

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Charleston County

SC Supreme Court

Deadra L. Jefferson, Circuit Court Judge

ORIGINAL

THONAL D. EDWARDS, JR.,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No 06-GS-10-0087, et al
	)	
Thonal Duane Edwards, Jr	)	
	)	
Defendant.	)	

TRIAL TRANSCRIPT

The within Jury Trial was held on February 7th & 8th, 2007, before The Honorable R. Markley Dennis, Jr in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, attended by Counsel, as follows

APPEARANCES

Greg Voight, Assistant Solicitor
 Trip Lawton, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
 100 Broad Street, 4th Floor
 Charleston, South Carolina 29401
 Appearing for State of South Carolina

James V Smiley, Esq
 Laura B Knobloch, Esq
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TESTIMONY OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Joseph Hoefer	66	76	83	
Thomas Buckheister	85	88		
Eric Lites	90	94		
Randall Utterbrink	95	102		
Barry Goldstein	118	123	124	125
Sterling Dutton	126	129	133	134
Colby Nitterhouse	136	141		
Thonal Edwards	149	168		

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INDEX OF STATE'S EXHIBITS

Exhibit No	Description	Entered
1	\$20 U S Currency	127
2	Photo, muffler	101
3	Photo, gun	101
4	Photo, ID Card of Joseph Hoefer	101
5	Photo, Wallet	101
6	Photo of front seat of automobile	101
7	Photo, SC Tag 849 UKK	101
8	Gun	96*
9	Clp	98*
10	9mm bullets (9) in plastic case & bag	98*

*Chain of Custody, Released to Officer Barry Goldstein

INDEX OF DEFENSE EXHIBITS

1	Photo	ID Only
2	Photo	ID Only
3	Photo	ID Only
4	Photo	ID Only

INDEX OF COURT'S EXHIBITS

1	Jury Request	233
	w/charge attached	

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1 FEBRUARY 5, 2007 9 40 A M

2 (STATUTORY JURY QUALIFICATION)

3 (COURT IN RECESS)

4

5 FEBRUARY 7, 2007 9 00 A.M

6

7 (IN CHAMBERS CONFERENCE)

8 THE COURT. The motion to sequester,
9 do we need to have a hearing or do you agree?

10 MR VOIGHT. I would agree

11 THE COURT. What about ---

12 MR. VOIGHT Is there a statement that
13 is going to be introduced?

14 MR SMILEY He says that he's not
15 going to use it

16 MR VOIGHT I don't intend to
17 introduce it It tends to be exculpatory

18 THE COURT Okay How do you
19 pronounce your first name, Mr Edwards?

20 DEFENDANT Thonal

21 THE COURT Thank you. The victim in
22 this case is Joseph Hoefer?

23 MR VOIGHT. Yes, sir, and ---

24 THE COURT Colby Nitterhouse?

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1 MR VOIGHT Nitterhouse, yes, sir

2 THE COURT. Okay The jury is not
3 ready

4 (BRIEF RECESS)

5 (DEFENDANT PRESENT)

6 THE COURT Any Motions? We've
7 already dealt with the Motion to sequester

8 MR VOIGHT No Motions

9 MR SMILEY Your Honor, I would ask
10 that my client, who was in car accident last
11 night, be allowed to get some treatment this
12 evening

13 THE COURT That's fine, as long as
14 the bondsman will stay on the bond

15 MR SMILEY Thank you

16 THE COURT. Do we have any Motions
17 before we select the jury?

18 MR VOIGHT No, sir, we don't
19 have any Motions

20 MR SMILEY I don't think that we --
21 as soon as I don't do one, I am afraid that it
22 will come back on me

23 THE COURT. Well, if you are not
24 challenging the identification, ---

25 MR SMILEY We are not challenging

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1 ID

2 THE COURT All right Then we don't
3 have anything As soon as we get the numbers, we
4 will do that I will grant your Motion for
5 sequestration

6 MR. SMILEY Thank you very much

7 THE COURT Yes, sir.

8 (JURY PANEL IN @ 10.30 A M)

9 THE COURT Good morning, Ladies and
10 Gentlemen I appreciate your patience with us
11 this morning This may be the last case that we
12 pick this week You will need to call after 6 00
13 tonight There is one possibility -- we are not
14 sure of that right now, but it will be the last
15 time that I will have an opportunity to see you
16 I just thank you again for your participation and
17 assistance in resolving some of the disputes this
18 week We are going to pick a jury now

19 The remaining dispute that I have with
20 which we need your assistance -- as for some of
21 you that were here before, I am going to identify
22 the parties to the dispute First, the State of
23 South Carolina in this matter is making a claim
24 against Thornal (sic) Edwards. Mr Edwards is
25 seated here to my left Good morning, Mr

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1 Edwards If you would, please stand and face the
2 jury panel, please

3 DEFENDANT (Complies)

4 THE COURT. This is Mr Thonal Duane
5 Edwards, Jr Thank you, sir, you may take your
6 seat

7 DEFENDANT (Complies)

8 THE COURT Are there any members of
9 the jury panel related by blood or marriage,
10 have any business dealings with, socially or
11 casually acquainted with Mr Edwards? Any
12 connection at all? If so, please stand. (No
13 response) Thank you, there are none

14 Mr Edwards is represented by Mr
15 Smiley If you would, identify yourself and your
16 law firm and anyone that may be assisting you,
17 sir

18 MR SMILEY Yes, sir. My name is
19 Jim Smiley I am a member of the Charleston
20 County Bar, I practice primarily in Charleston,
21 Berkeley and Dorchester counties in General
22 Sessions court and Federal Court Assisting me
23 -- she is not here right now, but another
24 attorney, Laura Knobloch, who will be second
25 chair She practices in Mount Pleasant and also

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1 does work in Charleston, Berkeley and Dorchester
2 counties

3 THE COURT: Thank you, Mr Smiley
4 Are there any members of the jury panel related
5 by blood or marriage, have any business dealings
6 with, socially or casually acquainted with, ever
7 been represented by Mr Smiley or Knobeloch. If
8 so, please stand (No response) Thank you,
9 there are none.

10 The State is represented by Mr Lawton
11 If you would, identify yourself and anyone that
12 will be assisting you, sir

13 MR VOIGHT: Thank you, sir. My name
14 is Greg Voight The Assistant Solicitor that is
15 going to be assisting me today is Trip Lawton

16 THE COURT Thank you, Mr Voight
17 Are there any members of the jury panel related
18 blood or marriage, have any business dealings
19 with, socially or casually acquainted with, ever
20 been represented by Mr Voight or Mr Lawton or
21 any connection with anyone employed with the
22 Solicitor's Office, its offices in Charleston or
23 Berkeley County? If so, please stand (No
24 response) Thank you, there are none

25 Are there any members of the jury panel

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1 related by blood or marriage, have any business
2 dealings with, socially or casually acquainted
3 with, ever been represented by, Mr Ralph
4 Hosington, who is the Solicitor for the 9th
5 Judicial Circuit? If so, please stand (No
6 response) Thank you, there are none

7 Are there any member of the jury panel
8 who, you or any member of your immediate family,
9 ever been connected with law enforcement in any
10 capacity? If so, please stand

11 POTENTIAL JUROR, NO. 304 Juror 304,
12 yes.

13 THE COURT: What is your connection?

14 POTENTIAL JUROR, NO 304 My brother
15 was a past sheriff

16 THE COURT: All right Would that
17 affect or influence you in any way?

18 POTENTIAL JUROR, NO 304. No, Your
19 Honor

20 THE COURT Thank you, sir Yes,
21 ma'am?

22 POTENTIAL JUROR NO 128 My brother-
23 in-law is a city policeman

24 THE COURT With Charleston?

25 POTENTIAL JUROR, NO 128 Yes

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1 THE COURT What is his name?

2 POTENTIAL JUROR, NO 128 Larry Saber
3 (phonetic)

4 THE COURT All right Would that
5 affect you in any way in this matter, ma'am?

6 POTENTIAL JUROR NO 128: No

7 THE COURT Thank you. You may be
8 seated

9 POTENTIAL JUROR, NO 217 My name is
10 Katherine Powell, I am Juror Number 217 My
11 brother is an officer with Charleston County
12 Sheriff's Office

13 THE COURT Has he had any connection
14 with this case?

15 MR VOIGHT No, sir

16 THE COURT. Yes, sir?

17 POTENTIAL JUROR, NO. 220 Brandon
18 Moore

19 THE COURT Would that affect or
20 influence your decision in any way?

21 POTENTIAL JUROR, NO 220: No, sir

22 THE COURT And you could be fair to
23 both sides, ma'am?

24 POTENTIAL JUROR, NO 220 I could.

25 THE COURT Yes, sir.

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1 POTENTIAL JUROR, NO 146. Juror
2 Number 146, Melvin King. My father is a retired
3 parole officer, State of Georgia

4 THE COURT Would that in any way
5 influence you, sir?

6 POTENTIAL JUROR, NO 146 No

7 THE COURT Your number again?

8 POTENTIAL JUROR, NO 146 146

9 THE COURT Yes, ma'am?

10 POTENTIAL JUROR, NO. 194 My father
11 was a police officer in Colleton County

12 THE COURT Would that affect or
13 influence you, ma'am?

14 POTENTIAL JUROR, NO 194 No

15 THE COURT Your number, please?

16 POTENTIAL JUROR, NO 194 Shelbie
17 Near, Number 194.

18 THE COURT Yes, sir?

19 POTENTIAL JUROR, NO 124 Juror No
20 124 My ex-wife's new husband is a police
21 officer in Calcott, Indiana

22 THE COURT Would that affect or
23 influence you in this matter?

24 POTENTIAL JUROR, NO 124 No, sir,
25 but I wanted to take the precaution

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1 THE COURT Thank you We are all
2 smiling and laughing but that's why, as I said on
3 Monday, that is the beauty of this system. I
4 appreciate your truthful, honest answer Thank
5 you, sir That is why this system works Thank
6 you, sir

7 Are there others? (No response)
8 Thank you, there appear to be none.

9 I am going to identify a number of
10 persons If you are related by blood or marriage
11 to any of these individuals, have any business
12 dealings with them, are socially or casually
13 acquainted with any of them, you need to stand
14 and share that information, please, with the
15 Court

16 Rodney McKelvey

17 Cobly Nitterhouse

18 Joseph Hoefer

19 Then the following who are employed with the
20 Charleston Police Department

21 Officer Lopez

22 Officer Lites

23 Officer Reyna

24 Officer Ambrose, who is also a
25 Sergeant,

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1 Officer Cecil
2 Officer Stephens, Angie Stephens
3 Officer Sgt Connolly
4 Sgt Altine
5 Officer Buckheister
6 Officer Unterbrink
7 Officer Wiersma
8 Officer Sgt Dutton
9 Sgt Barry Goldstein.
10 Any of those individuals?
11 POTENTIAL JUROR, NO 302 My name is
12 Jane Charles and I believe that I know Officer
13 Altine, if she is -- is the officer a woman? If
14 so, I believe that her son is a patient of mine
15 THE COURT The fact that you have
16 that connection, would that in any way influence
17 in this matter?
18 POTENTIAL JUROR, NO 302. No, sir
19 THE COURT. If she should testify in
20 this case, would you consider her testimony the
21 same as any other witness?
22 POTENTIAL JUROR, 302 Yes
23 THE COURT. And would you base your
24 decision on the evidence and the law and would it
25 be fair to be both sides?

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1 POTENTIAL JUROR, NO 302. Yes, sir

2 THE COURT Yes, ma'am?

3 POTENTIAL JUROR, NO 146 146, Melvin

4 King I am familiar with Officer Lites I
5 believe that he was my son's Cub Scout leader

6 THE COURT If he should testify,
7 would you consider his testimony the same as any
8 other witness?

9 POTENTIAL JUROR, NO 146 Yes

10 THE COURT And would you base your
11 decision on the evidence and the law and would it
12 be fair to both sides.

13 POTENTIAL JUROR, NO 146 Yes, sir

14 THE COURT Thank you, sir. You may
15 be seated Yes, sir?

16 POTENTIAL JUROR, NO 77 Mr Dutton
17 is the only name that I recognize, but there may
18 be some that I would recognize by face

19 THE COURT Yes, sir Would that in
20 any way influence you, sir?

21 POTENTIAL JUROR, NO 77. No, sir

22 THE COURT And if you should see any
23 of those persons that maybe the name and face --
24 that there wasn't a connection, but if they
25 should testify, would you in every instance be

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1 able to consider that testimony the same as any
2 other witness?

3 POTENTIAL JUROR, NO 77 Yes

4 THE COURT And would you base your
5 decision, sir, on the evidence and the law and
6 would it be fair to both sides, sir?

7 POTENTIAL JUROR, NO 77 Yes, sir

8 THE COURT Thank you, your name and
9 number

10 POTENTIAL JUROR, NO 77. David
11 Echols, Number 77

12 THE COURT Thank you, sir Yes,
13 sir?

14 POTENTIAL JUROR, NO 262 262

15 THE COURT Yes, Mr Staubs?

16 POTENTIAL JUROR NO 262 My wife
17 many years ago worked with the City of
18 Charleston

19 THE COURT Would that affect you in
20 any way, sir?

21 POTENTIAL JUROR, NO 262 No, Your
22 Honor

23 THE COURT Would you base your
24 decision on the evidence and the law and would it
25 be fair and impartial to both parties?

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1 POTENTIAL JUROR, NO 262 Yes, Your
2 Honor
3 THE COURT Thank you, sir You may
4 be seated Yes, ma'am?
5 POTENTIAL JUROR, NO 303: Juror 303,
6 Susan Goudy In my job I've had occasion to hire
7 off-duty officers as security. I recognize
8 several of the names
9 THE COURT The fact that you have
10 had dealings with some of those persons, would
11 that in any way influence you in this matter?
12 POTENTIAL JUROR, NO 303. No, Your
13 Honor
14 THE COURT And if those persons
15 should testify in this case, would you consider
16 their testimony as you would any witness?
17 POTENTIAL JUROR, NO. 303 Yes, sir
18 THE COURT Would you base your
19 decision on the evidence and the law and would it
20 be fair and impartial to both parties?
21 POTENTIAL JUROR, NO 303 Yes
22 THE COURT Thank you very much You
23 may be seated Are there any others? (No
24 response) Thank you, there appear to be none
25 This dispute, Ladies and Gentlemen, as

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1 some of you that were here earlier, is basically
2 framed in these documents that I hold in my hand
3 They are what they appear to you to be, they are
4 pieces of paper We called them Indictments and
5 basically they frame the parameters of the
6 dispute They contain allegations, they are not
7 evidence

8 Evidence of course will come through
9 the testimony of witnesses, but I need to share
10 with you what is alleged so that I can ask you
11 certain questions

12 In these documents it is alleged that
13 Mr Edwards, while acting in concert with others
14 in Charleston County on October 10th, 2005, at
15 George Street and St Phillip Street did, by use
16 of force, threats or intimidation, and while
17 armed with a deadly weapon, namely a pistol, did
18 take and carry away goods and other monies from
19 the person and presence of two individuals,
20 Joseph Hoefer and Colby Nitterhouse Also at
21 that time, it is further alleged that while
22 committing these acts he did possess a firearm or
23 visibly displayed what appeared to be a firearm
24 during the commission of these offenses

25 I share that with you to find out,

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1 first of all, if any member of the jury panel has
2 read anything, heard anything, if you have any
3 prior knowledge of this dispute If so, please
4 stand (No response) Thank you , there are
5 none

6 Is there anything about -- by virtue of
7 these allegations, Mr Edwards has been accused
8 of two offenses of armed robbery and two offenses
9 of possession of a firearm during the commission
10 of a violent crime. Is there anything about the
11 nature of the allegations or the crimes alleged
12 that you, because of some personal experience,
13 something that may have happened to a family
14 member of a close personal friend, some
15 philosophy that you may have, anything at all
16 that would affect of influence your ability to
17 fairly and impartially consider the facts and
18 fairly and impartially apply the law? If so,
19 please stand? (No response) Thank you, there
20 are none

21 Are there any members of the jury panel
22 who are members of or made contributions to
23 organizations dealing with victims' rights or law
24 enforcement organizations, such as, by way of
25 example

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1 Citizens Against Violent Crimes, which
2 is also known as CAVE

3 People Against Rape, known as PAR
4 MADD, Mothers Against Drunk Driving.

5 PEST, Persons Empowered to Save Teens
6 Or any similar organization or Community
7 Watch organizations or the like? If so, please
8 stand Yes?

9 POTENTIAL JUROR, NO 276 Janet
10 Wadsworth, Number 276, my family has made
11 contributions to Darkness To Light

12 THE COURT. Darkness To Light?

13 POTENTIAL JUROR, NO. 276 Yes

14 THE COURT Would that affect or
15 influence you in any way, ma'am?

16 POTENTIAL JUROR, NO 276 No

17 THE COURT Thank you, you may be
18 seated

19 POTENTIAL JUROR, NO 194. Number 194,
20 Shelbie Near I have made contributions to MADD
21 and as a victim's advocate in an organization to
22 stop guns

23 THE COURT Would that affect or
24 influence you?

25 POTENTIAL JUROR, NO 194 No

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1 THE COURT Thank you. Your number
2 again?

3 POTENTIAL JUROR, NO 194. 194

4 THE COURT Thank you, you may be
5 seated Yes?

6 POTENTIAL JUROR, NO 306 Ethel
7 Howle, Number 306 I have

8 THE COURT Would that in any way
9 influence you in this matter, ma'am?

10 POTENTIAL JUROR, NO 306 No, sir

11 THE COURT Your number?

12 POTENTIAL JUROR 306 306.

13 THE COURT Thank you. Any others?

14 (No response) Thank you, there appear to be
15 none

16 Are there any members of the jury panel
17 or member of your immediately family that have
18 been involved with any crime of this nature or
19 any other similar violent crime, either you were
20 an alleged victim, you were accused or were part
21 of a support group, any connection at all? If
22 so, please stand. Okay? I am going to ask you
23 to come forward, please The attorneys may
24 approach

25 SIDEBAR

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1 THE COURT: Yes, sir Your
2 number?

3 POTENTIAL JUROR 17 Mike
4 Bartley, Number 17 My son was killed a year ago
5 in a shooting crime There has been someone
6 charged with it, it's still in court, in
7 Greenwood.

8 THE COURT I'm sorry to hear
9 that Would that affect or influence you in this
10 matter?

11 POTENTIAL JUROR, NO 17 No,
12 sir

13 THE COURT: Would you base your
14 decision on the evidence and the law and would it
15 be fair and impartial to both parties?

16 POTENTIAL JUROR, NO 17: I
17 would

18 THE COURT Thank you, sir, you
19 may take your seat

20 (SIDEBAR CONCLUDED)

21 THE COURT Number 17, will remain

22 BAILIFF Juror Number 247

23 SIDEBAR

24 THE COURT: Your name, sir?

25 POTENTIAL JUROR, NO 247 Cortez

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1 Simmons

2 THE COURT What is your
3 situation, Mr Simmons?

4 POTENTIAL JUROR, NO. 247 My son
5 is currently incarcerated in the State of Georgia
6 for armed robbery and kidnaping

7 THE COURT Would that affect or
8 influence your decision in this case?

9 POTENTIAL JUROR, NO 247 No,
10 sir

11 THE COURT Considering those
12 circumstances, would you be able to base your
13 decision on the evidence and the law and would it
14 be fair and impartial to both parties?

15 POTENTIAL JUROR, NO 247 I
16 would

17 THE COURT Thank you, sir

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 147 will
20 remain

21 BAILIFF Juror Number 194

22 SIDEBAR.

23 THE COURT Yes, ma'am

24 POTENTIAL JUROR, NO 194 My ex-
25 husband is a convicted felon

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1 THE COURT Would that influence
2 or affect you in ---

3 POTENTIAL JUROR, NO 194 No,
4 sir, that was a long time ago, long after our
5 divorce

6 THE COURT Would you base your
7 decision on the evidence and the law and would it
8 be fair and impartial to both parties?

9 POTENTIAL JUROR, NO 194 I
10 would

11 THE COURT Thank you, ma'am

12 (SIDEBAR CONCLUDED)

13 THE COURT Thank you, you may take
14 your seat Juror Number 194 will remain with us

15 BAILIFF Juror Number 124.

16 SIDEBAR

17 THE COURT Yes, sir?

18 POTENTIAL JUROR, NO 194 My
19 sister's husband, husband at the time, molested
20 and murdered a ten-year-old girl

21 THE COURT Were you involved in
22 that in any?

23 POTENTIAL JUROR, NO 194 No,
24 sir

25 THE COURT Were you aware of it?

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1 POTENTIAL JUROR, NO 194 Not --

2 no.

3 THE COURT. Would that affect or
4 influence you?

5 JUROR NO , NO. 194 I don't
6 believe so

7 THE COURT. I appreciate that
8 answer and I understand, but would you be able to
9 set that aside and base your decision on the
10 facts and circumstances in this case and on the
11 law as I give it to you?

12 POTENTIAL JUROR, NO 194 Yes,
13 sir

14 THE COURT You would be able to
15 do that?

16 POTENTIAL JUROR, NO 194 I
17 would

18 THE COURT Thank you, sir

19 (SIDEBAR CONCLUDED)

20 THE COURT Number 124 will remain.

21 Thank you

22 BAILIFF Juror Number 306

23 SIDEBAR

24 THE COURT Good morning What
25 is your name?

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1 POTENTIAL JUROR, NO 306 Edith

2 Howle

3 THE COURT Yes, Ms Howle?

4 POTENTIAL JUROR, NO 306 I was

5 sexually assaulted as a child

6 THE COURT Would that in any way

7 affect you in this case?

8 POTENTIAL JUROR, NO. 306 No,

9 sir, it would not

10 THE COURT It would not

11 influence you in anything?

12 POTENTIAL JUROR, NO 306 No

13 THE COURT. And you would base

14 your decision on the evidence and the law and

15 would it be fair and impartial to both parties?

16 POTENTIAL JUROR, NO 306 Yes,

17 sir

18 (SIDEBAR CONCLUDED)

19 THE COURT Number 306 will remain.

20 BAILIFF Juror Number 262

21 SIDEBAR

22 THE COURT Mr Staubes

23 POTENTIAL JUROR, NO 262 Good

24 morning, Your Honor

25 THE COURT Good morning, sir

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1 POTENTIAL JUROR, NO 262 When I
2 was about ten years old, I was mugged and that --
3 (pause)

4 THE COURT Do you believe that
5 would affect you in this case?

6 POTENTIAL JUROR, NO 262 I am
7 afraid that it might

8 THE COURT We will excuse you
9 Thank you. Have a good day

10 (SIDEBAR CONCLUDED)

11 THE COURT Juror 262 will be excused
12 from participation in this dispute. Thank you,
13 sir Call the number, please, after 6 00
14 tonight Thank you, Mr. Staubes

15 BAILIFF Juror Number 146

16 SIDEBAR

17 THE COURT Yes, sir? Your name,
18 please?

19 POTENTIAL JUROR, NO 146. Number
20 146, Melvin King My brother-in-law and sister
21 have had multiple robberies at their house around
22 MUSC and one at knifepoint about a year ago

23 THE COURT Would that affect you
24 in this case?

25 POTENTIAL JUROR, NO 146 No,

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1 sir, I just thought that I ought to mention it

2 THE COURT Thank you Would you
3 base your decision on the evidence and the law
4 and would it be fair and impartial to both
5 parties?

6 POTENTIAL JUROR, NO. 146 I would

7 THE COURT Thank you, sir You
8 may take your seat

9 (SIDEBAR CONCLUDED)

10 THE COURT Juror Number 146 will
11 remain.

12 BAILIFF Juror Number 277

13 SIDEBAR

14 THE COURT Your name, ma'am?

15 POTENTIAL JUROR, NO. 277 Malinda
16 Walton

17 THE COURT Yes, ma'am, what is
18 your situation?

19 POTENTIAL JUROR, NO 277 In 1999
20 when I was at the College of Charleston, I was
21 assaulted on King Street.

22 THE COURT Would that affect or
23 influence you in this case?

24 POTENTIAL JUROR, NO 277 Did you
25 say that these were College of Charleston

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1 students?

2 THE COURT. Yes, they were

3 POTENTIAL JUROR, NO 277 I also
4 wanted to ask, because I thought that you said
5 they were

6 THE COURT. I tell you what I am
7 going to do, out of an abundance of caution I am
8 going to excuse you The similarities in the
9 allegations, you could probably do it but I don't
10 want to have any appearance or -- so I am going
11 to let you go, you can serve on another jury, if
12 there is one Thank you, ma'am. Have a good
13 day

14 POTENTIAL JUROR, NO 227 Thank
15 you, sir

16 (SIDEBAR CONCLUDED)

17 THE COURT Number 277 will be
18 excused from participation in this dispute
19 Please call the number after 6.00 Thank you

20 THE COURT. Juror Number 128

21 SIDEBAR:

22 THE COURT Yes, ma'am?

23 POTENTIAL JUROR, NO 128 Good

24 morning, Your Honor I am Jackie Holtz My
25 sister was held up in an armed robbery and it was

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1 just very, very traumatic for the family

2 THE COURT You believe that
3 would affect you in this case?

4 POTENTIAL JUROR, NO 128 I
5 believe that it might

6 THE COURT. Thank you, ma'am I
7 can tell that you are hesitant and we don't want
8 to put in that position. You will be excused

9 (SIDEBAR CONCLUDED)

10 THE COURT Juror Number 128 will be
11 excused from participation in this dispute If
12 you will, call the number after 6 00 tonight and
13 follow that instruction

14 JUROR NO 128 Thank you

15 BAILIFF Juror Number 11

16 SIDEBAR

17 THE COURT. Yes, sir? Good
18 morning, Mr Baker

19 POTENTIAL JUROR, NO 11 Good
20 morning, sir Fred Baker, Juror 11 This is not
21 squarely on point but I was the attorney recently
22 for some children in a DSS matter

23 THE COURT Would that affect or
24 influence you in this case?

25 POTENTIAL JUROR, NO 11 It

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1 would not.

2 THE COURT Would you base your
3 decision on the evidence and the law and would it
4 be fair and impartial to both parties?

5 POTENTIAL JUROR, NO 11 I
6 would Yes, sir

7 THE COURT Thank you, sir
8 (SIDEBAR CONCLUDED)

9 THE COURT Number 11 will
10 remain. Thank you, sir

11 BAILIFF Juror Number 227.

12 SIDEBAR

13 THE COURT Yes, sir, your name
14 please?

15 POTENTIAL JUROR, 227 I am
16 William Roberts This goes back to the
17 relationship with one of the attorneys I am a
18 veteran and have been treated at the VA Hospital
19 I don't know that that has anything to do with
20 anything, or they represent the VA, but I wanted
21 to tell you

22 THE COURT: Thank you, sir
23 Would that affect or influence you in this matter
24 if one of the attorneys had represented the VA?

25 POTENTIAL JUROR, NO 227 No,

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1 sir

2 THE COURT Would you base your
3 decision on the evidence and the law and would it
4 be fair and impartial to both parties?

5 POTENTIAL JUROR, NO 227. Yes,

6 sir

7 THE COURT. Thank you, sir You
8 may take your seat

9 (SIDEBAR CONCLUDED)

10 THE COURT 227 will remain

11 BAILIFF Juror Number 310

12 THE COURT Good morning, sir

13 COURT REPORTER Your name, sir?

14 POTENTIAL JUROR, 310 Lee Corbin

15 COURT REPORTER Thank you, Mr

16 Corbin

17 THE COURT Yes, sir?

18 POTENTIAL JUROR, NO 310 You

19 were asking about people's experiences and I was
20 a classmate of Sandra Keton (phonetic) that was
21 shot several years ago Also possibly, although
22 I am not sure, Eric Waldrop I don't know if he
23 is the one or not

24 THE COURT If he were -- would
25 that affect or influence you in any way?

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1 POTENTIAL JUROR, 310 No

2 THE COURT If you know him, if he
3 was to testify would you consider his testimony
4 the same as any other witness?

5 POTENTIAL JUROR, NO 310 Yes,
6 sir, I sure would

7 THE COURT Would you base your
8 decision on the evidence and the law and would it
9 be fair and impartial to both parties?

10 POTENTIAL JUROR, 310 Yes, sir

11 THE COURT Thank you Please
12 take your seat

13 (SIDEBAR CONCLUDED)

14 THE COURT Ladies and Gentlemen,
15 based on what we have discussed thus far, is
16 there anything now that you've heard, what is
17 alleged in this dispute or any of the questions,
18 that would give you any concern about your
19 ability to take an oath and make a commitment to
20 both sides that you when, at the appropriate
21 time, apply your common sense, your sense of
22 logic and reasoning in analyzing the evidence and
23 once deciding the facts to take the law as I give
24 it to you and apply that law fairly to those
25 facts? If you feel that you could not make that

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1 commitment for any reason, please stand (No
2 response) Thank you, there are none.

3 For those of you that have already been
4 through this, please forgive me but maybe some of
5 you were not here You may have participated in
6 a civil jury draw where your name is put on a
7 list In a minute, when your name is called, you
8 will be asked to come here and stand just as I am
9 standing, facing the attorneys and they will
10 either say 'seat the juror' or 'excuse the juror'
11 Each side has certain numbers, five for the State
12 and ten for the Defendant They can excuse
13 persons Don't be upset by anything along those
14 lines That is just the process Once we
15 empanel our jury, then we will excuse the balance
16 of you Thank you very much

17 Mr Wilson

18 CLERK As I call your name, please
19 gather your belongings and come forward

20 Juror Number 152, Christina Lackey

21 (POTENTIAL JUROR FACES COUNSEL)

22 CLERK What say you for the State?

23 MR VOIGHT Please present this

24 juror

25 CLERK What say you for the

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1 Defendant?

