

SOUTH CAROLINA
COURT OF APEALS

Case No.10-GS-43-0543

Joseph Waddell Dunbar, Jr.
Appellant in proper person

Vs.

State of South Carolina
Respondent

An Appeal of a Final Judgment
From the
Honorable William J. Young in the
Court of General Sessions
In and for Sumter County of the
State of South Carolina

Initial Brief of Appellant
Joseph Waddell Dunbar, Jr.
Proper person

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SC Court of Appeals

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STATEMENT OF THE CASE

This is an appeal arising out of a Final Judgment issued in the Sumter Municipal Court. Sumter county in and for the State of South Carolina v. Joseph Waddell Dunbar, Jr. Case No: 10-GS-43-O543 hearing of November 7-9 2011 before The Honorable William J. Young back in January 1, 2010 there was alleged armed robbery occurred on the south side of town in sumter county in South Carolina. According to victim's statement Ms. Mary pollard she got to her business at 7:00 am.in the morning she had two clients and she closed at approximately at 5:00 pm. And around 5:30 her pastor came andshe stepped outside of her business. She was still in front of the business but was outside talking to her pastor. then she came back in side. She left the door at that time her daughter and libra told her that an individual had came in was asking for the owner. They told him that they were the only ones there at the time.the individual was later I.D. as Reekem Dunbar he had on red socks the cousin of Joseph Dunbar Jr. and right after that she heard a knock on the door. She went to the door she had curtains up at her door. She pulled the curtain backed to the right of her and she seen a young man standing there to the side, to the left side, to right of her and he asked her would she twist his dreads. At that time she told him that her business was closed, that he could come back tomorrow and that she would do it for him then she stepped away from the door. And she told her daughter jahmelia she didn't feel right, she asked her to pass her the cell phone. As she pass the cell phone, a loud boom like. She stepped back to the right which is where her dryers was and stood along the wall. Jahmelia backed back in to the TV. Room. Glass shattering, kicking, guys jumping, through the glass door. One guy had the gun in her face. The other guys had gun on maqueda and jahmelia and libra on everybody that was in the shop. The one guy had a gun on her he ask where the fuck is it at. Then she reached inside of her bra and gave him **fifteen hundred dollars, EBT CARD AND HER MEDICAID card and license.** she told the guy she had a long counter, and everything is over there,you can take everything. And she peed on her self. The other guys snatched stuff and ran out the door, the gunmen said how the fuck you get out of here? She said the same way that you came in. when they left the business, she left out of a back door, which was a gated door Ms. Mary pollard started to bang on the door, which the owner of the building he lives upstairs. They let them in they ran up stairs she told them to call the police the police came. The police took them to the precinct to make a statement on **January 1, 2010 all the victims maid a**

report the same day and time. Then they went home. and the next day **detective Lyons** had Just Ms. Pollard come in for a **photo lineup** it was just her and detective Lyons. No witness to the photo lineup. On January 2, 2010. The photo lineup not videoed or audio detective Lyons said that he had knowledge of JOSEPH DUNBR PRIOR TO THE robbery taking place, he put Joseph Dunbar in a robbery because of a credit card in a 14 year old child pocket walking down the street who had nothing to do with the robbery he said he knew that he match that description so he took a jail photo from November of (2009) year later with 6 man lineup 2 darker MS. POLLARD STATED that the gun man had hair that can be twisted win The US. Marshals picked MR. JOSEPH DUNBAR UP FROM FLORIDA his photo from there will show he did not have hair that can twist. He never had a nother lineup I wonder why. The judge gave MR. DUNBAR 30 YEARS AND 15 YEARS WITH A TAITED JURY AND ALLEGED VICTIM That has EBT, card that is for people that cant work so if she is making \$1500.00 in a day to get and EBT Card you cant make over \$700 in month. If you say she made that every 2 days she has to be making 22,500 dollars a month. And she is taking food out of some poor childrens mouth and medical? Miss Justus.

STATEMENT OF ISSUES ON APPEAL

- 1.) JUDGES NOT IMPARTIAL
- 2.) TAINTED JURY
- 3.) JURY EYES CLOSED
- 4.) PHOTO LINEUP
- 5.) VICTIMS CONFLICTING STATEMENT
- 6.) CONSTITUTIONAL ERROR
- 7.) EIGHTH AMENDMENT
- 8.) SIXTH AMENDMENT
- 9.EFFECTIVE ASSISTANCE OF COUNSEL
- 10.) FIFTH AMENDMENT
- 11.) DOUBLE JEOPARDY
- 12.) NINTH AND TENTH AMENDMENTS
- 13.) FOURTEENTH AMENDMENT
- 14.PREJUDICAL STATEMENT

ARUMENT

ISSUE FACTS

“page (5.) lines 1-14.MR. BRUNSON: WE BELIEVE THAT THE JURY HAS BEEN TAINTED BY JUROR 189. THE COURT: He didn’t say anything. MR. BRUNSON: Well, he did. THE COURT: Nobody heard it. Solicitor? Solicitor: Judge, in your initial remarks to the jury you would remind them the state has the burden of proof in this case, and juror number 89 was set aside for cause, I think the --with the standard opening remarks to the jury, you could certainly clear up any confusion that may have been created in the jury’s mind by any statement that a juror may have made. page(6.)line 3. THE COURT: I may not do that in my opening charge,page (6.) lines 13-14THE COURT: Your Motion is respectfully denied.”

If the jury’s recommendation is tainted then the trial court’s sentencing decision, which took in to account that recommendation is also tainted

MANN V. DUGGER 844 F. 2d at 1452-1453

RILEY V. WAIN WRIGHT, 517 SO 2d, at 659 if the jury’s recommendation,

CONSTITUTIONAL ERROR

The sentencing Judge serves as the ultimate fact finder. If the judge was not impartial there would be a violation of due process. The law is well

established that a fundamental tenet of due process is a fair and impartial tribunal. MARSHALL V. JERRICO, INC., 446 U.S. 238, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980)

ISSUE

page 321 lines 4-16 **The Court: Mr. Griffin, what is the defendant's criminal history. Solicitor: your honor, going back to his juvenile record, he's got an assault on a police officer while resisting arrest, a shoplifting as juvenile. Your honor, he's also got a resisting arrest as an adult for which he received probation. Your honor, those are his prior criminal convictions. The Court: is that correct, Mr. Brunson? That's correct, your honor. Page 323 lines 23-25 THE COURT: you know, this was an extremely cowardly act. Although this was not a home that was invaded, this was an invasion-page 324 lines-1-25 of where these people worked and where they felt secure. These guys come in, and you went in there with them, with loaded gun or guns, pointing them at women and children. I can't think of a more cowardly act. You were bad that night, yeah, you were bad. You actually showed your face because you were intimidating her as to whether she should do anything. I find you to be unrepentant. I find you to be a danger to our community and therefore, although they give me the option of sentencing you down to ten years up to thirty, I am sentencing you to the maximum. I am sentencing you to**

thirty (30) years on armed robbery charge. Yeah, you crashed into these people's house-- not their house but where they worked-- and where they carried on their day to day life, so I am giving you thirty years. On the burglary charge, I am giving you fifteen (15) years. so you can be bad when you want--you thought that you were bad that night, so you are. They will run concurrently since they- page 325 line 1. Happened at the same time. Thank you

5th AMENDMENT RIGHT TO GRAND JURY, NO DOUBLE JEOPARDY, FREEDOM FROM SELF INCRIMINATION, DUE PROCESS AND JUST COMPENSATION? What is double jeopardy? The fifth amendment provides that "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." double jeopardy means that a person is placed in jeopardy of punishment for a crime twice. It prohibits a second prosecution after a person has been acquitted or convicted. It also prohibits multiple punishments for the same offense. The U.S. Supreme Court has declared that double jeopardy clause is designed "to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense." the U.S. Supreme Court's decision in BROWN V. OHIO (1978) PROVIDES an excellent illustration of the double jeopardy clause in action. County prosecutors initially charged Nathaniel brown with joyriding. He pled guilty and served 30 days in jail. upon his release, prosecutors charged him with the more serious crime of auto theft. The Supreme Court applied the BLOCKBURGER test-derived from BLOCKBURGER V. UNITED STATES(1932):The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not." applying this test, the court determined that joyriding and auto theft constituted the same offense.

14TH AMENDMENT CITIZENSHIP, RIGHT OF EQUAL PROTECTION AND DUE PROCESS? procedural due are notice and the right to a fair hearing.

