me to get in a wreck with other cars in other lanes, so this proves majewski is lying! And he even admits I was not violating no speeding laws under section of law 56-5-1520, (and I was not charged).

Now, Mr. Bax then asked him does the left turning lane I pulled into does it have a traffic light specifically for that lane, and majewski said "yes", and that it was a GREEN LEFT ARROW LIGHT = 56-5-9701.

Mr. Bax asked him, "does the traffic coming out of that lane, does it have any choice about where it's going?" majewski said, "No, it has to turn left."

Mr. Bax asked him did he testify to my car not using a turn signal and majewski said "yes", (Pg 54 transcript).

~~Mr. Bax asked him is it common for cars in the left turn only lane where the only direction they can only go is already indicated to always use a turn signal?~~

Mr. Bax asked him "Does he pull them each time he observe someone

Not using a Turn signal in a Left turn-only Lane? Masewski said "Not always." Masewski testified that alot of people over there Do use their Turn signals in a Left Turn Lane and He said alot of the do not, (Pg 55 Transcript). Masewski Testified That when my car got through this intersection He had done a U-Turn to get Behind my car. Now let me stop here, my attorney missed something. Firstly when I came out of Circle-K parking lot exit and got into "Left Turn only Lane" Masewski was coming from the opposite direction, and That's when He got Behind my car by doing a U-Turn, the Traffic Light was Red at that time. This Light was "Red" for at least 80 to 100 seconds! Now during this 80 to 100 seconds "Red Light" I saw Him in my rear view mirror. ~~Now I argue that at this specific point, the reason why Masewski got Behind my car by doing a U-Turn is because He had just received a Armed Robbery call of a KFC, and as He stated later the reason why He got Behind me is He just got a Armed Robbery call and He saw my car coming out of parking lot and He thought I could have been involved in it as "either" the subject or as a potential witness, (Pg 163 Transcript). So at this point as He did a U-Turn and got Behind me His purpose for encountering me was related to His subjective suspicions of my car "Possibly" being connected with ... "The K.F.C. Robbery". He did not get Behind me cause of no other reason or no type of Traffic violation. Now once He got Behind me If He had ~~any~~ ^{unparticularized} "Reasonable Suspicion" to suspect me of criminal activity in relation to K.F.C. Robbery then He could have flashed His lights and siren while Behind me while we were at a Red Light for 80 to 100 seconds and He could have conducted a Brief Investigative detention stop for Terry stop. Now I argue that He did not have any "specific and articulable facts" sufficient to give rise to a Reasonable suspicion of criminal conduct to reasonably warrant a intrusion. So what He did was that He waited for me to make a~~

railroad crossings he illuminated his lights/siren, cause he later say in
 his incident report that he ... [Officer matuski was at Circle K Lake Murray
 Boulevard when court dispatch advised that the Kentucky Fried chicken had just
 been robbed. Officer matuski turned around and saw the Kentucky
 Fried chicken. As officer matuski was passing the circle K, the listed
 vehicle was observed exiting the circle K ^{BETH A. CARRICO} a high rate
 of speed. Officer matuski turned around ^{on the vehicle} just as officer
 C. Dennis advised he was on scene at the K.F.C. The subjects vehicle
 made a left turn onto Lake Murray Boulevard from St Andrews Road without
 using a turn signal. Officer Dennis advised that the subject had run out
 of the K.F.C. towards St Andrews Road by the circle K.

So the reason why he stopped me is not because he had "reasonable
 suspicion or probable cause" for the armed robbery, he stop me because
 he say he observe me make a left turn with no left signal.

~~now I argue that this officer is lying about~~
 me making a illegal left turn and I will prove this by his conflicting story
 he fabricated, plus I will prove I did violate the law of 56-S-2150 (B).

Firstly when officer matuski pulled me over and put on his siren/lights
 for me to stop I was "arrested-sized". When he came to my car he did not
 once make no inquiry or investigation concerning the illegal left turn. The
 video tape in his patrol car recorded the entire conversation. Later when he
 wrote his incident report he say 2 things. He say (1) the subjects vehicle
 made a left turn onto Lake Murray Boulevard from St Andrews road without
 using a turn signal. (2) officer matuski asked the driver for his license,
 registration, and proof of insurance which he provided. The subject asked why
 he was pulled over, and officer matuski advised the subject that he did
 not use his turn signal.

Now in his 2nd statement above it must be noted that I was sitting in
 my car when he asked me for my paperwork. So in his statement above he
 basically saying I asked him why he pulled me over, and that he then say
 he told me for not using a turn signal, and that I was in my car when I
 asked him and he told me this. He then in his report say he had
 dispatch run my license and say it was suspended for not paying a traffic
 ticket, and that he then placed me under arrest for DWI and that he put
 me in cuffs, searched me, and then placed in back seat of his car.

In his report he is not saying that ^{he} put me in the back of his car and then I asked him why he pulled me over and this he told me I did not use my turn signal; ^{he} he is not saying that.

Now on the video tape it does in fact show him getting my paperwork from me while I was in my car, and he walked to his car and came back and asked me for D.U.S., and then put me in back of his car.

Now when he got up on the stand and testified under oath, this man perjured himself on the stand! He violated South Carolina code of law 16-9-10 of [Perjury and subornation of Perjury] Part (A) (1) which says it is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath or in any court of record, judicial, administrative, or regulatory proceeding in this state.

Now on the stand this is how he perjured himself, my attorney Mr. Bax asked him ... "You have put in or you have testified that -- Let me back up. You have put in your report that you advised the defendant or the subject in this case that he did not use a turn signal; is that correct?"

Matkowski said, "That's correct." Mr. Bax asked him ... "Do you recall what or not you actually said that to him?" Matkowski said ... "I advised

him that he did not use a turn signal when he was in the "back" of my patrol car. He asked why, again why he was being stopped and why he was under arrest. I told him he was stopped for not using his turn signal and he was under arrest for D.U.S."

Now in this above statement Matkowski statement conflicts with his statement in his written report. In his report he is saying I was in my car when he got license, registration, insurance and then when I asked him why I was pulled over and he told me for a left turn, but on stand he is saying I was in the "back of his patrol car" when he told me I did not use signal, when I was in back of his car I was already arrested for so this proves this officer lied!

Now Mr. Bax then said ... "So you advised him of the fact that he did not use a turn signal after you had already said his license, arrested him for D.U.S., searched his car, put him back in the patrol car; arrest?" Matkowski said ... "Prior to searching the vehicle, that's correct."

D.V.s, correct?" Matewski said, "correct." Mr. Bax said, "You had already searched him and put him in cuffs, correct?" ED Matewski said, "That's correct." Mr. Bax said, "You had placed him in the patrol unit?" Matewski said, "correct."

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I do not believe the court should view his statements as mere error or accident. Matewski is a police officer and if he's been caught lying then that's how the court should view it. This is my life and freedom of the line here! Now, there is 2 state laws comparable to each other one is under South Carolina code of law 56-5-215, the other is under Georgia law of O.C.G.A. 40-6-123. Below are comparisons of each law.

SOUTH CAROLINA 56-5-215

Turning movements and Required signals.

(A) No Person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety or without giving an appropriate signal as provided for in this section.

(B) A signal of intention to turn or move right or left "when required" shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(C), (D) ect...

Georgia 40-6-123

(A) No Person shall turn a vehicle from a direct course or change lanes or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate and timely signal in the manner provided in this code section.

(B) A signal of intention to turn right or left or change lanes "when required" shall be given continuously for a time sufficient to alert the driver of a vehicle proceeding from the rear in the same direction or the driver of a vehicle approaching from the opposite direction.

Now I would like to present changes from Georgia that specifically relate

To the laws 40-b-123. All of these cases have been before the High Georgia of Appeals Court and that court has ruled against the state in all these cases.

