

VOL. II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

TRAVIS D. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000866

A P P E N D I X

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 A. No, sir.

2 Q. Tell the jury what he said about the incident.

3 A. This is again the voluntary statement that we get and
4 write out -- we either get the defendants to write it or
5 either we write, and that night I was the one that was
6 assigned to write it.

7 Q. Let me stop you real quick. Was Mr. Tobbie with you
8 when you were talking to Mr. Robinson?

9 A. No, sir.

10 Q. Just him?

11 A. Yes, just Mr. Robinson.

12 Q. Okay. Go ahead. Go ahead and tell us what he said
13 about the incident that night.

14 A. "I, Travis Deniele Robinson, know and understand my
15 rights, having decided to answer questions at this time. I
16 now make the following statement:

17 "I was at the Tree Top Apartments around eight o'clock
18 when Quinton called and asked me where I was at and I told
19 him I was at Tree Top and they came and picked me up. We
20 went to Sleepy Hollow neighborhood and the driver got out to
21 talk to some of his people. We were there for five minutes.
22 Then we left and got on the interstate and headed south on
23 Interstate 77. We went into South Carolina for a few miles
24 and turned right and got off the interstate and went to the
25 gas station on the right. We pulled up to the gas pumps.

1 Quinton and the front passenger get out of the vehicle or
2 get out of the car and go to the store. They are gone for a
3 few minutes and they come back. Quinton got back in the car
4 and the first passenger started pumping gas. And when he
5 got through pumping gas he walked to a black vehicle parked
6 on the other side of the gas pumps and tried to rob them and
7 shot the passenger in the black car. He ran back to the
8 front passenger's seat and got in and we left and got on
9 I-77 for a couple of exits. Turned around and started back
10 north on 77. And when we got back to North Carolina, the
11 police got after us at Arrowwood Road in North Carolina and
12 we ran from the police until we got to Tree Top Apartments
13 and got out of the car and went into a girl's apartment
14 named Mimi. I called my momma and she came and picked me
15 and Quinton up. And as we were leaving, the police stopped
16 us. I had a gun in my right rear pocket when the police
17 stopped us."

18 At that time I give this to him. After it's written
19 down I give it to him and I have him read it. It consisted
20 of two pages. Mr. Robinson read at the bottom, "the
21 statement above consisting of two pages made of my own free
22 will. No one has threatened me in any way or promised me
23 any special treatment to cause me to make this statement. I
24 am signing my name in the space below to show that it is my
25 statement and it is the truth." And it's signed by Travis

1 Robinson.

2 Q. Now, he said there was a front seat passenger?

3 A. Yes, sir.

4 Q. Did he give you his name of this front seat passenger?

5 A. No, sir.

6 Q. Did he give you the name of the driver?

7 A. No, sir.

8 Q. At any time did you or anybody threaten him or make him
9 any promises to get him to tell that story?

10 A. No, sir.

11 Q. All right. Let's talk about Mr. Tobbie, but before we
12 do that, let me have that paper that you were holding. This
13 is Travis Robinson's written statement?

14 A. Yes, sir.

15 Q. That's State's Exhibit 2.

16 MR. SPRINGS: The State offers that into evidence
17 at this time.

18 MR. LEMEL: Without objection, Your Honor.

19 MR. DUNN: No.

20 THE COURT: Without objection it's in.

21 BY MR. SPRINGS:

22 Q. Let's talk about Quinton Tobbie, detective.

23 After you interviewed Mr. Robinson, did Quinton Tobbie
24 come into the same interview room and did you have a little
25 chat with him?

1 A. Yes, sir.

2 Q. Was he hurt?

3 A. No, sir.

4 Q. Was he sober and in his right mind?

5 A. Yes, sir.

6 Q. Was he complaining of any kind of ailment?

7 A. No, sir.

8 Q. Did he ever complain about anything?

9 A. No, sir.

10 Q. Did he seem, when you talked to him, to be a fairly
11 intelligent person?

12 A. Yes, sir.

13 Q. When he came in to talk to you, did you or anybody else
14 threaten him or make him any kind of promises, large or
15 small?

16 A. No, sir.

17 Q. Did you read him his rights according to Miranda?

18 A. Yes, sir.

19 Q. And before we go into that, let me ask you about the
20 handcuffs. Would you have checked his handcuffs at the
21 rear, or what was your normal practice?

22 A. Normal practice is we would -- if he was handcuffed at
23 all, he would have been handcuffed in the front, to be a
24 little more comfortable.

25 Q. Okay. Tell the jury the Miranda Rights that you read

1 to him.

2 A. "Before I ask you any questions, I want to advise you
3 of your rights.

4 "1. You have the right to remain silent.

5 "2. Anything you say can and will be used against you
6 in a court of law.

7 "3. You have the right to talk to an attorney and have
8 him or her present with you while you are being questioned.

9 "4. If you cannot afford to hire an attorney, one will
10 be appointed to represent you before any questioning, if you
11 wish.

12 "You can decide at any time to exercise these rights
13 and not answer any questions or make any statements. Do you
14 understand these rights as I have explained them to you?"

15 Q. And did he understand his rights?

16 A. Yes, sir.

17 At that time I got him just to do the same, initial
18 either yes or no his understanding. And then if he
19 understood them, I had him sign it and date it.

20 Q. All right. Keep on going, please.

21 A. I then read the waiver of rights to him. "I am willing
22 to talk to the police and answer questions. I do not want
23 an attorney at this time. I understand and know what I'm
24 doing. No promises or threats have been made to me and no
25 pressure of any kind has been placed upon me."

1 I asked him does he want to talk to us. He states yes.
2 I get him to sign this and also give him the opportunity to
3 read this whole sheet of paper, including the waiver of
4 rights, before he signs it, and then the rest of the
5 paperwork is finished on it.

6 Q. Okay. And did he give you his story of what happened
7 that night?

8 A. Yes, sir, he did.

9 Q. And read us what his story was as to what happened that
10 night.

11 A. The voluntary statement. "I, Quinton Lawrence Tobbie,
12 know and understand my rights, having decided to answer
13 questions at this time. I now make the following statement:

14 "I got into the burgundy four-door car with me and Trap
15 in the back and the driver and another person was in the
16 front seats. We left Nations Ford Road and got onto I-77
17 and came south into South Carolina to buy some cheap gas.
18 We came into South Carolina and drove a short distance, got
19 off the interstate and turned right and the gas station was
20 on the right. We pulled up to the gas pumps on the right
21 and me and the front passenger got out and went into the
22 store and paid for the gas. I bought a bag of chips and a
23 Slim Jim and a cigar and we went back to the car and got
24 back in the right back passenger seat. The front passenger
25 was pumping the gas. And when he got through pumping the

1 gas, he walked back towards the black vehicle in the next
2 lane and tried to rob them and I heard a shot and then he
3 came running back around and got in the front passenger's
4 seat and we took out of the store and started back into
5 North Carolina. I tried to get out of the car and the front
6 passenger turned around and told me that he would kill your
7 MFS. We rode south for about five minutes and then we
8 turned around and started back to North Carolina. Then the
9 police got after us around Arrowwood Road in Charlotte and
10 ran in the car until we parked the car at the apartment
11 complex and went into my sister's house, which was an
12 apartment. Trap called his momma to come pick us up. She
13 did and we got in her" car "and was leaving the apartment
14 complex when the police stopped us." And I did not have car
15 written down there.. That was just a mistake. It just
16 states that "we got in her" and I didn't write car down.

17 And then at the bottom of it it says "the statement
18 above consists of three pages. It's made of my own free
19 will. No one has threatened me in any way or promised me
20 any special treatment to cause me to make this statement.
21 I'm signing my name in this space below to show that this is
22 my statement and it is the truth," and it's signed and dated
23 by Quinton Tobbie.

24 Q. All right. Now, these statements that you hold in your
25 hand, did you write out what they told you?

1 A. Yes, sir.

2 Q. Other than the signatures, the handwriting is yours?

3 A. Yes, sir.

4 Q. Quinton Tobbie, he said that he and Trap got in the
5 back seat of the car?

6 A. Yes, sir.

7 Q. And there was the driver and front seat passenger?

8 A. Yes, sir.

9 Q. Did Quinton Tobbie give you the name of this front seat
10 passenger?

11 A. No, sir.

12 Q. Did Quinton Tobbie give you the name of the driver?

13 A. No, sir.

14 MR. SPRINGS: Your Honor, at this time we offer
15 into evidence the statement of Quinton Tobbie, which is
16 marked State's Exhibit 1.

17 MR. DUNN: No objection, Your Honor.

18 MR. LEMEL: Just note my objections from earlier,
19 Your Honor.

20 THE COURT: Okay. Over objection -- it's allowed
21 in over objection.

22 BY MR. SPRINGS:

23 Q. Detective, answer any questions that the defense
24 attorneys have for you.

25 A. All right.

1 CROSS EXAMINATION BY MR. LEMEL:

2 Q. Good morning, Detective Miller?

3 A. Good morning.

4 Q. Now, you are an officer with the York County sheriff's
5 department at this time?

6 A. Yes, sir.

7 Q. And your part of what we call the detective division?

8 A. Yes, sir.

9 Q. As opposed to the patrol division that we heard from
10 earlier when Sergeant Smith was up on the stand?

11 A. Correct.

12 Q. And the patrol guys, they have got guys out in the
13 field all the time?

14 A. Correct.

15 Q. Run a number of different shifts day and night?

16 A. Yes.

17 Q. But you guys in the detective duties, you have more of
18 a normal schedule, don't you?

19 A. Yes, sir.

20 Q. Somebody is always on call?

21 A. Yes, sir.

22 Q. And can be called out?

23 A. Yes, sir.

24 Q. But most of your job is a nine to five kind of job?

25 A. Yes, sir.

1 Q. And in this particular situation when this all happened
2 at 10:45, eleven o'clock, you were at home that night?

3 A. Yes, sir.

4 Q. And you guys got called out because you were what's
5 called an on-call detective?

6 A. That's correct.

7 Q. Okay. And as a result of that, you went over to the
8 scene at the gas station?

9 A. Yes, sir.

10 Q. All right. Now, as a detective or a police officer,
11 you have received a lot of training?

12 A. Yes, sir.

13 Q. Did you go to the South Carolina Criminal Justice
14 Academy?

15 A. Yes, sir.

16 Q. Okay. And that's where your training starts, your
17 basic stuff as a police officer?

18 A. Yes.

19 Q. And I imagine that as your career has gone on you have
20 received additional training?

21 A. Yes, sir.

22 Q. In a number of different areas?

23 A. Yes, sir.

24 Q. One of which would be investigative techniques?

25 A. Correct.

1 Q. And in any investigations you are taught, there are
2 certain things that you are looking for?

3 A. Correct.

4 Q. Certain categories of evidence --

5 A. Yes, sir.

6 Q. -- for lack of a better word.

7 A. Yes.

8 Q. Okay. The first category would be something called
9 witness statements, right?

10 A. Yes, sir.

11 Q. A witness statement is just a statement from somebody
12 who saw or heard or did something related to a case?

13 A. Yes, sir.

14 Q. Okay. And that's one thing you would be looking for in
15 a case?

16 A. Correct.

17 Q. A second component, a second type of evidence that you
18 would be looking for, would be some sort of physical
19 evidence?

20 A. Yes, sir.

21 Q. And there is all sorts of physical evidence?

22 A. Yes.

23 Q. And in a case like this, usually that would be
24 collected by, for instance, the Forensic Services Unit?

25 A. Yes, sir.

1 Q. And that's why they were called out to the scene?

2 A. Yes, sir.

3 Q. And the third type of evidence would be effect?

4 A. Right.

5 Q. A statement by a defendant, like what you have there?

6 A. Yes, sir.

7 Q. And the purpose of getting a confession is maybe to
8 implicate somebody?

9 A. Yes, sir.

10 Q. Or otherwise limit his options about what he could say
11 about a particular instance?

12 A. Yes.

13 Q. And then just to take that ahead of time to get that
14 down on paper, right?

15 A. Yes.

16 Q. As early as possible?

17 A. Correct.

18 Q. Which is why you would have did it that very same
19 night, even though by that time it was, as I understand it,
20 right around 3:30 that the interview with Travis was taking
21 place?

22 A. Yes, sir.

23 Q. So you had been up for a lot of hours since the very
24 early morning hours?

25 A. Yes.

1 Q. But you still wanted to get your statement right at
2 that point?

3 A. Yes.

4 Q. And as a detective, you are taught to gather as many of
5 those statements as you possibly can?

6 A. Yes, sir.

7 Q. Because the more of those statements, the stronger your
8 case is?

9 A. Yes, sir.

10 Q. Let's talk a little bit about how a case typically
11 comes into the detective division, if we can. And at some
12 point in time a complaint comes into the sheriff's
13 department?

14 A. Yes, sir.

15 Q. And those complaints can come in in any number of ways?

16 A. Yes, sir.

17 Q. But the most common one is probably a call for
18 assistance to 911?

19 A. Yes, sir.

20 Q. And that's what we have in this case?

21 A. Yes, sir.

22 Q. And typically when that happens, they send somebody
23 from patrol out first?

24 A. Yes.

25 Q. That's why they are called first responders?

1 A. Yes, sir.

2 Q. And that's what we have in this particular case when
3 Officer Smith, Sergeant Smith went out there at fist?

4 A. Right.

5 Q. And he has his job that he does?

6 A. Yes, sir.

7 Q. And some cases are resolved by first responders? They
8 take care of everything that's involved in a case?

9 A. Yes, sir.

10 Q. But other cases require more work?

11 A. Yes, sir.

12 Q. And those particular cases are assigned on to a
13 detective?

14 A. Yes, sir.

15 Q. To follow up?

16 A. Yes, sir.

17 Q. And to do whatever other investigation is needed in a
18 case?

19 A. Yes, sir.

20 Q. And that's where you come into play and the members of
21 your division, the detective division?

22 A. Yes, sir.

23 Q. Okay. And as part of that, y'all do paperwork?

24 A. Yes, sir.

25 Q. And you have got paperwork that is issued to you in all

1 forms --

2 A. Yes, sir.

3 Q. -- is that right?

4 Paperwork that's kept in the normal course of business
5 of the sheriff's department and of the investigative
6 department?

7 A. Yes, sir.

8 Q. Some of those forms you have already seen there being
9 used, which is the witness forms?

10 A. Yes.

11 Q. Right, the statement forms?

12 A. Yes, sir.

13 Q. Those are provided to you by the sheriff?

14 A. Yes, sir.

15 Q. They train you how to use them?

16 A. Yes, sir.

17 Q. And you use them as part of your whole business as a
18 detective?

19 A. Yes, sir.

20 Q. There is also a form that is used by your office to
21 summarize a case?

22 A. That's -- yes, there is forms, all kind of forms.

23 Q. Right, there's all types of forms.

24 But the particular form I'm talking about is what was
25 referred to as a General Sessions case summary form.

1 A. Yes, sir.

2 Q. And that is a form that's filled out by somebody in
3 your office?

4 A. Right.

5 Q. In the normal of course of business of being a
6 detective?

7 A. Yes.

8 Q. And kept in the normal course of business of being a
9 detective?

10 A. Yes, sir.

11 Q. And is used by other officers when they are on a case?

12 A. As in? Reference to?

13 Q. Exactly.

14 A. Yeah, it could be.

15 Q. Sure. Another officer may -- if they are coming in
16 later on a case may read a case summary to see what's been
17 done so far, what the position is so far?

18 A. No, the case summary is the last thing that's done
19 before it goes to --

20 Q. Okay. The solicitor?

21 A. -- the solicitor's office. So that would not be
22 referred to by another officer in this case to do part of
23 it.

24 Q. Let me ask you this. What if the case was completed
25 and it was sent up to the solicitor and something else came

1 up? Could the case be investigated any more by the
2 detective?

3 A. Sure, after -- the solicitor's office, they have their
4 own investigators. If they had something that needed to be
5 sent back to us, then they would have done that.

6 Q. And in that situation, a detective could have the case
7 summary and say okay, this is what's been done so far, new
8 evidence, this is what I need to do next?

9 A. Correct.

10 Q. Okay. And in this particular case a General Sessions
11 case summary was completed, right?

12 A. Yes, sir.

13 Q. Now, this was not done by you?

14 A. No, sir.

15 Q. Okay. But there is an indication on there who it was
16 done by, correct?

17 A. Who it was?

18 Q. Yes, who prepared --

19 A. Yes.

20 Q. -- this final case summary?

21 A. Yes, sir.

22 Q. And that is Eddie Strait?

23 A. Yes, sir.

24 Q. And Detective Strait is in your department, right?

25 A. Yes.

1 Q. And he is actually assigned on here as your lead
2 investigator?

3 A. Yes, sir.

4 Q. And he was here on Monday when we saw him?

5 A. Yes, sir.

6 Q. But he's not here now?

7 A. No, sir.

8 Q. But he was the one who is the lead investigator?

9 A. Yes, sir.

10 Q. And he was the one who produced this case summary?

11 A. Yes, sir.

12 Q. Which is sort of the final word that you, as a
13 detective division, send up to the solicitor's office?

14 A. Yes, sir, he would have sent this packet to the
15 solicitor's office.

16 Q. Okay. Let's talk just a minute about what you did in
17 this case. You arrived on the scene at the Shell station?

18 A. Yes, sir.

19 Q. And at some point in time while you were there at the
20 Shell station you found out that Charlotte-Mecklenburg had
21 some people in custody?

22 A. Yes, sir.

23 Q. Okay. And at that point in time you got a number of
24 people there at the Shell station?

25 A. Yes, sir.

1 Q. Which would include -- had the victim already been
2 taken away when that call came from Charlotte?

3 A. Yes, sir.

4 Q. So Ms. Howie's was in the ambulance, so she had already
5 been --

6 A. Yes, both of those were gone.

7 Q. All right. And so what you have left was Ms. Parker,
8 Melinda Parker?

9 A. Yes, sir.

10 Q. And Ms. Macomson?

11 A. Yes.

12 Q. And the call came in that they had these people up in
13 Charlotte?

14 A. Yes, sir.

15 Q. And you made the decision to take Ms. Parker to
16 Charlotte?

17 A. Yes, sir.

18 Q. You asked her to go with you or told her to go with
19 you, do you remember?

20 A. I wasn't going to make her drive, so I told her, I said
21 "we have two suspects, possible suspects in Charlotte and
22 I'm going to need you to look at them and see if these are
23 the fellows that came in this store and did what, you know,
24 y'all were saying that they did, and she said fine.

25 Q. Okay. So you told her you had two suspects, "let me

1 drive you up"?

2 A. Yes.

3 Q. "We will take a look at them and we'll see"?

4 A. Yes.

5 Q. So you made the decision to do that at that point in
6 time?

7 A. Yes.

8 Q. So you drove her up to the apartment complex?

9 A. Yes.

10 Q. Okay. In Charlotte?

11 A. Yes, sir.

12 Q. You parked your car facing the car where Travis was
13 being held?

14 A. No, sir.

15 Q. No?

16 A. No, I parked mine over in the parking area where she
17 couldn't be involved in what was going on up there.. She was
18 over in the dark.

19 Q. Okay. Which did she stay in the car or --

20 A. Yes, sir, she stayed in the car.

21 Q. But Travis was in a patrol car at that point in time?

22 A. If you were in the apartment complex where we were
23 parked here, you had to go up just a little bit a crest and
24 then down the hill a little bit back towards the apartments.
25 They were down there. No cars were up here where we were at

1 yet.

2 Q. I'm asking you, Travis at this point in time when you
3 pulled up was in the back seat of a Charlotte-Mecklenburg
4 police department car?

5 A. Yes, sir.

6 Q. And when you pulled up, you gave some indication that
7 she needed to take a look at that person, right?

8 A. It was a little bit of time later, because we -- I
9 believe it was a Charlotte vehicle that the victim's
10 girlfriend, they this picked her up --

11 Q. Okay.

12 A. -- and that car was lined up first. So -- you know, as
13 far as who brought her in, that was a total guess, but what
14 I'm telling you is my victim -- or my witness stayed back
15 out of the way until the end.

16 Q. Okay. At some point in time Ms. Howie comes in a
17 Charlotte-Mecklenburg police car?

18 A. Yes, I'm guessing in a police car.

19 Q. Okay. And at some point in time -- so Travis is in the
20 back of the Charlotte-Mecklenburg police car, right, while
21 you are waiting?

22 A. Yes, sir, that's to the best of my knowledge. I
23 couldn't see him all the time. I didn't know who was in
24 what car.

25 Q. Well, he certainly wasn't walking around or walking

1 around out there, was he?

2 A. No.

3 Q. So it's safe to assume that he was in the back of that
4 Charlotte-Mecklenburg police car?

5 A. Yes, sir.

6 Q. And at some point in time he's taken out of that police
7 car?

8 A. Yes, sir.

9 Q. By somebody from the Charlotte-Mecklenburg police
10 department?

11 A. Yes, sir.

12 Q. And he's brought in front of, do you remember a coal,
13 or lights, or what -- how --

14 A. He's brought up in front of the car with the bright
15 lights facing on the suspect.

16 Q. Okay. Still in handcuffs?

17 A. I can't -- he was in the back of the car is all -- no,
18 are you talking about when he gets out? Yeah, he was still
19 in handcuffs.

20 Q. So he was locked up still in handcuffs?

21 A. Yes, sir.

22 Q. Escorted by somebody from the Charlotte-Mecklenburg
23 police department?

24 A. Yes, sir.

25 Q. And there was no nobody else around at that point in

1 time around him but Charlotte-Mecklenburg police officers?

2 A. One officer walked him up that --

3 Q. He was positioned by that officer in front of the car
4 with the bright lights on him?

5 A. Yes, sir.

6 Q. Are you in the car or out of the car?

7 A. I'm standing outside of the car.

8 Q. Out of the car?

9 A. Yes.

10 Q. Ms. Parker makes the identification?

11 A. No, we are back to Ms. Howie first.

12 Q. Where is Ms. Howie?

13 A. She's in the Charlotte police officer's car.

14 Q. Now, you weren't part of the Charlotte --

15 A. I'm just sitting there watching. You were -- if you --
16 are we talking about Ms. Howie, or Ms. Parker, or the whole
17 situation?

18 Q. I'm talking about Ms. Parker.

19 A. Ms. Parker sat in my car.

20 Q. Right. You were outside the car?

21 A. Yes.

22 Q. Travis is walked out, placed in the bright lights?

23 A. Right.

24 Q. Okay. Could you hear what Ms. Howie said?

25 A. Yes, sir.

1 Q. Okay.

2 A. But we are talking about Ms. Parker now.

3 Q. I'm -- I'm trying to clarify this --

4 A. Okay.

5 Q. -- so we are all on the same page, okay?

6 A. Okay.

7 Q. So Ms. Howie's car that she's in is parked near where
8 you had Ms. Parker?

9 A. No, sir.

10 Q. You can hear what she says?

11 A. I walked up to her. I didn't sit with Ms. Parker the
12 whole time.

13 Q. Okay. So you walked up to Ms. Howie?

14 A. Yes.

15 Q. That's what I want to clarify.

16 She makes the ID as he's standing in front of the
17 bright lights with handcuffs on being escorted by the
18 Charlotte-Mecklenburg police officer?

19 A. That's correct.

20 Q. And you go back to Ms. Parker?

21 A. Correct.

22 Q. Okay. She makes the ID under the same circumstances?

23 A. That car is moved out of the way. My car is pulled up
24 into to the position I was in.

25 Q. And you are outside the car now?

1 A. Yes, sir.

2 Q. She makes the identification?

3 A. Yes, sir.

4 Q. You made some sort of hand gesture to the
5 Charlotte-Mecklenburg officer, thumbs up, or something like
6 that?

7 A. I walked up to them and advised them that he was ID'd
8 by both witnesses as the shooter.

9 Q. And your testimony is that you walked up to him and
10 told him that?

11 A. I believe I did. Like I say --

12 Q. Could you be wrong? Could you have made a hand
13 gesture?

14 A. That's very possible I could have, but I remember
15 telling them -- I remember telling the Charlotte police
16 officer that both of them ID'd them, so those two things
17 that, yes, I could have done either one at that time.

18 Q. It's been a year, right?

19 A. Close to it.

20 Q. And so those two things could have merged together in
21 your mind?

22 A. As far as -- as far as I told both of them -- I did the
23 thumbs up and I also told the Charlotte police officers that
24 they ID'd -- that both witnesses ID'd them.

25 Q. But until I sort of drawn out the thumbs up, your

1 memory of it was telling them?

2 A. Correct, that's going to always be -- my verbal is
3 going to always come first before.

4 Q. Okay. Now, at that point in time Travis is being held
5 in one car, right, in the Charlotte-Mecklenburg police car?

6 A. Yes, sir.

7 Q. Mr. Tobbie is in a totally separate car than Travis?

8 A. Yes, sir.

9 Q. And basically that same procedure repeated with Mr.
10 Tobbie?

11 A. Yes, sir.

12 Q. For identification purposes?

13 A. Right.

14 Q. And then they are transported over to a
15 Charlotte-Mecklenburg police station?

16 A. Yes, sir.

17 Q. And you go in to meet with them?

18 A. Correct.

19 Q. And you meet with Mr. Tobbie actually first?

20 A. Yes, sir.

21 Q. Earlier?

22 A. Mr. Tobbie's came at 1:55 and then Mr. Robinson's.

23 Q. It isn't until 3:30 --

24 A. 3:55.

25 Q. 3:50?

1 A. 3:37.

2 Q. 3:37. All right.

3 They are not in the same room?

4 A. No, sir.

5 Q. They can't hear what they are saying?

6 A. No, sir.

7 Q. As a matter of fact, I think you testified earlier that
8 Travis was being kept in a separate room when you talked
9 with Mr. Tobbie?

10 A. Yes, sir.

11 Q. And you didn't tell Travis what Mr. Tobbie had told
12 you?

13 A. No, sir.

14 Q. At all?

15 A. No, sir.

16 Q. You just let him talk?

17 A. Yes, sir.

18 Q. And you wrote down what he said to you?

19 A. That's correct.

20 Q. Okay. Did you ask him questions?

21 A. Yes, sir.

22 Q. Did you ask him to follow up on things?

23 A. Did I ask him to follow up on things?

24 Q. Yes.

25 A. If he had said something I didn't understand, I'm sure

1 I did.

2 Q. Okay. And he told you -- Travis told you that there
3 were four people in the car that night?

4 A. Yes, sir.

5 Q. He and Mr. Tobbie in the back seat and two front seat
6 passengers?

7 A. Yes, sir.

8 Q. And did you ask him the names of those passengers, of
9 those people in the front seat?

10 A. Yes.

11 Q. And he couldn't tell you who they were?

12 A. No.

13 Q. It wasn't that he just left it blank, he told you he
14 didn't know what their names were?

15 A. No, that's exactly -- he didn't know who they were.

16 Q. Okay. So it wasn't like he was refusing to tell you
17 who they were?

18 A. He just told us that "I don't know who it was."

19 Q. Okay. But he told you that they -- in between when he
20 told you that they had gone up to the apartments, that they
21 were in the back seat, right?

22 A. Yes.

23 Q. That they had gone into somebody's apartment, a girl by
24 the name of Nina?

25 A. Nina.

1 Q. Nina?

2 A. Yeah, it was one of them's cousin or sister.

3 Q. Right. And then they had been picked up by the
4 Charlotte-Mecklenburg police office?

5 A. Yes.

6 Q. And I notice that in Mr. Tobbie's statement you
7 referred to "Trap got in the back seat"?

8 A. Yes, sir.

9 Q. Is it your understanding that by Trap, he was referring
10 to Travis?

11 A. That's what I believe, yes.

12 Q. No real doubt he's talking about some other completely
13 individual?

14 A. No, sir, I believe he was talking about Mr. Robinson.

15 Q. So where in his statement it says Trap, it may have
16 been a nickname or something that he used, correct?

17 A. Yes, sir.

18 Q. But he's definitely talking with Travis?

19 A. Yes, sir. That was -- that was my understanding. I
20 know it's -- I don't know -- the way I spelled it was wrong.
21 You would have thought it was Travis, but --

22 Q. And I just ask what your understanding is so that there
23 is --

24 A. Yes, sir, I understood that.

25 Q. He says "Trap called his mom" and in Travis' statement

1 says "I called my mom".

2 A. Right.

3 Q. So we are talking about four people in the car the
4 entire time in their statement?

5 A. Yes, sir, that's what they told me.

6 Q. Now, during the entire process of this case, basically
7 you got in, you took the statements, turned those in?

8 A. Yes, sir.

9 Q. Okay. At any point in time did you go to talk to Mr.
10 Dodd?

11 A. No, sir.

12 Q. Try to get a statement from him?

13 A. No, sir.

14 Q. Get him to describe his assailant?

15 A. No, sir.

16 Q. Show him a photo lineup?

17 A. No, sir.

18 Q. Have him make any sort of identification until he came
19 to court on Monday?

20 A. No, sir.

21 Q. There was footage from the in-store camera?

22 A. Yes, sir.

23 Q. Was there ever any intent to have that analyzed?

24 A. To go back to explaining how we do the detective thing,
25 I was on call. Had that been a burglary -- I was in.

1 property crimes. Had that been a burglary, I would have
2 followed up through with it, but that next morning or next
3 Monday it was given over to Detective Strait.

4 Q. Okay.

5 A. That was the end of my dealings with it.

6 Q. That's the end of your dealings.

7 So this would have been turned over to Detective
8 Strait?

9 A. Yes.

10 Q. Who was here on Monday?

11 A. Yes, sir.

12 Q. But is not here now?

13 A. Yes, sir.

14 Q. But this is what he produced is a summary of his work,
15 correct?

16 A. Yes, sir.

17 Q. Have you read that? Do you want to go ahead and read
18 that real quick?

19 A. (Witness reviewing document)

20 Q. Okay. And, again, that's a document that y'all are
21 trained on how to fill out?

22 A. Yes, sir.

23 Q. You are trained to document everything that you do in a
24 case?

25 A. Yes, sir.

1 Q. According to that document, was anything ever done with
2 the footage from the store camera?

3 A. No, sir, but everything is not put in these things.

4 Q. Right, but the person who could tell us what was done
5 isn't here today?

6 A. No.

7 Q. Right?

8 A. No, sir.

9 Q. All we have to go on is that report, because he's not
10 sitting there to testify for us?

11 A. Yes, sir.

12 Q. And according to that report, nothing was ever done
13 with that footage?

14 A. Not this report right here.

15 Q. Nothing was analyzed?

16 A. Not out of this report right here.

17 Q. Okay. Nothing was attempted to be improved?

18 A. No, sir.

19 Q. Or photos?

20 A. No, sir.

21 Q. Okay. Are you aware that there were swabs taken in
22 this case?

23 A. Only by looking through the file.

24 Q. So you are aware of that, swabs that were taken from an
25 Icehouse beer can?

1 A. Again, just like I said, I just saw that swabs were --
2 I briefly looked at the evidence.

3 Q. About swabs that are taken from the steering wheel?

4 A. No, sir. Swabs -- swabs, in general, is all I can
5 answer.

6 Q. And you said that you briefly looked at the evidence.
7 Is that one of the boxes that you were moving around?

8 A. I looked at the evidence. I didn't look in the
9 evidence box. I looked on the evidence sheet.

10 Q. There is evidence boxes over there?

11 A. Yes, sir.

12 Q. And there is a case of swabs?

13 A. Yes.

14 Q. According to that report, anything done with those
15 swabs at any point in time?

16 A. No, sir; that would have come out in evidence.

17 Q. It was put in evidence?

18 A. Yes, sir.

19 Q. You know, or maybe you don't. Do you know about other
20 people's fingerprints being found in the car?

21 A. I know from what the forensics unit would do when they
22 come out, that that car would go -- nothing would go
23 unchecked, so I know that they -- they worked -- looked for
24 fingerprints. Did they get anything that matched up to
25 anything, I don't know. I don't know.

1 Q. The person who would know that, the person who is in
2 charge, the lead investigator, is not here?

3 A. Well, the forensics person yesterday should have known
4 it.

5 Q. But in terms of what was done with those fingerprints,
6 you can't tell us?

7 A. No, sir.

8 Q. So you don't know if there was ever any followup done?

9 A. No, sir.

10 Q. Whether the individuals fingerprints that were found
11 were ever questioned?

12 A. No, sir.

13 Q. Whether anybody tried to do anything with the
14 fingerprints that were found, you don't know?

15 A. I don't know that.

16 Q. The person who would know is who?

17 A. The forensics officer y'all had in here yesterday would
18 be the first to know.

19 Q. And the last to know, Detective Strait?

20 A. Yes, sir, there should be have been forwarded reports
21 to him.

22 Q. You know that there was cellphones found in the car?

23 A. I know there was one on the evidence sheet.

24 Q. Okay. Do you know if anything was ever done to process
25 the cellphones in the car?

1 A. I personally do not know, sir.

2 Q. Who would know?

3 A. Evidence -- the officer that was in here yesterday and
4 Detective Strait.

5 Q. Okay. And Detective Strait is not here?

6 A. No, sir.

7 Q. All right. You had Ms. Macomson, right, at the store?

8 A. Yes.

9 Q. The blond haired lady?

10 A. She -- I dealt with -- the paperwork that I have here
11 are the only ones that I really dealt with and took
12 statements from, sir. I didn't try to remember everybody
13 that was there.

14 Q. Do you remember --

15 A. I remember there was two ladies there.

16 Q. The one with the blond hair?

17 A. Lighter colored hair, yes.

18 Q. Okay. Now, she was not taken to Charlotte that night.
19 The lady with the dark hair and Ms. Howie, that was the lady
20 that was taken to Charlotte that night?

21 A. Correct.

22 Q. Was she ever shown a lineup, to your knowledge?

23 A. I don't know that.

24 Q. And who would know that?

25 A. Detective Strait.

1 Q. Do you know if Detective Strait ever went back up to
2 Charlotte?

3 A. In passing I believe that he went up to the hospital to
4 see Mr. Dodd.

5 Q. We don't have anything from that, do we?

6 A. I don't know. I do not -- I do not have anything.

7 Q. Okay. Certainly never went back to the Tree Top
8 Apartments?

9 A. I don't know, sir. I can't answer that.

10 Q. Nothing in the file, nothing in the document that he
11 produced showing that he did do that?

12 A. Not in this paperwork right here.

13 Q. There was from within Travis' statement the name of a
14 person at the apartments, Nini or Nene, right?

15 A. Yes, sir.

16 Q. Do you have any indication that Detective Strait ever
17 followed up in any way with that?

18 A. I do not. I would have to go through the whole file to
19 look and see if there was something in there.

20 Q. But as court, you have got the summary there of what he
21 did, correct?

22 A. Yes.

23 Q. And you would expect that if he had talked to somebody
24 by the name of Nene, that it would show up in there that he
25 had gone to Charlotte, wouldn't you?

1 A. Sometimes stuff we will put that stuff in there, but if
2 not, this is to give an overbriefing to the solicitor's
3 office so that they can know what to look for on certain
4 things in the --

5 Q. But there is no indication, what you got in that?

6 A. No, sir.

7 Q. And the person who would know?

8 A. Detective Strait.

9 Q. With regards to a search warrant to look for a gun or
10 clothes, is there any indication in there that he ever tried
11 to get any sort of search warrant?

12 A. I don't believe there was a search warrant, other than
13 incident to them catching those fellows in the car.

14 Q. So you --

15 A. It would have been a Charlotte search warrant anyway.
16 It wouldn't have been ours.

17 Q. But he didn't attempt to try to get one, that you know
18 of?

19 A. That I know of, no, sir.

20 Q. No indication that they ever found a black overshirt?

21 A. No.

22 Q. A white undershirt?

23 A. No, sir.

24 Q. Long black pants?

25 A. No, sir.

1 Q. Bright orange -- black shoes?

2 A. No, sir.

3 Q. Never found the gun that shot Mr. Dodd?

4 A. No, sir.

5 Q. Never really any indication there that there was a
6 search done?

7 A. Nothing on the summons.

8 Q. And that's all we have got. All we have got now is the
9 summons?

10 A. That's all I have right now to go by.

11 Q. But Detective Strait is not here?

12 A. Yes, sir.

13 Q. And he's just the lead investigator in this case?

14 A. Yes, sir, after I turned it over to him.

15 MR. LEMEL: Begging the court's indulgence.

16 (Off the record)

17 (Back on the record)

18 MR. LEMEL: Nothing further, Your Honor.

19 MR. DUNN: May it please the court?

20 THE COURT: Yes.

21 CROSS EXAMINATION BY MR. DUNN:

22 Q. State's Exhibit 1 is Quinton Tobbie's statement,
23 correct?

24 A. Yes, sir.

25 Q. Your handwriting?

1 A. Yes, sir.

2 Q. You were with him in the room when he told you the
3 facts as you wrote them down, correct?

4 A. Yes, sir.

5 Q. This statement was written in a substation in
6 Charlotte, North Carolina, correct?

7 A. Yes, sir.

8 Q. Mecklenburg County?

9 A. Yes, sir.

10 Q. Not in York County?

11 A. Yes, sir.

12 Q. You never spoke with Mr. Tobbie inside South Carolina,
13 did you?

14 A. No, sir.

15 Q. You didn't speak to him at the Shell station?

16 A. No, sir.

17 Q. You didn't speak with him down at the Moss Justice
18 Center?

19 A. No, sir.

20 Q. And at the time that you spoke with him, he wasn't
21 charged with anything by North Carolina, as far as you know,
22 right?