COUNSAL
ISSUE EFFECTIVE ASSISTANCE OF
STRICKLAND V. WASHINGTON, the
defendants trial attorney failed to subpoena key alibi witness crucial to the
defense of the case

Page 231 lines 14-15 Mr. Brunson: your honor, I did not serve my subpoena on a witness. Page 232 lines 4-9 Mr. Brunson The Court: if you can get him up here and you have a subpoena-- we'll have one waiting for him if he needs to come up here. I mean, a subpoena should have been served on him yesterday, or Monday.

page 271 lines 14 -19 **WE HEARD FROM FOUR MEM BERS OF LAW ENFORCEMENT. NOT A SINGLE ONE OF THEM OFFERED A SHRED OF EVIDENCE TO EVEN PROVE THAT MY CLIENT WAS THERE.** page 276 8-10 I submit to you that Mrs. Pollard, the only person in this entire case that says that my client did this, is not believable.

Page 53 lines 14-19 **LADIES AND GENTLEMEN, IT IS VERY IMPORTANT THAT YOU KEEP AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THIS CASE UNTIL ALL THE EVIDENCE HAS BEEN PRESENTED, THE ATTORNEYS HAVE MADE THEIR CLOSING ARGUMENTS AND I HAVE CHARGED YOU ON THE LAW.**

PAGE 114 LINE 24-25 The Court: If one of the jurors knows this person and knows that he is "a- page 115 lines 1-3 -creep", or something that, they're staying on the jury. I am not going to dismiss them from the jury because of that.

constitutional error a man life is on the line.

6th AMENDMENT PROVIDES: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

Page 177 lines 9-14. **The Court: hold on just a second. Ladies and gentlemen of the jury, I know that you listen pretty well with your eyes closed but it's important that you keep your eyes open, so-- I'm sure you all are listening carefully but you need to keep your eyes open.**

TAINTED JURY THE JURY IS SLEEPING.

page 261 line 1 a directed verdict. Page 261 lines 14-15 **THE COURT: I am going to respect-fully deny your motion.**

ISSUE impartial

page 6 line 16 -17 **Mr. Brunson Thank you your honor.**

The Defendant would also like to make a motion that the fact witnesses be sequestered.

ISSUE impartial

page 7 lines 22-25 **THE COURTS: Respectively denied.**

MR. BRUNSON: Thank you, your Honor.

The defense would like to make a motion with regard to the photo lineup.

ISSUE victim conflicting statement's
page 12 lines 6-7 " **MS. POLLARD: "It was like \$1,500, I had my EBT card, my drivers license, and another card."**

lines 11-12 "That was money that I had made the day before."

Lines 20-23 Q. **"Did you ever get a look at his face?"**
I didn't get a look at his face because he had a mask on."

page 100 line 25 Q.)so you know Dexter Dunbar, you know Dee-

page 101 lines 1-2 - Dunbar you know Reanna Johnson, --- A.)yes, sir.

page 103 lines 6-10 Q.) what other Dunbar do you know?

A.) those are the only two .

Q.)is it your testimony that this is the first time you ever saw Joseph Dunbar? A.) **for me, today, the first time.**

DAVIS V. STATE 694 so 2d 113,22 Fla L. weekly D1344 Fla App 4. Dist, May 28, 1997 (No. 96-1610) victims prior consistent statement desribing intruder to police officer required reversal in burglary prosecution: victim trial testimony about intruder's pants varied, defendant lived in area and was accustomed to riding bicycle in early morning and in evening, and it was reasonable to presume that police officer's testimony about victims description influenced jury in resolving confliting

page 45 lines 3-4MR. BRUNSON:“ Just an objection at the appropriate time.”

page 45 lines 8-24THE COURTS: Under the due process cause, evidence of identification of an accused must be excluded if the process to obtain the identification is so unnecessarily suggestive as to give rise to a substantial likelihood that there is a misidentification. The facts that the court should look to to determine the reliability of the witnesses are the opportunity to view the criminal at the time of the crime, the witness' degree of attention to the accuracy, the witness' level of certainty at the time of the confrontation, and the time between the crime and the confrontation.

In this situation, I find that the witnesses had an opportunity to view the criminal at the time of the crime. The testimony was that he took the mask off and that- page 46 lines 1-25-she would have seen it at the time. Her degree of attention, she was very specific that he was a

light-skinned black male with shorter hair, with facial markings. She was very specific, ends up being pretty accurate. The witness' level of certainty at the time of confrontation. She was very certain at the beginning of that. And there was very little time. I mean, we're talking about from one evening to the next morning when this lineup was presented. I am looking at the lineup. Four of them are very, very similar. The other two are darker but, yet, the hair would fall into the description. So based on--the key factor here is reliability. I think that being the linchpin, that the photo lineup will be allowed at this point. Thank you. Yes, sir, do you have another motion?

MR. BRUNSON: your honor--no, your honor. We just renew our objection. THE COURT: so noted, denied again.

Lyons did this in he's lineup

pollard

page 25 lines 6-9 "Q.) how many people were in the room?

A.) me and detective Lyons. Q.) Just the two of you.

A.)yes, sir.Page 25, line 17-25 Q. look at this

document,(tendering). **A.)(reviewing).** Q.)did anybody sign it in front of you?

A.)Yes, sir. Q.)who? **A.)Detective Lyons.** Q.)so at no point did anyone else ever come in the room, that you recall? **A.)no sir.**

Lyons

page 36 lines 15-25 Q.) was this photo lineup videoed? **A.)was the**

presentment videoed? Q.)yes, Sir **A.) no, sir.** Q.)was there an audio

of the photo lineup? **A.)no sir.** Q.)was there any other witness

present besides you and Ms. Pollard? **A.)no, sir.** Q.) how many

witness lines on the form? **A.)signature lines on the form?** page 37

lines 1-3Q.)there is a signature line for the officer and a signature line for the witness; correct? **A.) that's correct.**

page. 38 lines 10-25 Q.) okay. So the only way that you got to my

client is from a credit card that as in the back pocket of someone

walking down the street? A.)no. Q.)no. A.)**that's part of it.**

Q.)the first part of it. A.)**also, the person walking down the street was his family member.**

Page 41 lines 14-16 Q.)now, you said that you got this photo from a November of 2009 booking? A.)**correct.**

Page 41 lines 17-23 Q.)pollard testified that there were two other sets of photos with this one. Is it your testimony that is not true?

A.)**my testimony is that I presented this photo lineup to**

Ms. Pollard on that date. Q.)Just those six? A.)**that's correct.**

Page 44 lines 1-5 Q.)one other question. I notice on state's exhibit 1, proposed one, that there are two different writing utensils being utilized. Is that correct? A.)**correct.** Page 30 lines 13-24 Q.)prior to this robbery taking place, did you have knowledge of Joseph Dunbar? A.) **I did. And I knew that he matched that description. Therefore, I took a recent jail photo- he had a booking photo from November of 2009 for an unlawful weapons charge, so I took that booking photo**

because I knew that it would be probably the most recent photo of

Prejudicial statement Gottschalk v. Gottschalk

him, unless he'd gotten a new driver's license, so I sent that photo to the state law enforcement division and asked them to compile a six-

person photo lineup. Page 216 lines 18-23 Q.) isn't it true that there

is nothing in the incident report that says anybody took off a

mask?

Solicitor: your honor, I am going to object. He didn't prepare

this. The Court: Sustained. Page 211 lines 5-11 Q.) all right. After the

arrest warrant for Mr. Dunbar was completed, what happened?

A.) we began our efforts to try to locate Mr. Dunbar. during our

investigation and in trying to get Mr. Dunbar located, we received info that he may be in another state, that he may be in the state of Florida. Page 212 lines 3-13 A.) I believe, if my memory serves me correctly, he was taken into custody on January 8th. I am not sure what his extradition date was back to south Carolina, but normally when a defendant is arrested out of state they have to obtain what is called a governor's warrant in order to return him to the state.

Mr. Dunbar waived his extradition. We sent officers down and he was subsequently brought back to our facility.

ISSUE page 49 20-24

THE COURTS: ‘Ladies and gentleman, let me tell you upfront that your, not going to be able to take notes during the trial; so, therefore, it’s very important that you listen closely throughout the trial. ’

ISSUE page 51 lines 4-16 ‘On the other hand, but with equal emphasis, the same law that makes you the judges of the facts

makes me the judge of the law. The law as given to you by me is the only law that you may consider.” ‘Ladies and Gentlemen, you must accept the law as I give it to you even though you might disagree.’”

‘I cannot tell you what the facts are and you can not disagree with me about what the law is or what you believe that the law should be.’”

‘Your job is to take the law as I give it to you, apply it to the facts as you find them from the testimony and other evidence as presented.’”

ISSUE page 69 lines 8,11,14-17, 23. victim

A.) **Yes, sir**, I owned it. I was renting, renting from someone.