The case was in CLARK v State 432 SE.2d 220 (GA App 1973).

Officers assert that if Bodey's stop of Thunderbird was made without a valid independent reason, and therefore pretextual. They base their contention on the wording of 40-b-123 and argue that it does not require the use of a turn signal in the present circumstances, citing 40-b-123.

The trial court determined that a violation of OCGA 40-b-123 had occurred because the driver failed to give a turn signal when exiting. This determination was erroneous. It is clear from the face of the statute that the legislature anticipated occasions when a signal was not required. A lane change must be made with "reasonable safety" and in some instances, reasonable safety requires giving a turn signal.

40-b-123 (A). Subsection (B) sets forth the manner and purpose of signaling ones intention to change lanes at times when such a signal is "required". The legislature's concern was plainly the protection of the safety of others by requiring sufficient notice of the driver's intent to turn or change lanes. Their use of the terms "when required" in subsection (B), clearly indicates that they anticipated times when use of a signal was not required for the safety of others. Under the present facts, notice of intent to change lanes not necessary.

Trial court ruled that violation of 40-b-123 gave Bodey an independent valid reason to stop the Thunderbird. However, because this court finds that 40-b-123 was not violated, Bodey stop of car was invalid unless supported by specific and articulable facts sufficient to give rise to a reasonable suspicion that the occupants of the car were, or were about to be engaged in criminal activity. Terry v Ohio is set aside. Facts before us do not create any basis for reasonable suspicion of criminal conduct, therefore sergeant's Bodey stop of car cannot be upheld.]

[2nd] case was in State v Jones 448 SE.2d 496 (GA App 1994)

officers observed vehicle do a wide U-turn without giving a signal, no other vehicles were on the road at the time. Officer [redacted] stopped the appellee for failing to signal. officer detected odor of alcohol, appellee failed sobriety tests. The appellee was arrested on 7-14-91 later charged with making an improper turn. The trial court affirmed the initial stop was not justified by an articulable suspicion of ~~violation~~ because the appellee violated no law by failing to signal his turn when no other drivers on the roadway. Accordingly, the court granted the appellee's motion to suppress evidence concerning the field sobriety tests.

The state contends that the initial stop was rendered invalid because the appellee's failure to signal was later determined to be illegal. We cannot agree. [Citing 40-6-123 (A) (B)]. Because no other drivers were on the road, the appellee was "not required" to signal his intention to turn, *Clarke v State* 432 S.E.2d 220 (1993). The officer's stop of the appellee was not justified in that the officer did not observe him commit any crime before the stop, and the officer did not testify to any facts would indicate the appellee was about to violate the law in any manner. The officer's "hunch" that the appellee turned around to escape police detection of wrongdoing is an insufficient basis for an investigative stop, *Terry v Ohio*.

[3RD] CASE WAS *Bowers v State* 473 S.E.2d 201 (GA App 1996).

The arresting officer testified that he initially stopped Gilliam for changing lanes without using a turn signal. The officer testified that he observed Gilliam had from a distance of approximately 100 yards behind the car and there were no other vehicles in the area. There was no evidence that the lane change made by Gilliam was not accomplished with reasonable safety. After the stop, he detected no alcohol or drugs, and paper work was in order. Gilliam was made to stand in chilly weather for 20 minutes. He gave Gilliam a oral warning about changing lanes without using a signal, returned license and conducted investigation. Used dog to find drugs. The officer testified that the defendant's were pulled over for making an improper lane change in violation of O.C.G.A. 40-6-123 [Citing *Clarke v State*]. This statutory language states that the

INTENTION of the Legislature was that a turn signal is required as a lane change can be made with reasonable safety. Otherwise use of the phrase "when required" would be rendered meaningless. The stated purpose of the statute is to alert other drivers. Clearly the is no need to alert other drivers when there is none present. This purpose gives meaning to the "when required" phrase contained in the statute, [Citing Clark v State 432 S.E.2d 330 (1973) and Jones v State 443 S.E.2d 145]. There was no objective basis for a reasonable suspicion that the defendants were or were about to be engaged in criminal activity. No other ground for the stop was provided. Therefore there was no violation of 40-6-123 and no basis for the initial stop by officer Todd, thus the stop was unauthorized.

[4TH] CASE is in State v Goodman 469 S.E.2d 327 (GA App 1996), Defendant charged with D.V.I., making a Improper Left Turn, and violating open container ordinance moved to suppress evidence resulting from traffic stop. The state court granted motion. State appealed. The court of appeals, Ruffin J. held that: (1) motion adequately stated facts showing that seizure was unlawful; (2) statute did not require left turn signal in left turn only lane; and (3) traffic stop was not supported by reasonable suspicion that defendant was or was about to be engaged in criminal activity.

On 1/14/1945 at 4:30 pm Goodman car stopped at a "Red Light" in a "Left Turn Only Lane" at a "Intersection". He was awaiting a "Green Arrow signal" when officers stubbs drove up behind him and noticed that he had not activated his turn signal. When the "Arrow" turned green, he turned "Left" into a V-Turn. Officer followed him and stopped him, suspecting he was D.V.I. and drugs because he failed to use a turn signal. However, officer also admitted that from Goodman position in the "Left Turn Only Lane", his sole legal option was to turn left; that the V-Turn was not illegal; and further that if Goodman had gone straight at the intersection, he would have committed an improper lane change. O.C.B. 17-5-30 (b) requires making to suppress state facts showing that the search and seizure were unlawful. Thereafter, the state has the burden of proving that the search and seizure were lawful. We construe the evidence most favorably to uphold the findings and judgment and the trial court findings on disputed facts and credibility must be adopted unless they are manifestly and affirmatively incorrect.

Articulate facts sufficient to give rise to a reasonable suspicion of criminal conduct... This suspicion need not meet the standard of probable cause but must be more than mere "caprice" or a "hunch" or an "intuition".
 State v Jones 448 SE 2d 496 (1994). 2010 GA 195, 342 S.E.2d 242, 244. The state contends that when all of the evidence is viewed in the proper context, it is apparent that officer Conley was neither harassing, harassing, nor pretextual. "We disagree." Because the evidence does not show that Goodman violated 40-6-123 in officers presence nor would a reasonable officer conclude that Goodman was intoxicated solely because he failed to use a turn signal, [citing 40-6-123 (A) (3) - which required].

Thus the statute contemplates instances in which a turn on a roadway can be made with reasonable safety without the use of a turn signal, i.e., where a signal is not necessary to alert other drivers of a motorists intention to turn. Other than officers car, there was no evidence of any other vehicles in the vicinity at the time of goodmans turn. Consequently, we must examine whether safety dictated the use of a signal to alert officer of goodmans intention to make a u-turn. Officer admitted that from goodmans position in the left turn only lane, his sole legal option was a left turn and that goodmans u-turn at the intersection was legal. Under these circumstances, officers stop could not reasonably maintain that he was unaware of goodmans intention to turn. Therefore, a left turn signal was not necessary, and there was no violation of 40-6-123 committed in officers presence which alone justified the stop. Furthermore the traffic stop was not supported by a reasonable suspicion or an objective manifestation that Goodman was or was about to be engaged in criminal activity.]