2 MR SMILEY Please seat this juror

3 CLERK Please have a seat in the jury
4 box, you have been selected in this case

5 (JUROR NUMBER 152 SEATED)

6 CLERK Juror Number 217, Kathryn
7 Powell

8 (POTENTIAL JUROR FACES PANEL)

9 CLERK: What say you for the State?

10 MR VOIGHT: Please present this
11 juror

12 CLERK What say you for the
13 Defendant?

14 MR SMILEY Please excuse this
15 juror

16 CLERK Thank you, you have been
17 excused from the trial in this case Please have
18 a seat back in the audience

19 (JUROR NUMBER 217 EXCUSED)

20 CLERK Juror Number 190, Martha
21 Murray

22

23 (POTENTIAL JUROR FACES PANEL)

24 CLERK What say you for the State?

25 MR VOIGHT Please excuse this

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1 juror

2 CLERK Ma'am, you're excused from the
3 trial of this case If you would, please have a
4 seat back in the audience

5 (JUROR NUMBER 190 EXCUSED)

6 CLERK Juror Number 132, Matthew
7 Jackson

8 (POTENTIAL JUROR FACES PANEL)

9 CLERK What say you for the State?

10 MR. VOIGHT Please present this
11 juror

12 CLERK What say you for the
13 Defendant?

14 MR SMILEY Please seat this
15 juror

16 CLERK Sir, you have been selected
17 for the trial of this case Please have a seat
18 in the jury box

19 (JUROR NUMBER 132 SEATED)

20 CLERK Juror Number 88, Henry
21 Fleming, Jr

22 (POTENTIAL JUROR FACES PANEL)

23 CLERK What say you for the State?

24 MR VOIGHT. Please present this
25 juror

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1 CLERK What say you for the
2 Defendant?
3 MR SMILEY: Please seat this juror
4 CLERK Sir, you have been selected
5 for the trial in this case Please have a seat
6 in the jury box
7 (JUROR NUMBER 88 SEATED)
8 CLERK Juror Number 194, Shelbie
9 Near
10 (POTENTIAL JUROR FACES PANEL)
11 CLERK What say you for the State?
12 MR VOIGHT Please present this
13 juror
14 CLERK What say you for the
15 Defendant?
16 MR SMILEY Please excuse this
17 juror
18 CLERK Ma'am, you have been excused
19 from the trial of this case Please have a seat
20 back in the audience
21 (JUROR NUMBER 194 EXCUSED)
22 CLERK. Juror Number 26, Jeffrey Bong.
23 (POTENTIAL JUROR FACES PANEL)
24 CLERK What say you for the State?
25 MR VOIGHT Please present this

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1 juror

2 CLERK What say you for the

3 Defendant?

4 MR SMILEY Please excuse this

5 juror

6 CLERK Sir, you have been excused

7 from the trial of this case. If you would,

8 please have a seat back in the audience

9 (JUROR NUMBER 26 EXCUSED)

10 CLERK Juror Number 174, Michael

11 McBride

12 (POTENTIAL JUROR FACES PANEL)

13 CLERK What say you for the State?

14 MR. VOIGHT Please present this

15 juror

16 CLERK What say you for the

17 Defendant?

18 MR SMILEY. Please excuse this

19 juror

20 CLERK Sir, you have been excused

21 from the trial in this case Please have a seat

22 back in the audience

23 (JUROR NUMBER 174 EXCUSED)

24 CLERK Juror Number 227, William

25 Roberts

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1 (POTENTIAL JUROR FACES PANEL)

2 CLERK What say you for the State?

3 MR VOIGHT Please excuse this
4 juror.

5 CLERK Sir, you have been excused
6 from the trial in this case Please have a seat
7 back out in the audience.

8 (JUROR NUMBER 227 EXCUSED)

9 CLERK Juror Number 282, Monique
10 Watson

11 (POTENTIAL JUROR FACES PANEL)

12 CLERK What say you for the State?

13 MR VOIGHT: Please present this
14 juror

15 CLERK What say you for the
16 Defendant?

17 MR SMILEY Please seat this juror

18 CLERK Ma'am, you have been selected
19 for the trial in this case If you would, have a
20 seat in the jury box

21 (JUROR NUMBER 282 SEATED)

22 CLERK Juror Number 124, Ty High

23 (POTENTIAL JUROR FACES PANEL)

24 CLERK What say you for the State?

25 MR VOIGHT Please present this

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1 juror

2 CLERK What say you for the

3 Defendant?

4 MR SMILEY Please excuse this

5 juror

6 CLERK Sir, you have been excused

7 from the trial in this case Please take your

8 seat in the audience

9 (JUROR NUMBER 124 EXCUSED)

10 CLERK Juror Number 99, Paulette

11 Galloway.

12 (POTENTIAL JUROR FACES PANEL)

13 CLERK What say you for the State?

14 MR VOIGHT. Please present this

15 juror.

16 CLERK What say you for the

17 Defendant?

18 MR SMILEY Please excuse this

19 juror

20 CLERK Ma'am, you have been excused

21 from the trial in this case Please have a seat

22 back in the audience

23 (JUROR NUMBER 99 EXCUSED)

24 CLERK Juror Number 12, Joyce Baker

25 (POTENTIAL JUROR FACES PANEL)

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1 CLERK What say you for the State?
2 MR VOIGHT Please present this
3 juror
4 CLERK What say you for the
5 Defendant?
6 MR SMILEY Please seat this juror
7 CLERK Ma'am, you have been selected
8 for the trial in this case Please have a seat
9 in the jury box
10 (JUROR NUMBER 12 SEATED)
11 CLERK Juror Number 288, Cameron
12 Wilson.
13 (POTENTIAL JUROR FACES PANEL)
14 CLERK What say you for the State?
15 MR VOIGHT Please present this
16 juror
17 CLERK What say you for the
18 Defendant?
19 MR SMILEY Please seat this juror
20 CLERK You have been selected for the
21 trial in this case Please have a seat in the
22 jury box
23 (JUROR NUMBER 288 SEATED)
24 CLERK Juror Number 306, Edith Howle
25 Juror Number 306.

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1 (POTENTIAL JUROR FACES PANEL)

2 CLERK What say you for the State?

3 MR VOIGHT Please present this

4 juror

5 CLERK What say you for the

6 Defendant?

7 MR SMILEY Please excuse this

8 juror

9 CLERK Ma'am, you've been excused in
10 the trial of this case Please have a seat back
11 in the audience

12 (JUROR NUMBER 306 EXCUSED)

13 CLERK Juror Number 233, Joseph Roy,

14 Jr

15 (POTENTIAL JUROR FACES PANEL)

16 CLERK What say you for the State?

17 MR VOIGHT Please present this

18 juror

19 CLERK What say you for the

20 Defendant?

21 MR SMILEY Please excuse this

22 juror

23 CLERK Sir, you have been excused

24 from the trial in this case Please have a seat
25 back in the audience

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1 (JUROR NUMBER 208 EXCUSED)

2 CLERK Juror Number 230, Linda

3 Rollerson

4 (POTENTIAL JUROR FACES PANEL)

5 CLERK What say you for the State?

6 MR VOIGHT Please excuse this

7 juror

8 CLERK: Ma'am, you have been excused
9 from the trial in this case Please have a seat
10 back in the audience

11 (JUROR NUMBER 230 EXCUSED)

12 CLERK Juror Number 67, James Davis

13 (POTENTIAL JUROR FACES PANEL)

14 CLERK. What say you for the State?

15 MR VOIGHT Please present this

16 juror

17 CLERK What say you for the
18 Defendant?

19 MR SMILEY Please excuse this

20 juror

21 CLERK Sir, you have been excused
22 from the trial in this case. Please have a seat
23 back in the audience

24 (JUROR NUMBER 67 EXCUSED)

25 CLERK: Defendant has one strike

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1 remaining Juror Number 310, Lee Corbin
2 (POTENTIAL JUROR FACES PANEL)
3 CLERK What say you for the State?
4 MR VOIGHT Please present this
5 juror
6 CLERK What say you for the
7 Defendant?
8 MR SMILEY Please seat this juror
9 CLERK You have been selected for the
10 trial in this case Please have a seat in the
11 jury box
12 (JUROR NUMBER 310 SEATED)
13 CLERK Juror Number 130, Crisanta
14 Jackson.
15 (POTENTIAL JUROR FACES PANEL)
16 CLERK What say you for the State?
17 MR VOIGHT Please present this
18 juror
19 CLERK What say you for the
20 Defendant?
21 MR SMILEY Please seat this juror
22 CLERK Ma'am, you have been selected
23 for the trial in this case Please have a seat
24 in the jury box
25 (JUROR NUMBER 130 SEATED)

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1 CLERK: Juror Number 76, David Echols
2 (POTENTIAL JUROR FACES PANEL)
3 CLERK What say you for the State?
4 MR VOIGHT Please present this
5 juror
6 CLERK: What say you for the
7 Defendant?
8 MR SMILEY Please seat this juror
9 CLERK Sir, you have been selected
10 for the trial in this case Please have a seat
11 in the jury box
12 (JUROR NUMBER 76 SEATED)
13 CLERK Juror Number 222, Sean
14 Reynolds
15 (POTENTIAL JUROR FACES PANEL)
16 CLERK What say you for the State?
17 MR VOIGHT Please present this
18 juror
19 CLERK What say you for the
20 Defendant?
21 MR SMILEY Please excuse this
22 juror
23 CLERK Sir, you have been excused
24 from the trial in this case Please have a seat
25 back in the audience.

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1 (JUROR NUMBER 222 EXCUSED)

2 CLERK The Defendant has exhausted
3 all its strikes Juror Number 17, Mike Bartley
4 (POTENTIAL JUROR FACES PANEL)

5 CLERK What say you for the State?

6 MR VOIGHT. Please seat this juror

7 CLERK Any challenge from the
8 Defendant?

9 MR SMILEY No challenge

10 CLERK: Sir, you have been selected
11 for the trial in this case If you would, please
12 have a seat in the jury box

13 (JUROR NUMBER 17 SEATED)

14 CLERK Juror Number 302, Jane Shaw
15 (POTENTIAL JUROR FACES PANEL)

16 CLERK: What say you for the State?

17 MR VOIGHT Please seat this juror

18 CLERK: Any challenge for cause by the
19 Defendant?

20 MR SMILEY No challenge

21 CLERK: Ma'am, you have been selected
22 for the trial in this case If you would, please
23 have a seat in the jury box

24 (JUROR NUMBER 302 SEATED)

25 CLERK Juror Number 151, David

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1 Laboone.

2 (POTENTIAL JUROR FACES PANEL)

3 CLERK What say you for the State?

4 MR VOIGHT Please present this

5 juror

6 CLERK Any challenge from the

7 Defendant?

8 MR SMILEY: No challenge

9 CLERK: Sir, you have been selected
10 for the trial in this case Please have a seat
11 in the jury box

12 (JUROR NUMBER 151 SEATED)

13 CLERK Your Honor, those are our
14 twelve jurors.

15 THE COURT Thank you, Mr Wilson
16 Let's select one alternate Strikes will be one
17 and two

18 CLERK Juror Number 31, Anthony
19 Brown

20 (POTENTIAL JUROR FACES PANEL)

21 CLERK What say you for the State?

22 MR VOIGHT Please present this

23 juror

24 CLERK What say you for the
25 Defendant?

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1 MR SMILEY Please seat this juror

2 CLERK. Sir, you have been selected
3 for the trial in this case Please have a seat
4 in the jury box

5 (JUROR NUMBER 31 SEATED)

6 CLERK. Your Honor, the jury has been
7 selected

8 THE COURT Thank you very much Any
9 Motions from the State regarding the selection?

10 MR. VOIGHT No, Your Honor

11 THE COURT Motions from the
12 Defendant regarding the selection?

13 MR SMILEY None

14 THE COURT. Thank you very much
15 Ladies and Gentlemen, those of -- I am going to
16 ask you to go to your jury room for just a few
17 moments Do not begin your deliberations, do not
18 discuss the case, we will be with you probably in
19 about five to ten minutes, I would think

20 (JURY OUT)

21 THE COURT Ladies and Gentlemen,
22 thank you very much for your participation in the
23 process I hope that you have a great week I
24 thank you again for your assistance in this I
25 will keep my fingers crossed that tonight the

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1 message will say that you don't have to come back
2 any more this week If you will call after 6 00
3 and follow that instruction Have a great day.
4 Thank you

5 (JURY PANEL DISMISSED)

6 MR SMILEY: Your Honor, before we
7 begin my client would like a brief recess
8 THE COURT I am going to let
9 everybody take a break for a minute before we
10 start Okay? Thank you very much We will be
11 at-ease for about -- be back in place by a
12 quarter after, please

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT Is the State ready to
16 proceed?

17 MR VOIGHT: Yes, sir

18 THE COURT Is the defense ready to
19 proceed?

20 MR SMILEY Yes, Your Honor.

21 THE COURT Very well, bring in our
22 jury, Mr. Robinson

23 (JURY IN)

24 BAILIFF ROBINSON The jury is
25 seated, Your Honor

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1 THE COURT Thank you, Ladies and
2 Gentlemen YOU'all have already selected your
3 presiding juror? You'all are ahead of the game
4 You'all just cut out about three-fourths of what
5 I was going to talk to you about Thank you very
6 much Thank you for taking care of that

7 The rest of you may sit in any of the
8 seats except for the two on the end. Those
9 belong to Mr Brown Mr Brown is the alternate
10 juror Mr Brown, that term really has no
11 significance at this point

12 If at the end of the case the first
13 twelve can continue, then you would not
14 participate in the deliberations Since you nor
15 I know the status at that time now, you are very
16 much a part of the jury Please do not let that
17 deter your attention I know that it won't

18 Thank you Ladies and Gentlemen, what
19 we are to do now is something that I mentioned
20 throughout and some of you have already been
21 involved If you would, give your attention now
22 to Mr Wilson as he administers your oath

23 (JURY SWORN)

24 CLERK Thank you Please be seated

25 THE COURT: Thank you very much,

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1 Ladies and Gentlemen "Well and truly try", I
2 think those are pretty interesting terms if you
3 think about it

4 As I mentioned to you this morning when
5 I was qualifying you Monday, you now have become
6 a judge in this case and now we will work
7 together resolving this dispute In fact, when
8 you came in you noticed the parties standing, the
9 attorneys That's because when I come in the
10 same thing occurs, not for me, not for you but
11 for the position that we occupy I have
12 instructed them that they may remain seated It
13 is just a formality Please don't be offended by
14 that as you will be more comfortable sitting if
15 they are seated as you come in, as well But
16 that is the purpose of it It truly is
17 significant because that is just what you are
18 You are a judge

19 Some of you participated in a criminal
20 dispute this week Some of you may have
21 participated in a civil dispute I don't know
22 But one thing that is significant, and it really
23 goes back to what I said when I thanked you for
24 your presence When you are present, then I
25 don't have anything to do with the facts In

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1 some ways, if you participated in a trial this
2 week, you'll understand because some of the law
3 that you are going to hear as a juror will be the
4 same, same thing But there is one thing that
5 has changed, and it's really the essence of this
6 process While there -- while you and I may try
7 many cases in a given week, one thing is
8 important This is the first time that these
9 parties have had an opportunity to come into this
10 court and have their dispute resolved This case
11 is based on its own facts and the law that
12 applies to those facts So please give your
13 attention to that

14 If some of you have served on a civil
15 jury this week, the parts are really pretty much
16 the same. But there are two major differences in
17 the dispute in a civil proceeding and a dispute
18 in a criminal dispute One deals with the
19 parties making the claims having the burden of
20 proof That is true in a civil dispute and there
21 are cases when a defendant may have a burden of
22 proof, not so in criminal disputes, that's one
23 major distinction At no time -- at no time does
24 the defendant in this case have anything to prove
25 or disprove to you You should never look to him

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1 for any explanation He doesn't have to prove
2 his innocence He doesn't have to explain
3 anything He has no responsibility

4 As you recall, you and you alone have
5 the responsibility now, by virtue of that oath,
6 of making a determination of what you believe to
7 be the true facts

8 One of the things important about the
9 oath is that you've said that you will base us
10 decision on the evidence and the law, which is
11 certainly important

12 Another thing that was not said but was
13 said throughout the qualification process, and
14 that is that when you walked in here, when you
15 just raised your hand, you brought with you
16 everything that is essential to performing this
17 task.

18 One, you brought your common sense,
19 your sense of logic and reasoning, and everyone
20 expects you to use that.

21 Two, you brought an open mind Now,
22 that open mind is very critical to this process
23 It is critical because one thing that you have
24 said is that you knew nothing about this dispute
25 and that there was nothing about it that would

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1 cause you to predetermine or predecide any issue
2 That is important It is important to the
3 process, it is importance to the performance of
4 your task as jurors

5 For, you see, in a dispute such as this
6 there are four distinct parts of this proceeding
7 One will occur in just a moment when the
8 attorneys have their first opportunity to speak
9 to you when they talk to you in what is called
10 opening statements, which will you a brief
11 overview of what the trial is about

12 Following the opening statements, at
13 that time you will hear testimony from the
14 witnesses It is at that time that I will tell
15 you and remind you during my charge portion that
16 the only party in this dispute, unlike a civil
17 dispute, the only party that ever has any burden
18 to prove anything or anything to prove is the
19 State Because under our law, the law in this
20 State and in every state in the United States,
21 the defendant, such as Mr Edwards here today, is
22 never required to prove, disprove or explain
23 anything at all The law says that the party who
24 makes the accusation, in this case the State of
25 South Carolina, is the sole party that bears the

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1 burden of proof In essence, that is what your
2 jury verdict at the end of this case will say

3 If the State fails to prove each
4 element that they are required to mean -- a
5 guilty verdict means the State proved each
6 element that they are required to prove and
7 that's what the jury's response is

8 Now, the burden that you will apply in
9 this case and the question that you will be
10 asking yourself as to each of those elements at
11 the appropriate time is whether or not the State
12 has convinced you beyond a reasonable doubt
13 Now, unlike the civil trials that you may have
14 participated in -- we qualified a jury earlier
15 today -- the burden of proof in that case is a
16 probability standard It's called preponderance
17 or greater weight of the evidence In this
18 proceeding it is much greater than that. It is
19 more than a probability, it's proof beyond a
20 reasonable doubt

21 I will explain that term to you more in
22 my charge, but "beyond a reasonable doubt" is
23 simply that doubt that would cause a consciences
24 juror who is searching for the truth in a case to
25 hesitate to act or to take some action or make

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1 some statement concerning a particular issue or
2 fact That is the standard that you will apply
3 when you evaluate this case, that is when you
4 make a determination of whether or not the State
5 has met its burden of proof

6 Please remember something You
7 promised all the parties that you have an open
8 mind It is important that you maintain that
9 open mind until the Court gives you an
10 instruction to begin your deliberations Quite
11 honestly, folks, the last instruction that I give
12 to you in the charge portion is when you may
13 start your deliberations So until then, please
14 keep that open mind which is so critical to the
15 performance of your task

16 The reason for that is that obviously
17 you need to hear the opening statement, you need
18 to hear all of the evidence and then after you've
19 heard the evidence the attorneys have their
20 second opportunity to speak to you in what we
21 call closing arguments. At that time they will
22 discuss the evidence with you and suggest
23 reasonable inferences that you may draw from that
24 evidence

25 Their remarks, both opening statements

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1 and closing arguments, will be extremely
2 important and helpful to you when you begin the
3 process of deciding this case So, again, that
4 reason to keep that open mind

5 Please remember something else, though
6 Their remarks, just as my remarks, should never
7 be considered evidence because the evidence comes
8 solely from testimony of witnesses That is the
9 sole source of evidence in this proceeding

10 After the closing arguments, I will
11 give you the instruction on the law. At that
12 time we will discuss the elements of this crime

13 I look forward to trying this case with
14 you It is an honor to serve with each one of
15 you Thank you for your attention to my remarks

16 Please now give your attention to the
17 attorneys as they give their opening statements

18 MR VOIGHT. Everyone does this a
19 little differently I am going to try to frame
20 the case to see if maybe you will see it through
21 the filter of what I believed happened out there,
22 so that you can determine the facts. While I am
23 not going to give you the facts, it really is my
24 burden, my "show"

25 We can have a trial -- I'm not saying

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1 that it is going to go this way, but I could do
2 all the talking, present all the witnesses Mr
3 Smiley has no obligation to say anything to you,
4 no obligation to produce any witness and, in all
5 candor, even Mr Edwards doesn't have to say
6 anything

7 We can have a trial -- I'm not saying
8 that it is going to go this way, but I could do
9 all the talking, present all the witnesses Mr
10 Smiley has no obligation to say anything to you,
11 he has no obligation to produce any witness and,
12 in all candor, even Mr Edwards doesn't have to
13 say anything They can just sit there and
14 observe

15 It is really, the first part of this,
16 the most important part of this is what can I do,
17 what can I show you -- all of us watch the
18 SuperBowl I think more people watch the pregame
19 shows than the post-game show -- which is we turn
20 off the TV Well, consultants and people who
21 tell lawyers about juries tell us that this is
22 actually the most important part of the trial,
23 this, right now

24 And, then of course we have the closing
25 but it's not the most important I love the

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1 closing when I can get all excited and tell you
2 about the evidence that you have seen

3 It's not the evidence part, which I
4 think is most important, when the evidence comes
5 off the witness stands, things that you will hear
6 and things that you might get to see

7 But maybe that's true if you tend to
8 watch the pregame rather than the post-game

9 What I have to basically have to show
10 you is what you're about to hear, basically give
11 you an overview. What I like to do is to start
12 framing it in a way that you know what you will
13 hear

14 I don't know what -- they have no
15 obligation to do anything, and although I try, I
16 can't figure out what they may do They don't
17 have to do anything But I really believe in
18 this case that most of what is going to come off
19 that witness, that there is not going to be too
20 much disagreement in that. I think that there
21 are going to be several key facts and then the
22 interpretation of those facts, upon which
23 everything that we do today is going to revolve

24 There is going to be some law that I am
25 going to tell you about in just a second, things

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1 that I would like for you to keep in your head so
2 that when we look at this things you'll know
3 where I am coming from

4 This is really the story about a bad
5 day in the lives of five young men Three of the
6 young men made bad decisions that day. The other
7 two were the victims of that

8 Colby Nitterhouse and Joseph Hoefer
9 were Charleston students, going about their
10 business on October 10th just a little over a year
11 ago There was nothing particularly special
12 about the day until a very brief encounter with
13 three young men in a blue Honda and it changes
14 the whole day. Changes their lives It can take
15 the wind right out of your sails

16 You are going to hear from Joseph
17 Hoefer and you're going to hear from Toby
18 Nitterhouse and what happened to them, the time
19 in which this happened to them was probably less
20 than I taking in this opening. (Fingersnap),
21 that fast

22 The evidence is going to show you from
23 this witness stand, testimony of people who take
24 this witness stand and you'll get to hear, you
25 get to judge You are to judge their

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1 credibility, their truthfulness, you get to judge
2 whether their story makes sense

3 And then I am going to show you some
4 things that are direct evidence These are
5 exhibits If they get entered into evidence,
6 then they come into the trial.

7 There is another form of evidence,
8 called circumstantial evidence Circumstantial
9 evidence is really inferences that give rise to
10 another -- this plus this leads up to this The
11 conclusion that we can derive from things that
12 were plainly observed by witnesses.

13 As witnesses, Mr Hoefer is going to
14 tell you that he was walking down the street, a
15 car pulls up, they ask directions to I-26 He
16 was giving them directions to I-26 when two of
17 the people jump out of the car, one of them had
18 a black object They demand his wallet Mr
19 Hoefer didn't really want to give them his wallet
20 because he had been studying and he really wanted
21 to go get something to eat But he was scared
22 because there was not just one of them, there
23 were two of them, and he gives them the wallet
24 The evidence will show that that wallet was found
25 in that blue Honda.

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1 Less than seven minutes later, right
2 around the corner, Toby Nitterhouse is walking
3 down the street and this guy jumped out of a blue
4 Honda, with a gun and demanded his money while
5 displaying a gun The evidence will show that,
6 oh, yeah, in that blue Honda there was a gun

7 When the car is stopped, the evidence
8 will show that the guy in the backseat had a gun,
9 the evidence will not show that the guy in the
10 front seat had a gun

11 In South Carolina there is a law known
12 as "the hand of one is the hand of all" That
13 has a little bit of Three Musketeers sound to it,
14 a little Arcadic I practiced law in Louisiana
15 and we called it the law of principals, that you
16 were a principal to a crime It means that in
17 this case liability falls to all the actors The
18 judge will go into a little bit more detail about
19 that when he instructs you on the law

20 The evidence is going to show that the
21 all three men -- the guy in the rear seat, the
22 guy that jumped out of the car, circled around
23 behind the guy and the driver of the car, "the
24 hand of one is the hand of all " You will hear
25 that the guy in the front seat had the gun and

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1 that it was not Mr. Edwards I know that and
2 that's what you are going to hear from that stand
3 today

4 I have the burden of proof I have to
5 show you each and every element of this event
6 Okay? I know that That is what you are going
7 to hear today You will also hear from Mr.
8 Smiley but I would ask you to keep an open mind
9 because that is what you are going to hear today
10 Thank you

11 THE COURT· Mr Smiley

12 MR SMILEY Thank you, Your
13 Honor It is pretty straightforward We are
14 going to agree on a lot of things

15 We agree that Toby Nitterhouse and Mr
16 Joseph Hoefer were armed-robbed I think that is
17 undisputed

18 Also Thonal Edwards, T J Edwards, my
19 client was present There is no dispute about
20 that

21 What is going to be in dispute is that
22 he planned and participated in this armed
23 robbery I want you to understand that he had
24 nothing to do with it He has told the court and
25 has told you, by being here, that he is not

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1 guilty He is not guilty because he did not
2 participate He was not part of that hand of one
3 being the hand of all You are going to hear
4 evidence from the stand that will support that
5 claim

6 He has nothing to prove You are going
7 to hear evidence that he has nothing to prove
8 In fact, I think you may even hear evidence that
9 is to the contrary We will see how that comes
10 out In fact, you might find evidence to the
11 contrary

12 The hand of one, hand of all accomplice
13 liability says that two of more persons combine
14 or agree to commit a legal act and one of those
15 persons is participating in that act they are
16 equally responsible for the consequences The
17 judge will define that more precisely for you
18 than I can do when he gives you the law

19 What you are going to hear is T.J , not
20 too long before this happened, had gotten out and
21 ran because he was scared

22 Now, the State has to prove their case
23 beyond a reasonable doubt Attorneys have to use
24 the football analogy To prove their case beyond
25 a reasonable doubt, they have to score a

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1 touchdown This isn't just crossing the 3 50-yard
2 line, they have to score a touchdown That he is
3 Guilty under the hand of one is the hand of all

4 No, he is not The evidence is not
5 going to support that. The evidence will support
6 that Mr Edwards was there that day He doesn't
7 deny that I agree with that He'd met a
8 gentleman that he wishes that he had never met
9 You will see that is the evidence

10 I ask you to withhold your judgment
11 until you've heard all the evidence, the judge
12 has instructed you, keeping in mind that Mr
13 Edwards has nothing to prove, and to see that
14 things are not always what they seem There is
15 not much that is in dispute except as to what
16 actually happened That is in dispute is whether
17 Mr Edwards participated, actively was a
18 participant in the armed robberies The judge
19 will explain that law to you. He contends and
20 maintains that he was not. I am going to ask you
21 to consider that and listen the evidence as it is
22 presented throughout the case The case won't
23 take very long, it is pretty straightforward
24 There is one truth and I am hoping today that the
25 witnesses will tell you that truth Thank you

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1 THE COURT Thank you, Mr Smiley

2 Mr. Voight, you may call your first witness

3 MR VOIGHT Thank you very much, Your

4 Honor The State calls Joseph Hoefer

5 (WITNESS TAKES STAND)

6 JOSEPH HOEFER, being duly

7 sworn to tell the truth, the whole truth and

8 nothing but the truth, testified, as follows

9 DIRECT EXAMINATION

10 BY MR VOIGHT

11 Q Joseph, are you in school?

12 A Sir?

13 Q Are you in school?

14 A Yes, sir

15 Q Where do you go to school?

16 A. College of Charleston

17 Q When did you start?

18 A Last year

19 Q Were you attending the College of Charleston
20 in October of 2006?

21 A Yes, sir

22 Q What were you studying?

23 A Uh, just general stuff

24 Q What were you doing on the evening of
25 October 10th at approximately 9 50 p.m

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1 A. I was coming back from lab, on Cummings

2 Q Where was the lab located?

3 A. The Lightsey lab is on Calhoun

4 THE COURT Mr Hoefer, pull that mic
5 if you would, please You need to speak into it
6 You've got to get closer to it

7 WITNESS Okay, (adjusts
8 microphone)

9 THE COURT Thank you, sir
10 Appreciate it

11 DIRECT EXAMINATION CONTINUED

12 BY MR VOIGHT

13 Q Were you by yourself or were you with other
14 people?

15 A. By myself

16 Q Was it light or dark out?

17 A It was dark.

18 Q Was the street lit?

19 A Not very well where I was walking

20 Q Were there other people about, on the
21 sidewalk? Other students walking to and fro or
22 was it ---

23 A Few and far between.

24 Q Were you carrying anything with you as you
25 walked down the street?

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- 1 A A book bag
- 2 Q Did you have your wallet on you?
- 3 A I did
- 4 Q Do you remember having money in your wallet?
- 5 A. A couple of dollars, probably.
- 6 Q Did you have your ID in your wallet?
- 7 A Yes, I did
- 8 Q. When did you first notice a blue car in your
- 9 immediate area?
- 10 A. I heard it first, it had a really loud
- 11 muffler Then it pulled in front of me
- 12 Q Were the windows in it up or down?
- 13 A. Down
- 14 Q This was in October Was it a warm night, a
- 15 cool night, cold night? What were you wearing?
- 16 A I was wearing shorts and a short-sleeve
- 17 shirt Cool, but nice
- 18 Q Did anybody talk to you from the car?
- 19 A Yes, the driver
- 20 Q. Did he ask you for anything?
- 21 A How to get to Greenville
- 22 Q To Greenville?
- 23 A (Affirmative nod)
- 24 Q. What did you take him to mean, what did you
- 25 understand him to mean?

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1 A I didn't understand him at first I asked
2 him to repeat the question He asked if I knew
3 how to get to Greenville, South Carolina

4 Q Did you tell him?

5 A. (Affirmative nod), I told him how to get to
6 I-26

7 Q How many people were in the vehicle?

8 A Three.

9 Q. What did they look like, do you recall?

10 A. The driver was black male, the passenger in
11 the front was a black male and the passenger in
12 the back was a white male

13 Q What happened after you told him how to get
14 to I-16?

15 A They said -- as I started to walk around the
16 car, as I got to the front of the car, there is a
17 trash dumpster there and ---

18 Q Is there a driveway of some sort?

19 A Yes, sir They had pulled sort of into the
20 driveway as I was walking

21 Q Okay

22 A I was walking about there and that's when
23 they got out?

24 Q Who got out?

25 A The passenger in the front and the passenger

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- 1 in the back
- 2 Q Did the driver get out?
- 3 A No
- 4 Q Where did the front seat passenger go?
- 5 A The front seat came in front of me
- 6 Q About how far away from you did he get?
- 7 A I'd say ---
- 8 Q I will walk toward you, tell me when to stop
- 9 when I get close enough. (Walking, stopped at
- 10 witness box rail) -- was he closer than that?
- 11 A. He was close enough to touch me
- 12 Q Okay. What did he look like?
- 13 A Short, stocky, short hair
- 14 Q Did you get a good look at him?
- 15 A (Affirmative nod), I had a conversation with
- 16 him for a couple of minutes
- 17 Q Had you had conversation with him before
- 18 they got out of the car?
- 19 A While giving directions, I was in the window
- 20 of the car
- 21 Q Which window were you -- are you saying that
- 22 you leaned into the window or something?
- 23 A Yes, the driver's side
- 24 Q Driver's?
- 25 A (Affirmative nod)

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1 Q Did you get a chance to observe the
2 passenger in the back seat?

3 A I did

4 Q Did you get a chance to observe the
5 passenger in the front seat?

6 A Yes, sir.

7 Q Did you get a chance to observe the driver/

8 A Yes, sir

9 Q And you estimate that you talked to them for
10 -- how long?

11 A Two, three minutes

12 Q. When the front seat passenger got out, what
13 did the back seat passenger do?

14 A He got out, too, and came behind me

15 Q. Did you notice his size?

16 A I just noticed that he was tall

17 Q Can you give us an estimation of about how
18 tall you think he may have been?

19 A I guess about my height

20 Q The person that you saw as the passenger in
21 the courtroom today?

22 A Yes, sir.

23 Q Would you point him out and describe him for
24 us?

25 A The man in the drab green suit

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1 Q Did he say anything to you when he came out
2 of the car?

3 A Yes, he did

4 Q What did he say to you?

5 A As he got behind me, he said "Don't fucking
6 move."

7 Q How close to you did he get?

8 A Close enough to where his arms could be on
9 my shoulder.

10 Q Did you see a weapon?

11 A I did, but I didn't want to say it for sure
12 unless I was absolutely positive

13 Q. Describe what you say?

14 A I saw a black male come up and I saw his
15 hand come up and when I saw his hand I looked
16 right in his eyes because I didn't want to look
17 at it

18 Q Why didn't you want to look at it?

19 A I just didn't want to know

20 Q Were you afraid?

21 A It happened really fast, I was just kind of
22 reacting

23 Q What did the black male ask you to do?

24 A He got out of the car and said, "Yeah,
25 you're getting robbed " Said, "Give me your

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- 1 wallet "
- 2 Q What did you do in response to that?
- 3 A I pulled out my wallet and tossed it to him
- 4 Q Did you have any other conversation with
- 5 him?
- 6 A I asked him if I could keep my computer card
- 7 back
- 8 Q What is that?
- 9 A It's your meal thing I had just gotten it
- 10 Q What did he say?
- 11 A "Fuck no "
- 12 Q What happened next?
- 13 A Then they got in the car and left
- 14 Q What did you do?
- 15 A I sat there a second and then a girl walked
- 16 across the seat and asked what just happened I
- 17 told her and she said to call the cops.
- 18 Q. What did you do?
- 19 A I called my parents and then they told me to
- 20 call the cops
- 21 Q How long after they'd left -- "they" being
- 22 the individuals in the blue car -- did you call
- 23 the police?
- 24 A A minute, two minutes
- 25 Q Did you tell the police what had happened to

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1 you?