23 A. No, sir.

24 Q. They were basically holding him for y'all to come up
25 and talk to him, correct?

1 A. Yes, sir.

2 Q. At the time that you spoke with him, I believe the
3 statements says 1:55, right?

4 A. Yes, sir.

5 Q. And on page number four of Exhibit No. 1 -- the first
6 three pages are actually a statement that you wrote that he
7 signed, correct?

8 A. Yes, sir.

9 Q. And it says all the things that you have already read.
10 Page number four is actually where -- it's not labeled
11 page four, but it's the fourth page that's stapled here?

12 A. It's a separate page altogether, right.

13 Q. And it's labeled "your rights", correct?

14 A. Yes, sir.

15 Q. It's the one where you read the Miranda?

16 A. Yes, sir.

17 Q. Now, your testimony earlier was you read this here,
18 correct?

19 A. Yes, sir.

20 Q. He signed it?

21 A. Yes, sir.

22 Q. Now, I notice on here that on the first three pages
23 where it says voluntary statements, it says 1:55?

24 A. Yes, sir.

25 Q. Well, on the waiver it also says 1:55?

1 A. Yes, sir.

2 Q. Right.

3 A. Yes, sir.

4 Q. Now, it's your testimony that he signed the waiver
5 before he signed the statement?

6 A. On every case anytime I get a statement, I do a waiver
7 of rights. As soon as I get through doing the waiver of
8 rights, that time is written down. At the same time I begin
9 my investigation or my interview with him. That same time
10 goes on my interview statement. I have always done it that
11 way. It may not be the right way for some people, but it's
12 my way of doing it so I can keep track of time.

13 If there had been a long pause in between there, the
14 times would have changed, but it flowed from one to the
15 other, and that's why those times are the same.

16 Q. What do you mean by long pause?

17 A. An hour or so I wouldn't have used that same time, but
18 it was immediately after, and so I used the same time.

19 Q. You weren't the lead investigator for Mr. Tobbie
20 either, were you?

21 A. Not after that night. I turned it over to Detective
22 Strait.

23 Q. And there was also a General Sessions case file summary
24 generated for Mr. Tobbie, correct?

25 A. Yes, sir.

1 Q. It's actually different from the one that's generated
2 for Mr. Robinson?

3 A. Yes, it would be a different one. It may say the same,
4 but it would be a different one.

5 Q. And in both of them, Mr. Strait was the
6 lead investigator -- Detective Strait was the lead
7 investigator, right?

8 A. Yes, sir.

9 Q. When you interviewed Mr. Tobbie, he was handcuffed?

10 A. Again, I don't remember. But if he was, he was
11 handcuffed in the front.

12 Q. You just can't remember one way or the other?

13 A. No, sir, I just do not remember.

14 Q. Okay. Do you remember telling him or threatening him
15 that unless he spoke with you or somebody else, he was going
16 to go to jail for somebody else's crime?

17 A. No, sir.

18 Q. You never said that?

19 A. No, sir.

20 Q. But overall his demeanor was he was pretty cooperative
21 with you, wasn't he?

22 A. He wasn't combative, or argumentative, or anything
23 else.

24 Q. Okay. I mean, he gave you that statement, right?

25 A. Yes, sir.

1 Q. And that statement doesn't include the name of driver,
2 doesn't it?

3 A. Nor the driver nor the front passenger.

4 Q. He said there was four people in the car, correct?

5 A. Yes.

6 Q. And the reason why he didn't include the driver was
7 because he didn't know who the driver was, did he?

8 A. No, sir. That's what he's telling me, he didn't know
9 who the driver or the passenger was.

10 Q. And he said he didn't know who the passenger was
11 either?

12 A. No, sir.

13 Q. And the passenger, in his words, was the shooter,
14 correct?

15 A. That's correct.

16 Q. And he and Travis were in the back seat of the car?

17 A. Yes, sir.

18 Q. Travis Robinson?

19 A. Yes, sir.

20 Q. Is that right?

21 A. Yes.

22 Q. Was your interrogation of Mr. Tobbie, was that
23 videotaped?

24 A. My interview?

25 Q. Interrogation or interview, whatever you want to call

1 it.

2 A. It was not videotaped or audiotaped.

3 Q. There was no audio or video, right.

4 As far as you know, did anybody ever follow up with Mr.
5 Tobbie and talk to him down at the Moss Justice after they
6 transported him?

7 A. If they did, it would have been Detective Strait and it
8 would be in the case folder.

9 Q. Detective Strait is not here today?

10 A. No, sir.

11 Q. Now, when you got up to the scene in Charlotte, I
12 believe you brought Ms. Howie, correct?

13 A. No, I brought Ms. Parker.

14 Q. Ms. Parker. Ms. Howie was went first and Ms. Parker
15 went second?

16 A. Yes, sir.

17 Q. By the time that you got up there, Travis and Tobbie,
18 Quinton, they weren't in the same car, were they?

19 A. I don't -- I'm sure they wouldn't have been. I did not
20 go down to that part of the scene. I was met by Charlotte
21 officers up where I parked.

22 Q. And at the time of the ID that Ms. Parker is concerned,
23 was that before or after the car was towed by York County?

24 A. The car was towed later on. That was one of the last
25 things to be done.

1 Q. Okay. So what happened first before the towing then
2 was sometime before was the ID by Ms. Howie and Ms. Parker?

3 A. Yes.

4 Q. Do you remember about what time of night that ID was?

5 A. It would have been right after their statements where
6 they would have written those statements within five to ten
7 minutes after they ID'd him. Their statements that -- you
8 know.

9 Q. Are you talking about Exhibits 1 and 2?

10 A. No, sir, there is some other statements.

11 Q. Are you talking about the statements given by the
12 witnesses?

13 A. That's correct.

14 Q. Were those statements written up in Charlotte then?

15 A. Yes, sir.

16 Q. In the car, I guess?

17 A. Yes.

18 Q. Somewhere in the car.

19 Is it fair to say that it was sometime during the
20 midnight hour, between twelve and one, that Ms. Howie and
21 Ms. Parker identified --

22 A. It was somewhere in between those times, yes.

23 MR. DUNN: May I approach?

24 BY MR. DUNN:

25 Q. Now, you said something when Mr. Lemel was questioning

1 you, you said you didn't search the apartment because you
2 would have needed a search warrant, correct?

3 A. I didn't search anything. My goal was to talk to the
4 two defendants and see what I could do from there. I
5 didn't -- that would have been taken care of by our
6 forensics units. I wouldn't have had anything to do with
7 that.

8 Q. If you would have went and helped to search that
9 apartment, you would have needed a search warrant, right?

10 A. Unless Mimi was there and said it was her apartment.

11 Q. Or you saw one of the defendants run into it and you
12 could follow them in, but, you know, apart from that you
13 would normally need a search warrant?

14 A. Yeah.

15 Q. But you wouldn't have been able to get a South Carolina
16 search warrant from where you were at, would you?

17 A. No, sir.

18 Q. I mean, you were in North Carolina?

19 A. That's correct.

20 Q. Right.

21 And you were aware that Officer Gibson at some point
22 was in a high speed pursuit of the red car, correct?

23 A. Officer Gibson was.

24 Q. Yes, this was Officer Gibson?

25 A. Yes.

1 Q. When he began it, he was also in North Carolina, wasn't
2 he?

3 A. Yes, sir.

4 Q. When you crossed that line between on I-77 between York
5 County and Mecklenburg County, that's creates problems for
6 police officers, doesn't it?

7 A. It can, yes, sir.

8 Q. I mean, there is jurisdictional issues at that point,
9 is there not?

10 A. Yes, sir.

11 MR. DUNN: I don't have any further questions,
12 Your Honor.

13 MR. SPRINGS: Nothing further.

14 THE COURT: You can step down and be excused.

15 THE WITNESS: Thank you.

16 THE COURT: Call your next witness.

17 MR. SPRINGS: Your Honor, the State rests.

18 THE COURT: All right. Members of the jury panel,
19 the State is resting, that is, the State is telling us that
20 it has presented its evidence. Under certain circumstances
21 the State would have a right to present evidence at a later
22 time, but it is now saying it has presented its case. I
23 have to take up some matters of law with the attorneys
24 before we move forward, so I'm going to let you go to the
25 jury room for a little bit. We will send for you as

1 promptly as we can.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: State?

5 MR. SPRINGS: Nothing from the State, Your Honor.

6 THE COURT: Mr. Lemel? Ms. Inzerillo?

7 MS. INZERILLO: Thank you, Your Honor.

8 At this time we would renew our previous
9 objections and move for a directed verdict.

10 THE COURT: On all indictments?

11 MS. INZERILLO: Yes, sir.

12 THE COURT: I find there is sufficient evidence,
13 direct evidence. I don't think this is much of a
14 circumstantial evidence case, but there is ample evidence -
15 identification, statement, pictures, placing this gentleman
16 at the scene - and there is evidence which a jury could
17 conclude he actually was the person who shot at an attempt
18 to rob him, so I would overrule that motion.

19 All right.

20 MR. DUNN: Yes, sir, may it please the court, I
21 have -- I would also renew all the previous objections that
22 I had raised.

23 I would also move for a directed verdict on both
24 the warrants, Your Honor -- or, excuse me, or both the
25 indictments. I would start with the aiding and abetting

1 because --

2 THE COURT: Well, before you start on that, let me
3 hear from the State as to what evidence there is of aiding
4 and abetting.

5 MR. SPRINGS: Certainly, Your Honor.

6 You heard from Ms. Pamela Macomson that Mr.
7 Dodd -- let me back up.

8 Mr. Robinson and Mr. Tobbie followed Mr. Dodd into
9 the store. They sort of split up. Mr. Robinson was in the
10 back hall trying the doorknob on the office while Mr. Tobbie
11 is up to the cash register and the chip area near where Mr.
12 Dodd was checking out and he's got his wad of cash within
13 eyesight of Mr. Tobbie and the clerk expressing to him
14 saying "you shouldn't be carrying all that around."
15 Basically "you shouldn't be flashing all that money" within
16 earshot of Mr. Tobbie and then Mr. Dodd goes on his way.
17 Robinson and Tobbie go out, and I think that the jury could
18 very reasonably infer that when they come in there with a
19 license tag off the car, they have taken it off. Mr.
20 Robinson goes back and tries the office door; that they go
21 out and they change plans from where they were going to rob
22 the store and Tobbie tells him about an easier mark, just
23 one guy just flashed some money, let's do that. And I think
24 they can infer Mr. Tobbie assisted Mr. Robinson by giving
25 him that information of the easier target.

1 THE COURT: I'm going to grant the motion as to
2 aiding and abetting. I do not -- I don't see there is any
3 evidence of -- I think it's sort of a mere presence
4 situation. I'm going to grant the directed verdict on the
5 aiding and abetting indictment.

6 MR. DUNN: Okay. If I may address the accessory
7 after the fact, Your Honor. I mean, there are certain
8 things that the State has to prove in accessory after the
9 fact - that the defendant would know that the crime was
10 committed. I think that the jury could probably infer that
11 here.

12 You know, he doesn't have to be present or intend
13 to be present, but the thing that's important or the crux of
14 the accessory after the fact charge is that he has to do
15 something to help the defendant who committed the crime,
16 either -- you know, he has to give some kind of aid or --
17 not aid, but some kind of comfort or some kind of help him
18 to escape. The only thing that was done in this case that's
19 been shown is that Mr. Tobbie gave a statement. Whether or
20 not it's a lie, you know, obviously is a fact question, but
21 the fact that the statement was given in North Carolina says
22 that even if it is a lie, even if lying in South Carolina,
23 he didn't offend part of justice in South Carolina. If
24 anything, he would have offended part of justice in North
25 Carolina. The indictment, Your Honor, says that in York

1 County, South Carolina, on or about September 7th, that Mr.
2 Tobbie did all those things to -- you know, as an accessory
3 after the fact.

4 Your Honor, there is a case, State v. Crocker. I
5 may have -- I have got a copy, if Your Honor needs it, that
6 says that one of the things that the State has to prove is
7 that they knew of where they allege in the indictment is
8 where the crime itself occurred. They are alleging here
9 that this crime occurred in York County. It never alleges
10 that in any way that Mr. Tobbie did any kind of accessory in
11 York County, South Carolina, or any time in South Carolina.
12 We have -- there is no evidence of that they -- there is no
13 evidence presented that somehow that once they got to North
14 Carolina that he schemed and tried to help him out. The
15 only thing that they have is a statement that was given,
16 and, Your Honor, it was given in North Carolina, which is
17 outside the State of South Carolina. It's outside the
18 rules.

19 Your Honor, I just don't think that this court has
20 the ability or the jurisdiction to even try Mr. Tobbie, if a
21 crime was committed, was committed in Mecklenburg County.

22 THE COURT: Mr. Springs?

23 MR. SPRINGS: And in response I would simply have
24 to say that where the substantive offense, the attempted
25 armed robbery took place gives us jurisdiction over his

1 person, gives us enough of a nexus and a location inside
2 York County that we can go forward.

3 MR. DUNN: Your Honor, I would argue with that,
4 that some of the evidence that somehow he was an accessory
5 in York County, I just don't see it, Your Honor. The only
6 thing I see is a statement given. In fact, the only
7 evidence given at all in this trial really against my client
8 is a statement that he gave and that was given in North
9 Carolina.

10 THE COURT: Well, I don't know -- I'm going to
11 deny the motion for directed verdict on that, because the
12 allegations are that he had knowledge that a felony had been
13 committed in South Carolina and he assisted in evading
14 responsibility of that by giving false information.

15 So continuing -- I haven't read this case. I kind
16 of recall it, but that had to do with some drug trafficking
17 and that would not have to do with aiding and abetting, so
18 it's not completely on point, but I find that even as the
19 indictment reads, that the part of the aiding and abetting
20 is based on the fact that he, quote -- in fact, I think, and
21 I can look at my charge, I think my charge says that in
22 aiding and abetting he must know that a crime had been
23 committed, and that is one of the elements that must be
24 proven.

25 To be liable as an accomplice, the defendant must

1 have knowledge of the principle's criminal conduct. So I
2 think that's one of the elements the State must prove, and I
3 think they can certainly determine by substantial
4 circumstantial evidence, if not by direct evidence, that at
5 the time of the event, that's when the knowledge was
6 garnered by Mr. Tobbie, so I'm going to deny that motion.

7 All right. Anything else?

8 We are going to take a short break. But before we
9 get there, Mr. Robinson, can you hear me?

10 DEFENDANT ROBINSON: Yes, sir.

11 THE COURT: All right. I want you to listen to me
12 very carefully, and I think your attorney can probably
13 discuss this with you, but we have reached the point in the
14 trial where you have a right to present a defense. You do
15 not have to present a defense because you are presumed
16 innocent of these charges. The law clothes you with the
17 presumption of innocence and the State must prove your guilt
18 beyond a reasonable doubt. You must not -- you need not
19 prove your innocence.

20 You can present witnesses, if you wish. That's up
21 to you. You have the right to present and call witnesses,
22 and you have the right to testify or the right to remain
23 silent.

24 If you exercise your right to remain silent, I
25 would tell the jury that you have exercised that right. I

1 would tell them that they cannot in any way use your
2 exercise of that right against you. I will tell them that
3 they cannot discuss your exercise of that right in the jury
4 room nor factor it into their own consideration of the
5 issues before them.

6 Do you understand all that?

7 DEFENDANT ROBINSON: Yes, sir.

8 THE COURT: The decision of whether to testify or
9 not is yours. It's not your attorneys, although you
10 certainly can seek whatever guidance you wish from your
11 attorneys and family or friends, but it's ultimately Mr.
12 Robinson's decision whether to testify or not. Do you
13 understand that?

14 DEFENDANT ROBINSON: Yes, sir.

15 THE COURT: Now, tell me whether there are any
16 impeachable offenses on this gentleman.

17 MR. SPRINGS: Not on Mr. Robinson, no.

18 THE COURT: Okay. Do you have any questions about
19 any of that?

20 DEFENDANT ROBINSON: No, sir, Your Honor.

21 THE COURT: Are you going to exercise your right
22 to remain silent or testify?

23 MR. LEMEL: Your Honor, if we could -- I just --

24 THE COURT: We will. That's fine. We are going
25 to take a break and you can discuss that and let me know

1 later.

2 MR. LEMEL: Thank you.

3 THE COURT: You may have a seat.

4 Mr. Tobbie, can you hear me?

5 DEFENDANT TOBBIE: Yes, sir.

6 THE COURT: I'm going to go over what I just went
7 over with Mr. Robinson and then I'll direct it to you.

8 You, like Mr. Robinson, have a right to remain
9 silent. You have a right to present a defense. You do not
10 have to present a defense. You do not have to prove your
11 innocence. The State must prove your guilt beyond a
12 reasonable doubt. You do not have to prove anything.
13 Again, the State must prove your guilt beyond a reasonable
14 doubt, because you are presumed innocent of this charge and
15 the burden is on the State to so prove your guilt again
16 beyond a reasonable doubt.

17 You have a right to present a defense, call
18 witnesses and have them testify, and you have a right to
19 remain silent. If you exercise your right to remain silent,
20 I will tell the jury that you have exercised that right and
21 that by exercising that right -- because you exercised that
22 right, they cannot use that against you. You have an
23 absolute right, as would anyone charged with any offense in
24 or system, to remain silent. And the exercise by you of
25 that right cannot be used against you in any fashion

1 whatsoever. I would remind the jury that you are presumed
2 innocent of the charge and that you need not prove your
3 innocence, but the State must prove your guilt beyond a
4 reasonable doubt, and I would tell the jury they cannot
5 discuss your exercise of your right to remain silent among
6 themselves in the jury room. I would tell them that they
7 could not even factor that into their own consideration in
8 determining whether to find you guilty or not guilty in the
9 charge against you.

10 Now, you have a criminal record. They can ask you
11 about that criminal record that was discussed with you
12 yesterday or the today before. And I would tell the jury
13 that if you testify and if the fact that you have a record
14 comes out, I'll tell the jury that they cannot use that as
15 evidence that you committed this offense. I would tell them
16 that the evidence of prior criminal activity is allowed into
17 a trial only for their consideration as to your
18 believability; that is, whether or not the fact that you
19 have committed a crime would make you more or less truthful
20 than someone who had not committed a crime. So I would
21 instruct them that they cannot use your criminal past as any
22 evidence that you have committed this offense, but they can
23 only use that in determining the credibility of the
24 testimony that you give.

25 Mr. Dunn, have you discussed all that with him?

1 MR. DUNN: Yes, sir.

2 Just for some clarification, my understanding from
3 your ruling on Monday was that they could mention he has a
4 felony, but not the actual --

5 THE COURT: Yeah, I think there were two. There
6 was proximity -- or just one?

7 MR. DUNN: Well, I thought it was pled down to
8 lesser.

9 MR. SPRINGS: Conspiracy.

10 THE COURT: Okay.

11 MR. DUNN: But it's my understanding that they can
12 mention the felony, not --

13 THE COURT: That's all.

14 MR. DUNN: That's right.

15 THE COURT: Do you understand all that?

16 DEFENDANT TOBBIE: Yes, sir.

17 THE COURT: Do you have any questions about that?

18 DEFENDANT TOBBIE: No, sir.

19 THE COURT: Again, like I told Mr. Robinson, this
20 is your decision. It's not your attorney's. It's not mine,
21 of course, or the State's, but you can get advice from
22 anyone that you wish to make a decision.

23 Have you made a decision as to testify or not?

24 MR. DUNN: Yes, sir, we have, Your Honor. He
25 chose not to.

1 THE COURT: You are going to exercise your right
2 to remain silent?

3 DEFENDANT TOBBIE: Yes, sir.

4 THE COURT: Thank you. We are going to take a
5 short break.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 MR. SPRINGS: Judge, I have just a quick small
9 matter, if you are ready for us.

10 THE COURT: I'm ready.

11 MR. SPRINGS: Ms. Rich was asking what my
12 recollection is on some photos, State's 7, 3, 5, 4, and 6.
13 Our intentions was that we thought we had entered all photos
14 that are up there into evidence. The defense has possibly
15 used these in pretrial but did not later offer them into
16 evidence, and I would at this time offer those photos in
17 evidence, identified by the witnesses, into evidence.

18 MR. LEMEL: I think ultimately, judge, they are
19 probably cumulative, in that I know that the videotape would
20 be those are taken from has been entered into evidence as
21 all things that they would be able to see. I have no
22 objection to them being entered at this time.

23 MR. DUNN: Your Honor, we have no objection.

24 THE COURT: Well, I'll let them. Well, it's kind
25 of out of a discretionary thing, they are either admissible

1 or they are not. And if you don't object to it --

2 MR. DUNN: I don't object to them. I'm just -- I
3 don't care. I don't object to them.

4 THE COURT: They would be entered without
5 objection.

6 MR. SPRINGS: Thank you. That's all.

7 THE COURT: All right. Mr. Lemel, do you want to
8 tell me if Mr. Robinson, is he going to testify, or is he
9 going to exercise his right to remain silent?

10 MR. LEMEL: He's indicated to me that he will not
11 be testifying, but we will be presenting a case.

12 THE COURT: Are you going to exercise your right
13 to remain silent, as did Mr. Tobbie?

14 DEFENDANT ROBINSON: Yes, sir.

15 THE COURT: Okay. All right, but you do have some
16 witnesses.

17 All right, bring in the jury.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right. The jury is present.

21 Mr. Lemel?

22 MR. LEMEL: Thank you, Your Honor.

23 At this time we call Lori Van Wallendael.

24 DR. LORI VAN WALLENDael, having been first duly
25 sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. LEMEL:

2 Q. And Dr. Van Wallendael, if you could introduce yourself
3 to the jury?

4 A. My name is Lori Van Wallendael.

5 Q. And it is doctor, correct?

6 A. Yes, sir.

7 Q. And are you a medical doctor?

8 A. No, I'm not.

9 Q. You have a Ph.D.?

10 A. Yes.

11 Q. And is that Ph.D., that basically is what entitles you
12 to be called a doctor?

13 A. It does.

14 Q. Okay. And could you tell us a little bit about your
15 educational background, Dr. Van Wallendael.

16 A. I received my Bachelor's Degree from a little school
17 called McMurray College in central Illinois back in 1982.
18 That was in psychology and English.

19 And then I did my graduate work in psychology. I
20 received my Ph.D. from Northwestern University in 1986.

21 Q. Have you continued education since 1986, in any manner?

22 A. Yes, as part of being a faculty member, you are
23 constantly keeping track of new developments in your field,
24 educating yourself at conferences and reading journals and
25 so forth.

1 Q. You mentioned as being as part of a faculty. Are you a
2 teacher?

3 A. Yes, I am.

4 Q. Where do you teach?

5 A. I teach at the University of North Carolina at
6 Charlotte.

7 Q. How long have you been a teacher?

8 A. I have been at Charlotte for 22 years now.

9 Q. What department do you work in there?

10 A. I work in the Department of Psychology.

11 Q. Have you been there the entire time?

12 A. Yes, I have.

13 Q. What sort of classes do you teach as a professor at
14 UNCC?

15 A. I primarily teach the experimental psychology classes.
16 Instead of doing abnormal or developmental, like probably
17 most students take, I tend to teach the research methods,
18 cognition courses, forensic psychology courses.

19 Q. So less than preferred run of the mill psychology that
20 people may associate in college, it's called an experimental
21 psychology?

22 A. Right.

23 Q. And within that -- so as your career has gone on, have
24 you focused on any particular fields in particular?

25 A. Yes, I have.

1 Q. What about -- tell us about that.

2 A. My focus in what we call cognitive psychology or
3 cognitive science, and cognition is really just a fancy way
4 of saying thinking. So it has to deal with all aspects of
5 perception, attention, memory, decision making, and problem
6 solving.

7 Q. Do you teach any particular classes related to that?

8 A. Yes, I do. I teach a class in cognitive psychology and
9 I also teach a more interdisciplinary class in cognitive
10 science, which interweaves a little bit more of the
11 biological aspect and also a little bit of artificial
12 intelligence and comparisons with computer intelligence as
13 well.

14 Q. So basically cognition is how to think?

15 A. Yes.

16 Q. And how to take in information and apply it to the
17 normal day?

18 A. Very good.

19 Q. Okay. Within cognition have you focused on any areas
20 in particular inside of that?

21 A. Yes, I have. As I think a lot of people do as they
22 kind of go through their careers in a field like this, I
23 started adding more sort of theoretical aspects of memory
24 and how we remember and how we make judgments and then kind
25 of moved into more applied areas of how people do these

1 things more in the real world. And in the last I would say
2 probably six to eight years, or so, in particular I have
3 been focusing primarily on how people remember in the
4 context of an eyewitness or an ear witness face or voice
5 recognition situation.

6 Q. So you have passed that from a theoretical to a more
7 practical rule type thing?

8 A. Yes.

9 Q. And has a lot of studies been done in this area by
10 witness identification?

11 A. Yes. My students are often surprised to learn that
12 this is really an area of psychology that goes back over a
13 hundred years.

14 Q. Have you, yourself, been involved in any studies?

15 A. Yes, I have.

16 Q. What sort of studies have you been involved with?

17 A. I have been involved both with laboratory studies,
18 where we look at people's ability to identify usually
19 perpetrators of simulated crimes, filmed crimes, and so
20 forth. And I have also recently been involved in a field
21 study with the Charlotte-Mecklenburg police department,
22 where we have been looking at the accuracy of lineups in
23 real robbery cases.

24 Q. Now, how do you keep someone updated on what's going on
25 in that field?

1 A. Basically you read a lot. There are journals that
2 actually focus very specifically on psychology and law, as
3 well as journals that focus more generally on memory, and
4 are also conferences every year where you can hear about
5 what the latest things are going on in other people's
6 laboratories.

7 Q. Have you, yourself, ever been published in any of those
8 journals?

9 A. Yes, I have.

10 Q. How many times would you say that you have been
11 published?

12 A. You stop counting when you get to tenure, but I would
13 say overall in the area of cognition, twenty something
14 publications. Probably eight to ten of those specifically
15 in either face recognition or voice recognition.

16 Q. And do those articles then get what's called peer
17 feedback or peer reviews?

18 A. Right. The process basically of getting an article
19 into a scientific journal involves usually at least three
20 expert reviewers who will pick your manuscript apart from
21 your procedures down to who you studied, what kind of
22 statistics you used. And by the time it actually gets
23 accepted by a journal, it's probably been revised several
24 times with a number of people providing input.

25 Q. Now, outside of teaching, have you ever worked for

1 something called The Actual Innocence Program?

2 A. Yes, I have.

3 Q. What is that?

4 A. A number of states in the United States have within the
5 last ten years, or so, become very involved and very
6 concerned about cases of people who have been imprisoned who
7 have later been proven innocent through usually scientific
8 technology, like DNA. And North Carolina, about five or six
9 years ago, I think, had a few cases come to their attention
10 that were very concerning to the State Supreme Court and the
11 State legislature, and they brought together and very
12 interesting body of people who were State Supreme Court
13 Justices, defense attorneys, prosecutors, police chiefs from
14 all over the State, and they were trying to find ways that
15 North Carolina could change the way that they were doing
16 police work to try and limit as much as possible the odds of
17 an innocent person winding up being in prison. And a
18 colleague, Dr. Brian Cutler, and I were called in to talk
19 one afternoon to the Actual Innocence Commission
20 specifically about eyewitness identification and what can be
21 done to improve lineup procedures and how we interview
22 witnesses so that we can get the best possible testimony
23 that's least likely to accuse an innocent person.

24 Q. So is the innocence program sort of a national trend
25 that's going on?

1 A. Yes, it definitely is. It started out with the
2 National Institute of Justice, and then a number of cities
3 and states followed suit quite rapidly after that.

4 Q. And basically it's a situation where somebody is, after
5 they have been convicted, have been exonerated by some sort
6 of forensic evidence?

7 A. Right.

8 Q. And within that, was there any particular type of crime
9 and the type of evidence that was used to get that initial
10 conviction that makes it very relevant to you?

11 A. Yes. As more and more data started becoming put
12 together about these DNA exonerations around the country,
13 the one thing that kept coming up most commonly as the thing
14 that they all had in common was that a large percentage of
15 them involved an erroneous eyewitness identification.

16 Q. You mentioned earlier that you were working with the
17 Charlotte-Mecklenburg police department?

18 A. Right.

19 Q. What exactly were you doing with them?

20 A. Charlotte-Mecklenburg, when the Actual Innocence
21 Commission a couple of years ago came out with
22 recommendations to police departments, which at that point
23 where voluntary recommendations of, you know, the State
24 would like you to do it this way, one of the things that the
25 State was recommending was a switch from what we call

1 simultaneous lineups, which is what you see on TV and sort
2 of six pack of photos that people look at and pick someone
3 out of, and switching over to what we call a sequential
4 lineup, where people look at photos one at a time, the idea
5 being that you are less likely to just pick out the person
6 who looks more like or most like your memory. And Charlotte
7 wanted to adapt these new procedures and, in fact, had
8 started adopting them, but they wanted to be sure that they
9 were doing the right thing that was going to actually help
10 their police work and particularly that would not hurt their
11 chances of getting a good identification out of their
12 witnesses, so they called Dr. Cutler and myself to try to
13 help them design a study where they could actually compare
14 simultaneous and sequential lineups on the street and do it
15 right and do a good fair comparison and see if a switch
16 would be good or bad for them basically as a department. So
17 we helped design their field study to try and look at what
18 type of lineup would be best for them and how they could
19 administer that.

20 Q. So the police actually initiated the contact with you?

21 A. Yes, they did.

22 Q. Okay. How has that program been going?

23 A. It's going very well. We were actually thrown a little
24 bit of a snag because a lot of the, quote, recommendations
25 of the Innocence Project eventually became law, and as of

1 March 1st now North Carolina has to use the sequential
2 lineup procedures. So we were trying to basically compare
3 procedures and so our data collection was kind of cut short
4 on March 1st when they could only use the one procedure, but
5 we are basically a part of a larger national study as well,
6 so the data that we are just starting to look at from
7 Charlotte is also going to be combined from data from other
8 states and cities.

9 Q. With regards to being here, this is not the first time
10 that you have ever been in a courtroom, is it?

11 A. No.

12 Q. Have you ever been qualified to testify as an expert in
13 court before?

14 A. Yes, I have.

15 Q. How many times have you been qualified?

16 A. Probably about a dozen.

17 Q. What exactly area would you consider yourself to be
18 qualified in on that? What have you been qualified in, I
19 guess is the next question?

20 A. I guess what's usually been stated has been the
21 psychology of memory, or more specifically the psychology of
22 eyewitness memory.

23 Q. Okay. And has there ever been a time that you ever not
24 been qualified as an expert by the court?

25 A. No.

1 Q. What states have you previously been qualified as an
2 expert in in this area?

3 A. I have been qualified in North Carolina, South
4 Carolina, Georgia, West Virginia. A couple of times in
5 juvenile court in the District of Columbia.

6 MR. LEMEL: Your Honor, at this time we would
7 offer Dr. Van Wallendael as an expert in the area of
8 psychology of eyewitness identification.

9 THE COURT: Any voir dire, Mr. Springs.

10 MR. SPRINGS: Yes, I would like to voir dire this
11 lady.

12 VOIR DIRE EXAMINATION BY MR. SPRINGS:

13 Q. Now, ma'am, you said that you have been published in
14 twenty publications in admission-related things. How many
15 of those articles dealt with crime?

16 A. Being eyewitness memory or --

17 Q. How many of the articles dealt with criminal
18 circumstances, scenarios?

19 A. Criminal circumstances, I would say probably six to
20 eight.

21 Q. Are you a member of the actual Innocence Program?

22 A. Consultant to them.

23 Q. Now, you say that you have been involved or familiar
24 with a large percentage of erroneous identifications?

25 A. Yes.

1 Q. And how many of those percentages of what you felt were
2 erroneous identifications dealt with three eyewitnesses?

3 MR. LEMEL: Your Honor, this is not voir dire as
4 to qualifications. That's more of a factual question as
5 opposed to voir dire.

6 THE COURT: I overrule the objection. I think
7 he's got a right to inquire under these matters.

8 A. I couldn't give you a specific number, but, in fact,
9 quite a surprising number of the cases that the Innocence
10 Project has documented have involved multiple eyewitnesses.

11 BY MR. SPRINGS:

12 Q. I wondered about things that you have been involved
13 with personally. That's the important issue here. How many
14 of the erroneous identification cases you personally have
15 been identified with that had as minor as three
16 eyewitnesses?

17 A. I would say one or two.

18 Q. And in those one or two cases, has the eyewitnesses
19 made the identification within two hours of the crime?

20 A. Not specifically that I'm aware of, no.

21 Q. And you said that you were qualified as an expert in
22 South Carolina. Where in South Carolina?

23 A. Greenville, and -- let's see, Columbia. I think there
24 may have been an earlier one as well.

25 Q. Was that Family Court or was that a General Sessions

1 criminal court like this one?

2 A. It was general sessions.

3 Q. And what year was that?

4 A. That was actually -- both of those two were earlier
5 this year, 2008.

6 Q. When did you start testifying as an expert in
7 identification?

8 A. Let's see, that was probably within the last I would
9 say five years, or so, four or five.

10 Q. All right. And how much are you getting paid to be
11 here today?

12 A. I will probably make I would say somewhere around 1,200
13 to \$1,500 on this.

14 Q. Okay.

15 MR. SPRINGS: Your Honor, that's all I have, but I
16 have a matter of law I would like to take up.

17 THE COURT: I'm going to let the jury go to the
18 jury room for just for a minute.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: Yes, sir.

22 MR. SPRINGS: Your Honor, I'm looking at my -- Mr.
23 Epting has pulled up the case of State v. Whaley at 305 S.C.
24 138. That's a S.E. cite, but it says that the admission of
25 expert testimony and eyewitness identification has been

1 allowed in some court's discretion, but also says the sole
2 evidence against the perpetrator is the eyewitness
3 education and there is nothing else corroborating that, and
4 I think we have that here. We have an admission that he was
5 there at the scene and we have --

6 THE COURT: Have you got a copy of the case so I
7 can see it?

8 MR. LEMEL: Your Honor, I have a copy of it.

9 THE COURT: Is that the sole case that you want me
10 to look at it?

11 MR. SPRINGS: I think we are going to hang our hat
12 on that one, yes. This is an appropriate case for such
13 testimony.

14 THE COURT: And tell me exactly what part of the
15 case that you are looking at so I won't have to spend the
16 whole time reading it.

17 MR. SPRINGS: We are at page 7 and 143, so it says
18 "generally the admission of expert testimony is a matter for
19 the sound discretion."

20 THE COURT: All right.

21 MR. SPRINGS: Let's see here. Let me find it.

22 We come on down to the second instance, "expert's
23 testimony is admissible where the main issue of identity.
24 The sole evidence of identity is eyewitness identification
25 and identification is not substantially corroborated by

1 evidence given independent reliability."

2 We think because OF his admission he's at the
3 scene, plus the pictures and the security camera putting him
4 at the scene. Eyewitness identification is not the only
5 evidence here. We have some corroboration.

6 THE COURT: What have you got to say about that,
7 Mr. Lemel?

8 MR. LEMEL: Your Honor, first of all I believe it
9 certainly doesn't limit the use of an ID expert to those
10 scenarios. It just says that in that particular case it was
11 perfect.

12 Secondly, I disagree completely with Mr. Springs'
13 statement that there is independent corroboration. The
14 video the court has seen certainly is not in and of itself
15 independent. It's not clear enough to determine anyone's
16 face by.

17 The admission of being at the scene is actually
18 the exact opposite. He says that there were four people in
19 the car, somebody else had gotten out of the car, so there
20 is nothing within his statement beyond placing him at the
21 scene that provides independent corroboration.

22 In addition, Your Honor, you have multiple
23 situations here where you have other elements that suggests
24 it might be other people, including the fingerprint analysis
25 and things of that nature that suggests there may be other

1 people involved in this situation.

2 So it's certainly relevant, where the most
3 important thing in the case the State has in this case is
4 the eyewitness identification. That's what's -- that's what
5 this case is about, and it's highly relevant.

6 THE COURT: Has anybody got People v. McDonald, 37
7 California 3d 351?

8 MR. LEMEL: We do not, Your Honor.

9 MR. SPRINGS: We can get it, Your Honor. Well,
10 maybe it's here. I have it here on my computer. Mr. Epting
11 can pull it up. I would note that it's red flagged. There
12 is some problems. Perhaps we can find out --

13 THE COURT: My clerk says it's possibly been
14 overruled, but our court, in 1991, used that in the second
15 instance where expert testimony is admissible for the
16 identification is not substantially corroborated by evidence
17 given at independent reliability. I wanted to see what
18 McDonald had to say about the independent reliability,
19 although if it's been overruled, it would not be good for us
20 to look at anyway.

21 While he's looking that up they talk, the court
22 does, about the other evidence, given the independent
23 reliability. It says that "we note that other factors favor
24 in the admission or that the assailant's features were
25 partially obscured during entire the incident." We don't

1 have that. "The cross-racial nature of identification." We
2 do have that. "And the short length of time the witness was
3 exposed to the assailant." And the time here was -- I don't
4 know what short and long is, as far as what they are talking
5 about, but certainly is a cross-racial nature of
6 identification.