The 4 cited cases I just listed from Georgia are from another state jurisdiction, but these cases are directly on point, in relation to my case, especially the 4th case of State v Goodman 464 SE 2d 327 which specifically relate to the issue of the left turn only lane and left green arrow signal. I apply those same standards or rulings from that case of State v Goodman to my case and I state that the evidence in my case does not show that I violated section of LAW 50-5-215 (B). I was not in a left turn only lane.

of a defendant with no cars in front of my lane or back of me and
 that officer madowski did a u-turn and got behind me. That makes
 argues that I did not use a left turn signal, and I argue that I did
 not for argument sake. Let's say for example hypothetically speaking that I
 did not use my signal. Then I argue that that still doesn't matter.
 Because as the court said in *State v. Goodman* (which relates to South
 Carolina law 56-5-215 (b)), *Goodman* states under S.C. Code of Law 56-5-2
 that statute contemplates instances in which a turn on a roadway can
 be made with reasonable safety without the use of a turn signal, i.e.
 where a signal is not necessary to alert other drivers of a motorist's
 intention to turn. Other than madowski's car, there is no evidence
 of any other vehicles in the vicinity at time of my left turn and
 as madowski testified he does not recall whether or not there were any
 cars in the other lanes, (pg 53/54, transcript). As court examined in *State v.*
Goodman as applied to my case, safety does not dictate the use of a left
 signal to alert officer madowski of my intention to make a left turn from
 a left turn only lane. madowski admitted that from my position in the
 left turn only lane, my sole legal option was a left turn being
 directed by a left green arrow signal. Under these circumstances, officer
 madowski could not reasonably maintain that he was unaware of my
 intention to turn. Therefore, a left turn signal was not necessary, and
 and there was no violation of 56-5-215 (b) committed in officer
 madowski's presence which justified the stop. The judge ruling that officer
 testimony is credible that vehicle did not use left signal is clearly erroneous and reversible
 now, I also clarify something which later applies to the state's
 arguments to justify intent to suppress and to the court's ruling against motion.
 Firstly, in *U.S. v. Espinosa* 782 F.2d 888 the court described 3 tiers
 categories of police citizen encounters: (1) consensual police-citizen
 encounter. encounter is characterized by voluntary cooperation of citizen in
 response to non-coercive questioning. A consensual encounter is not a seizure. (2)
 and category is referred to investigative detention or a Terry stop. Terry v.
 Ohio 481 U.S. 380. While an investigative detention (investigative stop) is a
 seizure within the meaning of the 4th Amendment, it need not be supported
 by probable cause. It is justified where specific and articulable facts
 and rational inferences from those facts give rise to reasonable suspicion
 that a person has committed or is committing a crime. (3) The category
 an "Arrest" is a seizure characterized by highly intrusive or bodily

cause

To believe that a person is committing or has committed a crime.

In US v 5434, 905.50 182 F.3d 443 court said, "A police officer who personally observes a traffic violation has probable cause to stop the vehicle and offend-
ing driver. On the other hand, when police have no direct cause to stop for traffic violation a purely investigative stop must be based upon at least a reasonable suspicion that either the automobile or its occupants are subject to seizure under the applicable criminal laws."

The court say, "A Traffic stop is not investigative, it is a form of arrest based upon probable cause that a penal law has been violated."

Now I allege in my case that matewski traffic stop of me allegedly not using my left turn signal is a traffic violation of 56-5-215 and under 56-1-920 turning unlawfully is 4 points, and failing to give the proper signal for stopping, turning or suddenly decreased speeds is 4 points.

The traffic violation matewski say he observed me commit is not based upon the standard of "reasonable suspicion", but is based upon the standard of "probable cause". The standard for "arrest" is "probable cause" not reasonable suspicion. Therefore I allege I was "arrested" for traffic violation when matewski pulled me over.

For the left turn violation matewski never served me with a uniform traffic ticket (summons) under 56-9-10/56-2-15. But regardless if he did not issue me citation, I was still "arrested" for the traffic violation he say I committed. Now there is different levels to an arrest. There is a simple arrest of informal nature, which does not include a tactical custodial arrest, and then there is the formal custodial arrest. Some traffic stops based upon probable cause do not involve custodial arrest, but it is still a arrest (seizure or forcible restraint).

Now that it is established I was "arrested" for the alleged traffic violation, I now allege matewski violated South Carolina code of law 23-6-150 of "summons". This law say "When any person is apprehended by a officer upon a charge of violating any laws of the state relating to highway traffic, motor vehicles, or commercial motor carriers such person shall immediately be served with an official summons." Etc.

Matewski apprehended me by accusing (charging) me of violating a traffic law but he failed to immediately serve me with an official summons of a uniform traffic ticket. This is not something that's "discretionary" this is a mandatory duty for him to do by state law. But when I told him that I was not

Amounted to 2 more violations. I feel he violated my Due Process rights by not charging me through a summons because by him not charging me this did let the courts with jurisdiction to hear and dispose of the alleged traffic charge, this deprived courts of jurisdiction. I could've went to court on this alleged minor traffic violation and courts could've found me Not Guilty! And therefore the trial court in my armed robbery trial could not have found malawski's testimony "Credible".

Now under Tort law of South Carolina there are laws against libel and slander and under state law 16-7-150 slander and libel are criminal laws! I allege malawski imputed the crime of either sexual violation or turning unlawfully upon me which was false statement. He just came up around falsely accusing me of committing crimes I didn't commit, but that's exactly what he did.

Now after the judge heard malawski and me testify, Mr. Bax and solicitor argued some points. My attorney Mr. Bax did in fact present a good motion that adequately stated facts showing that seizure (stop) was unlawful. The solicitor fumbled things around to sound convincing. (pgs 102/103/104 transcript) and he mentioned *Whren v United States*. In

U.S. v. Whren 53 F.3d 371, 375. Court say officers cannot make a "Traffic stop" unless they have "Probable cause" to believe a traffic violation has occurred, or a reasonable suspicion of unlawful conduct based upon articulable facts. So the solicitor was correct in stating that *Whren v US* does basically say that once a officer have probable cause of a traffic violation, that ~~the~~ stop is reasonable, whatever the officers underlying subjective intentions might be.

However there is a area of law called a "Pretextual stop". Black Law dictionary define it as "... An arrest of a person for a minor offense for the opportunity to investigate the persons involvement in a more serious offense for which there are no lawful grounds to make an arrest." In *U.S. v. Brown* 402 F. Supp 1410 (Nat 1945) court say, "The classic example of a pretextual stop occurs when an officer stops a driver for a minor traffic violation in order to investigate a 'hunch' that the driver is engaged in illegal drug activity." In *U.S. v. Escobarte* 239 F.3d 628 (9th Cir 2001) The traffic stop may have been pretextual but under *Whren v US* 116 Sd 1769, A traffic stop even if pretextual, does not violate the 4th Amendment if the officer making the stop has articulable cause to believe that a traffic violation has occurred.

at the time of the stop, and on the motivation of the officer in making the stop. On the other hand, if it is clear that what the police observed did not constitute a violation of the cited Traffic law there is no "probable cause" basis for the stop, and the stop is illegal. *US v Miller*, 146 F.3d 274, 279 (5th Cir 1998), see also *US v Lopez-Valdez*, 178 F.3d 1282, 1284 (5th Cir 1999). In *US v Lopez-Valdez*, 52 Fed 420, 424 (1992) (An arrest may not be used as a pretext to search for evidence).

In my case, I argue that this was a pretextual stop in which Matewski stopped (arrested) me for the minor traffic violation of illegal left turn. In order to investigate his unparticularized suspicion or HUNCH of my involvement in a more serious offense for which there were no lawful grounds to make an arrest for armed robbery.

The Judge cited state v JIHAD 553 SE.2D 249 Which was a Brake Light Case, In that case the appeals court of South Carolina say "It is uncontested in this case that respondent was actually driving with a non-functioning brake light which satisfies the higher standard of "Probable Cause If such conduct is in fact a traffic violation". The appeals court was correct that was a Traffic stop Based upon Probable Cause, "NOT REASONABLE SUSPICION!" But I argue that state v JIHAD has no bearing on my case because that traffic stop for the Brake light is totally different from my Traffic stop of making a unlawful turn in which I have already explained. In my case I was not required to use a left turn signal in a left turn only lane so there is a probable cause, but in JIHAD he was required to have 2 functioning brake lights, but since he only had one, there was probable cause. So these are 2 different cases.