2 A Yes, sir

3 Q What happened then?

4 A They said to wait there The lady had
5 gotten confused because apparently somebody else
6 had just called them and she thought -- I guess
7 that she thought that I was the other person who
8 had just been robbed by the same one She said
9 to wait there and that somebody would come to
10 pick me up

11 Q Did they come and pick you up?

12 A Yes, sir

13 Q About how long before somebody came to pick
14 you up?

15 A Three or four minutes

16 Q Do you recall who that person was?

17 A Greenstein? I don't remember

18 Q What did the officers tell you when they
19 picked you up, did they give you any
20 instructions?

21 A They didn't say anything, we just drove

22 Q How far did you drive?

23 A Down to East Bay, to the Blockbuster's
24 parking lot

25 Q What happened once you got to the parking

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1 lot on East Bay Street?

2 A We pulled in and the blue Honda was there
3 All the doors were open We pulled in front of
4 the car and he just said, "Wait here "

5 Q What happened next?

6 A They closed all the doors and pulled each
7 person from the blue Honda and asked me if this
8 is who it was

9 Q Did you recognize the driver?

10 A Yes, sir

11 Q Did you recognize the rear seat passenger?

12 A Yes, sir

13 Q Did you recognize the other passenger?

14 A Yes, sir.

15 Q. Did you inform the officers that these were
16 the guys that had robbed you?

17 A Yes, sir

18 Q From the time that you got for instructions
19 until the time that you told the officers that,
20 about how much time had elapsed?

21 A. When they asked me?

22 Q From the time you saw -- from the very first
23 time that you saw these gentlemen in the car
24 until the time that they were shown to you by the
25 police officer, how much time had transpired?

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- 1 A. Twenty to twenty-five minutes maybe
- 2 Q Did you ever recover your wallet?
- 3 A I did They gave it back
- 4 Q When you say "they" gave it back, who?
- 5 A The police.
- 6 Q Is this (indicating Defendant) the gentleman
- 7 that came up behind you and said, 'don't move'?
- 8 A Yes, sir
- 9 Q Is this the gentleman that got out of the
- 10 car with the gun and came to the front?
- 11 A Yes, sir
- 12 Q Do you have any doubts, at all?
- 13 A No
- 14 MR VOIGHT One moment, sir
- 15 THE COURT Yes, sir
- 16 MR LAWTON Thank you, Your Honor, we
- 17 tender the witness
- 18 THE COURT Mr. Smiley, you may
- 19 cross-examine
- 20 CROSS EXAMINATION
- 21 BY MR SMILEY
- 22 Q Mr Hoefer, you said that you were walking
- 23 towards Calhoun?
- 24 A I was walking away from Calhoun
- 25 Q. You were walking towards -- on Cummings?

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- 1 A Yes
- 2 Q. You had just gotten past the Stern Center?
- 3 A. I was at the Stern Center
- 4 Q Right there at George and Cummings?
- 5 A Yes
- 6 Q And the car pulled in in front of you?
- 7 A Yes, sir
- 8 Q So they were coming towards Calhoun and you
- 9 were coming up to the right, they stopped and you
- 10 would have walked up on the driver's side?
- 11 A Yes, sir
- 12 Q The windows were down?
- 13 A (Affirmative nod)
- 14 Q And he asked you how to get to Greenville?
- 15 A Yes, sir
- 16 Q You propped yourself on the window and
- 17 leaned in to talk to them?
- 18 A Yes, sir
- 19 Q. You didn't know the guy in the driver's
- 20 seat?
- 21 A. (No response)
- 22 Q The guy that was driving the car?
- 23 A. Had I ever met him before?
- 24 Q. Yes
- 25 A. No

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1 Q How about the guy in the front passenger
2 seat?

3 A No, sir

4 Q You said that conversation -- was there
5 anything else that you'all talked about?

6 A Besides -- no, just that

7 Q Just how to get from George and Cummings to
8 I-26?

9 A Yes

10 Q And you told them to go down Cummings and it
11 runs right into it, right?

12 A I told them how to go -- I told them how to
13 get to I-26 and then they said, 'How do you get
14 to Greenville?' And I said, 'There's a gas
15 station on Calhoun, go there and turn left there
16 and just go '

17 Q Okay.

18 A That took probably two or three minutes, you
19 said?

20 A I guess

21 Q Just to make sure that I understand, at that
22 point you started walking around the front of the
23 car?

24 A Yes, sir

25 Q And before you could get to the other side

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- 1 the passenger side door opens?
- 2 A Yes, sir
- 3 Q And the fellow with the gun was sitting in
- 4 the front seat, correct?
- 5 A Yes
- 6 Q Because he would have gotten out first?
- 7 A About the same, I guess
- 8 Q. Was it a four-door car?
- 9 A Yes, sir
- 10 Q So they both got out at the same time?
- 11 A Yes, sir
- 12 Q And the -- and Mr Edwards walked behind you
- 13 before the black guy got to you?
- 14 A Simultaneously.
- 15 Q And the white guy had a black object?
- 16 A Yes, sir
- 17 Q And he came right up on you?
- 18 A Right.
- 19 Q And Mr Edwards was behind you?
- 20 A Right.
- 21 Q Said, "Don't move "
- 22 A Yes.
- 23 Q They asked for your wallet?
- 24 A. Yes
- 25 Q Did you hand it to them? You said you

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1 tossed it? Did he back off at that point or did
2 you hand it to him?

3 A He'd backed up I was reaching in my back
4 pocket and he backed off and I tossed him the
5 wallet

6 Q Did Mr Edwards ever say anything else to
7 you?

8 A No, sir.

9 Q Did he ever touch you?

10 A Shoulders

11 Q He held your shoulders?

12 A No, it was more like 'don't move, I'm here
13 right behind you '

14 Q Okay So he grabbed your shoulders?

15 A His arms were on my shoulders, yeah

16 Q Okay Do you remember giving a statement to
17 the police the night of the incident?

18 A Yes, sir

19 Q Is it fair to say that -- have you had a
20 chance to review that statement?

21 A Yes, sir

22 Q Since this happened and you wrote it that
23 night?

24 A Yes, sir

25 Q In that statement do you say anything about

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1 him grabbing you?

2 A (No response)

3 Q Would it help refresh your memory if you
4 were given a copy of your statement?

5 A Yes, sir

6 Q. (Tendering) -- I will give you a chance to
7 read over it, refresh your memory

8 A (Upon review), okay

9 Q You gave that statement the night of the
10 incident, right?

11 A Yes, sir

12 Q That was right after it had happened?

13 A Yes, sir

14 Q And in that statement the officer was taking
15 down as much information about what happened as
16 you could remember, is that correct?

17 A Sure

18 Q And you were trying to tell him anything
19 that you could remember, right?

20 A (No response)

21 Q. I mean, you weren't leaving things out You
22 were trying to tell him everything that you knew,
23 correct?

24 A. That's correct

25 Q In that, do you ever mention that my client

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1 touched you?

2 A No.

3 Q But today, a year and several months later,
4 you are now saying that he grabbed you?

5 A This is not the most detailed account, sir

6 Q Did you give that account?

7 A It was more of a -- I'd just gotten robbed
8 and I was filling this out

9 Q Needless to say in that statement when you
10 were giving information to the officer you never
11 mentioned that the gentleman behind you grabbed
12 you

13 A No

14 MR SMILEY. I beg the Court's
15 indulgence

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION CONTINUED

18 BY MR SMILEY

19 Q The only thing that you'all talked about was
20 directions?

21 A. Yes, sir

22 Q. There was no other conversation?

23 A No, sir

24 MR SMILEY Nothing further of this
25 witness

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1 THE COURT Redirect, Mr. Voight?

2 MR VOIGHT Briefly

3 THE COURT Yes, sir

4 REDIRECT EXAMINATION

5 BY MR. VOIGHT

6 Q Do you recall, Joseph, to whom you gave that
7 statement with North (sic) Charleston?

8 A Greenstein? I don't really remember his
9 name.

10 Q Did he ask you a series of questions -- a
11 series of detailed questions about the role of
12 each of the participants?

13 A I don't really recall

14 Q About how long after the robbery did you
15 write this statement?

16 A It was the last thing that I did Probably
17 a couple of hours

18 Q Were you nervous or upset at the time?

19 A I had just gotten robbed It was a weird
20 feeling

21 Q Were you asked by the detective specifically
22 anything about Mr Edwards?

23 A Not that I can remember

24 Q Did the detective or anyone else from the
25 Charleston Police Department ask you if anybody

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1 grabbed you?

2 A Not that I remember I just thought that
3 was a part of the robbery so I didn't say
4 anything

5 Q And Mr Smiley asked you if he grabbed you
6 Did he physically push you, pull you in any way
7 that you recall?

8 A It was more of a touching of the shoulder
9 'to let you know I am here, don't turn around,
10 you are being robbed '

11 Q Thank you

12 MR VOIGHT Nothing further

13 THE COURT Recross, Mr Smiley?

14 MR SMILEY No, sir

15 THE COURT Thank you. You may come
16 down

17 (WITNESS STEPS DOWN)

18 THE COURT Call your next witness,
19 please

20 MR LAWTON The State would call
21 Officer Buckheister

22 (WITNESS TAKES STAND)

23 MR LAWTON May it please the court?

24 THE COURT You may proceed

25 THOMAS BUCKHEISTER, being duly

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1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows.

3 DIRECT EXAMINATION

4 BY MR LAWTON

5 Q Officer, my name is Trip Lawton Are you
6 doing all right today?

7 A Fine, thank you

8 Q Please tell the jury your occupation

9 A I am a police officer with the City of
10 Charleston, currently in the Warrants Division
11 I've been there for about thirteen to fourteen
12 years

13 Q Any previous experience in law enforcement?

14 A. I left for about six months and did the air
15 marshal thing in Washington, D C , and then came
16 back to Charleston

17 Q How were you employed on October 10th, 2005?

18 A. With the City of Charleston Police
19 Department

20 Q. Did you have the opportunity to get involved
21 with the investigation of several armed robberies
22 in downtown Charleston on that same night?

23 A I heard of several

24 Q How did you become involved in the
25 investigation?

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1 A Well, actually I wasn't ---

2 Q This is one involving students at the
3 College of Charleston about 9:50 p m

4 A Oh, okay I was -- at the time I was
5 working an off-duty job at the Boathouse
6 Restaurant on East Bay Street and I heard the
7 call for a couple armed robberies go out.

8 Q How were you brought into the case?

9 A Officer Lopez was right behind a vehicle
10 that matched the description, a blue small car
11 with a loud muffler, on East Bay and Calhoun
12 streets That's not far from the Boathouse, so I
13 shut down and we pulled the car over at 40 East
14 Bay Street

15 Q What did you'all do after that?

16 A We approached the vehicle Officer Lopez
17 approached the driver's side and I approached the
18 passenger side of the vehicle Officer Lopez got
19 the driver out and I got out the front seat
20 passenger

21 Q Do you recall the name of the front seat
22 passenger?

23 A I believe that it was Eric Waldrop

24 Q Could you please describe Eric Waldrop?

25 A He is a white male, uh, ---

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1 Q Approximately how tall?

2 A Roughly around six foot, six feet.

3 Q And what did you do when you pulled him out?

4 A As I was pulling him out of the vehicle, I
5 noticed that he had a black handgun in his left
6 front pocket, at which time I notified all the
7 officers involved by yelling "Gun!" I retrieved
8 the gun from him and secured him, handcuffed him

9 MR LAWTON May I approach, Your
10 Honor?

11 THE COURT You may

12 DIRECT EXAMINATION CONTINUED

13 BY MR LAWTON

14 Q I am handing you State's Exhibit 8 and I
15 would ask that you would look at that The
16 serial number on that is P156999 and I am just
17 curious if you have seen that weapon before?

18 A Yes, sir, this is the weapon that was in the
19 subject's left front pocket

20 Q Okay Was it in substantially the same
21 condition when you first removed it from his
22 pocket?

23 A Yes, sir.

24 Q What did you do with that pistol?

25 A I secured it, took it out of his pocket and

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1 set it on the rear of the vehicle

2 Q Okay. Let me ask you this, did that pistol
3 have a magazine or a clip in it at the time?

4 A No, sir No, sir, it did not I do recall
5 that it did not have a magazine in it

6 Q Do you recall who the evidence tech was that
7 put it into Evidence?

8 A I believe that it was Officer Lites

9 Q I believe it was an officer with crime
10 scene?

11 A Right He retrieved the weapon,
12 (affirmative nod) Yes, sir

13 MR. LAWTON One moment, Judge

14 THE COURT Sure

15 MR LAWTON No further questions at
16 this time, Your Honor

17 THE COURT Mr Smiley, you may cross
18 examine

19 CROSS EXAMINATION

20 BY MR SMILEY

21 Q You were the first officer to make contact
22 with the persons and the car, is that correct?

23 A No, sir, Officer Lopez pulled it over --
24 well, we pulled it over approximately at the same
25 time He was behind it and by the time he

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- 1 stopped, both of us were there together
- 2 Q And you came up on the passenger side?
- 3 A Yes, sir
- 4 Q And that is where Mr Waldrop, the white
- 5 male, was sitting?
- 6 A Right, front passenger
- 7 Q Okay He had the gun in his pocket?
- 8 A Left front pocket
- 9 Q Left front pocket?
- 10 A Yes, sir
- 11 Q Okay You secured the gun?
- 12 A Yes, sir.
- 13 Q Did it have any bullets in the chamber?
- 14 A I don't recall I did not open. I didn't
- 15 clear it myself because I had already cleared it
- 16 Q I guess my question is, even though there is
- 17 not a magazine in it you can't tell whether there
- 18 was a bullet in the gun or not You couldn't
- 19 tell, could you?
- 20 A Not at that point
- 21 Q And you secured Mr Waldrop while Officer
- 22 Lites dealt with Mr Edwards?
- 23 A Correct
- 24 MR SMILEY Nothing further
- 25 THE COURT Redirect, Mr Lawton?

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1 MR LAWTON No, Your Honor

2 THE COURT You may come down

3 (WITNESS STEPS DOWN)

4 THE COURT Thank you, sir. You may
5 call your next witness

6 MR LAWTON Thank you, Your Honor
7 The State would call Officer Lites.

8 (WITNESS TAKES STAND)

9 ERIC LITES, being duly
10 sworn to tell the truth, the whole truth and
11 nothing but the truth, testified, as follows

12 DIRECT EXAMINATION

13 BY MR LAWTON

14 Q How are doing, Mr Lites?

15 A Good

16 Q. Trip Lawton with the Solicitor's Office
17 How are you doing?

18 A (No response)

19 Q Are you doing all right today?

20 A. Yeah

21 Q Please tell the court your occupation

22 A Patrolman for the City of Charleston

23 Q Okay How long have you done that?

24 A Three and a half years

25 Q Okay Were you employed there on October

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1 10th, 2005?

2 A. Yes, sir

3 Q. Okay. Did you have an opportunity to be
4 involved in the investigation of several armed
5 robberies that occurred on the College of
6 Charleston campus?

7 A Yes, sir

8 Q. That same night?

9 A. Yes, sir

10 MR SMILEY Your Honor, we would
11 object to the use of the term "several"

12 THE COURT. Rephrase your question

13 MR LAWTON Yes, sir

14 DIRECT EXAMINATION CONTINUED

15 BY MR LAWTON

16 Q. Two armed robberies?

17 A That's correct

18 Q. How were you brought into the case?

19 A. I was brought in by Officer Lopez putting on
20 the radio that he had a possible suspect, that
21 vehicle He stated his location and I headed for
22 that location put out by the radio

23 Q. Okay What did you do when you got there?

24 A As soon as I got there, I observed Officer
25 Lopez pull the driver out and Officer Buckheister

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1 pull the -- I believe the passenger out I am on
2 the passenger side, rear passenger That is
3 where I went when I went over to the vehicle

4 Q Okay Is that occupant present in this
5 courtroom today?

6 A Yes.

7 Q Would you please point him out?

8 A That's him right there (indicating
9 Defendant).

10 Q. What is he wearing?

11 A He's wearing a suit and tie, brown shoes

12 Q Okay

13 MR LAWTON Let the record
14 reflect, Your Honor

15 DIRECT EXAMINATION CONTINUED

16 BY MR LAWTON

17 Q Did you perceive anything on Mr Edwards?

18 A Yes

19 Q What was that?

20 A During the -- when we were pulling him out
21 of the vehicle, Officer Buckheister stated that
22 there was a gun and I immediately grabbed the
23 Defendant to effect a pat down As soon as I did
24 that, I felt a magazine in his left front pocket
25 which was consistent with the firearm retrieved

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1 I took the magazine out of his pocket, put it my
2 pocket and secured him with handcuffs

3 Q Okay This is State's Exhibit 9 that I am
4 showing you Is this the same magazine that you
5 pulled out?

6 A Yes, sir.

7 Q. Okay And was it -- did it have any bullets
8 at the time?

9 A Yes, sir It had eight loaded in the
10 magazine

11 Q Other than the bullets, is it substantially
12 in the same condition as when you pulled it out?

13 A Yes, sir

14 Q. Where did you put it?

15 A I put it in my pocket As soon as I
16 retrieved it from him, I put it in my pocket

17 Q Give it to anybody?

18 A. After I secured it in my pocket, we put the
19 Defendant in the vehicle and secured him and then
20 Officer Unterbrink responded and I handed it over
21 to him.

22 Q Okay And -- if you would, hand that back

23 A (Tenders)

24 Q I hand you State's Exhibit 9 Does this
25 reflect the caliber of bullet that was occupied

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1 in the clip at the time?

2 A Yes, sir

3 MR LAWTON No further questions at
4 this time, Your Honor.

5 THE COURT Cross examine?

6 CROSS EXAMINATION

7 BY MR SMILEY

8 Q Officer Lites, the magazine that you pulled
9 was in my client's front left pocket?

10 A Correct

11 Q And you took him out of the car, patted him
12 down?

13 A Yes, sir

14 Q Did you question him at any point?

15 A No, sir

16 Q You just secured him?

17 A. I secured him and we put him in the car

18 Q This is the clip that he had in his pocket?

19 A Yes, sir

20 Q All right At the time that you took it
21 from him there were eight bullets in the clip?

22 A That's correct

23 Q So the bullets that are in evidence, I would
24 guess, in the container were actually in the
25 clip?

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1 A Yes, sir

2 Q All right You don't have any idea when
3 that clip was put in my client's pocket?

4 A No, sir

5 Q All you know is that you took it out?

6 A That's correct

7 MR SMILEY: Nothing further

8 THE COURT Redirect?

9 MR LAWTON. No, Your Honor

10 THE COURT You may come down

11 (WITNESS STEPS DOWN)

12 MR LAWTON The State calls Officer
13 Unterbrink

14 (WITNESS TAKES STAND)

15 RANDALL UNTTERBRINK,
16 being duly sworn to tell the truth, the whole
17 truth and nothing but the truth, testified, as
18 follows

19 DIRECT EXAMINATION

20 BY MR LAWTON.

21 Q How you doing, sir?

22 A Fine

23 Q If you would, please tell the jury your
24 occupation

25 A I work for the Charleston Police Department,

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1 in the crime scene unit

2 Q Were you employed there on October 10th,
3 2005?

4 A I was

5 Q And did you have an opportunity to be
6 involved with two armed robberies that occurred
7 on the College of Charleston that same night?

8 A. I was

9 Q How were you brought into the case?

10 A I was dispatched there by the dispatcher at
11 the Police Department

12 Q Okay And were you there when the
13 defendants were initially placed under custody?

14 A No

15 Q You didn't see any guns or anything removed
16 from the defendant?

17 A No.

18 Q All right I am handing you State's Exhibit
19 8 Do you recognize that gun, the serial number
20 P156999?

21 A Yes, sir

22 Q Okay Where did you first see it?

23 A When I first arrived it was on the trunk of
24 the vehicle in the parking lot

25 Q Okay Was it in the same condition, when

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1 you first saw it, as it is today?

2 A Yes, sir

3 Q What did you do it once you got it?

4 A When I first arrived, when I saw that the
5 gun was there, I went ahead and inspected it
6 What I needed to do was to determine what the
7 condition of the gun is, to determine if there is
8 a clip

9 Q Okay. Did it have a clip?

10 A. No, sir, it was not there, which is unusual
11 Normally they are there, but I noticed that it
12 was not there There was not one when I first
13 saw the gun

14 Q Was there a bullet in the chamber?

15 A No, sir

16 Q All right

17 A I inspected it for that purpose, as well,
18 and it was empty

19 MR LAWTON At this time, Your
20 Honor, I would offer State's Exhibit 8 into
21 evidence

22 MR. SMILEY No objection.

23 THE COURT Without objection, it is
24 submitted

25 (SO ENTERED AS STATE'S EXHIBIT 8)

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1 MR LAWTON Thank you, Your

2 Honor

3 DIRECT EXAMINATION CONTINUED

4 BY MR LAWTON

5 Q I am handing you State's Exhibit 9, to see
6 if you have ever seen that before

7 A. Yes, sir

8 Q All right What is it?

9 A It is a clip, also known as a magazine

10 Q. When did you first see that?

11 A When it was handed to me by Officer Lites

12 Q Okay And that is substantially in the same
13 condition as it was when you first saw it?

14 A Yes, sir

15 Q Is there any difference? Was there any
16 bullets when you first saw it?

17 A (Affirmative nod), there was

18 Q There was?

19 A (Affirmative nod)

20 Q Okay I am handing you State's Exhibit 10
21 There are bullets in there Is that the caliber
22 of bullets -- I will let you take a look at ---

23 A (Reviewing)

24 Q --- it, as what you saw in the clip that
25 night? Nine millimeter?

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1 A Yes, sir

2 Q Okay

3 MR LAWTON Your Honor, I would
4 offer State's Exhibit 9 and 10 into evidence

5 MR SMILEY Without objection

6 THE COURT Without objection, they
7 are admitted

8 (SO ENTERED AS STATE'S EXHIBIT 9)

9 (SO ENTERED AS STATE'S EXHIBIT 10)

10 DIRECT EXAMINATION CONTINUED

11 BY MR. LAWTON

12 Q What else did you do when you got there, as
13 far as crime scene investigation goes?

14 A I took photographs

15 Q All right I am going to hand you State's
16 Exhibit 3, 4, 2, 5, 7 and 6 and let you take a
17 look at those

18 A (Reviewing)

19 Q See if you recognize those and see if those
20 are the same pictures that you took that night

21 A (Upon review), yes, sir

22 Q I want you -- briefly just hold them up to
23 the jury and maybe describe what you saw

24 A This particular photo is one of the gun on
25 the trunk

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1 Q. Go ahead, proceed

2 A That is of the gun on the trunk of the
3 vehicle when I first arrived.

4 COURT REPORTER What is the exhibit
5 number?

6 WITNESS Number 3 And, of
7 course, one of the main things that I noticed
8 here is that there was no clip in the gun itself

9 DIRECT EXAMINATION CONTINUED

10 BY MR LAWTON.

11 Q Okay Proceed

12 A This is a photograph of ---

13 THE COURT What is the number?
14 Please give us the number first

15 WITNESS: Yes, sir I apologize

16 THE COURT: That's okay, it just
17 helps Ms Garrison with the record Thank you,
18 sir What is the number?

19 WITNESS This one is number seven
20 (State's Exhibit 7)

21 THE COURT Thank you

22 DIRECT EXAMINATION CONTINUED

23 BY MR. LAWTON

24 Q Go ahead

25 A I wanted to take a picture of the vehicle

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1 and that was it

2 Exhibit 2, I took a photograph of the
3 tailpipe, the exhaust pipe The reason for that
4 is because in talking with Detective Goldstein he
5 wanted to make certain that I took a photograph
6 of the exhaust pipe because we needed to know the
7 difference

8 Q. Okay

9 A. Also, over here I have Exhibit 4 -- I think
10 that it may be better to start with number six

11 Q All right

12 A This is a more general photograph of what I
13 saw on the front seat, it is a wallet.

14 This is a slightly closer picture of that
15 item, Exhibit 5 Again, you can tell that there
16 was an identification card of some type there

17 Then the final photograph is number four
18 (State's Exhibit 4) and I wanted to -- made it a
19 point to take a closeup of the ---

20 Q Please tell the jury the name on the blown
21 up ID (identification) card

22 A It is Joseph -- and I am not quite sure of
23 the pronunciation

24 THE COURT Spell it out

25 WITNESS H-o-e-f-e-r

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1 DIRECT EXAMINATION CONTINUED

2 BY MR LAWTON

3 Q Joseph Hoefer?

4 A Hoefer, yes

5 MR LAWTON Your Honor, at this time
6 the State would offer into evidence State's
7 Exhibits 2, 7, 3, 4, 5, and 6

8 MR SMILEY Without objection

9 THE COURT Thank you Without
10 objection

11 MR LAWTON Thank you, Your
12 Honor

13 (SO ENTERED AS STATE'S EXHIBIT 2)

14 (SO ENTERED AS STATE'S EXHIBIT 3)

15 (SO ENTERED AS STATE'S EXHIBIT 4)

16 (SO ENTERED AS STATE'S EXHIBIT 5)

17 (SO ENTERED AS STATE'S EXHIBIT 6)

18 (SO ENTERED AS STATE'S EXHIBIT 7)

19 MR LAWTON No further questions at
20 this time, Your Honor

21 THE COURT Cross-examine?

22 MR SMILEY Yes, sir

23 CROSS EXAMINATION

24 BY MR SMILEY

25 Q Officer, you arrived after the car was

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1 stopped?

2 A Yes, sir.

3 Q So your purpose was to collect evidence and
4 to take photographs?

5 A That's right

6 Q All right Did you prepare some reports as
7 a result of that?

8 A Yes, I did

9 Q In your supplemental report, you have that
10 you got the clip and the gun and that then
11 Officer Lites removed the clip for officer
12 safety. Did you put that in your report?

13 A I ---

14 Q I will let you look at the report to refresh
15 your memory, your supplemental report

16 A Yes, sir, I did put that

17 Q You did put that in there?

18 A I would have to be ---

19 Q (Tenders), do you recognize that?

20 A Yes, sir

21 Q Does that refresh your memory about your
22 description of what you collected?

23 A Yes

24 Q In that description there is something that
25 is really important You put that you retrieved

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1 the clip and the gun and that then Officer Lites
2 removed the clip for officer safety

3 A What I stated was that the clip was removed
4 by an officer for safety purposes.

5 Q Okay I guess -- what I am trying to clear
6 up is, you weren't there with the clip and the
7 gun were retrieved?

8 A That's correct

9 Q So that is an incorrect statement, that the
10 gun and the clip were retrieved separately and
11 not removed by an officer Correct?

12 A Yes, sir

13 Q However, let me ask you this question. In
14 your experience in collecting evidence and as a
15 police officer, you typically take the clip out
16 of a gun to make sure that there are no bullets
17 Right? You might have to clear the chamber but
18 if you take the clip out, the quickest way to
19 remove the clip?

20 A Yes

21 Q To clear the chamber -- if you're able to
22 pull the clip out it means, at most, that there
23 is only one bullet. Right?

24 A Yes

25 Q. So that was for safety, correct?

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1 A Yes, that's how you normally do it

2 Q All right You photographed inside the car?

3 A Yes, sir

4 Q I think that you said that you found a
5 wallet on the front passenger seat?

6 A Yes

7 Q Correct?

8 A Yes, sir.

9 Q And you photographed that?

10 A (Affirmative nod)

11 Q And there was identifying information in the
12 wallet?

13 A Yes, sir

14 Q With that, you were able to determine that
15 the wallet belonged to a Joseph Hoefer?

16 A All I knew was what I saw, the wallet in the
17 car

18 Q Because there was some other conflicting
19 information that that wallet had, too, as to
20 ownership?

21 A. That, I don't know

22 MR SMILEY Let me have it marked

23 COURT REPORTER Defendant's Exhibit 1
24 for identification

25 MR SMILEY Thank you

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1 CROSS EXAMINATION CONTINUED

2 BY MR SMILEY

3 Q Is this the picture that you took that
4 evening?

5 A (Upon review), it appears to be

6 Q Was that taken from the wallet that was on
7 the front seat?

8 A That, I don't know

9 Q Well, let me find another picture for you
10 then

11 MR SMILEY If we could mark these
12 COURT REPORTER. Defendant's Exhibits
13 2 through 4 for identification

14 CROSS EXAMINATION CONTINUED

15 BY MR SMILEY

16 Q. I am going to show you a series of
17 photographs to see if you can recognize them.

18 A (Upon review), it does appear to come from
19 the same source

20 Q Okay If it appears to come from the same
21 source, then the driver's license that you
22 collected does not have Mr Hoefer's name on it

23 A No That's correct

24 Q Okay I know that the -- well, let me ask
25 you this question From the bullet, were you

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1 asked to collect latent prints?

2 A I did process them.

3 Q Were you able to find any latents?

4 A No, sir

5 Q. Doing this as a lawyer, I understand but if
6 you would explain it to the jury, what a latent
7 print is

8 A A latent print is -- the word itself means
9 "hidden", you can't regularly see it Although
10 you touch items, you are leaving prints in almost
11 every case -- many cases -- but you can't
12 necessarily see it easily So you have to go
13 through a processing of that particular area to
14 help create a contrast so that you can see it
15 individually It can be done through a variety
16 of different processes You can use powder,
17 which a very common approach, plus some others
18 but that is one of the bigger, more well-known
19 approaches

20 Q A latent print is a print that may or may
21 not -- that you are trying to lift the image of?

22 A Yes A latent print ---

23 Q You bring it up by dusting it or using a
24 glue techniques, or whatever You're trying to
25 find a print

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1 A That's right

2 Q Okay So when I ask you did you find any
3 latent prints, the better question would have
4 been did you process the weapon, the clip and the
5 bullets for prints?

6 A. Yes, sir

7 Q Were you able to lift any prints?

8 A. No, sir

9 MR SMILEY Nothing further

10 THE COURT. Redirect?

11 MR LAWTON No, sir

12 THE COURT You may come down, sir

13 (WITNESS STEPS DOWN)

14 THE COURT You may call your next

15 witness

16 MR LAWTON The State would recall

17 Joseph Hoefer

18 (WITNESS TAKES STAND)

19 THE COURT: Mr. Hoefer, I would
20 remind you that you are still under oath in this
21 matter

22 WITNESS Yes, sir

23 DIRECT EXAMINATION

24 BY MR VOIGHT

25 Q Joseph, I would like to show you what has

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1 been marked as State's Exhibit 5 and ask you to
2 take a look at that Do you recognize that?

3 A Yes, I do.

4 Q What is that?

5 A That is my wallet

6 Q And I would like to show you what's been
7 marked previously as State's Exhibit Defendant 3

8 MR SMILEY. For identification

9 DIRECT EXAMINATION CONTINUED

10 BY MR VOIGHT

11 Q I would ask you to take a look at that Do
12 you recognize that?

13 A Yes, sir

14 Q Do you recognize that?

15 A Yes

16 Q What is that?

17 A That is my computer card

18 Q And let me show you what has been marked as
19 Defendant's Exhibit 1, for identification, and
20 ask you to take a look at that Do you recognize
21 that?

22 A Yes, sir.

23 Q Can you tell the jury what that is?

24 A That is my fake ID

25 Q Did you have that on your person when you

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1 were held-up?

2 A Yes, sir

3 MR VOIGHT No further questions

4 THE COURT Cross-examine?

5 MR SMILEY No, sir

6 THE COURT You may come down

7 (WITNESS STEPS DOWN)

8 THE COURT Call your next witness

9 MR LAWTON: One moment, Your Honor

10 THE COURT Yes, sir

11 MR LAWTON The State calls Brian

12 Ambrose

13 (WITNESS TAKES STAND)

14 BRIAN AMBROSE, being duly

15 sworn to tell the truth, the whole truth and

16 nothing but the truth, testified, as follows

17 DIRECT EXAMINATION

18 BY MR LAWTON

19 Q How you doing, sir?

20 A I am good, sir

21 Q Tell the jury your occupation

22 A I work with the City of Charleston Police

23 Department

24 Q How long have you been there?

25 A I have been fulltime with the City since May

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1 of 1997

2 Q Were you working there on October 10th, 2005?

3 A Yes, sir

4 Q Were you involved in the investigation of
5 two robberies that occurred that evening, about
6 9 50 or 10.00 p m on the College of Charleston
7 campus?