I got to my business at 7:00 in the morning, had two clients, one

being Libra, I was braiding hair, just doing hair, just doing my

normal/ usual. I closed at approximately 5:00 o'clock.

Page 97 lines 18-24 Q.)you closed at around 5:00, you were outside

talking to your pastor and then-- well, was it daytime or nighttime?

A.)it was partially-- day and night, it wasn't quite dark yet. Q.)okay A.)it was dark.

victim ISSUE page 73 4-8 'At that time I reached inside of my bra area and I gave him-- which I had **fifteen hundred dollars, EBT card, my Medicaid card and my license.** I just gave him all that at one time."

page 96 lines 13-17

A.)I usually stay in the shop until 2:00 or **3:00 in the morning. I have a lot of nighttime clients that work other shifts. If I have early morning clients, I open my shop as early as 5:00 or 6:00 in the morning. I work all day.**

page 68 lines 16-25 Q. all right. Ms. Pollard, what do you do for a living? A.)**beautician.** Q.)how long have you been a beautician?

A.)**ten years.** Q.)back on January 1st, 2010, were you working as a beautician? A.)yes, sir. Q.)where were you working? A.)**untouchable cuts barber & beauty salon.**

page 74 lines 24-25

victim conflicting

When he took his mask off, his face was red, real red like if your hot, a red person.

ISSUE page 76 13-22

victim conflicting

MS. POLLARD: 'No, I didn't speak with anybody until I got to the precinct.' that's what I am getting at. Did you have an opportunity to tell law enforcement what happened to you that night? Yeah I had an opportunity when I got to the precinct. They had you write down the statement that you gave? Um-humm.

ISSUE page 106 lines 7-9 11-25

MR. BRUNSON:

Yes, your Honor,

I would like to make a motion at the appropriate time to suppress the introduction of any evidence regarding an anonymous tip.

The basis of the motion being that--kirk and I discussed this earlier.

I asked him--rather, if he had a copy of it. I think, your honor, anything about a tip would be hearsay, not within any exception.

THE COURTS: MR. GRIFFIN? SOLICITOR: Your honor number one, I would like to-- that testimony would come through detective Lyons. He's going to be my last witnesses. I would

like, number one, to ask you to reserve ruling on that until before he testifies. Number two at this point your honor, I would argue that the tip wouldn't be offered for truth-- THE COURTS: But as to why they did what--- SOLICITOR(Affirmative nod) , as to why they did what they did, your honor; why they would have notified the u.s. Marshals in the state of florida. The basis of the tip was that joseph dunbar had fled from sumter to florida, so we would be offering it for why that--- THE COURTS: But if you put it those contexts, that he fled doesn't that **look very prejudicial-- of course**, fleeing would be a consideration of a knowledge of guilt. SOLICITOR: yes, your honor. THE COURTS: Guilty of knowledge. SOLICITOR: Yes, your honor. That would be the basis for why we would offer the evidence that the u.s Marshals--and we've got the officer that actually went to florida to retrieve MR. DUNBAR, who will testify after detective Lyons. So-- THE COURTS: There was

an extradition, wasn't there? MR. BRUNSON There was. THE COURTS: He had to be extradited back up here?

21.

MR. BRUNSON And he waived. SOLICITOR: And ,
your honor, I would concede that any mention of
extradition would perhaps be more prejudicial than
probative, but certainly why law enforcement

focused their efforts on looking for MR. DUNBAR after
the warrant was issued in the state of florida. I would
submit that were offering that for the basis of law
enforcement action, not for the truth of-- I

mean, it turns out that--- THE COURTS: I certainly think
that he could answer to ' why did you do it' with '
because we got a tip.'

SOLICITOR: And, your honor,-- THE COURTS: Your
not saying what was stated, just that you received a tip.
We do that all the time.

SOLICITOR: Your honor,-- and we would couch it in
that pharse,

that, uh,-- THE COURTS: I wouldn't allow a tip that
says 'MR.

DUNBAR was the one who perpetrated this crime,'That
would be'

fairly, hearsay. Page 109 1-15 SOLICITOR: Right.
THE COURT:

But why did you do what you did'
'we had a tip' I don't think that is

hearsay at all.

MR. BRUNSON: So it depends on how its-- THE

COURT: Very much so. Yeah. MR. BRUNSON So
you deny my motion at this point? THE COURTS; I am
going to reserve and see how it is couched. MR.
BRUNSON: Yes, sir. THE COURT: If its

couched in the right way, they can say why they did what
they did without saying what the verbiage was. page 177

THE COURT: Hold

**on just a second. Ladies and gentlemen of the jury, I
know that you of you listen pretty well with your eyes
closed bit its important that you keep your eyes open,
so im sure you all are listening carefully but you need
to keep your eyes open.**

ISSUE page 222 lines 1-25 impartial

Okay. So you did not collect any fingerprints that belong
to my client from the scene? DETECTIVE LYONS: I
did not, no sir. MR. BRUNSON: In fact, there arent any
in file that belong to my client?

DETECTIVE LYONS: No, sir, MR. BRUNSON: In
fact there isn't any DNA evidence in your file that
belongs-- that was collected that

belongs to my client, from the scene? DETECTIVE
LYONS: **That's**

correct. MR. BRUNSON: There
is no footprint of shoe in your files

that
suggest or that came from my client, from the scene?

DETECTIVE LYONS: No sir we do not have any of
your clients

shoes. MR. BRUNSON:

But you found a shoe print and you made

an imprint from it, is that correct. DETECTIVE LYONS:
That's

correct.

MR BRUNSON: But you have no evidence that that
imprint

matched a shoe belonging to my client?

DETECTIVE LYONS: We

don't have any

evidence that it matches anybody's shoes at this point.

At that point we have not been given a shoe nor nor have
we located a shoe that matches it.

ISSUE page 225 17-23

impartial

MR. BRUNSON: Your honor, the defendant would like to
move for

a **directed verdict** at this time.

That motion is based on the defendant contends that the
state has not met its burden and that they have not
provided evidence that my client is guilty of arm robbery
or use of a weapon.

Page 218 lines 1-4 18-23Q. DETECTIVE LYONS, I BELIEVE THAT YOU INDICATED THAT YOU WERE THE LEAD INVESTIGATOR ON THIS CASE? A.)CORRECT.

Q.)MY QUESTION IS, DID ANYBODY--DIDTHE INCIDENT REPORT SAY THAT SOMEONE TOOK OFF A MASK? A.) DOES THE ACTUAL INCIDENT REPORT SAY IT? Q.) YES. A.) NO, IT DOES NOT.

Page 220 lines 11-21 Q.NOW, WHEN YOU ENCOUNTERED MR. RAKEEM DUNBAR, HE HAD RED SOCKS ON ?A.)HE DID. Q.)AND NIKE FLIP-FLIPS (SIC)? A.)THAT 'S CORRECT. Q.)DID ANY OF THE VICTIMS SAY THAT A ROBBER HAD ON RED SOCKS? A.)NO, THEY DID NOT. Q.)DID ANY OF THE VICTIMS SAY THAT THE ROBBER HAD ON NIKE FLIP-FLOPS? A.)NO,THEY DID NOT.

STATE V. GIBSON,so 3d--,38 F.L.W. D343(2d DcA2/1312013The defendant was charged with a shop lifting robbery following a struggle with a store security officer.an leo used a license plate trace to locate aphoto of defendant, and the employee identified the defendant. The court found that the photo lineup was impermissibly suggestive be cause the officer told the employee that the officer's research had located some one who resembled the perpetrator, which the court found to suggest to the witness that the perpetrators photo would be in the photo pack. Further, the defendants photo was the only photo of a person aged 35-45, while the others in the lineup were younger. The court suppressed both the out of court identification and the in court identification. Regarding the out of court identification the court up held, 25.

JURISDICTION

This Court has Jurisdiction over the parties and subject matter of this Appeal because this Appeal is from a Final Judgment of a Lower Tribunal to this District Court of Appeal out of Sumter Municipal court. and the function of this Honorable Court is to review the actions of the Lower Tribunals.

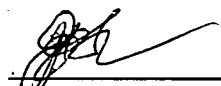
CONCLUSION

We are requested this HONORABLE Courts for a Reversial or any other releaf the courts can give.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Appellants' Initial Brief was served via U.S. mail to; 7012346000117189080

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8,20,2013

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the lettering in this brief is (times new Roman 14-point font) and complies with the font requirements of south Carolina rule of Appellate Procedure Rule 267SCACR

signed


JOSEPH W. DUNBAR JR.

#348569/ L.C.I. DARLINGTON/NORTH #1146.

990 WISACLCY H.W.Y BISHOPVILLE S.C. 29010

date 8, 20, 2013.