And to prove my point even further that matewski was jacking specific and articul-
able facts to necessary to establish reasonable suspicion or probable cause to
make stop (arrest) for the Armed Robbery, is what he said to me when he
came to my car. When he came to my car he had his hand on his gun
and other officers had surrounded my car with their guns out. I rolled
down my window and turned engine off. I asked matewski "What's the
problem officer was I speeding or something?" He said "No". He

He asked me where did I just come from? I told him I just came from the Circle-K gas station up the street. I then asked him again "What the Problem officer?" (See my testimony by 255/256 Transcript). Now this is testimony of stand to after I asked him the 2nd time of "What's the Problem officer?" He say.... He said "We just had an armed robbery with a vehicle matching your description." My attorney then say.... "Well in fact there was not a description of any vehicle that had been put out by dispatch; is that right?" Matjewski said "correct." Mr Bax said.... "And I believe that you had -- the reason that you testified that you pulled this car over was due to lack of a turn signal, correct?" Matjewski said "correct." Now let me pause here for 1 second to clarify facts. 1st fact is, is in his testimony of "We just had an armed robbery with a vehicle matching your description" this man was correct in that there was a K.F.C robbery, but what he did was combine that truth with a "pretextual lie", because nobody at K.F.C saw my car anywhere near K.F.C, my car was 1/2 a block away at Circle-K gas station. So nobody there who witnessed the crime relayed any facts to the 911 dispatcher Jerry Woodward, and therefore dispatcher did not relay any specific and articulable facts to Matjewski of any description of my car. Now if the dispatcher would have relayed facts of a description of my car to Matjewski then "yes" he then would have had specific and articulable facts to form a "reasonable suspicion" or even "probable cause" to stop my car for armed robbery. So his statement proves he was lying about my vehicle matching a description in armed robbery. And by him saying "correct" to my attorney question of there being no description of any vehicle put out by dispatch this confirms and support my argument here. 2nd fact is my attorney Mr Bax pointed out that the given reason why he pulled me over is due to lack of a turn signal and Matjewski said "correct" to that question. He did not say he pulled me over for no armed robbery, he specifically say it was for the traffic violation. So this confirms and supports my argument here of Matjewski not having a particularized and objective basis for suspecting my car (or me) of any criminal activity in relation to K.F.C robbery. He had no specific and articulable facts sufficient to give rise to a reasonable suspicion or probable cause to stop me for

might have something to do with the incident. This feeling of his was not, then, but a particularized suspicion or hunch. And as the court said in *U.S. v. Iengo*, 182 F.3d 571 Even Inspired Hunches do not invest the police with the authority to stop people at will, *U.S. v. Shabla*, 124 F.3d 813, 812. Now continuing on... My attorney Mr. Bax then asked him... "Why exactly officer, did you state to the defendant at the time that there had been an armed robbery and that his car matched the description ^{PLEA OF COURT} said there was no description of a car in this case?" Majewski said... "It was just the heat of the moment. I observed a suspicious vehicle earlier, saw it leaving at a high rate of speed. It was just a slip of words."

I argue this man is trying to cover up his lie he told of this being a description of my vehicle, so now he's trying to cover that lie up by saying "It was just the heat of the moment and it was just a slip of words."

(Pg 58 Transcript). Mr. Bax kept on questioning him and Bax says... "So basically in your work as a police officer and observing the vehicle that you had seen at the circle K and then exiting, you had a feeling it might have something to do with this incident; correct?" Majewski says... "That's correct." And you were operating under that suspicion (hunch) correct?" Majewski says, "Yes." Mr. Bax says... "But that wasn't the reason you pulled the vehicle over, correct?" Majewski says... "Correct." Mr. Bax says... "Because you didn't have a description of the vehicle in this case; is that correct?" Majewski says... "That is correct." Mr. Bax says... "And you didn't have a description of any kind of suspect physical wise, correct?" Majewski says... "Not at that time, no." Mr. Bax says... "So you were going off a hunch; is that right?" Majewski says... "Trailing." (Pg 59/59 Transcript).

Mr. Bax later asks him... "Now your report does not indicate in here that you had stated to him anything about the robbery or a description of a vehicle, why is that?" Majewski says... "At the time, you know, the report indicates all the facts that occurred." Mr. Bax then played the dash cam/mobile camera that was in Majewski's car (pg 60-67 Transcript). Now as Mr. Bax correctly pointed out, Majewski's report did not say anything about him telling me about the robbery or a description of a vehicle whereas the mobile camera does! But here he is saying, "At the time, you know, the report indicates all the facts that occurred." I argue he is lying! Because

If the report indicates all the facts that occurred, that the report would
have indicated him telling me what he did me on the video which was
"we just had an armed robbery with a vehicle matching our description"

① Ineffective Assistance of Counsel

I received Ineffective Assistance of Counsel At Trial In That Trial Counsel Was Inadequately prepared at for trial and failed to Investigate Whether or not I could be subjected to a full custodial arrest for DUS 1st and Failure To Surrender License for failure to pay a fine

At Trial I could not access a law library to do legal research. I was depending on Counsel Bax to Investigate a defense that officer could not arrest me for DUS 1st for failure to surrender/failure to pay fine. Counsel Bax did not do investigation into this defense nor did he research state laws / Relevant case laws.

I was convicted on May 2, 2011 and came to prison on May 9, 2011

While in prison I discovered state laws, case citations, and have received after discovered evidence of evidence that counsel could of obtained before trial it

The cases he could've discovered had he researched are:

Meek v. Con 549 SE.2d 605

Knowles v. Iowa 119 S.5 484 (1998)

Loveless v. Commonwealth 532 SE.2d 256, Plus (1999)

Farrington v. Commonwealth 535 SE.2d 11, 13 (2000)

US v. Robinson 94 S.5 469, 477 (1993)

The state statutes he could've discovered had he researched are:

56-1-350

56-25-20 / 56-25-30

56-25-40

AFTER DISCOVERED EVIDENCE OR NEWLY DISCOVERED EVIDENCE AFTER TRIAL:

Discovered through city of Iowa attorney on April 20th in civil action, discovery of interrogatories. That there are exceptions to being arrested and taken to jail which is the statutory exception when the suspension is for failure to pay a fine.

Discovered U.S. Supreme Court case Knowles v Iowa 119 S Ct 404 (1998)

The Evidence introduced at my Trial WAS matuszowski saying my license was REPEY that I was driving under suspension for unpaid traffic ticket and ended immediately and that he heard this information from Dispatchers.

Counsel Bax asked him "Is it the practice of the Farm P.D. to utilize a court summons for D.V.S. firsts at any time or does the Farm P.D. always conduct arrests on driving under suspensions?" matuszowski said "It all depends on WHAT they are driving under suspension for. Bax say one other times when a driving under suspension charge is brought as a ticket is issued, where the person who's accused of that is not taken into arrest at that time?" matuszowski said "yes."

Also, Earlier Testimony of matuszowski confirms that his given reason for pulling me over was for left turn violation he say observed, not for Armed Robbery.

I'm alleging he was ineffective for not investigating evidence for my defense that there was a exception to being arrested for DVS 1st for failure to pay fine, and he failed to research Knowles v. Iowa and State Laws 56-25-20/56-25-30/56-25-40

Knowles v. Iowa is a controlling case from the U.S. Supreme Court and this case applies to mine. There is a DVS 1st / DVS 2nd / DVS 3rd. All are misdemeanors. But for a DVS 1st that is for failure to pay a fine the officer is only supposed to write me a citation and not conduct a full custodial arrest and take me to jail. He was not supposed to search me or search my car. So it ^{counsel} would have presented first that there is a statutory exception ~~where~~ for DVS when the suspension is for failure to pay a fine. and if he would've researched the and cite that relate to Knowles v. Iowa

Then:

Law/analysis

(1) must show counsel performance was deficient, meaning that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the 6th Amendment.