7 MR. SPRINGS: It's cross-racial from one person,
8 but we have two. It would not be cross-racial.

9 THE COURT: Right. Well --

10 MR. SPRINGS: Ms. Parker --

11 THE COURT: No, I understand that, but we have at
12 least one.

13 Just -- the case of Whaley mentions cross-racial
14 nature.

15 People v. McDonald I don't think has been
16 reversed, but interestingly enough in talking about People
17 v. McDonald, also says well, you don't have to be an expert
18 to testify that identification -- people who identify can be
19 mistaken, but there are certain factors that jurors wouldn't
20 think about, according to this opinion, that may influence
21 one's ability to identify someone that may affect an
22 eyewitness' identification identification. One would be the
23 cross-racial nature, but the other one that I think we
24 possibly have here, the effects on memory of the witnesses
25 exposure to subsequent information or suggestions. And in

1 this case we have, if I recall the testimony, that both the
2 African American and white witnesses were told "we think we
3 have the shooters or we have the shooters," which expose
4 them to at least some suggestion. All right, so I'm going
5 allow it.

6 All right. Let's bring in the jury.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: All right. Mr. Springs?

10 MR. SPRINGS: I'm finished.

11 THE COURT: Mr. Dunn, do you have any questions of
12 this witness --

13 MR. DUNN: No, sir.

14 THE COURT: -- as far as qualifications?

15 MR. DUNN: No, sir.

16 THE COURT: I find she is qualified in the area of
17 the psychology of memory and the psychology of eyewitness
18 memory.

19 You may proceed.

20 MR. LEMEL: Thank you, Your Honor.

21 CONT'D DIRECT EXAMINATION BY MR. LEMEL:

22 Q. Now, just to clarify, Dr. Van Wallendael, are you here
23 to tell us whether one individual is lying and telling the
24 truth in making a statement? Can you do that?

25 A. No, there is no way to do that.

1 Q. That's not what you are here for?

2 A. No.

3 Q. Let's talk a little bit. You have already mentioned
4 that you are working with the Charlotte-Mecklenburg police
5 department with their identification procedures?

6 A. Correct.

7 Q. And that North Carolina has already actually by law
8 changed their identification procedures?

9 A. That's correct.

10 MR. SPRINGS: I'm going to object to the relevance
11 of that.

12 THE COURT: I sustain the objection. What North
13 Carolina has done is not -- is no impact in this state.

14 MR. LEMEL: I apologize, Your Honor, she testified
15 to it before.

16 BY MR. LEMEL:

17 Q. Why is that so important?

18 MR. SPRINGS: Objection. It's the same thing.

19 THE COURT: Let's just start over. Let's just --
20 we are not asking about what North Carolina has done. Let's
21 just move to something else.

22 MR. LEMEL: And I'm not referencing what North
23 Carolina has done.

24 THE COURT: Well, you used a pronoun, why is that
25 important.

1 MR. LEMEL: Okay.

2 THE COURT: We don't know what you are referring
3 to.

4 MR. LEMEL: Yes, sir.

5 BY MR. LEMEL:

6 Q. Why is it important to look at identification
7 procedures when it comes to eyewitnesses?

8 A. We know from many studies that eyewitnesses can make
9 errors and that those errors can sometimes lead to innocent
10 people spending time in prison. And a lot of the reasons
11 that eyewitnesses make errors are outside of the control of
12 the system. There really isn't anything that the police or
13 the courts or anyone else can do about them. They are the
14 nature of crime and victimization, but the thing that's
15 under control of the system is how we actually get an
16 identification out of a victim or witness; what are the
17 instructions we give, what are the procedures that we use.
18 Those are areas where psychologists feel like if we can
19 offer alternatives and study different kinds of scenarios
20 used in identifications, we can discover what procedures are
21 the best for getting good identification and what procedures
22 are going to hopefully rule out the false identifications.

23 Q. So as to there are certain things in the system that
24 you can't control?

25 A. Right.

1 Q. So there are certain things that a police officer would
2 confirm with an identification the system can control?

3 A. Exactly.

4 Q. Is one of those things that they can control the ways
5 that an identification can be made?

6 A. Yes.

7 Q. Okay. There are a different number of ways in which an
8 identification could be made, correct?

9 A. Correct.

10 Q. One of those is what we refer to as a lineup I think
11 you referred to earlier?

12 A. Yes.

13 Q. What is a lineup?

14 A. A lineup is where you have a suspect, ideally a single
15 suspect, who is either presented physically or in the form
16 of photograph, along with a number of what we call foils or
17 innocent people who are just there to basically test the
18 witness' memory. So if you see, for instance, a lineup with
19 six people in it, the assumption is that it was created by
20 taking one suspect and five people who are not suspects and
21 the witness is hopefully going to pick out the suspect and
22 not one of the foils from the lineup.

23 Q. So when we see this on TV, the lineup, is that what we
24 are talking about?

25 A. Yeah, that's the standard kind of lineup.

1 Q. There is another procedure that is done as a showup,
2 right?

3 A. Correct.

4 Q. What is a showup?

5 A. A showup is when the witness only sees one person,
6 either in the form of a photograph or actually in the flesh
7 and the police ask them "is this the person who committed
8 the crime," or, "is it not?" So there are no foils
9 involved. There is just one face that you see or one person
10 that you see.

11 Q. Basically they are given one choice?

12 A. Right.

13 Q. And they can say yes or no to that one choice?

14 A. Correct.

15 Q. Between those two procedures, which one is preferable
16 from a psychological standpoint?

17 A. Definitely the lineup.

18 Q. Why?

19 A. There are two reasons. From a psychological standpoint
20 one problem with a showup is that it doesn't really test the
21 witness' memory in any way.

22 If you think about a lineup, the police obviously are
23 looking for evidence against their suspect, but they are
24 also in a way testing how much the witness really saw and
25 really remembered and there are no wrong answers in a

1 lineup. So if somebody is just guessing or if somebody's
2 memory is faulty, part of what a lineup can do is it can
3 tell the police, hey, he or she picked a foil out of the
4 lineup. We know that's not right. We need to kind of take
5 this witness' memory with a large grain of salt.

6 But with a showup, there are no wrong answers. There
7 is no known incorrect answer. The person can either say
8 "yes, this is the party," or "no, he's not," or, "no, I'm
9 not sure," but none of those answers are known right or
10 wrong. So there is nothing really that the witness can say
11 that would actually give the police an indication of
12 whether, in fact, what they have stored in their memory is
13 correct or not.

14 Q. And have there been any studies regarding showups as an
15 identification procedure?

16 A. Yes, there have been a number.

17 Q. And have any of those focused on sort of an accuracy
18 rate in a showup-type procedure versus other types of
19 procedures?

20 A. Yes, probably the most recent study that I'm aware of
21 was done by a researcher named Daniel Yarmey up in Ontario,
22 Canada, who is probably one of the most prolific researchers
23 in face and voice recognition, and one of the things that
24 Yarmey did was to try and set up a situation where he
25 directly compared people in the same kind of situation,

1 either looking at a lineup or a showup in trying to identify
2 a person that they had been interacting with.

3 Q. What sort of interaction were they --

4 A. What Yarmey tried to do in his study was to basically
5 set up the best case scenario for a person to be able to
6 remember accurately. So he did a study on broad daylight on
7 a city street. He would have passers by approached by a
8 research associate, a young woman in her twenties, I
9 believe, white woman. All the participants in the study
10 were also white, and they would just be approached and would
11 interact with this stranger for 15 seconds, or so, usually
12 in a matter of giving directions; you know, "how do I get
13 from here to such and such place." And then within five
14 minutes after the person had left, the participant was
15 approached by an experimenter who told them "you have just
16 been a part of a psychology experiment. We would like to
17 see if you can recognize the picture of the person that you
18 just talked to and gave directions to." And then they would
19 either be given a lineup of six photographs or just a single
20 photograph showup to try and identify the person that they
21 had talked to five minutes earlier.

22 Q. And what were the results in that particular
23 experiment?

24 A. The accuracy for lineups was quite a lot, what we say
25 statistically significantly higher than the accuracy for

1 showups.

2 And if you want sort of a ballpark idea of how the
3 showups operated, if you think about a showup where
4 basically you are looking at one photograph and just saying
5 yes or no, if you never saw the person in the first place
6 and you were just guessing, since you have only got yes or
7 no to pick from, you have got a 50 percent guessing rate or
8 chance rate of getting it right.

9 The accuracy rate that they got for showups in Yarmey's
10 study for people who had seen and interacted with the
11 individual in question was about 57 percent. So basically
12 it just improved on chance guessing by only about seven
13 percent.

14 Q. So chance -- I mean, that's chance like flipping a
15 coin?

16 A. Yes.

17 Q. Flip a coin, it's 50/50?

18 A. Right, flip a coin yes or no, it was or wasn't.

19 Q. So in showup scenario, under those conditions, it was
20 only seven percent better than flipping a coin?

21 A. Right.

22 Q. Why are showups such a poor test of a person's memory?

23 A. Well, part of the issue, and I think, you know, studies
24 like Yarmey's don't really get at this as much, but in a
25 real showup situation when you are a witness to a crime or a

1 victim of a crime and then you are exposed to a showup in
2 trying to make an identification, there is a lot of
3 psychological pressure to say yes, as opposed to no.
4 Showups tend to be suggestive in the sense that they occur
5 fairly quickly. Very often, you know, it's the police
6 officer who you have been talking to who is investigating
7 your case who suddenly comes back and says, you know, "we
8 want you to look at a suspect." And, you know, as a victim
9 or even as a nonvictim witness, you want to have some
10 psychological closure. You know, you want to get this
11 person who did this and get them off the streets and feel
12 like you have assisted the police, and so for a lot of
13 reasons, you know, psychologically you feel a lot better if
14 you can say "yes, that's the person, and I did my bit and
15 the police are taking him away." So it's not a coin toss in
16 the sense of 50/50 you say, yes -- you are probably, you
17 know, 60/70 percent more likely to say yes before you even
18 see the person just, you know, due to that sense of "I want
19 this to be the right person. I want this to be over with."

20 Q. Let's talk -- we are going to come back to that a
21 little bit more.

22 Somewhat earlier you were alluding to you were talking
23 about memory. How -- do we -- are memories like videotape
24 pictures?

25 A. No, they are not.

1 Q. Why is that? Why is that the case?

2 A. When -- when I talk to my students about memory and I
3 try to find an analogy that is definitely not a camera or a
4 video recorder, the phrase that researchers often use in
5 describing memory is reconstructive. And what I like to say
6 is that when you put a memory together and you tell someone
7 about an incident from your life, or something that is in
8 your memory, it's more like putting a jigsaw puzzle
9 together, where you have pieces of information that is
10 actually stored in your brain from what you actually
11 perceived at the time of an event, but it's always
12 incomplete information and you are always having to fill in
13 other pieces from things that seem logical, from things that
14 other people may have told you about what happened, from
15 things that, you know, maybe you have thought about in the
16 interim and, you know, thought, well, maybe, you know, it
17 must have been or it could have been. And so even though
18 you are not always aware of it --

19 Q. Do you need some water?

20 A. No, I'm okay.

21 Even though you are not always aware of it, you
22 typically have information that is incomplete that you are
23 trying to complete in your head. And unfortunately when we
24 actually tell someone what happened or recognize what
25 happened, we are never able to really separate out what we

1 have inferred through logic, what has actually been a piece
2 of our accurate memory. It all kind of gets woven together.

3 Q. So going back to that analogy of the jigsaw puzzle, any
4 memory, in the puzzle, there is gaps in it?

5 A. Absolutely.

6 Q. And we try to -- we naturally as human beings just try
7 to fill in those gaps?

8 A. Yes.

9 Q. And we use information that doesn't come from that
10 memory moment to fill in those gaps?

11 A. Right.

12 Q. It comes from all sort of different places, like you
13 said?

14 A. Yes.

15 Q. Okay. How do we remember things? Like are there
16 different stages of how to remember things?

17 A. Yes. One of the big differences between a camera that
18 just clicks a shot in an instant and a memory, a memory
19 actually is formed in a variety of stages.

20 We talk about, first of all, acquiring the information
21 in a memory, and the technical term for that is encoding,
22 because we don't actually physically remember a sight or a
23 sound or a smell. We have to encode that into terms that
24 our brain cells can retain.

25 In acquiring a memory involves perceiving. It involves

1 paying attention to information that is going on around us.
2 Attention is limited, so we only acquire a small percentage
3 of what's really happening around us at any given time.
4 Even that percentage of information that we have acquired
5 then has to be stored. We have to have some way to keep it
6 in our heads. And ultimately when we are questioned or when
7 we make a decision like a recognition, we go through what's
8 called a retrieval stage, where we have to get that memory
9 back out of our brains and not to store it further while we
10 are trying to pry it out of there.

11 Q. So, as I understand it, there are basically three
12 phases? Acquisition?

13 A. Right.

14 Q. Retention?

15 A. Right.

16 Q. And retrieval?

17 A. Correct.

18 Q. Now, back to this phase, I think you indicated
19 basically when the information comes in?

20 A. Right.

21 Q. When information comes in, it's not always a hundred
22 percent, correct?

23 A. Correct.

24 Q. That would be holes in the jigsaw puzzle that we talked
25 about?

1 A. Right.

2 Q. What are some factors that can affect how many holes in
3 the jigsaw puzzle there are?

4 A. There are a number of things, starting out with simply
5 your opportunity to view or to pay attention to the
6 situation. If you think about anything that you are trying
7 to remember, whether it's your grocery list, or information
8 for a test, information for, you know, maybe a written
9 driver's license test or something, you are trying to study
10 information. We know that memory is better when we study
11 longer, so we have more time with the information. Multiple
12 times with the information is good. Your teachers tell you
13 not to cram, space your studying over several nights. We
14 want to have good lighting when we are studying. We want to
15 be free of distractions when we are studying. So if you are
16 trying to remember something, you know almost intuitively
17 the things that are good for your memory.

18 The problem is also none of those things are ever true
19 in a crime situation. In a crime situation you have things
20 happening very fast. You have maybe five or ten seconds
21 that you have this person in view. You are often very
22 distracted by other things in the crime scene. Very often
23 it's dark. You only see the person once. So all of those
24 things that we try to do when we study information and
25 remember it, typically in a crime you are having to work

1 against the fact that it happened fast, it happened once, I
2 didn't get a second opportunity to view, I was distracted.
3 All these things are making more holes in the jigsaw puzzle
4 as opposed to pieces.

5 Q. So after an event occurs and you go into the next
6 stage, which is retention?

7 A. Correct.

8 Q. I think you referred to that as encoding on the brain?

9 A. Encoding is kind of a process that goes on in the
10 acquisition phase so that we can store or retain.

11 Q. How -- during that retention phase, how can information
12 that somebody gets after get pushed into a memory?

13 A. If you think of a memory, it's a constantly fluctuating
14 thing, and unless every time that you think about or re-tell
15 or re-live a memory, you are probably modifying it. So what
16 tends to happen is during the storage phase, if people ask
17 you questions about what happened, if you ask yourself
18 questions and just, you know, re-live an event, you are apt
19 to change some of the details.

20 And there is a researcher named Elizabeth Loftis who
21 has been doing these kind of studies for probably thirty
22 years now, or more, where what she likes to do is show
23 people a film, or a slide show, or some kind of a depiction
24 of a crime or an incident, and then she repeatedly questions
25 them about the incident. And sometimes she kind of slides

1 misleading information into her questioning. So if you saw
2 a film of a car accident, for instance, she might ask you
3 first to just describe what you saw, and people reasonably
4 accurate at that. You know, they miss a lot of details, but
5 they get some things right. And then on the subsequent
6 questioning she starts throwing in questions, like "well,
7 how fast do you think the car was when it ran through the
8 stop sign?" Well, it never ran a stop sign. It ran a yield
9 sign. Or "how fast was the car going when it passed the
10 barn," and there is no barn. And what she discovers is that
11 after answering questions like that, you bring the person
12 back and you ask them for their account again and they start
13 talking about the stop sign. They start talking about the
14 barn.

15 My favorite study that she did, she simply asked people
16 at the end "how fast do you think the red car was going at
17 the time of the yield," and then she varied. "At the time
18 the cars contacted; at the time the cars collided", kind
19 ever neutral terminology, variety of other terms. And then
20 the big one, "at the time the cars smashed into each other?"
21 Just using that term smashed resulted in people remembering
22 things like broken glass, blood on the road. None of those
23 things were there, but it was like their memory was modified
24 just from thinking about the cars smashing into each other,
25 they started thinking about details that were consistent

1 with smashing and with a very violent accident.

2 So just the process of being questioned about what they
3 saw resulted in a lot of changes from their very first
4 account of the accident to, you know, at the end when they
5 were talking with, you know, the stop sign that wasn't there
6 and the broken glass at the crash scene and so forth.

7 Q. Now, that example is a very active situation in trying
8 to imprint something, where they use the --

9 A. Right.

10 Q. Does it have to be that active in order to have that
11 effect on the people?

12 A. No, most of the time it's probably much more passive,
13 much more subtle. You know, just things that, you know,
14 will happen in the course of just a normal person's life
15 than, you know, telling and retelling what happened to them.
16 It doesn't have to be somebody deliberately trying to
17 mislead them.

18 Q. We talked about the last stage where you actually tell
19 somebody what your memory is, is the retrieval stage,
20 correct?

21 A. Right.

22 Q. And when some people retrieve a memory, they appear
23 very, very confident in doing so?

24 A. Yes.

25 Q. How does confidence relate to accuracy?

1 A. Unfortunately it really doesn't. There are a lot of
2 studies that have tried to find a relationship or a
3 correlation between confidence and accuracy. Most of them
4 have found very, very low relationships or no relationship.
5 People who are wishy-washy and not very confident can turn
6 out to be very accurate and people who are super confident
7 can turn out to be wrong.

8 Q. Any psychological reason why that's true?

9 A. Yeah. Basically you have got apples and oranges here.
10 Confidence is affected by a certain set of factors.
11 Accuracy is affected by totally different things.

12 Confidence, a lot of it is personality. You know, we
13 all know people who are just anytime they answer a question
14 they are dead on sure. Some of it also has to do with
15 feed back that we may get after we make a statement or a
16 decision you know in someone nods, smiles, indicates to you
17 that, you know, you have said something correct. Those are
18 things that can increase your confidence, but they really
19 don't have anything to do with whether you were accurate or
20 not.

21 Q. So you said there could be some very subtle things on
22 the feedback that increase the confidence?

23 A. Sure.

24 Q. Smile would be one?

25 A. Smile, eye contact, thumbs up, yeah.

1 Q. Does it have to be very overt over-the-top statement of
2 "you did good," or "we appreciate --

3 A. No. When we talk about sort of the best practices and
4 procedures for lineups and identifications, it's important,
5 you know, that the officer try not to give any direct verbal
6 feedback saying, you know "yes, you picked our suspect.
7 Thank you."

8 But, you know, there are also a lot of things that you
9 probably can't even help. I mean, simply the fact that
10 after the identification, you are ultimately called into
11 court to testify. You know, that is to a certain extent
12 feedback that you picked the right person and that person is
13 now on trial and being called back. You know, of all those
14 things that happen in the court system that make you think
15 "well, you know, I must not have been wrong, because if I
16 had been wrong, if I had made a mistake, somebody would have
17 caught it by now, this person would be freed." You know,
18 you are assuming that, you know, the system is working fine.
19 And so the fact that this person is even working their way
20 through the system, even though nobody ever told you "yeah,
21 congratulations, you picked the right guy," doesn't
22 necessarily mean that you are not getting a lot of feedback
23 that's telling you, yes, you did.

24 Q. And so a person can very strongly believe that they are
25 telling the truth?

1 A. Oh, yes.

2 Q. And be completely inaccurate?

3 A. Yes.

4 Q. So confidence, we established, is not a good indicator
5 of accuracy. What sort of things psychologically are good
6 indicators of accuracy?

7 A. Well, as you have said before, you know, there is no
8 test. There is no way that we can simply look at a witness
9 and say this person has a good memory, this person has a bad
10 memory, this person got it right, this person got it wrong.
11 But what we do try to do is to look at the circumstances
12 that the person was in, and we have already talked about
13 things like opportunity to view, but psychologists have
14 pointed out a number of things that we know that are good or
15 bad for an eyewitness identification in terms of, you know,
16 red flags for dangerous identifications and things, you
17 know, on the other side that would be good for an
18 identification.

19 Q. We talked a little bit about showups being a poor test
20 of memory. How would the conditions of a showup impact, for
21 instance, the confidence level of an individual?

22 A. The conditions of a showup are such that as they are
23 usually done in the real world, they are both, you know
24 suggestive and also very likely to increase a witness'
25 confidence in their recall. So, for instance, if you think

1 about a showup situation, you know, you are probably within
2 a fairly short frame of time after the crime has occurred
3 and suddenly, you know, the police are saying, you know, "we
4 have got somebody we want you to look at." You are
5 thinking, wow, they must have found them nearby.

6 Q. Now, let me stop you there. Do the police have to say
7 "oh, we have got the guy. That's -- you know, you are going
8 to identify this guy. You are going to recognize this guy."
9 Does the police have to say something like that to cause
10 that person --

11 A. No, no, and you are being -- either you are having
12 someone brought to you or you are being brought out to look
13 at someone. Someone is taking some effort to put you in
14 contact with another human being that they want you to look
15 at. So that by its very nature is going to make you think,
16 oh, they got him. And unfortunately with a showup a lot of
17 times you do get situations where, you know, the witness
18 will try and get information out of the police officer.
19 "You know, so you have got somebody. Where did you get
20 them?" You know, and, you know, most officers will try and
21 avoid answering questions like that, but, you know, you may
22 get some information nonverbally, subtly, and then you get
23 to the actual showup procedure. And maybe you have got the
24 suspect in handcuffs, or you have got the suspect being
25 brought out of a police car. You have got, you know,

1 situational factors that are all saying this is the person,
2 this is somebody that they have arrested, they must have had
3 a reason for this person to be arrested. So all of those
4 things are increasing your confidence that, you know,
5 "ah-ha, you know, this is going to be the guy that I saw."
6 And if you do make an identification and say yes, that's
7 him, or her, then the whole situation is going to contrive
8 to boost your confidence and make you think, you know, yeah,
9 everything about this situation looks like the right person
10 was arrested and I just identified him.

11 Q. Let's go back a little bit about the acquisition phase
12 and talk about things that can impact the acquisition phase.
13 I think you briefly mentioned one. Stress would be one?

14 A. Yes.

15 Q. What about the presence of a gun in a case? Have there
16 been any studies with regard to that?

17 A. Yes, there have been a number of studies of what we
18 call the weapon focus effect. The first few studies were
19 actually prompted by police officers talking to researchers
20 about frustrations that they had had in their day-to-day
21 life. You know, the witness who gave me a totally detailed
22 description of the gun and couldn't remember anything about
23 the person holding it. Why does that happen? And
24 researchers started looking into it and discovered that very
25 systematically when you have a weapon like a gun present, it

1 does draw people's attention. It draws their focus. And
2 when you draw someone's focus to one thing, usually it means
3 drawing attention away from other things.

4 If you think about your attention as kind of a
5 spotlight where you could make it broad and, you know, cover
6 a whole choir, or you can narrow the focus down and just,
7 you know, beam in on a soloist.

8 When you are facing a weapon, you beam in on that
9 weapon. Your attention is very closely focused. And it's
10 not even just vision. A lot of people think, well, you
11 know, if you are looking at a gun, then you don't see much
12 in the periphery, but it's not even just that, because we
13 know that when there is a gun present in a situation, people
14 are less likely to be able to identify the face of the
15 person holding the gun. They are also less likely to
16 identify what was being said at the time; most likely to
17 identify voices; most likely to be able to give a coherent
18 account of other things that were happening with all of
19 their senses - with their hearing, with their sense of
20 smell. You know, it's like everything that you have as a
21 mental resource is focused on that weapon that is pointed at
22 you. You want to know exactly what's going on with that
23 weapon and not much else has very much importance to your
24 brain at that moment.

25 Q. Let's talk about opportunity to view. Has there been

1 any studies that have to do with how good the information
2 coming in is relating to how long it takes somebody how long
3 they have to view something?

4 A. Yes, typically the longer that you have to view a
5 situation, the more likely you are to remember it. If you
6 see a face more than once, you are more likely to remember
7 it. If you see a face in the light as opposed to the dark,
8 you are more likely to remember it.

9 Q. So the amount of time has an impact?

10 A. Yes.

11 Q. What about when people of different races try to
12 identify an individual? Have there been studies on that?

13 A. Yes, I have actually done some studies in my own lab on
14 this as well. It's a pretty well known fact among
15 psychologists, which I don't think that we have really
16 gotten out to the general public very well, but it's much
17 easier to identify a person within your own race than it is
18 to identify someone of a different racial heritage.

19 Q. Why is that?

20 A. It's -- it's really a consequence of how we learn to
21 remember our faces from our very earliest days. It's not
22 about racism. It's not -- it doesn't even seem to be well
23 related to how much contact you have as an adult with
24 members of other races.

25 We think it really goes back to our babyhood. We know

1 that babies learn to recognize their mother's face very
2 early on, within a day or so of birth. So face recognition
3 is something that, at least in early form, we do very
4 quickly in our lives. It's one of the first things that we
5 have to learn. And if you think about a baby coming out
6 into the world and suddenly faced with all of these sights,
7 sounds, things that are totally new, to be able to focus in
8 on a face, like your mother's face, and learn to tell your
9 mother from your aunts and your sisters and the nurses and
10 all various other faces around you, it's a pretty good
11 trick, but it is a pretty complicated one. And what we
12 think is going on there is that as we learn to recognize mom
13 and dad and our siblings, we learn to focus on pieces of a
14 face that are most helpful to us in separating mom from just
15 one of the nurses. We can't notice everything. Now,
16 especially as one-day-old baby you are not going to notice
17 everything, but what you probably are going to do is focus
18 in on the things about mom that are most distinctive. So as
19 a Caucasian baby, I probably learned early on to tell things
20 like brown eyes from blue eyes, to focus in on blond or red
21 or brunette hair color, to focus in on hairstyles, to focus
22 in on things that would help me as a white baby tell my
23 white parents from the rest of the world.

24 The problem is that as I go through life doing that, if
25 I have learned to focus on things like hair color and, you

1 know, eye color, and then I am faced with a situation where
2 I have to learn to identify Asian Americans or African
3 Americans and my first inclination is to say, oh, dark hair,
4 dark eyes, that's not going to help me a whole lot. You
5 know, I have just basically zeroed in on features that are
6 not going to help me one bit in discriminating one African
7 American person from another.

8 If, on the other hand, I have focused in more on size
9 and shape of the lips, or more perhaps on aspects of the
10 structure of the nose or the cheek bones, I might be better
11 off. And somebody, in fact, who is growing up learning to
12 recognize African American faces would be better at it. So
13 that's we think cognitively what's going on when we find out
14 that just almost across the board any kind of study that you
15 look at that compares races, we find that African Americans
16 do a better job identifying other African Americans,
17 Caucasians do a better job identifying other Caucasians and
18 so forth.

19 Q. Now, in light of that, are initial descriptions given
20 by witnesses important at all?

21 A. Oh, yes.

22 Q. In what way?

23 A. The initial description is basically the purest
24 indication that you get of the witness' memory before it's
25 been distorted by the questions that you have asked them, by

1 other people telling them things, by their own making
2 identifications and so forth. You know, that initial
3 interview when, you know, it's fresh after the crime as
4 possible, that's where you are really getting more of the
5 person's actual memory and the details that they do recall
6 and less of, you know, anything that might be planted later
7 by, you know, someone asking about specific elements.

8 Q. So that initial description of the jigsaw puzzle is
9 before somebody is actually filling in pieces?

10 A. Right.

11 Q. And if there is something particularly distinctive
12 about the individual, how would that affect that person's
13 ability to identify them?

14 A. Usually what we see is that distinctive elements tend
15 to stand out for people. So if -- you know, if you are
16 looking for a key to hang a recognition on, you know, it's
17 the things that are unusual about a person that tend to
18 stand out in our memory and tend to show up in some of those
19 initial descriptions. You know, the really flaming red
20 hair, or the fact that a person was unusually tall, or
21 short, or heavy, or had a scar, you know, things that draw
22 our attention because they are not just the run of the mill
23 every day face.

24 Q. Would that, for instance, be a birthmark on the face?

25 A. Yes.

1 Q. What about clothing?

2 A. Clothing, again, we don't tend to notice as much,
3 unless there is something unusual about it. But if there is
4 something that stands out from the norm, then you would
5 expect that that would be more likely to appear in a
6 person's description. So I might not notice, you know, a
7 college student wearing blue jeans and, you know, tennis
8 shoes and a T-shirt of some sort. But if one of my students
9 walks into my class wearing a suit and tie, you know, boy, I
10 remember that. Or if somebody has, you know, a hat on, that
11 draws my attention. You know, so, again, it's sort of out
12 the ordinary elements that we would expect people to
13 remember the best.

14 Q. Okay. Now, we talked about that initial description
15 being important. And how does that interact with, for
16 instance, in proper showup, a technique that's suggested
17 like that? Is there a relationship between those two?

18 A. Yeah, basically, again, if you think about memory as,
19 you know, this constantly reconstructing kind of process,
20 when you get the initial description, you know, the
21 incomplete pieces of the jigsaw puzzle, a person --

22 (Whereupon, the audio tape was turned over in the
23 recording device and there may be a missing part in this
24 answer. It then picks up with the following)

25 A. -- then they know they don't have all the details.

1 They tell you what they can.

2 Then if you do an identification procedure,
3 particularly one that's suggestive, a biased lineup or
4 showup, and a person says "yes, that is the criminal, I
5 recognize them," what happens there is that once you make
6 that identification, whatever is in your mind from the
7 initial crime, whatever details are still there floating
8 around your brain is now kind of combined with the details
9 of the face that you just identified. So from here on out
10 when you think about the crime to yourself, when you make
11 additional identifications or additional statements, it's
12 impossible to tell where the description of the real
13 perpetrator begins and ends and where the description of the
14 person that you identified begins and ends. They become
15 blurred together. So from then on basically it's kind of
16 like having a window of opportunity that closed for getting
17 new information about the person that committed the crime,
18 because once you have made an identification, that person
19 you have identified becomes in your memory and it is their
20 features that you will see and their features that you will
21 remember when you make subsequent statements, and you are
22 more likely to probably be talking about, you know, the
23 clothing that you saw them wearing when you made your
24 identification, or, you know, the circumstances of that
25 identification.

1 Q. So going back to our jigsaw analogy, if there are holes
2 that get filled in by some sort of suggestive procedure,
3 once those holes are filled in, whatever else is underneath
4 those holes is wiped out?

5 A. You can't get it back.

6 Q. And that will affect every subsequent identification
7 somebody comes in and makes?

8 A. Yes.

9 Q. That taint carries through?

10 A. Yes, that's why researchers are really cautious about
11 any kind of multiple identification procedures. If you look
12 at mug shots, if you make a drawing of the person who robbed
13 you or attacked you, any of those things can taint your
14 memory and can change your recall of what happened, so that
15 once you have done that, you know, are you really
16 identifying the person you drew, or are you identifying the
17 person you saw in the mug shot, or are you identifying the
18 person that you saw in the showup, we will never be able to
19 know.

20 Q. So they basically have one chance to get it right?

21 A. Yes.

22 Q. And if that chance is messed up, everything is else is
23 messed up?

24 A. Correct.

25 Q. Please answer necessary questions that the solicitor

1 may have for you.

2 CROSS EXAMINATION BY MR. SPRINGS:

3 Q. Ms. Van Wallendael, I'll be as I can. I don't want to
4 keep you a minute longer than possible.

5 When you say someone viewing someone in person, they
6 have seen more detail than they would see seeing a photo of
7 that same person?

8 A. Sure.

9 Q. Is seeing someone in person more true life, more
10 realistic than a photo?

11 A. Sure, you get more information, height, weight, build.
12 You might see them move.

13 Q. More context?

14 A. Yes.

15 Q. When Mr. Yarmey was doing his surveys, I assume they
16 were probably college students that he was using?

17 A. His people that he was, you know, going up and
18 interacting with passersby, those were college student
19 volunteers, but he was trying to get sort of, you know, your
20 averaging Joe on the street, people going to and from work
21 and shopping, so he had a --

22 Q. His college students that he used, do most of these
23 surveys because that's who is handy? Most of you guys are
24 around college students?

25 A. Yeah, absolutely. In a lot of studies, that's one of

1 the reasons why we are getting so focused on trying to get
2 out of the lab and doing some field work, because college
3 students -- they are college students. They may be
4 different.

5 Q. In Mr. Yarmey's research, he was having people,
6 passersby, interact with a stranger asking direction to go a
7 bank or a library, or something like that?

8 A. Right.

9 Q. And that he was finding out that he didn't think that
10 person's recollection later, the identification was very
11 good?

12 A. Right.

13 Q. As you have more people making an identification,
14 statistically, would the odds be better and better that it
15 is proper and a good identification when more and more
16 witnesses to the same thing agree? Would that make good
17 sense?

18 A. To the extent that those witnesses are independent from
19 each other, yes.

20 The key thing really is if you have a situation where
21 there is a particular factor that you are concerned about,
22 whether it's a biased procedure or something, if that bias
23 is shared by all the witnesses, then you may expect them to
24 all give the same answer; but, you know, to the extent that
25 they are separate and different identifications, obviously

1 more evidence is better than less.

2 Q. Okay. So if there is circumstances of making
3 identification, say two did a showup and one never did a
4 showup, the circumstances of the identification start to
5 vary, would you put more reliability in these
6 identifications?

7 A. Yes.

8 Q. And when someone paid more or less attention or a
9 degree, full attention, or not, to somebody that does point
10 a gun at them and says something like "give me that money,"
11 are they going to pay more attention to that person or
12 somebody asking directions to the library?

13 A. I would say that in general you probably would pay more
14 attention to the situation of the person pointing a gun at
15 you and asking for your money.

16 Q. Let's get personal. If somebody pointed a gun at you
17 and said "give me that money," would you pay more attention
18 to them, or somebody that walked up while you were grading
19 papers and said "which way to the library?"

20 A. I would probably pay very little attention to the
21 person who asked "which way to the library," and I think my
22 students could probably tell you that's accurate.

23 Q. Okay. And you said the longer you viewed someone and
24 the more different multiple times that you had to see
25 somebody, you start slipping through the accuracy of the

1 later identification?

2 A. Yes.

3 Q. You went to the stand about twenty of twelve and it's
4 less than an hour. Thank you very much.

5 MR. SPRINGS: That's all I have.

6 MR. DUNN: I don't have any questions, Your Honor.

7 THE COURT: Redirect.

8 MR. LEMEL: Just very briefly, Your Honor.

9 REDIRECT EXAMINATION BY MR. LEMEL:

10 Q. A question was asked about the number of people making
11 an identification and you talked about inattentive they are?

12 A. Right.

13 Q. And that's where the key in terms of whether they have
14 formed the -- you know, the identification was made sort of
15 as a group, basically?

16 A. Yes.

17 Q. And the question was asked if you had two people show a
18 lineup and one person do something else?

19 A. Uh-huh.

20 Q. What if the person who was doing something else was
21 hold that person in the lineup, "that's the person we saw,"
22 or the person that didn't show up, "that's we person we
23 saw", would they be independent?

24 A. No.

25 Q. What if they had seen a person who was involved in a

1 showup made the identification, would they be independent?

2 A. No, the best practices would be to try to, you know,
3 keep those witnesses separate and make sure that they don't
4 know whether the other person has made an identification or
5 not.

6 Q. Thank you.

7 MR. LEMEL: Nothing further.

8 THE COURT: You can step down and be excused. We
9 appreciate your time.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. LEMEL: The defendant would call Jeff
13 Hollifield.

14 JEFF HOLLIFIELD, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. LEMEL:

17 Q. Mr. Hollifield, please introduce yourself to the jury.

18 A. My name is Jeff Hollifield. It's H-O-L-L-I-F-I-E-L-D.

19 Q. How are you employed?

20 A. I own and operate Micro Analytical, which is a private
21 forensics lab in the Greenville area. I do work for local,
22 state, and federal police agencies.

23 I do work for attorneys, both prosecution and defense,
24 criminal and civil. I also serve the insurance industry.
25 Insurance adjusters who are investigating fraudulent claims

1 asks me to do analysis occasionally.

2 Then I also do industrial exams, which the typical
3 request there is primarily identifying contaminants and
4 small particles in commercially produced products.

5 I also teach chemistry and forensic science at
6 Greenville Technical College as an adjunct instructor
7 part-time.

8 Q. So you have your forensics lab?

9 A. Yes, sir.

10 Q. Okay. Before starting Micro Analytical where did you
11 work?

12 A. Prior to that I worked at the South Carolina Law
13 Enforcement Division. I served as a drug analyst and trace
14 evidence analyst for ten years with the state crime lab in
15 Columbia.

16 Q. Did you leave SLED on good terms?

17 A. Yes, sir.

18 Q. What's your formal educational background?

19 A. I received a Bachelors Degree in Bachelors of Science
20 and Chemistry in '84 Furman University.

21 Then a Masters in Chemistry in '86, also from Furman.

22 In '96 and '97, I attended McCall Research Institute in
23 Chicago and earned a Masters in Chemical Microscopy.

24 Q. And would you call yourself therefore a chemical

25 micro --

1 A. Microscopist.

2 Q. Microscopist, thank you.

3 A. Yes, sir, I do conventional analytical chemistry and
4 then also a lot of microscopy, which is simply using various
5 types of microscopes to gain chemical information about
6 various samples.

7 Q. How does that relate to forensic?

8 A. Well, in forensics, most samples -- a lot of the
9 samples that I encounter are very small pieces of evidence,
10 what we term as trace evidence. So I look at a lot of small
11 particles, such as fibers, paint pigments, glass,
12 insulation, explosive residues, gunshot residues, that sort
13 of thing. So the microscope, of course, is an important
14 tool in that regard.