8 A I was

9 Q How were you brought into the case?

10 A I responded to a call on St Phillips Street
11 in reference to locating a victim of an armed
12 robbery that had just occurred

13 Q Roughly what time did you get there?

14 A Right around 10 00 p.m

15 Q And who was there when you got there?

16 A One of the victims, Mr Nitterhouse

17 Q What did you'all do next?

18 A At that point in time a vehicle had been
19 stopped that matched the description that had
20 been broadcasted by our dispatchers

21 Q Okay

22 A I went ahead and asked Mr Nitterhouse to
23 accompany me to the scene of the traffic stop so
24 that we could see if the vehicle in question was
25 involved in the robberies

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1 Q On the way over there what did you gather
2 from your investigation?

3 A I learned that Mr Nitterhouse had been
4 leaving the Stern Center, was approaching the
5 intersection of George and St Phillips, that a
6 vehicle described or indicated as blue, small
7 vehicle passed him and had stopped at the
8 intersection I learned that a white male and a
9 black male had exited from the vehicle and asked
10 for direction The white male then indicated or
11 asked for money from the victim and pulled and
12 presented a firearm on the victim

13 Q What occurred when you'all got to East Bay?

14 A Once we arrived at East Bay Street there
15 were three persons who had been detained Each
16 were separated, in the back of individual police
17 cars I asked Mr Nitterhouse, once he was shown
18 the individuals, whether or not any of those
19 persons were involved in the robbery

20 Q Okay. How did you'all do it, as far as the
21 identification? Was it one by one?

22 A There were, one by one Each person was
23 removed individually, they were asked to step out
24 of the back of the police car where they were
25 kept and I explained to Mr Nitterhouse that all

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1 he needed to do was to indicate whether this was

2 a party involved or a party not involved

3 Q Did you suggest that he pick out the

4 Defendant?

5 A No.

6 Q What was the result of the identification?

7 A He positively identified one party, Eric

8 Waldrop, which was a white male, as the party

9 that had had a gun and robbed him

10 Q. What about the two black males?

11 A. He indicated to me that he was unsure at the

12 time

13 Q Did he give a reason why?

14 A He said that he was focused on the white

15 male who was armed with the handgun

16 Q. Okay

17 MR LAWTON One moment, Your Honor

18 THE COURT Certainly

19 DIRECT EXAMINATION CONTINUED

20 BY MR LAWTON

21 Q How certain was he of the white male?

22 A Absolutely

23 Q. Absolutely certain?

24 A (Affirmative nod).

25 Q And how long did he take him to make an

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1 identification?

2 A On Mr Waldrop less than a second

3 MR LAWTON: One moment, Your Honor

4 THE COURT. Certainly

5 DIRECT EXAMINATION CONTINUED

6 BY MR LAWTON

7 Q Did you gather through your investigation
8 that Mr Nitterhouse have anything taken from
9 him?

10 A Yes. I learned through the investigation
11 that \$20 had been removed from the defendant --
12 I'm sorry, from the victim

13 MR LAWTON No further questions,
14 Your Honor

15 THE COURT Cross-examine?

16 MR SMILEY Yes, sir

17 CROSS EXAMINATION

18 BY MR SMILEY

19 Q So you were the first officer that had
20 contact with Mr Nitterhouse?

21 A Correct

22 Q And he told you -- described him being
23 robbed?

24 A Right.

25 Q And you were the first officer who received

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1 that information?

2 A Correct

3 Q And that's what you put in your report?

4 A Correct

5 Q In that he described the white male had a

6 gun?

7 A Yes

8 Q And demanded money?

9 A That's correct

10 Q He indicated that a black male got out of

11 the car Correct?

12 A Correct

13 Q He does not indicate that the black male did

14 anything other than get out of the car Correct?

15 A Correct

16 MR SMILEY Nothing further

17 THE COURT Redirect?

18 MR LAWTON No, Your Honor

19 (WITNESS STEPS DOWN)

20 THE COURT. Ladies and Gentlemen, at

21 this point we are going to take a recess for

22 lunch. While you are out, please do not begin

23 your deliberations, do not discuss this case

24 among yourselves and do not permit anyone to talk

25 about the case in your presence

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1 I am going to give you a little bit
2 longer I have a matter not related to this case
3 at 2 00 o'clock I think that it won't take any
4 longer than thirty minutes, so I would ask that
5 you be back in your jury room by 2:30 Do not
6 discuss the case until then

7 One thing. I have been advised that
8 some of you are uncomfortable in here and I
9 apologize about that That's the one thing that
10 -- I don't know precisely about this courthouse
11 but in the old courthouse, when you wanted to
12 change the heat you had to call Columbia, and
13 they in turn called Myrtle Beach, who called
14 somebody else I am advised that there is not a
15 lot that we can do about it If you have a coat,
16 sweater or overgarment, you certainly may wear it
17 in the courtroom if you want We will see if it
18 warms up after lunch for you Have a good lunch

19 (JURY OUT @ 12:40)

20 THE COURT Anything from the State
21 before recessing?

22 MR VOIGHT No, Your Honor

23 THE COURT Anything from the
24 defense?

25 MR SMILEY No, sir And, Your

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1 Honor, ---

2 THE COURT The Defendant is still on
3 bond, so he is free to leave.

4 MR. SMILEY. Thank you, Your Honor.

5 (LUNCH RECESS 12 40 - 2:50 P M)

6 (DEFENDANT PRESENT)

7 THE COURT Let the record reflect
8 that Mr Edwards is present Is there anything
9 from the State before we bring in the jury?

10 MR VOIGHT Nothing from the State

11 THE COURT Anything from the
12 defense, Mr Smiley?

13 MR SMILEY. No, Your Honor Thank
14 you

15 THE COURT Please bring in the jury,
16 Mr Robinson

17 (JURY IN @ 2 50 P M)

18 THE COURT Thank you, Ladies and
19 Gentlemen I hope that you had a good lunch
20 We are now ready to continue Solicitor, you
21 may call your next witness

22 MR VOIGHT Yes, sir. The State
23 calls Barry Goldstein.

24 (WITNESS TAKES STAND)

25 BARRY GOLDSTEIN, being

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1 duly sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows

3 DIRECT EXAMINATION

4 BY MR VOIGHT

5 Q You are a sergeant, is that correct?

6 A Yes, I am

7 Q How long have you been employed with the
8 City of Charleston Police Department?

9 A Twenty-nine (29) years

10 Q On the 10th of October, 2005, did you have
11 occasion to become involved in two armed
12 robberies of two College of Charleston students?

13 A Yes, sir

14 Q And can you tell the Ladies and Gentlemen of
15 the jury how you became involved in the
16 investigation?

17 A I was the detective on duty on the 4 00 to
18 12 00 shift when a dispatch went out that a
19 robbery had taken place around the College of
20 Charleston area

21 Q What did you do as a result of that
22 dispatch?

23 A. My responsibility as an investigator would
24 be to go and meet with the victim of the crime,
25 which I proceeded to do from the police station

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1 on Lockwood Boulevard

2 Q Where did you go?

3 A I went to the area of George and Cummings
4 Street

5 Q Who did you meet there?

6 A I met the victim of a robbery there

7 Q Do you recall his name?

8 A I don't have it in front of me No, sir.

9 Q Would a copy of your report refresh your
10 recollection?

11 A Yes

12 MR VOIGHT May I approach the
13 witness?

14 THE COURT You may

15 DIRECT EXAMINATION CONTINUED

16 BY MR. VOIGHT.

17 Q (Tenders document to witness)

18 A (Upon review), the name would be Joseph
19 Hoefer

20 Q With the information that you gathered from
21 Mr. Hoefer, what did you do?

22 A I began to take a written statement and I
23 had the police radio activated in the automobile
24 I was listening to radio dispatch going between
25 the dispatcher and the officers and a broadcast

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1 had been put out on the description of the
2 vehicle involved in this offense, by the uniform
3 officer who had gotten there before I did
4 Another officer, Officer Lopez, came up on the
5 radio spotting the vehicle, a vehicle that fit
6 that description, traveling on Calhoun Street in
7 the area of Meeting in an easterly direction

8 Q Did you relocate from where you were at the
9 College of Charleston area as a result of what
10 you heard on the radio?

11 A I did Once the vehicle was stopped by
12 uniform police officers, I then asked Mr Hoefer
13 to ride with me to view a lineup

14 Q Where did that lineup take place?

15 A It would have been -- the address would have
16 been 480 East Bay Street, which across the street
17 would be Calhoun Street and Charles It is right
18 there on East Bay, traveling north towards the
19 bridge

20 Q Now, as a result of what you learned in your
21 investigation, were the locations where the
22 robbery occurred as you have testified to and the
23 location where the identification procedure
24 occurred, are those located in the county of
25 Charleston?

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1 A. Yes, they are

2 Q What did you do when you reached East Bay
3 Street? What happened there?

4 A Persons who were inside of the automobile
5 were divided One would have been, uh, -- with a
6 uniform policeman, so they wouldn't have been
7 together The lineup would have been a one-on-
8 one. One person at a time

9 Q Were you with Mr Hoefer when he identified
10 -- or when he was shown people that came out of
11 the vehicles?

12 A. Yes, I was

13 Q Were you with Mr Hoefer when Thonal Edwards
14 was shown to him?

15 A Yes

16 Q. What, if anything, did he do when shown Mr.
17 Edwards?

18 A. He identified him as one of the assailants
19 involved in this robbery

20 Q Do you remember what Mr. Edwards' role would
21 have been in this robbery, based on what you
22 learned from your investigation?

23 A I don't remember exactly what his role would
24 have been, sir

25 Q. All right

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1 MR VOIGHT May I approach?

2 THE COURT Yes

3 DIRECT EXAMINATION CONTINUED

4 BY MR VOIGHT

5 Q While you were on East Bay Street, did you
6 help to collect any items from that vehicle?

7 A Yes Once these subjects were taken into
8 custody, I observed a black wallet in the front
9 seat of the automobile

10 Q Sgt Ambrose, I am going to ask you to turn
11 -- just a second, we're getting a countdown here,
12 we're getting close, it's (projector) warming up
13 I show you State's Exhibit 6 and ask if you can
14 identify that?

15 A Looks like the black wallet that I am
16 speaking of presently

17 Q Is that in the same place where you first
18 observed it?

19 A Yes

20 Q What did you do with that black wallet?

21 A I retrieved it, opened it up to find the
22 identification of the victim

23 Q. I am going to show what has previously been
24 marked as State's Exhibit 4 ---

25 MR SMILEY. Your Honor, it is not

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1 really an objection but since there are two
2 alleged victims, if he just identify who he is
3 speaking of when he uses the word "victim"

4 THE COURT All right

5 MR SMILEY Just to make it more
6 clear

7 DIRECT EXAMINATION CONTINUED

8 BY MR VOIGHT

9 Q Would you take a look at what I have put up
10 there on the screen, previously marked as State's
11 Exhibit 4 Do you recognize that?

12 A Yes, sir, it is the individual's name that I
13 just spoke of, that I was interviewing around the
14 College of Charleston. That's his name on the
15 College of Charleston identification and he was
16 the person standing there with me

17 MR VOIGHT The State would tender,
18 Your Honor

19 THE COURT Okay You may cross-
20 examine

21 CROSS EXAMINATION

22 BY MR SMILEY:

23 Q. That night you took a statement from Mr
24 Hoefer?

25 A Yes, sir

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1 Q When you took that statement, did you tell
2 him that you were trying to gather as much
3 information as you could to help with the
4 prosecution and apprehension of the individuals
5 responsible?

6 A Yes, sir

7 Q Or something to that effect I know that
8 those weren't the exact words but ---

9 A Right

10 Q Basically you wanted to get as much
11 information as you could about the incident?

12 A Yes, sir

13 Q And that's what you put down on paper He
14 wrote and you would ---

15 A I would ask him questions.

16 Q Right, and you would ask him as many
17 questions as you could to get as full a picture
18 as possible about what was going on?

19 A Yes, sir

20 MR SMILEY. Nothing further

21 THE COURT Redirect?

22 REDIRECT EXAMINATION

23 BY MR VOIGHT.

24 Q Sgt Ambrose, did you ask Mr Hoefer
25 anything about being grabbed by any of the

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1 assailants? Do you remember asking him any
2 questions or anything that he said about anything
3 like that?

4 A I would have to reflect off the statement

5 MR VOIGHT Thank you

6 THE COURT Recross?

7 RE CROSS EXAMINATION

8 BY MR SMILEY

9 Q The only question that I have is that you
10 asked him to accurately describe what happened,
11 didn't you?

12 A Yes, sir

13 Q And he gave you as much detail as possible
14 to get as full a picture as possible of what he
15 alleged happened?

16 A Yes, sir

17 MR SMILEY Nothing further

18 THE COURT You may come down

19 (WITNESS STEPS DOWN)

20 THE COURT Do you wish the witness
21 to be excused, Solicitor?

22 MR. VOIGHT: Yes, sir

23 THE COURT. Any objection?

24 MR SMILEY No objection

25 THE COURT You are free to leave,

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1 sir Thank you. You may call your next
2 witness

3 MR LAWTON Thank you, Your Honor
4 The State calls Sterling Dutton

5 (WITNESS TAKES STAND)

6 STERLING DUTTON, being
7 duly sworn to tell the truth, the whole truth and
8 nothing but the truth, testified, as follows

9 DIRECT EXAMINATION

10 BY MR LAWTON

11 Q How are you doing?

12 A Just fine

13 Q Please tell the jury how you're employed

14 A I am a sergeant with the Charleston Police
15 Department with the City of Charleston, I am a
16 detective in the Central Detective Division

17 Q All right How long have you been so
18 employed there?

19 A I have been with the Charleston Police
20 Department over twelve years

21 Q And you were working there on October 10,
22 2005?

23 A. Yes, sir, I was

24 Q Did you help investigate two armed robberies
25 that occurred at the College of Charleston that

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1 evening, around 9 50 p m ?

2 A Yes, sir, I did

3 Q Okay How were you brought into the case?

4 A The City of Charleston had a program at the
5 time called "Shop Spotters" Myself and another
6 officer was doing Shop Spotters, off-duty
7 assignment, the call went out and responded to
8 it

9 Q What did you do when you got there?

10 A When I got there, there was about three or
11 four other officers already present. I just kind
12 and helped at the scene for a minute, and then
13 went to the station

14 Q Again Showing you State's Exhibit Number 1
15 -- if you want to look at the card, you can
16 Would you please identify that and tell the jury
17 what it is?

18 A That is a Charleston Police Department
19 evidence tag with a case number on it, as well as
20 describing the evidence that it is attached to.

21 Q And what is that evidence?

22 A It is in reference to a case, with the
23 serial number, twenty dollars in U.S currency --
24 and it's in my handwriting, by the way I am the
25 one that wrote it

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1 Q Okay

2 A And it tells where I found it, it was found
3 in Eric Waldrop's pants pocket

4 Q Is that in substantially the same condition
5 as it was when you first located it?

6 A Yes sir, because I put it in the bag

7 MR LAWTON Your Honor, we would
8 offer that as State's Exhibit Number 1

9 THE COURT Any objection?

10 MR SMILEY. No objection

11 THE COURT Without objection, it is
12 admitted

13 (SO ENTERED AS STATE'S EXHIBIT 1)

14 DIRECT EXAMINATION CONTINUED

15 BY MR LAWTON

16 Q Throughout your investigation, were you able
17 to take a statement from anyone about this?

18 A Yes, sir, I did.

19 Q Who did you take statements from?

20 A Mr Waldrop, I believe

21 MR LAWTON No further questions,
22 Your Honor

23 THE COURT You may cross-examine

24 CROSS EXAMINATION

25 BY MR SMILEY

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- 1 Q And so you pulled the \$20 out of Mr
2 Waldrop's pocket?
- 3 A Yes, sir
- 4 Q And the gun had already been removed out of
5 his pocket?
- 6 A I was not there for that
- 7 Q All right, you did not take it?
- 8 A (Negative gesture)
- 9 Q But later, you searched him again and found
10 a \$20 bill?
- 11 A Yes, sir.
- 12 Q What pocket was it in, do you remember?
- 13 A No, sir, I don't All that I have is "pants
14 pocket".
- 15 Q Then you had an opportunity to sit down and
16 talk with Mr Waldrop?
- 17 A Yes, sir, I did
- 18 Q. And he waived his *Miranda* rights and spoke
19 to you?
- 20 A Yes, sir, he did
- 21 Q. As he was -- did he speak with you?
- 22 A. Yes, sir
- 23 Q And he provided you with a statement?
- 24 A Yes, sir.
- 25 Q In that statement, did he admit to having a

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1 gun?

2

3 A I would have to see the statement to tell
4 you that

5 Q. I can show it to you to refresh your memory,
6 (tendering) I will give you a second to read
7 over it

8 A (Upon review), okay

9 Q Does that refresh your memory?

10 A Yes, sir

11 Q. Now, if I could get that back to keep my
12 memory clear.

13 A (Tenders)

14 Q. Thank you Did he admit to having the gun?

15 A Yes, sir

16 Q Does he admit to robbing the individual?

17 A He admits to jumping out

18 Q. And taking the money?

19 A Right

20 Q And did he say in that statement, T J , as
21 my client is known, and Dante, the other
22 gentleman driving the car, did nothing wrong?

23 A. Yes, sir

24 Q And this statement that you took was shortly
25 after his arrest, correct?

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- 1 A About forty-five minutes to an hour
- 2 Q And when you took that statement, T J had
- 3 been read his *Miranda* rights?
- 4 A Oh, yes sir
- 5 Q He did not request an attorney
- 6 A (No verbal response)
- 7 Q Did -- you asked him some questions or asked
- 8 him to tell you what had happened, and he
- 9 complied?
- 10 A Yes, sir
- 11 Q And in that statement he said that T J.
- 12 didn't do anything wrong?
- 13 A That's what he told me, yes sir.
- 14 Q Did he also tell you in that statement that
- 15 he, T J , had jumped out of the car, he and
- 16 Dante, had jumped out of the car and gone over to
- 17 where the fellow was at?
- 18 A Yes, sir That is in the statement
- 19 Q Told him that he was going to 'beat his ass'
- 20 and took his money? That's in that statement
- 21 A That's correct
- 22 Q When you taking this statement from Mr.
- 23 Waldrop, you were trying to get him to tell you
- 24 everything that happened
- 25 A Correct

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- 1 Q You wanted to hear everything, correct?
- 2 A Yes, sir
- 3 Q And that is what is in the statement?
- 4 A (Affirmative nod), I wrote down what he told
- 5 me
- 6 Q All right Mr Waldrop, was he intoxicated?
- 7 A (No response)
- 8 Q Did he appear intoxicated?
- 9 A Yes, sir, that's in the statement
- 10 Q One last question, when you were questioning
- 11 Eric Waldrop did he tell you that T J or Dante
- 12 had any prior knowledge of what he was going to
- 13 do?
- 14 A That's not ---
- 15 Q Did he mention that?
- 16 A That is not in the statement. No, sir
- 17 Q Did he mention it otherwise?
- 18 A Not that I know of
- 19 Q He didn't tell you that these guys knew what
- 20 was going on? He didn't tell you that Correct?
- 21 A (No response)
- 22 Q He actually said that they did nothing
- 23 wrong Didn't it?
- 24 A I don't know
- 25 Q I'm sorry, I am not communicating well I

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1 get moving too fast

2 When you were taking this statement did Mr
3 Waldrop ever indicate to you that Mr. Edwards or
4 Mr McKelvy, the fellow known as Dante, had any
5 prior knowledge of what he was going to do

6 A I -- I wrote exactly what he told on the
7 statement

8 Q And in that he never mentioned that they
9 knew

10 A No

11 Q Okay

12 MR SMILEY Nothing further

13 THE COURT Redirect?

14 MR. LAWTON. Yes, sir, Your Honor

15 REDIRECT EXAMINATION

16 BY MR LAWTON-

17 Q Since you have been refreshed with the
18 statement and in talking with Mr Smiley, did he
19 admit that the ever used a gun when he got out?

20 A (No response)

21 Q You can use that statement if you need to
22 refresh yourself Did Mr Waldrop ever admit
23 using the gun when he got out on Mr Hoefer?

24 A (Upon review), no, sir He did not

25 Q. Okay. And after refreshing one more time,

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1 did he admit to anything about being involved
2 with Colby Nitterhouse, the second victim, in
3 that statement?

4 A (Upon review), no No, sir

5 Q How many victims were involved in that case?

6 A Two

7 Q But in the statement what does he say?

8 A. The statement -- in the statement there is
9 only one.

10 Q Let me get that back

11 A (Tenders)

12 MR LAWTON: All right One moment,
13 Your Honor No further questions

14 THE COURT Recross?

15 RECROSS EXAMINATION

16 BY MR SMILEY

17 Q Did you ask him if he was involved with Mr
18 Nitterhouse?

19 A In the statement, I wrote down everything
20 that he told you

21 Q So he neither admitted nor denied Colby
22 Nitterhouse?

23 A No

24 Q He admitted to robbing Mr. Hoefer?

25 A He admitted to jumping out and telling him

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1 that he was going to kick his ass

2 Q And taking his wallet?

3 A The guy handed him his wallet

4 Q And he also said very clearly, in the
5 information that he provided to you, that Dante
6 and T J did nothing wrong, correct?

7 A He said that they did not

8 Q That's what he told you?

9 A Yeah

10 Q And you wrote it down?

11 A (Affirmative nod).

12 Q That T J and Dante did nothing wrong?

13 A Right

14 MR LAWTON One more brief question

15 THE COURT No, sir

16 MR LAWTON No, sir?

17 THE COURT No

18 MR LAWTON All right

19 THE COURT You may come down

20 (WITNESS STEPS DOWN)

21 THE COURT Do you wish for the
22 witness to be excused?

23 MR LAWTON Yes, sir

24 MR SMILEY No objection.

25 THE COURT You are free to leave

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1 Solicitor, you may call your next witness

2 MR VOIGHT Thank you very much, Your
3 Honor May it please the Court, the State would
4 call Colby Nitterhouse

5 (WITNESS TAKES STAND)

6 COLBY NITTERHOUSE, being
7 duly sworn to tell the truth, the whole truth and
8 nothing but the truth, testified, as follows

9 DIRECT EXAMINATION

10 BY MR VOIGHT.

11 Q. Mr Nitterhouse, where do you go to college?

12 A. College of Charleston

13 Q How long have you gone there?

14 A. This is my last year

15 Q. Were you a College of Charleston student in
16 October of 2005?

17 A Yes, sir

18 Q What were you studying?

19 A Right then it was undergraduate
20 requirements

21 Q Where were you on October 10th at
22 approximately 9 55 p m ?

23 A I was leaving the Stern Center I'd got
24 some dinner and I was going back to the dorm room
25 in Craig

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1 Q Where were you walking?

2 A It was down St. Phillips, I was making a
3 right onto George Street where the Craig dorm is
4 located

5 Q. Was it a well-lit area or was it fairly
6 dark?

7 A There are street lights all along St
8 Phillips and Craig, especially out in front of
9 the dorm

10 Q Were you walking by yourself or did you have
11 anybody else with you?

12 A I was by myself

13 Q What happened?

14 A I was leaving Stern and a blue car drove by
15 me and stopped at the red light, the intersection
16 of St Phillips and George I caught up to them,
17 they were still at the light I walked past
18 them, the windows were down and they asked for
19 directions to I-26 I stopped to talk to them
20 and they proceeded to exit the car, the front
21 passenger and rear passenger, at the same time,
22 came out and was walking towards me I was
23 giving them directions The white male, that's
24 when he pulled out a gun, pointed it into my
25 stomach and asked for my wallet

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1 Q. When they got out of the car, did you feel
2 threatened in any way?

3 A Well, I thought about it but they just
4 continued to ask directions, said that they were
5 from out of state and just wanted to know how to
6 get onto I-26 Did I think I was being robbed?
7 No.

8 Q What did the front seat passenger look like,
9 do you recall?

10 A He was a short white male with a buzz
11 haircut

12 Q Do you recall what the guy, the backseat
13 passenger looked like?

14 A He was a black male, I guess like 6'2",
15 skinny He wasn't the one talking He got out
16 with him and walked over there with him

17 Q What did the front passenger do? When he
18 got out of the car, where did he walk?

19 A. They both walked right towards me The
20 white male, you know, came face to face as when
21 you're talking to someone He came out to my
22 right and stood, you know, arms length, the same
23 distance, right beside him.

24 Q Did the person who was in the backseat, the
25 rear seat passenger, did he say anything to you

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1 at any time?

2 A No.

3 Q What did the person, the front seat
4 passenger do or say?

5 A I don't remember exactly what he said
6 He was just asking directions, not threatening or
7 anything Then he pulled the gun and said, 'Give
8 me your wallet '

9 Q What did the gun look like?

10 A. It was a black, automatic handgun

11 Q Let me show you what has previously been
12 marked as State's Exhibit 8 and ask you to take a
13 look at that if you can.

14 A It was definitely a gun of that sort,
15 (affirmative nod) It looked the same

16 Q What did you do after he said that to you,
17 what did you do then?

18 A I pulled out my wallet and told him that I
19 only had like twenty dollars and I'd like to keep
20 my wallet and everything because I wanted to keep
21 that They said 'just cash', so I handed them my
22 twenty dollars

23 Q Who did you hand the money to?

24 A The white male

25 Q What happened next?

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1 A Then the driver that had made the right onto
2 St Phillips, he pulled around on St Phillips
3 and was waiting there The two men, they got
4 back in the car and started to drive away. I got
5 my phone out and they stuck their head out the
6 window and said, 'Putting your fucking phone
7 away, keep your hands where I can see them.'
8 So I stood there. Then I walked down to the
9 Craig dorm entrance where there is a security
10 guard and we called the police.
11 Q Was there anything particular about the car
12 that you can remember?
13 A The muffler definitely stood out, it was
14 extremely loud compared to a regular car
15 Q Did there come a time when you met with some
16 police officers?
17 A Yes, shortly after It was really very
18 long I started filling out a college security
19 form I'd wrote a little bit down there and then
20 the City police showed up and Mr Ambrose -- I am
21 not quite of his name I got in the car with him
22 and went to the lineup
23 Q Did you identify anybody when you got to
24 where the officer was taking you?
25 A Yeah The white male, I was a hundred

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1 percent certain that's who it was That is who I
2 was talking to giving directions, that's who had
3 the gun and that's who I was focused on

4 I knew that the driver had a hat on but I
5 didn't get a good look at him because he was in
6 the car the whole time I knew that he had a hat
7 on but he didn't even -- just the other two males
8 had gotten out of the car

9 Q The guy with the gun, had you ever met him
10 before? Did you know him?

11 A No

12 Q Did you know any of these guys?

13 A No, sir

14 MR VOIGHT: One moment, Judge

15 THE COURT Sure

16 MR VOIGHT: I tender

17 THE COURT Cross-examine?

18 CROSS EXAMINATION

19 BY MR SMILEY

20 Q Did Mr. Edwards ever touch you?

21 A No

22 Q Did he ever say anything to you?

23 A No

24 Q You said that the car was pulling away and
25 they said to get off the phone, don't call the

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1 police

2 A (Affirmative nod)

3 Q. That was the white guy?

4 A. Yes

5 Q. He was the one hanging out the window
6 telling you that?

7 A (Affirmative nod)

8 THE COURT. Is that a "yes"?

9 WITNESS. Yes, sir

10 CROSS EXAMINATION CONTINUED

11 BY MR SMILEY.

12 Q You said that the robbery took place in
13 front of the Craig dorm?

14 A. Yes, I could see the entrance

15 Q. Could you see the security guard?

16 A No, not really

17 Q When the white guy put the gun in your side,
18 it wasn't like it was out in the open where
19 everybody could see It was up close, right?

20 A Right, he was pointing it right at me

21 Q He took twenty dollars from your pocket?

22 A When he told me to give it to him, I gave it
23 to him

24 Q You gave him twenty dollars?

25 A (Affirmative nod) -- yes

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1 MR. SMILEY I beg the Court's

2 indulgence

3 THE COURT Yes, sir.

4 CROSS EXAMINATION CONTINUED

5 BY MR SMILEY

6 Q. The white fellow, did he look like he was
7 drunk? Did he appear intoxicated to you?

8 A. No It never crossed my mind

9 Q. It never crossed your mind?

10 A (Negative gesture)

11 Q Okay During the entire evening he never
12 spoke to you?

13 A. No

14 Q. And he never touched you?

15 A No

16 MR SMILEY: That's all, Your
17 Honor

18 THE COURT Redirect?

19 MR. VOIGHT No redirect

20 THE COURT All right, you may come
21 down

22 (WITNESS STEPS DOWN)

23 THE COURT You may call your next
24 witness

25 MR VOIGHT At this point, Your

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1 Honor, the State rests

2 THE COURT Very well. Ladies and
3 Gentlemen, at this point there are some matters
4 of law that I need to take up out of your
5 presence Do not begin your deliberations, don't
6 discuss this case among yourselves We will be
7 with you in probably about fifteen to twenty
8 minutes

9 (JURY OUT)

10 THE COURT Any Motions from the
11 State at this point?

12 MR VOIGHT No Motions from the
13 State

14 THE COURT Mr Smiley, I will be
15 glad to hear from you

16 MR SMILEY Your Honor, I would
17 make a Motion for directed verdict In looking
18 in the light most favorable to the State, they've
19 certainly relied on accomplice liability in this
20 case Under accomplice liability, they have to
21 have more than mere presence that my client
22 intended to be a part of what Mr Waldrop was
23 contemplating. The State has not established any
24 evidence to show that my client intended to be a
25 part of Mr Waldrop was doing He was merely

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1 present, and I would ask that you consider that

2 THE COURT All right

3 THE COURT It is overwhelming

4 considered in the light most favorable to the

5 State Thank you.

6 MR SMILEY Quite frankly, Your
7 Honor, this case has gone at lightening speed
8 compared to what I thought it would. Could I
9 have a few minutes with my client before we
10 present the case for the defense?

11 THE COURT Certainly. And I need to
12 examine him concerning his testifying

13 MR SMILEY (Affirmative nod),
14 that's what I need to talk with him about

15 THE COURT All right, we will be at-
16 ease for a few minutes

17 MR SMILEY Thank you

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT Mr Smiley, do you wish
21 to call any witnesses?

22 MR SMILEY My client wishes to
23 testify, Your Honor

24 THE COURT. Very well Mr Edwards,
25 let me ask you a question You had an

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1 opportunity just a few moments ago, and I assume
2 before today as well, to talk with your lawyer
3 about your right to testify or not testify in
4 this matter Is that correct, sir?

5 DEFENDANT. Yes, sir.

6 THE COURT. And you understand that
7 it if your right to testify, if you so wish?

8 DEFENDANT Yes, sir.

9 THE COURT. And you further
10 understand, as I have already told the jury in
11 this matter, you don't have to testify at all
12 You have nothing to prove

13 If you chose not to testify, I would
14 tell the jury that they could not consider that
15 when they are in deliberations Do you
16 understand that?

17 DEFENDANT. Yes, sir

18 THE COURT Your lawyer tells me that
19 after full consultation that you wish to testify,
20 is that correct?

21 DEFENDANT Yes, sir

22 THE COURT You realize that if you
23 testify that you will subject to cross-
24 examination, just as any of the other witnesses?

25 DEFENDANT Yes, sir

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1 THE COURT: Have you had a sufficient
2 opportunity to reflect on this decision, sir?