(2) must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable.

(1) Deficient Performance.

Counsel has a duty to undertake a reasonable investigation which at minimum includes researching applicable law and cases and making an independent investigation of the facts and circumstances of the case. And WATSON 642 S.E.2d 590, 596 (2001) / McKINIGHT v STATE 661 S.E.2d 354, 360 (2006) a criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the state.

(2) Prejudice.

I suffered prejudice due to counsel performance that was deficient. I will demonstrate that counsel errors had an effect on the judgment against me. There is a reasonable probability that, but for counsel unprofessional errors, the result of the proceeding would have been different.

of the fact that:

① This is a exemption to being arrested for D.U.S and failing to surrender Driver License which the exemption is a statutory exemption which the suspended is for failure to pay a fine.

② This is a U.S. supreme court case Knox v. Louisiana that decided to expand the search incident to arrest exception to the 4th Amendment prohibition against warrantless searches unless a historical rationale for the exception arise in a specific situation, that is: (1) the need to disarm the suspect in order to take him into custody / (2) the need to preserve evidence for later use at trial. The court held there is no "SEARCH Incident to Citation EXEMPTION".

As that an arrest effected by issuing a citation or summons rather than taking the suspect into custody does not by itself justify a full field type search.

③ This is a state statute 56-25-20/56-25-30/56-25-40 (which is similar to the law in 14.2.74/46.2.936 in West & com sup ss. 21 bus) that provides for the issuance of a summons in lieu of an arrest warrant for most misdemeanor cases. 56-25-30 mandate the arresting officer shall issue a summons in the absence of an express exception to the statutes.

④ This is a state statute 56-1-463 which operates together with 56-25-30. 56-1-463 applies to this being a exemption for failure to pay fine.

If counsel would have presented these facts / evidence that Maxwell should have written me tickets for D.U.S and failure to surrender license / failure to pay to fine that the judge may have granted the arrest warrant rather than perform a custodial arrest and take me to jail, then there is a considerable probability that the ~~prosecution~~ ~~prosecutor~~ ~~prosecutors~~ Judge would have suppressed the evidence.

Counsel for did not conduct a reasonable investigation which includes legal

To do legal research pertaining to this issue and he failed to do so, so his performance was deficient. The failure of him to do legal research on this issue resulted in counsel ignorance of valuable evidence which would have substantially benefited the accused.

Counsel decided not investigate by doing legal research pertaining to this issue was not reasonable, because that evidence would have been of great value to my case and beneficial to me.

Now AFTER MAJEWSKI check my license my attorney ask him "What information did you receive from your dispatch officer?" MAJEWSKI say... "That He WAS driving under suspension for unpaid Traffic ticket and it ended indefinitely." I was then searched and arrested for D.V.S and Failure to pay fine. (pg 63 transcript)

my attorney later ask him... IS it the practice of the Irmo Police Department to utilize a court summons for D.V.S First at any time or does the Irmo Police Department always conduct arrests on driving under suspensions?" MAJEWSKI say... "It all depends on what they are driving under suspension for." MR. ZAX say... "Are there times when a driving under suspension charge is brought or a ticket is issued where the person who accused of that is not taken into arrest at that time?" MAJEWSKI say "Yes". (pg 66 transcript)

Now there are serious issues surrounding my license which I will later explain but first I'd like to argue that above testimony by MAJEWSKI proves that for D.V.S 1st Irmo Police officers do not always issue a ticket and does not always conduct arrest for D.V.S... As MAJEWSKI said... "It all depends on what they are D.V.S for." AND above testimony also establishes there are times when a person is charged for D.V.S and is not arrested. So now the question is, "What type of D.V.S falls into the category in which a person is not arrested?"

Well there are numerous of violations which cause a person license to be suspended and 1 of those is for Failure to pay a fine, which is in violation of Failure to surrender/surrender license under 56-1-350, which suspends a persons license to drive. If a person is driving while his license is suspended then he would be violating 56-1-460 (D.V.S LAW).

Now I recently had a civil action in state court and I did a Interrogatory in which city of Irmo answered. I asked "What the procedure in effect during 10/13/2006 at Irmo Police Department in city of Irmo for penalty of D.V.S in violation of SC statute 56-1-460 / and Failure to surrender suspended DL 56-1-350! city of Irmo Answer... "Typically, persons

Driving under suspension and failing to surrender their drivers license are Arrested. There are EXCEPTIONS including the statutory exception when the suspension is for failure to pay a fine, (SEE ANSWERS TO INTERROGATORIES).

THIS INFORMATION IS FROM A ATTORNEY FOR CITY 340 ELMOR W. 4:29 PM APRIL 2010. THIS ANSWER FROM THE STATE (CITY OF IOWA) STATES THAT FOR THE DUB LAW UNDER SECTION 316.1 THERE IS EXCEPTION TO BEING ARRESTED UNDER DUB LAW AND THAT INCLUDES THE STATUTORY EXCEPTION WHEN THE SUSPENSION IS FOR FAILURE TO PAY A FINE!

Well THAT IS THE EXACT REASON WHY OFFICER SAY MY LICENSE WAS SUSPENDED IS CAUSE OF FAILURE TO PAY A FINE!

SO I ARGUE THAT BECAUSE OF THIS STATUTORY EXCEPTION THAT I SHOULD NOT HAVE BEEN ARRESTED!

NOW THIS IS A CASE FROM VIRGINIA APPEALS COURT 2011 CALLED WEST V. COM 549 SE.2D 605 THIS CASE IS CONTROLLED BY THE U.S. SUPREME COURT CASE OF KNOWLES V IOWA 119 S. CT 404 (1998). IN WEST V COM A OFFICER SAW CAR TURN TWICE WITHOUT SIGNALING. OFFICER POLAK APPROACHED CAR AND ASK APPELLANT FOR HIS LICENSE AND STATED HE DID NOT HAVE A LICENSE AND PROVIDED A I.D. OFFICER POLAK INFORMED HIM HE WAS UNDER ARREST FOR DRIVING WITHOUT A LICENSE. HE WAS FILLING OUT A SUMMONS FOR DRIVING WITHOUT A LICENSE AND FAILING TO SIGNAL A TURN WHEN HE NOTICED A BULDOGE IN APPPELLANT'S RIGHT SHOULDER. POLAK LOOKED UNDER THE FLAG OF SHOULDER AND FOUND BAG OF CRACK COCAINE. HE TESTIFY HE WAS IN PROCESS OF DETERMINING WHETHER APPPELLANT HAD ANY HISTORY OF FAILURE TO APPEAR IN COURT WHEN HE NOTICED THE BULDOGE. HE SAID HE NORMALLY HE WOULD ISSUE SUMMONS FOR THE 2 INITIAL OFFENSES, BUT HE WAS GOING TO THE MAGISTRATE TO GET A WARRANT FOR THE FELONY AND THE MAGISTRATE WOULD DECIDE WHETHER TO RELEASE APPPELLANT ON SUMMONSES. THE COURT SAY THE GENERAL ASSEMBLY EXPRESSED ITS PREFERENCE FOR THE ISSUANCE OF A SUMMONS IN LIEU OF AN ARREST WARRANT FOR MOST MISDEMEANOR CASES BY EXACTLY CODE 19.2-74. CODE 46.2-436 PARALLS CODE 19.2-74 IN REITERATING THE PREFERENCE FOR ISSUANCE OF A SUMMONS WITH A REQUEST TO VIOLATIONS OF THE MOTOR VEHICLE CODE. CODE 46.2-436 DIRECTS THAT "FOR PURPOSES OF ARREST, TRAFFIC INFRACTIONS SHALL BE TREATED AS MISDEMEANORS. CODE 19.2-74 AND 46.2-436 MANDATE THE ARRESTING OFFICER SHALL ISSUE A SUMMONS IN THE ABSENCE OF AN EXPRESS EXCEPTION TO THE STATUTES, OR A REASONABLE BELIEF THAT THE PERSON ARRESTED

will fail to appear in court on his or her promise or fails to discontinue the unlawful act. Police stopped appellant for failing to signal a turn in violation of code 46.2.240, a traffic infraction, and subsequently arrested him. He also was in violation of code 46.2.230, for driving without a valid operators license, a class 2 misdemeanor. Neither of these offenses under any exception justifying a suspect to be taken directly to a magistrates office.