15 Q. Now, have you ever testified in court before?

16 A. I have.

17 Q. And in those situations were you able to be qualified
18 as an expert?

19 A. I have been.

20 Q. How many times have you been qualified as an expert?

21 A. Approximately 160, and I would say roughly a 100 of
22 those are in the area of gunshot residue analysis.

23 Q. Okay. Have you ever not been qualified as an expert by
24 any court?

25 A. No, sir.

1 Q. What states have you been qualified in?

2 A. South Carolina and Georgia.

3 Q. And in those cases, what sides have you testified
4 before as an expert?

5 A. Both prosecution and defense. At SLED, most of my
6 testimony was prosecution. As a private consultant, the
7 majority are for defense, but I do both, and also civil, as
8 well as criminal.

9 Q. All right.

10 MR. LEMEL: Your Honor, at this time we would
11 tender Mr. Hollifield as an expert in chemical microscopy.

12 THE COURT: Any voir dire?

13 MR. SPRINGS: No, sir, no voir dire.

14 THE COURT: Mr. Dunn.

15 MR. DUNN: No voir dire.

16 THE COURT: I find he's qualified.

17 BY MR. LEMEL:

18 Q. Just briefly, in this particular case, Mr. Hollifield,,
19 were you given the testing and the data that was generated
20 up by somebody at SLED?

21 A. I was. Your office contacted me in May of this year
22 and asked that I review the scientific information in this
23 case, specifically the part related to the gunshot residue
24 analysis which SLED had conducted.

25 Q. And as a result of that did you make a request for some

1 raw data from SLED, basically?

2 A. Yes, sir. The routine procedure is to request a case
3 file in, in my case, from the trace evidence department at
4 SLED and they make a copy of their case file and submit that
5 to me so that I can review it, interpret the data, and then
6 use that as basis of consultation.

7 Q. And is that what you got in this particular case?

8 A. Yes, sir, we did.

9 Q. Did it appear like you got the entire file?

10 A. Yes, sir.

11 Q. Something that you as an expert can then base some
12 opinions on?

13 A. That's correct.

14 Q. Okay. Now, the raw data or what you received was
15 coming from York County forensics unit, correct?

16 A. Yes, sir.

17 Q. They are the ones that do the initial sat-down and --

18 A. They collect samples and then submit those to the SLED
19 lab, yes, sir.

20 Q. And then that raw data has processing that is done by
21 SLED?

22 A. Correct.

23 Q. And they make an opinion, SLED does?

24 A. They form an opinion, yes, sir.

25 Q. And based upon the raw data provided to you by SLED,

1 were you able to form an opinion concerning the presence of
2 gunshot residue on the hands of Travis Robinson?

3 A. I did.

4 Q. And what was that opinion?

5 A. Well, I agree with the SLED report, which states that
6 the amounts of metals on the various areas of the hands are
7 negative for gunshot residue. They do not indicate that
8 gunshot residue is present.

9 Q. Now, you received the raw data generated by SLED, all
10 their reports, correct?

11 A. That's correct, yes.

12 Q. And that includes the collection data, right?

13 A. Yes, sir, I received two sheets which are called the
14 evidence collection sheets, which gives specific information
15 about the time and conditions under which the samples were
16 collected, as well as the instrumental data, the computer
17 printouts from the testing itself, and then the formal lab
18 reports and worksheets.

19 Q. Is there anything noteworthy about the timing noted on
20 those documents?

21 A. There is. It was noted on both of the collection
22 sheets that both samples in this case from both individuals
23 were taken within about an hour and a half from the time of
24 the incident. That's significant, because SLED will not
25 test samples or analyze samples if they are taken beyond six

1 hours after the time of the incident. And the reason for
2 that is that over the course of time gunshot residue can be
3 wiped or washed away from normal daily activities, but in
4 this case both samples were collected well within the six
5 hour time frame, about an hour and a half.

6 Q. How often do you see something within an hour and a
7 half be?

8 A. That's -- that's fairly quickly after the incident.
9 It's extremely rare to find something collected within an
10 hour, so an hour and a half is very good.

11 Q. And SLED's policy is no more than six?

12 A. Six hours, that's right.

13 Q. Okay. As far as the raw data goes, what you had, what
14 you got, is it possible that Travis simply washed his hands
15 and removed the gunshot residue, based upon what you have
16 there?

17 A. In my opinion, the hands were not washed. And the
18 reason is that the values for the metals that are detected
19 are not zero. If someone washes their hands and the debris,
20 the gunshot residue or gun primer residue is removed
21 completely from the hands, you would literally see zeroes on
22 the data sheets. These are not zeroes. There are some
23 metals present on the various areas of the hands. In my
24 opinion it's most consistent with what you would expect to
25 find on any of our hands from just the environment.

1 Q. Normal environmental numbers?

2 A. Yes, sir.

3 Q. Now, the question was raised in terms of once the hands
4 are washed, at some point environmental metals begin to
5 accumulate on there again, correct?

6 A. Sure.

7 Q. Would those numbers still essentially, if it was
8 roughly soon after the washing occurred be relatively low on
9 the hands? How quickly do these metals accumulate on the
10 hands?

11 A. Well, I would think it would take several hours of
12 daily activity for these things to accumulate, once someone
13 has showered or washed their hands.

14 Q. So it's not just an instantaneous thing?

15 A. No, sir.

16 Q. Wave their hands around in the air and suddenly there
17 are metals back on them?

18 A. No, sir.

19 Q. And what you had, again, was consistent with having
20 been on there for several hours?

21 A. Well, they would be consistent with what would probably
22 be found on my hands right now, just from normal daily
23 activity, but they are not completely absent, which is why I
24 believe that the hands were not washed.

25 Q. Okay. And within that, there are many things, it talks

1 about hands being rubbed clean, you know, by taking of
2 clothes? That's something that could happen, right?

3 A. Any rubbing, abrasive action on the hands, of course,
4 is going to wipe away some of the debris that's there. It
5 won't be wiped away completely and it does take place over a
6 course of time. That's why SLED has a six hour time frame
7 within which to get a sample.

8 Q. Based upon the raw data that was submitted, is it your
9 belief were the hands rubbed clean? Is that consistent with
10 the raw data?

11 A. I don't -- well, I don't have any way of knowing that.
12 I don't -- I don't have any way of knowing what the specific
13 activity was of the individuals before the samples were
14 taken within that one and a half hours. What I do know is
15 the samples were taken relatively quickly, certainly within
16 the six hour time frame, and they are some small quantities
17 of metals present.

18 Q. The normal environmental levels?

19 A. In my opinion it's most consistent with environmental
20 levels, yes, sir.

21 Q. And we heard all sorts of ways that could be done; that
22 it could be rubbed off, it could be washed off, it could be
23 taken off clothing or sweating, right?

24 A. It's going to be diminished over the course of time
25 from any activity, yes, sir.

1 Q. Is it also just the simple possibility that no gun was
2 ever fired by those hands?

3 A. Well, one explanation for the levels that are found
4 would be that the person did not fire a weapon.

5 Q. Please answer any questions that the solicitor might
6 have for you.

7 CROSS EXAMINATION BY MR. SPRINGS:

8 Q. Mr. Hollifield, I'm E.B. Springs. Do you remember me
9 from years ago?

10 A. I think I do, yes, sir.

11 Q. How are you doing?

12 A. Fine.

13 Q. So you have gone into the private sector?

14 A. I've been there for awhile.

15 Q. All right. Even though these samples were taken in an
16 hour and a half, you have no idea what Travis Robinson was
17 doing in that hour and a half, do you?

18 A. I don't. I have the incident reports and understand
19 there was a chase of some sort, both in the vehicle and by
20 foot. But other than what I have read in the incident
21 report, I have no direct knowledge of what his specific
22 activities were, no, sir.

23 Q. Okay. So you wouldn't have any idea how many times he
24 changed his clothes?

25 A. I have no idea.

1 Q. How many times he wiped his hands on anything?

2 A. I don't know.

3 Q. What kind of clothing, whether it sweatshirts or
4 T-shirts, cutdown sleeves, you wouldn't have any kind of
5 clothes he was changing, would you?

6 A. No, sir.

7 Q. And how heavily he was sweating, you wouldn't know that
8 either, would you?

9 A. No.

10 Q. And you wouldn't know how much he wiggled around on his
11 hands when he was handcuffed behind his back in a police
12 car, would you?

13 A. I have no way of knowing that.

14 Q. Okay. Now, you have done this a long time, and while
15 you were at SLED, you had people that you knew for dead
16 certain who had fired a gun, but they did not have
17 sufficient quantities of metals to be considered as gunshot
18 residue, did you not?

19 A. Well, in an actual case you don't have a controlled
20 environment, so you don't know a hundred percent for certain
21 if they fired a gun or not. We did rely heavily on suicide
22 cases where, you know, everyone was convinced that, yes, it
23 was a suicide, and looked at what those levels were. And we
24 also did in-house studies, you know, firing weapons and
25 taking samples and looking at what the levels were, and

1 that's -- that's exactly what these threshold levels are
2 based on that SLED uses, and it's also what the six hour
3 time limit is based on.

4 So, in other words, an analyst would expect to find
5 elevated levels, not just the presence, but elevated levels
6 of all three metals within six hours from someone who has
7 fired a handgun or a weapon.

8 Q. Unless they had wiped their hands or changed their
9 clothes and wiped their hands or sweated to some degree?

10 A. Most everyone certainly is going to be perspiring to a
11 certain degree and there is going to be some activity, of
12 course, between the time of incident and collection, but
13 what I'm saying is that's exactly why SLED has a six hour
14 rule. So before six hours you would expect to find not just
15 the presence, but elevated levels beyond six hours, you may
16 or may not find elevated levels.

17 In this case they are present, but they are certainly
18 not elevated. They are well below the SLED threshold.

19 Q. Okay. I don't want to keep going in a circle, but let
20 me just put it to you in a nutshell. If Travis Robinson had
21 fired one shot from a pistol and during the period of time
22 that he was off on his own, if he had wiped his hands on
23 clothes and if he had sweated profusely, he could get, if
24 there was any gunshot residue on his hands, down to normal
25 levels, could he not?

1 A. I certainly think that's possible. I don't know how
2 likely or probable it would be to be able to wear it off
3 within an hour and a half, without washing the hands.

4 Q. Or wiping it on clothes?

5 A. If he wiped his hands, yes, significantly, or perspired
6 significantly, it certainly is going to be diminished by
7 just -- I don't know how it would be diminished to that
8 degree within that short a time.

9 Q. And heavy sweating plays a part, does it not?

10 A. Yeah, that's why we have the six hour rule.

11 Q. The gunshot residue that is looked for is residue from
12 the primer, is it not?

13 A. That's correct.

14 Q. It's not the big explosion coming out the barrel. It's
15 just that tiny little primer, is it not?

16 A. Well, it's any debris that comes out of the gun,
17 whether it's the barrel or around the cylinder. Any opening
18 in the gun, there is going to be powder, primer, and debris
19 exiting the gun, and it forms a cloud around the gun, and if
20 someone hands are exposed to that, you are going to have
21 gunshot residue.

22 Q. Well, am I mistaken then when I say the metals that you
23 are looking for are the metals from primer?

24 A. No, that's exactly where they are from. It's from the
25 gun --

1 Q. From the primer?

2 A. From the gun primer, as opposed to gunpowder, that's
3 correct.

4 Q. And would you say someone that shoots a gun one time is
5 less likely to have gunshot residue than someone who empties
6 revolver and shot about six times?

7 A. That's true. It has a accumulative effect and the more
8 rounds that are fired, the higher the levels are expected to
9 be, yes.

10 Q. All right. And how much are you getting paid to be
11 here?

12 A. Judge Alford approved up to \$3,000.

13 Q. Let me stop you.

14 MR. LEMEL: Your Honor, objection to the side bar
15 conference there at the side.

16 MR. SPRINGS: I said I was going to stop him.

17 THE COURT: Mr. Dunn, do you have any questions?

18 MR. DUNN: No.

19 MR. LEMEL: Just briefly.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION BY MR. LEMEL:

22 Q. Professor, the mention was actually of a revolver being
23 used and how that would contribute. A revolver versus a
24 semiautomatic, is there usually a difference in the amount
25 of gunshot residue that's distributed by those two weapons?

1 MR. SPRINGS: I'm going to object. I don't think
2 that's his revolver.

3 MR. LEMEL: He asked him if it was his revolver,
4 Your Honor.

5 THE COURT: Well, I'll allow the question.

6 BY MR. LEMEL:

7 Q. Please.

8 A. Typically a semiautomatic handgun is probably going to
9 emit a little less residue than a revolver, simply because
10 it's -- there is a relatively large gap around the cylinder
11 on a revolver. However, you also have an ejection port
12 where the shell casing is ejected, so there is still a
13 relatively large opening.

14 The bottom line is SLED has one set of thresholds that
15 apply to all weapons. And every weapon, no matter the
16 caliber or whether it's a semiautomatic or revolver, is
17 going to emit significant amounts of gunshot residue or
18 primer residue.

19 MR. LEMEL: I have no further questions.

20 MR. SPRINGS: Nothing further.

21 THE COURT: You can step down and be excused.
22 Thank you.

23 Members of the jury panel, in the interests of
24 time we have ordered pizza for lunch, so we are going to
25 take our lunch break. And it's -- if you want to smoke, you

1 can have a smoke break. It's about ten minutes to one, so
2 we will try to start back about 1:30. We are not going to
3 rush you. Mr. Foreman, once y'all have eaten and are ready
4 to go, just knock on the door and tell the bailiff and we
5 will send for you and we will start back up as soon as we
6 can. Again, I don't want to rush you, but we got perhaps a
7 couple more witnesses and then arguments and charge and then
8 we will have the case in your hands. So enjoy your pizza
9 and let us know when you are ready to come back.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: Obviously y'all, counsel needs to eat
13 too, but try to remain -- if you leave the building, let us
14 have your cell phone number, if you have one, but let's all
15 try to be back no later than 1:30. Hopefully they will be
16 through by then.

17 MR. LEMEL: Yes, sir. Just for the court's
18 information, my next two witnesses, one would be really,
19 really short, and one would be pretty short. I would say
20 probably less than 30 minutes altogether, taking into
21 account cross-examination.

22 THE COURT: All right.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Just sort of some procedural things,

1 since the defendant -- one defendant has put up witnesses, I
2 believe that would give the solicitor the right for final
3 argument.

4 MR. SPRINGS: That is my understanding. In fact,
5 not having put up any witnesses, just putting in the
6 photographs, that would still be it.

7 MR. DUNN: I have no idea. I'll defer to the
8 court's judgment.

9 THE COURT: Well, trust me, that's -- well, you
10 don't have to trust me. I shouldn't say that. Trust Mr.
11 Lemel.

12 MR. DUNN: I have discussed it with him.

13 (The following takes place in the presence of the
14 jury panel)

15 MR. LEMEL: We call Cheryl Goseman.

16 OFFICER CHERYL GOSEMAN, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. LEMEL:

19 Q. Lieutenant Goseman, you work for the York County
20 detention center, correct?

21 A. That's correct.

22 Q. And you are a supervisor there?

23 A. Yes.

24 Q. A lieutenant is your rank?

25 A. Yes.

1 Q. And what division or department are you a supervisor
2 for?

3 A. I'm the administrative lieutenant.

4 Q. All right. And as part of your duties, do you oversee
5 what we call the property section with the inmates at the
6 detention center?

7 A. Property falls under records and I am the keeper of the
8 records.

9 Q. Okay. So ultimately all that stuff, if you go all the
10 way up to the food chain, you are at the top of it?

11 A. Yes.

12 Q. Now, at the detention center did y'all receive a
13 subpoena requesting certain things be brought over?

14 A. Yes.

15 Q. And as keeper of the records, you were the person that
16 was in charge of bringing that stuff over there?

17 A. Yes, sir.

18 Q. And the stuff that's being brought from over inmates
19 when they come in, their property, when someone is booked
20 into the detention center, their personal property is placed
21 in the storage, correct?

22 A. Yes, that's correct.

23 Q. Is that storage secure?

24 A. Yes.

25 Q. How is that secured?

1 A. It's a locked room in the confines of the secured area
2 of the facility. There are two separate areas, one in which
3 their clothing is kept, and then additionally secured is a
4 vault for other belongings that may be of value.

5 Q. Okay. And in terms of access it if, is inmates
6 property tracked at all in any way?

7 A. Yes.

8 Q. Now, were you requested to bring over some property
9 that belonged to Travis Robinson?

10 A. Yes, I was.

11 Q. Is that what you brought over?

12 A. Yes.

13 Q. And how did you bring that over?

14 A. In a box.

15 Q. Okay. And prior to you putting it in that box and
16 bringing it over here, had that been secured in the
17 detention center?

18 A. Yes.

19 Q. Since the time of his arrest?

20 A. Yes.

21 Q. Okay. If you could please open that up and see what we
22 have got in there.

23 A. (Witness opening box)

24 Q. The first item is a pair of blue jean shorts, is that
25 correct?

1 A. That's correct.

2 Q. Okay.

3 MR. LEMEL: And I would ask that these be marked
4 for identification purposes.

5 (Pair of Blue Jean Shorts marked as Defense
6 Exhibit No. 11 for identification).

7 MR. LEMEL: And that's been marked as No. 11 by
8 the defense.

9 MR. DUNN: No objection.

10 MR. SPRINGS: We object to nothing in that box.

11 THE COURT: Okay.

12 MR. LEMEL: Your Honor, we will ask that the other
13 stuff be marked as 12 and 13. They are in the box at this
14 point.

15 THE COURT: Without objection.

16 MR. DUNN: No objection.

17 (T-Shirt marked as Defendant's Exhibit No. 12 for
18 identification).

19 (Pair of Tennis Shoes marked as Defendant's
20 Exhibit No. 13 for identification)

21 BY MR. LEMEL:

22 Q. What we are going to mark as I believe -- this would be
23 12 would be a gray T-shirt?

24 A. Uh-huh.

25 Q. And that is essentially a sleeveless T-shirt, is that

1 correct?

2 A. Yes.

3 Q. Would you hold that up for the jury.

4 That commonly is what would be called sort of a wife
5 beater I think is sort of the common term for a T-shirt like
6 that? It doesn't have any sleeves on it at all?

7 A. I didn't see any.

8 Q. Okay. And No. 13 is pair of orange and yellow shoes.

9 Now, all of these items have been in the custody of the
10 detention center since Mr. Robinson was arrested, correct?

11 A. Yes.

12 Q. And they have been held secure in your facility since
13 that point in time?

14 A. Yes.

15 Q. Nobody has asked to check them out, or get them, or
16 process them, or anything like that, have they?

17 A. I'm not aware of anything prior to your subpoena.

18 Q. Okay. Please answer any questions the solicitor would
19 have for you.

20 MR. SPRINGS: No questions.

21 MR. DUNN: Nothing, Your Honor.

22 THE COURT: All right. You can step down and be
23 excused. We appreciate your time.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Call your next witness.

1 MR. LEMEL: Thank you, Your Honor.

2 Call Mr. Ken Whitler.

3 SLED AGENT KENNETH WHITLER, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. LEMEL:

6 Q. Good afternoon, Mr. Whitler.

7 A. Good afternoon.

8 Q. I'm going to ask you to speak up real loud for us
9 because this courtroom has bad sound. I appreciate that.

10 Mr. Whitler, you are here today under subpoena,
11 correct?

12 A. That's correct.

13 Q. A subpoena by who?

14 A. The defense.

15 Q. Okay. To come and testify?

16 A. That's correct.

17 Q. Okay. And who are you employed by?

18 A. The South Carolina Law Enforcement Division.

19 Q. That's commonly known as SLED?

20 A. That's correct.

21 Q. Okay. How long have you been working with SLED?

22 A. Since 1997.

23 Q. And what are your job duties at SLED?

24 A. I'm a firearms examiner in the Forensics Services
25 Division in the firearms department.

1 Q. What exactly does that entail? What do you do?

2 A. Basically I examine firearms and bullets and cartridge
3 cases to determine if bullets and cartridge cases were fired
4 by a particular gun or by the same gun.

5 Q. What got you into that business?

6 A. Just an interest in it.

7 Q. How long have you been doing that sort of thing?

8 A. Since 1991.

9 Q. Okay. You were employed somewhere else before you came
10 on with SLED?

11 A. That's correct.

12 Q. Where was that?

13 A. The FBI laboratory in Washington, D.C..

14 Q. Okay. And what sort of background and training do you
15 have it this? Just general. You don't have to go into very
16 much detail.

17 A. Basically I underwent the training course for firearms
18 examiners in the FBI laboratory and I was certified in 1991
19 by them to be a firearms examiner.

20 And when I retired in 1997, I came to SLED and do
21 basically the same job.

22 Q. Okay. And in that capacity have you ever been
23 qualified as an expert?

24 A. Yes, I have testified approximately 200 times in
25 various state, federal, and territorial courts.

1 Q. Okay. Ever not been qualified as an expert at any
2 time?

3 A. Not to my knowledge.

4 Q. Okay. What would you say that you have been qualified
5 as an expert in?

6 A. Firearms identification.

7 Q. Okay.

8 MR. LEMEL: Your Honor, at this point in time we
9 would ask that Mr. Whitler be qualified as an expert in
10 firearms identification.

11 MR. SPRINGS: No objection.

12 MR. DUNN: No objection.

13 THE COURT: I find he's qualified.

14 BY MR. LEMEL:

15 Q. Now, as in your duties as a firearms examiner for SLED,
16 you have been sent some things from York County relating to
17 a case involving Travis Robinson and Quinton Tobbie,
18 correct?

19 A. That's correct.

20 Q. How did that happen to get to you? What exactly
21 happened?

22 A. Well, the York sheriff's office submits the evidence to
23 SLED and the evidence is routed to me. I work it and then
24 they come and pick it up.

25 Q. Okay. I want to ask you if you recognize a couple of

1 things. I'm handing you what's been previously entered into
2 evidence as State's No. 45. Do you recognize what that is?

3 A. Yes, I do.

4 Q. What is that?

5 A. It's a pistol.

6 Q. Okay. And do you have any prior experience with that
7 pistol at all?

8 A. Yes, I previously examined it.

9 Q. Okay. What exactly were you examining it for?

10 A. To determine if it fired a bullet that was submitted.

11 Q. Thank you. And I'm going to hand you what has been
12 marked as State's 46. Do you recognize what that is?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's a fired bullet.

16 Q. Okay. Have you had any experience with that particular
17 fired bullet before?

18 A. Yes, I did.

19 Q. What is your experience with that?

20 A. I compared it with the test bullets from that pistol
21 and made a conclusion.

22 Q. Okay. Great.

23 Now, let's talk a little bit about exactly what you are
24 looking for when you do a comparison. We previously used
25 something like this as an example of a bullet with the shell

1 casing and this being the bullet head. Okay? You can go
2 along with me.

3 When a bullet is fired out of a firearm, such as a
4 pistol, this part goes out the barrel of the pistol,
5 correct?

6 A. Uh-huh.

7 Q. Now, there is something typically in a barrel called
8 rifling?

9 A. That's correct.

10 Q. What exactly are rifling?

11 A. Rifling are grooves cut into a barrel in a spiral which
12 makes the bullet rotate, which increases the accuracy of the
13 bullet.

14 Q. So it gives it a spin?

15 A. Yes.

16 Q. And the particular Llama that you have there, is that a
17 pistol that has that sort of rifling in it?

18 A. Yes, it does.

19 Q. And as a bullet passing through the rifling, is there
20 anything that happens to the actual bullet itself?

21 A. The bullet can pick up marks from the barrel and the
22 rifling impressions.

23 Q. Because the bullet is simply made of some sort of
24 softer lead-type material?

25 A. That's correct.

1 Q. And as it literally passes through those grooves on the
2 rifling, those grooves become embossed?

3 A. That's correct.

4 Q. Okay. And is there any way to be classified or sort of
5 categorize those marks?

6 A. No.

7 Q. In terms of the number, for example?

8 A. Oh, well, the -- you look in the barrel and determine
9 how many lands and grooves -- or how many grooves are in the
10 barrel.

11 Q. And you said lands and grooves. Lands are the valleys?

12 A. In the barrel the land is the part that's not cut away.
13 The groove is the part in the barrel that's cut away.

14 On the bullet it's just reversed, because the land,
15 being the higher part of the barrel, will dig into the
16 bullet. So when a bullet, the depressed areas, the land
17 impression, and the raised area would be the groove
18 impression.

19 Q. Okay. And for the testing purposes, how would you, for
20 example, find that out about a Llama at it, in terms of
21 lands and grooves?

22 A. I would just look down the barrel.

23 Q. Can you also tell anything in terms of the spiraling of
24 the lands and grooves?

25 A. Well, this case I took the pistol and looked down the

1 barrel and counted the number of lands and grooves and then
2 I counted the number of lands and grooves on the bullet to
3 determine the bullet couldn't have been fired by the gun.

4 Q. Okay. So you can look at the Llama, the pistol, right?

5 A. Yes.

6 Q. And count out those lands and grooves?

7 A. Yes.

8 Q. And you can examine the bullets itself that you were
9 given?

10 A. That's correct.

11 Q. And count up the number of lands and groove impressions
12 that are on that?

13 A. That's correct.

14 Q. And ultimately the determination is that there is no
15 way that this bullet came out of this gun?

16 A. That's correct.

17 Q. Okay. And could you tell anything else about the
18 bullet itself from your examination?

19 A. Other than it was consistent with the type of bullet
20 you usually find in cartridges loaded, a .38 special and
21 .357 magnum caliber cartridges.

22 Q. And the Llama's caliber was?

23 A. .380.

24 Q. And the one we took the bullet is a usually a .38 or a
25 .357 round?

1. A. That's.

2. Q. And typically those sort of rounds are found in the .38
3. and the .357, specifically, are found in what types of
4. pistols, revolver or semiautomatic?

5. A. It could be in both.

6. Q. Most typically in what?

7. A. They are most likely in revolvers, but there are
8. several pistols that are chambered for them, and some
9. rifles.

10. Q. In this case we are just talking about pistols, right?

11. A. Well, I can't tell from looking at the bullet what it
12. was from through.

13. Q. All right. Now, did you prepare a report documenting
14. your findings in this case?

15. A. Yes, I did.

16. Q. I'm going to ask if you recognize what this is?

17. (SLED Report marked as Exhibit No. 14 for
18. identification)

19. BY MR. LEMEL:

20. Q. And that has been marked as No. 14.

21. Can you identify what that is?

22. A. It's a copy of my report.

23. Q. Okay. Is that copy, the copy, accurate as to what your
24. report was?

25. A. Yes.

1 Q. And is that report a product of your examination and of
2 the bullet and the pistol?

3 A. That's correct.

4 MR. LEMEL: Your Honor, we would move to introduce
5 it as 14 at this time.

6 MR. SPRINGS: Absolutely, no objection.

7 MR. DUNN: No objection.

8 THE COURT: It would be received without
9 objection.

10 MR. LEMEL: Mr. Whitler, thank you for answering
11 those questions. Please questions any questions that either
12 the prosecutor, judge, or the other defense attorney might
13 have.

14 MR. SPRINGS: No questions.

15 MR. DUNN: Nothing, Your Honor.

16 THE COURT: You can step down and be excused. We
17 appreciate your time.

18 Call your next witness.

19 MR. LEMEL: Your Honor, that would be the case for
20 Mr. Robinson.

21 THE COURT: Mr. Dunn?

22 MR. DUNN: We have no witnesses, Your Honor.

23 THE COURT: Anything in reply?

24 MR. SPRINGS: Nothing in reply.

25 THE COURT: Members of the jury panel, you have

1 now heard the testimony and received the evidence. We have
2 to take up some matters of law outside your presence. When
3 you back, you will hear the attorneys make before you their
4 closing arguments; that is, not like day before yesterday,
5 they are not just outlining the trial. They are now going
6 to present to you why your verdict should be a certain
7 verdict. I have to go over certain matters with the
8 attorneys before we do that, but I'm going to send you to
9 the jury room and we will send you for as promptly as we
10 can. Again, when you come back, you will hear the
11 arguments, then my charge, and then we will have the case in
12 your hands.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: State?

16 MR. SPRINGS: Nothing from the State.

17 THE COURT: Ms. Inzerillo?

18 MS. INZERILLO: Thank you, Your Honor.

19 At this time we would renew all previous
20 objections and motions again.

21 THE COURT: The motion is denied.

22 I know it becomes somewhat en vogue to renew
23 objections. I'm not sure why you have to do that. You have
24 already objected once, if it makes you happy, you can object
25 at any time you want to. All I can do at this point is deny

1 your motion.

2 Mr. Dunn?

3 MR. DUNN: Your Honor, I would also renew my
4 motions for directed verdict -- excuse me, motion for
5 directed verdict on accomplice liability.

6 And just for the record --

7 THE COURT: Well, I think I granted it on
8 accomplice liability. I think it's -- one of the things
9 that you have is accessory after the fact.

10 MR. DUNN: It started out to be accomplice under
11 accessory after the fact. I just wanted to make sure that
12 it was -- that my argument was clear for record that I was
13 objecting -- or I was asking for my motion, one, based on
14 the fact that I think the crime happened outside the State
15 of South Carolina, and, therefore, this court doesn't have
16 jurisdiction.

17 But also that even if the court would feel that it
18 has jurisdiction, that the indictment alleges it happened in
19 York County. That's not a proven fact that the State can
20 prove at this time because what happened happened in North
21 Carolina and South Carolina. I think it's a two-prong -- I
22 just want to make sure both of them were --

23 THE COURT: I'll deny the motion. There was
24 testimony that whoever tried to rob Mr. Dodd did it in
25 York County, but there is a specific question as to -- is it

1 in York County, and it testified to that it was.

2 All right. Now, requested charge, the State's 1,
3 2, 3, 4, and 5 and 7 -- what happened to -- 1, 2, 3, 4, and
4 then it to 7 I think are all covered by my -- here is 6. It
5 comes after 7. I believe all those are covered in my
6 standard charge.

7 Now, as to State's request 1-B and 2-B, any -- I
8 think those are probably covered, but let me just see.

9 Mr. Lemel, you and Ms. Inzerillo have comments on
10 1-B or 2-B?

11 MS. INZERILLO: No, Your Honor.

12 THE COURT: Mr. Dunn?

13 MR. DUNN: Your Honor, I see 1 and a 2. I don't
14 see 1-B and --

15 THE COURT: All right. They have to do with the
16 assistance, or harboring rendered by accessory after the
17 fact must be for the purpose of an enabling the felon to
18 escape detection or arrest.

19 And then second, accessory after the fact is one
20 who knowing a felony had been committed, receives, relieves,
21 comforts, or assists the felon.

22 MR. DUNN: I think those are --

23 THE COURT: Yeah, I think those are covered.

24 Now, since we have been going in this direction,
25 let's keep going in this direction next with Mr. Robinson's

1 multiple indictments and multiple defendants.

2 I charge his right to remain silent and I will
3 charge mere presence at the scene of the crime.

4 Of course, Mr. Robinson, you chose not to testify,
5 obviously.

6 MS. INZERILLO: Yes, Your Honor.

7 THE COURT: Mere presence, well, appears to be
8 okay.

9 Prior inconsistent statement, okay.

10 I charge reasonable doubt.

11 As to the accuracy factors, 1, 7 and 8 do not seem
12 to be applicable, but other than that it looks okay.

13 Pipe up, solicitor, if you have any concerns.

14 MR. SPRINGS: Not really, as far as that one is
15 entitled, eyewitness accuracy. I think your standard charge
16 covers it all. So far I have no problem with what you have
17 articulated so far.

18 THE COURT: Now, No. 7 kind of cuts both ways.

19 MR. SPRINGS: Now, I'm going to fuss about that
20 one.

21 THE COURT: Well --

22 MR. SPRINGS: Because we pulled up a case. They
23 have handed this up and says this case holds that
24 proposition. There is not one word in this case about
25 compensation for an expert witness.

1 THE COURT: Let me see the case, because I've
2 never had anybody hand this up before, and I've allowed
3 experts to testify.

4 MS. INZERILLO: Your Honor, I will say the case is
5 not the strongest support for our request on that. We
6 pulled this charge out of Judge Anderson's charge book.
7 That was the case that he had cited. I typed it up, a very
8 search for something that would be stronger than how
9 Anderson v. Campbell College laid out, but I could not find
10 any, so if Mr. Springs' quibble is not necessarily disputed
11 by us, so we do feel that the charge itself is a proper
12 charge and it does not say anything that would certainly be
13 prejudicial or --

14 THE COURT: Well, where in here does it say that?
15 That's my question, because I have never been handed
16 anything like this, and I do charge bias and prejudice, that
17 you can take into consideration bias and prejudice and you
18 certainly can argue to the jury. And I think they can take
19 into effect what somebody is paid being or not, but show me
20 in here where it says it and I'll take a look at it.

21 MS. INZERILLO: Your Honor, to be honest with you,
22 if Your Honor's charge covers bias and prejudice, I don't
23 think we will have a problem with that and I'll ask to make
24 it a Court's Exhibit.

25 THE COURT: All right. Well, I'll make it a

1 Court's Exhibit at the proper time.

2 Now, as to Mr. Tobbie's, then No. 1, aiding and
3 abetting is out.

4 MR. DUNN: Yes, sir.

5 THE COURT: No. 2 has to do with misprision of a
6 felony. That's not the charge.

7 No. 3, accessory after the fact, I have got my own
8 charge on that.

9 MR. DUNN: That's -- I just supported in their
10 motion.

11 THE COURT: Right.

12 Aiding and abetting is out.

13 So really the only one that is applicable now
14 would be your accessory after the fact, and I charge -- I
15 use mine. I love Judge Anderson to death, but he's much
16 more verbose than I am, and quite frankly sometimes I find
17 myself coming around like in a circle when I use his charges
18 so --

19 MR. DUNN: Just for the record, you know, last
20 night when I was preparing my defense for charges, I was
21 debating the misprision, only because there is language
22 that's in misprision says, you know, if the crime doesn't
23 rise to the level of accessory, then misprision may be the
24 appropriate charge. You know, when you are looking at the
25 factors, though, I'm not sure if it's a lesser included,

1 and, as such, I'm not sure if it's appropriate, but I wanted
2 to try it.

3 MR. SPRINGS: On that charge, this may be
4 premature, but we would actually like for him to be
5 precluded on the record from arguing misprision to a felony
6 to the jury. Since it's not a lesser included, it's not a
7 charge then. That's State v. Dunning.

8 THE COURT: Well, we are not talking about -- I
9 don't know what he plans to argue, but the question is
10 whether or not to charge it, but -- it seems to not be --
11 it's a -- misprision is a crime of omission; I mean, you
12 don't do anything when you should. And, in fact, it says
13 that when he does something to assist without it rising to
14 the level of making the concealer an accessory before or
15 after the fact.

16 MR. DUNN: That's -- that's what I was saying,
17 Your Honor, I think it's below the pantheon of the crimes.
18 There is not as much as an active part of the participation
19 by the defendant as, you know, as to accessory, but with the
20 evidence that is presented here, I don't think -- as long as
21 the State would be inclined, which in my opinion falls under
22 the -- could fall under the affirmatively attempting to
23 concealing the crime, but --

24 THE COURT: Why would it not be a lesser included?

25 MR. SPRINGS: Well, Your Honor, actually we take a

1 look at a dispute with the definition given and a charge.
2 As you know, misprision of a felony I believe is a common
3 law offense in South Carolina.

4 THE COURT: All right. Let's see what you got on
5 there.

6 MR. SPRINGS: The evidence given here is from an
7 Arizona case.

8 THE COURT: Well, let's see what South Carolina
9 says about misprision.

10 That's exactly what this charge he handed up says.

11 MR. DUNN: Your Honor, just for the record, I
12 pulled my definition out of Judge Anderson's book word for
13 word.

14 THE COURT: No, this is exact language.

15 MR. SPRINGS: If Your Honor is reading Carsons.

16 THE COURT: I am.

17 MR. SPRINGS: It's described a criminal neglect,
18 then a felony can be committed from preventing the offender
19 to justice --

20 COURT REPORTER: I can't hear you.

21 MR. SPRINGS: Misprision of a felony is described
22 as a criminal neglect to prevent a felony from being
23 committed or to bring the offender to justice after its
24 commission by the top such previous concern subsequent
25 assistance of him as relates to the concealer and accessory

1 before or after the fact.

2 THE COURT: That's exactly what this charge says.
3 That's exactly what the first sentence of his charge says.

4 MR. SPRINGS: Your Honor, I was actually
5 referencing the four listed down. You are correct, that is
6 right there.

7 THE COURT: Are you asking for a lesser included?
8 I don't know what the penalty is without out
9 looking it up, but --

10 MR. DUNN: The penalty for misprision, Your Honor,
11 it's a misdemeanor. Therefore, it's a common law
12 misdemeanor. It's zero to ten, which is the reason why
13 we -- it sure beats being a felony, zero to fifteen, in the
14 event the jury wanted to come back with it, but that's why I
15 included it.

16 THE COURT: Well, I know, but you are missing what
17 I'm saying. If you believe -- I can't charge misprision of
18 a felony just as some sort of defense.

19 MR. DUNN: No, sir, I just --

20 THE COURT: I can charge it as a lesser included,
21 so I'm just asking you to give them the option of the lesser
22 included of misprision.