1 Your Honor can take care of the whole burden of
2 proof issue.

3 THE COURT: I may not do that in my
4 opening charge, but the jury is going to go
5 under a new oath that they will swear that they
6 will try this case based on these facts and not
7 on what somebody else may tell them.

8 His statement was so generic that I
9 don't think that it would taint the jury in any
10 way whatsoever.

11 MR. BRUNSON: Yes, sir, I
12 understand your ruling.

13 THE COURT: Your Motion is
14 respectfully denied.

15 MR. BRUNSON: Thank you, Your
16 Honor. The Defendant would also like to make a
17 Motion that the fact witnesses be sequestered.
18 The basis of that Motion, Your Honor, is that we
19 believe that there are some discrepancies in the
20 statements that they have written and I believe
21 that sequestering them would prevent them from
22 altering their statements or tailoring them in
23 any fashion.

24 THE COURT: Any objection to that?

25 SOLICITOR: I would just state for

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7

1 the record that ---

2 THE COURT: The victims and the
3 investigating officer always can be present.

4 SOLICITOR: Yes, sir, and, Your
5 Honor, these people were all present during
6 robbery at the barber shop, they were all
7 present, they all had guns pulled on them. They
8 will each testify that they were in the presence
9 of this robbery and in such a position that
10 these witnesses are all victims, and of course
11 the lead investigation, Detective Lyons, can
12 stay in the courtroom. So, Your Honor, these
13 are -- they are all victims, and I think that
14 they have a right to stay during the entirety
15 of the trial.

16 THE COURT: I agree if they were all
17 present; however, any other witnesses will be
18 kept out/sequestered.

19 SOLICITOR: And, Your Honor, we don't
20 have anybody else in the courtroom other than
21 the victims and Detective Lyons.

22 THE COURT: Respectively denied.

23 MR. BRUNSON: Thank you, Your
24 Honor. The defense would like to make a Motion
25 with regard to the photo lineup.

1 on. One individual, I seen, walk around to the
2 barber shop and they was like, 'where the fuck
3 is that, where the fuck is it at?' I reached
4 inside my bra and I gave the individual that was
5 in front of me the money that I had inside my
6 bra. It was like \$1,500, I had my EBT card, my
7 driver's license, and another card -- I can't
8 quite remember now which ---

9 Q. That amount of money, was that -- why did
10 you have that amount on you?

11 A. That was money that I had made the day
12 before. I just hadn't took it off of me. I
13 left my shop earlier that day so -- I left my
14 shop earlier that day to take it home, but then
15 I came right back to the shop and I still had
16 that amount on me.

17 Q. And you had worked that day, as well?

18 A. Yes.

19 Q. Now, the individual that was in front of
20 you holding the gun, did you ever get a look at
21 his face?

22 A. I didn't get a look at his face because he
23 had a mask on.

24 Q. At some point did you?

25 A. Yes, sir.

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1 Q. Where?

2 A. (No verbal response).

3 Q. Where at the police station? Big room?

4 Small room?

5 A. Big room.

6 Q. How many people were in the room?

7 A. Me and Detective Lyons.

8 Q. Just the two of you?

9 A. Yes, sir.

10 Q. And your testimony is that you selected
11 number five from this page?

12 A. Yes, sir.

13 Q. And then you signed this document?

14 A. Yes, sir.

15 Q. Did anybody else sign this document?

16 A. No, sir.

17 Q. Look at this document, (tendering).

18 A. (Reviewing).

19 Q. Did anybody sign it in front of you?

20 A. Yes, sir.

21 Q. Who?

22 A. Detective Lyons.

23 Q. So at no point did anyone else ever come in
24 the room, that you recall?

25 A. No, sir.

1 card, did you have occasion to compile a photo
2 lineup?

3 A. I did. After having spoken with Ms.
4 Pollard and after having talked with Mr. Dunbar,
5 -- in fact, he had the defendant's credit card
6 with him and the physical description that Ms.
7 Dunbar (sic) gave me matched that of the
8 defendant.

9 Q. That Ms. Pollard gave you?

10 A. Yeah. I'm sorry. That Ms. Pollard gave
11 me. Matched that of the defendant, Joseph
12 Dunbar.

13 Q. Prior to this robbery taking place, did you
14 have knowledge of Joseph Dunbar?

15 A. I did. And I knew that he matched that
16 description. Therefore, I took a recent jail
17 photo - he had a booking photo from November of
18 2009 for an unlawful weapons charge, so I took
19 that booking photo because I knew that it would
20 be probably the most recent photo of him, unless
21 he'd gotten a new driver's license, so I sent
22 that photo to the State Law Enforcement Division
23 and asked them to compile a six-person photo
24 lineup.

25 Q. So you sent a known photo of Joseph Dunbar

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1 THE COURT: Mr. Brunson?

2 MR. BRUNSON: Thank you, Your

3 Honor.

4 CROSS EXAMINATION

5 BY MR. BRUNSON:

6 Q. Detective Lyons, just a couple of
7 questions. The date and time line, who filled
8 that out? Was it you or was it Ms. Pollard?

9 A. The date and time line was filled out by
10 myself.

11 Q. Okay. And that's a zero-eight-fifty-two?

12 A. Yes, sir.

13 Q. 8:52 in the morning?

14 A. Yes, sir.

15 Q. Was this photo lineup videoed?

16 A. Was the presentment videoed?

17 Q. Yes, sir.

18 A. No, sir.

19 Q. Was there an audio of the photo lineup?

20 A. No, sir.

21 Q. Was there any other witness present besides
22 you and Ms. Pollard?

23 A. No, sir.

24 Q. How many witness lines on the form?

25 A. Signature lines on the form?

1 Q. There's a signature line for the officer
2 and a signature line for the witness; correct?

3 A. That's correct.

4 Q. Now, isn't it procedure to have a photo
5 lineup witnessed?

6 A. Not necessarily procedure. If you have
7 someone there that can witness it, we do; but,
8 again, this was a holiday weekend. I had her
9 coming in on a Saturday morning, met her up
10 there and presented her with the photo lineup.

11 Q. So it was New Year's? In fact, the day
12 after?

13 A. The day after New Year's.

14 Q. So there wasn't a whole lot of people
15 around?

16 A. No.

17 Q. All right. Now, what the reason for have a
18 witness to a photo lineup?

19 A. Just to have anyone else there to initial
20 or sign it, witness her signing it. Or there
21 might not be anybody.

22 Q. So that witness would then be able to
23 verify that the lineup was done properly?

24 A. I'm verifying that it was done properly.

25 Q. But a witness would be able to do that,

1 too; right?

2 A. Would be a second person.

3 Q. Now, you testified that you got the
4 information about my client from a credit card;
5 correct?

6 A. Yes.

7 Q. Did you place that credit card into
8 evidence?

9 A. I do not remember if we did or not.

10 Q. Okay. So the only way that you got to my
11 client is from a credit card that as in the back
12 pocket of someone walking down the street?

13 A. No.

14 Q. No?

15 A. That's part of it.

16 Q. The first part?

17 A. Also, the person walking down the street
18 was his family member.

19 Q. Okay.

20 A. Therefore, his family member had his ID.

21 At first, I didn't think anything about it.

22 Okay? It wasn't until we discussed what was
23 going on in the business with the victim and Ms.
24 Pollard gave a description and I said, 'that
25 matches the description of Joseph Dunbar'; which

1 male? In your opinion, how many of this six are
2 light skinned?

3 A. Four.

4 Q. All right. So the other two in the lineup
5 clearly -- well, let me rephrase it. So your
6 testimony is that two of them aren't even light-
7 skinned?

8 A. They are not dark-skinned.

9 Q. So you're testifying ---

10 A. They are not dark.

11 Q. So your testimony is that four are light-
12 skinned?

13 A. (Affirmative nod).

14 Q. Now, you said that you got this photo from
15 a November of 2009 booking?

16 A. Correct.

17 Q. Pollard testified that there were two other
18 sets of photos with this one. Is it your
19 testimony that is not true?

20 A. My testimony is that I presented this photo
21 lineup to Ms. Pollard on that date.

22 Q. Just those six?

23 A. That's correct.

24 Q. Tell me about the process for requesting a
25 photo lineup from SLED. Now, you sent a photo

1 Q. One other question. I notice on State's
2 Exhibit 1, proposed one, that there are two
3 different writing utensils being utilized. Is
4 that correct?

5 A. Correct.

6 Q. Any particular reason why -- and -- well,
7 first of all, tell me what the types. One
8 appears to be a marker/pen.

9 A. If you look at the photo lineup, the same
10 marker that was used to write the initials and
11 to circle number five on the photo lineup is the
12 same marker that's used to put it in the box.
13 It's a Sharpie marker.