The court say in *Knowles v Iowa* the supreme court declined to expand the "Search Incident to Arrest" Exception to the 4th Amendment prohibition against the warrantless searches. Unless either of the 2 historical rationales for the exception arise in a specific situation, i.e. (1) the need to disarm the suspect in order to take him into custody and (2) the need to preserve evidence for later use at trial. The court held there is no "Search Incident to citation exception", see *Lovelace v Commonwealth* 522 SE.2d 856, 860 (1994) after *Knowles*, an arrest that effected by issuing a citation or summons rather than taking the suspect into custody does not by itself justify a full field type search. Code 46.2.236 specifically require the issuance of a custodial arrest regardless of the classification of the misdemeanor offense. The officer is directed to take the name and address of the suspect, obtain his promise to appear and release the suspect unless the facts warrant otherwise. In the absence of a particularized concern about a weapon or need to collect evidence for the charged offenses, the officer was not authorized to conduct a full search incident to the arrest by summons or citation. See *Farrar v Commonwealth* 525 SE.2d 113 (2001).

In *Farrar v Commonwealth* officer morton arrested defendant for profanity in public, a class 3 misdemeanor, issued him a summons and searched him and found evidence of him. In support of his contention that the search was in violation of the 4th Amendment, claiming suppression of the related evidence, defendant asserted that a brief detention incident to the issuance of a summons for a class 3 misdemeanor does not give rise to a custodial arrest or otherwise justify a search of the accused. He further contend that he was subjected to a custodial arrest in violation of code 9.19.2.3d (1)(2), a circumstance that he maintains also requires suppression of the evidence. Court said it is well established that, following a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the 4th Amendment, but is also a reasonable search under that amendment. *U.S. v Robinson* 410 U.S. 16, 47 (1973). However, the U.S. Supreme court has refused to extend this bright line rule to a routine traffic stop. See *Knowles v Iowa*, subsequently in *Lovelace v Commonwealth* 522 SE.2d 856 (1994). The supreme court of Virginia ruled by the

latitude of knowledge, concluded that class 3 and class 4 misdemeanors were similar in nature and duration to a routine traffic stop and did not contemplate a custodial arrest. Thus an arrest that is effected by issuing a citation or summons rather than taking the suspect into custody does not by itself justify a full field type search. 9-29-79 and the trial court erroneously denied the motion to suppress and entered and remanded for further proceedings.

3 11-17-80 OF 111
FBI OF NC

Now under South Carolina code of laws 56-25-30/56-25-30/56-25-40 the South Carolina General Assembly (like the Virginia General Assembly in West v. Con 549 S.E.2d 605) expressed its preference for the issuance of a summons in lieu of an arrest warrant for most misdemeanor cases by Exemption Code 56-25-30. 56-25-30 mandates the arresting officer shall issue a summons in the absence of an express exception to the statute.

This law says: "56-25-30 [Release of violator on P.R.; Release of non-resident licensed by compact jurisdiction.] Any law enforcement officer who issues to a person a uniform traffic citation may, in addition to any other action authorized by law and subject to the exceptions noted in this section, allow the person to proceed without first either having to post bond or appear before a magistrate, recorder or other judicial officer if the person accepts the citation, such acceptance shall constitute the person's recognizance to comply with the terms of the citation. When issuing a citation for a traffic violation to a non-resident who is licensed by a compact jurisdiction, if the law enforcement officer receives the person's recognizance as above described, the officer shall not, subject to the exceptions noted below, require the person to post bond but shall allow the person to proceed."

Under this law I argue madawell was only authorized by code 56-25-30 to only issue me a summons for the failure to pay fine (failure to surrender license), and D.V.S. The state has offered no evidence of a need to disarm me in order to take me into custody for the failure to surrender license and D.V.S. violations, following the non-custodial detention, and he could not search me without to arrest. He conducted a "search incident to citation (search incident to summons)" which in the absence of one of the 2 historical rationales was unreasonable under the 4th amendment, this violation was unreasonable under the 4th amendment, this violation was unreasonable under the 4th amendment and dismissed!

(P) INEFFECTIVE ASSISTANCE OF COUNSEL.

I received Ineffective Assistance of Counsel at Trial in that Trial Counsel WAS Inadequately Prepared for Trial, By Not Investigating If DMV Records were Wrong. That was provided to officer, and failed to discover evidence of errors and records to be used in my defense and failed to object to official advice being used to prove I was suspicious.

At Trial I did not have access to law books to do legal research, I was depending on Counsel BAX to investigate my allegations that Records of DMV was wrong, and depending on him to discover relevant applicable state statutes and applicable case laws.

Counsel BAX did not do investigation into if Records was wrong, nor did he research state laws / relevant case laws in preparation for my defense.

I was convicted on May 2, 2017. I came to prison on May 9, 2017.

While in prison I ^{DISCOVERED} ~~discovered~~ state laws / case rulings, and have received After Discovered Evidence of Evidence that Counsel could it obtained before Trial.

The cases he couldve discovered had he researched are:

Barrett v State 326 SE.2d 816 GA. APP 1985

Bumpkinner v SC Dept Hwy. 331 SE.2d 767

Buckley v State 540 SE.2d 292

State v ORA 270 SE.2d 346

The Attorney General explained he couldve discovered had he researched are:

1973-74 of atty gen N. 3107 p.1. Opinion is under state law 56-1-350

The state states he could've discovered had he researched more.

56-1-463

56-1-35

56-1-36

56-1-465

56-1-810

56-33-30

AFTER DISCOVERED EVIDENCE vs NEWLY DISCOVERED EVIDENCE AFTER TRIAL: ↓

Discovered "notice of suspension" on March 13, 2004 through Discovery motion with D.M.V.

Discovered that there is a distinguished difference between "Final/Actual notice of suspension and impending suspension"

And that the official notice that solicitor presented in court was not a final/actual notice of suspension that license was suspended but was an impending notice of suspension as described in statute 56-1-463.

Discovered South Carolina state notational laws: 56-1-35/56-1-36/56-1-465/56-1-810

Discovered through admissions in a civil action from D.M.V. on 7/16/2004 that D.M.V. did not mail me the final notice of suspension between September 20 and October 19th 2006.

Discovered evidence of a "warning ticket" from Newberry that was issued on 10/4/2006; and dispatcher in Newberry said license was not suspended.

Newly discovered evidence of state law 56-1-463 and dismissal of DUS/and failure to surrender license charges mandatory arrested me for

Discovered on 8/11/2004 from clerk of court of city of Forest Hill that they did not send a notice of suspension to D.M.V.