23 MR. DUNN: Do you mind if I confer with my client
24 on that?

25 THE COURT: Sure..

1 (Off the record)

2 (Back on the record)

3 MR. DUNN: Your Honor, we wish to withdraw that.

4 THE COURT: Okay.

5 MR. DUNN: Yes, sir.

6 MS. INZERILLO: Your Honor?

7 THE COURT: Yes.

8 MS. INZERILLO: One thing, if I may, before on the
9 defendant Robinson's request for eyewitness accuracy, I
10 believe the court was saying it would not charge --

11 THE COURT: Let me find it now. I have a slew of
12 pages up here and --

13 MS. INZERILLO: It says --

14 THE COURT: Wait a minute. I'm -- I know -- I
15 know it when I see it. I just have got a pile of papers up
16 here. Let me find it.

17 All right.

18 MS. INZERILLO: I believe the court indicated that
19 it would not charge factors 1, 7 and 8, is that correct?

20 THE COURT: Right.

21 MS. INZERILLO: We would ask that factor 1-B
22 charge --

23 THE COURT: I'll include 1.

24 MS. INZERILLO: Thank you, Your Honor.

25 THE COURT: I'll include 1.

1 MR. SPRINGS: Your Honor, going back to Mr.
2 Tobbie, I did want him to preclude him from arguing -- I
3 don't want to interrupt his closing, Mr. Dunn's closing, but
4 I want to preclude him, though, however under the clear law
5 about State v. Condrey case I tried before Judge Alford.
6 It's improper to argue to the jury that the defendant
7 committed some other crime that he's not on trial for. That
8 is absolutely improper. I'll be glad to hand up the case.

9 THE COURT: Do you intend to do that, Mr. Dunn?

10 MR. DUNN: I don't see the --

11 THE COURT: Let him see the case and let me see
12 it.

13 MR. DUNN: Did he say Condrey?

14 MR. SPRINGS: State v. Condrey, the one that's
15 passed up to the court because.

16 THE COURT: What's the name of it?

17 MR. SPRINGS: State v. Condrey, C-O-N-D-R-E-Y,
18 2006.

19 Mr. Dunn, do you have a copy?

20 MR. DUNN: I have a copy.

21 MR. SPRINGS: Those are on page six, last page,
22 last paragraph.

23 THE COURT: In that case they argued something
24 that was not a lesser included offense of larceny.

25 "The real impact of an instruction is that to

1 convince the jury to reach a compromised verdict on a
2 noncharged offense." So I'm going to preclude your charging
3 that -- or argument that he committed misprision of a felony
4 and he's being charged on the wrong charge.

5 MR. DUNN: I understand, Your Honor.

6 MR. SPRINGS: Thank you.

7 THE COURT: You certainly can argue whatever the
8 facts are and whatever his conduct was.

9 MR. DUNN: Well, my only concern, Your Honor, is
10 my client was originally charged with the principle offense,
11 the accessory -- the accomplice liability, and then we
12 didn't get the accessory charge until a relatively short
13 period of time ago when the really theory of themselves were
14 trying to hedge at the time of trial. I mean, that would be
15 my only concern.

16 THE COURT: Well, but you kind of handed me a case
17 to -- you want me to charge them misprision as a lesser
18 included, I would probably do that. I haven't heard --

19 MR. DUNN: I understand that, Your Honor.

20 THE COURT: But the charge and put it before the
21 jury through the court as an option, or it's not going to be
22 part of the trial.

23 MR. DUNN: Yes, sir, and that's why we prefer not.

24 THE COURT: Okay. This is the only point. It's
25 not going to be another point.

1 MR. DUNN: I understand. My client has indicated
2 that --

3 THE COURT: I think that's the proper way. It's
4 either in or it's out.

5 Anything else before we get the jury in?

6 MR. SPRINGS: Nothing from the State.

7 THE COURT: Bring in the jury.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Ladies and gentlemen of the jury
11 panel, the lawyers will now have an opportunity to make
12 before you their closing arguments, as I told you earlier.

13 I believe Mr. Lemel would be going first, and then
14 Mr. Dunn. Are you waiving opening?

15 MR. SPRINGS: Yes, sir, we are.

16 THE COURT: And then followed by the State.

17 MR. LEMEL: May it please the court.

18 Within my family there is a story that is pretty
19 much told at every family get together. The story basically
20 involves a long time ago every summer I would come up and
21 visit my aunt. Sometimes siblings would come with me,
22 sometimes they wouldn't. And on one occasion when I was
23 about four years old, some of the older kids there hid a
24 walkie-talkie underneath my bed and after I had gone to
25 sleep, woke me up by a voice coming out from underneath my

1 bed saying boo. And the story of my family, of course, is
2 that me running through the hall screaming for my aunt
3 wearing little footed pajamas going about 50 miles an hour.
4 That story is told almost every time the family gets
5 together. It's part of our family's history. It's part of
6 our family's, for lack of a better word, mythology. And
7 it's been told so much that if you were to ask my brother,
8 my older brother about it, he would say that he was at my
9 aunt's house the night it happened. He is a hundred percent
10 convinced that he was there that day, and he is one hundred
11 percent wrong, because on that particular trip he didn't go.
12 It was just my sister and I that went to my aunt's house.
13 And if we were able to go back many, many years to the
14 old Eastern Airlines and look at the tickets, you would see
15 that there was no ticket purchased for my brother on that
16 particular day, but he is convinced of it and it is part of
17 his memory of those events, even though he is not there, and
18 it's been planted in his brain by little key elements that
19 he had had, and it's become part of the mythology of my
20 family.

21 There is group right now that has their own
22 mythology and it is the group of people that were at the
23 Shell station that particular day back in September of last
24 year, particularly the four individuals who were inside the
25 store. They had shared an experience, and it was a

1 traumatic experience, and they all grouped together with it,
2 and they clearly have identified with each other. Even
3 though these individuals don't know each other outside of
4 this one event, they still call each by name. They knew
5 exactly who they are are talking about, and they have been
6 brought together through this whole process and all brought
7 in here to court to testify, to sit out there and watch what
8 happens and they have formed their own mythology, their own
9 story. But we know that when that's done, that their memory
10 does not necessarily reflect accurately on what happened.
11 We know now from the testimony of an expert witness that
12 memory comes in like a puzzle, that that initial splash
13 comes down, and there are all sorts of holes in that puzzle
14 and that we as simply as human beings as part of what we do,
15 we try to fill in those holes with whatever other
16 information we can get, regardless of whether the source of
17 are in question and regardless about whether we are
18 consciously doing that. As a matter of fact, it's not an
19 act of conscious doing it. It is simply the natural
20 reaction of human beings to try and fill in the holes in
21 that puzzle. And information can be added very subtly. It
22 doesn't have to be some sort of an underhanded way of "oh,
23 you are going to see this person. It's going to be the
24 person that involved with the shooting." It doesn't have to
25 be like that. It can come from very, very subtle things - a

1 nod, a smile, simple thumbs up gesture confirming something
2 and implanting it in your memory. Whether you want to or
3 not, it just happens. And we actually saw an example of
4 that brought to light. That was actually brought to light
5 by Mr. Dunn with his cross-examination from Ms. Macomson.
6 On the videotape versus what she testified to, you may
7 remember this, she testified with one hundred percent
8 certainty that Mr. Tobbie was behind Mr. Dodd in the line
9 and saw the money at that point in time. But when she was
10 challenged with it and compared to something objective, the
11 videotape, you could see that wasn't the case at all, that
12 by the time Mr. Tobbie got up to the register, Mr. Dodd was
13 already basically walking out of the store. And so
14 something else that had never been brought up before was
15 suddenly brought up. Somebody said "yeah, I was fussing at
16 him about carrying around so much money," and we are going
17 to talk about why people do that in a second as well, but we
18 had an excellent example of how in order to create the myth,
19 in order to keep the story consistent, you remember things a
20 certain way until you are confronted by objective evidence
21 that it's different, and that implantation can take place
22 very quickly. It can be as simple as somebody shot in the
23 background, there were three black males in the car, three
24 black males in a little burgundy car. And that fact,
25 shouted out, becomes part of the memory when we shout it out

1 where everybody can hear it. Regardless of whether they had
2 or not, that hole is now filled what. What has happened
3 there? Well, memories are perfect. We only encode things a
4 certain way.

5 And before the gunshot happened, the one thing
6 that we have established is this was a perfectly ordinary
7 setting - a normal gas stop, a normal work day where they
8 were going about their normal things. And you can think
9 about this. Think about the last spot that you went for
10 gas. Do you remember there being a car next to you? Do you
11 remember what they were doing whether, they went in the
12 store? Do you remember these things? What about the last
13 time that you went out for dinner? Do you remember who was
14 sitting in the booth next to you, or who walked in after
15 you, or who walked in before you? Do you remember what they
16 did? If it was a typically uneventful dinner, a
17 particularly uneventful stop at a gas station, there would
18 be no particular reason for you to encode this and there
19 would be no particular reason for you to remember this.

20 Now, I want to make one thing very, very clear to
21 you. I in no way believe that Mr. Dodd or any of the
22 other -- Ms. Macomson, any of the people believed that they
23 are lying or acting in any way maliciously. I think it's
24 just the opposite. I thinking they are trying to do their
25 duty as citizens. What everybody wants to do in a situation

1 like this, let's help out the cops. We want to get the bad
2 guy. They one hundred percent believe what they are saying,
3 and Mr. Dodd was shot and he has suffered tremendously.
4 There is no question about that, and you don't want to take
5 anything away from that. We are very sympathetic to him
6 about that. That is very emotional for him, obviously, that
7 makes sense, but it's what we talked about in opening when I
8 had a chance to talk to you before that sympathy doesn't
9 really come into play here in this. This is not about
10 denying his injuries in any way. It is a simple question of
11 whether they were accurate or not. Is their memory fresh?

12 And we have a lot of situations where the memories
13 of these people changes and varies as time go on and changes
14 and varies in the face of circumstances that challenge them,
15 and the memory has varied from what they put down in the
16 initial statements that night a year ago, what they wrote
17 down, even varying from what they have testified for earlier
18 and they varied internally within what they both say. Do
19 you remember Ms. Parker talked about the incident. She said
20 she was changing the garbage bag. I want to say this. The
21 twelve of y'all have better memories than I do as one
22 individual. I'm telling you what my recollection of what
23 the testimony was is. If y'all have a different memory,
24 please go with what y'all's memories are, but this is my
25 recollection. She testified that she was over at pumps one

1 and two changing the garbage bag and the first thing she
2 noticed was a struggle at the next set of pumps. And she
3 even said initially that she thought they were just playing
4 around somehow before she saw this struggle and then a
5 gunshot. But Mr. Dodd testified just the opposite. He said
6 when the gun is pulled, he doesn't struggle, that he
7 immediately puts up his hands and tries to reach for his
8 money. Now, I think both of them believe one hundred
9 percent that they are telling the truth about that, but
10 clearly those things are contradictory. They can't -- you
11 can't have one person not struggling and at the same time
12 struggle. There is no way to confuse those two things.
13 It's not the same act, but it's what your memory is, and
14 it's how you map in the holes. Ms. Parker believes a
15 hundred percent that there was a struggle. Mr. Dodd says
16 there was not. They are both hundred percent confident, but
17 somebody is inaccurate.

18 Sometimes it comes out -- it came out in the trial
19 when it didn't fit into the myth. Do you remember Ms.
20 Parker in her statement to the police when she's describing
21 the little red car talks about a busted rear window. She is
22 very specific about that in her initial description that
23 goes out to the police. When she gets on the stand, there
24 is some stuff about it. Now we know there was no busted
25 rear window in that car. So it certainly changes, "oh, the

1 window was just down and I thought it was busted." That's
2 what she said. She didn't say the window was down. She
3 said it was busted. She believed a hundred percent at that
4 point in time that it was busted, but the memory changed
5 when it was confronted by some objective fact, the fact it
6 was rolled down and there were no busted window. It's an
7 example of how we change to fit the pieces of the puzzle
8 together based upon the information that we get.

9 Ms. Macomson did it. You may not remember when
10 she was on the stand and she kept on referring to the person
11 as Travis, the person as Travis, and I actually had to take
12 the laser pointer and put it up on the screen and ask her
13 "the face on that screen, it's blurry. You can't say with
14 any certification that that person on the screen is Travis,"
15 and she admitted that, "that's correct," because that's what
16 it is. But in her mind, in her memory, as a normal human
17 being, when she sees that now, she maps Travis' face over
18 that blur. Again, not maliciously. It's because she's a
19 human being and that's what humans being do.

20 Sometimes in our eagerness to help out the police,
21 we try to explain things away, we try to embellish stuff,
22 and I saw that when Ms. Parker was testifying about being
23 outside. She said first that she was -- came to the garbage
24 bag, tried to make eye contact. And when no eye contact was
25 made, she got a bad feeling about it. Later on she went on

1 and testified that as she was changing the garbage bags in
2 front of pumps three and four, that the driver was staring
3 at her and she had a bad feeling about that, so she stared
4 back at him. And then just a few seconds after that she
5 testified about how she and Ms. Macomson watched out for
6 each other, that they had to keep an eye on things. Now,
7 that's two times in a relatively short period that she is
8 saying she gets a bad feeling from people. Well, what did
9 we actually see on the tape? Did she come inside and say
10 something, keep an eye on this guy? Did she watch from
11 outside and make sure that everything was okay in the store?
12 Did she retreat when somebody was staring at her because she
13 got uneasy about it? She went ahead and did her normal
14 every day thing. And also when she wrote out her statement
15 to the police that very night, there is no mention of
16 feeling uneasy as the person in dreadlocks walked by her.
17 There is not mention of staring at the driver or anything
18 like that. This is something that because of the incident
19 itself "I should have known something was going to happen."
20 She has created in her mind a feeling of uneasiness, but
21 it's not borne out by what she actually did that night.

22 Ms. Howie has her own situation and it's amazing
23 how close it coincides with what Dr. Van Wallendael told us.
24 She talks about the gun a lot in her statement. The
25 statement that she gave the police that night talks about

1 the gun. "I saw the gun and I froze. It was a small black
2 gun," without any description at all of the individual
3 holding the gun. Does that not coincide exactly with the
4 theory of gun focus, that when you see the gun, that's where
5 your attention is? It's almost a product-typical
6 description of it, "I saw the gun and I froze watching
7 that." And that's what you had from her is her focus in all
8 to that gun. Not around, not to the person walking over
9 here, but with that gun, because before she saw that gun, it
10 was a perfectly ordinary day, a perfectly ordinary gas stop.

11 And memory is weak. Memory has flaws and
12 identification is fraught with peril, as you heard from Dr.
13 Van Wallendael. And because of that we know evolves things
14 to try to compensate for that, things as simple as starting
15 off with a lineup and things that developed scientifically
16 in terms of DNA, in terms of fingerprinting and things of
17 that nature. And the response to that, as she said, there
18 is a lot of stuff that's not the controls of the witnesses.
19 The responsibility for that sort of stuff, though, for
20 following up belongs with the police, belongs with law
21 enforcement.

22 Ladies and gentlemen, I going to tell you, I don't
23 envy their job, I wouldn't want their job, and I don't
24 casually criticize law enforcement officers, but what we
25 have in this particular case is a complete and utter failure

1 of law enforcement to just do the basics of their job. And
2 it was summed in one phrase. It was summed up in one phrase
3 to me by Officer Gibson as he's talking about the case, when
4 he was on the case, I wrote it down. He said the phrase "I
5 done the best I could with what I got. I done the best I
6 could with what I got." That's sort of like the things that
7 goes around the little baby's legs, "good enough for
8 government work." That's an excuse, and that's an excuse
9 that does not cut it when you are taking evidence to a jury,
10 and that is not an excuse that you can accept as jurors,
11 because quite frankly the police didn't do the best they
12 could with what they got. They didn't even come close in
13 this case. And it's a shame, because the basics, the
14 components were there. The components were there. The
15 components started with the patrol officers. Officer Smith
16 did his job. He identified the witnesses and he got the
17 best description that they could give him at that point in
18 time; young black male with dreadlocks in a white T-shirt.
19 That's what the description that was given to him. Now, we
20 know, we know from the outset that that initial description,
21 that there is a problem with it, because, again, as you know
22 what I had Ms. Macomson do, there is no young black male
23 with dreadlocks in a white T-shirt in there. There is a
24 black shirt over some sort of white shirt, but there is no
25 mention of that. But he got that initial identification and

1 identified witnesses that could do this.

2 And the components are there in what the Forensic
3 Service Unit did. Officer Gardner talked about how to work
4 this case, about how hard he did, everything that he looked
5 for and he identified this. He found fingerprints in the
6 car of two other individuals, fingerprints from the center
7 console area, in particular, where the front seat people
8 would have access to the compartment. A lifted center
9 console. You have that fact. People in the front seat and
10 he identified two individuals from that, two persons, the
11 Beams. He took DMA swabs from a couple of different sources
12 - the mouthpiece, the steering wheel. They collected
13 cellphones that day. Cellphones are inside the car. The
14 components were all there. And at that point in time is
15 where we have failures to start.

16 And the failure is probably most tragic because
17 the people the fail the most work with witnesses. Officer
18 Miller made his decision to do this as a showup. I don't
19 know why he did it. He never explained why he decided to
20 just pop people in the car and take them up and show them
21 one individual. But there was absolutely no reason why he
22 asked to do that. He didn't provide you a single one. But
23 he made the choice to take these individuals up and show
24 them a scene that involved a young black man with
25 dreadlocks. He had him get out of a police car in handcuffs

1 and that's the choice that they have got to make. That's
2 the -- how hard a selection is that? Surrounded by law
3 enforcement. Is he going to mistake a law enforcement
4 officer that he's got? No. There was no other choice for
5 that purpose. And we have heard that the best things that
6 they could do is seven percent more accurate in that
7 scenario than flipping a coin. Seven percent more
8 accurately than flipping a coin to determine whether that's
9 the right person or not.

10 Well, once that failure takes place, they have the
11 option of doing other things. They had two other perfectly
12 good witnesses that had not been contaminated; Mr. Dodd and
13 Ms. Macomson. So what do they do? Do they ever go talk to
14 them to find out and get a description? Does he ever just
15 do the simple courtesy of showing them a photo lineup? At
16 this point like he's been arrested. They can do that at any
17 point over the course of a year. Nope. Didn't bother to go
18 to the hospital. Didn't bother just to even talk to Mr.
19 Dodd. The victim in the case, the guy who has been shot,
20 never thought to say "could you identify somebody out of
21 this lineup?" No, what do they do? They plop him down in
22 this chair and they say "look around this courtroom and pick
23 out a young black man with dreadlocks." How many choices
24 did they have in this courtroom that matches that
25 description? One. It's just another the form of showup.

1 It's not a real test, and it's even worse, because, well,
2 he's been introduced as the defendant. He's sitting at the
3 defense table. He's been in here. Mr. Dodd has been in
4 here to see Mr. Springs stand over Travis and gesture so
5 forcefully at him, repeatedly pointing that finger. It's
6 not a real test. It's not a real test. And that failure to
7 give them the opportunity to make a real identification, a
8 meaningful identification, is their fault. They are the
9 ones that they made this choice. Certainly not Travis.
10 That responsibility lies right here and they're the ones
11 that have to deal with it and they're the ones with the
12 complete lack of followup.

13 Okay. Instead, what happens Detective Miller does
14 his work, takes his statements, turns it over to Detective
15 Strait. Detective Strait, as I recall on Monday, pretty
16 much sitting right here, behind the prosecutor. He is the
17 lead investigator of this case. It would have been his
18 responsibility to seek out search warrants; to try to get
19 the cooperation from North Carolina; to try to do something
20 with the fingerprints that were recovered; to try to do
21 something with this videotape, to clear it up. Where was
22 Detective Strait? He is the lead investigator in this case,
23 the lead investigator. He's supposed to be doing this
24 stuff. He showed up on Monday and he doesn't even bother to
25 show up later on to testify? Don't you want to know why he

1 didn't do any of these things? Don't you deserve that? I
2 mean, they are sitting here asking you to judge somebody
3 guilty, to take away their freedom and their liberty, to
4 convict them of a crime, and not just a little teeny tiny
5 crime. We are not talking about some sort of run of the
6 mill thing. We are talking about some of the most significant
7 crimes on the books. Don't you deserve that? Don't you
8 deserve how to answer where Detective Strait is, or does he
9 not just want to expose him to the fact that he didn't do
10 anything, because that's what you got in this case.
11 Detective Strait did nothing on this case after. And that
12 is a complete and utter failure, and that failure sits right
13 here at this table. That's their responsibility. It's
14 pretty casual. It's a pretty casual approach to try and
15 convict somebody of a crime, and you deserve better than
16 that. They should not ask you to do these things without
17 providing you with answers, and they just haven't done it.
18 And with all these police failures, what we have
19 is the prosecution supporting the mythology. It comes out
20 as little subtle ways. Officer Gibson was up on the stand
21 and he testified repeatedly that his description that he was
22 looking for, he was just looking for a red car without a
23 license plate. A red car without a license plate. Red car
24 without a license plate. He was asked by Ms. Inzerillo
25 "that wasn't all you were looking for. Weren't you told

1 about a busted out window?"

2 "Well, I don't know that."

3 "Well, here is your report. Doesn't it say in
4 your report that you were looking for a car with no tag and
5 a busted window?"

6 "Oh, yeah, I guess it does."

7 Why would he hide that? Because it doesn't fit
8 the myth; because the reality of objective evidence doesn't
9 support that fact, and they and they are trying to convict
10 him. He certainly didn't talk about that on his direct.

11 How about Mr. Whitler? Mr. Whitler came here
12 under my subpoena to talk about this gun and talk about this
13 bullet, and they lay these things up here together. At the
14 end of the State's case that's what you had. You had a
15 bullet and you had a gun, and they didn't tell you anything
16 about that. Do you realize that if not for the subpoena of
17 us bringing this up there, you may never have known that Mr.
18 Whitler ever existed? Don't you have a right to know about
19 that? Don't you -- isn't that a fact that you need to know
20 that that bullet doesn't match up at all with that gun?
21 Isn't that a highly relevant piece of information there is
22 no way that it would fire it? It's making it a most
23 relevant piece of information in this case and they wouldn't
24 have even warned you about it. They haven't even brought
25 him up to testify about it. Why? What were they scared of?

1 Because they are supporting myths, they have got to engage
2 in a lot of speculation.

3 And I don't know exactly what Mr. Springs is going
4 to be arguing, we would submit, but I submit to you there is
5 going to be a lot of speculation, because you can see it in
6 the case. When he was asking his own expert, Ms. Simmons,
7 about the gunshot residue, he tried to come up with a
8 thousand different scenarios of how it could be rubbed off.
9 It could be washed off, it could be wiped off, it could be
10 taken off when you change clothing. It could be rubbed --
11 you know, can you maybe rub it off when you got your hands
12 tied behind your back or handcuffed behind your back? A
13 thousand different speculative ideas, not one of which that
14 they have proved to you. Not one piece of evidence that
15 they bring to you to show that any of those things actually
16 happened and that's a ruse. Don't mistake speculation for
17 proof, because remember we talked about the burden of proof.
18 They have got to prove stuff. They can't just speculate
19 about it.

20 They did the same thing with Mr. Gardner about the
21 fingerprints; "is it possible that the Beams are mechanics?
22 Is it possible they trade CD's," all these sort of
23 speculative things, as opposed to fighting with one concrete
24 fact about the Beams, the concrete fact being that they were
25 in that car, but there was stuff that they have touched in

1 that car. They are talking about a thousand different
2 speculations to try to explain it away. It's speculation.
3 That's the burden of proof. And what they are required to
4 bring you is proof.

5 I imagine that speculation is going to extend all
6 the way through the story that they are going to create.
7 Here is I'm predicting you are going to hear. They went to
8 the store to rob it. That's why you see the individual with
9 the dreadlocks walk around to the back door to the office.
10 Okay. But even Officer Gardner testified that when he was
11 swabbing these areas, he swabbed the two bathroom doors and
12 the door right next to it. And in that regard, I just ask
13 you, have you ever had trouble identifying where a restroom
14 is in a gas station? Ever wandered in a gas station, ever
15 did this before, and not know where the door to the bathroom
16 is? And that's why you keep it locked. I mean, they keep
17 it locked because there is a chance that somebody could run
18 in there by accident.

19 Sit back and watch Ms. Macomson on the video when
20 this is all going down. She says now she heard a rattle at
21 that door. Did she react in any way to that on the video?
22 She's up there checking and she hears the door rattling back
23 there, the doorknob. Did she turn and look? Did she look
24 around? Did she walk over there and see what was going on?
25 No. She keeps on doing her normal every day stuff; checking

1 people out, ordinary stuff. Why? Because that's just
2 speculation that that's what was going on. And it really is
3 not supported by the official fact. But when that plot
4 falls through, which again they haven't shown you anything,
5 you know, how they're being involved and where that door is
6 or what that door is to, they testified they had never seen
7 these individuals in the store before. They didn't know
8 them. It's not like they have given you any proof that
9 something happened that gives them the layout of the store.
10 But after that, oh, now we are going to say that Mr. Tobbie
11 is part of this wad of cash and there was this big gunfire
12 out in the parking lot and we will just go after him
13 instead. What evidence of that have they given you? None.
14 Because, again, the objective facts are that it's a guess
15 what Mr. Tobbie saw that Mr. Dodd had any money, and there
16 is no evidence of any way, shape, or form there was any
17 conversation out in the parking lot about doing something
18 like this. But in order to support the myth that they have
19 created, they have got to argue that.

20 Then in order to explain stuff away, they are
21 going to say somehow, and you track the time, in the roughly
22 hour, or so, that we have got, which includes the chase up
23 into North Carolina, until they are identified up by the
24 police in Charlotte, that somehow they managed to change
25 clothes, wash their hands to get rid of any gunshot residue,

1 have enough environmental residue reapplied to their hands
2 so that it looks like normal environmental factors,
3 completely change what they were wearing, and, oh, by the
4 way, dump one gun and pick up another. All right. Let's
5 think about that for just one second. Think about that.
6 Just basic common sense. If you are trying to hide, if you
7 are trying to get away because you think you are going to be
8 caught by police and you have the opportunity to dump guns,
9 are you going to dump one gun and then pick up another and
10 stick it in your pocket?

11 And it seems to me that what they are going to say
12 from Officer Gardner -- they asked Officer Gardner whether
13 he carried two pistols. Well, as a police officer, maybe
14 you have got a reason to do that. They have given you
15 absolutely no proof that there were two pistols that day.
16 It's more speculation, and it just doesn't make any sense.
17 That's just ludicrous to think that a person would change
18 clothes, dump one pistol, but, oh, I'm going to pick up
19 another pistol and put it in my pocket and go out where all
20 the police are.

21 And by the way, I'm not saying he is right to be
22 carrying a pistol, and we heard from Sergeant Booth that he
23 was arrested for that, okay, but that's not what we are here
24 for. He's not charged with unlawfully carrying a pistol,
25 and we are not trying to excuse that either, and that's a

1. different court and he can settle that out on a different
2. time, okay, but this is not what he's here in York County
3. for. But they have got to do that, because that's the only
4. way that they can explain these things away.

5. Why are they forced to speculate like this? Why
6. must they come up with this explanation that has so many
7. guesses in it? Because the objective facts of the case do
8. not support their story. It's as simple as that. Because
9. the ID's have so many problems with them. And ultimately,
10. because they treated this case very, very casually. That's
11. why they try to come up with these speculative theories.
12. Don't let them just speculate, ladies and gentlemen. Demand
13. proof. That's what their job is, to bring you proof. Not
14. speculation, not guesses, not conjecture, not excuses that
15. they have done the best with what they got.

16. Let's talk a little bit about what are the some
17. true tests of accuracy. If the ID is not that accurate,
18. where can we look to? The most definitive place is that
19. initial description. Before the memory has had a chance to
20. be corrupted, you look at initial description. And we have
21. those. And, again, Sergeant Smith did his job. He's not --
22. as the first responder he understands that it is a critical
23. stage for him to get those initial ID's, to get much as
24. information as he can. And what he got was young black
25. male, 5'5", dreads, white T-shirt. Well, we know that's in

1 error. We know that's. We know from the outset that they
2 were not accurate. So how generic is that? Young black
3 male with dreads, it doesn't tell us a whole lot about him.
4 And we know that's actually what was put out initially,
5 because Sergeant Booth talked about that as the description
6 that came over his radio - black male, dreads, dark skin.
7 And I would agree with you one hundred percent that the
8 gentleman he saw on the videotape walking in the store, and
9 there is some pictures of him in here. No. 27 is the one
10 that the State introduced. And you will have the video
11 itself. No. 27, yeah, this man with dark skin. Okay.

12 I would submit to you that if you look at Defense
13 1 and 2, dark skin, particularly when you compare the two.
14 That initial description has accuracy to it. It doesn't
15 mean it's complete. It doesn't mean that it's enough to
16 make an identification from, but it has accuracy.

17 You can see that the gap in that at the 911 call.
18 You hear the 911 call, which came into evidence, has who
19 shot him, and there is a response, a young black man with
20 dreadlocks and he looked like this? No. It's three black
21 males in a little car going away, because that's the only
22 information that they have at that point in time. The rest
23 has been filled out. Those are the elements of accuracy.

24 You can look at their initial statement to see how
25 good their investigation takes. Those initial statements,

1 there are snapshots right after the incident took place,
2 before they have been exposed to anything else. Ms.
3 Macomson has no description.

4 Ms. Howie, well, we talked about her and the gun
5 focus and how she gives a great description of the gun, but
6 no description of the individual.

7 Ms. Parker, very generic - young black male with
8 dreads, with no mention whatsoever of staring at this
9 individual, having a bad feeling of staring at the person in
10 the car. All that has come out after the fact, and this is
11 dated a year later in response to being pressured about her
12 identification.

13 You could look for accuracy on distinctive
14 features. The testimony that "I looked right in his eyes,"
15 or "tried to make eye contact with him," and I brought
16 Sergeant Smith down and stood him just a few feet away and
17 tried to -- about the same distance if you were standing in
18 the door of the car and say "can you look at him and notice
19 anything particular about his face?" Instantly, instantly
20 Sergeant Smith identified a unique characteristic that is
21 not shared by anybody else. A birthmark, and not a little
22 tiny birthmark, not a little beauty mark, but a very large
23 birthmark located about a half inch below the right eye to
24 extend almost all the way down his cheek. If you were
25 looking for something to specify somebody, if you had been

1 looking at their face, what is the first thing that you
2 going to notice that's unusual about him. That sticks out.
3 Incredible. And no one, no one, ever mentions that to the
4 officers. Even when they are taken up to Charlotte, they
5 are twenty feet away, is there anything like "can I get
6 closer to take a look at his face, because I remember a
7 birthmark?" No. They are shown a young black man with
8 dreads and that's it.

9 I would submit to you one other source of accuracy
10 you can look at would be do you say things that might hurt
11 you in what you testify to? And you have heard Travis'
12 statement he gave to the police. That's there before you.
13 Now, how does he put it, for instance, at that point in
14 time? Okay. "Well, I wasn't even there. I don't know what
15 you are talking about. I was never in South Carolina." If
16 you are going to lie to try to keep yourself away, why do
17 you even put yourself at the scene in any way, shape or
18 form? That's not what he meant. He meant if he was there
19 that night. He gave a complete statement, two pages,
20 talking to the officer for awhile, almost an hour, answered
21 his questions. And if we pen this to certain objective
22 facts that you know, pen this, one thing that excites me.
23 For example, and only under cross-examination, Officer
24 Gibson admitted that when the call first went out, he first
25 tracked one little red car. Okay. That wasn't it. He then

1 went and tracked another little red car and that took him up
2 into North Carolina. That wasn't it. And it was only at
3 that point in time after he had already done that a couple
4 of times did he find the red car that he chased that night.
5 When he talks about what they did, which is first they
6 headed south and then they headed north, which coincides
7 exactly with the timing from Officer Gibson. Objectively
8 begets the truth. And it's very clear what he said. "I was
9 the one that got out of the car. There were four people in
10 the car. I was sitting behind the driver's seat and it's
11 the person who got out of the right front seat that did
12 this."

13 Now, I'm sure the State will be ready. "You don't
14 know of the name of the person. He didn't tell you the name
15 of the person. Why would he get in the car with somebody
16 you didn't know?" Well, maybe that's a culture you are not
17 familiar with. Maybe it's something that you are not
18 familiar with up in Charlotte, young kids riding around
19 together. Is it that unusual for young man in Charlotte to
20 hop in the car for a ride. "We have got nothing better to
21 do, go down to South Carolina. Not really talked about what
22 was going on or anything like that. Just to have something
23 to do." In certain cultures that happens all the time. I
24 mean, you might eventually know who it is and maybe because
25 they threaten to blow your head off, maybe you really don't.

1 want to try to find out that long.

2 And one other sort of interesting fact here. We
3 know that Travis and Quinton were kept separately from the
4 second the police picked them up. Separate police cars,
5 separate rooms the entire time. So this comes back to the
6 State's question, you know, how can their statements
7 basically be identical? Not so identical, but consistent in
8 every major feature about what they had, where they were
9 going, what was going on, who did what. Every single part
10 of it is consistent.

11 Ahh, let's speculate. While they were busy
12 scrubbing their hands, changing their clothes, dropping one
13 gun and picking another gun up, they all got together to
14 form up this absolutely ironclad story; or, is the simple
15 explanation of what they put down in there is the truth and
16 it's so similar, so consistent, because they are telling the
17 truth? I submit to you that echoes and rings with accuracy
18 when you compare one to the other that. That echoes and
19 rings with accuracy. And that may be the greatest irony in
20 this case. All those benchmarks of accuracy, every single
21 one of them runs counter to the myth, run counter to the
22 story, all of these objective things, and that's what the
23 State has to explain.

24 What are some of the these objective factors that
25 you can look at? Well, the gunshot residue. No gunshot

1 residue found on Travis' hand. None of these metals were
2 found on their hands, but no gunshot residue. And Mr.
3 Springs tried mightily hard to say oh, he could have rubbed
4 it off and it be redeposit, but that's not what the expert
5 said. His own expert, yes. And then when I gave him this
6 no gunshot residue, do you think he was surprised? Well,
7 there is more than one case and that was very distinctive
8 where the gun had never been fired before and it was very
9 unique and we really don't -- that's unique. One case of
10 all the tests he's ever done. Do you think he was expecting
11 that answer?

12 With Mr. Hollifield, he tried to come up with
13 all -- well, it could have been rubbed off and redeposited,
14 but that's not what the expert is saying. They are saying
15 he had the metals on his hands of an environmental level; in
16 other words, normal limits. And had the gun been fired, you
17 would have expected to find so. In the absence of washing,
18 if you rub off, it's not as if you can just rub this off
19 too. The entire hand is swabbed for these and it was not
20 there. It was of such a normal environmental level they
21 didn't even bother to look on the second test to see if they
22 could find the ideal level, the Holy Grail as it were of
23 gunshot residue, that one little ball that's a combination
24 of the gun. There wasn't any point in doing it, because it
25 just was not far, it just was that normal. That's a big

1 factor.

2 You can look at the fingerprints that were found
3 as an objective finding, and there is no question. Let me
4 ask you this. Do you think that if they had found Travis'
5 fingerprints in that car they would have been trumpeting
6 that up? If they had found Travis' fingerprints somewhere
7 at the station, don't you think that they would be
8 trumpeting that up? "This is the key. You know he was
9 there. You know he was out of the car. You know he was in
10 the car, because we have his fingerprint right there." We
11 have two fingerprints identified by Officer Gardner and they
12 did nothing with them. Nothing.

13 The videotape. You will have the videotape back
14 there and certain pictures from the videotape have been
15 introduced and it's objective. The videotape, unlike our
16 memories, records stuff as it happens, the way it's found.
17 Compare the pictures. As grainy as it is, there are certain
18 things that you can see. Compare that picture to how Travis
19 looked that night. Is the skin color the same? No. Is the
20 shape of the face the same? Long face here, round face
21 here. Nope. Is even the fall of the dreadlocks, the hair
22 is on the head the same? Well matted here, more falling
23 straight down here. It's not the same. Now, the witnesses
24 have mapped these two together, but you have to look at the
25 objective evidence in this case.

1 It's interesting that they took this picture. You
2 will have the entire videotape in there and you can look at
3 the frames that come right before then to look at the
4 clothing that's involved here - black shirt with a white
5 long sleeve undershirt with the black pants that go all the
6 way to the ground, the black and white shoes, none of which
7 has ever been found or even looked for.

8 Another thing that you can look at as an objective
9 factor is basically the bullet character. They sat here on
10 the myth and created this with the two guns together, but we
11 know for sure that the bullet that struck Mr. Dodd was not
12 recovered from the gun that was found on him. And the only
13 way, the only possible way that this can come together, is
14 that Travis had one gun, dumped it and picked up another
15 gun. There is no other explanation for it. How reasonable
16 is that? And, oh, by the way, there certainly didn't bring
17 you any proof that that's what happened. They were just
18 doing speculation on their part to explain away a huge
19 problem, quite frankly something that would not even have
20 known about unless you heard Dr. Whitler's report, who I
21 asked him to bring up.

22 So one thing I would like y'all just to consider,
23 quite frankly, is Travis' behavior up in Charlotte. You
24 heard from Sergeant Booth. Sergeant Booth came forward and
25 was a little bit different. He wrote out a very long

1 two-page statement about his involvement with this case, and
2 did he look almost pained to you as he was forced to comment
3 on the behavior of a fellow law enforcement officer when I
4 asked him "did anybody ever contact you again for assistance
5 in looking for things? Was the apartments ever searched?
6 Was anyone ever questioned about this? Did they ever ask
7 you to try to get help with the search warrant?" Did he
8 look a little bit uncomfortable and the answer time and time
9 again they would never do these things? No, no, no, no, no,
10 no.