14 After she completed that, I had her sign it
15 with a pen instead of trying to sign it with the
16 Sharpie. That's the difference for the two.

17 Q. No other significance?

18 A. No. To me, a Sharpie shows up better when
19 you're marking something than trying to use a
20 pen. A pen looks better when you're signing
21 something.

22 MR. BRUNSON: Nothing further.

23 THE COURT: Any redirect?

24 SOLICITOR: Your Honor, we have no
25 redirect. At this time we would offer State's

1 Exhibits 1 and 2 into evidence.

2 THE COURT: Any objection?

3 MR. BRUNSON: Just an objection at
4 the appropriate time.

5 THE COURT: All right.

6 (SO ENTERED AS STATE'S EXHIBIT 1)

7 (SO ENTERED AS STATE'S EXHIBIT 2)

8 THE COURT: Under the due process
9 clause, evidence of identification of an accused
10 must be excluded if the process to obtain the
11 identification is so unnecessarily suggestive as
12 to give rise to a substantial likelihood that
13 there is a misidentification.

14 The facts that the Court should look to
15 to determine the reliability of the witnesses
16 are the opportunity to view the criminal at the
17 time of the crime, the witness' degree of
18 attention to the accuracy, the witness' level of
19 certainty at the time of the confrontation, and
20 the time between the crime and the
21 confrontation.

22 In this situation, I find that the
23 witnesses had an opportunity to view the
24 criminal at the time of the crime. The
25 testimony was that he took the mask off and that

1 she would have seen it at the time. Her degree
2 of attention, she was very specific that he was
3 a light-skinned Black male with shorter hair,
4 with facial markings. She was very specific,
5 ends up being pretty accurate.

6 The witness' level of certainty at the
7 time of confrontation. She was very certain at
8 the beginning of that.

9 And there was very little time. I
10 mean, we're talking about from one evening to
11 the next morning when this lineup was presented.

12 I am looking at the lineup. Four of
13 them are very, very similar. The other two are
14 darker but, yet, the hair would fall into the
15 description.

16 So based on -- the key factor here is
17 reliability. I think that being the linchpin,
18 that the photo lineup will come in. Based on
19 that, your in-court identification will be
20 allowed at this point. Thank you.

21 Yes, sir, do you have another Motion?

22 MR. BRUNSON: Your Honor -- no,
23 Your Honor. We just renew our objection.

24 THE COURT: So noted, denied again.

25 MR. BRUNSON: Thank you, Your

1 interest. Ladies and Gentlemen, remember you
2 just took an oath to listen to the evidence in
3 this case and reach a fair and just verdict.
4 Ladies and Gentlemen, you're expected to be
5 professional, reasonable and ethical as well.

6 Again, thank you for accepting this
7 important responsibility of jury duty and your
8 contribution to our justice system.

9 Is it hot in here, or is it just me?
10 Turn that down a little bit.

11 Now, Ladies and Gentlemen, what I am
12 going to tell you now is intended to serve just
13 as an introduction to the trial of this case.
14 These remarks are not a charge on the law. I
15 will charge you the law that is applicable to
16 this case at the end of the trial. This is
17 merely an explanation of procedures that we will
18 follow during this trial so that you may better
19 understand what's happening.

20 ~~*~~ Ladies and Gentlemen, let me tell you
21 upfront that you're not going to be able to take
22 notes during the trial; so, therefore, it's very
23 important that you listen closely throughout the
24 trial. ~~*~~

25 Now, Ladies and Gentlemen, the

1 diligently and conscientiously because
2 ordinarily there is no way to correct an
3 erroneous interpretation of facts by a jury.

4 On the other hand, but with equal
5 emphasis, the same law that makes you the judges
6 of the facts makes me the judge of the law. The
7 law as given to you by me is the only law that
8 you may consider. Ladies and Gentlemen, you
9 must accept the law as I give it to you even
10 though you might disagree. I cannot tell you
11 what the facts are and you cannot disagree with
12 me about what the law is or what you believe
13 that the law should be. Your job is to take the
14 law as I give it to you, apply it to the facts
15 as you find them from the testimony and other
16 evidence as presented.

17 After hearing the evidence, you will
18 deliberate and render a true and just verdict
19 under the solemn oath that you just took, Ladies
20 and Gentlemen, as jurors.

21 Now, until I advise you to begin your
22 deliberations at the conclusion of the case you
23 must not discuss the case with anyone, including
24 your fellow jurors, except when authorized to do
25 so by me. You may not use a computer, cellular

1 instructions. As I said, the system is designed
2 that all of the information that you're going to
3 need to reach a verdict should be presented from
4 this witness stand or exhibits that are provided
5 here in the courtroom. So if you hear anything
6 from outside, that would taint that and we don't
7 want to have that happen.

8 Ladies and Gentlemen, it is very
9 important that you keep an open mind and not
10 decide any issue in this case until all the
11 evidence has been presented, the attorneys have
12 made their closing arguments and I have charged
13 you on the law.

14 Ladies and Gentlemen, it is your solemn
15 responsibility to determine the guilt or the
16 innocence of the defendant and your verdict must
17 be based solely on the evidence as presented to
18 you in this trial and on the law as I instruct
19 you during and at the close of the trial.

20 Now, in just a moment the Solicitor
21 will make what is called an opening statement,
22 in which he will explain to you what he believes
23 that the issues are in this case. The attorney
24 for the defendant may also make an opening
25 statement, although he is not required to do so.

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1 The State may call its first witness.

2 SOLICITOR: Your Honor, the State
3 calls Mary Pollard.

4 (WITNESS TAKES STAND)

5 MARY POLLARD, being duly sworn to tell
6 the truth, the whole truth and nothing but the
7 truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Ms. Pollard, how are you today?

11 A. Fine.

12 Q. Are you nervous?

13 A. Yes.

14 Q. Just listen and answer the questions, okay?

15 A. (Affirmative nod).

16 Q. All right. Ms. Pollard, what do you do for
17 a living?

18 A. Beautician.

19 Q. How long have you been a beautician?

20 A. Ten years.

21 Q. Back on January 1st, 2010, were you working
22 as a beautician?

23 A. Yes, sir.

24 Q. Where were you working?

25 A. Untouchable Cuts Barber & Beauty Salon.

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1 Q. Where was that located?

2 A. On the south side of Sumter.

3 Q. What street?

4 A. Lafayette.

5 Q. Okay. Now, did you own that business or
6 what was the status of the barber shop or salon
7 there?

8 A. Yes, sir, I owned it.

9 Q. Did you own the actual physical property or
10 were you renting it from someone?

11 A. I was renting, renting from someone.

12 Q. Okay. On January 1st, 2010, tell the jury
13 what you had done that day.

14 A. I got to my business at 7:00 in the
15 morning, had two clients, one being Libra, I was
16 braiding hair, just doing hair, just doing my
17 normal/usual.

18 Q. Even though it was a holiday you were
19 working?

20 A. Yes, sir, I worked.

21 Q. Okay. Now, what time did you close that
22 day?

23 A. I closed at approximately 5:00 o'clock.

24 Q. When you closed, was there anybody still in
25 the business after you closed to the public?

1 on everybody that was in the shop. The one guy
2 stayed on me, he was like, 'Where the fuck is
3 at, where the fuck is at?'

4 At that time I reached inside of my bra
5 area and I gave him -- which I had fifteen
6 hundred dollars, EBT card, my Medicaid card and
7 my license. I just gave him all that at one
8 time.

9 He kept like, 'Where the fuck is at,
10 where the fuck is at?' I was like -- I have a
11 counter, a long counter -- I was like,
12 'everything is over there, we don't have
13 anything, you can take everything.'

14 He still proceeded with the gun is my
15 face and I was, like, 'Look, I am peeing on
16 myself. I am peeing.'

17 Q. You actually were -- went to the bathroom
18 on yourself?

19 A. (Affirmative nod).

20 Q. Did you say anything else to him?

21 A. I was like, 'Please don't shoot, don't
22 shoot, take everything, take everything you
23 want', I gave him everything. And (emotional)
24 he was like -- the other guys snatched up the
25 stuff and they ran out the door, and then -- he

1 was like 'how the fuck you get out of here?' I
2 said, 'you gotta go out the same way that you
3 came in.'

4 When they left the business, I have a
5 locked back door, that had a gate on it. I told
6 everybody to come with me and let's just go to
7 the back.

8 Q. The individual that had the gun on you, did
9 you get a look at his face?

10 A. Yes. At the time he asked me how the fuck
11 to get out of there, he took his mask off.

12 Q. When he pulled his mask off, what did you
13 see?

14 A. I saw his face.

15 Q. What did ---

16 A. And when I saw his face, my mind was like
17 'that's the same guy that knocked on the door
18 just not too long ago.' To myself. I didn't
19 say that out loud.