Review 8 pages from 355 - 322

1. allege counsel was ineffective for failing to:

- (1) ^{Failed to} Research D.M.V. Laws and Notices of "Impending Notice of suspension" and "Final Notice of suspension".
- (2) ^{Failed to} Explain to the court that the official notice the solicitor questioned about was not a final notice of suspension but was an impending notice of suspension.
- (3) failing to research Notification Laws and present a defense.
- (4) failing to obtain evidence from D.M.V. that no final notices of suspension was mailed to me.
- (5) failing to obtain evidence from Newbury Highway Patrol of a warranty ticket I received on 10/11/2006 which proved license was not suspended on that date which would of proved that license was not suspended on 7/26/2006.
- (6) failed to obtain from D.M.V. a copy of a notice of suspension that ~~was~~ ^{was} supposedly received from city of forest acres, which was not signed or endorsed by judge or clerk of city of forest acres court.
- (7) failed to present ~~any~~ ^{any} evidence of 3 D.U.S. Elements and failed to establish that all 3 elements to D.U.S. could not be proven.

my Argument to all these allegations are on pages 355 - 322

Law/Analysis

- ① must show Trial Counsel's Performance was deficient, meaning that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the 6th Amendment
- ② That deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable.

① Petitioner Performance

Counsel Bar had a duty to do a reasonable investigation, which at a minimum includes obtaining records from DMV / Information from city of Forest Acres Court / researching Notification Laws / obtaining Waiting Times

And venture into SE 23 / McKnight v State but SE 20 351, 360 (a criminal defense attorney has the duty to conduct a reasonable investigation to discover all relevant and available evidence tending to rebut any aggravating evidence introduced by the state)

Counsel Bar did not conduct a reasonable investigation, by researching notification laws and other facts of evidence to prove that records of DMV was wrong. It was reasonable for him to do so, by him failing to do so, his performance was deficient.

His failure to do research and discover relevant evidence to prove records was wrong resulted in counsel's ignorance of valuable evidence which would have substantially benefited me.

② Prejudice:

Counsel Bar failed to investigate evidence previously mentioned was a serious error and affected in the judgment against me.

There is a reasonable probability that but for counsel's unprofessional errors,

A reasonable probability to undermine the outcome of the trial is if he could
it proven to the court that results of trial was wrong. If he could have done
that then the judge would have ruled that the stop was wrong.

Counsel was clearly deficient in his representation of me. It is unreasonable to
conclude that he investigated and disclosed evidence to prove that trial results
was wrong that that would at least have been beneficial to me.

I believe I established the requisite prejudice for a claim of ineffective
assistance of counsel.

EXHIBIT

3rd This is marked for identification which is a "Impending Notice of suspension" from D.M.V. (Pg 95/89 Transcript). The solicitor basically asked me what was beginning date of my driver's license suspension? I said beginning date was 12:01 am 9/1/2006 and HE ASK ME WHAT DOES IT SAY WHEN IT'S ENDING DATE? I said, "ENDING DATE: WHEN YOU RECEIVE NOTICE FROM THE DEPARTMENT THAT THIS ACTION HAS BEEN CLEARED". (Pg 96 Transcript). My lawyer did not object to the questioning, but when solicitor asked me about a letter which I initiated K.R. - my attorney asked to see it and what is the relevance? Solicitor said that in a letter to Robert Madsen the head solicitor, that while in jail I said the D.M.V. sent me letters saying my driving record has been changed effective 11/8/2006. Solicitor say suspension began in September, and "THAT I'm saying I'm getting letters in the jail saying that it's November, and so it goes to show that my license was suspended in October. My attorney responded by pointing out that the basis of the pretrial suppression motion is basically what reason the officer that was testified today had to pull me over initially. The court say he was looking up state v Redford and that he don't think it matters whether I was or was not under suspension on 10/13/2006, and that it matters whether or not HE had probable cause or reasonable suspicion to make the stop AND THEN Probable cause to make the arrest. The court say, "If the records are wrong that were provided to the officers, unless you show me otherwise, I don't think that makes the stop wrong. I haven't decided that issue, of course. But I don't think that makes the stop wrong or the search after the stop wrong.

Now in response to what the judge say above of "and then Probable cause to make arrest", I argue that the D.M.S. and failure to surrender license charges which gave officer probable cause to arrest me, was in fact founded upon FALSE probable cause. And also in response to what court say if records wrong provided to officers, then I argue I can prove otherwise.

Firstly from beginning. on August 1, 2006 I was on my way to work and I accidentally ran a stop sign and was charged by city of Fort Worth officer and he cited me a ticket #13804 DK. I accidentally was late for my

Court was over. The court officials told me to sit in court room and they
 was gonna call the charging officer to see what to do. A Agreement
 was made and it was established that I got 1 month to pay fine or
 penalties would be entered against me. I paid \$85.00 same day. I paid \$137.50 by 9/1/2006 and
 on 9/1/2006 the clerk of court issued me a RECEIPT FROM AS A COMPLIANCE
 Notice, which proves I paid the full fine of \$222.50 to court. on
 9/1/2006 I took a copy of that to D.M.V.

[Note: Now recently on March 13, 2009 (which is 3 years later after my arrest
 and after my conviction) D.M.V. told me through discovery papers, that city
 of forest acres court issued a "Notice of suspension", and that court sent it
 to D.M.V. to initiate suspension of my drivers license for failing to pay
 remaining fine of \$147.50. In the discovery papers on 3/13/2009, D.M.V.
 claim they received the notice of suspension from city of forest acres court
 on 9/5/2006, (which is 4 days after I paid total fine to court). To this
 very day and year in 2010 D.M.V. has not told me what date city of forest
 acres court mailed this "alleged" notice of suspension to D.M.V., nor have they
 presented a copy of envelope it came it to them. The city of forest acres
 court never informed me of any fine not paid or any "alleged" notice of sus-
 pension they sent to D.M.V. on 9/5/2006. From 2006 to 2009 I had
 no knowledge of this alleged notice of suspension from court to D.M.V. This
 was concealed from me until 3-13-2009]

on 9-6-2006 D.M.V. claim they mailed me a "official notice" form of
 a impending suspension telling me to pay fine (\$222.50) by 9/26/2006
 or my license would be suspended.

Now this "official notice" is not a "Actual notice of suspension" or "Final
 notice of suspension", it is a "impending suspension" (or rather a Proposed
 suspension as described in state law 56-1-463). This "official notice" relates
 to notice "Prior" to the proposed suspension date of 9/26/2006, not notice
 that ones license has been suspended, (see Barratt v state 326 SE.2d 816
 G.A. App 1425). on the impending suspension date of 9/26/2006 I
 never received no type of notification of any Actual or Final notice of
 suspension from D.M.V. Letting me know that license "HAS BEEN SUSPENDED"
 or afterwards. Now D.M.V. violated said certain notification of laws
 of 56-1-350/56-1-360/56-1-465/56-1-810 by not notifying me my license
 has been suspended and this is mandatory by law to do, not discretionary.
 56-1-350/56-1-360/56-1-810 all have the statutory phrases of "license has
 been suspended". This means that once the impending date of 9/26/2006

Solved around 9/26/2006 by law if they take Affirmative action & suspending my license on 9/26/2006 then they were mandatorily required to notify me of this suspension. Notice is a 1st process requirement. 56-1-350 say D.M.V. shall notify me as prescribed in 56-1-360. / 56-1-360 say notice must be given by US mail postage prepaid and certified by the D.M.V. Section is presumptive proof that requirement as to notice of suspension have been met when it has received by licensee. / 56-1-465 say license shall be held void if suspension order 56-1-460 and same is required when suspension is due to loss of points as provided in 56-1-810. / 56-1-810 say D.M.V. shall notify licensee in writing return receipt requested and licensee has been suspended; (return receipt requested means use of certified mail under 2-1-90). Now under these laws D.M.V. did not comply by notifying me.

Now I have recent new evidence proving this allegation! on February 18 2009 D.M.V. answered my request for admissions in a civil matter. My 1st request for admission in civil case 08-CR-32-4159

request: From September 20th to October 13th 2006 D.M.V. did not mail me any final notices of suspension.