11 But what else did he say about Travis? Travis
12 didn't fight, didn't try to run away, didn't try to hide
13 anything. The most damning things that they could say about
14 him is that he hesitated before he put his hands up, the
15 cooperation around his back. Not trying to hide anything.

16 And in this case the situation is simply this.
17 There were four people in the car that night, the people in
18 the car heading out. The only person outside to look at
19 that who has talked about that is Ms. Parker, who says that
20 there were three people in the car, and she says she stared
21 at the driver. He was staring at her, so she stared right
22 back at him. But when pushed, when asked "what description
23 of the driver can you give us?" The only thing she could
24 say was "he had short and wearing a ball cap," a totally
25 incomplete description, because the whole staring thing has

1 turned out not in her statement, not anytime before, but
2 when she was pressed at trial and sworn at that time. The
3 reality is that she could walk by that car and there could
4 have been somebody sitting behind the driver and she
5 wouldn't have no reason to look in the car. Ms. Macomson
6 admitted that she didn't have any reason to look in the car.
7 We never heard Ms. Howie say anything about looking in the
8 car, but they couldn't have committed the armed robbery, and
9 she wouldn't say it, and that's the case.

10 And so when they charge with assault and battery
11 with intent to kill, they are saying that he was the
12 triggerman. They are charging him with being the shooter.
13 Not just being there on the scene, because being there on
14 the scene is not enough. I think the judge is going to tell
15 you that mere presence at something is not enough to make
16 you guilty of something. You got to know more. They have
17 got to prove that he was part of some sort of conspiracy, or
18 plan, or something to make him guilty of this, and there has
19 been no evidence of anything like that. No talk about the
20 schedules ahead of time, the schedules afterwards, meeting
21 in the parking lot, nothing like that. They are saying he's
22 the shooter, and they are wrong. Because they are wrong,
23 he's not guilty.

24 You know, the fact that this gun appears up in
25 Charlotte, you know, one of the charges is possession of a

1 firearm in the commission of a violent crime. Even if this
2 pistol was in his pocket at the time that something else was
3 going on that he didn't know about, that doesn't make him
4 guilty of possessing that pistol. That's not what that
5 statute is about. It's not hiding the pistol, pointing it
6 at somebody and shooting them. That's what they have
7 charged him with. But none of them say, oh, yeah, he had
8 this pistol, he's guilty. No, no, that's not what they
9 charged him with, and I don't think that's what the law that
10 you are going to hear from the judge is going to say.

11 So I'm going to have to sit down in just a second
12 and I appreciate y'all's attention. I know that I have been
13 talking a long time, but the prosecutor is going to get a
14 chance to say something and Mr. Dunn is going to get a
15 chance to say something.

16 There is a few things that I will ask that you do
17 when you get back in the jury room, because there is going
18 to become a time I think you are going to have to really
19 think hard back there, and it may be difficult, that you can
20 use to fall back on. The first thing I would say that you
21 can do is take a look at that tape again. Compare the
22 individual on that tape with Travis and see. Certainly none
23 of his clothes. You can see the clothes up there, which I
24 guess the State is going to say that these are not his
25 clothes. Although they have no proof of it, they are just

1 going to get up and say it, and compare that to what Travis
2 is like.

3 I would like you to take back with you the
4 doctor's statement about how this can happen. Not
5 maliciously, not intentionally, but that people can just be
6 wrong. And I would like you to take a second, each one of
7 you, takes those pictures, No. 1 exhibit from the State.
8 Look at it for a period of about five seconds and flip it
9 around. What do you remember about this thing? Look at it,
10 each one of them. What do you remember about his face.
11 What's the one thing that you can say that will identify him
12 with the distinction from any other person on this planet?
13 This one, right on his face. Look at that. Look at that
14 and ask yourself was Travis the person in the store? Why
15 didn't anyone bring that out? The reason why they didn't
16 because they are wrong. You saw the guy on the videotape
17 and that guy on the videotape is not Travis.

18 We talk a lot about the roles that each person has
19 in this case, the role, their job. It's the prosecution's
20 job to bring you evidence, not speculation. It's the law
21 enforcement's job to do the case right, not just take the
22 attitude "oh, I did it as good as I can with what I got,"
23 and leave you dangling. It's their job to answer the
24 questions. Where is Detective Strait? Why isn't he here?
25 Why isn't he here to answer the questions about all the

1 holes in this investigation? Why did they make the
2 decisions that they did to corrupt the identification of
3 their witnesses? They have not done their job. When the
4 prosecution doesn't do their job, it becomes time for
5 somebody else to do theirs. We do not have show-trials in
6 this country. The reason why we do not have show-trials is
7 because of people like you, jurors who look at prosecutors
8 and say "you better answer these question for me. If you
9 don't answer these questions for me, I'm not satisfied,
10 because I as a juror demand the answers." They haven't
11 given them to you. They have not done their job. When they
12 have not done their job, you ought to do yours, and your job
13 in this case is to return a verdict of not guilty on all the
14 charges against Travis.

15 MR. DUNN: May it please the court, Your Honor.

16 Good afternoon. I will not keep you very long.
17 It's getting late.

18 Yesterday when we opened, I asked you to do two
19 things for me. One was to pay attention to the case and the
20 gas station and one was to pay attention to the case once
21 they got in that car and they took off. Today I'm only
22 asking you to do one thing. What happened once Mr. Dodd was
23 shot? And as far as that image, how was Mr. Tobbie involved
24 with Mr. Dodd, once Mr. Dodd was shot?

25 In a little while the judge is going to read you

1 the law. He is going to tell you that Mr. Tobbie is charged
2 with accessory after the fact, which means that somehow he
3 was supposed to have helped Travis Robinson escape or, you
4 know, evade being captured. My question to you right now is
5 what evidence has been submitted in the last few days that
6 would show that Mr. Tobbie did that?

7 We heard from a lot of witnesses from the State,
8 and I'm not going to repeat that. A number of them were
9 there on the scene, right? A couple of them were police
10 officers, none of which saw what happened. They were just
11 investigating, once the shooting had occurred and they were
12 trying to put pieces together themselves.

13 When we look at the witnesses that were there,
14 well, Ms. Macomson, she didn't see anything that happened
15 outside. She said she heard the gunshot and she said, in
16 her words, that she immediately ran to do door, or she was
17 running to the door and a car was driving away and right
18 before the car drove away Mr. Dodd was running up saying "I
19 have been shot."

20 Ms. Parker was outside and she said as Mr. Dodd
21 was being shot, my client was in the back seat, or getting
22 into the back seat of the car.

23 And then we have Ms. Howie, and she didn't say
24 anything about my client, except for the fact that she
25 picked him out when they got to Charlotte, but that's all.

1 she said. Well, I can pick a lot of people out from the air
2 right now and what good would that do? She never ever
3 placed him at the scene of the shooting, and the only thing
4 she said was "when we was up to Charlotte, I picked him out
5 when the cop pointing to me. Brought him out of the car to
6 me."

7 Why did I bring all this up? Where is the
8 evidence? Where is the evidence that somehow Mr. Tobbie
9 helped Mr. Robinson escape? There isn't any.

10 What we know is that as soon as Mr. Dodd got shot,
11 a bunch of things happened simultaneously, but everybody who
12 was there had a little bit of a different reaction to the
13 shooting. For Ms. Macomson, we heard "I immediately ran
14 into the door to see what that noise was," right? And even
15 when you are watching the video, showed up, coming into
16 view, coming from around the cash register and into the
17 front door and peaking out, opening it and waving the arm
18 and doing what she did.

19 And Mr. Dodd said that when he got shot, he looked
20 over and said "I got shot" and he got up and ran inside.

21 Ms. Howie, when you watch the video, she sat there
22 for a little while. The black SUV did not move right away,
23 but eventually she pulls forward and she comes running
24 inside.

25 Ms. Parker said that she sort of stood there for a

1 second and then she said her mom and her son were coming up
2 in the white van. You see the white van in the video, and
3 she's waving them on to go away because she doesn't want
4 them to come into danger. That's very understandable, and
5 then she finally comes running in the store.

6 All of that happened after the red car had already
7 taken off.

8 Why did I bring up all that? We all react
9 differently in the same situation. In this particular
10 situation each one of these witnesses acted a little
11 different, reacted a little bit differently.

12 What we do know is that that car took off mighty
13 quick. We also know that Mr. Tobbie was not driving that
14 car. There had been absolutely zero evidence saying that he
15 drove that car. And, in fact, the identification was a guy
16 in a white cap. Mr. Tobbie didn't have a white cap on.
17 There has never been any allegations that Mr. Tobbie had a
18 white cap on. And, in fact, the witness said, if I remember
19 correctly, he was getting into the back seat.

20 We know that that car made a left-hand turn out of
21 the gas station and immediately got on the interstate and
22 took off south. And how do we know that? We know that
23 because Travis Robinson said that in his statement and
24 Quinton Tobbie said that in his statement.

25 A couple minutes later they make a U-turn and they

1 head up north and cross over into Mecklenburg County. And
2 at the time they cross into Mecklenburg County we know that
3 they were being chased at a high rate of speed by Officer
4 Gibson, at first on the interstate, and they are probably
5 doing -- nobody ever said how fast, but you don't go slow on
6 the interstate. And at some point he testified that he got
7 into a high speed chase with that red car and they were
8 weaving through traffic, blowing through red lights, blowing
9 through stop signs, making quick left-hand turn, and Officer
10 Gibson eventually lost track of the red car. He couldn't
11 keep up with them. We don't know what's going on in that
12 little red car. We don't know what was said, except for
13 what Mr. Tobbie says in his statement. He tried to get out
14 of the car and front passenger turned and he told him that
15 he would kill your MFS. But I don't know about you, when
16 someone is fixing to shoot you, after having shot somebody
17 else, you do what they say.

18 The next time that you see Mr. Tobbie of any
19 evidence being presented against Mr. Tobbie he's in
20 Charlotte in handcuffs being pulled out of -- being shown to
21 the various folks -- to Ms. Parker and Ms. Howie.

22 We know from Sergeant Booth from the
23 Charlotte-Mecklenburg County that as that car was driving
24 up, he said he stopped a gray Tempo, right, and inside it
25 was occupied three times. It was driving by a black female.

1 Well, obviously that's not Mr. Tobbie. And that there were
2 two people in the back seat. One of them had dreads on, and
3 the other one was Mr. Tobbie.

4 He says that Mr. Tobbie cooperated with them
5 fully. We know that after that that he was taken to the --
6 Mr. Tobbie was taken down to the substation and was
7 interviewed by Lieutenant Miller. You saw that. What did
8 Lieutenant Miller say? He cooperated fully. He gave a
9 statement, right?

10 Now, trying to help somebody escape, when you are
11 trying to help somebody evade the law, will you put in there
12 that me and the other guys were trying -- trying to say I
13 helped escape, were down at the crime, the shooting? Would
14 you put that in your statement? I would submit to you that
15 you would not and that you are just trying to be as
16 cooperative and straight with the police officers as you
17 possibly can.

18 Mr. Tobbie got in the car with a couple of people
19 he probably shouldn't have got in the car with. He didn't
20 know the driver. He didn't know the shooter. But merely
21 being present at that scene he is not guilty. The fact that
22 he was in the car and it took off and ran into North
23 Carolina doesn't make him guilty of being an accessory after
24 the fact. The State has to show that he did something, that
25 he had -- that he acted with some kind of intention to help

1 Mr. Robinson escape. And the words are "to escape detention
2 or arrest." What has the State shown to us in the last two
3 days that would suggest that Mr. Tobbie did anything to help
4 Mr. Robinson escape? I would submit to you that they have
5 shown you absolutely nothing. I would suggest to you that
6 whatever they do would be speculative, that this statement
7 somehow is the intention that they are looking for you, the
8 State is looking for, to help Mr. Robinson escape arrest or
9 report or detection, and I would submit to you that
10 simply -- this simply by itself is not enough to show that
11 he committed anything -- that he did anything wrong.

12 What else do we know? We know that the shooting
13 happened sometime around 10:42, 10:45, sometime in that time
14 frame. You can see it on the video, the little clock up
15 there, and you can go back and -- you can -- you don't see
16 the shooting, but based on the reaction of everybody, you
17 can kind of get a good time or probably what time it
18 happened.

19 We know that 10:55, and again you can tell it
20 because there is a clock on Officer Gibson's tape, that at
21 10:55 there is a high speed chase going on through
22 Mecklenburg County. It was about ten minutes after the
23 shooting.

24 We know that 12:53, the gap in the tape, that the
25 car is being towed out of Mecklenburg County. That's on

1 Officer Gibson's tape.

2 The other thing that we know that at sometime in
3 between those two times he was identified -- Mr. Tobbie was
4 identified by Ms. Parker and Ms. Howie. There is not a
5 whole lot of time in there to come up with a plan. In fact,
6 there has been no evidence to suggest that they came up with
7 a plan. There has been nothing to show that any kind of
8 plan was there, except for a statement he gave voluntarily,
9 that he gave cooperatively.

10 The only other thing I would want to point out to
11 y'all is yesterday morning when we all had an opportunity to
12 outline all of our cases, the one thing that wasn't outlined
13 by the State is how he was involved -- how Mr. Tobbie was
14 involved in accessory after the fact. Nothing was ever said
15 about it. And I would submit to you that the reason why he
16 was never shown in it is because they couldn't prove in it
17 their case, and I would submit to you in the last two days
18 we have seen nothing to prove it.

19 Thank you for y'all's attention. Mr. Tobbie
20 certainly thanks you for y'all's attention.

21 COURT REPORTER: Can I have a break?

22 THE COURT: We will take a break.

23 COURT REPORTER: I need a break.

24 THE COURT: That's fine. We will take a short
25 break.

1 Take the jury to the jury room.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: We will takes about a ten minute
5 break.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 MR. DUNN: Your Honor, I know you directed a
9 verdict for Mr. Tobbie on one charge and not the other. I
10 think I handled it all right with the jury, but I just
11 wanted to make sure the jury is aware that they are only
12 looking at --

13 THE COURT: Oh, I'll tell them. And I'll tell
14 them that the reason that the other one is before them is of
15 no importance to them.

16 MR. DUNN: That's fine. I just wanted to make
17 sure.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: Mr. Springs.

21 MR. SPRINGS: Thank you, Your Honor.

22 May it please the court.

23 Ladies and gentlemen of the jury, Mr. Foreman,
24 what are the odds, what are the odds of that guy didn't try
25 to rob Mr. Dodd? What are the odds that he didn't shoot

1 him, when three eyewitnesses, three good people got on that
2 witness stand and said "that's the guy," including the man
3 that had the gun right there in front of him who got shot?
4 And what are the odds it wasn't him when he's on videotape
5 at the station, when he's on pictures there in the station?
6 And what are the odds it wasn't him when out of his own
7 mouth said "well, yeah, I was there." Some mysterious
8 fourth people, we don't know the name of who they are, that
9 fourth person in the car, that made-up person did it.
10 That's who did it. It wasn't me. That's like with little
11 children do like this and say "you can't see me. You can't
12 see me."

13 And when three eyewitnesses said that's the guy
14 that shot Mr. Dodd, he's on video and the pictures of him
15 and he's sitting over there, that some mysterious person did
16 it, the odds are astronomical. And the person that has to
17 convince to you that that didn't happen, they got to do a
18 whole lot of yelling and screaming, and they have.

19 All witnesses are blind and delusional and I'm
20 evil and the police are corrupt, and they got to take you
21 down as many rabbit holes and drag as many red herrings
22 across your path as possible to keep hounding off that,
23 hounding all that to tell you that until your head swims,
24 and you might -- you might go "I can't see that child. Just
25 leave me alone. I can't see that child." There is an old

1 saying. I think the Texas Rangers came up with it
2 originally back in the 1800's, "you can run but you can't
3 hide."

4 When you shoot a man to try to rob him, you don't
5 even give him time to go in his pocket. He's trying to give
6 you his money. "You've taking too long, so I'm going to
7 shoot you." And you do it in front of witnesses and you get
8 caught, you get caught. You are just caught.

9 And everybody did their job. Everybody did their
10 job, including me, and I take it very seriously. The deputy
11 that chased the car did his job. He did the best he could
12 to catch the car. It wasn't his fault they got away.

13 The Charlotte police, Lord knows they have a full
14 plate. They caught these two guys. They caught these two
15 guys, after they had had about 40 minutes off to themselves
16 to change clothes, to do whatever and not to pick up another
17 gun. Use your common sense. He had two guns to start with.
18 This guy likes guns. This guy is dangerous. This guy is
19 dangerous.

20 We have proven this case beyond a reasonable
21 doubt. And if you don't do the right thing after I have
22 done my job and the police have done their job and the
23 defense attorneys have done their job, you might as well
24 give that back to him and say have a nice day.

25 Mr. Dodd and Ms. Howie went up to the filling

1 station and -- a classic case of, bless his heart, he is in
2 the wrong place at the wrong time, because these guys had
3 taken this tag off their car and this guy was packing a gun
4 and goes into the store -- goes into the convenience store
5 where they split up and this guy is trying the office. And
6 he didn't confuse about the men's room. Don't you check
7 your common sense at the door. You keep your common sense
8 with you every step of the way here. And Mr. Dodd, while
9 these two guys are there, pays for his purchase with a roll
10 of cash to seal his fate. Because of that he was getting in
11 the car and this guy, he says "give me that money. Give me
12 that money. Give me that money." Mr. Dodd, "you got it.
13 You got it." But he needs to get it out of his pocket
14 before this guy shoots him.

15 He jumps in the car with the other two. Multiple
16 witnesses said three people in the car. There is no front
17 seat passenger. But with you and your friend, Quinton, all
18 changing clothes and doing whatever, visiting in the
19 sister's apartment, going wherever, or doing whatever before
20 you finally do get caught. When you are off and you know
21 that you are at a convenience store and they finally have
22 cameras and you know there were witnesses, because one of
23 them is sitting right there next to the guy who was shot, he
24 come with a story. And the story is Mr. May, the front seat
25 passenger, the guy that doesn't exists, some other dude did

1 it, is the old expression, the mystery guy did it, and it's
2 going to explain everything else. That's all we got to keep
3 straight, our story is straight now. Some other guy did it,
4 the front seat passenger who doesn't have a name, he did it.

5 All the other rabbit holes and the red herrings.
6 Well, we know they were in the car. Yeah, we didn't get
7 fingerprints from in the car, because we know -- they said
8 they were in there themselves. You don't always get
9 fingerprints. I wish it was like TV. They always get
10 everything, but real forensics is not that way.

11 How many different people had been in that car in
12 the past? The fingerprints they did lift, who knows. Maybe
13 the original salesman kept his fingerprints in it. It
14 doesn't matter, because when it comes back to it, what are
15 the odds if Travis Robinson didn't try to rob Mr. Dodd, or
16 what are the odds he didn't shoot him, when three
17 eyewitnesses say "that's the guy." And they are not saying
18 that a year later. They are not saying it weeks later.
19 "That's the guy" when it's fresh, and he's on video. He is
20 there. He says he is there out of his own mouth. "Yeah, I
21 was there, but some other guy did it." Some other mystery
22 guy. The front seat passenger, and he's made up a story.
23 He's made up a tale. He's created a fourth person that
24 doesn't exist, because multiple witnesses there says there
25 were three people.

1 I didn't interrupt Mr. Lemel one time to try to
2 correct anything that he said. I don't want anything that
3 he, or I, or Mr. Dunn says facts-wise that isn't quite
4 right. There are twelve of you. Twelve memories are better
5 than one. It's a collective memory. It works great.
6 Actually, you are going to be proud of the system after you
7 work this case. You can be proud of the police. They did a
8 good job. They worked it. And everybody in this courtroom
9 did a good job. The defense attorneys did a good job. They
10 played the devil out of me, but they did a good job. They
11 had a job to do. You can't argue that. They are like
12 quality control. They did make sure that this fellow was
13 defended and this defendant was defended. I think we have
14 proven it not beyond a reasonable doubt, beyond all doubt.
15 When three eyewitnesses say "that's the guy" and he is so
16 close to them. Ms. Parker said "I seen him a couple of
17 times. I seen him coming and going from the store. I'm
18 right there looking at him, because he's not making eye
19 contact, so I'm studying him," and he's on the move.

20 And all these people seen the shooting. Three
21 people see him shoot Mr. Dodd, and then he gets caught and
22 says "yeah, I was there, but this other guy did it, the
23 fourth guy, the mystery guy, the front seat passenger,
24 that's who did it," the guy that he and Quinton made up.
25 Let's get our stories straight. We are going to change our

1 clothes, get our stories straight.

2 And the pistol that shot pistol Mr. Dodd, where is
3 it? Who knows. Who knows. I guess if the police got
4 together a couple hundred guys and walked up and down I-77
5 long enough and Nations Ford Road and Arrowwood Road in
6 Charlotte long enough, they might have found it, but, you
7 know, at what point is it so clear that this guy did it that
8 the police can go, "that's enough, we are piling on. We
9 have got three eyewitnesses that say, yeah, no question
10 about it, that's the guy." There are movies of him there.
11 He said he was there and he's made up some fictitious
12 person. So at what point can the police say "that's enough.
13 This isn't the only case that we have. Let's go help out
14 some other folks." At what point is enough enough? That's
15 all strong direct evidence.

16 All the evidence stuff, the gunshot residue, there
17 was a reason why he might have not have had it on his hands.
18 He only fired one shot. He sweated profusely, the sergeant
19 said. He's covered with sweat. He's changed his clothes.
20 He's taken off sweatshirts and T-shirts and putting on other
21 clothes, and he's sitting on his hands in the back of a
22 police car, so there are plenty of reasons why he might not
23 have that tiny little bit of gunshot residue that comes from
24 that little powder cap in the back. Plenty of reason why he
25 might not.

1 This case is proof beyond all doubt. If this
2 isn't proof, nothing is, and we might as well all go home
3 and lock our door and get a shotgun, because it's all over.
4 When these three people I see do it, seen him do it, they
5 come up here and testify and tell you credibly and honestly
6 what happened and he says he's there, what else is there?
7 What else is there?

8 The height, the top I thought was holding up the
9 two pictures. This is the classic little job, you can't see
10 me, it's not him. It's not him. It's some other guy.
11 Unbelievable. What are the odds? What are the odds?

12 Let me talk to you about the law in a minute, the
13 law for assault and battery with intent to kill. We don't
14 have attempted murder in this state. We use assault and
15 battery with intent to kill. It sounds like lawyer mumbo
16 jumbo. To be guilty of it, you don't have to have intended
17 anybody is going to get killed. You just have to be
18 malicious. You just don't care.

19 The guy that gets drunk and just fires a pistol
20 into a crowd just doesn't care. He's not intending to kill
21 anybody. He just doesn't care.

22 Was he intending to kill Mr. Dodd? We don't have
23 to prove that. He just didn't care. It's just downright
24 meanness. It's maliciousness. He doesn't care.

25 The legal term is he doesn't have to have a

1 specific intent to kill. That means just general
2 malignancy, don't care, so please so please don't get hung
3 up on that, because when you pump a bullet into somebody,
4 that's malicious and that's assault and battery with intent
5 to kill.

6 It's attempted armed robbery because he didn't
7 give Mr. Dodd time to get the money. He shot him and left
8 before he got the money. You have to get the money from him
9 to complete the armed robbery. That's why it's called
10 attempted.

11 And the other law term I want to talk about is
12 reasonable doubt. We don't have to prove this case beyond
13 all doubt. Maybe, maybe one of the witnesses was crazy and
14 delusional. Maybe they ought to be in a straight jacket
15 right now, but not all three. No, none of them are crazy or
16 delusional.

17 We have to prove it beyond a reasonable doubt. We
18 have had a lot of definitions over the years and one they
19 have fashioned now is a reasonable doubt is the kind of
20 doubt that would cause a reasonable person to hesitate to
21 act. Hesitate to act. Now, that doesn't mean go back there
22 and go over the evidence and deliberate. That's not the
23 hesitation to talk about it, because you are back there for
24 a reason. Everyone sit down and kick it around. I hope you
25 won't kick it around too long, but go over it, talk about

1 odds. What are the odds? Three eyewitnesses, pictures,
2 video, and he puts himself there along with a made up fourth
3 person.

4 Hesitate to act. It doesn't mean hesitate to
5 think about it, because you make big decisions all the time
6 that you know darn good and well that you are going to make,
7 but you stop and you think about it first. It's sort of
8 like you say "I'll give you \$3,000 to go in one of the
9 courtrooms at the Moss Justice Center and shoot the breeze
10 for 25 minutes." You might hesitate and go "well, what day
11 do you want me to do it," or, "if I'm going to need to get a
12 sitter for the kids before." You are going to do it.

13 They say, "well, we are going to give you 1,200 or
14 \$1,500 to go to the Moss Justice Center and go in one of the
15 courtrooms and shoot the breeze about something for 15
16 minutes," you might hesitate about that. "What day do you
17 want me to do it? What night?" So there's no doubt you are
18 going to do it. No doubt you are going to do it. You see
19 how it works..

20 You represent all the citizens of York County.
21 These guys came from Charlotte into our county, pointed a
22 gun at Mr. Dodd, and Travis Robinson said "give me that
23 money." Mr. Dodd was trying to comply not wanting to move
24 too fast and get shot, take it easy. Good Lord, didn't even
25 give him time to get the money out of his pocket. He goes

1 ahead and pumps a bullet into him. Essentially he's lucky
2 to be alive, lucky he's not in a wheelchair, lucky he got
3 out with a good chunk of his intestines removed.

4 And Quinton Tobbie, what did he do? He lied to
5 the police. He lied to the police when he made up the
6 fourth person. When he said somebody else was the shooter,
7 he helped his buddy. That's the assistance that makes him
8 guilty of accessory after the fact. You don't get to lie to
9 the police about your buddy so your buddy can dodge
10 responsibility for shooting somebody. "We are not going to
11 suddenly accuse your buddy. That's okay you lied about it.
12 That's okay. Tried to cover for him, that's okay. We don't
13 do that."

14 You shouldn't do that, whoever did it. He's
15 guilty of accessory after the fact of this attempted armed
16 robbery, because he lied when he made up the fourth person
17 when they got their stories together.

18 I ask you to please just go back there and do what
19 you swore to do and be good jurors. Be a good umpire. Be
20 the judges of the facts. You are not going to judge their
21 souls or whether they are good people or nice people or bad
22 people, just whether they did this behavior. And goodness
23 gracious, obviously, obviously they did this behavior beyond
24 all doubt. We have proven this case beyond all doubt.
25 Don't give him his gun back. This is a dangerous person.

1 Don't give him his gun back and say have a nice day. Thank
2 you.

3 (Whereupon, at 3:56 p.m., the Court charged the
4 jury panel).

5 THE COURT: Members of the jury panel, I
6 appreciate the attention that you have given us all at this
7 point. I'm now going to charge you the law which you are to
8 apply in this case as to the facts you determine them to be.

9 Mr. Robinson is charged with three charges;
10 assault and battery with intent to kill, attempted armed
11 robbery, and possession of a firearm during the commission
12 of a violent crime.

13 At the start of this case Mr. Tobbie had two
14 charges against him. He now only has one. The reason we
15 are down to one for him is no importance to you and you are
16 not to give that any consideration whatsoever. The only
17 charge against Mr. Tobbie that will be presented to you for
18 consideration is the indictment charging him with accessory
19 after the fact of attempted armed robbery.

20 Each indictment charges a separate and distinct
21 offense. You must decide each indictment as to both of
22 these gentlemen separately on the evidence and the law
23 applicable to it, uninfluenced by your decision as to any
24 other indictment. A defendant may be convicted or acquitted
25 on any or all of the offenses charged.

1 I will, when I talk to you about writing the
2 verdicts, ask you to find a separate verdict on each
3 indictment.

4 An accused here, either one of these individuals,
5 is not to be prejudiced by the fact that they had or have
6 more than one charge pending against them.

7 Also each defendant is entitled to an
8 individualized consideration of the charge or charges
9 against them. What you find as to one is not to influence
10 what you do as to the other, nor is it to be to the
11 prejudice of the other.

12 The fact that the defendants have been charged and
13 indicted is not evidence and cannot be considered by you as
14 evidence in this case, nor does the fact that they were
15 charged, arrested, and indicted create any presumption or
16 inference of guilt. Our system simply works by individuals
17 being arrested pursuant to a warrant, indicted, brought to
18 trial, and then a jury trial is held. And based on the
19 written formal documents - the indictments - a jury makes a
20 determination and enrolls their unanimous verdict. You will
21 have with you in the jury room these indictments. They are
22 not evidence, as I said. They are simply the formal
23 paperwork by way of which this case is processed through our
24 court system. They contain the charges against the
25 defendants. And, Mr. Foreman, I'll show you later, they

1 will ultimately be where you enroll the jury's unanimous
2 verdict.

3 Each defendant has entered pleas of not guilty to
4 the charges against them. These pleas place on the State
5 the burden of proving the guilt of a defendant as to a
6 charge beyond a reasonable doubt.

7 Each defendant - Mr. Robinson and Mr. Tobbie - are
8 presumed innocent of the charges against them. Anyone
9 charged with any offense in our system is presumed innocent
10 of that offense. This presumption of innocence is not a
11 mere legal theory or a mere legal phrase. It's a
12 substantial right. The presumption of innocence attaches to
13 an individual at the time that they are arrested and remains
14 with them as their case is processed through our court
15 system. The presumption of innocence in each of these
16 gentleman's favor remains with them at this moment and even
17 as you deliberate. The presumption of innocence in Mr.
18 Robinson and Mr. Tobbie's favor is removed if and when, and
19 only if and when, you as the trial jury in this case are
20 satisfied of their guilt as to a particular indictment
21 beyond a reasonable doubt.

22 Now, the State is not required to prove their
23 guilt all or beyond every doubt, but beyond a reasonable
24 doubt. A reasonable doubt has been described by our courts
25 as the kind of doubt that would cause a reasonable person to

1 hesitate to act.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of a defendant's guilt. There
4 are, of course, very few things in our world that we can
5 know with absolute certainty, and our law does not require
6 that in criminal cases.

7 If, based on your consideration of the evidence,
8 you are firmly convinced that Mr. Robinson or Mr. Tobbie are
9 guilty of one, or more, of the charges against them, you
10 must find them guilty.

11 On the other hand, if you think there is a real
12 possibility that they are not guilty of an offense, you must
13 give them the benefit of that doubt and find them not
14 guilty.

15 They are entitled to the benefit of any reasonable
16 doubt that you have as to any issue in this case.

17 As I told you when we started, I am the sole judge
18 of the law in this case and you must take, accept, and apply
19 the law as I charge it. You are not to infer from anything
20 that I say or do as being an indication of an opinion of
21 mine on the facts. Our law does not allow a trial judge to
22 formulate or express to a jury any opinion on the facts.
23 That is solely your job.

24 It is solely up to you to examine the evidence and
25 give to the evidence the effect, the value and the weight

1 and the truth you believe the evidence should have. In
2 doing this, you may believe one witness as opposed to
3 several, several witnesses as opposed to one. You may
4 believe all, part, or none of a witness' testimony. Use
5 your common sense, your sense of logic, your sense of
6 reason. Use your experiences in life as you analyze the
7 evidence.

8 As judges of the facts you, of necessity, must
9 judge the credibility, that is the believability of the
10 witnesses who have testified. In assessing believability,
11 use those things that I have already talked about. You can
12 use things that you in your day-to-day life find as
13 indicative to you of a person's truthfulness. You can use
14 certain evaluators; the witness' demeanor - how they acted
15 on the stand. Were they hesitant or straightforward. Was
16 their testimony consistent or inconsistent within the
17 testimony that they gave at trial or when prepared the
18 testimony, statements given at earlier time.

19 You may examine the witness' opportunity to know
20 those things about which they testified. You can consider
21 any opportunity the witness had as to actually know those
22 things about the they testify.

23 If a witness has a criminal record, you can
24 examine that and use that in determining the credibility you
25 give the witness.

1 Now, in this case we have had expert testimony.
2 Generally one can only testify as to something that they
3 have seen or heard, something that they have observed. It
4 could be with any of the five senses, but usually it's
5 something that someone has seen or heard, although it could
6 be taste, touch, or smell also.

7 However, where an individual has certain
8 qualifications, knowledge, experience and training, that
9 person can be qualified by the court to render an opinion.
10 That is, they can take facts and from those facts render
11 opinion.

12 Now, the opinion of experts are allowed into
13 evidence to assist you, the jury. They are not binding on
14 you. You look at the testimony of an expert just like you
15 look at the testimony of any witness.

16 In addition as to an expert, you look at the
17 qualifications that a witness had to give an opinion and you
18 look at the reasons they gave for their opinion, but they
19 are simply allowed to testify to assist you. You may reject
20 or accept the testimony of an expert in whole or in part.

21 In cases like this there are usually two types of
22 evidence presented - direct and circumstantial.

23 Direct evidence is testimony of a person who
24 claims to have actual knowledge of a fact, such as an
25 eyewitness. It's evidence which immediately establishes the

1 main fact sought to be proven.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a fact.
4 It is evidence which immediately establishes collateral
5 facts from which the main fact may be inferred.
6 Circumstantial evidence is based on inference and not on
7 personal knowledge or observation.

8 Our law makes absolutely no distinction between
9 the weight or value to be given either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than is
12 required of direct evidence.

13 What you should do is weigh all of the evidence in
14 the case. After weighing all the evidence if you are not
15 convinced of the guilt of a defendant as to a particular
16 charge, you must find them not guilty.

17 In this case the identification of the
18 defendants -- well, let me phrase it like this. The
19 identification of a defendant or the defendants as
20 individuals involved in the commission of this crime is an
21 issue. The State has the burden of proving identity beyond
22 a reasonable doubt. You must be satisfied beyond a
23 reasonable doubt of the accuracy of any identification of a
24 defendant before you may convict a defendant.

25 Identification testimony is an expression of

1 belief or impression by a witness. You must determine the
2 accuracy of the identification of a defendant. You must
3 consider the believability of each identification witness in
4 the same way as you examine the other testimony and all the
5 testimony in this case.

6 In evaluating reliability of the identification of
7 a defendant as the person or persons involved, you must
8 consider the circumstances under which the eyewitness made
9 the observations. In this regard you may consider whether
10 the witnesses knew the defendant before the crime took
11 place; whether the witness had a good opportunity to see the
12 person, including the lighting at the place the
13 identifications occurred; whether a witness seemed as though
14 they were paying careful attention to what was going on at
15 the time; whether any description given by a witness was
16 close to the way the defendant actually looked.

17 You can consider how much time passed between the
18 incident and the first identification by the witness. You
19 can consider whether at the time of the first identification
20 by the witness the conditions were such that a witness was
21 likely to make a mistake because he was cued or she was cued
22 by certain circumstances.

23 You also may consider whether the witness and the
24 defendant are the same or a different race. And if so,
25 whether a witness is sensitive to differences among persons

1 of another race.

2 You can also consider how certain or confident a
3 witness was as to their identification. And you can
4 consider whether the witness was a mere passerby or was
5 someone threatened at the time the crime took place.

6 The burden of proof is on the State to prove
7 beyond a reasonable doubt the identity of a defendant as the
8 person committing the crime of which they are charged.

9 Therefore, if you are not convinced beyond a
10 reasonable doubt as to the accuracy of the identification of
11 a defendant as an individual committing the crime with which
12 they are charged, you must find them not guilty.

13 In this case the defendants have alleged to have
14 made statements. These statements have been admitted into
15 evidence. While I, as the trial judge in this case,
16 determined that the statements were admissible, I instruct
17 you that you, as the trial jury in this case, make the
18 ultimate decision of whether or not the defendant made the
19 statement.

20 If you find that a defendant did not make such a
21 statement, you must determine whether -- I'm sorry, you must
22 first determine whether or not the defendant actually made
23 the statement. If you determine he did, then you must
24 determine whether it was made by a defendant voluntarily and
25 of their own free will. This means that any statement,

1 before you could consider it and use it, was not caused by
2 pressure, force, fear, threats, coercion, intimidation, nor
3 by hope or promise of leniency or reward of any kind.

4 In determining whether a statement was given
5 voluntarily, you should consider both the characteristics of
6 a defendant and the details of the questioning. Some of the
7 factors you may consider are the age of the defendant; the
8 place and length of detention; the nature of the
9 questioning; the advice, or lack thereof, to the defendant
10 of their Constitutional Rights, including, but not
11 limited to, their right to remain silent; that any statement
12 could be used against them in a court of law; that they had
13 the right to have a lawyer present while they were being
14 questioned; and that if they could not afford a lawyer, a
15 lawyer would be appointed to represent them without any
16 costs; and further advised that they could stop making
17 a statement at any time.

18 You must carefully consider all of the surrounding
19 circumstances of the alleged statement before you may give
20 any weight to that statement.

21 The State has the burden of proving beyond a
22 reasonable doubt that the alleged statement was voluntary.

23 If you determine it was, you may give it any
24 further consideration you deem proper. You must decide what
25 weight, if any, should be given to an alleged statement.

1 If you determine the alleged statement was not the
2 free and voluntary statement of the defendant, you should
3 not consider the statement to any degree whatsoever.