20 Q. That was in your mind at the time?

21 A. Yeah.

22 Q. Okay. What -- how would you describe the
23 person who took the mask off?

24 A. When he took his mask off, his face was
25 red, real red like if you're hot, a red person.

1 downstairs. They let us in. We ran upstairs
2 and we started screaming. You know, we were
3 real, real frantic so we couldn't get it out,
4 you know, what had happened. I was like, 'Call
5 the police, please call the cops, call the cops,
6 call the cops.' So they called the cops and
7 after that we kind of like calmed down.

8 The police came. We were still kinda
9 shaken up when we, you know, talked with the
10 officers.

11 Q. Did you have an occasion to speak with the
12 officers about what happened?

13 A. No, I didn't speak with anybody until I got
14 to the precinct.

15 Q. That's what I am getting at. Did you have
16 an opportunity to tell law enforcement what
17 happened to you that night?

18 A. Yeah, I had an opportunity when I got to
19 the precinct.

20 Q. They had you write down the statement that
21 you gave?

22 A. Um-humm.

23 Q. You said that the man had light-skin,
24 pimples, red face. Did you give this
25 description to the police?

1 Q. How many were there at the time of this
2 incident?

3 A. None.

4 Q. Okay. What are your hours of operation?

5 A. We don't have set hours.

6 Q. This morning you testified that you'd
7 arrived at 7:00. Was that normal or not?

8 A. Yes, sir.

9 Q. And you testified that you closed at 5:00.
10 Was that normal or not?

11 A. No.

12 Q. Tell me about it.

13 A. I usually stay in the shop until 2:00 or
14 3:00 in the morning. I have a lot of nighttime
15 clients that work other shifts. If I have early
16 morning clients, I open my shop as early as 5:00
17 or 6:00 in the morning. I work all day.

18 Q. You testified that you were outside talking
19 to someone around 5:00 o'clock, is that right?

20 A. My pastor.

21 Q. So you talked to your pastor before you
22 closed that day?

23 A. No, I was closed.

24 Q. So you had already locked the door and
25 everything?

1 A. Yes.

2 Q. What time did you talk to your pastor?

3 A. It was around 5:00, I want to say it was
4 between 5:15 and 5:30.

5 Q. And you spoke to him outside?

6 A. Yes. It was a lady.

7 Q. Her. Sorry. How long did that
8 conversation last?

9 A. I am not too sure.

10 Q. Estimate.

11 A. I am not too sure.

12 SOLICITOR: Your Honor, he is calling
13 or speculation.

14 THE COURT: That'd be speculation.
15 She said that she didn't know.

16 CROSS EXAMINATION CONTINUED

17 BY MR. BRUNSON:

18 Q. You closed at around 5:00, you were outside
19 talking to your pastor, and then -- well, was it
20 daytime or nighttime?

21 A. It was partially -- day and night, it
22 wasn't quite dark yet.

23 Q. Okay.

24 A. It was dark.

25 Q. So when you were out talking with the

1 A. Yes, sir.

2 Q. In fact, you are Reanna Johnson's baby's
3 godmother; isn't that true?

4 A. No, sir.

5 Q. Are you aware that she has a child?

6 A. Yes, sir, she has two.

7 Q. Okay. Aren't you aware that my client is
8 Reanna Johnson's child's father?

9 A. I am aware of it now.

10 Q. Isn't it true that you know multiple
11 Dunbars?

12 A. (No verbal response).

13 Q. Multiple meaning more than one?

14 A. Yes, sir.

15 Q. You know Joanna Dunbar, don't you?

16 A. I don't know.

17 Q. Well, tell me which Dunbars that you know.

18 A. I know Dee. I call her "Dee", I don't know
19 her name.

20 Q. Dee Dunbar.

21 A. And I know, um, Derrick. I think that's
22 right.

23 Q. Dexter?

24 A. Dexter, yes. He boxed with my son.

25 Q. So you know Dexter Dunbar, you know Dee

1 Dunbar, you know Reanna Johnson, ---

2 A. Yes, sir.

3 Q. You know Janice Dunbar, too; don't you?

4 A. No, I don't know her.

5 Q. Isn't it true that Joanna Dunbar was a
6 customer of yours?

7 A. I don't know all my customers by name.

8 Q. All right. Isn't it true that you knew Mr.
9 Joseph Dunbar prior to January 1st, 2010?

10 A. No, sir.

11 Q. Okay. Now, you testified earlier that you
12 knew Reanna Johnson, his baby's mother?

13 A. Yes, sir.

14 Q. And you knew that she had a child?

15 A. Yes, sir.

16 Q. And you knew that he is the child's father?
17 You know that he is the child's father?

18 A. Now I know.

19 Q. Were you at the hospital when this child
20 delivered?

21 A. No, sir.

22 Q. And if anybody said you were, they're not
23 telling the truth?

24 A. They're not telling the truth.

25 Q. And you knew Dexter Dunbar was my client's

1 period?

2 A. No, sir.

3 Q. Didn't know that he was Reanna's baby's
4 father?

5 A. No, sir.

6 Q. What other Dunbars do you know?

7 A. Those are the only two.

8 Q. Is it your testimony that this is the first
9 time you ever saw Joseph Dunbar?

10 A. For me, today, the first time?

11 Q. Right.

12 A. No.

13 Q. When was the first time?

14 A. When he knocked on my door.

15 Q. January 1?

16 A. Yes, sir.

17 Q. All right. Now, --

18 MR. BRUNSON: Court's indulgence,
19 Your Honor.

20 THE COURT: Yes, sir.

21 MR. BRUNSON: Nothing further,
22 Your Honor.

23 THE COURT: Any redirect?

24 SOLICITOR: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

1 NOVEMBER 8, 2010

9:30 A.M.

2

3

(DEFENDANT PRESENT)

4

5

THE COURT: Good morning. Is there
anything before we bring in the jury?

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14

MR. BRUNSON: Yes, Your Honor. I
would like to make a Motion at the appropriate
time to suppress the introduction of any
evidence regarding an anonymous tip. The basis
of the Motion being that -- Kirk and I discussed
this earlier. I asked him -- rather, if he had
a copy of it. He doesn't have it. I think,
Your Honor, anything about a tip would be
hearsay, not within any exception.

15

16

17

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21

THE COURT: Mr. Griffin?

SOLICITOR: Your Honor, number one,

I would like to -- that testimony would come
through Detective Lyons. He's going to be my
last witness. I would like, number one, to ask
you to reserve ruling on that until before he
testifies.

22

23

24

Number two, at this point, Your Honor,
I would argue that the tip wouldn't be offered
for truth ---

25

THE COURT: But as to why they did

1 MR. BRUNSON: And he waived.

2 SOLICITOR: And, Your Honor, I would
3 concede that any mention of extradition would
4 perhaps be more prejudicial than probative, but
5 certainly why law enforcement focused their
6 efforts on looking for Mr. Dunbar after the
7 warrant was issued in the State of Florida.
8 I would submit that we're offering that for the
9 basis of law enforcement action, not for the
10 truth of -- I mean, it turned out that ---

11 THE COURT: I would certainly think
12 that he could answer to 'why did you do it'
13 with 'because we got a tip.' That's not
14 hearsay. We ask that type question, 'why did
15 you do what you do', 'we got a tip.'

16 SOLICITOR: And, Your Honor, ---

17 THE COURT: You're not saying what
18 was stated, just that you received a tip. We
19 do that all the time.

20 SOLICITOR: Your Honor, -- and we
21 would couch it in that phrase, that, uh, ---

22 THE COURT: I wouldn't allow a tip
23 that says "Mr. Dunbar was the one who
24 perpetrated this crime." That would be,
25 fairly, hearsay.

1 SOLICITOR: Right.

2 THE COURT: But 'why did you do what
3 you did', 'we had a tip', I don't think that's
4 hearsay at all.

5 MR. BRUNSON: So it depends on how
6 it's ---

7 THE COURT: Very much so. Yeah.

8 MR. BRUNSON: So you deny my
9 Motion at this point?

10 THE COURT: I am going to reserve
11 and see how it is couched.

12 MR. BRUNSON: Yes, sir.

13 THE COURT: If it's couched in the
14 right way, they can say why they did what they
15 did without saying what the verbiage was.

16 MR. BRUNSON: Yes, sir. If it
17 please the court, my second, Your Honor, was
18 that, uh, -- I know that we've got some fairly
19 young witnesses that are going to take the
20 stand. Your Honor, we ---

21 THE COURT: Do you want me to do an
22 in-camera meeting with the kids to see if
23 they're -- outside the presence of the jury?