Response: The defendant admits that "no final notices of suspension" were mailed to the Plaintiff.

Now, I paid the fine within 1 month, provided D.M.V. with a copy of compliance notice on 9/1/2006. So when impending suspension date of 9/26/2006 rolled around and I did not hear anything of my license being suspended, then I reasonably concluded that D.M.V. processed the compliance receipt by 9/26/2006 and therefore everything was ok in order and that it was ok for me to drive. Any minister in my situation would have also concluded the same exact logical conclusion!

Now 9 days later after 9/26/2006 I was pulled over in Newberry County by Highway Patrol officer Mc Gentry Columbus, Unit 1177. He stopped me for speeding. He checked my license/registration/Insurance/Tags and Dispatcher KymcBride told him my license was "clear", meaning "not suspended". We came back to my car and told me my license was not suspended and he wrote me a warning ticket. So from this encounter I also reasonably concluded I was ok for me to drive. Warning ticket # 1079548.

Now I like to point out a important fact. If my license was in fact suspended on 9/26/2006 then on 10/4/2006 when officer Gentry saw my license the dispatcher KymcBride would have told him it was suspended and I would have been charged for D/S/ failure to surrender my license but this never happened. I have later been informed that

pulled over by Brian Majewski in time for alleged illegal left turn and KFC robbery HUNCH. He ran my license and F.M.E.D. Dispatcher (Sherry Woodward) told him my license was suspended for unpaid Traffic Ticket (Ticket I was accused of not paying is the ticket from MAY 19 2006 for \$29.00 of the \$232.50, which I did in fact pay 43 earlier on 9/1/2006). He arrested me for DVS/FAILURE TO SURRENDER LICENSE.

Now the "official notice" of impending suspension D.M.V. claim they sent me on 9/26/2006 say under "REINSTATEMENT Fee" section: [You must pay a \$100.00 REINSTATEMENT fee if your Compliance Notice shows payment on or AFTER the suspension date].

The compliance notice issued to me by city of forest acres court does not show payment on after the suspension date of 9/26/2006, IT SHOWS PAYMENT ON 4/1/2006, so the \$100.00 REINSTATEMENT fee does not apply to me!

8 days after my arrest D.M.V. claim they received proof that fine was in fact paid on 4/1/2006, they later say they cleared all ^{pending} suspensions off my record. After I was convicted on May 2, 2007 for KFC Armed robbery, my 2 traffic charges were still pending in another court. On 8-22-07 I had a bench trial before Honorable Mr. Joseph M. Eppitong of Lima Municipal Court. Majewski argued his case, I argued mine and I read a state law of 56-1-463 to judge which basically says the DVS-56-1-460 does not apply if and when the proposed suspension is based solely on lack of notice being given to D.M.V. when the person has in fact paid any fines or penalties due to court.

Mr. Eppitong found me NOT guilty of DVS/and NOT GUILTY of FAILURE TO SURRENDER LICENSE and dismissed both charges on 8/22/2007.

Now even though I was not guilty of both traffic charges there are 2 more points I missed and will explain and prove to show that I was arrested upon false probable cause.

On the "Notice of suspension" that D.M.V. claim they supposedly received on 9/5/2006 from city of forest court, is a section labeled court information section, which has name of court / address / phone number / date of trial. Last section has "Authorized by", which is blank. It has no signature of any judge or clerk authorizing that order of notice of suspension. In order

For this form to be legally authorized or valid, it has to be initialed by a judge or clerk, and since it is not initialed or signed, it is not authorized and is illegal. Under 56-25-20, it says when a state "assaults a court" or the other licensing authority of a compact jurisdiction notifies the department that a resident of South Carolina or person possessing a valid SC driver license has failed to comply with the terms of a traffic citation issued in this or any compact jurisdiction the department shall suspend the persons drivers license ... etc.

Under this section 56-25-20 D.M.V. can only suspend my license if they receive a notice of suspension from the court that is furnished with a signature.

I have newly discovered evidence from city of Forest Acres court. After I had found out from D.M.V. that they say that the city of Forest Acres court sent them a notice of suspension on 9/5/2006, I investigated that by writing court. On August 11, 2009 I discovered through a letter from clerk ms michelle morrison the following. She says.... "It dont show in the computer where there was any form sent to Highway Department letting them know you didnt pay ticket".

This is clear and convincing evidence that the city of Forest Acres court did not notify D.M.V. on 9/5/2006 of me failing to comply with ticket. The court never sent D.M.V. no notice of suspension form, so D.M.V. is lying about this! Introduction of a false notice of suspension in itself violates due process! D.M.V. is not privileged to make up a false notice of suspension. In the Black Law Dictionary "Unauthorized" is.... Done without authority; specifically (of a signature or instrument) made without actual, implied, or apparent authority.

The last thing I am pointing out is the elements of DUB and some cases. In BUMGARDNER V SOUTH CAROLINA DEPARTMENT OF HIGHWAY 331 SE 20761 (S.C. App 1185) in this case he was cited for speeding. He chose to defend and was convicted of charge, North Carolina "Notified" S.C. Highway Dept that he failed to appear or pay fine on charge, upon receiving notification the Department suspended his license under 56-25-20. In accordance with 56-1-360 the Department gave him notice of suspension by letter which he apparently received. In that case every requirement was met by law, but if you compare that case to my case you will see D.M.V. did not meet none of the requirements and no notice of Forest Acres court did not

... notify DOD of no failure to pay fine through a notice of suspension under
 56-25-20 and 56-1-360, (3) DOD never gave FULL notice of suspension under
 56-1-350/56-1-360.

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In Buckley v STATE 540 SE.2d 292 (Ga App 2001) she was found guilty
 of DUB at Denard trial. She appealed. ^{BEFORE A JUDGE} THE STATE failed to prove
 that her license was suspended. The Georgia Court of Appeals agreed and
 reversed. Trooper stopped her for speeding 7/20/1991, ran a computer check
 and it showed license had been suspended. On 3/8/1997, for driving with
 no proof of insurance, he cited her with a suspended license. Buckley denied
 she was aware of any suspension, and she claimed she was issued a renewal
 license after the alleged suspension date. The state gave trial court a copy
 of Buckley license history report showing her license had in fact been
 suspended but the report was not admitted into evidence, (just like in my
 case the "OFFICIAL NOTICE" solicitor questioned me about was not admitted into
 evidence nor was no final notice of suspension admitted into evidence in my
 trial to prove my license was suspended). The court in Buckley engaged in
 an extended colloquy with attorneys/Trooper/Buckley as to reason for suspension
 which was not clear from the history report. The court stated: BASED ON
 THE EVIDENCE ms Buckley is going to determine that technically you were DUB
 at the time, although there was a great amount of confusion about it.
 Buckley case say that in order to establish the offense of driving with a
 suspended license the state must show that the accused (1) was driving (2) that her
 license was suspended, (3) and that the accused had received actual or
 legal notice of the suspension. Here the state failed to prove her
 license was suspended. The state notes that (a Georgia crime info center) record
 drivers history was provided for the judge. Such history is admissible to
 show the fact of suspension. But only if the state tenders a "certified copy
 of a Department of public safety record", or proves that the driving record was
 obtained from a computer terminal lawfully connected to the G.C.I.C. computer.
 The record does not show that the state satisfied this foundational requirement
 or that even offered Buckley's driving history into evidence. Trooper state-
 ment at trial that her computer check of Buckley revealed a suspended
 license also fails to establish the fact of suspension. This unsworn representa-
 tion as to the contents of her driving record does not qualify as evidence.
 To hold otherwise would eviscerate the foundational requirement outlined above for
 proper admission of a driving record into evidence. Finally, the uniform traffic