3 DEFENDANT: Yes

4 THE COURT Are you under the
5 influence of any alcohol, any medication here
6 today, sir?

7 DEFENDANT No, sir

8 THE COURT: Do you know of anything
9 that is affecting your ability to make this type
10 of decision?

11 DEFENDANT No, sir

12 THE COURT If at any point, sir, you
13 wish to change your mind before actually taking
14 the stand, if you will let your attorney know
15 that we will excuse the jury and I will discuss
16 the matter further with you If you take the
17 stand, I will assume that you are doing that
18 based on what you have decided to do and that you
19 weren't threatened in any way or promised
20 anything to cause you to testify

21 Has anybody promised you anything or
22 threatened you in any way, sir?

23 DEFENDANT No, sir

24 THE COURT Thank you very much Oh,
25 let me ask you, are you satisfied with the manner

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1 in which your attorney has advised you concerning
2 this issue?

3 DEFENDANT: Yes, Your Honor

4 THE COURT Very well, I find that
5 Mr Edwards has certainly had the benefit of very
6 competent counsel in this proceeding, that he has
7 indicated that he is satisfied with advice and he
8 has had an opportunity to discuss fully with him
9 the right to testify or not to testify He has
10 demonstrated a full and complete understanding.
11 I find nothing that would suggest that he is
12 under the influence of anything that would affect
13 his ability to make this decision I find the
14 decision to be one that he makes freely,
15 voluntarily, knowingly and intelligently Thank
16 you very much

17 Okay, are we ready to proceed?

18 Do you have any other witnesses other than that?

19 MR SMILEY I have possibly one
20 other

21 THE COURT: Very well Is the State
22 ready to proceed?

23 MR VOIGHT Yes, Your Honor

24 THE COURT Ask the jury to return,
25 please

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1 (JURY IN @ 3 45 P M)

2 THE COURT. Thank you, Ladies and
3 Gentlemen. We are ready to continue in this
4 matter Mr. Voight, as I understand, the State
5 has rested?

6 MR. VOIGHT: Yes, Your Honor

7 THE COURT Mr Smiley, does the
8 defendant wish to present any evidence?

9 MR. SMILEY: Yes, Your Honor

10 THE COURT Very well you may call
11 your first witness

12 MR. SMILEY. Thank you, Your Honor
13 We call T J Edwards, Your Honor

14 (WITNESS TAKES STAND)

15 THONAL J EDWARDS, being
16 duly sworn to tell the truth, the whole truth and
17 nothing but the truth, testified, as follows

18 DIRECT EXAMINATION

19 BY MR. SMILEY:

20 Q Thonal, is it okay if I call you "T J"?

21 A Yes, sir

22 Q Is that the name that people call you by?

23 A No, sir

24 Q They call you "Thonal"?

25 A Yes, sir.

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- 1 Q Okay I have a hard time tripping over
2 "Thonal", I will call you "T J "
3 A Okay.
4 Q How old are you?
5 A I am twenty-two years old, as of today
6 Q Today is your birthday
7 A (Affirmative nod)
8 Q I just realized that Happy Birthday
9 I am sorry that you have to be present here
10 Where are you from?
11 A. I am from Greenville, South Carolina
12 Q You grew up in Greenville?
13 A Yes, sir
14 Q How far did you go in school?
15 A I graduated from high school
16 Q Was that in Greenville?
17 A Yes, sir
18 Q Do you work?
19 A Yes, I work for the School District
20 Q Now, I want to turn your attention back to
21 October 2005 Would you please explain to the
22 jury how and why you got to Charleston?
23 A It started on Sunday I went over to one of
24 my friend's house, he stayed with his girlfriend,
25 and we was over there watching the game It was

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1 spontaneous, they just asked or he asked if I
2 would be willing to take a ride with him to
3 Charleston I had never been there before and,
4 uh, ---

5 Q What else -- so you were at your friend's
6 house?

7 A (Affirmative nod), at my friend's house

8 Q Who were you there with?

9 A I was with my friend That would be Dante

10 Q Dante McKelvey

11 A. McKelvey, (affirmative nod)

12 Q He was also charged in this case?

13 A Yeah.

14 Q Who asked you to come down to Charleston?

15 A Dante had presented the offer to me

16 Q All right So Dante asked you if you wanted
17 to ride with him to Charleston and you agreed
18 When did you get to Charleston?

19 A I am not quite sure It would be later on
20 that night

21 Q Sunday night?

22 A Yes, sir

23 Q When you got there -- where did you go next?

24 A Straight to his house

25 Q Whose house?

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- 1 A Oh, -- Eric's Excuse me I don't really
2 know his last name
3 Q The third party that was ---
4 A Yes, sir, the third party
5 Q Did you ride down with him?
6 A I did not ride with him I drove my own
7 car
8 Q So Dante and you were in one car?
9 A Yes
10 Q This was your car?
11 A Yes
12 Q Eric was in another?
13 A Yes
14 Q He was on his way back to Charleston?
15 A To Charleston
16 Q So when you got there, you went to Mr
17 Waldrop's house, the white guy's house?
18 A Yes, sir
19 Q Where did Eric live?
20 A I couldn't tell you
21 Q When you got there, was there anybody else
22 there?
23 A I believe that his father or maybe it was
24 his stepfather, they lived there by themselves
25 Q And so -- just to clarify for the jury, how

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- 1 did you meet Mr Waldrop?
- 2 A He was Dante's girlfriend's boyfriend
- 3 Q Dante's girlfriend?
- 4 A Dante's girlfriend's boyfriend Yes
- 5 Q Where was his girlfriend?
- 6 A The two girls stayed together in the hotel
- 7 Q Okay After you got to Charleston, after
- 8 you left Eric's house, where did you go?
- 9 A He just wanted to show us around
- 10 Q Pardon?
- 11 A He just wanted to show us around.
- 12 Q Where did you go?
- 13 A I am not sure, just a lot of bars.
- 14 Q Were you in downtown Charleston?
- 15 A. Downtown Charleston
- 16 Q On a Sunday evening?
- 17 A The next day, Monday
- 18 Q. So on Monday he was showing you around?
- 19 A. Yes
- 20 Q Did you'all go from bar to bar, is that fair
- 21 to say?
- 22 A Yes, sir
- 23 Q In the process of doing that, did Mr.
- 24 Waldrop at any time present a weapon?
- 25 A Repeat that again? I'm sorry

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1 A At any time, did Mr Waldrop ever show you
2 or present a weapon?

3 A Yes, sir, he did

4 Q Tell the jury when was the first time that
5 you saw a gun?

6 A It was earlier that day right before we had
7 took off, he had mentioned something about
8 robberies around Charleston taking place and that
9 that's why he had it

10 Q So he showed you the gun?

11 A Yes

12 Q And that was at his house?

13 A Yes, sir

14 Q At some point did you touch the gun?

15 A Yes, sir, I did

16 Q What was it -- when you touched the gun,
17 when and why did you touch it?

18 A The second time that I did get to see the
19 gun, it wasn't that I wanted to It was forced
20 upon me

21 Q By who?

22 A Eric

23 Q What do you mean "forced" upon you?

24 A. He had took it out and he was messing around
25 with it

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1 Q. Mishandling it?

2 A Yes, sir

3 Q. What did you do?

4 A I asked him to give it to me

5 Q When he showed you the gun the second time,
6 where were you?

7 A I was in the car

8 Q Okay Had you'all already started bar
9 hopping?

10 A Yeah

11 Q At the time that he presented the gun the
12 second time and you took it, what did you do?

13 A I felt threatened, more than once, so I took
14 the clip out of it

15 Q You took the magazine out of it?

16 A Magazine Yeah

17 Q For your safety and -- explain to this jury
18 what you mean when you say "threatened" Tell
19 this jury what you mean by that

20 A This wasn't my first time around any weapon
21 I mean, you know, I know how to handle a weapon
22 But it was the manner and, uh, body language and
23 I -- I just wasn't going to trust nobody that I
24 don't know like that with my life -- just showing
25 it around

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- 1 Q So you took the clip out?
- 2 A (Affirmative nod)
- 3 Q What did you do with it?
- 4 A Put it in my pocket
- 5 Q All right, what did you do with the weapon
- 6 when you took the clip out?
- 7 A. I gave it back to Eric
- 8 Q All right At these bars, had you all been
- 9 consuming alcohol?
- 10 A Yes Yes, sir
- 11 Q Do you feel like you were inebriated?
- 12 A No, sir
- 13 Q What was -- how did Eric appear?
- 14 A One too many Same effect
- 15 Q Do you remember the names of any of the bars
- 16 that you went to?
- 17 A No, not by the name
- 18 Q When you saw and took the weapon the second
- 19 time, did you'all go to bar after that?
- 20 A No By then we had parked the car to go
- 21 into a gas station to get something else to
- 22 drink
- 23 Q Did you have a conversation with Dante about
- 24 this?
- 25 A No, I didn't

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1 Q How were you feeling about the situation
2 with Mr Waldrop showing the gun and everything
3 else at that time?

4 A Caution I was not totally safe, I wasn't
5 familiar with my surroundings But I felt like I
6 was somewhat in control

7 Q At the time when he handed you the gun?

8 A Yes, sir

9 Q Did you clear the gun?

10 A No, sir

11 Q So you didn't know if there was one in the
12 chamber or not?

13 A No, sir

14 Q Now, let's talk about the incidents that
15 happened on Cummings and George -- and I know
16 that you don't know the streets down there
17 The first incident -- all right?

18 A Yes, sir.

19 Q Leading up to that incident, was there any
20 discussion in that car about robbing anybody?

21 A No, sir

22 Q When the car stopped -- Dante was driving,
23 right?

24 A Yeah

25 Q And Eric was in the front seat and you were

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- 1 in the backseat?
- 2 A Yes
- 3 Q Whose car was that?
- 4 A It was Eric's car
- 5 Q It was Eric's car?
- 6 A Yeah
- 7 Q Why wasn't Eric driving?
- 8 A Because that was when he was intoxicated
- 9 enough to know that he shouldn't be driving
- 10 Q So Dante took over driving?
- 11 A He took over, correct
- 12 Q When you pulled up to the fellow on
- 13 Wentworth Street, what was the purpose?
- 14 A By that time there was no purpose for
- 15 anything Right after we had pulled up, Eric had
- 16 mentioned to watch him That was his statement,
- 17 to watch him
- 18 Q What did you take that to mean?
- 19 A That there was -- 'watch me' You know,
- 20 'watch me ' I mean, I knew something was going
- 21 to happen, nothing good could come of it
- 22 Q You knew that something was ---
- 23 A (Affirmative nod)
- 24 Q Was he like showing off or ---
- 25 A Yeah He was showing off for me and Dante

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1 I believe that he had mention that he did knew
2 the two fellows, that they had went to school ---
3 Q He definitely said ---
4 A That's what he said
5 Q When he jumped out was there -- was there a
6 request for directions?
7 A Yes, there was.
8 Q. Did you'all know where you were, you and
9 Dante?
10 A No, we didn't
11 Q Okay When Eric got out of the car -- okay?
12 A (Affirmative nod)
13 Q. When Eric got out of the car, you need to
14 explain to this jury why you got out of the car?
15 A My assumption was that he -- he'd stated for
16 me to watch him, not so much for me to watch what
17 he was going to do but it was for me to watch him
18 do something that I wouldn't want him to do
19 The reason that I got out of the car was for me
20 to be able to control what I thought, and I
21 pretty much knew, would have been a bad outcome
22 Not on my part but his
23 Q So are you telling the jury that you were --
24 that you wanted to control the situation What
25 do you mean?

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- 1 A I didn't want to get, uh, Colby, the victim,
2 I didn't him to get shot. I didn't know if he
3 was going to get shot, I didn't know ---
4 Q If you had the clip, ---
5 A I didn't know if he had other bullets, I
6 didn't know if he had another clip
7 Q Okay So did you fact tell the first
8 gentleman not to move?
9 A Not to my knowledge
10 Q Were you standing close to him?
11 A Yes, sir
12 Q Why?
13 A I didn't want him to, in any form or
14 fashion, hinder himself He was getting into a
15 situation that he didn't know that he was getting
16 into
17 Q All right Did you know when he got out of
18 the that he -- "he" being Eric --
19 A Being Eric, (affirmative nod)
20 Q Did you know that he was going to rob
21 anybody?
22 A No, sir
23 Q All you knew was that whatever he was going
24 to do that it wasn't good?
25 A Correct.

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- 1 Q Did he ask you to participate in any form or
2 fashion?
3 A Negative
4 Q Didn't he say to watch him or something.
5 A He said to watch him
6 Q Did you respond, other than getting out of
7 the car and standing there?
8 A Other than getting out of the car, no
9 Q. At any point in time did you -- do you
10 remember touching the front gentleman?
11 A No, sir
12 Q Did you go through his pockets?
13 A No, sir
14 Q Did you make any threats to him?
15 A No, sir
16 Q Now, you saw him hand over the wallet?
17 A Yes, sir
18 Q He gets back in the car?
19 A (Affirmative nod)
20 Q Why did you get back in the car?
21 A One, he told me Eric told me to. Like I
22 said, I was unsure of the total -- I didn't know
23 where he was I was put in a situation that I'd
24 never been in before and, you know, -- I should
25 have, but I didn't

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1 Q You got back in the car?
2 A Yes, sir
3 Q The car pulled down the corner and went down
4 a little ways?
5 A Yes, sir
6 Q Was there a discussion inside the car?
7 A Yes, sir
8 Q What was the discussion?
9 A After ---
10 MR. VOIGHT Objection
11 MR SMILEY What?
12 THE COURT Hearsay objection, I
13 sustain the objection
14 MR SMILEY If I may be heard,
15 Your Honor
16 THE COURT. Yes, sir. I will be
17 happy to hear you
18 (OFF RECORD SIDEBAR)
19 THE COURT Thank you, sir I
20 sustain the objection
21 DIRECT EXAMINATION CONTINUED
22 BY MR SMILEY
23 Q All right So the car comes around the
24 corner?
25 A (Affirmative nod)

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- 1 Q There is conversation in the car?
- 2 A (Affirmative nod)
- 3 Q Then the car stops again?
- 4 A Yeah
- 5 Q At this point what happened?
- 6 A At this point, what I acknowledged would
7 happen happened, my assumption was correct, and
8 it was going to happen again.
- 9 Q Did he say -- withdrawn. What happened
10 next?
- 11 A. Eric jumped out of the car
- 12 Q Did you follow him?
- 13 A Yes
- 14 Q At this point in time, describe to the jury
15 the second event
- 16 A I guess in the most humblest way that I
17 possibly could -- Eric approached the second
18 victim, asked him for directions, and my body
19 language -- like I said, I tried to say -- I
20 tried to sit there and not say anything that
21 would hurt him in any way
- 22 Q After that what happened?
- 23 A We got back in the car.
- 24 Q What happened after that?
- 25 A No farther than a couple feet, a couple of

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- 1 yards, three or four minutes, we got pulled over
2 by the police
3 Q So is it fair to say that a couple of
4 minutes after that, that the police stopped you?
5 A Correct
6 Q They took everybody out of the car?
7 A No, sir, they took Eric out
8 Q. Eric?
9 A (Affirmative nod), just Eric
10 Q After they took Eric out, what did they do?
11 A They found the gun and someone yelled "Gun!"
12 and it was a felony stop after that
13 Q What do you mean, a felony stop?
14 A Everybody got thrown out of the car and the
15 police searched it
16 Q The police found the gun?
17 A Yes, sir
18 Q They pulled you out of the car?
19 A Yes, sir
20 Q And you were searched?
21 A Yes, sir
22 Q What did the police find on you?
23 A My license, credit card, \$1,500 and a mag
24 Q The clip?
25 A (Affirmative nod), correct

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- 1 Q Did the officer ask you about the magazine?
- 2 A Yes, sir, he did
- 3 Q That was the officer right there on the
- 4 scene?
- 5 A Yes, sir
- 6 Q What did he ask you?
- 7 A. He asked me why did I have the mag
- 8 Q What was your response?
- 9 A My safety
- 10 Q Did you give any further explanation to him
- 11 at that time?
- 12 A Yeah, I believe that he asked me one more
- 13 time and I gave him the same answer
- 14 Q All right Now, you were taken to the
- 15 police station?
- 16 A Correct
- 17 Q You'd never been convicted of anything
- 18 before?
- 19 A No, sir
- 20 Q So they were taking you down to the police
- 21 station?
- 22 A Correct
- 23 Q For questioning?
- 24 A Yes
- 25 Q So you were in a room with one or two

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1 officers, right?

2 A. I -- (pause)

3 Q When you get to the police station, describe
4 what was ---

5 A The holding cell, awful, terrible

6 Q Okay

7 A I think that I stood there all night Then
8 in the morning they redressed me, put me in some
9 paper clothes and took me up to an office to let
10 the detectives question me

11 Q. And you provided a statement?

12 A Yes, sir

13 Q In that statement, Mr Edwards, did you tell
14 the whole truth?

15 A Yes, sir

16 Q Did you tell those officers that you knew
17 what Eric was doing?

18 A No, sir, I didn't.

19 Q When in fact you did know what he was doing?

20 A Yes, sir

21 Q Why is that? Why didn't you tell them that
22 you knew what he was doing?

23 A Anxiety, a loss of sense of everything I'd
24 never been put in that situation before, I was
25 trying to distance myself as much as possible

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- 1 Q. When you'all were driving in the car, did
2 Eric give you any of the money?
3 A. No, sir
4 Q. Did it give it to Dante?
5 A No, sir
6 Q. Did he show you what was in the wallet that
7 he took?
8 A He tried to
9 Q Why did you say that? What was your
10 response?
11 A I looked away. I didn't ---
12 Q You didn't want anything to do with that
13 A Yes, sir
14 Q Okay Pleading the Fifth in this courtroom
15 means something different I want to be sure
16 that ---
17 A I mean, -- excuse me
18 Q The next morning when the officers talked to
19 you, they read you your rights, didn't they?
20 A Yes, sir
21 Q And you waived them?
22 A Yes, sir
23 Q They told you that you didn't have to,
24 correct?
25 A Correct

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1 Q So why did you provide them with a
2 statement?

3 A Not being in the situation before, I thought
4 that it would help them out I was looking to
5 help the police force out

6 Q Okay

7 MR SMILEY Please answer any
8 questions that the solicitor might have

9 DEFENDANT Yes, sir

10 THE COURT You may cross examine

11 MR VOIGHT Thank you very much, Your
12 Honor

13 THE COURT Yes, sir

14 CROSS EXAMINATION

15 BY MR VOIGHT

16 Q Mr Edwards, ---

17 A. Yes, sir?

18 Q You said a lot of things, I want to go
19 through them and I hope that I will go through
20 them in roughly the same order that Mr Smiley
21 did

22 Q. Let me see if I understand what I think that
23 you testified the motives were When you got out
24 of the car when Mr Waldrop was robbing Mr.
25 Hoefer, you were doing that to help Mr Hoefer

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1 Is that what you are testifying to?

2 A Yes, sir

3 Q And when you took possession of the clip you
4 were doing that to help everybody, including
5 yourself, to keep everybody safe?

6 A Exactly

7 Q And when you got out of the car when Mr
8 Waldrop robbed Mr Nitterhouse, you were trying
9 to help Mr Nitterhouse by getting out of the car
10 and walking up?

11 A Correct

12 Q And when you gave a statement to the police,
13 you didn't tell them everything, you were trying
14 to help them solve their case Right?

15 A No, I was trying to tell them what they
16 needed to hear, what Eric had did, not so much
17 what I did

18 Q. And you tried to help them by leaving out
19 certain facts about your role in those robberies,
20 correct?

21 A Yes, sir

22 Q And you thought that distance would be
23 helpful to the officers in solving this case?

24 A I assumed so.

25 Q You were just trying to help them?

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1 A Correct.

2 Q Now, we start out on Sunday in Greenville,
3 South Carolina. That's where you are from,
4 right?

5 A Correct

6 Q Before that Sunday, did you know Eric
7 Waldrop at all?

8 A No, sir

9 Q And he was in Greenville visiting friends of
10 friends, correct?

11 A That's correct

12 Q You knew Dante?

13 A Yes, sir

14 Q And you and Dante decided to go to
15 Charleston with Eric Waldrop, who you didn't
16 know

17 A Eric was a friend of Dante's I am a friend
18 of Dante's I went down there with Dante to meet
19 a friend that he knew, which was Eric

20 Q When you were in Greenville, did you see the
21 gun?

22 A. No, sir

23 Q Did you see the gun when you came to the
24 Charleston area?

25 A No, sir

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1 Q You testified that Eric had shown you the
2 gun, though, the day before when you'all had went
3 out to the bars, right?

4 A That was Sunday

5 Q And Sunday is the day that you traveled to
6 Charleston?

7 A Yes, sir

8 Q You spent the night at Eric's house?

9 A Yes Yes, sir We got there late, pulled
10 over to sleep

11 Q Then sometime on Monday you testified that
12 Eric was going to show you around, right? He was
13 going to show you around Charleston?

14 A Yes, sir

15 Q A city that you had never been to?

16 A Correct

17 Q And you knew when he left the house that he
18 had a gun in his pocket, correct?

19 A Correct

20 Q You didn't think that was a problem at that
21 time, did you?

22 A No, sir

23 Q You have some familiarity with guns, so that
24 didn't ring any alarm bells with you, did it?

25 A Say that one more time

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- 1 Q You had some familiarity with guns That's
2 what you testified to
- 3 A Correct
- 4 Q. And the fact that Eric was carrying a gun,
5 that didn't bother you Did it?
- 6 A. No, sir, not until he started handling it
- 7 Q And you knew when you left that day that
8 you'all were going to be heading to bars, or at
9 least that was the plan?
- 10 A. Correct.
- 11 Q And you didn't have any problem with Eric
12 going into a bar with the gun, correct?
- 13 A. It wasn't just bars, we went other places
- 14 Q Where else did you go?
- 15 A Just driving pretty much, driving around
- 16 Q Just driving around Charleston, going to
17 bars and other places?
- 18 A He said that he knew people down there He
19 was driving around, I guess, to find people that
20 he knew
- 21 Q Okay.
- 22 A That's my assumption
- 23 Q Did he find anybody there?
- 24 A One or two at the bar, maybe a female
- 25 Q. How long were you with him? How long did

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1 you'all do this, drive around Charleston?

2 A I couldn't tell you We got up around 2 00
3 or 3.00, 3 00 all the way until this incident
4 happened. 9-00, 10 00

5 Q So at 9 00 or 10.00 at night, you'all are
6 driving around Charleston with a gun, going in
7 and out of bars, trying to meet girls?

8 A Correct

9 Q The whole time, though, you were in control?

10 A. Correct

11 Q So you never -- you weren't drunk, you
12 weren't tipsy, you didn't lose any of your mental
13 faculties based on anything that you did in these
14 seven hours?

15 A Being in control of my actions? Right

16 Q You testified that you were in control

17 A Of my actions

18 Q You were in control of your actions?

19 A Correct

20 Q Now, as a matter of fact, -- before Mr
21 Hoefer got robbed, did you have the clip in your
22 pocket?

23 A Yes, sir

24 Q So you were in control, at least
25 temporarily, of the gun?

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- 1 A I felt that I was, correct
- 2 Q You didn't take the gun away from Mr
- 3 Waldrop entirely, just the clip; right?
- 4 A. Eric was a bigger man, he was intimidating
- 5 Q When you say bigger man, you don't mean
- 6 taller man, do you?
- 7 A. No, sir He's a fitness trainer. He's
- 8 well-built
- 9 Q He is substantially shorter than you but he
- 10 is stocky?
- 11 A Right
- 12 Q He let you have the gun?
- 13 A. He let me see it, correct
- 14 Q You took the clip out?
- 15 A Correct
- 16 Q You didn't clear the chamber but you did
- 17 take the clip out?
- 18 A Yes, sir
- 19 Q Then you handed the gun right back to him,
- 20 right?
- 21 A Yes, sir
- 22 Q. Then he told you to watch his back?
- 23 A Yes, sir, in some fashion "Watch me",
- 24 'watch my back'
- 25 Q That means something a little different,

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- 1 right?
- 2 A (No response)
- 3 Q That's different, right, than watching his
- 4 back.
- 5 A Yes, for me to watch him.
- 6 Q Watching somebody's back means that you kind
- 7 of cover for them?
- 8 A Exactly
- 9 Q Make sure that they don't come to harm?
- 10 A I see where you are coming from I am not
- 11 sure exactly what he stated
- 12 Q But you told that to the officers, though,
- 13 right?
- 14 A Yes, sir
- 15 Q You weren't lying then, when you told that
- 16 to the officers?
- 17 A No, sir
- 18 Q That part of the statement was accurate?
- 19 A I suppose so, yes
- 20 Q You got the clip, you got the gun Did you
- 21 believe that when he got out of the car that he
- 22 knew this fellow?
- 23 A That is what he said
- 24 Q You'd just asked him for directions to
- 25 Greenville, right?

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- 1 A Me?
- 2 Q You'all had stopped?
- 3 A Correct
- 4 Q Pulled over to the side of the road
- 5 A Correct
- 6 Q Windows open. Directors were asked of this
- 7 individual, 'how do we get to Greenville?'
- 8 Correct?
- 9 A Correct
- 10 Q Was it your intention to drive back to
- 11 Greenville that night?
- 12 A Yes, it was
- 13 Q With Eric or without him?
- 14 A Without Eric, with Dante
- 15 Q And that person talked to you a little bit
- 16 about how to get to and from -- about how to get
- 17 to the highway Right
- 18 A Yeah It didn't make any sense to me
- 19 Q And that person -- you've seen him here
- 20 today, right?
- 21 A Yes
- 22 Q He is sitting right back here What Joseph
- 23 said happened that day happened Right?
- 24 A No, not -- that's not a hundred percent
- 25 correct

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- 1 Q Eric Waldrop got out of the car with a gun,
2 right?
- 3 A Correct
- 4 Q You knew that he had the gun?
- 5 A Correct
- 6 Q You knew that he'd had the gun for hours
7 before that?
- 8 A Correct
- 9 Q He had kind of scared you with that gun,
10 hadn't he?
- 11 A Intimidated me
- 12 Q Intimidated you?
- 13 A Yeah Or threatened.
- 14 Q When he got out of the car with the gun, you
15 didn't leave him there, did you?
- 16 A No, sir
- 17 Q You were in control of your actions, right?
- 18 A Yes, sir
- 19 Q You made the decision where to go, what to
20 do and what not to do, right?
- 21 A Yes, sir
- 22 Q He didn't threaten you?
- 23 A No, sir
- 24 Q. He didn't hold the gun to you or anything
25 like that, did he?

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1 A No, sir

2 Q. He didn't -- you weren't coerced into
3 getting out of the car, were you?

4 A Coerced? Give me the definition of that

5 Q In other words he didn't force you to do it,
6 did he?

7 A No, sir

8 Q And you were going to help Mr Hoefer?

9 A That's what I did, yes

10 Q And you helped him by saying, "Don't fucking
11 move "

12 A No, sir, I did not say that

13 Q You said something to him, though, didn't
14 you?

15 A Negative

16 Q So ---

17 A Not to my knowledge

18 Q --- your help was kind of silent help?

19 A Correct I was -- go ahead, I didn't mean
20 to interrupt you

21 Q Without talking to him, how did you intend
22 to help him?

23 A Me being there, knowing that if I had seen
24 him do something crazy, put a gun to somebody's
25 head, mentally or physically get them -- try to

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1 shoot the gun, have another clip. Anything that
2 would help my safety and the safety of everybody
3 around him I thought that I would at least be
4 able to be some type of help

5 Q. So you thought you were going to witness a
6 murder?

7 A I thought -- I thought -- I wasn't in right
8 state, I was in a situation that I had never been
9 in before I thought that my actions were plenty
10 clear what I was doing

11 Q You expected Mr Hoefer to understand that
12 you were helping him by getting behind him

13 A He didn't feel threatened by me

14 Q That is your interpretation?

15 A Yeah, right You're right

16 Q There came a time when you decided to "help"
17 the police and give your little statement?

18 A. Yes, sir You can call it that

19 Q And when you told the police about this
20 encounter, you told the police that they shook
21 hands?

22 A My sight was blocked It was either him
23 taking something or giving something, something
24 like that

25 Q. So you thought that it would be helpful to

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1 the police if you told them that these guys shook
2 hands instead of somebody holding a gun?

3 A I didn't -- I still don't know Eric At
4 that time I was still protecting myself I
5 didn't know what he could have said, what he
6 could have do I was putting my safety on the
7 line.

8 Q. So your safety was more important than
9 telling the truth to the police officers?

10 A Eric had already showed his character, you
11 know, when they pulled him over by what he did

12 Q And you knew that Eric was in custody,
13 right?

14 A Prior to?

15 Q Prior to giving your statement to the
16 police

17 A Oh, yes

18 Q Because you had watched him being arrested?

19 A Yes

20 Q And the police didn't encourage you to lie,
21 did they?

22 A No, sir, they didn't

23 Q They encouraged you to tell the truth,
24 didn't they?

25 A Yes, sir

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1 Q But you didn't do that?

2 A I did

3 Q You did?

4 A Yes, sir, because I did not see any
5 transaction I seen two hand gestures, made by
6 both of them

7 Q. You were aware that Eric had a gun?

8 A Yes

9 Q And you knew that he had demanded his wallet
10 from him, using the gun?

11 A Right

12 Q. You didn't tell the police any of that, did
13 you?

14 A I distanced myself

15 Q So your next act of good Samaritan was when
16 you decided to help Mr Nitterhouse?

17 A (No response)

18 Q. Now, did you in any way try to communicate
19 to Mr Nitterhouse the danger that he was in,
20 talking to Eric?

21 A Physically, yes Verbally, no

22 Q So verbally you didn't say anything to him?

23 A I didn't want to

24 Q Because you didn't want to communicate to
25 Mr Nitterhouse that he was going to be in any

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1 trouble, did you?

2 A I didn't want to be involved in that

3 Q So -- you didn't stay in the car

4 A (No response)

5 Q. You got out of the car?

6 A Yes

7 Q. You didn't want to but you approached
8 somebody that you knew was going to be the victim
9 of an armed robbery, right?

10 A Yes

11 Q So when you got out of the car you told
12 Nitterhouse that he was about to get jacked-up,
13 right?

14 A I tried to save him, I tried to help him

15 Q How did you do that?

16 A By getting out of the car.

17 Q. Did you try any other sort of nonverbal
18 communications with him, that he was in trouble,
19 that perhaps he should flee?

20 A When the cops came But as soon as I tried
21 to put a hand up, to say anything, I was pushed
22 to the ground and I couldn't say anything.

23 Q So when the police were there and had Eric
24 Waldrop arrested, you tried to communicate ---

25 A They took Eric out of the car first. They

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1 said that they found a gun, that it was a felony
2 stop and we were thrown to the ground, and I
3 couldn't say anything

4 Q Okay The first incident, when Eric got out
5 of the car you knew that he had a gun?

6 A. (Affirmative nod)

7 Q And you said that he said that he knew him

8 A Correct.

9 Q Did you believe that?

10 A I don't even know if he had a license for
11 the gun He acted like he did, it wasn't for me
12 to know

13 Q. Do you know if he had a license?

14 A. No, sir, I didn't

15 Q. And you watched Joseph Hoefer being robbed?

16 A That's right

17 Q And you watched Colby Nitterhouse being
18 robbed?

19 A Yes, sir., sir

20 Q And you didn't try to disassociate yourself
21 from Eric Waldrop from the time that he robbed
22 Joseph Hoefer and Colby Nitterhouse until the
23 time that you were stopped by the police and
24 you'all get arrested?

25 A I didn't want anybody to get killed or shot,

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1 so the first time I thought that I was doing the
2 right thing The second time, I didn't know if
3 he had another clip or not I didn't know if he
4 had another gun, bullets or anything

5 Q Did you have your cell phone on you?

6 A No, sir, it was in the car Dead

7 Q Did you have -- do you know if Dante had his
8 cell phone in the car?

9 A No, sir, he didn't

10 Q. You made no attempt to flag down any passers
11 by or a police officer to let them know that a
12 man had just been robbed?

13 A Yes, but they were so close together -- I
14 count to two, the first young man, count to two,
15 the second young man, count to three and we were
16 being pulled over I was glad I was relieved
17 that it was over

18 Q. You didn't know how many people he was going
19 to rob before he stopped?

20 A No, sir

21 Q That's not what you told the police
22 officers, right?

23 A The questions that they asked me, was it
24 planned and did I have anything to do with it
25 No, I did not have anything to do with it

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1 Q When Eric Waldrop got out of the car and
2 robbed Colby Nitterhouse, you knew that a robbery
3 was about to take place?