24 MR. BRUNSON: I think it's
25 appropriate.

1 gone through the motions of putting together a
2 photo lineup of -- if she knew this man prior
3 to the incident that happened in her salon,
4 certainly she would have said, 'Joseph Dunbar
5 did this. I got a good look at him. I know
6 him.' The evidence in the case, the evidence
7 that has been presented goes to the fact that
8 she didn't know him. Her actions corroborate
9 what she's telling on the stand, that she did
10 not know him. Why else would they have gone
11 through this whole lineup procedure.

12 MR. BRUNSON: And, Your Honor,
13 that's exactly why my rebuttal witnesses are so
14 important, because it goes directly to her
15 truthfulness.

16 THE COURT: All right. Well, I'm
17 not going to -- because of that -- I'm not
18 going to grant a mistrial. If one of these
19 witnesses (sic) say that they know your guy
20 and they don't like him, you're going to have
21 to ---

22 MR. BRUNSON: One of the
23 witnesses?

24 THE COURT: If one of the jurors
25 knows this person and knows that he is "a

1 creep", or something like that, they're staying
2 on the jury. I am not going to dismiss them
3 from the jury because of that.

4 MR. BRUNSON: Yes, sir.

5 THE COURT: That is a risk that you
6 take, because I could have asked that whole
7 panel out there whether they knew these people.
8 They -- you know how to prepare a case. You
9 have the ones that you know are going to be
10 witnesses and then you have your potential
11 witnesses, and then you have your other tier as
12 to whenever things fall apart where you are
13 going to go. So, I mean, we like to ask all of
14 those names rather than just the ones that
15 you're sure of.

16 MR. BRUNSON: I understand.

17 SOLICITOR: And, Your Honor, we
18 would just ask if maybe at the lunch break we
19 could get the names of these witnesses.

20 THE COURT: Well, you're going to
21 have to get the names.

22 SOLICITOR: Yes, sir.

23 THE COURT: Because you are going to
24 have to run a criminal background on them.

25 SOLICITOR: Yes, sir. That's what

1 A. Okay. Naturally a countertop or something
2 that there's going to be multiple prints,
3 prints over prints over prints. So you'd be
4 less likely to find something that's
5 identifiable, because there's just so much
6 there and it's going to be smudged. So it just
7 depends on what type of surface and what you're
8 looking at.

9 THE COURT: Hold on just a second. *
10 Ladies and Gentlemen of the jury, I know that
11 you of you listen pretty well with your eyes
12 closed but it's important that you keep your
13 eyes open, so -- I'm sure you all are listening
14 carefully but you need to keep your eyes open. *

15 SOLICITOR: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR:

18 Q. Ms. Hodge, based on your education,
19 training and experience, would the presence of
20 chemicals or oils have any bearing on the
21 suitability of fingerprints to be -- would that
22 have any effect on fingerprints?

23 A. I wouldn't be certified as an expert as far
24 as processing. I would think not, but I
25 couldn't offer a good opinion on that because

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1 A. I do.

2 Q. Where is he?

3 A. He is seated next to Mr. Will Brunson, his
4 attorney. One Joseph Dunbar.

5 Q. All right. After the arrest warrant for
6 Mr. Dunbar was completed, what happened?

7 A. We began our efforts to try to locate Mr.
8 Dunbar. During our investigation and in trying *
9 to get Mr. Dunbar located, we received info
10 that he may be in another state, that he may be
11 in the state of Florida. *

12 Therefore, we turned our efforts to trying
13 to investigate whether or not he had any
14 connections in the state of Florida. We were
15 able to determine that he did have some family
16 members that lived in the state of Florida,
17 based on records that we obtained.

18 Given the addresses that we had, I
19 contacted the United States Marshal Service,
20 Fugitive Task Force. Officers from their task
21 force were able to subsequently locate Mr.
22 Dunbar in a family member's home in the state
23 of Florida.

24 Q. Okay. Now, was Mr. Dunbar subsequently
25 returned to the state of South Carolina? *

1 A. He was.

2 Q. How did that occur, to your knowledge?

3 A. I believe, if my memory serves me
4 correctly, he was taken into custody on January
5 8th. I am not sure what his extradition date *
6 was back to South Carolina, but normally when a
7 defendant is arrested out of state they have to
8 either waive extradition or the State has to
9 obtain what is called a Governor's warrant in
10 order to return him to the state. Mr. Dunbar
11 waived his extradition. We sent officers down
12 and he was subsequently brought back to our
13 facility.

14 Q. Okay. When he was brought back to South
15 Carolina, what was done there?

16 A. He was brought by the Sumter Police
17 Department, the officers that were transported
18 -- that were given his arrest warrant. He was
19 subsequently booked into the Sumter detention
20 center.

21 Q. Okay. Now, Detective Lyons, as the lead
22 detective on this case, did you have any role
23 in the crime scene processing or anything like
24 that?

25 A. No, I did not.

1 MR. BRUNSON: Thank you, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MR. BRUNSON:

5 Q. Detective Lyons, you weren't the first
6 officer on the scene, were you?

7 A. No, I was not.

8 Q. In fact, the first officer on the scene
9 wrote a report; didn't he?

10 A. He may not be the first officer.

11 Q. Well, there was an incident report
12 prepared; is that correct?

13 A. There was an incident reporter prepared,
14 that's correct.

15 Q. And I presume that incident report was
16 prepared after certain people were talked to?

17 A. It should be.

18 Q. Isn't it true that there is nothing in the
19 incident report that says anybody took off a
20 mask?

21 SOLICITOR: Your Honor, I am going
22 to object. He didn't prepare this.

23 THE COURT: Sustained.

24 MR. BRUNSON: Well, Your Honor, he
25 -- well, let me ask another question.

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- 1 Q. Detective Lyons, I believe that you
2 indicated that you were the lead investigator
3 on this case?
4 A. Correct.
5 Q. As lead investigator, you collected all
6 that law enforcement had done?
7 A. Correct.
8 Q. And you testified that an incident report
9 was prepared by an officer.
10 A. Correct.
11 Q. Not you, but an officer that responded to
12 the scene?
13 A. Correct.
14 Q. And that you reviewed that incident report?
15 A. Yes, a copy of it.
16 Q. You read it?
17 A. Yes.
18 Q. My question is, did anybody -- did the *
19 incident report say that someone took off a
20 mask?
21 A. Does the actual incident report say it? *
22 Q. Yes.
23 A. No, it does not. *
24 Q. Okay.
25 A. That would be because the initial officers

1. responding to the scene.

2 Q. Okay. Approximately how much time ---

3 A. I don't know how much time went by or how
4 much time it took me to get from Point A to
5 Point B. It's not like I was -- it was not
6 like an hour later.

7 Q. It was within ---

8 A. --- a short period of time.

9 Q. Less than thirty minutes?

10 A. That would be fair to say.

11 Q. Now, when you encountered Mr. Rakeem
12 Dunbar, he had red socks on?

13 A. He did.

14 Q. And Nike flip-flaps (sic)?

15 A. That's correct.

16 Q. Did any of the victims say that a robber
17 had on red socks?

18 A. No, they did not.

19 Q. Did any of the victims say that the robber
20 had on Nike flip-flops?

21 A. No, they did not.

22 Q. In fact, -- (pause). You testified on
23 direct that Mary Pollard described one of her
24 robbers as being light-skinned and that he had
25 acne -- you said acne or dents in his face.

1 Q. Okay. So you did not collect any
2 fingerprints that belong to my client from the
3 scene?

4 A. I did not. No, sir.

5 Q. In fact, there aren't any in your file that
6 belong to my client?

7 A. No, sir.

8 Q. In fact, there isn't any DNA evidence in
9 your file that belongs -- that was collected
10 that belongs to my client, from the scene?

11 A. That's correct.

12 Q. There is no footprint of shoe in your files
13 that suggests or that came from my client, from
14 the scene?

15 A. No, sir, we do not have any of your
16 client's shoes.

17 Q. But you found a shoe print and you made an
18 imprint from it; is that correct?

19 A. That's correct.

20 Q. But you have no evidence that that imprint
21 matched a shoe belonging to my client?

22 A. We don't have any evidence that it matches
23 anybody's shoes at this point. At that point
24 we have not been given a shoe nor have we
25 located a shoe that matches it. So I can't say

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1 You may step down.

2 (WITNESS STEPS DOWN)

3 SOLICITOR: Your Honor, the State
4 rests.

5 THE COURT: Ladies and Gentlemen of
6 the jury, I am going to give you an early
7 break. We have some matters of law that we
8 need to take up at this time. You may go back
9 in your jury room, take a smoke break. Do not
10 discuss the case and we will be with you
11 shortly. Thank you.