4 I instruct you now and emphasize to you that the
5 fact that neither defendant testified is not a factor to be
6 considered by you in any way in your deliberations, nor
7 should it be considered by you on the question of either
8 one's guilt or their innocence. It must not be considered
9 by you because a defendant in our system has an absolute
10 Constitutional Right to remain silent. The assertion of
11 this right must not be, cannot be, and is not to be
12 considered by you in any way in your deliberation. You are
13 to draw no conclusion whatsoever from the fact that a
14 defendant, or here both defendants, chose to exercise their
15 Constitutional Right and not to testify. The fact that they
16 did not testify cannot be discussed by you in the jury room,
17 nor can it be factored into your consideration of the issues
18 before you, that is, whether or not the State has proven
19 their guilt beyond a reasonable doubt.

20 It is the burden of the State to prove an
21 individual's guilt beyond a reasonable doubt. I'll remind
22 you that they are, each defendant that is, is presumed
23 innocent of the charges against them, until the State has
24 proven, if it has, their guilt to your satisfaction beyond a
25 reasonable doubt.

1 Now, Mr. Robinson has been charged with assault
2 and battery with intent to kill.

3 In order to prove this, the State state must prove
4 beyond a reasonable doubt Mr. Robinson committed an unlawful
5 act of a violent nature to the person of another with malice
6 aforethought.

7 An assault occurs when a person unlawfully
8 attempts or offers to commit a violent injury upon another
9 person and had the present ability to complete the attempted
10 injury.

11 An assault is the intentional creation of a
12 reasonable fear of immediate bodily harm.

13 It is not necessary that the attempted injury or
14 harm actually take place. I always use for an example of an
15 assault if I am close enough to you to strike you and I
16 raise back my fist in an angry manner, a rude manner, as if
17 I'm going to strike you, and I have the ability to do it,
18 and I put you in fear that I'm going to strike you, that's
19 an assault.

20 A battery is an unlawful touching of another
21 person by the person committing the assault. An unlawful
22 touching can be caused by any part of the accused body or by
23 any object that the accused places in motion.

24 A battery is the completion of the assault by
25 using or applying force to another person, however slight,

1 in a rude, angry, or resentful manner without legal
2 justification for so doing.

3 Using my earlier example, if I draw back and I'm
4 close enough and I go forward and hit you, then my assault
5 has become a battery because I have struck you.

6 Now, the battery must be committed -- in order for
7 you to find Mr. Robinson guilty of assault and battery with
8 intent to kill, the battery must have been committed with
9 malice.

10 Malice is hatred, ill will, or hostility towards
11 another person. This malice does not necessarily import ill
12 will towards a particular individual injured, but signifies
13 rather a general malignant recklessness for the lives and
14 safety of others.

15 Malice is the intentional doing of a wrongful act
16 without just cause or excuse and with an intent to inflict
17 the injury, or under circumstances that the law would infer
18 in viewing intent.

19 Malice aforethought is not required that the
20 malice exists for any particular time before the act is
21 committed, but malice must exist in the mind of the
22 defendant here, Mr. Robinson, just before and at the time
23 the act is committed. Therefore, there must be a
24 combination of the previous evil intent and the act.

25 Malice may be conceived at the very moment the

1 assault occurs.

2 Malice aforethought may be expressed or inferred.
3 These terms do not mean different kinds of malice, but terms
4 that differentiate simply different ways that malice may be
5 shown to exist; that is, either by direct evidence or by
6 inference from the facts and circumstances that are proven.

7 Express malice is shown when a person speaks words
8 which express hatred or ill will upon another or when a
9 person prepared beforehand to do the act which was later
10 accomplished. For example, acts of preparation going to
11 show that the deed was within the defendant's mind would be
12 express malice.

13 Malice may be inferred from conduct showing a
14 total disregard for human life.

15 Inferred malice may arise also when the deed is
16 done with a deadly weapon. A deadly weapon is any article,
17 instrument or substance which is likely to cause death or
18 great bodily harm.

19 Whether an instrument has been used as a deadly
20 weapon depends upon the facts and circumstances of the case.

21 If facts are proven beyond a reasonable doubt
22 sufficient to raise an inference of malice to your
23 satisfaction, this inference is simply an evidentiary fact
24 to be considered by you, along with the other evidence in
25 the case, and you may give this inference such weight, if

1 any, you determine it should receive.

2 A specific intent to kill is not an element of
3 assault and battery with intent to kill, but there must be a
4 general intent to commit serious bodily injury.

5 Intent means intending the results which actually
6 occurs. Intent is something that is not accidental or
7 involuntary. Intent may be shown by acts and conduct of a
8 defendant and from other circumstances from which you can
9 naturally and reasonably infer intent; evidence of the
10 character of the assault, the character of the instrument
11 used, the manner in which the instrument is used; the
12 purpose to be accomplished; and any resulting wounds or
13 injuries may be considered by you in determining the intent
14 with which the assault was committed.

15 Intent may be inferred when it is demonstrated
16 that a defendant voluntarily and willfully commits an act,
17 the natural tendency of which is to destroy another's life.

18 Now, included within the offense of assault and
19 battery with intent to kill is a lesser offense of assault
20 and battery of a high and aggravated nature.

21 If you find the State has not proven Mr. Robinson
22 guilty of assault and battery with intent to kill, you must
23 then determine whether the State has proven him guilty of
24 assault and battery of a high and aggravated nature.

25 Assault and battery of a high and aggravated

1 nature includes all the elements I just went over for
2 assault and battery with intent to kill, except the element
3 of malice.

4 In addition to proving an assault and battery, in
5 order to find Mr. Robinson guilty of assault and battery of
6 a high and aggravated nature, the State must also prove
7 beyond a reasonable doubt an aggravating circumstance.

8 Circumstances of aggravation include the use of a
9 deadly weapon; the intent to commit a felony; the infliction
10 of serious bodily injury; the great disparity between the
11 ages and physical conditions of the parties; a difference in
12 the genders of the parties -- I'm sorry, that one doesn't
13 apply. These are the examples that I have just given you
14 are just examples of aggravation, and you may consider any
15 other acts of aggravation which you deem are appropriate.

16 And attempted armed robbery is a felony.

17 I'm now going to define for you attempted armed
18 robbery:

19 Attempt is an effort to accomplish a crime which
20 does not succeed. An attempt includes a specific intent to
21 do a particular criminal act along with the act falling
22 short of the act intended.

23 The State must show more than mere preparation and
24 intent. There must be some overt act committed by the
25 defendant, here again that's Mr. Robinson, in an effort to

1 commit the crime.

2 Intent means intending the result which actually
3 occurred. Intent, of course, as I said a moment ago, does
4 not mean something that's accidental or involuntary. Intent
5 may be shown by acts and conducts of a defendant and from
6 other circumstances which you may naturally and reasonably
7 infer intent.

8 In order to prove attempted armed robbery, the
9 State must prove beyond a reasonable doubt that Mr. Robinson
10 attempted to take personal property from the person or
11 presence of another person.

12 Property is in the presence of a person if it is
13 within that person's reach or control so that the person
14 could, if not overcome with violence or prevented by fear,
15 keep possession of the property.

16 Money, currency is property.

17 The State must also prove beyond a reasonable
18 doubt that the defendant attempted to carry the property
19 away intending to permanently deprive the owner of the
20 property and keep the property for the defendant's own use.

21 The attempting taking and carrying away of the
22 property must have been done with violence or by putting the
23 owner of the property in fear of violence.

24 Finally, the State must prove beyond a reasonable
25 doubt that the defendant, here again Mr. Robinson, was armed

1 with a deadly weapon during the attempted armed robbery.

2 , Again, a deadly weapon is any article, instrument,
3 or substance which is likely to cause death or great bodily
4 harm.

5 Whether an instrument has been used as a deadly
6 weapon depends upon the facts and circumstances of the case.

7 Our legislature has made it a separate offense to
8 be in possession of a firearm during the commission of a
9 violent crime.

10 Both armed robbery and assault and battery with
11 intent to kill are violent crimes.

12 Here Mr. Robinson is charged with being in
13 possession of a pistol at the time of the commission of
14 those two offenses.

15 The State must prove beyond a reasonable doubt,
16 first, of course, that he committed the offense - either
17 attempted armed robbery or assault and battery with intent
18 to kill; and they must also prove that at the time he was in
19 possession of a firearm or visibly displayed what appeared
20 to be a firearm.

21 To convict Mr. Robinson of this offense, you must
22 first find him guilty, as I said, of at least one of those
23 violent crimes, but not of both.

24 Now, as to Mr. Tobbie, he is charged with
25 accessory after the fact.

1 To prove this crime, the State must prove beyond a
2 reasonable doubt that Mr. Tobbie knew that another person,
3 here being Mr. Robinson, committed a felony, and after the
4 crime intentionally helped the principal - Mr. Robinson - to
5 escape from arrest, conviction, or punishment.

6 Intentionally means willfully intending the result
7 which actually occurs.

8 Intentionally again means not accidentally or
9 involuntary.

10 Intent may be shown by acts and conduct of Mr.
11 Tobbie and other circumstances from which you may naturally
12 and reasonably infer intent.

13 Absence is not an element of the crime of
14 accessory after the fact.

15 If you find that Mr. Tobbie was merely present at
16 the scene where a crime occurred, but did not participate,
17 but became involved only after the commission of the crime,
18 you may find him guilty of being an accessory after the
19 fact.

20 Although the actions of the defendant may have
21 helped the principal to escape detection or arrest, this is
22 not enough to be accessory after the fact. The State must
23 also prove that Mr. Tobbie acted with the intention or with
24 the purpose of helping the principal to escape detection or
25 arrest. So if the person charged with being accessory after

1 the fact did not intend that his acts should help the
2 principal, the one committing the act escape detection or
3 arrest, then he's not an accessories after the fact, even
4 though his acts, in fact, may have resulted in helping the
5 principal escape detection or arrest. There must be some
6 affirmative act tending toward concealment of the commission
7 of the crime by Mr. Tobbie. Silence alone is not sufficient
8 to make a person an accessory after the fact of a felony.

9 As to both defendants, I charge you that the mere
10 presence of an individual at the scene of a crime merely
11 creates a suspicion and you cannot find someone guilty
12 because of suspicion.

13 Mere presence at or near the scene of the crime
14 does not in and of itself permit an inference to be drawn by
15 you that either defendant had knowledge of any criminal
16 plans which might have been formed.

17 Suspicious circumstances are not a justification
18 for the finding of guilt against the defendant.

19 Now, your verdict in these cases must be
20 unanimous. All twelve of you must agree. Once all twelve
21 of you have agreed, you are, Mr. Foreman, authorized to
22 enroll the verdict, and I'll tell you more about that in
23 just a moment.

24 Mr. Sawyer, you will remain with us as the
25 alternate and not go back in just a moment.

1 You are not to be considered by matters outside of
2 the record or by sympathy, passion, prejudice, public
3 opinion, or public fear.

4 While you are deliberating, if you have any
5 questions, first write them down on a piece of paper and
6 hand them to the bailiff. Knock on the door whenever you
7 want the bailiff. The bailiff will bring those notes to me.
8 I'll confer with the attorneys. After that it may be that I
9 can write a note on the -- write an answer on the note and
10 send it back. It may be that I will have to bring you in
11 here and answer to your question.

12 We can have testimony replayed, if you wish to do
13 that.

14 In South Carolina we do not send in a written
15 charge on the law, but if you wish me to go over any part or
16 all the law, let me know and I'll bring you back in here in
17 open court and go over the law with you.

18 When you have reached a verdict, knock on the door
19 and tell the bailiff and the bailiff will come and get me
20 and we will send for you as promptly as we can and bring you
21 back and receive the verdict here in open court.

22 When you first go into the jury room, do not start
23 deliberating because I have to go over my charge with the
24 attorneys. If I have made any error, I have to bring you
25 back in and correct them.

1 If I have not, I will send in the exhibits and the
2 bailiff will tell you to start deliberating, but don't get
3 to comfortable and don't start deliberating until you hear
4 from the bailiff.

5 Now, if you are deliberating and wish to take a
6 break, that's fine. Just when you are on break, you are all
7 on break. Your verdict has to be unanimous, so all twelve
8 of you are working or all twelve of you are on break.

9 Now, as to all the indictments except for the
10 assault and battery with intent to kill, I will go over that
11 in just a moment, on the back you will see the word verdict
12 and then four lines beneath, Mr. Foreman. The bottom line
13 is where you sign it, and you will date it below there and
14 the date is August 6th.

15 If, as to one, or all of these indictments, and
16 one is to Mr. Tobbie and two of these are as to Mr.
17 Robinson, if you find the State has failed as to the charge
18 in that indictment to prove Mr. Tobbie as to his and Mr.
19 Robinson as to his, guilty beyond a reasonable doubt, you
20 would on one of those four lines above your signature --
21 well, that would be three above your signature, write two
22 words - not guilty - if the State has failed to prove Mr.
23 Tobbie or Mr. Robinson guilty of the particular offense.

24 If, on the other hand, you find that the State has
25 proven beyond a reasonable doubt Mr. Tobbie and/or Mr.

1 Robinson guilty of a particular offense, you would enter the
2 one word - guilty - on that indictment.

3 It's little different on the assault and battery
4 with intent to kill, because, as I told you, there is what's
5 called a lesser included offense; that is, an offense that's
6 not as serious as the one that's charged, but one that you
7 may still consider, assault and battery of a high and
8 aggravated nature. So I have got a separate verdict form
9 and place for you to sign again and date.

10 There are three choices here. The order they are
11 in is of no significance. I have to put them in some order.
12 I always put them in this order. The fact that one precedes
13 the other does not mean it has any more emphasis than the
14 others.

15 The first is "we find the defendant, Travis
16 Deniele Robinson, guilty of assault and battery with intent
17 to kill." If that's the unanimous verdict of the jury, you
18 will put an X or a check on the little line in front of that
19 finding.

20 The second says "we find the defendant, Travis
21 Deniele Robinson, guilty of the lesser included offense of
22 assault and battery of a high and aggravated nature."

23 And if you find the State has failed to prove him
24 guilty of assault and battery with intent to kill, but has
25 proven beyond a reasonable doubt his guilt of assault and

1 battery of a high and aggravated nature, you would use the
2 second line, putting a check or an X.

3 The third line says "we find the defendant, Travis
4 Deniele Robinson not guilty." You would put a check in
5 front of that line, if the state has failed to prove Mr.
6 Robinson's guilt as to a charge, such as that charge, or
7 either of those charges beyond a reasonable doubt.

8 Now I'm going to let all you of you but Mr. Sawyer
9 go to the jury room, but as I said, don't get started yet.

10 (Whereupon, at 4:29 p.m., the jury panel went to
11 the jury room awaiting instructions to begin deliberations)

12 THE COURT: Mr. Lemel, Ms. Inzerillo?

13 MS. INZERILLO: Your Honor, we had requested an
14 entire charge on the prior inconsistent statement. I'm not
15 sure if heard Your Honor charge --

16 THE COURT: I didn't charge the whole charge. I
17 charged it the way I usually charge it. They consider the
18 inconsistencies in the statements.

19 MS. INZERILLO: Okay.

20 MR. DUNN: Nothing, Your Honor.

21 MR. SPRINGS: Nothing.

22 THE COURT: All right. We'll send in the verdict
23 form, the indictments and the exhibits.

24 Your charge again on prior inconsistent statement?

25 MS. INZERILLO: No. 4, Your Honor.

1 THE COURT: I think I charged them basically that
2 they can consider prior inconsistent testimony and --
3 anyway, I think I have got it.

4 All right.

5 MR. SPRINGS: We talked about the -- there are two
6 videos, being the security camera. It has to be played on a
7 computer and that type computer, there no such thing back
8 there. If they wanted to see it, they would have to come
9 back in.

10 The chase scene, that is a DVD. I guess I could
11 put a DVD back there, but if they wanted to see that, I
12 think they would have to come back out here.

13 And the last thing is I have to leave at five
14 o'clock, got to leave at five o'clock, so if I'm not here
15 after five, I just want to let you know that I won't be
16 here. Mr. Epting will be here.

17 THE COURT: All right. Well, I'm going to send a
18 note back to the jury rather than bring them back in. Why
19 don't y'all be checking the --

20 Mr. Sawyer, do you have anything in the jury room
21 that you need to get?

22 ALTERNATE JUROR: No, sir.

23 THE COURT: All right, you are through for the
24 week and you are through for the day, so you can leave. You
25 can stay if you want, but we appreciate your help. You can

1 turn in your badge. And, like I say, you can certainly
2 stay, if you want, but feel free to leave and you are
3 through. You don't have to call back or report back. Thank
4 you.

5 (Whereupon, the alternate charge was discharged)

6 THE COURT: Mr. Ivey?

7 THE BAILIFF: Yes, sir.

8 THE COURT: If you would -- just stand right
9 there. If you would, just when you go in, hand him that
10 note separate from the evidence. Just hand him that.

11 THE BAILIFF: Do you want the gun and the
12 ammunition to go in there?

13 THE COURT: They don't need to go in. They don't
14 need to go in, unless somebody has got some --

15 MR. SPRINGS: Both the bullets are not in
16 evidence. Can the gun go in?

17 THE COURT: Yeah, the gun can go in.

18 (Off the record)

19 (Back on the record)

20 (Whereupon, at 4:35 p.m., the jury panel was
21 instructed to begin deliberations).

22 (Whereupon, proceedings were recessed, pending the
23 verdict of the jury panel).

24 (Whereupon, at 6:07 p.m., proceedings were
25 reconvened)

1 THE COURT: We received a request from the jury
2 to -- for the recharge on assault and battery with intent to
3 kill and assault and battery of a high and aggravated
4 nature.

5 I'm going to make the note a Court's Exhibit. I
6 have consulted with counsel and we will now bring them in
7 and I'll also charge them.

8 Bring them in.

9 (Jury Note marked as Court's Exhibit No. 1 for
10 identification)

11 (Whereupon, at 6:09 p.m., the jury panel returned
12 to open court)

13 THE COURT: Mr. Foreman, I received your note and
14 let me apologize for us not sending for you sooner. We had
15 a computer crash. Our court reporter has to take everything
16 down and she has, while you went out, had the sheriff take
17 her to Rock Hill get her new computer and back, so we are
18 good to go now, but that's why we didn't send for you
19 sooner. Bless her heart.

20 All right. Assault and battery with intent to
21 kill, you have asked that I recharge you that and
22 distinguish it from assault and battery of a high and
23 aggravated nature, and that's what I will do at this time.

24 Mr. Robinson, and Mr. Robinson alone, has been
25 charged with assault and battery with intent to kill.

1 Now, to prove assault and battery with intent to
2 kill, the State must prove beyond a reasonable doubt that
3 Mr. Robinson committed an unlawful act of a violent nature
4 to the person of another with malice aforethought.

5 Assault occurs when a person unlawfully attempts
6 or offers to commit a violent injury upon another person and
7 had the present ability to complete the attempted injury.

8 An assault is the intentional creation of a
9 reasonable fear of immediate bodily harm.

10 It is not necessary that the attempted injury or
11 harm actually take place. And you recall my example that an
12 assault is raising my fist in an angry and rude manner where
13 I'm close enough to strike someone and they could believe
14 that I intended to strike them.

15 A battery is the unlawful touching of another
16 person by a person who has committed the assault.

17 An unlawful touching can be caused by a part of
18 the accused body or by any object the accused puts in
19 motion.

20 A battery is the completion of an assault by using
21 or applying force to another person, however slight, in a
22 rude, angry, or resentful manner, without legal
23 justification for so doing.

24 My example earlier, assault, and then my battery
25 is I go forward; or, if I hold up a rock to throw it and you

1 think I'm going to throw it, that would be an assault, even
2 though you are further away than I could hit you with my
3 fist and then I threw the rock and hit you with it. That
4 would be a battery.

5 Malice, which is required, there must be malice
6 present before one could be convicted of assault with intent
7 to kill, malice aforethought, malice is hatred, ill will, or
8 hostility towards another. It does not necessarily, or
9 malice does not necessarily import ill will toward the
10 particular individual who has been injured, but signifies
11 rather a general malignant recklessness for the lives and
12 safety of others.

13 Malice is the intentional doing of a wrongful act
14 without just cause or excuse and with an intent to injure,
15 or under circumstances in which the law would infer an evil
16 intent.

17 Malice aforethought does not require that malice
18 exists for any particular time before the act is committed,
19 but malice must exist in the mind of a defendant just
20 before and at the time the act is committed. Therefore,
21 there must be a combination of the previous evil intent and
22 the act.

23 Malice may be conceived at the very moment the
24 assault occurs.

25 Malice aforethought may be express or inferred.

1 These terms do not mean different kinds of malice, but
2 merely the manner in which they may be shown to exist; that
3 is, either by direct evidence or by inference from the facts
4 and circumstances which have been proven.

5 Express malice is shown when a person speaks words
6 which express hatred or ill will for another, or when a
7 person prepared beforehand to do the act which was later
8 accomplished. For example, acts of preparation going to
9 show that the deed was within the defendant's mind would be
10 considered express malice.

11 Malice may be inferred from conduct showing a
12 total disregard for human life.

13 Inferred malice may also arise when the deed is
14 done with a deadly weapon. A deadly weapon is any article,
15 instrument, or substance which is likely to cause death or
16 great bodily harm.

17 Whether an instrument has been used as a deadly
18 weapon depends on the facts and circumstances of a
19 particular case.

20 If facts are proven beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, this inference would be simply an evidentiary
23 fact to be considered by you, along with the other evidence
24 in the case, and you may give this inference such weight, if
25 any, you should decide it should receive.

1 A specific intent to kill is not an element of
2 assault and battery with intent to kill, but there must be a
3 general intent to commit serious bodily injury.

4 Intent means intending the result which actually
5 occurs. Intent is not something that's accidental or
6 involuntary. Intent may be shown by acts and conducts of
7 the defendant and from other circumstances for which you may
8 naturally and reasonably infer intent. Evidence of the
9 character of the assault; the character of the instrument
10 used; the manner in which it was used; the purpose to be
11 accomplished; and any resulting injuries or wounds may be
12 considered in determining intent with which the assault was
13 committed.

14 Intent may be inferred when it was demonstrated
15 that a defendant voluntarily and willfully commits an act
16 the natural tendency of which is to destroy another's life.

17 Now, assault and battery with intent to kill must
18 be proven beyond a reasonable doubt by the State and it
19 requires malice, as I have explained to you.

20 Included within the offense of assault and battery
21 with intent to kill is the lesser included offense of
22 assault and battery of a high and aggravated nature.

23 If you find the State has failed to prove Mr.
24 Robinson guilty of assault and battery with intent to kill,
25 you must then determine whether the State has proven him

1 guilty of assault and battery of a high and aggravated
2 nature.

3 Assault and battery of a high and aggravated
4 nature includes all the elements of assault and battery with
5 intent to kill except malice aforethought.

6 In addition, the State must prove beyond a
7 reasonable doubt an aggravating circumstance.

8 The difference is assault and battery with intent
9 to kill requires malice. Assault and battery of a high and
10 aggravated nature does not require malice, but does require
11 an aggravating circumstance.

12 Circumstances of aggravation include the use of a
13 deadly weapon; intent to commit a felony; the infliction of
14 serious bodily injury. And as I said earlier, these are
15 examples of aggravation, and you may consider such other
16 circumstances of aggravation as you deem appropriate.

17 The State again, if it has not proven assault and
18 battery with intent to kill beyond a reasonable doubt, in
19 order for you convict of the lesser, they still would have
20 to prove that offense beyond a reasonable doubt.

21 If they have failed to prove either of those,
22 then, of course, you would find Mr. Robinson not guilty as
23 to those charges.

24 Now, it's 6:15. It takes about an hour to get a
25 meal here. If you decide you want us to order a meal, just

1 send out word and we will send in -- we probably will order
2 from a place called Italian Garden. They have sandwiches
3 and salads. And if you decide -- Mr. Foreman, if the jury
4 decides they are going to be here long enough so that they
5 want to have a meal, let us know and we will start working
6 on that, but it does take about an hour for us to get it
7 here, so I want you to be aware of that.

8 You may return to the jury room.

9 (Whereupon, at 6:16 p.m., the jury panel returned
10 to the jury room to continue their deliberations)

11 THE COURT: Any exceptions by the State?

12 MR. SPRINGS: None from the State.

13 THE COURT: Mr. Lemel?

14 MR. LEMEL: No, sir.

15 THE COURT: Mr. Dunn?

16 MR. DUNN: No, sir.

17 THE COURT: All right. We will continue to be at
18 ease and I'll -- if y'all just kind of hover around not too
19 far. We will let you know what we are hear from them, if
20 anything, regarding whether they wish to send out for a
21 meal.

22 (Whereupon, at 6:18 p.m., proceedings were
23 recessed, pending the verdict of the jury panel)

24 (Whereupon, at 6:30 p.m., proceedings were
25 reconvened)

1 THE COURT: I understand we have verdicts in these
2 cases.

3 There is quite a few people here. I will tell you
4 in advance I don't, of course, know what the verdict is.
5 Whatever the verdict is, the court will not tolerate any
6 outbursts. If anyone feels they cannot control their
7 emotions, they need to leave now, because if there are any
8 outburst, they will leave not through that door but through
9 that door for at least 30 days in jail. So if you can't
10 control your emotions, please leave.

11 Bring in the jury.

12 (Whereupon, at 6:31 p.m., the jury panel returned
13 to open court to report its verdict)

14 THE COURT: Mr. Foreman, I understand the jury has
15 reached verdicts?

16 JURY FOREMAN: Yes, Your Honor.

17 THE COURT: If you will hand them to the bailiff,
18 he will hand them up to me.

19 All right. Madam Clerk.

20 THE CLERK: Indictment 2008-GS-46-854, the State
21 versus Travis Deniele Robinson, we find the defendant Travis
22 Robinson guilty of assault and battery with intent to kill.

23 It's signed by the foreperson, dated today's date.

24 Indictment 2008-GS-46-855, State versus Travis
25 Robinson, indictment for possession of a firearm during the

1 commission of a violent crime. Verdict guilty. Signed by
2 the foreperson, dated today's date.

3 Indictment 2008-GS-46-856, the State versus Travis
4 Robinson, indictment for attempted armed robbery, verdict
5 guilty, signed by the foreperson, dated today's date.

6 Indictment 2008-GS-46-2770, the State versus
7 Quinton Tobbie, indictment for accessory after the fact of
8 attempted armed robbery, verdict guilty, signed by the
9 foreperson, dated today's date.

10 Ladies and gentlemen of the jury, if that be your
11 verdict, so say you all by raising your right hand.

12 Let the record show that all jurors raised their
13 hand.

14 THE COURT: Anything, Mr. Lemel, on behalf of Mr.
15 Robinson before the jury is dismissed?

16 MR. LEMEL: Your Honor, can we poll the jury,
17 please?

18 THE COURT: Anything on behalf of Mr. Tobbie?

19 MR. DUNN: Poll the jury, Your Honor.

20 THE COURT: The clerk is going to go through with
21 each one of you and ask you to tell us whether you confirmed
22 that verdict -- those verdicts.

23 THE CLERK: Could y'all please stand.

24 Mr. Foreman, is this your verdict?

25 JURY FOREMAN: Yes.

1 THE CLERK: Is this still your verdict?

2 JURY FOREMAN: Yes.

3 THE COURT: After you answer, you can be seated so
4 we will know.

5 THE CLERK: Number 23, Jackie Brotherton, is this
6 your verdict?

7 JUROR NUMBER 23: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NUMBER 23: Yes.

10 THE CLERK: No. 176, Deborah Pettus, is this your
11 verdict?

12 JUROR NUMBER 176: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NUMBER 176: Yes.

15 THE CLERK: Number 231, Martetus Walker, is this
16 your verdict?

17 JUROR NUMBER 231: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NUMBER 231: Yes.

20 THE CLERK: Number 93, Maureen Hlavacek, is this
21 your verdict?

22 JUROR NUMBER 93: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 93: Yes.

25 THE CLERK: No. 149, Tammie Moore, is this your

1 verdict?

2 JUROR NUMBER 149: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR NUMBER 149: Yes.

5 THE CLERK: Number 69, Kathy Francis, is this your
6 verdict?

7 JUROR NUMBER 69: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NUMBER 69: Yes.

10 THE CLERK: No. 119, Andrea Ladrach, is this your
11 verdict?

12 THE COURT: She's the one that we dismissed, so
13 she's not with us, but Ms. Gunter is, the alternate.

14 THE CLERK: No. 183, Melissa Hamilton, is this
15 your verdict?

16 JUROR NUMBER 83: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR NUMBER 83: Yes.

19 THE CLERK: Number 74, Kaleena Gibson, is this
20 your verdict?

21 JUROR NUMBER 74: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR NUMBER 74: Yes.

24 THE CLERK: Number 87, Stephen Hayko, is this your
25 verdict?

1 JUROR NUMBER 87: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR NUMBER 87: Yes.

4 THE CLERK: No. 142, Charles Mobley, is this your
5 verdict?

6 JUROR NUMBER 142: Yes.

7 THE CLERK: Is this still your verdict?

8 JUROR NUMBER 142: Yes.

9 THE CLERK: Number 80, Diane Gunter, is this your
10 verdict?

11 JUROR NUMBER 80: Yes.

12 THE CLERK: Is this still your verdict?

13 JUROR NUMBER 80: Yes.

14 THE CLERK: Thank you.

15 THE COURT: Thank you all.

16 Anything else, Mr. Lemel?

17 MR. LEMEL: No, sir, Your Honor.

18 THE COURT: Anything else, Mr. Dunn?

19 MR. DUNN: No, sir.

20 THE COURT: Members of the jury panel, this
21 finishes your work for the week. I do not require you to
22 stay. The next process will be when I sentence the
23 defendants. You can go around and come in the front, if you
24 wish, but I don't require it. You might be ready to leave,
25 but you are through for the work. We are not going to start

1 another trial in this room or the other, so you are through
2 for the week. We appreciate your service and you will be
3 mailed a check. Just hand the bailiff your badges as you go
4 out.

5 And if you wish to come in, you certainly can.
6 The bailiff will make sure that those last two rows are
7 available. The bailiffs will make sure that those last two
8 rows are available. Mr. Dunlap, just have those last two
9 rows on your right available, if the jury wants to come back
10 in.

11 All right, you may exit. Thank you so much for
12 your help.

13 (Whereupon, at 6:40 p.m., the jury panel was
14 discharged).

15 THE COURT: All right, Mr. Lemel, anything at this
16 point?

17 MR. LEMEL: Your Honor, I would ask the court to
18 set aside the verdict and grant a new trial in this matter
19 based on the grounds previously argued.

20 THE COURT: That's denied.

21 Mr. Dunn?

22 MR. DUNN: The same argument, Your Honor. We
23 would ask that you set aside the verdict and grant us a new
24 trial, based on the previously noted directed verdict and
25 the motions.

1 THE COURT: Those motions are denied.

2 If you will bring the defendants around and hand
3 me the sentencing sheets.

4 Do either of these -- I know I should remember,
5 but any past record on either of these?

6 MR. SPRINGS: Yes, Your Honor.

7 On Travis Robinson, he has a juvenile conviction
8 from 2005, an unlawful carrying of a pistol.

9 2007, a misdemeanor conviction for resisting
10 arrest.

11 Possession of marijuana under one-half ounce.

12 Drugs paraphernalia and concealed weapon.

13 Quinton Tobbie has a 2006 conviction for
14 conspiracy to commit armed robbery, which was pled down.

15 A 2007 conviction for second degree trespass.

16 THE COURT: All right. Both of these gentlemen
17 have prior records, and one, Mr. Tobbie's, is very similar
18 to what he's got now.

19 Mr. Dodd, anything that you want to tell me?

20 SAVALAS DODD: Yeah, I would like --

21 THE COURT: Stand right there.

22 SAVALAS DODD: I just want to say my life has been
23 changed drastically. I mean, I --

24 THE COURT: All right.

25 Okay, you are Mr. Dodd's dad?

1 GRADY LOCKHART: Yes, sir.

2 THE COURT: Your name?

3 GRADY LOCKHART: Grady Lockhart.

4 THE COURT: Grady Lockhart?

5 GRADY LOCKHART: Yes.

6 THE COURT: Yes, sir, tell me what you want to
7 tell me.

8 GRADY LOCKHART: I just -- you know, I would just
9 ask that the court, you know, due to these kids age, let
10 that be a consideration in the sentence. I mean, I would
11 ask the court to be lenient. Although I realize what had
12 happened is drastic, I still ask for leniency for these
13 kids.

14 THE COURT: That's very generous of and I
15 appreciate you asking that, but they do have some
16 substantial records. This is not their first brush with the
17 law.

18 Anything else from the State?

19 MR. SPRINGS: Nothing further from the State.

20 THE COURT: Mr. Lemel, I would be glad to hear
21 from you on behalf of Mr. Robinson, and then anybody on
22 their behalf.

23 MR. LEMEL: Thank you, Your Honor.

24 Your Honor, I know the court is aware of the
25 record. Given what it's for, I recall it's not a long and

1 significant record. I mean, everything in there is a
2 misdemeanor level. Some of it -- the majority of it is when
3 he was a juvenile for -- you know, the resisting arrest is
4 probably the most serious thing on there.

5 Travis has been a model client for me. He's been
6 very respectful to me. He's been up front with me, has
7 never tried to do anything. In my dealings with him, he has
8 understood exactly what's going on and has always taken
9 responsibility for what he did do.

10 THE COURT: Now, wait a minute. Don't tell me
11 he's taken responsibility for what he did do. He has just
12 been found guilty. He pled not guilty --

13 MR. LEMEL: I understand.

14 THE COURT: -- so -- you are his lawyer and you
15 can certainly reflect to the court that you believed that
16 he's not guilty, but --

17 MR. LEMEL: I do, Your Honor, and I do not mean to
18 take that as a manner -- he has never, Your Honor, tried to
19 say that he wasn't there. He's never tried to lie about
20 that aspect of it, or anything of that nature, Your Honor,
21 and that's what I was referring to.

22 And, you know, of course, the jury disagrees with
23 him and we accept that and that's where we are at at this
24 point, but I wanted the court to know that he has been a
25 model client for me.

1 He's got a little baby who's been here. His mom
2 is here and she sat here throughout the case. His
3 grandmother is here. She's been here throughout the case.
4 I believe that his mom is wanting to address the court
5 briefly about Travis a little bit.

6 THE COURT: All right. Yes, ma'am.

7 TRAVIS ROBINSON'S MOTHER: Yes, Your Honor.
8 Travis is my baby boy and I understand what he's been
9 charged for and what he has been convicted of, but Travis
10 has a history of -- for one, he lost his oldest brother,
11 which was a father figure to him, at a very young age. He
12 now has a six month old baby. He has a family that's very,
13 very supportive and tried to the best of our ability to lead
14 and guide him in the right direction. He was raised and
15 brought up in the church and just did wrong. He's at a
16 very -- at a very young age, and I realize that he has made
17 some mistakes coming up, but one thing that I can say is
18 that being the effect that it took on him once his brother
19 got murdered, it probably gave Travis a turn for the wrong
20 road, but at the time of this incident I can say that Travis
21 had tried to get things straightened back out with -- had
22 gotten a job, was trying to prepare himself to be a father,
23 so I do ask for mercy of the court and to offer him a
24 retrial.

25 THE COURT: Well, I'm certainly not going to give

1 him a retrial, but it does -- it's interesting, and I
2 understand you are his mom and I'll take your word for it,
3 but it's interesting that someone would shoot somebody after
4 they had lost a family member to murder, but I don't try to
5 figure out why people do what they do, but thanks for your
6 input.

7 Anybody else?

8 MR. LEMEL: Your Honor, we are -- obviously very
9 important, as far as victim's statements, but Travis is a
10 very young man. He's still a teenager and in my
11 consultations with him, he's a bright young man. He had a
12 future and obviously that's so -- we just ask for whatever
13 mercy the court could possible show. He's never been to
14 prison before. This is the first time. He will be going to
15 decades, I'm sure. Just whatever the mercy the court sees
16 fit.

17 THE COURT: All right.

18 MR. DUNN: If it please the court, we would also
19 ask that you -- Mr. Tobbie's is concerned, that you consider
20 his age. As the victim's father asked, he's 19. My
21 understanding he was 18 at the time this happened.

22 He's here with his mother, his grandmother, his
23 brother, his baby's girlfriend -- or baby's mother. And the
24 little baby that's been in and out of the courtroom for last
25 three days is his baby daughter. She's six months old.

1 Your Honor, I just -- I would ask for mercy on the
2 court as well.

3 The evidence that's he presented, you know,
4 besides -- you know, obviously the jury disagrees with it,
5 but that being said, you know, the evidence is what it is.
6 We just ask for mercy at this point.

7 He does have a prior where he pled guilty to a
8 prior robbery charge. My understanding from talking with
9 Travis is that he -- unfortunately it was a lot like this
10 one. He was --

11 THE COURT: Travis?

12 MR. DUNN: I'm sorry, Quinton.

13 A lot like this one, he was -- he could have done
14 a better job picking his friends. He wasn't actively
15 participating in the robbery, but he was there and had the
16 result for the victim. The advice that he was given and the
17 circumstances, he pled guilty to a lesser charge as common
18 law robbery or equivalent. Like I said, he makes poor
19 choices of who he hangs out with, I reckon, but we would ask
20 that, based on his age and what he was convicted of. He
21 wasn't convicted as a principal. He was convicted of an
22 accessory, that he be given a light sentence.