4 A Yes, sir

5 Q And you lied to the police officers when
6 they took your statement, because of your
7 anxiety?

8 A Yes, to distance myself

9 MR VOIGHT One moment, please

10 THE COURT Certainly

11 MR VOIGHT Thank you

12 THE COURT Redirect?

13 MR SMILEY. Briefly. Yes, sir

14 THE COURT Yes, sir

15 REDIRECT EXAMINATION

16 BY MR SMILEY

17 Q Just so that it doesn't get confused here,
18 the solicitor asked did you get out of the car to
19 help, he was talking about Eric Waldrop?

20 A At first it was ---

21 Q Listen to the question Did you get out of
22 the car and help Eric? That's the white man,
23 with the gun

24 A Yes, sir

25 Q You got out of the car to help him?

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1 A Oh, -- no, sir. NO, sir

2 Q You keep saying that you were trying to
3 help, you took no active role in helping him,
4 correct? Aside from getting out of the car and
5 standing ---

6 A Correct

7 Q How did you think at the time that that was
8 helping?

9 A It was a different angle.

10 Q Not angle, how did you ---

11 A If I had had my phone, I would have called
12 911 I wouldn't set there and let him bleed to
13 death I wouldn't have -- but I put my life on
14 the line and made sure that nothing was going to
15 happen again You know? He could have broke his
16 nose and him be unconscious, suffocate him or
17 something I'm CPR certified and I would have
18 done everything in my nature to help him

19 Q I have two more questions and then I am
20 done Where was your car?

21 A At Eric's house

22 Q When this events started happening downtown,
23 did you know how to get back to where your car
24 was?

25 A That's what I was trying to get back to

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1 MR. SMILEY. Nothing further
2 THE COURT Recross?
3 MR. VOIGHT No recross Thank you,
4 Your Honor
5 THE COURT Thank you Mr Edwards,
6 you may step down
7 (WITNESS STEPS DOWN)
8 THE COURT You may call your next
9 witness, Mr Smiley?
10 MR SMILEY The defense rests, Your
11 Honor
12 THE COURT Any reply?
13 MR VOIGHT: May we approach, Your
14 Honor?
15 THE COURT Sure
16 (OFF RECORD SIDEBAR)
17 THE COURT At this point, Ladies and
18 Gentlemen, we wouldn't have completed this case
19 anyway because there still remains two parts
20 There is another witness that is enroute We are
21 going to go ahead and take a recess now
22 Please do not begin your deliberations,
23 do not discuss this case I would ask that you
24 please return to your jury room at 9 30 in the
25 morning

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1 When you go home tonight, if there is
2 someone there and they ask you what you are
3 doing, you can tell them that you are serving as
4 a juror in a criminal dispute but that is about
5 as far as you can go If you start talking about
6 this case, you will have begun your individual
7 deliberations and that would be a violation of
8 the oath that you took

9 We will finish this case tomorrow

10 Have a good evening, we will see you
11 tomorrow at 9.00

12 (JURY OUT)

13 (DEFENDANT REMAINS PRESENT)

14 THE COURT All right We will be
15 at-ease at this point I will allow the Order to-
16 stand. Mr Edwards, you have testified and there
17 may be a temptation now to leave

18 DEFENDANT (Negative gesture)

19 THE COURT This is your day in
20 court, this is your opportunity to have this jury
21 decide it This case will go forward tomorrow
22 whether you are present or not

23 DEFENDANT Yes, sir

24 THE COURT And I will tell you, as I
25 am sure your attorney has, that your absence

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1 wouldn't be mentioned but I -- I can't stop a
2 jury from being a human being I am not
3 suggesting anything to you because, to be totally
4 honest with you, I have had a person who did not
5 come back for closing arguments and the jury
6 basically didn't return a decision They were
7 undecided So they may not consider anything
8 about that They might I don't know

9 But I will tell you that the case will
10 go forward or not, and I would suggest that you
11 be present, sir.

12 DEFENDANT Okay

13 THE COURT All right Concerning
14 the Motions, there is still some reply but there
15 is one that I really want to address, not so much
16 the armed robbery, but the possession of the
17 firearm I haven't heard anything at this point
18 but I'd be interested to hear any Motion on that
19 particular charge, because I don't think that
20 there is any evidence to show that in this
21 particular case Based on the one case I found,
22 there was some direction

23 I haven't heard any testimony here
24 about that, other than the clip That may be
25 sufficient to get it by there, but I don't -- I

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1 know that is what you are relying on but I don't
2 think that is substantial enough to submit that
3 to the jury Just letting you know my thinking
4 in advance During this break if you want to
5 research that issue, you may

6 MR SMILEY. One other matter,
7 very briefly, Your Honor, and I don't think it
8 requires much response but just for the record I
9 understand that a codefendant is going to be
10 testifying tomorrow Just to make it abundantly
11 clear, he has been offered no incentive for his
12 testimony whatsoever

13 THE COURT Yeah, I -- any deals with
14 this person, whatsoever?

15 MR VOIGHT No, Your Honor He is
16 just flying blind

17 MR SMILEY. I just wanted to make
18 sure

19 THE COURT As long as -- he hasn't
20 been prosecuted yet?

21 MR VOIGHT. He has been indicted,
22 Your Honor

23 THE COURT But he has not been
24 prosecuted yet? Gone to trial?

25 MR VOIGHT (Negative gesture)

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1 THE COURT Okay As long as
2 everybody understands -- I assume that is one of
3 the statements that you were trying to get out,
4 the things that he was saying ---

5 MR. SMILEY: I also have Mr Waldrop
6 under subpoena, but I have rested my case now and
7 I ---

8 THE COURT Yeah. If you want to --
9 if you have him under -- if you want to reopen
10 yours given the fact that there was an objection
11 to your asking questions, I will allow you to do
12 that However in doing so, so that we are clear,
13 I have ruled -- because there is some case that
14 says that, uh, -- I'm pretty comfortable with it
15 Just because a person calls a witness doesn't
16 necessarily make that witness -- excuse me If
17 you call him, it doesn't necessarily mean he is
18 entitled to cross-examination him unless there is
19 some adverse situation Well, clearly in this
20 case there is So if you call him, he will be
21 permitted to cross-examine him

22 MR SMILEY Mr. Waldrop is
23 represented by the Public Defender's office and
24 he may ---

25 THE COURT. Oh, I understand

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1 MR SMILEY --- invoke the Fifth

2 THE COURT He may I don't know. I

3 don't what he is going to do, that remains to be

4 seen But if you want to -- I will allow you to

5 reopen your case if you want to call him since an

6 objection was made, uh, and that will allow you

7 to examine him relative to any of these issues

8 MR SMILEY Yes, sir 9 30, Your

9 Honor

10 THE COURT Let's assemble at 9 15 so

11 that if there are any questions we can take care

12 of those

13 (COURT IN RECESS)

14 (TRANSCRIPT CONTINUED NEXT PAGE)

15

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1

2 FEBRUARY 8, 2008

9 15 A M

3

4

(DEFENDANT PRESENT)

5

6

THE COURT We are missing three
(jurors), so we have some time Any specific
requests to charge?

8

9

MR. SMILEY: No, sir, I have heard
your accomplice liability before

10

11

MR. VOIGHT. No, sir

12

13

14

15

THE COURT: I just heard peripherally
some discussion, but I do not think on the armed
robbery that there is enough evidence to warrant
a lesser-included offense charged. It's either
up or down

16

17

18

19

MR SMILEY: I agree, sir

THE COURT Thank you I've been
informed that the jurors are all here. Is the
State ready?

20

21

22

23

24

25

MR VOIGHT Yes, sir

THE COURT Seeing that everyone has
rested, the Motion for directed verdict on the
charge of armed robbery is a jury issue and I
respectfully deny those Motions

MR SMILEY Yes, sir

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1 THE COURT As I understand, you are
2 going to open on the law?

3 MR LAWTON Yes, sir

4 (JURY IN @ 9 30 A M)

5 THE COURT: Good morning, Ladies and
6 Gentlemen I hope that you had a good evening
7 We are now ready to continue in this matter
8 We assembled a little earlier to deal with any
9 issues that may be necessary to addressed I
10 have been advised of their decision -- sometimes
11 people reflect on whether or not there is a need
12 for reply testimony and the State has decided to
13 not call any other witnesses, and it is their
14 right to do so So that will conclude the
15 evidentiary portion

16 As I now understand, the State does
17 formally rest Is that correct?

18 MR VOIGHT That's correct, Your
19 Honor

20 THE COURT Thank you Normally
21 there would be Motions that I would have to hear
22 but we already, having -- I knew that before we
23 brought you in and we have heard those Those
24 are now protected on the record, as well

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1 Now we move into the third phase that
2 we talked about, which is where the attorneys
3 have their second opportunity to speak to you
4 Like in opening statements -- you have now heard
5 the evidence and they will discuss with you and
6 suggest reasonable inferences that you may draw
7 from that evidence.

8 Please give them your attention but
9 please remember that their remarks are not
10 evidence

11 Following the closing arguments of the
12 attorneys I will give you the instruction on the
13 law Thank you for your attention thus far.

14 Please give your attention now to the attorneys

15 Solicitor, do you wish to make an
16 opening on the law?

17 MR LAWTON Thank you, Your Honor

18 THE COURT Yes, sir

19 MR LAWTON Ladies and Gentlemen of
20 the jury, I'd like to thank you for being here a
21 second day I know that it is tough I know
22 that there are a gazillion other things that
23 you'all would rather be doing But I can promise
24 you one thing, you are the bedrock of this court

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1 system, civil, criminal, everything Nothing
2 gets done without you I promise you that

3 Before I kind of go through the law a
4 little bit, I want to put this caveat here If
5 that is, it is my bad It is not intended --
6 Judge Dennis is the judge of the law and what he
7 says is the law Judge Dennis told you yesterday
8 that it is our burden to prove the defendant
9 guilty beyond a reasonable doubt.

10 What is that? I will tell you what it
11 is not Mr. Smiley got up here yesterday and
12 that the state needed to score a touchdown I
13 will tell you that I am no football expert but
14 the last time that I checked you got to get the
15 ball into the end zone You can't get stopped on
16 the ten yard line, you can't get stopped on the
17 twenty yard line, you've got to go all the way

18 Why is that? Why is not beyond all
19 doubt? Because there would never be a
20 conviction There are only about five people
21 that know what happened that night beyond all
22 doubt or beyond absolute doubt Those are the
23 Defendant, Mr Edwards, and our victims, Colby
24 Nitterhouse and Joseph Hoefer

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1 You know, the judge told you couldn't
2 know anything about this case If you did, you
3 would be a witness and that's why it is beyond a
4 reasonable doubt

5 What is beyond a reasonable doubt? It
6 just means that are you firmly convinced that the
7 defendant is guilty of each element of armed
8 robbery? Are you firmly convinced? If you are,
9 you must convict That is what the judge will
10 tell you If you are firmly convinced of each
11 element of armed robbery, you must convict

12 Now, with that said, let's look at
13 armed robbery. It is pretty simple and I know
14 you all know about that It is taking personal
15 property of another with the intent to
16 permanently deprive that person through threats,
17 force or intimidation while armed with a deadly
18 weapon

19 Now, how are we going to get to that?
20 You all have heard the testimony. You heard that
21 Defendant, T J Edwards, didn't have a deadly
22 weapon

23 It is simple, the hand of one is the
24 hand of all I know that you all have heard that
25 before you got here Or a variation, accomplice

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1 liability The hand of one is the hand of all is
2 the law in the state of South Carolina for two
3 reasons safety in numbers and it is easier to
4 commit crimes when you are working with others to
5 commit a crime.

6 Now, I am going to ready you the gist
7 of the hand-of-one The judge's charge will much
8 longer and much more thorough But here it is,
9 (reading)

10 "If a crime is committed by two or
11 more people who are acting together in committing
12 a crime, the act of one is the act of all A
13 person who joins with another to accomplish a
14 legal purpose is criminally responsible for
15 everything that is done by the other person which
16 occurs as a natural consequence of the acts done
17 in carrying out a common plan and purpose "

18 Now, I am not going to get into my
19 interpretation of what this or how that applies
20 to the facts, because that is up to Mr Smiley to
21 do and it is up to Mr Voight here in one second.
22 But I want you'all to do one thing, I want
23 you'all to compare that interpretation of the law
24 to what Judge Dennis tells you in a few minutes
25 I know that you can do that

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1 Thank you

2 THE COURT Thank you, Mr Lawton
3 Mr Smiley?

4 MR SMILEY Thank you

5 THE COURT Yes, sir.

6 MR. SMILEY: Certainly the question
7 that has to be answered is the one that was
8 proposed in the opening. Was T J , Thonal
9 Edwards, an accomplice in the armed robbery?

10 There is no doubt that he did not have
11 a gun, there is doubt that he through threats,
12 intimidation or force took anything himself by
13 getting out of the car with Eric Waldrop took
14 anything from these individuals

15 From the outside in, it looks really
16 easy He got out of the car, but I would suggest
17 to you that there is more to that You know, I
18 think that the evidence has shown that T J made
19 some poor judgments that night He was with
20 someone that he did not know, he was downtown
21 drinking with someone that he didn't know
22 Someone exercising good judgment probably would
23 have then and there. So I am not proposing that
24 he exercised good judgment But his poor
25 judgment is not armed robbery

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1 I was sitting, trying to figure out how
2 to put across to you the situation that he found
3 himself and the best analogy then I can come up
4 with is sort of like -- you're a woman and you
5 go to a strange town and a mutual friend sets you
6 up on a blind date The mutual friend says he's
7 okay You go to dinner, things are okay You
8 have a few drinks and this gentleman is no longer
9 a gentleman when he starts drinking He becomes
10 fairly intimidating and you start trying to stop
11 him When he is not watching, you pour his
12 drinks out You try to calm him down. You do
13 your best to get home You don't know exactly
14 what to do You're in a strange town, you are
15 with someone that you wish you weren't with

16 That's sort of what T J found himself
17 in that evening You know, T J testified and
18 through that he had a hard time with his words
19 coming out, explaining it to you

20 Yeah, it was poor judgment but he was
21 trying to tell you the truth is someone If
22 somebody is lying to you, things slip out easy,
23 there isn't any hardship trying to explain He
24 was trying to explain to you that he was in that
25 car with this guy who was drunk He gets out

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1 saying, 'watch this' or 'watch my back'. T J
2 get out He knew the guy had a gun because he
3 had disarmed him earlier So he got out and he
4 stood there. All of this happened very quickly
5 As you heard, there is some testimony that T J.
6 said, 'don't move ' T J said that he doesn't
7 remember saying that, but regardless, he said he
8 stood there trying -- and he wasn't being a good
9 Samaritan as the prosecutor tried to put words in
10 his mouth He didn't know what to do, so he just
11 stood there

12 Then they get back in the car and
13 minute later they do it again, Mr Waldrop jumps
14 out of the car and he gets out again. He says
15 that the fellow who was the car, who was his
16 friend, they were just trying to get home. They
17 are asking directions

18 I think you heard T J from the stand
19 when he said, "I just wanted to go home, I just
20 wanted to get out "

21 "When the police pulled me ." -- he
22 said something that might have struck you as off
23 -- "I was relieved "

24 I guess if you think about it, he was
25 in a situation that he did not know what to do

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1 and when the police stopped him he was relieved
2 that it was finally stopping

3 Why didn't he call the police? His
4 cell phone was dead and he hadn't had an
5 opportunity Remember, that car got stopped just
6 a few blocks away downtown from where this
7 incident happened

8 Now, in this case while Mr Edwards
9 does not have to prove anything, he wanted to
10 He wanted to get up here (witness stand) and
11 look you in the eye and tell you what happened
12 But don't take that to say -- it's very important
13 that you don't turn this into a 50-50 Mr
14 Edwards got up to testify, he did not have to,
15 but he wanted to tell you what was going through
16 his mind, how this came down

17 Ladies and gentlemen, if there is one
18 thing in this case that will show you, give you a
19 reason to hesitate to act, that is testimony and
20 that can't be changed, is that the clip was in
21 his pocket If you are an accomplice, okay,
22 you're aiding someone to rob somebody, you don't
23 disarm them You don't take the clip out of the
24 gun

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1 There's nothing to dispute that he
2 removed the clip from that gun beforehand There
3 is nothing in the testimony to dispute that If
4 you are an accomplice, you do not take the clip
5 out of the gun It makes no sense

6 Now, the solicitor could argue -- while
7 we didn't hear it -- 'well, he could have gotten
8 that clip afterwards ' Well, why would he have
9 put it in pocket? Wouldn't he have hid it,
10 thrown it out the window? That does not make
11 sense but it does make sense that if you are
12 downtown with a fellow that you don't know very
13 well and he is getting out of control and he has
14 a weapon to take it and at least take the clip
15 out of it?

16 He doesn't know the guy, he knows that
17 he is drunk and not acting very well and he knows
18 that he needs to get the clip out of that gun
19 He did that.

20 Then this guy is jumping out of the car
21 saying, 'watch this' In that situation, he got
22 out. Maybe he should have stayed in the car I
23 don't know

24 He got out but there is nothing in

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1 the evidence to show that he was truly an
2 accomplice, that he was the gun who pulled the
3 gun on him

4 Does he go through his pockets?

5 Does he rough him up?

6 Does he share the proceeds once they
7 get in th car?

8 None of that happened

9 He downtown with his friend, Dante

10 They are from Greenville They are in
11 Eric's car He had never been to Charleston
12 before All they want to do is to get home, to
13 get to his car They don't know how and they've
14 got a drunk in the front seat

15 Now, being present is not being an
16 accomplice Merely being present does not make
17 you an participant There has to be more. In
18 this case, I don't believe that there is more
19 In fact, to the contrary I think that the clip
20 shows that he was not a willing accomplice

21 I would ask you to compare the
22 evidence, to listen to what you heard from the
23 stand, to take in the testimony of my client and
24 in the end I would suggest to you that is the way

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1 that it happened At that point in time, there
2 is only verdict -- Not Guilty

3 Now, you heard them talking about
4 football and they said that they didn't need to
5 score a touchdown, that they merely had to cross
6 the 50-yard line

7 They have got to get over a much higher
8 bar than the preponderance of the evidence, the
9 one that causes a reasonable person not to
10 hesitant to act

11 That day a year and a half ago when
12 T.J was downtown was pretty -- it was not a good
13 day. It wasn't a good day for Joseph Hoefer, it
14 wasn't a good day for Colby Nitterhouse and it
15 wasn't a good day for my client

16 Eric Waldrop caused a lot of damage
17 that day Luckily, Colby and Joseph didn't get
18 hurt. Luckily, my client didn't get hurt
19 T J Edwards was in a bad situation, T J Edwards
20 did what he could He disarmed the fellow with
21 the gun He stood by and -- they used the word
22 "controlled" He tried to put himself in a
23 position to do what he could He's got a guy
24 that he doesn't know with a gun and that guy is

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1 kind of a little bit of control, he was
2 dangerous He did what he could do

3 This is a young man who had not been in
4 trouble before, had not had that experience, who
5 did what he could do

6 I am going to ask you when you consider
7 the evidence to see that he was not a willing
8 accomplice in this armed robbery What he is
9 guilty of is using bad judgment

10 Thank you very much.

11 THE COURT Thank you, Mr Smiley
12 Mr Voight?

13 MR VOIGHT Thank you, Your Honor

14 THE COURT Yes, sir

15 MR. VOIGHT Mr Smiley and I must
16 have watched different cases At the beginning
17 of our 'pregame show', we kind of laid out what
18 we thought that the evidence was going to prove
19 You got a bonus

20 The evidence has shown that Thonal
21 Edwards is both a robber and a liar I think
22 that I only had to do half of that I only had
23 to show you that he was a robber, the evidence
24 did, very clearly did

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1 Reasonable doubt? A doubt that would
2 cause you to hesitate After watching that case,
3 it ought to make you run back there and do your
4 job and be at work by noon It shouldn't take
5 that long to arrive at Guilty

6 It was real clear to Joseph Hoefer what
7 Thonal Edwards meant when he got out of that car
8 It was real clear 'He is here to help the guy
9 with the gun take my wallet from me '

10 It was real clear to Colby Nitterhouse
11 what Thonal Edwards was doing when he jumped out
12 of the car and confronted him with Eric Waldrop
13 and this gun It was real clear what his
14 intentions were 'Give me your twenty dollar
15 bill '

16 Reasonable doubt. The law understands
17 that there is no such thing that when you are at
18 this table, you are the State, that there is a
19 perfect case It's that you have to have a
20 reasonable doubt, not be beyond all doubt

21 When we came in here today we had
22 Joseph Hoefer who couldn't tell you a hundred
23 percent that he saw a gun. He told you that he'd
24 seen a black object when he got on the witness

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1 stand. But we know later that it was very
2 clearly a gun, all the evidence shows that

3 Joseph Hoefer couldn't identify Thonal
4 Edwards as the guy that jumped him outside

5 Again, I didn't have a perfect case
6 Colby Nitterhouse couldn't tell you I didn't
7 ask him that question because he couldn't tell
8 the police that he could identify that guy as
9 being the one that jumped out from the back seat
10 and he wasn't going to sit here on this witness
11 stand and tell you something different than he
12 told you way back in October

13 It wasn't perfect One guy could put
14 him there but he didn't have the gun One guy
15 clearly saw the gun but really tell you a hundred
16 percent that was the guy

17 But from the evidence, we know that he
18 was there, we know that he jumped out to help.
19 It's just that he was helping the wrong fellow,
20 he was helping Eric Waldrop He was assisting
21 Eric, he was aiding and abetting him That is
22 what the evidence proves that is what he did

23 Do you think Joseph Hoefer appreciated
24 the help that T J Edwards was going to give him?

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1 Do you think Colby Nitterhouse
2 appreciated all that help?

3 When he told his story to the police,
4 he said that he had no part in it Did you think
5 that was a help? No No

6 He admitted that he had done it but
7 that he was there to help Who was he trying to
8 help? He was helping himself In fact, back in
9 the old days we wouldn't let people testify
10 because we knew that they were going to get up
11 here and help themselves That was a long, long
12 time ago

13 The Constitution protects all of us
14 He did not have to get up here (witness stand),
15 but he did He tried to help himself with you

16 It's all about his safety and he
17 testified to that, it's all about him

18 Well, the interesting part is just how
19 he was going to help Just in case drunk Eric
20 Waldrop did something crazy like put a bullet in
21 his head, he was going to dial 911 He even said
22 that he would jump in front of the bullet

23 He was going to call 911 with a dead
24 battery? You all heard that his phone had a dead

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1 battery and that's why he didn't call the police,
2 he didn't hop out of the car.

3 Three young men in the car They all
4 had a decision to make Clearly Eric Waldrop
5 made some really bad decisions All right?

6 Eric Waldrop gets out of the car with
7 the gun.

8 The driver mad a bad decision, he stays
9 there

10 Thonal Edwards makes a real bad
11 decision, he goes out to help and assist Eric
12 Waldrop

13 To make it worse, four minutes later he
14 does it again

15 Four minutes later Eric Waldrop hops
16 out of the car again and robs Colby Nitterhouse

17 The driver then makes the second bad
18 decision He doesn't speed off, he sees what is
19 helping

20 Thonal Edwards made a bad decision, he
21 jumped out of the car to help -- Eric Waldrop
22 That is what he did

23 You heard from Officer Dutton when Mr
24 Smiley asked him about Eric Waldrop, and we know
25 that Mr Edwards didn't tell the truth about what

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1 happened Eric Waldrop, that paragon of virtue
2 that we have heard so much about, Eric Waldrop
3 didn't admit to this Eric Waldrop only admitted
4 to getting out of the car once He never
5 admitted to using the gun. We know that he had
6 the gun twice, we know that he did it twice.
7 Edward told us that they did it twice

8 Poor judgment? Well, yeah Poor
9 judgement can cross that line right into criminal
10 acts and that's what we have here

11 You get to judge the credibility of
12 every witness that you have heard You get to
13 judge every police officer that got up here,
14 Joseph Hoefer, Colby Nitterhouse You get to
15 judge every one of them The law is that if you
16 hear something from here that you don't think is
17 the truth, you can disregard that testimony All
18 right? Once a liar, always a liar All right?

19 Mr Smiley wants you to believe little
20 parts of what his client told you, not the whole
21 -- all those places where he was clearly fudging,
22 'Well, let's just ignore that ' He wants you to
23 believe that little part about the clip, how in
24 goodness of his heart to protect us all that he
25 took a clip from Eric Waldrop's gun because he

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1 was he so familiar with guns -- that's what he
2 testified to right here -- so familiar that he
3 didn't clear the chamber? No, that would have
4 required -- he had the gun and he could have
5 cleared it, but he didn't There is still maybe
6 a bullet in the chamber and he is going to let
7 Eric just jump out with a bullet and he is going
8 to just hide that clip in his pocket

9 That is evidence that he was helping
10 him? Wow He wants you to believe that He
11 wants you to believe that he did that before the
12 robbery and that it was intentional You don't
13 have to believe that

14 This was a couple of kids, three kids
15 in the car, out to rob somebody and it was so
16 good, so much fun, that they hit the rush and
17 they go out to do it again, there's another kid
18 walking alone on the street

19 Then, watch out, there's a blue light
20 behind them Eric Waldrop is taking the clip out
21 of the gun, they are trying to hide everything,
22 they don't have any time Remember, I told you
23 that this case was going to take much longer from
24 the time that the bright idea to rob Joseph
25 Hoefer occurs to the time that they get arrested

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1 I probably have already talked longer than that
2 already All right?

3 That clip was out, maybe the gun was
4 empty and it's not an armed robbery? Whose
5 safety? 'I am going to protect myself ' 'We are
6 going to try to protect ourselves '

7 When Eric Waldrop talked with the
8 police, he didn't tell them the truth I got
9 once, didn't have a gun He had no participation
10 in it whatsoever Remember, that's what he told
11 the police? They all, from the second those blue
12 lights went on, until they got pulled over, it
13 all about making up a story to make it seem less
14 than what it is

15 You heard the story, it is what it is,
16 it clearly is It's two armed robberies All
17 right?

18 He helped, he aided, he abetted, the
19 gun never was in his hand but it might as well
20 have been Thonal Edwards committed two armed
21 robberies Don't hesitate to go back and come
22 back and tell him just that

23 You've done a good job here, you've
24 listened very attentively I really appreciate
25 that I really appreciate the decision that you

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1 have to make, but don't hesitate to make it

2 Thank you

3 THE COURT Thank you, Mr Voight

4 All right, Ladies and Gentlemen, it now
5 becomes my responsibility to give you the law
6 that you have promised that you will accept and
7 apply impartially to the facts that you will
8 determine very shortly when you begin your
9 deliberations in this case

10 Of course, as you recall, it is your
11 exclusive duty to determine the effect, the value
12 and the weight of the truth of the evidence in
13 this case Both the State and Mr Edwards expect
14 that you will perform that function when you
15 begin your deliberations I would respectfully
16 submit to that end they both will attain a fair
17 and impartial determination in this proceeding

18 Please remember that nothing I say
19 during this instruction should be considered by
20 you as an indication of how you are to resolve
21 any factual issue in this case because, Ladies
22 and Gentlemen, that is your sole prerogative,
23 your sole right No one in this room has that
24 duty but you

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1 Also, nothing that I have done in this
2 trial, said during trial, rulings in this trial
3 should be considered by you in deciding the
4 factual issue Because we have that separation
5 that we have to observe

6 Also, please understand that the order
7 of instruction means nothing and please
8 understand that you are expected to apply all
9 parts of this charge to those facts that you
10 ultimately determine That would include any
11 statement of law with which you may differ I
12 respect your right to feel that way but you have
13 promised to set aside that feeling and take the
14 law as I give it to you

15 During this instruction, there may be
16 occasions when I use the term "defendant" If
17 so, I'm referring of course to Mr Edwards It
18 means nothing more than just to designate the
19 party again whom the claim is made It is
20 synonymous with him and that is the sole purpose
21 It is a term used to identify the person about
22 whom you are speaking

23 He is charged as I mentioned when we
24 started in these two documents that we call
25 indictments They are allegations that accuse

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1 him of committing two offenses of armed robbery
2 Of course, they are not evidence, they were not
3 introduced as exhibits and they will not
4 accompany you to do your jury room

5 To these indictments, Mr Edwards has
6 entered a plea of not guilty, which places then
7 upon the State the burden of proving his guilt
8 beyond a reasonable doubt As I stated earlier,
9 when a person is accused of committing a criminal
10 offense in this state or this country, that
11 person is never required to come in and prove
12 anything at all They do not have to prove their
13 innocence, they don't have to explain anything.

14 The law says that a person who is
15 accused is presumed to be innocent Each of you
16 therefore is required under our law and under
17 your oath to actively presume that Mr Edwards is
18 not guilty The presumption of innocence is
19 maintained at all times throughout the trial of
20 this case and may be removed only when and if the
21 State brings in enough evidence to persuade you,
22 to convince you, beyond a reasonable doubt that
23 he is guilty of this offense

24 What is a reasonable doubt? Ladies and
25 gentlemen, a reasonable doubt is a doubt that

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1 would make an honest, sincere, conscientious
2 juror who is searching for the truth in a case to
3 hesitate to act Beyond a reasonable doubt is
4 proof that leaves you firmly convinced of his
5 guilt

6 There are very few things in this life
7 or this world that we know with absolute
8 certainty and in criminal disputes such as this
9 our law does not require proof that overcomes
10 every possible doubt

11 If based on your consideration of the
12 evidence you are firmly convinced that the
13 defendant is guilty, that is that the State has
14 established and met each element requires of it,
15 then you must return a verdict of Guilty

16 If, on the other hand, you feel hat
17 there is a reasonable doubt as to one element,
18 then you must give him the benefit of that doubt
19 and must return a verdict of Not Guilty

20 Reasonable doubt may rise from evidence
21 in a case or from the lack or absence of evidence
22 in the case It is up to you to determine
23 whether or not reasonable doubt exists in this
24 particular case

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1 Now, Ladies and Gentlemen, in this
2 particular case you are certainly -- you must
3 remember if upon any issue of fact which is
4 essential to a conviction you have any doubt as
5 to how that is to be resolved, you are to resolve
6 it in favor of Mr. Edwards because the State --
7 he is entitled to every reasonable doubt arising
8 in the whole case.