12 (JURY EXITS COURTROOM)

13 THE COURT: Mr. Brunson, do you have
14 any motions to make?

15 MR. BRUNSON: Yes, Your Honor.

16 THE COURT: All right.

17 MR. BRUNSON: Your Honor, the
18 defendant would like to move for a directed
19 verdict at this time. That motion is based on
20 -- the defendant contends that the State has
21 not met its burden and that they have not
22 provided evidence that my client is guilty of
23 arm robbery or use of a weapon.

24 THE COURT: Mr. Griffin?

25 SOLICITOR: Your Honor, going to the

1 MR. BRUNSON: Your Honor, he and I
2 have discussed this and we have a witness
3 problem. Is it okay if he reserves that
4 decision until ---

5 THE COURT: Yeah. I'll ask him
6 again right before he testifies.

7 MR. BRUNSON: Yes, sir. Thank
8 you.

9 THE COURT: If he wants to. Of
10 course he doesn't have to.

11 MR. BRUNSON: Your Honor, one more
12 before the jury comes back?

13 THE COURT: Yes, sir.

14 MR. BRUNSON: Your Honor, I did
15 not serve my subpoena on a witness.

16 THE COURT: All right. And the
17 witness has indicated that he needs a subpoena
18 before he will appear.

19 THE COURT: You know, that's stuff
20 that should have been handled before the trial.

21 MR. BRUNSON: Yes, sir.

22 THE COURT: We're right in the
23 middle of trial. I've got twelve people,
24 thirteen people, sitting in a room down there.
25 He either needs to show or not show. I cannot

1 send an officer out at this point to go fetch
2 him. To do -- I mean, do you have another
3 witness, he can testify?

4 ✓ MR. BRUNSON: I do, Your Honor.

5 THE COURT: If you can get him up
6 here and you have a subpoena -- we'll have one
7 waiting for him if he needs to come up here. I
8 mean, a subpoena should have been served on him
9 yesterday, or Monday. X

10 X MR. BRUNSON: Well, he was a
11 rebuttal witness, Your Honor.

12 THE COURT: Do what?

13 MR. BRUNSON: He's the rebuttal
14 witness, Your Honor.

15 THE COURT: You don't have rebuttal.
16 They have rebuttal. You don't have rebuttal.
17 You have a witness. It's your opportunity to
18 try your case.

19 MR. BRUNSON: Yes, sir, I under-
20 stand.

21 THE COURT: This is your case in
22 chief.

23 MR. BRUNSON: I understand that,
24 Your Honor. But that witness is in rebuttal to
25 the first witness presented by the State.

1 a directed verdict.

2 THE COURT: All right.

3 MR. BRUNSON: Based on that the
4 State has failed to prove its case, in light of
5 our witness' testimony.

6 THE COURT: Solicitor?

7 SOLICITOR: Your Honor, we would
8 submit the same grounds for submitting this
9 case to the jury that we submitted the first
10 time that Mr. Brunson made a Motion at the end
11 of the State's case. We feel that certainly
12 there is enough evidence to let the jury
13 decide.

14 THE COURT: I am going to respect-
15 fully deny your Motion. We are going to need
16 to have a charge conference tomorrow morning.
17 Please make sure that Sam has your e-mail -- he
18 will send you a draft of the charge.

19 Now I will bring the jury out. I've
20 got a short hearing at 9:30 that will go to
21 about 10:00 at the latest, a probable cause
22 hearing on sexually violent predator case.
23 Let's say that we have a charge conference for
24 about ten minutes at ten o'clock and as soon as
25 we finish that charge conference be prepared to

1 anybody took off a mask. Two more took the
2 stand and they said that 'yeah, somebody took
3 off his mask', it was a light skinned guy, a
4 light skinned man, a light skinned dude. They
5 talked about it as if the robber was not in the
6 room with them: a guy, a man, a dude. None the
7 witnesses said "that guy" (indicating
8 defendant). They talked about it as if the
9 robber wasn't in the room. Well, I submit to
10 you that they did it that way because the
11 robber isn't in the room. He wasn't in the
12 room in the beginning and he isn't in the room
13 now.

14 (We heard from four members of law
15 enforcement. Not a single one of them offered
16 physical evidence to say or to suggest that my
17 client did anything. Not a single one of them
18 offered a shred of evidence to even prove that
19 my client was there.)

20 Now, in the beginning I told you that
21 it all boiled down to the credibility of one
22 witness, and I maintain that is their case.
23 That one witness was Ms. Mary Pollard. As you
24 delve into the evidence and review what we have
25 heard, let's begin with her testimony.

1 could see the trees, that she could see her
2 surroundings. I submit that she could see
3 these things because it was not dark.) The
4 State must prove that these events happened in
5 the nighttime. They can't do it. That's the
6 only evidence that we have from someone who was
7 outside.

8 I submit to you that Mrs. Pollard, the
9 only person in this entire case that says that
10 my client did this, is not believable.

11 Now, Joanna Dunbar's testimony has
12 gone unchallenged. She said that Mary Pollard
13 knows Joseph Dunbar. The solicitor asked her -
14 the solicitor said, 'You don't want to see
15 something bad happen to your brother, do you?'
16 She said, 'I don't want anything bad to happen
17 to anyone.'

18 In fact, she said that she wasn't that
19 close to her brother. She said that she had
20 not visited him when he was in Palm Beach
21 County jail on these charges. Why would she
22 come to court and not be truthful?

23 That's another one of those building
24 blocks that I talked to you about earlier.
25 Joanna testified and her testimony was not

1 opportunity to get the sentencing sheets.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT)

4 THE COURT: Mr. Griffin, what is the
5 defendant's criminal history.

6 SOLICITOR: Your Honor, going back
7 to his juvenile record, he's got an assault on
8 a police officer while resisting arrest, a
9 shoplifting as a juvenile. Your Honor, he's
10 also got a resisting arrest as an adult for
11 which he received probation. Your Honor, those
12 are his prior criminal convictions.

13 THE COURT: Is that correct, Mr.
14 Brunson?

15 MR. BRUNSON: That's correct, Your
16 Honor.

17 THE COURT: Would any of the victims
18 like to say anything?

19 SOLICITOR: Your Honor, I believe
20 that Ms. Pollard would like to make a
21 statement.

22 THE COURT: Ms. Pollard?

23 SOLICITOR: Yes, Your Honor. For me
24 and my daughters and Ms. Libra, she asked me to
25 speak for her and also her daughter, we forgive

1 accumulate charges.

2 Your Honor, I believe that there is
3 hope for this young man in the future. I
4 understand that Your Honor is going to sentence
5 him. We'd ask the court to have mercy on him
6 upon sentencing.

7 Your Honor, on behalf of the
8 defendant, we would like to apologize to the
9 court -- and I think he would like to apologize
10 at the appropriate time.

11 THE COURT: Mr. Dunbar, would you
12 like to say anything to the court at this time?

13 DEFENDANT: Yes, sir. I'm sorry for
14 what happened, Your Honor. I don't know what
15 else to say. I'm just sorry that you all had
16 to go through a crime like that.

17 I just want to say that I got two --
18 two little girls at home. One of them I ain't
19 never meet. I just wonder if you would just
20 let me get home in time before it's too late
21 for me to have a say-so in their life. That's
22 it.

23 THE COURT: You know, this was an
24 extremely cowardly act. Although this was not
25 a home that was invaded, this was an invasion

1 of where these people worked and where they
2 felt secure. These guys came in, and you went
3 in there with them, with loaded gun or guns,
4 pointing them at women and children. I can't
5 think of a more cowardly act.

6 You were bad that night, yeah, you
7 were bad. You actually showed your face
8 because you were intimidating her as to whether
9 she should do anything.

10 I find you to be unrepentant. I find
11 you to be a danger to our community and
12 therefore, although they give me the option of
13 sentencing you down to ten years up to thirty,
14 I am sentencing you to the maximum. I am
15 sentencing you to thirty (30) years on the
16 armed robbery charge. Yeah, you crashed into
17 these people's house -- not their house but
18 where they worked -- and where they carried on
19 their day to day life, so I am giving you
20 thirty years. On the burglary charge, I am
21 giving you fifteen (15) years.

22 So you can be bad when you want -- you
23 thought that you were bad that night, so you
24 can be bad -- you can find out how bad you are.

25 They will run concurrently since they

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1 happened at the same time. Thank you.

2 DEFENDANT: I been bad?

3 (DEFENDANT IN CUSTODY)

4 THE COURT: I would like to tell the
5 attorneys and everyone involved, thank you for
6 your professionalism. You've certainly upheld
7 your Civility Oath and I thank you.

8 (TRIAL CONCLUDED)

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