9 Again, the State has to prove each
10 element to that standard for you to return a
11 verdict of Guilty

12 Evidence, as you know, consists of
13 testimony of witnesses and exhibits that have
14 been offered through their testimony

15 Objections, rulings on objections, any
16 matters that may of been excluded are not matters
17 for your consideration, those are matters of law
18 that I had to resolve; again, that is the
19 separation that we must observe

20 Likewise, during this proceeding you
21 have heard from the attorneys and if at any point
22 any their remarks or statements concerning the
23 evidence should differ from your recollection,
24 you are to take your recollection because you are
25 the judges of the facts of this case and what you

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1 recall the witnesses saying -- what the witness
2 said That is what you are to determine -- and
3 that is what you will determine

4 Likewise, any statement of law which
5 may differ from that which I give you, you are to
6 take what I give you and disregard the statements
7 of the attorneys because, as I told you, their
8 remarks, Ladies and Gentlemen, again, are not
9 evidence They will be helpful to assist you in
10 analyzing the evidence and in applying the law,
11 but you must remember that they are just that and
12 that alone

13 Now, Ladies and Gentlemen, there are
14 two types evidence that we generally have in a
15 case or that we can have in a case, I should say
16 Sometimes you have direct evidence and sometimes
17 you have circumstantial evidence and sometimes
18 you have a combination of both

19 Direct evidence, Ladies and Gentlemen,
20 is evidence which really generally deals with
21 one's sensory perception, they saw something,
22 they heard something, they felt something, or the
23 like If you are firmly convinced beyond a
24 reasonable doubt that that -- that you find that
25 to be credible and believable, then of course it

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1 would establish that particular fact.
2 Circumstantial evidence is when you testified to
3 a number facts and if you are convinced of a
4 number of facts and when you combine those or
5 link those they suggest or point to another fact
6 or conclusion and sometimes a crime That is
7 what we talk about as circumstantial evidence or
8 indirect evidence Now, I will tell you
9 that our law makes absolutely no distinction
10 between circumstantial evidence and direct
11 evidence There is no greater weight required or
12 value to be given to either type of the evidence
13 Nor is there any greater degree of certainty
14 required for circumstantial evidence than direct
15 evidence You are instructed to weigh all the
16 evidence in this case and decide what you find to
17 be credible and believable
18 I would instruct you concerning that,
19 however, that the mere fact that the
20 circumstances brought out in a case are strongly
21 suspicious of guilt or that the circumstances are
22 such that the defendant's guilt is probable, that
23 would not be enough As you know, it is not
24 sufficient to sustain a conviction on a
25 probability standard It has to be proof that

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1 firmly convinces you beyond a reasonable doubt
2 that he is guilty

3 How do you evaluate the evidence in a
4 case? It is a commonsense exercise You do and
5 have done it over and over in your life and you
6 will do it tomorrow We all do it. We hear
7 something, we read something and we make a
8 decision for ourselves whether or not we believe
9 it

10 There are many factors that a person
11 may consider to assist them in making this type
12 of decision I would like to discuss some of
13 them now but if I do not mention something that
14 you've used in your life or found helpful to you
15 in making this decision and reliable, please use
16 it when you begin your deliberations in this
17 case

18 Some of the factors that you may wish
19 to consider would be the appearance of the
20 witness, the witness' misdemeanor, how did they
21 appear to you? Straightforward or hesitant in
22 answering questions?

23 Was the testimony of a witness
24 consistent or was it inconsistent?

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1 Was it strengthened or weakened by
2 other evidence in the case?

3 How did the witness come to know the
4 facts that he or she testified to and what was
5 the ability of that witness to know those
6 particular facts and circumstances?

7 Is there a reason for a witness to give
8 testimony which may be of benefit to one side or
9 the other or which may be detrimental to one side
10 or the other?

11 In other words, is the witness biased
12 or prejudiced in any fashion?

13 In determining the issue of credibility
14 and believability our law gives you very broad
15 discretions. You may believe many witnesses
16 against one, you may believe one witness against
17 many You do not count witnesses -- that's not
18 what we are talking about

19 And in considering a witness's
20 testimony, you have the right to believe all of
21 the witness's testimony, parts of a witness'
22 testimony, or none of a witness' testimony

23 Now, in making these decisions of what you
24 find to be credible and believable, you don't
25 give them arbitrarily but if there is a reason in

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1 the evidence or in the record this case for
2 taking that position, you have that prerogative
3 because your objective, your oath, what you
4 promised is to determine the truth regardless of
5 the source of the evidence

6 Now, as I mentioned to you when we
7 started, Mr Edwards has been accused of
8 committing two armed robberies They both
9 allegedly occurred on October 10th, 2005 They
10 allegedly occurred in Charleston, and the State
11 has to prove beyond a reasonable doubt all of the
12 elements, that Mr Edwards did, while acting in
13 concert with the others, by use of force, threats
14 and intimidation while armed with a deadly
15 weapon, a pistol, take and carry away goods and
16 monies from the person of Colby Nitterhouse
17 He is accused of committing the same offense
18 against Joseph Hoefer

19 All of that is alleged to be contrary
20 to the law of this State That statute is 16-11-
21 330 of our Code of Laws It provides in part, in
22 Section A, that if a person commits a robbery
23 while armed with a pistol or other deadly weapon
24 or by that, either in actions or by words, that
25 he was armed while using a representation of a

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1 deadly weapon or any object which a person
2 present during the commission of the robbery
3 reasonably believes to be a deadly weapon, that
4 that person has committed the offense of armed
5 robbery.

6 In order to prove the offense, the
7 State must first prove beyond a reasonable doubt
8 that the defendant took personal property from
9 the presence of another Property is in the
10 presence of another if it is within that person's
11 reach, inspection, observation or control so that
12 the person could, if not overcome with violence
13 or prevented by fear, keep possession of that
14 property

15 The State must also prove beyond a
16 reasonable doubt that the defendant carried the
17 property away, intending to permanently deprive
18 the owner of its use In that regard, the
19 slightest removal of the property or the complete
20 possession of the property, even for an instant,
21 by the defendant is sufficient to show a taking
22 and carrying away of the property

23 Also the taking and carrying away of
24 the property must have been done with violence or

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1 putting the person that owned the property in
2 fear of violence

3 Finally, the State must prove beyond a
4 reasonable doubt that the defendant was armed
5 with a deadly weapon during the robbery

6 A deadly weapon, Ladies and Gentlemen,
7 is any article, instrument or substance that is
8 likely to cause death or great bodily harm

9 Whether the weapon has been used a deadly
10 weapon depends on the facts and circumstances of
11 each case, and you must determine that from the
12 evidence in this case

13 I will charge you, Ladies and
14 Gentlemen, that it is the law in this state that
15 if a crime is committed by two or more people who
16 are acting together in committing a crime, the
17 act of one is the act of all.

18 A person who joins with another to
19 accomplish an illegal purpose is criminally
20 responsible for everything done by the other
21 person that occurs as a natural consequence of
22 the acts done in carrying out the common plan and
23 purpose If two or more people are together,
24 acting together, assisting each other in
25 committing the offense, the act of one is the act

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1 of all This is sometimes called "the hand of
2 one is the hand of all "

3 I further instruct that prior knowledge
4 that a crime is going to be committed, without
5 more, is not sufficient to make a person guilty
6 of that crime Mere knowledge that another
7 person is going to commit a crime, even if the
8 defendant is present when the crime is committed,
9 is not sufficient to convict the defendant as a
10 principal Guilt as a principle is shown by
11 actual or constructive presence at the scene, as
12 shown by evidence of a prior arrangement
13 Therefore a finding of a prearrangement of a plan
14 or common scheme is necessary for finding of
15 guilt as a principal

16 The State must prove beyond a
17 reasonable doubt by competent evidence the theory
18 that the hand of one is the hand of all A
19 principal in a crime is who actually commits a
20 crime or who is present aiding, abetting or
21 assisting in committing the crime When a person
22 does an act in the presence of and with the
23 assistance of another, the act is done by both
24 Where two or more acting with a common intent are
25 present in the commission of a crime, it does not

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1 matter who actually commits the crime because, as
2 we have stated the hand of one is the hand of
3 all

4 "Presence" at the commission of a crime
5 means to be sufficiently near to aid and abet
6 in the commission of that crime; however, mere
7 presence at the scene of a crime is not
8 sufficient to convict one as a principle on the
9 theory of aiding and abetting Intent is also a
10 necessary element because there must have been a
11 common design or intent to commit the crime and
12 the crime must have been committed pursuant
13 thereto, with the person aiding and abetted by
14 some overt act

15 "Intent" means intending the result
16 which actually occurs, not accidentally or
17 involuntarily Intent may be shown by acts and
18 conduct from which you may naturally and
19 reasonably infer intent

20 The State must prove these elements,
21 all of them, beyond a reasonable doubt Criminal
22 intent is a necessary element of the crime,
23 Ladies and Gentlemen, and as stated it is proven
24 by the surrounding circumstances which the
25 evidence shows to have existed Criminal intent

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1 is a state of mind that operationally jointly
2 with the act and in commission of a crime
3 Intent would include those consequences which
4 represent the very purpose for which an act is
5 done or which are known to be substantially
6 certain to result regardless of one's desire

7 Criminal intent is said to be a mental
8 state of conscious wrongdoing, so it is up to you
9 to determine whether or not the State has met its
10 burden and established the intent required of
11 this Defendant

12 Ladies and Gentlemen, throughout this
13 process, you have been selected to be unbiased,
14 fair-minded judges You are not partisans or
15 advocates for either side You do not have any
16 friends to reward in this process, nor do you
17 have any enemies to punish

18 You have also promised something that
19 is very critical to performing the task of being
20 a judge As human beings, we are all affected by
21 emotion and that is not uncommon But what you
22 have to do, just as I have to do, we have to use
23 all of our ability and power to set those aside
24 because it has no place in performing this
25 function You have promised both the State and

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1 the Defendant that you will use your sense of
2 common, your sense of logic and reason without
3 any influence of human emotion in deciding what
4 you believe to be the truth

5 Once you decide that, then you take the
6 law as I have given it to you and apply the law
7 fairly and impartially and report your decision.

8 Mr Presiding Juror, to assist you in
9 returning and reporting that decision, I have
10 prepared two verdict forms that I would like to
11 discuss with you now and the other jurors

12 There are two choices The order of
13 the choices means nothing, I had to put them in
14 some order

15 You will see that they are both the
16 same except that you will note that one is -- we
17 put under the verdict form (Colby Nitterhouse)
18 and the other would be (Joseph Hoefer), because
19 there are two separate crimes alleged. Both are
20 the same but to be separate them I have made that
21 notation on there

22 The caption means nothing, that is just
23 to facilitate the filing

24 It says that, "We the jury by unanimous
25 consent find the defendant, Thonal Duane

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1 Edwards," -- and this is the Nitterhouse verdict
2 form The first choice is Guilty, the second
3 choice is Not Guilty Whichever your choice, I
4 would ask you to place an "x" or a check mark in
5 it and then circle the entire, whether it is
6 guilty or not guilty and then sign it

7 What will you be saying if your
8 selection is guilty? Well, first of all, for
9 that to be the selection, for you to complete it
10 all twelve of you have to agree Eleven to one
11 won't work It is required that you reach a
12 unanimous decision

13 If Guilty is the choice what you will
14 be saying, considering the elements that I have
15 discussed with you that the State is required to
16 prove for armed robbery, considering those
17 elements and the law concerning the hand of one
18 is the hand of all, if your decision based on
19 your decision on credibility and believability,
20 you have decided that the State has met its
21 burden of proof and established each of those
22 elements and you are firmly convinced of Mr
23 Edwards' guilt, that would be your verdict

24 Not Guilty says that from your
25 consideration of the evidence that you are not

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1 firmly convinced of one or more elements. Then,
2 as I instructed you, then you must return a
3 verdict of Not Guilty

4 Whichever is your verdict, please
5 indicate as I have requested Then knock on the
6 door and we be happy to return you to receive the
7 verdict

8 At this moment, I am about to let you
9 retire and begin your deliberations Let me ask,
10 of the first twelve is there any juror who feels
11 that they would be unable to continue? If so,
12 please raise your hand (No response) Thank
13 you

14 Mr Brown, at this point it looks like
15 the first twelve will be able to continue, so
16 when the jury is excused and you are excused, in
17 just a moment, I am going to ask that you not
18 return with the jury They will show you into
19 another room and I'll be in shortly to tell you
20 how much longer that you need to stay.

21 When you got out -- I know that you are
22 anxious to get started, and you are almost there,
23 but I have to discuss my charge with the
24 attorneys It might be necessary to return you

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1 for some additional instruction or clarification

2 If so, we will return you to accomplish that

3 But if there aren't any editions or
4 corrections, then we gather the exhibits and the
5 verdict form and bring them to you When you
6 receive those exhibits and the verdict form, then
7 you may begin your deliberations

8 Once deliberations begin, the only
9 restriction is this if at any point any juror
10 has to leave the table for any reason, you must
11 not deliberate until all jurors are present,
12 otherwise you may proceed as you deem fit and
13 proper

14 Thank you very much for your attention
15 You may retire now and await the exhibits and the
16 verdict form. Please do not begin your
17 deliberations until you receive the verdict form
18 and the exhibits Thank you

19 (JURY OUT @ 10.30 A M)

20 THE COURT Anything exceptions or
21 additions from the State?

22 MR VOIGHT None from the State, Your
23 Honor

24 THE COURT From the defense?

25 MR SMILEY No, sir

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1 THE COURT Very well Gentlemen,
2 thank you again for the manner in which you
3 presented your clients

4 COURT REPORTER Gentlemen, if you
5 would, please come forward and check your
6 exhibits. All State exhibits are in, however
7 Exhibit 10, the live ammunition, does not go back
8 to the jury

9 MR SMILEY. That's fine

10 MR VOIGHT Okay

11 (JURY IN DELIBERATIONS @ 10-30 A M)

12 THE COURT: At this point, Mr
13 Smiley, the Order now stops He can stay right
14 here, but he may not leave the courtroom.

15 MR. SMILEY. T J , you have to stay
16 in the courtroom All right?

17 DEFENDANT Yes, sir

18 (NOTIFIED OF JURY REQUEST @ 11 26)

19 (DEFENDANT PRESENT)

20 THE COURT We have received a
21 request from the jury for a copy of the law I
22 have no problem giving it to them. I am going to
23 bring them in and ask specifically what they
24 want Any objection to my giving the jury a copy
25 of the charge for their review/

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1 MR. SMILEY. No, Your Honor

2 MR VOIGHT I don't, Your Honor

3 MR SMILEY I guess I say that,
4 Your Honor, as long as it is complete

5 THE COURT Well, whatever they ask
6 me, I will give them whatever they want.

7 MR SMILEY Yes, sir

8 THE COURT Bring them in

9 (JURY IN @ 11 21 A M)

10 THE COURT Thank you, Mr Foreman, I
11 have your request, which we will mark as Court's
12 Exhibit 1

13 (SO ENTERED AS COURT'S EXHIBIT 1)

14 THE COURT The question is,
15 (reading) "Can we get a copy of the law on
16 points that we need to apply to this case "

17 I am prepared to certainly copy the
18 entire charge Everything that I said, from
19 start to finish, is the charge Do you want the
20 entire charge or do you want the charge that
21 pertains to any particular -- for instance, I
22 defined a number of things I don't want you to
23 tell me at this point what necessarily

24 I would like for you to go back to the
25 jury room and ask the jurors what aspects of the

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1 charge If you want the entire charge, so be it
2 But if you only want the charge -- and this is
3 only by way of discussion, I am not trying to
4 lead you into anything If you want that portion
5 that defined armed robbery, then certainly I can
6 provide that If you want the portion that dealt
7 with determining the credibility of witnesses, I
8 will be happy to give you that portion. If you
9 want the part that deals with criminal intent,
10 the hand of one being the hand of all If you
11 could just give me the specifics that you want or
12 you can just say, 'we want the entire charge.'

13 FOREMAN I believe that we would
14 like the entire charge There are a couple of
15 pieces that we are specifically interested in

16 THE COURT That's fine

17 FOREMAN But knowing what we know,
18 it would probably be better to have the entire
19 charge

20 THE COURT That's no problem It
21 will probably take me a few minutes but then I
22 will sent it back to you

23 FOREMAN Thank you

24 THE COURT Please return to the jury
25 room

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1 (JURY OUT @ 11 22 A M)

2 THE COURT As soon as I get it
3 printed, I will get you both a copy of it. Any
4 objections, any additions or exceptions from the
5 State as to the comments of the Court?

6 MR VOIGHT No, Your Honor.

7 THE COURT From the Defendant?

8 MR SMILEY No, Your Honor

9 THE COURT Okay, we will be at-ease
10 for just a few moments

11 (BRIEF RECESS)

12 (DEFENDANT PRESENT)

13 THE COURT If you'all want to look
14 this over and see if there is objection to my
15 sending this back to them

16 MR VOIGHT Okay.

17 MR SMILEY All right (Upon
18 review), no objection, Your Honor

19 MR VOIGHT (Upon review), the State
20 has no objection

21 THE COURT Then we will send it back
22 to the jury

23 COURT REPORTER This will be attached
24 to Court's Exhibit 1

25 (WRITTEN CHARGE PROVIDED TO JURY)

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1 (RECESS - JURY IN DELIBERATIONS)

2 (NOTIFIED OF VERDICT)

3 (DEFENDANT PRESENT)

4 THE COURT Is the State ready to
5 receive the verdict?

6 MR VOIGHT Yes, sir

7 THE COURT Is the Defense ready to
8 receive the verdict?

9 MR SMILEY The defense is ready,
10 Your Honor.

11 THE COURT: Bring the jury in.

12 (JURY IN)

13 THE COURT Thank you very much,
14 Ladies and Gentlemen for your patience I hope
15 that you received your lunch all right

16 I appreciate your efforts in resolving
17 this matter Mr Foreman, as I understand, the
18 jury has reached a verdict?

19 FOREMAN: Yes, sir

20 THE COURT If you would, pass the
21 verdict form to the clerk

22 FOREMAN (Complies)

23 CLERK (Tenders verdict form to
24 bench)

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1 THE COURT (Upon review), the
2 verdict form has been properly completed
3 I would ask the Defendant to please rise
4 Will the Defendant please rise?

5 DEFENDANT (Complies)

6 THE COURT (Reading). State of
7 South Carolina, County of Charleston, Case Number
8 2006-GS-10-0084, State of South Carolina versus
9 Thonal Duane Edwards" -- this is, for purpose of
10 the record, the Nitterhouse indictment "We, the
11 jury, by unanimous consent find the Defendant,
12 Thonal Duane Edwards, Jr Guilty " Signed by Lee
13 Corbin, the presiding juror, dated February 8th,
14 2007

15 2006-GS-10-85, this is the Hoefer
16 indictment, (reading) "We, the jury, by
17 unanimous consent find the Defendant, Thonal
18 Duane Edwards, Jr Guilty " Signed by Lee
19 Corbin, the presiding juror and dated February
20 8th, 2007

21 Ladies and Gentlemen of the jury, if
22 the Court has published your verdict in each case
23 accurately, please indicate that by raising your
24 right hand (all jurors raise right hand) Let

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1 the record reflect that each juror has raised
2 their right hand in response to the question

3 Anything for the jury, from the State?

4 MR VOIGHT No, Your Honor

5 THE COURT Anything further from the
6 Defendant?

7 MR SMILEY. No

8 THE COURT Ladies and Gentlemen,
9 thank you very much for your participation in
10 this process Thank you for your service to this
11 community, the County and the State It has been
12 an honor to serve with each one of you

13 I am pleased to inform you that this is
14 last matter in which you will be needed this
15 week You have completed the jury services now

16 You are also free to talk about this
17 case if you wish But if you wish not to talk
18 about this case and someone should persist in
19 asking you questions, if you would let Ms
20 Armstrong know then she can bring that to my
21 attention and we can try to assist you

22 Have a great day, you are free to
23 leave If there are any questions that anyone,
24 if you will remain in the jury room I will be
25 happy to step out and try to address it If not,

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1 good luck to each one of you. Thank you so much
2 for giving your time and energy

3 (JURY DISMISSED)

4 THE COURT. Anything from the State
5 concerning the verdict?

6 MR VOIGHT. No, Your Honor

7 THE COURT Mr Smiley, from the
8 defendant?

9 MR SMILEY No

10 THE COURT Thank you

11 MR VOIGHT We will complete the
12 sentencing sheet

13 (BRIEF RECESS)

14 (DEFENDANT IN CUSTODY, PRESENT)

15 THE COURT All right Are we ready
16 to proceed?

17 MR VOIGHT The State is ready, Your
18 Honor.

19 MR SMILEY. Yes, sir

20 THE COURT I will be happy to hear
21 from you, Mr Smiley

22 MR SMILEY Your Honor, I am going
23 to ask for the minimum sentence in this case
24 I wish that there was something else that I could
25 request You have had an opportunity to watch

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before The Honorable R. Markley Dennis, Jr

1 my client in the courtroom and how he conducted
2 himself I would ask that the Court consider
3 that

4 Your Honor, his mother who is terribly
5 upset is here today She would tell you that he
6 has been an exceptionally good young man,
7 especially since October of 2005

8 This was a terrible thing and we don't
9 dispute the jury's verdict by any means but would
10 ask that you take view of my client's life as a
11 whole and not that particular night It was
12 totally out of character for him

13 I told the family beforehand that I
14 would do the talking and they don't really need
15 to tell you anything, that you are quite clear
16 and aware and I don't believe that they have
17 anything to add

18 I would ask that you impose the minimum
19 sentence

20 THE COURT Thank you, sir

21 THE COURT Mr Edwards, is there
22 anything that you wish to say, sir?

23 DEFENDANT No, sir

24 THE COURT I would agree with your
25 lawyer's description that it was totally out of

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1 character for you I don't know anything about
2 your life, but I don't quarrel with the jury's
3 decision or assessment I think that they made
4 the correct assessment, to be perfectly candid
5 with you But it was a jury question

6 Had there been one act I probably could
7 even consider the ten-year sentence as being an
8 appropriate sentence But what concerns me the
9 most is to repeat Because at some point, you
10 just simply -- what everybody has told you in
11 your life has got to register and at some point
12 there was something about you that said 'no' on
13 that particular night I don't know, I wasn't
14 there I don't know why That bothers me

15 I will take into consideration that you
16 do not have any prior offenses

17 The sentence of the Court on each
18 indictment, 06-0084 and 06-0085 is fourteen
19 years Good luck, sir

20 MR. SMILEY Thank you, Your Honor

21 THE COURT Does he have credit --
22 any jail time?

23 MR SMILEY Very little, Your Honor

24 THE COURT All right, I will just
25 check that box

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1 MR SMILEY: Thank you For the
2 record, I have advised him of his right to appeal
3 and will file an intent to appeal in this matter

4 THE COURT. Thank you.

5 COURT REPORTER. Concurrent or
6 consecutive, Your Honor?

7 THE COURT It is concurrent Thank
8 you.

9 MR SMILEY Thank you

10 (TRANSCRIPT CONCLUDED)

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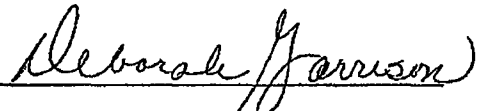
State of South Carolina v Thonal Duane Edwards, Jr
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Jury Trial of February 7th & 8th, 2007
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate
and complete transcript of the jury trial held
before The Honorable R Markley Dennis, Jr , on
February 7th & 8th, 2007,

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

January 10, 2008

DBD-2005-10 05245

WITNESSES

KEITH HAIR AND/OR

MAT CASEY

LOZEZ CPD

OCA# 2005-22109

ARREST WARRANT NUMBER

K 021738

OCTOBER 11 2005

ACTION OF GRAND JURY

JUL 11 2006

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO 2006 GS 10 0084

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

VS

THONAL DUANE EDWARDS, JR.

Indictment for

ARMED ROBBERY

05-5592(1)

FILED
2006 JAN 12 PM 3 09
JUL 11 2006
CLERK OF COURT

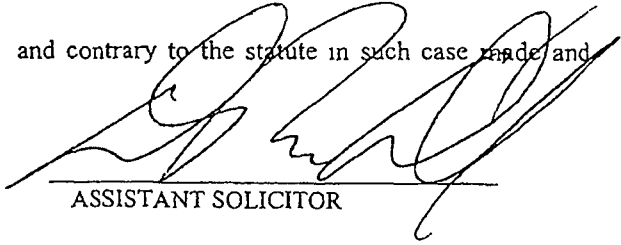
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on January 9, 2006 the Grand Jurors of Charleston County present upon their oath

That Thonal Duane Edwards, Jr , while acting in concert with others, did in Charleston County on or about October 10, 2005 at George Street and St Phillip Street by use of force, threats or intimidation and while armed with a deadly weapon, to wit a pistol, , take and carry away goods and/or monies from the person or immediate presence of Colby Nitterhouse with the intent to permanently deprive him of possession thereof, in violation of Section 16 11 330(A) of the South Carolina Code of Laws, 1976 as amended

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS

THONAL EDWARDS

AKA _____

Race B Sex M Age 22

DOB _____

Address _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2006GS100084A/W# K021738Date of Offense 10/10/2005S C Code § 16-11 0330(A)CDR Code # 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO Armed Robberyin violation of § 16 11 0330(A) of the S C Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25 45
w/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 14 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of
probation which are incorporated by reference☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____☒ The Defendant is to be given credit for time served pursuant to S C Code § 24 13 40 to be calculated and applied
by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine \$ _____

§ 14 1 206 (Assessments 107 5 %) \$ _____

§ 14 1 211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14 1 211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56 5 2995 (DUI Assessment) \$12 \$ _____

§ 35 13 (Public Def/Prob) \$500 \$ _____

§ 73 3 1B TP (Law Enforce Funding) \$25 \$ 25.00

§ 33 7 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50 21 114(BUI Breath Test Fee) \$50 \$ _____

§ 56 5 2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

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 [Signature]Judge Code 2 1 0 1 6 1 0Sentence Date 2 1 8 0 7

SCCA/217 (9/2006)

[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter D. Garrison

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DBD 2005 10 05245

WITNESSES

KEITH HAIR AND/OR

MAIT CASEY

LOZEZ CPD

OCA# 2005 22109

ARREST WARRANT NUMBER

K 021739

OCTOBER 11 2005

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO 2006 GS 10

0085

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs

THONAL DUANE EDWARDS JR

Indictment for

ARMED ROBBERY

02-5592(3)

FILED
JUL 12 11 3 09
CLERK OF COURT

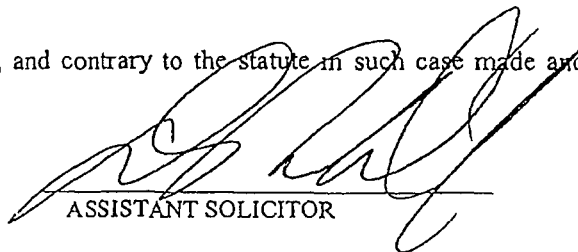
STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT FOR
 ARMED ROBBERY

At a Court of General Sessions convened on January 9, 2006 the Grand Jurors of Charleston County present upon their oath

That Thonal Duane Edwards Jr , while acting in concert with others, did in Charleston County on or about October 10, 2005 at George Street and Coming Street, by use of force, threats or intimidation and while armed with a deadly weapon, to wit a pistol, , take and carry away goods and/or monies from the person or immediate presence of Joseph Hoeffler with the intent to permanently deprive him of possession thereof, in violation of Section 16 11 330(A) of the South Carolina Code of Laws, 1976 as amended

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS

THONAL EDWARDS

AKA _____

Race B Sex M Age 22

DOB _____

Address _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2006GS100085A/W# K021739Date of Offense 10/10/2005S C Code § 16-11 0330(A)CDR Code # 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO Armed Robberyin violation of § 16-11-0330(A) of the S C Code of Laws, bearing CDR Code # 0139☐ NON VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25 45 w/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 14 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference☒ CONCURRENT or ☐ CONSECUTIVE to sentence on _____☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13 40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17 25 135

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 1P (Law Enforce Funding)

§ 33 7 1B 1P (Drug Court Surcharge)

§ 50-21 114(BUI Breath Test Fee)

§ 56 5 2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$

\$

\$ 3.75

\$ 128.75

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 1P
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code 2101219Sentence Date 2/8/07

Clerk of Court/ Deputy Clerk

Court Reporter D. Garrison

SCCA/217 (9/2006)

STATE OF SOUTH CAROLINA)

County of Charleston)

IN THE COURT OF COMMON PLEAS

Thomas D Edwards Jr #380003)
Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

2010-CP-10-3801

APPLICATION FOR
POST-CONVICTION RELIEFFILED
JUL 11 11 PM 12:41
CLERK OF COURTINSTRUCTIONS - 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 Tyger River
- 2 Name and location of Court which imposed sentence Charleston County
- 3 Name(s) of co-defendant(s) (if any) _____
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
(a) 2006-G5-10-0084

(b) 2606-GS-10-0085

(c) _____

5 The date upon which sentence was imposed and the terms of the sentence

(a) fourteen years - February 7th - 8th 2007

(b) _____

(c) _____

6 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) ☒ after a plea of not guilty found guilty

(c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8 If you answered "yes" to (7), list

(a) the name of each Court to which you appealed

I direct appeal - South Carolina,

II _____

III _____

(b) the result in each such Court to which you appealed

I Amended

II _____

III _____

(c) the date of each such result

I December-18th 2009

II _____

III _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

I State v. Weston 367 SC 279, 292-93, 625 SE 2d 641, 648 2008

II _____

III _____

9 If you answered "no" to (7), state your reasons for not so appealing

(a) _____

- (b) _____
- (c) _____
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) IAC - Ineffective assistance of Council
- (b) N/A
- (c) N/A
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10)
- (a) Failure: To challenge identification, to call Co-dependent to stand -
- (b) attorney should have requested lesser offenses
- (c) N/A N/A
- 12 Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? Court of Appeals - SC
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions if any, already specified in (8)? _____
- (d) any other petitions motions or applications in this or any other Court? _____
- 13 If you answered 'yes' to any part of (12), list with respect to each petition, motion or application
- (a) the specific nature thereof
- i Motion for direct verdict
- ii failure to identify
- iii failure to prove the existence of a gun
- iv _____
- (b) the name and location of the Court in which each was filed
- i Court of Appeals, Charleston SC
- ii _____
- iii _____

IV

(c) the disposition thereof

I

Amended

II

III

IV

(d) the date of each such disposition

I

December 1, 2009 - filed Dec 15 2009

II

III

IV

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

I

N/A

II

III

IV

- 14 Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

- 15 If you answered "yes" to (14) identify

(a) which grounds have been presented

I

II

III

(b) the proceedings in which each ground was raised

I

II

III

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) VERIFICATION

I THONAL EDWARDS, 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

Thonal Edwards Jr

Sworn to and subscribed before me

This 16th day of March, 2010

Jessie P. Childers J.S.
Notary Public for South Carolina
My Commission Expires 12-20-17

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I Thonal Edwards, 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 proceeding or give security therefor

Thonal Edwards Jr
Applicant

Sworn to and subscribed before me

This 16th day of March, 2010

Jessie P. Childers J.S.
Notary Public for South Carolina
My Commission Expires 12-20-17

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2010-CP-10-3801
	)	
Thonal D Edwards Jr #320003	)	
	)	
Applicant	)	
	)	
v	)	RETURN
	)	
State of South Carolina	)	
	)	
Respondent	)	
	)	

The Respondent making its Return to the Application for post-conviction relief filed May 11, 2010 would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2006 term of the Charleston County Grand Jury for two counts of armed robbery (2006-GS-10-0084, -0085). James Smiley, Esquire, and Laura Knobeloch, Esquire, represented the Applicant. The Applicant proceeded to trial on February 7-8, 2007, after which a jury found him guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for fourteen (14) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Elizabeth A. Franklin-Best, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of

Appeals affirmed the conviction and sentence State v. Edwards, Op No 2009-UP-595 (S C Ct App filed December 15 2009) The Remittitur was issued on December 31 2009

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Amended Final Brief of Appellant, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated December 31, 2009

II

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of trial counsel in that counsel
 - a Failed to challenge identification
 - b Failed to call co-defendant to stand
 - c Failed to request lesser-included offenses

III

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application Butler v. State, 286 S C 441, 334 S E 2d 813 (1985) Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result " Strickland v. Washington, 466 U S 668, 104 S Ct 2052, 2064 80 L Ed 2d 674, 692 (1984), Butler, 286 S C 441, 334 S E 2d 813

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V

WHEREFORE having made its Return the Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel

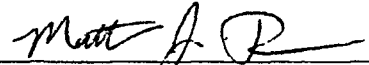
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

MATTHEW J FRIEDMAN
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
(803) 734-3737

8/18, 2010

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2010-CP-10-03801

THONAL D EDWARDS, JR ,)
Applicant,)
-vs-)
STATE OF SOUTH CAROLINA,)
Respondent)

TRANSCRIPT OF RECORD
May 25, 2011
Charleston, South Carolina

B E F O R E

The Honorable Deadra L Jefferson, Judge

A P P E A R A N C E S

Charles Brooks, III, Esquire
Attorney for the Applicant

Matthew S. Friedman, Esquire
Attorney for the Respondent

Amanda K Haffenden, RPR, CRR
Circuit Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Thonal Edwards	6	10	--	--
James Smiley	11	14	--	--

1 (May 25, 2011)

2 THE COURT This is Thonal D Edwards versus
3 the State of South Carolina, CP-10-3801 It's before the
4 Court on an application for post-conviction relief, which
5 was filed on May 11 of 2010 The return was filed on
6 August 20th of 2010 This matter went to trial before
7 the Honorable Markley Dennis on February 7th through 8 of
8 2007 on indictment 2006-GS-10-0084 and 0084, which were
9 two counts of armed robbery

10 His he convicted about sentenced to 14 years
11 for each offense to run concurrently with each other
12 His appeal was filed and perfected by the office of
13 indigent defense, and an Anders brief was filed with the
14 Court

15 Actually, I apologize It was affirmed by --
16 the conviction and sentence were affirmed by the Court of
17 Appeals in an unpublished opinion The remitterer was
18 issued on December 31 of 2009 He alleges several
19 things, that being that his lawyer failed to challenge
20 the identification, failed to call his co-defendant as a
21 witness, and failed to include lesser included offenses

22 Applicant ready to proceed, Mr Brooks?

23 MR BROOKS Yes, ma'am

24 THE COURT Is the state ready to proceed?

25 MR FRIEDMAN Yes, ma'am

1 THE COURT And our witness is present
2 We'll dispense with opening arguments you may present

3 We would call Mr Evans to the stand

4 THE COURT Have you explained to him the
5 only relief available is a new trial?

6 MR BROOKS Yes, ma'am

7 THE COURT And what are the dates these
8 alleged armed robberies are alleged to have taken place?

9 MR BROOKS Let me look back at the actual
10 dates October 2005

11 THE COURT Both of them or --

12 MR BROOKS They were all at the same time
13 They were part of the second situation, so we just have
14 two parties

15 THE COURT Okay

16 MR BROOKS And, Your Honor, I was going to
17 put on the record --

18 THE COURT Just give me one second One was
19 alleged to have occurred on October 10th of 2005, and one
20 of them is alleged at the same time, one on George Street
21 and St Phillip and one on George Street and Coming
22 Street, one at 2200 hours -- this one doesn't list a
23 time

24 MR SMILEY Literally a minute apart, Your
25 Honor

1 THE COURT This affidavit didn't have a time
2 on it Okay And you've explained to him the only
3 relief is a new trial?

4 MR BROOKS Yes, ma'am

5 THE COURT And that can result in a higher
6 sentence than he received?

7 MR BROOKS Yes, ma'am

8 THE COURT And, I don't know, can't the
9 state try each of these separately?

10 MR BROOKS I explained to him --

11 THE COURT I guess they could since they
12 could call the cases I guess, worst case scenario, that
13 could happen

14 MR BROOKS I explained to him he could face
15 a 60 career sentence, 30 years on one, 30 on the second

16 THE COURT And both of those are most
17 serious strikes

18 MR BROOKS Yes, ma'am

19 THE COURT And that two strikes, would that
20 be considered one event or two, Mr Smiley?

21 MR SMILEY It would be arguable, but I
22 think it would count as one because they happened a
23 minute apart It was something that we brought to the
24 attention of His Honor because I would have separated
25 them We never made a formal motion about that, but,

1 Your Honor, Honorable Dennis said that no, they're all
2 one chain of events

3 THE COURT Okay I just wanted to give him
4 worst case scenario and make him aware that the best
5 thing that could happen to him is a new trial, which
6 could subject him to enhanced penalties In other words,
7 he could receiver a greater sentence than what he
8 received

9 MR BROOKS He maxes out in about six years,
10 and I explained to him that he could potentially be
11 trading six for 60 or even more

12 THE COURT Okay And, sir, you understand
13 that?

14 THE APPLICANT Yes, ma'am

15 THE COURT And you still wish to go forward
16 with your post-conviction relief action?

17 THE APPLICANT Correct

18 THE COURT Let's proceed

19 THONAL EDWARDS,

20 having been first duly sworn,
21 was examined and testified as follows

22 DIRECT EXAMINATION

23 BY MR BROOKS

24 Q Mr Edwards, you had Mr Smiley as your attorney?

25 A Correct

1 Q And he was retained, is that correct?

2 A Yes, sir

3 Q And you have brought this application,
4 post-conviction relief, alleging ineffective assistance
5 of counsel, is that correct?

6 A Yes, sir

7 Q Now, during your trial, do you recall your
8 attorney challenging the identification of you during the
9 trial?

10 A No, sir, I didn't

11 Q You guys did have a hearing challenging your
12 identification?

13 A No

14 Q What we commonly refer to as Neil vs Biggers, you
15 never had an identity hearing, is that correct?

16 A That's correct

17 Q And also one of the things that you had raised was
18 that the issue about calling Mr Walter to the stand, is
19 that correct?

20 A Right

21 Q And that was your codefendant

22 A Yes, sir

23 Q And why, in your opinion, why would you think that
24 is significant? Why do you think you should call Walter
25 to the stand?

1 A He had a statement declaring that what he did was
2 his own doing, and it disclosed me from any wrongdoing of
3 what he had planned or did that day, that afternoon

4 Q So Mr Walter -- it was your position that
5 Mr Walter's attorney didn't have any knowledge of his
6 client or his intentions as to violence, is that correct?

7 A Yes, sir

8 Q And did you relay that to your attorney?

9 A Yes, sir

10 Q And Mr Walter was never called, correct?

11 A Correct

12 Q And also as a part of your trial was there any
13 lesser included offenses, such as strong-arm robbery,
14 submitted to the Court?

15 A No, sir

16 Q And that is something that your attorney should
17 have done, is that correct?

18 A Correct

19 Q Now, I wanted -- some other things you talked
20 about was during the trial he had mentioned something
21 about you running, is that correct?

22 A Yes, sir

23 Q And you felt that was negligence on his part, is
24 that correct?

25 A Yes, sir

1 Q And that was in the transcript around page 64?

2 A Yes, sir

3 Q And that is when he was arguing to the jury, or he
4 admits he was raising statements to the jury?

5 A Opening statements

6 Q Opening statement Okay And you felt that that
7 was something that actually prejudiced you, is that
8 correct?

9 A Yes

10 Q In particular, when you add all these up, you
11 think these things had a significant impact on the
12 outcome of your trial?

13 A Yes, sir

14 Q And if these things had been changed, whereas had
15 somebody challenged the identification or there been a
16 lesser included offense, you would not have been found
17 guilty of two counts of armed robbery?

18 A Correct

19 Q Okay Is there anything else you want to tell the
20 judge about your trial lawyer that you haven't raised?

21 A No, sir

22 MR BROOKS Okay All right

23 THE COURT Mr Friedman, any questions for
24 the witness?

25 MR FRIEDMAN Thank you, Your Honor

CROSS-EXAMINATION

BY MR FRIEDMAN

Q Mr Edwards, did you testify at your trial?

A Yes, sir

Q Do you recall in your testimony that you admitted that you were at the scene?

A Yes, sir

Q And one of your allegations is that your attorney failed to challenge the identification?

A Correct

Q What did you want him to challenge about that?

A That we wouldn't have gotten to that point if a direct verdict for a lesser included offense was granted to the jury We didn't have the state investigate their case In the event I wouldn't have to testify and I wouldn't implement it myself there or the jury having to hear that

Q Do you recall your attorney did make a directed verdict motion?

A Yes, correct

MR FRIEDMAN I have nothing further

THE COURT Any redirect?

MR BROOKS No, ma'am

THE COURT Any other witnesses?

MR BROOKS Yes, ma'am We call Mr Smiley

1 JAMES SMILEY,
2 having been first duly sworn,
3 was examined and testified as follows

4 DIRECT EXAMINATION

5 THE COURT You may proceed

6 BY MR BROOKS

7 Q Mr Smiley, you represented Mr Edwards in this
8 matter?

9 A I did

10 Q And do you recall having challenging the
11 identification of Mr --

12 A I did not

13 Q Okay So there was no Neil vs Biggers issue?

14 A No, there was not

15 Q Now, do you recall requesting a lesser included
16 offense for this?

17 A I did not

18 Q And you did not call Mr Walter who was a
19 codefendant in this case, correct?

20 A Walter, no, I did not

21 Q There was some mentioning about Mr Edwards
22 running in the opening statement Do you recall that?

23 A I don't recall that What page was that so I can
24 read it?

25 Q Page 64

1 A What line, do you know? Oh, I see it What
2 you're going to hear T J not too long after this
3 happened had gotten out and ran because he was scared I
4 don't think -- that is what's in the transcript, but it
5 wasn't really the theory of our case, so I don't
6 understand what that is in there for at all, because it
7 wasn't that I said he ran, they were stopped shortly
8 thereafter It might have been put in the transcript
9 wrong It surely wasn't the theory of my case

10 Q What, in your opinion, what was the -- can you
11 summarize what the state's case was against Mr Edwards?

12 A There was two armed robberies of College of
13 Charleston students in a close period of time committed
14 by a white male with a gun, and there were two black
15 males, one was a driver and one had gotten out as the
16 first victim, I believe it was, called his parents and
17 then the police The police stopped this blue Honda on
18 East Bay Street In the car was the codefendant black
19 male driving

20 There was a white male in the passenger seat and,
21 T J in the back seat They had the white male get out,
22 at which time they saw a gun and it turned into a felony
23 stop T J was patted down and they found a clip to that
24 gun, or a clip to a gun, I should say, in his pocket, and
25 so the state's case was these young men committed an

1 armed robbery They found a gun, and then they had one
2 of the -- one of the fellows was able to ID T J One of
3 them couldn't

4 Q You say one of the fellows, one of the victims?

5 A One of the victims Both victims picked out the
6 white guy that had the gun, Eric Walter One of the
7 victims believed it was T J He didn't say he was 100
8 percent positive, but he believed it, and the second time
9 said he couldn't because he was concentrating on the
10 white guy The reason, if you want me -- the reason I
11 didn't use identity as a defense is because T J was
12 arrested with the guy that was positively ID'd within
13 minutes of the crime, had a clip to a gun in his pocket,
14 and a gun was found

15 I believe the wallet was found too in the car, if
16 my recollection is correct, so I figured that a better
17 defense in the case was what I believed still to this day
18 to be the truth, is that T J didn't know what was going
19 on when these events happened and that he was merely
20 present, and that was the defense that we pursued

21 In retrospect, maybe there would have been a
22 better defense, but that is the one in talking with T J
23 I thought best applied to the situation at hand

24 Q Was there any plea negotiations?

25 A No I wanted a plea offer to strong-arm robbery

1 We were not offered that I wanted that and T J didn't
2 much want it, I can tell you that He didn't want to
3 plead to anything, but I told him that we got a
4 strong-arm robbery plea that I would be strongly
5 encouraging him to take This happened about the same
6 time that the Wando kids arm robbed a series of places
7 over in Mount Pleasant, so I was very mindful of the
8 situation when I was literally begging for a strong-arm
9 robbery plea that T J wouldn't be treated any
10 differently because of the color of his skin than the
11 young men in Mount Pleasant

12 They weren't -- the culprits in that case weren't
13 extended strong-arm robbery pleas Some got other pleas,
14 and I was very angry, quite frankly, and it caused a big
15 fallout at the time with Mr Hoisington because I thought
16 T J was similarly situated to the young men that did
17 catch breaks in that Wando case So, very clearly,
18 though, we did not get a plea offer whatsoever

19 MR BROOKS Beg the Court's indulgence No
20 other questions

21 THE COURT Any questions of the witness?

22 MR FRIEDMAN Just briefly

23 CROSS-EXAMINATION

24 BY MR FRIEDMAN

25 Q Mr Smiley, how long have you been practicing law?

1 A Since 1993

2 Q Did you have any prior experience with armed
3 robbery trials before this case?

4 A Yes I think Your Honor is well aware I've tried
5 dozens of felony cases, and I probably tried over a dozen
6 armed robbery cases At this point in my career, I've
7 probably tried over 100 case if I had to count

8 Q Do you remember how many times you met with the
9 applicant?

10 A I want to tell you, we didn't meet a whole lot as
11 he was out on bond in Greenville We met, we talked, we
12 got down to what our defense was going to be and how it
13 was going to fall out, and if I got an offer somewhere
14 along the line on strong arm, we were going to jump on
15 it

16 In the meantime, I would try to keep this out of
17 the trial as well as I could, and I wouldn't call it a
18 rush, but it came up for T J -- I think this trial was
19 during his birthday, and not something I'll forget

20 Q Do you remember you discussed the elements of
21 armed robbery, what the state was required to prove?

22 A Absolutely

23 Q Was there any discussion about calling codefendant
24 Walter?

25 A Yes, there was In fact, we talked about that

1 Eric Walter had not pled guilty or been sentenced at that
2 time His public defender at that time was a gentleman
3 named Andrew Grimes Andrew had indicated to me that
4 Walter would say things in our favor, however, I was told
5 the night before I was going to call him that he wasn't
6 so sure that his client would still do that and would
7 most likely invoke the Fifth, and because I hadn't been
8 able to question Mr Walter directly, as Mr Grimes
9 didn't give me access, I didn't feel -- rule number one
10 is you don't call somebody to the stand unless you know
11 what they're going to say, and I didn't know what
12 Mr Walter was going to say

13 I knew that our defense was mere presence We
14 certainly had Mr Walter as being the gentleman that was
15 the perpetrator I thought I had adequately explained
16 T J 's -- I won't call it participation, but presence for
17 what it really was, and in my years, this one sticks with
18 me I didn't like this one I don't think it was the
19 right result, but the jury did speak

20 Q Okay

21 MR FRIEDMAN I have nothing further

22 THE COURT Any redirect for the witness?

23 MR BROOKS No, ma'am

24 THE COURT Any objection to the witness
25 being excused?

1 MR BROOKS No

2 THE COURT Let me ask another question Was
3 there any basis to request a lesser included offense,
4 Mr Smiley?

5 THE WITNESS Your Honor, they found the gun
6 in the car, literally within minutes of this happening,
7 and --

8 THE COURT Was the only eyewitness testimony
9 that a gun was used in the events, as I recall from the
10 transcript?

11 THE WITNESS Yeah Both of them said they
12 were focussed on the gun, so I didn't think it -- I
13 always believe that when you put forward a defense, you
14 got to pick a defense and stick to it and so I, in
15 opening, gave up there was an armed robbery but that T J
16 didn't participate

17 THE COURT That he was merely present

18 THE WITNESS Merely present I think to
19 argue, yeah, he was merely present, but if you think he
20 did it, it could be a strong arm --

21 THE COURT That's like conceding a point, in
22 other words, conceding guilt by default

23 THE WITNESS Yes, ma'am

24 THE COURT And would that have been contrary
25 to your strategy in this case?

1 THE WITNESS Yes, ma'am I would have
2 certainly wanted to give him a compromise point and that
3 did not fit our strategy in the case, and that is a
4 strategy that T J knew I was going to employ I felt we
5 did tried a pretty good case, Your Honor, but, like I
6 said, this one sticks with me And I'll tell you, if I
7 could, something that bothers me in this case, and it
8 still bothers me to this day, is Eric Walter, the
9 perpetrator of the crime, got less time than my client,
10 and that bothers me

11 THE COURT But he pled guilty, didn't he?

12 THE WITNESS Yes, ma'am, and he did it, and
13 I talked to my client --

14 THE COURT Was it a negotiated plea or was
15 it a recommendation?

16 THE WITNESS No, ma'am It was a straight
17 up plea All I know is my client got 14 years, the
18 person with the gun got 12, I believe, and then I don't
19 know what the third guy who didn't show up for trial, but
20 I think he got ten, if I remember And I see mom shaking
21 her head

22 THE COURT Did he plead as well?

23 THE WITNESS Yes, ma'am And he was --
24 actually, the driver of the car was subpoenaed in this
25 case and failed to appear for his subpoena and was bench

1 warranted I didn't subpoena him, but the state had, so
2 it was -- it's just one of those cases, Your Honor T J
3 Edwards was, I think, and still to this day I believe is
4 one of the guys that -- I'm not saying he put himself in
5 a good position, but certainly the outcome is one that is
6 very harsh in our situation, and you know me, no criminal
7 record before this, and it bothered me

8 I'm not saying I did anything wrong I think
9 I tried the case to the best of my ability, Your Honor,
10 and would try it the same way tomorrow, but I could still
11 sleep good with the outcome

12 THE COURT But you recognize when people
13 plead guilty, they're always going to get some break?

14 THE WITNESS Yes, ma'am, and I talked to
15 T J about that

16 THE COURT One for admitting culpability,
17 and the other because the Court doesn't get to hear all
18 the facts of the case completely developed as a trial is
19 developed, so it's not a punishment, I think it's just --

20 THE WITNESS Yes, ma'am And I'm not saying
21 they're apples to apples, it just still bothers me I'm
22 not saying there is a remedy, it just bothers me that the
23 gunman who put this all in action and the guy that
24 actually had the gun and pointed at people got less time
25 than T J

1 I'm not saying why or otherwise, it just
2 bothers you It's just one of those things that you
3 say -- not that it can be fixed, but it's not right

4 THE COURT Was he ever given the opportunity
5 to testify against the codefendant in that case?

6 THE WITNESS No, ma'am He was not

7 THE COURT Did he ever offer that?

8 THE DEFENDANT No, ma'am, we did not The
9 codefendant was pleading They were pleading regardless

10 THE COURT Oh, I got you

11 THE WITNESS It came down to us deciding
12 whether we were going to plead too and give them the
13 circumstances I thought our defense -- and worse had
14 happened He got 14 years

15 THE COURT Okay Any questions as a result
16 of the Court's questions?

17 MR BROOKS No, ma'am

18 MR FRIEDMAN No, ma'am

19 THE COURT Any objection to Mr Smiley being
20 excused from the state?

21 MR FRIEDMAN No, Your Honor

22 THE COURT From the applicant?

23 MR BROOKS No, ma'am

24 THE COURT You're excused Anything
25 further, Mr Brooks?

1 MR BROOKS That's the applicant's case

2 THE COURT Anything from the state?

3 MR FRIEDMAN Nothing from the state

4 THE COURT Glad to hear argument

5 MR BROOKS It's our position that my client
6 should be give his post-conviction relief and should be
7 granted a new trial You heard the facts as recited by
8 the trial attorney at the time We would submit that
9 although that was brought up to be considered as
10 strategy, not having an identification hearing and not
11 even asking for a lesser included offense, that doesn't
12 mean that you have to argue that to the jury, but at
13 least a judge could have still submitted it more often
14 than not You have times where the jury makes certain
15 compromise verdicts That would have actually been a
16 compromised verdict to help Mr Edwards out

17 For those reasons and those reasons I put on
18 the record, Judge, we would respectfully ask that
19 Mr Edwards have his PCR granted

20 THE COURT Mr Friedman, would you like to
21 respond

22 MR FRIEDMAN Just briefly

23 The state would submit the applicant has
24 failed to meet his burden Mr Smiley testified the
25 defense was mere presence He did not want to ask for a

1 request on strong-arm robbery and give the jury a
2 compromise point There was no basis to challenge that
3 identification

4 The applicant testified at trial and admitted
5 that he was there As far as the codefendant not
6 testifying, I believe Mr Smiley testified that he did
7 not know what the codefendant would say at trial He did
8 not have a chance to speak with him ahead of time, his
9 attorney would not let him, and he chose not to call him
10 at trial, and we would ask that you deny and dismiss the
11 application

12 THE COURT As you all know, the applicant
13 has the burden of proving relief for post conviction --
14 in order for a post-conviction relief action to be
15 granted The standard set for this is Strickland vs
16 Washington and Cherry vs State, and without belaboring
17 that I think we all know what that standard is, I find
18 for the record that the applicant has failed to prove
19 that Mr Smiley was -- that his performance fell below
20 professional norms or that his performance, but for that
21 official performance, that there is a reasonable
22 probability that the result of the proceeding would have
23 been different

24 There are several grounds that were raised,
25 one is the failure to challenge the identification, and

1 Mr Smiley has articulated and the Court finds credible
2 that that was a matter of strategy, and that being that
3 his client was merely present and that he did not
4 participate in any sort of conspiracy to commit armed
5 robberies, and it really would not have -- there is such
6 a low threshold for the admission of an identification
7 It's unlikely that the ID would have been suppressed
8 because you have one eyewitness who could identify him,
9 but in addition to that, in his own testimony, he
10 admitted he was present, so it really became a nullity at
11 some point because the real theory of the case is yeah, I
12 was there, but I just didn't participate I just
13 happened to merely be present, which is one of the things
14 that the Court could have instructed and didn't instruct,
15 which is mere presence of itself did not meet the burden
16 of guilt beyond a reasonable doubt

17 So it was a matter of strategy, and pursuant
18 to case law, even though a strategy may have failed, that
19 does not mean a lawyer was ineffective In addition, the
20 other ground is that he failed to call the codefendant to
21 the stand It is my recollection from reviewing the
22 record and from what has been represented today that
23 Mr Andrew Grimes represented the codefendant

24 It is unlikely that he would have allowed his
25 client to testify His client certainly was not going to

1 set on the stand and admit culpability That's just
2 unlikely, and in addition to that, before he would have
3 ever been able to admit that culpability, the Court would
4 have advised him of Fifth Amendment right against
5 incrimination so it's unlikely that he would have ever
6 gotten on the stand and said that these other people did
7 it, and I'm the only person that did it and these other
8 people are innocent

9 If he was going to do that, he would have
10 made that very well-known, but I find credible
11 Mr Smiley's testimony that Mr Grimes would not allow
12 him access to his client Certainly, it's just not --
13 it's not believable to this Court that he would have
14 gotten up there and incriminated himself It's just
15 unlikely, and even if he were, the Court would have
16 stopped him, and his lawyer would have been present
17 and -- if he was going to do it, he would have done it

18 He wouldn't have had to have subpoenaed him,
19 and you wouldn't have had to go look for him He would
20 have done it of his own volition, and his lawyer would
21 have approached Mr Smiley about it, if that was really
22 his impression, to take culpability for the entire event

23 As regards failure to include a lesser
24 included offense, it is appropriate to request a lesser
25 included offense when the facts support it, and in this

1 case, there is no guarantee that the Court would have --
2 the Court is under no obligation to charge a lesser
3 included offense unless it is supported by the facts, and
4 in this case, based on my review of the record, the
5 eyewitness testimony is a gun was used A strong-arm
6 robbery is when something is taken with force but
7 without -- the element that is missing is the deadly
8 weapon, and in this case it is unlikely that strong-arm
9 robbery would have been instructed because the only
10 evidence is that a weapon was present, that there was a
11 deadly implement used as a means of force to take
12 property, and so it is unlikely it would have been
13 instructed, and, in addition to that, it was inconsistent
14 with the parties' theory of this case, which is that he
15 was merely present

16 A court is only required to include a lesser
17 included offense when it is supported by the facts, and
18 it is not supported by the facts in this case, so
19 although I'm not clairvoyant and I don't know what Judge
20 Dennis would have done, just as a matter of course, doing
21 this every day, probably trying more armed robberies than
22 I would care to recall, that is something that comes up
23 routinely, and you would only instruct it like, say, for
24 example someone saw a glimmer of a gun but a gun was
25 never recovered, or where somebody uses an ordinary

1 object as a deadly weapon, that would be their first or
2 something else, you probably would have an instruction on
3 armed robbery so it is unlikely that the facts in this
4 case would have shown armed robbery, would have been
5 instructed

6 So based on the record in this case as well
7 as the testimony that has been presented, the Court would
8 dismiss the post-conviction relief action as being
9 unsupported and that the applicant failed to meet his
10 burden of proof in advancing the application

11 And I would observe -- you know, I understand
12 it's very difficult sometimes, and I agree with
13 Mr Smiley, sometimes the system can seem extremely
14 disproportionate when somebody who is less culpable gets
15 more than somebody who is culpable, but that is the
16 nature of the beast, and oftentimes when I talk to young
17 people at bond hearings, if I know somebody is least
18 culpable, I tell them flat out, you better be the first
19 one to get in the boat, because just like in elementary
20 school, the person that throws their rock, they always
21 get in the boat and you always get the short end of the
22 stick because they will say you did it

23 So it looks like that is what happened in
24 this The people who were the most culpable got in the
25 boat early, and they apparently made that known to the

1 solicitor early, and that is probably why they were
2 recalcitrant about offering him anything, coupled with
3 the fact if he really didn't believe he didn't do it, he
4 should have had a trial. If it was his posture and his
5 strategy that I was merely present, then, you know, I'm a
6 firm believer that that is what you should do, and 12
7 people heard it, they made judgments about credibility,
8 and sometimes that risk pans out, sometimes it doesn't.
9 But you're always going to get some consideration for
10 admitting culpability, and it looks like that is what
11 happened with them.

12 And, actually, in the grand scheme of things
13 and knowing how the system works as I do, the fact that
14 you only got two more years than the person that is more
15 culpable is shocking. I would have expected you to have
16 gotten on the higher range, after having been found
17 guilty, just because my knowledge of the system, there is
18 some folks who had no record, had one armed robbery, and
19 got 30 years the other day.

20 So in grand picture, the bigger picture of
21 things, there are so many factors that go into
22 sentencing. There is no science to it. Even if you go
23 across the street to the federal court where they have
24 guidelines, there is no science to it. But there is no
25 way for everything to be completely meted out the same,

1 as much as we try There is no way to effect that

2 So I say that just for the benefit so y'all
3 can understand The Court has the opportunity to see
4 everything, whereas the guilty plea you heard, like, four
5 minutes of facts, if that much, and everybody agrees to
6 what the facts are, so half the time you don't hear
7 everything You certainly most times don't have the
8 opportunity to hear the victims and see what impact it
9 has on their lives and everything, so all that goes into
10 what I think the public could perceive as an enhancement
11 when you go to trial, but that is really not what
12 happens, but you do get kind of cut a little slack for
13 admitting culpability

14 All right Thank y'all very much Have a
15 good day

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17 (Whereupon, the proceedings were concluded)

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I, the undersigned Amanda K Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 25th of May 2011

I do further certify that I am neither of kin, counsel, nor interest to any party hereto

October 25, 2011



Circuit Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Thonal D Edwards, Jr , #320003,
Applicant,

v

State of South Carolina,
Respondent

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2010-CP-10-3801

ORDER OF DISMISSAL

2011 JUL 14 PM 1:10
JULIE J. FRIEDMAN
CLERK OF COURT

Presiding Judge
Applicant's Attorney
Respondent's Attorney
Trial Counsel

Date of Hearing
Court Reporter

Deadra L Jefferson
Charles T Brooks, III , Esq
Matthew J Friedman, Esq
James W Smiley, IV , Esq
Laura B Knobloch, Esq
May 25, 2011
Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 11, 2010. The Respondent made its Return on August 18, 2010 which was filed August 20, 2010. An evidentiary hearing into the matter was convened on May 25, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T Brooks, III, Esquire. Matthew J Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, James Smiley, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Amended Final Brief of Appellant, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated December 31, 2009, the PCR

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application and the State's Return thereto

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2006 term of the Charleston County Grand Jury for two counts of armed robbery (2006-GS-10-0084, 2006-GS-10-0085). James Smiley, Esquire, sitting as first chair, and Laura Knobloch, Esquire, sitting as second chair, represented the Applicant. The Applicant proceeded to trial on February 7-8, 2007, after which a jury found him guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for fourteen (14) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Elizabeth A. Franklin-Best, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Edwards, Op. No. 2009-UP-595 (S.C. Ct. App. filed December 15, 2009). The Remittitur was issued on December 31, 2009.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to challenge identification
 - b. Failed to call co-defendant to stand
 - c. Failed to request lesser-included offenses

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S C Code Ann § 17-27-80 (2003).

The Applicant testified that counsel did not challenge the identification. He testified that he wanted counsel to call co-defendant Eric Waldrop to testify at trial, because Waldrop made a statement indicating that it was his own doing. Applicant testified that counsel failed to request a charge for the lesser-included offense of strong arm robbery.

Trial counsel testified that it was not his strategy to pursue identification. Further, counsel testified that this strategy was fully explained to Applicant, and the Applicant was fully aware of the strategy. He testified their defense was mere presence and that Applicant did not know what was going on (Tr 63 18-64 5). In his own testimony, Applicant admitted that he was at the scene so there was no basis to challenge the identification. Moreover, the police found a clip to the gun in Applicant's pocket. He testified that one victim identified Applicant while the other victim was uncertain, however, both victims identified the co-defendant. Counsel asserted that he did not call co-defendant Waldrop to the stand because he did not know what Waldrop would say. Co-defendant's attorney first said that Waldrop would testify in Applicant's favor, but the day before trial he changed his mind. Counsel testified that he begged for a plea offer for strong arm robbery, but the solicitor would not offer it. He opined in large part to the fact that this took place in the same time frame as the "Wando" incident, and he was angry because he felt his client should be treated as the similarly situated young white men living in the Mt Pleasant area. He asserted that he did not request a jury charge on strong arm robbery because he did not want to give the jury a compromise point, and it would have been contrary to his trial strategy.

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Trial counsel admitted he did not have the opportunity to meet with Applicant very often as he was out on bail living in Greenville, South Carolina. Counsel testified this incident occurred around the same time as the "Wando" incident, and he felt angry because there were no breaks given to the Applicant as there were for similarly situated young white men. Counsel also felt Applicant's sentence was not fair given that Waldrop received twelve (12) years after pleading guilty to armed robbery and a third co-defendant received ten (10) years after pleading guilty.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC, Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984), Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its ‘reasonableness under prevailing professional norms’” Id. at 117, 386 S E 2d at 625 (citing Strickland, 466 U S at 688, 104 S Ct at 2065) Second, counsel’s deficient performance must have prejudiced the applicant such that ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different’” Id. at 117–18, 386 S E 2d at 625 A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997)

This Court finds trial counsel’s testimony credible This Court finds that counsel is a trial practitioner who has eighteen (18) years of extensive experience in the trial of serious offenses, practicing almost exclusively in the area of criminal defense Counsel conferred with the Applicant as much as possible given the fact Applicant was out on bond residing in Greenville, South Carolina During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant’s constitutional rights, trial strategy, and possible defenses or lack thereof

Regarding Applicant s claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina State v Pendergrass, 270 S C 1, 5, 239 S E 2d 750, 752 (1977), Strickland, 466 U S at 687–88, 104 S Ct at 2064–65, Butler, 286 S C at 442, 334 S E 2d at 814 This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation This Court finds that counsel’s representation did not fall below an objective standard of reasonableness

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This Court finds that there was no basis for counsel to challenge the identification. This Court finds counsel's strategy of mere presence to be credible. There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S C 103, 109, 525 S E 2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S C 546, 419 S E 2d 778 (1992), Whitehead v. State, 308 S C 119, 417 S E 2d 529 (1992). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S C 467, 470, 560 S E 2d 401, 402 (2002). One of the victims identified Applicant from seeing his face from a close distance during the robbery, Applicant admitted that he was at the scene, the police found an ammunition clip on the Applicant at the time of his arrest, and the Applicant was arrested with the co-defendant who possessed the gun alleged to be involved in the crime. In Counsel's evaluation, the best defense was mere presence, so there would be no basis to challenge identification.

This Court finds that counsel made a valid strategic decision not to call co-defendant Eric Waldrop as a witness at trial. Based on counsel's discussions with Waldrop's attorney, counsel did not know what he would say on the stand. Moreover, it is unlikely Waldrop's attorney would have allowed him to testify. The Court finds it credible that Waldrop's attorney would not allow access to his client. Applicant has failed to show that the outcome of the trial would have been different if counsel had called Waldrop as a witness at trial.

This Court finds that counsel made a valid strategic decision not to request a jury charge on strong arm robbery. Here, counsel testified that he did not want to give the jury a compromise point by requesting a charge on strong arm robbery. Counsel tried to obtain a plea

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offer for strong arm robbery, but the solicitor would not offer a lesser included offense. Moreover, it is only appropriate to request a lesser included offense where the facts support it, and the record establishes eyewitness testimony that a gun was used. Therefore, even if requested, it is unlikely the trial court would have instructed strong arm robbery. Additionally, a request for the lesser included offense of strong arm robbery is inapposite to counsel's strategy of mere presence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing.

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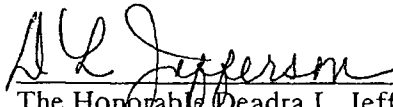
proceedings Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation Therefore, this PCR application must be denied and dismissed with prejudice

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

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 12th day of July, 2011


The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston South Carolina

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