23 THE COURT: Mr. Robinson, anything that you want
24 to say?

25 DEFENDANT ROBINSON: Just that pretty much like

1 the man said, I disagree with what was presented today, but
2 I know I can't change that, but I do have a family that I
3 know they stand behind me very much. And I have a son who
4 is six months old and hadn't really laid hands on his father
5 yet. I would ask that you whatever kind mercy you can give
6 me, that you do, so that I may have a chance to see my son
7 grow up.

8 MR. DUNN: Your Honor, I forgot to -- Quinton's
9 mother would like to say something.

10 THE COURT: Yes, ma'am, your name?

11 ROSILAND GRANT: Rosiland Grant. I'm Quinton
12 Tobbie's mother, Your Honor, and I was just asking that you
13 have mercy on him. I know that he admitted to being in the
14 crime. As I told him, you know, be careful about who you
15 get in the car with and do the things like that. He was
16 brought up in the church. I mean, good kid. You know, we
17 were knew to the area of Charlotte. (Inaudible) and I left
18 there because of a domestic relationship I was in and we
19 moved here and we didn't know anybody. Didn't have any
20 family here. And I think he just took to the wrong friends,
21 wrong people to hang out with.

22 Prior to moving here Quinton had never been in
23 trouble, not even a suspension from school.

24 THE COURT: Well, now, they just -- I always hate
25 to interject on a parent, but they just told me that he pled

1 guilty to a robbery charge.

2 ROSILAND GRANT: I said prior to --

3 THE COURT: Oh, prior to that, okay.

4 ROSILAND GRANT: He was with somebody else then.

5 He was -- he was on his way to school. He was on his way to
6 school. And, like I said, he was in the house before dark
7 every day. I think that other incident happened during the
8 daytime. You know, I don't know all with him in the
9 streets, but, you know, like I said, not being here, not
10 knowing anybody, not having any family, I think the people
11 that he chose to hang around is not good people. I just
12 pray and ask that you would have mercy on him.

13 THE COURT: Thank you.

14 ROSILAND GRANT: This is my oldest son.

15 DEFENDANT ROBINSON'S BROTHER: How are doing
16 today, Your Honor?

17 THE COURT: I'm okay. How are you? What's your
18 name?

19 DEFENDANT ROBINSON'S BROTHER: (Inaudible).

20 20 years -- well, 19, he is my brother, my little
21 brother, and neither one of my dads really don't have, so I
22 always did my best to try to show my brother what was
23 happening, but I can't be around 24/7, so, you know, being
24 my age difference, went to different schools. When I was in
25 high school, he was in middle school. I believe at that

1 particular time I wasn't in town, because I always told him
2 that if it's five in the morning, call me and I'll come get
3 you. Then I don't know what happened, but I know my brother
4 and if he did something wrong, he would admit to what he
5 did, but he looked me in my eye and told me that he was just
6 trying to catch a ride. So, I mean, I can't change, you
7 know, the outcome. I ask you to take that into
8 consideration.

9 THE COURT: All right. Thank you.

10 Of course, Mr. Lemel, your client was packing a
11 gun when he was arrested. There wasn't a gun found that was
12 used in this, but he's up to mischief.

13 MR. LEMEL: He's already pled guilty to that.

14 THE COURT: I understand, but -- all right.

15 Mr. Tobbie, anything that you want to say?

16 DEFENDANT TOBBIE: Yes. Yes, sir. That -- that
17 last what I pled to was I was going to school and they got
18 in a traffic stop. I had on my school uniform and
19 everything. And I didn't know what they had in the car.
20 And, you know, I pled guilty to that so something like this
21 wouldn't happen.

22 Your Honor, I would -- I paid \$20 to get a ride
23 home and I still got on the bus, Your Honor.

24 I mean, I don't try to make any excuses for what I
25 do or anything, Your Honor, just I didn't do anything, Your

1 Honor. I mean, it showed that I didn't do anything. I was
2 just -- I was really just trying to get home to my pregnant
3 girlfriend, because that's -- we were living together at the
4 time and that's why I was really rushing home, Your Honor.
5 I'm not trying to make any excuses. I just -- I'm very,
6 very, very, very sorry for what happened to Mr. Dodd.
7 That's why I cooperated with the police as much as I can.
8 If I knew who that was, Your Honor, I would have told them
9 who that was. They just offered me a ride home for 20
10 bucks, Your Honor, and I gave it to them, but I was trying
11 to get home to my pregnant girlfriend, because she was going
12 through a lot, and I was going through a lot. My brother
13 was out of town and I -- I should have got on the bus. I
14 made the wrong decision. It's basically caused me a big
15 concern in my life, Your Honor, but I just want to ask can
16 you put any kind of leniency to where I could see my
17 daughter grow up? You know, I mean I would -- I mean, I
18 would have took the victim's spot. My momma raised me up to
19 being a man. That's one of the responsibilities of being a
20 man. I would have took responsibility for my actions, Your
21 Honor. This I had nothing to do with, and I seem to be
22 getting sentenced to something that I did not do, but I
23 would not make any kind of excuses. I'm very sorry for Mr.
24 Dodd and I'm very sorry to you, because -- I have been shot,
25 too, Your Honor, so I know how it feels to be hit with a

1 bullet. It's something very, very, very serious, Your
2 Honor. That's why I tried to give the police everything
3 that they could to everything they asked me, but -- and, I
4 mean, if I knew who had the gun, Your Honor, I would have
5 told them. But, I mean, I'm just asking for mercy on the
6 court.

7 THE COURT: All right. Mr. Robinson, on your
8 attempted armed robbery, the sentence is 20 years.

9 On your assault and battery with intent to kill,
10 that's 20 years to run concurrent.

11 On the possession of a firearm during the
12 commission of a felony, that's also -- that's five years,
13 and they are all to run concurrent.

14 Do you understand that?

15 DEFENDANT ROBINSON: They run concurrent, Your
16 Honor?

17 THE COURT: They run all at one time.

18 You serve one day, you serve for all three.

19 MR. LEMEL: Your Honor, can he be given credit for
20 the time he's done.

21 THE COURT: I'll give you credit for any time you
22 have already been in jail, since -- I guess that's about a
23 year.

24 MR. LEMEL: Yes, sir.

25 THE COURT: All right. Mr. Tobbie, I'm sentencing

1 you to 15 years, and I will give you credit for any time
2 that you served in jail also.

3 Do you understand, Mr. Tobbie?

4 DEFENDANT TOBBIE: Yes, sir.

5 THE COURT: Thank you.

6 MR. DUNN: Do you want to say something?

7 DEFENDANT TOBBIE: No, sir.

8 THE COURT: Mr. Dunlap, would you escort that
9 juror out, please? I don't want them to be bothered by
10 anybody standing out there.

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for YORK County, South Carolina, on the
9 4th, 5th and 6th days of August, 2008.

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

12 I also attest to the fact that I am typing this
13 transcript of Janet Rich, Resident Court Reporter for Judge
14 John C. Hayes, III.

15
16
17 JUNE 24, 2009
18
19

20 

21 Michael R. Watts
22 Circuit Court Reporter
23
24
25

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA 2011 DEC 13 AM 8:49 In the Court of Common Pleas

County of YORK DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

TRAVIS D. Robinson

Full name and prison number, if any, of applicant.

APPLICATION FOR

v.

POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA

Name of Respondent

DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

2011 DEC 12 PM 2:29

FILED - RECEIVED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence IN THE COURT OF General Sessions York County Courthouse
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-65 46-854 65-46 855 - 65-46-856
 - (b) 08-46-1304-65-46-2770
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 6, 2008 Attempted ARM Robbery 20 years
 - (b) ASSAULT AND Battery with Intent to Kill 20 years Concurrent
 - (c) possession of Fire Arm during Commission of violent crime 5 years concu

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
(b) after a plea of not guilty ☒ _____
(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. THE SOUTH Carolina Court of Appeals.
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. AFFIRMED Conviction
ii. _____
iii. _____

(c) the date of each such result:

- i. Submitted January 1, 2011. Filed January
ii. 25, 2011.
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished opinion NO. 2011-4P-022
ii. _____
iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
(b) _____
(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE Assistant of TRIAL Counselor
(b) Violation of Applicant Due process Rights / After Discovered Evi
(c) INEFFECTIVE Assistant of Appellate Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE Attachment Document

AS well AS Discoverable Materials and Transcript-

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NA

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NA

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NA

(d) any other petitions, motions or applications in this or any other Court?

NA

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NA

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) HAD TO EXHAUST Appeal guidelines First
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NA
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Appellate Attorney

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Gary LEMEL Asst. Public Defender &
- ii. MELISSA INZERILLO Asst. Public Defender
- iii. Public Defenders Office York County

(b) the proceedings at which each such attorney represented you:

- i. Both Attorneys Trial Counselor
- ii. LaNelle Contey Duval Appellate Defender on
- iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

Applicant Request AN Evidentiary Hearing to bring forth Exculpatory Evidence to be presented to the Court

19. Are you now under sentence from any other court that you have not challenged?

NA

Attachment10. A. INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant contends that his United States and South Carolina Constitutional Rights to be Represented by an effective Counsel during those sessions of criminal proceedings designated as crucial were violated and the Courts for whatever reasoning continued with the disposition of the allegations Attempted ARM Robbery, Assault and battery attempt to kill, and possession of a firearm during a commission of a violent crime, Denying Applicant the opportunity to put up an defense on his behalf. At the Aforementioned hearing, Applicant did not have Counsel to represent him Consistently or pursuant as Rights are set forth in the United States Constitution and the South Carolina Code of Laws.

Applicant Alleges for the following reasons he is being held in custody unlawfully.

- A. Trial Counsel Fail to properly Investigate, As well As review Applicant previous File and history and prepare for trial.
- B. Trial counsel Failed to Call expert witness and lay witness from the crime scene on Applicants behalf.
- C. Trial Counsel Failed to suppress the States evidence.
- D. Trial Counsel Failed to present exculpatory evidence which was ~~was~~ A video that was not clear enough to show the real culprit photograph.
- E. Failure to object and challenge the States Eyewitness Testimony and credibility of the eyewitness statements.
- F. Failure to Challenge the Forensic Experts testimony
- G. Failure to properly conduct Discovery.
- H. Trial counsel Failure and Refusal to object to improper Malice charge which swithed the Burden of Proof, from STATE TO DEFENDENT.

INEFFECTIVE ASSISTANCE OF Appellate Counsel 761

A. Appellate Counsel Failed to properly research case and present proper issues including but, not limited to the structural errors made by the Trial judge in reference to the Exculpatory Evidence, which was video documented that would have excluded Applicant of the crime if the Tape would have been cleaned and the true Identity of the Culprit in the video would have been revealed.

Violation of Due process

A. There is no sound or lawful reason for the State not to do A comprehensive Review on why Trial counsel Did not allow Applicant to have Culpary process of obtaining witnesses in his favor which would have given Applicant A complete defense, As well as Ascertain Each and Every Allegator Thoroughly Review Each piece of Evidence, AN IF there is Evidence that is EXculpatory in Nature To Eliminate Applicant As A assailant in this crime.

After Discovered Evidence

A. VIDEO Documentation Key Evidence to be reviewed By the Court To Determine IF A Judicial corrective process NEEDS TO BE DONE.

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF York)

I, Travis D. Robinson, 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.

Travis D. Robinson

Sworn to and subscribed before me

This 8th day of November, 2011.

James T. McEntee, Jr.

Notary Public for South Carolina

My Commission Expires November 7, 2016

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Travis D. Robinson, 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.

Travis Robinson
Applicant

Sworn to and subscribed before me

This 8th day of November, 2011.

James T. McEntee, Jr.

Notary Public for South Carolina

My Commission Expires November 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Travis D. Robinson, #330152,

2011-CP-46-4651

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on December 12, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2008 term of the York County Grand Jury for Attempted Armed Robbery (2008-GS-46-0856), Assault and Battery with Intent to Kill (ABWIK) (2008-GS-46-0854), and Possession of a firearm during the commission of a violent crime (2008-GS-46-0855). Gary Lemel, Esquire, represented him. On August 6, 2008, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for twenty (20) years for Attempted Armed Robbery, twenty (20) years, concurrent, for ABWIK, and five (5) years, concurrent, for Possession of a firearm during the commission of a violent crime.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Robinson, Op. No. 2011-UP-022 (filed

January 25, 2011). The Remittitur was issued on February 18, 2011.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counselor"
 - a. "Trial counsel fail to properly investigate, as well as review Applicant previous file and history and prepare for trial"
 - b. "Trail counsel failed to call expert witness and lay witness from the crime scene on Applicant behalf"
 - c. "Trial counsel failed to suppress the states evidence"
 - d. "Trial counsel failed to present exculpatory evidence which was a video that was not clean enough to show the real culprit photograph"
 - e. "Failure to object and challenge the state eyewitness testimony and credibility of the eyewitness statements"
 - f. "Failure to challenge the Forensic experts testimony"
 - g. "Trial counsel failure and refusal to object to improper malice charge which switched the burden of proof, from State to Defendant"
2. "Violation of Applicant Due Process rights"
3. "Ineffective assistance of appellate counsel"
 - a. "Appellate counsel failed to properly research case and present proper issues..."

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Record on Appeal, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make

appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 30, 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2011-CP-46-4651

Travis D. Robinson, 330152

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

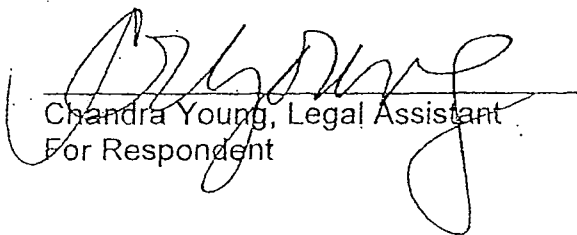
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Julia M. Bass, Esquire
1039 44th Ave North Ste 102
Myrtle Beach, South Carolina 29577

DATED this 6th day of April, 2012.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 TRAVIS D. ROBINSON,

4 Plaintiff,

5 Case No.

6 -against-

2011-CP-46-4651

7 STATE OF SOUTH CAROLINA,

8 Defendant.

9 -----x

10 October 10, 2012

11 Spartanburg, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON

15

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

17 J. RUTLEDGE JOHNSON, Esquire

18 Attorney for the State

19

20 JULIA BASS, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Travis Robinson				
4	Ms. Bass	5		22	
5	Mr. Johnson		19		24
6					
7	Gary Lemel				
8	Mr. Johnson	24		46	
9	Ms. Bass		34		47
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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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6		No Exhibits Marked		
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1 MR. JOHNSON: May it please the court,
2 Your Honor.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: This is case of Travis
5 Robinson versus state of South Carolina, case
6 2011-CP-46-4651. Mr. Robinson was indicted the
7 June 2008 term, York County for attempted
8 armed robbery, assault and battery with intent to
9 kill and possession of firearm during the
10 commission of a violent crime.

11 On August 6, 2008 he proceeded to a jury
12 trial pursuant to which he was found guilty of
13 all charges as indicted. The Honorable John C.
14 Hayes sentenced him to confinement for 20 years
15 for attempted armed robbery, twenty years
16 concurrent for the ABWIK, five years concurrent
17 for possession of a firearm during the commission
18 of a violent crime. There was a notice of appeal
19 filed and appeal perfected. South Carolina
20 Court of Appeals affirmed his conviction and
21 sentence. The remitter was thereafter issued on
22 February 18th 2011.

23 Mr. Robinson filed a timely PCR application
24 on December 12, 2011. The State filed its return
25 April 6, 2012 and he is represented here today by

1 Miss Julia Bass.

2 THE COURT: Miss Bass.

3 MS. BASS: Yes, Your Honor. We are prepared
4 to go forward.

5 THE COURT: Okay.

6 MS. BASS: May it please the Court. I call
7 Travis Robinson to the stand please.

8 THE COURT: All right.

9 TRAVIS ROBINSON, called as a witness, having
10 been duly sworn by The Clerk, was examined and
11 testified as follows:

12 THE COURT: All right. Whenever you are
13 ready.

14 MS. BASS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. BASS:

17 Q. Travis, you don't have a copy of your post
18 conviction relief?

19 A. I don't.

20 THE COURT: Here is one. I got one here.

21 MS. BASS: Could we pass that to him.

22 (Whereupon a document was handed to the
23 defendant.)

24 Q. Mr. Robinson, let me know if you have any trouble
25 hearing me. You are currently housed at the Department

1 of Corrections; is that correct?

2 A. Yes, that is correct.

3 Q. And what charges were you convicted of?

4 A. Assault and battery with intent to kill, and
5 attempted armed robbery and possession of a firearm
6 during a violent crime.

7 Q. And that trial was in August of 2008; is that
8 correct?

9 A. That's correct.

10 Q. And who were your attorneys?

11 A. Gary Lemel and Melissa Inzerillo.

12 Q. And did you file at some point a post conviction
13 relief application?

14 A. Yes, I did.

15 Q. And what were the grounds that you made against
16 Miss Inzerillo and Mr. Lemel?

17 A. Ineffective assistance of counsel.

18 Q. Okay, and Your Honor has a copy of the
19 application. So does Mr. Johnson. Lets go through
20 those one by one, and I believe it is a page and a half;
21 is that correct?

22 A. That is correct.

23 Q. On the first ground, what was the ground that you
24 alleged against your attorney?

25 A. Yeah. Failure to defend. He didn't properly

1 investigate into my case. I wondered why he didn't ask
2 for a continuance on the grounds of a mug shot photo
3 that was brought by the investigator in my case.

4 Q. Okay. Let's start with that. You are with the
5 public defender's investigator; is that correct?

6 A. That's correct.

7 Q. How many days was it prior to your trial?

8 A. That I first originally met with my attorney?

9 Q. You met with the public defender's investigator,
10 correct?

11 A. Yes. Yes.

12 Q. And this was right before the trial?

13 A. Uh-huh. Yes.

14 Q. How many days before your jury trial?

15 A. One. Two at the most.

16 Q. Okay. What happened when you met with the public
17 defender's investigator?

18 A. He came in with a photo. It was a mug shot. You
19 could tell it by a mug shot by the look of it. He
20 showed it to me. Asked if I knew who it was. I looked
21 at it. I let him know it was the shooter.

22 Q. It was the shooter of Sabalas Dodd from your
23 case?

24 A. Yes.

25 Q. And let me just ask you a couple of questions.

1 Was there any gunshot residue found on you after the
2 shooting?

3 A. No.

4 Q. Was the gun ever found, located, entered during
5 the trial that shot Mr. Savalas Dodd?

6 A. No, ma'am, it was not.

7 A. Okay. Was there any DNA linking you? Any blood?
8 Any fingerprints linking you to the shooting?

9 A. None at all.

10 Q. And how many people do you alleged were in the
11 car with you when the shooting took place?

12 A. It was four of us all together including myself.

13 MR. JOHNSON: Your Honor, if he is claiming
14 actual innocence that is not an PCR claim. I
15 don't see how that is relevant to the ineffective
16 assistance of counsel claim.

17 MS. BASS: Your Honor, I just wanted to
18 cover that because there is some evidentiary
19 issues that he has alleged in his PCR.

20 THE COURT: If you go into the evidentiary
21 issues, I appreciate it.

22 MS. BASS: Thank you, sir.

23 Q. So Travis you met with investigators; is that
24 correct?

25 A. Yes.

1 Q. And he showed you a mug shot; is that correct?

2 A. That's correct.

3 Q. And that is of the person who you alleged was the
4 shooter?

5 A. Yes.

6 Q. What did you do with that information? Did you
7 talk to your lawyer about it?

8 A. I did. I spoke with him the morning of trial.

9 Q. Hold on one second. Which lawyer did you?

10 A. I spoke with Gary Lemel.

11 Q. And you spoke to him the morning of trial?

12 A. Yes.

13 Q. Had you been in the courtroom yet with the jury?

14 A. No, ma'am, I hadn't.

15 Q. Had you looked at the jury? Selected the jury?
16 Had the case been called for trial?

17 A. No.

18 Q. Okay. What did you tell your attorney and why do
19 you believe that particular issue is post conviction
20 relief, ineffective assistance?

21 A. I asked him -- I made sure he was aware that the
22 investigator had shown me the picture and I asked him
23 what was being done about it? Was there any way were
24 going to get that in and he told me it was too late. It
25 was nothing we could do about it.

1 I feel that is post conviction relief because he
2 should have at least, you know, requested a continuance
3 or something so that the solicitor's office could have
4 been made aware that I identified the person who I said
5 was the shooter and you know, so they could have did an
6 investigation or somehow he could have been the one on
7 trial for this instead of me.

8 Q. Okay. And did you give that information to Mr.
9 Lamel?

10 A. Yes, I did.

11 Q. Okay. And did he request a continuance?

12 A. No.

13 Q. And you believe that is ineffective assistance
14 of counsel?

15 A. Yes, ma'am.

16 Q. How would that have benefitted you or helped you
17 had an investigation been conducted into what you and
18 the private investigator discussed?

19 A. Because I am pretty sure that once all the facts
20 came together it would have turned out to be proven that
21 that was the actual shooter.

22 Q. And you would like the judge to consider this in
23 his decision?

24 A. Yes.

25 Q. Did you share this information with Miss

1 Inzerillo?

2 A. No, I didn't. I just spoke with Mr. Lemel alone
3 when we talked about that.

4 Q. And was Mr. Lemel, was he your lead trial
5 counsel?

6 A. Yes.

7 Q. And Miss Inzerillo was assisting him as co-
8 counsel, second chair; is that correct?

9 A. That's correct.

10 Q. Okay. All right. What other -- you mentioned
11 several times on -- in your attachment, ineffective
12 assistance of counsel. You mention several times a
13 video tape?

14 A. Yes.

15 Q. A Surveillance tape. What exactly are you
16 referring to and how do you think that plays into the
17 ineffective assistance of counsel?

18 A. It was the video tape from the convenience store
19 that night and I asked that my lawyer have that
20 surveillance disc, you know, to try and send it off to
21 be cleaned so that it would show a better picture to
22 prove it was not me on the surveillance disc.

23 Q. How many times did you talk to Mr. Lemel about
24 that?

25 A. Constantly.

1 Q. When you say constantly how many times?

2 A. I say approximately we spoke about it -- we saw
3 each other maybe five, six times. I am sure we spoke
4 about every time we saw each other.

5 Q. Okay. And was that tape enhanced that you are
6 aware of prior to trial?

7 A. No, ma'am, it was not.

8 Q. Was there an enhanced tape shown during the
9 trial?

10 A. No, ma'am, there was not.

11 Q. All right. You chose not to testify at trial; is
12 that correct?

13 A. That is correct.

14 Q. Okay. And you made that part of your
15 application. Did you discuss with Mr. -- it shows in
16 the transcript you discussed it twice with Judge Hayes.

17 A. Yes.

18 Q. What conversations did you have with Mr. Lemel
19 about whether or not you should testify?

20 A. When he came up I did say I wanted -- I actually
21 wanted to get on the stand and testify because I wanted
22 the jury to hear what I had to say straight from me, but
23 I was advised by my lawyer that it could hurt me and he
24 would suggest that I not do it.

25 Q. And how old were you at the time you went to

1 trial?

2 A. Is was eighteen.

3 Q. You are 23 years old now?

4 A. Yes.

5 Q. How far had you gone in school?

6 A. Ninth grade.

7 Q. Did you complete the ninth grade?

8 A. No, ma'am.

9 Q. So you had completed eighth grades of school at
10 the time?

11 A. Yes.

12 Q. How many times did you tell your attorney that
13 you would like to testify?

14 A. We probably spoken about it two or three times.
15 After probably the second time when he advised me that
16 he didn't think it would be a good idea I decided to
17 follow his lead but we spoke about it at least twice
18 letting him know that I wanted to do it.

19 Q. And why are you mentioning that now as part of
20 the post conviction relief process?

21 A. Because I feel if at the time I didn't really
22 know a lot and I had gotten to the point where I was
23 just following the lead of my attorney but my better
24 judgement said I should do and I feel if he had given,
25 you know, support what I wanted to do I would have done

1 it. But the sole reason I didn't do it was because my
2 lawyer suggested that I didn't.

3 Q. Do you personally feel it could have impacted for
4 the better, influence the jury being able to hear from
5 you?

6 A. Yes.

7 Q. I want to talk to you about the hand of one is
8 the hand of all. Was that legal theory ever discussed
9 with you prior to going to trial?

10 A. Prior to trial, no.

11 Q. Okay. Did Miss Inzerillo ever discuss that with
12 you?

13 A. No, ma'am.

14 Q. Did, Mr. Lemel ever discuss that with you?

15 A. No, ma'am.

16 Q. Were you aware of the fact that if the jury
17 believed that someone else in the car had been the
18 shooter that you could be in fact found guilty if they
19 found under the legal theory hand of one is hand of all?

20 A. I did not know that.

21 Q. Okay. Would that been helpful to you?

22 A. Yes.

23 Q. Why would that have been helpful to you to know
24 that prior to going to trial?

25 A. Because had I known that prior to trial I

1 probably wouldn't have taken a jury trial. I would have
2 tried to take the plea knowing that even if I prove my
3 innocence in trial I could still be convicted and given
4 all this time.

5 Q. Okay. And that was never discussed with you with
6 by Miss Inzerillo or Mr. Lemel?

7 A. No.

8 Q. But you understand from being in the Department
9 of Correction, you understand that people get convicted
10 throughout the State often under the theory of the hand
11 of one is the hand of all?

12 A. Yes. Now I do, yes.

13 Q. Okay. I want to ask you about failure to call
14 witnesses. You list under B and I believe also trial
15 counsel failed to call expert witness and it looks like
16 and lay witnesses; is that correct?

17 A. Yes.

18 Q. From the crime scene on applicant's behalf?

19 A. Yes.

20 Q. Under section B under the attachment?

21 A. Yes.

22 Q. What lay witness or what witnesses are you
23 alleging that your attorney should have contacted and
24 should have call as witnesses on your behalf?

25 A. I believe it was Ty Gardner, if I am not

1 mistaken, the forensic part of the crime scene.

2 Q. What did Ty Gardner -- what did he testify to or
3 wasn't asked about? What is it that you believe would
4 have helped you in your case?

5 A. There was some DNA samples taken from a steering
6 wheel and a beer can, I believe, that was taken from the
7 car and there was never anything done to try and get any
8 matches on those or any DNA taken from me to see if it
9 was mine or anything of that sort.

10 Q. Okay. So you believe that it was ineffective
11 assistance of counsel that the DNA samples from the Ice
12 House beer can and the DNA samples from the steering
13 wheel of the car?

14 A. Yes.

15 Q. That is alleged to have been driving the shooter,
16 you believe that was ineffective assistance of counsel
17 for your lawyers not to call an expert?

18 A. Yes.

19 Q. A DNA analysis?

20 A. Yes. Yes.

21 Q. Okay. Now that is also covered in detective I
22 believe William Miller's testimony. Were there any
23 other police officer's or lay witnesses that you believe
24 should have also been called?

25 A. Yes. I believe Detective Eddie Strait.

1 Q. Okay. And why do you believe Eddie Strait should
2 have been called to testify on your behalf?

3 A. Because he was the one that was alleged the lead
4 detective in my case and being that the other detective
5 didn't do anything as far as DNA, by him being the lead
6 detective I feel as though he should have been there so
7 that he could have been questioned as far as what was
8 going on with the DNA samples and why nothing was done.

9 Q. So you wanted your attorney to call Detective
10 Strait, who was the lead detective, who was not call
11 during the trial?

12 A. Yes.

13 Q. And was that because Detective Miller made
14 reference to him so many times. That he had already
15 left Court. That he didn't testify during the trial
16 when he was in fact the lead investigator?

17 A. Yes. It was another thing that were stated that
18 was actually done by Detective Strait and he wasn't even
19 there.

20 Q. Okay. He did not testify for the State?

21 A. No.

22 Q. And part of this application your alleging that
23 he should have been called by your attorneys on your
24 behalf?

25 A. Yes.

1 Q. And that was Detective Eddie Strait?

2 A. Yes.

3 Q. Okay. And was it Officer Gardner?

4 A. Yes.

5 Q. And Detective Miller that made reference to the
6 DNA samples from the Ice House beer can and the steering
7 wheel that the shooter was in that particular car that
8 we are not sent off to sled; is that correct?

9 A. Yes.

10 Q. And other than asking that the surveillance tape
11 should have been enhanced, the trial being continued --

12 A. Yes.

13 Q. Due to the mug shot that you were shown by the
14 public defender's investigator, not testifying at trial,
15 not being told about the hand of one is the hand of all,
16 DNA samples from the Ice House beer can, the steering
17 wheel not being sent off for analysis and not calling
18 Detective Strait as a witness, were there any other --
19 any other information you want the judge to consider?

20 A. No, not really. No.

21 Q. No other witnesses that you would like to ask
22 called on your behalf?

23 A. No.

24 MS. BASS: Okay. Your Honor, I believe that
25 would be our showing.

1 THE COURT: Thank you. Anything on cross?

2 MR. JOHNSON: Yes, Your Honor. Briefly.

3 CROSS EXAMINATION

4 BY MR. JOHNSON:

5 Q. Mr. Robinson.

6 A. Yes.

7 Q. You said that you wanted to testify but in fact
8 the judge actually asked you whether or not you wanted
9 to testify, didn't he.

10 A. Yes, he did.

11 Q. You told him you didn't?

12 A. Yes.

13 Q. And that was your choice?

14 A. Yes.

15 Q. You also say that attorney Lemel did not explain
16 hand of one hand of all to you; is that correct?

17 A. No, he did not.

18 Q. That is because they were identifying you as
19 shooter, isn't that right?

20 A. Yes.

21 Q. So that wouldn't be applicable to you?

22 A. Actually it would.

23 Q. No, it wouldn't.

24 A. All right.

25 Q. The hand of one is an accomplice liability,

1 meaning you are the main actor, do you understand that?

2 A. And I is in a situation where I am pleading not
3 guilty. It is not like I was pleading guilty to it. So
4 hands of one, hands of all would have been relevant to
5 me knowing I am not guilty.

6 Q. Sir, was the State alleging you were the shooter
7 in this case?

8 A. Yes, the State was alleging it. Yes.

9 Q. Thank you. You also said you would are taken a
10 plea. But do you understand there is no constitutional
11 right that the State has to offer you a plea?

12 A. I mean no, because I never -- we never discussed
13 a plea so --

14 Q. But your testimony here today that you would have
15 taken a plea?

16 A. Yeah, I would have, but we never got into the
17 depth of a plea because I didn't know anything about the
18 hands of one, hands of all law.

19 Q. But do you understand today there is no
20 constitutional right to a guilt plea from the State?

21 A. Yes.

22 Q. You say that attorney Lemel failed to call Todd
23 Gardner on your behalf?

24 A. That's correct.

25 Q. He did testify at trial, didn't he?

1 A. No.

2 Q. Is he here today to testify on your behalf?

3 A. No, he is not.

4 Q. The DNA samples that you speak of that he should
5 have had matched or tested, did you bring those tests
6 here today?

7 A. No, I did not.

8 Q. And just hypothetically speaking, if that DNA
9 comes back and it is positive to you, that is another
10 nail in the coffin, isn't it?

11 A. Yes, it is, but that is not something I was
12 worried about.

13 Q. You also say attorney Lemel didn't call Detective
14 Strait on your behalf?

15 A. Correct.

16 Q. Is he here today to testify?

17 A. No.

18 Q. But attorney Lemel actually called two experts on
19 your behalf, didn't he?

20 A. Yes.

21 Q. An identification expert and firearm expert?

22 A. Correct.

23 MR. JOHNSON: No further questions at this
24 time.

25 MS. BASS: Your Honor, I just have two.

1 THE COURT: Yes, ma'am.

2 REDIRECT EXAMINATION

3 BY MS. BASS:

4 Q. Travis, you don't work for the police department,
5 correct?

6 A. No, I do not. That is correct.

7 Q. You don't collect evidence, correct?

8 A. I do not. That's correct.

9 Q. So know one has volunteered or given anything'us
10 any results or any samples to send off? You don't even
11 know what happens to those samples after Officer Gardner
12 testified that they were taken, is that correct?

13 A. That's correct.

14 Q. And Officer Gardner testified he doesn't even
15 know what happened to them; is that correct?

16 A. That's correct.

17 Q. And the lead detective did not testify, correct?

18 A. Correct.

19 Q. And isn't true that prior to you getting Mr.
20 Lemel and Ms. Inzerillo as your attorney didn't people
21 approach you from the solicitor's office with plea
22 offers?

23 A. Yes, I was approached with one plea, yes.

24 Q. And didn't the police officers talk to you about
25 trying to get you to turn on some of the other

1 co-defendants?

2 A. Yes.

3 Q. And were two of the people not ever found, the
4 driver and the front passenger?

5 A. That's correct.

6 Q. But there was DNA found, correct?

7 A. That's correct.

8 Q. And fingerprints belonging to other people in the
9 car; is that correct?

10 A. That's correct.

11 Q. Those people were never charged; is that correct?

12 A. Nerver charged. Correct.

13 MS. BASS: No further questions. Thank you,
14 Your Honor.

15 THE COURT: Anything on recross.

16 RECROSS EXAMINATION

17 BY MR. JOHNSON:

18 Q. There were independent eye witnesses who
19 identified you as the shooter, correct?

20 A. Correct.

21 Q. And that is the story the jury believed?

22 A. Yes.

23 Q. There is no fingerprint analysis at your trial,
24 eas there? There was no DNA?

25 A. No.

1 Q. They didn't find a gun?

2 A. Correct.

3 Q. But the ID came back to you; isn't that right?

4 A. That is correct.

5 MR. JOHNSON: No further questions.

6 THE COURT: All right. Thank you. You may
7 step down. Thank you, sir.

8 THE COURT: Miss Bass, you may call your
9 next witness.

10 MS. BASS: That is our showing.

11 THE COURT: State.

12 MR. JOHNSON: Yes, Your Honor, call Gary to
13 Lemel to the stand please.

14 GARY LEMEL, called as a witness, having
15 been duly sworn by The Clerk, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q. Good afternoon Mr. Lemel.

20 A. Good afternoon.

21 Q. Can you please state your name and I guess what
22 position you held during this trial?

23 A. My name Gary Craig Lemel. At the time of this
24 trial I was the senior assistant public defender for the
25 York County, 16th Circuit public defender's office.

1 Q. And how did you come to represent Mr. Robinson?

2 A. The office was appointed to represent Mr.

3 Robinson and I was the attorney assigned from the office
4 for that representation.

5 Q. And did you receive Discovery from the State?

6 A. I did.

7 Q. Did you provide that to Mr. Robinson?

8 A. I know I reviewed it fully with Mr. Robinson.
9 Went over it with him several times in terms of evidence
10 both good and bad. I can not recall whether I provided
11 him a copy or not off the top of my head.

12 Q. Did he -- did you explain the charges to Mr.
13 Robinson?

14 A. I did.

15 Q. What he was facing?

16 A. Yes, sir.

17 Q. Did he seem to understand what he was facing?

18 A. Yes, sir. He was an excellent in every way. He
19 listened very carefully to what I told him. Seemed to
20 take it in. He asked me very good questions. Was very
21 very cooperative and I think he understood the gravity
22 of the situation that we were facing.

23 Q. And did you come up with a theory of this case?

24 A. Yes.

25 Q. And can you explain to the Court what your

1 defense theory was?

2 A. The theory of the case, was basically consistent
3 with the statements of both he and Mr. Toby, his
4 co-defendant gave. Which is that they were the
5 passengers in a car that were driven by two other
6 individuals down from Charlotte. That those other
7 individuals pulled off, the driver and passenger pulled
8 off. One of those individuals in the car in addition to
9 Travis, he looks a lot different today, but at that
10 point in time he had dreadlocks. One of the other
11 people in the car also had dreadlocks, African American
12 male. That it was in fact that individual who without
13 any consultation with Travis was the one who was the
14 shooter in the case. Travis was just there. These
15 other guys got out. Did this thing. Jumped back in the
16 car and drove off back to Charlotte and it wasn't until
17 the time they got back that Toby and Travis was able to
18 get away from the actual shooter and his companion.

19 Q. So Mr. Robinson and Mr. Toby don't dispute they
20 were actually at the scene?

21 A. No, that is correct.

22 Q. And did you interview any witnesses in this case?

23 A. Interviewed obviously Travis and talked with Mr.
24 Toby's attorney. I don't believe there were any other
25 factual witnesses.

1 We spent a great deal of time working with our
2 expert witnesses. We obtained a gunshot residue expert
3 and we also obtained an expert on the area of
4 identification because of the nature of the case in this
5 case that it was almost a prototypical case of bad
6 identification practices. A show-up rather than a
7 line-up. Suggested behavior. Failure to get adequate
8 descriptions ahead of time. Everything that you look at
9 in terms of a bad job in terms of identification that is
10 what we had in this case and that's why we consider the
11 expert to be crucial.

12 Q. In fact you had a Neal versus Biggers hearing?

13 A. We did have a Neal versus Biggers hearing. Not
14 surprisingly given the way those things typically go the
15 judge basically did not share our concerns about the
16 show-up nature and the in court identification issues.

17 Q. Did you also have Jackson versus Denno hearing?

18 A. We did have Jackson versus Denno hearing
19 regarding the statements that were given.

20 Q. And so those ID's and statements came into
21 evidence?

22 A. Yes, over our objection.

23 Q. Do you think you had ample time to prepare this
24 case?

25 A. Yes, with the understanding that any time you

1 look back on a case like this you always wish you had
2 more time and you wish you had done something different.
3 This was a very, very tough case for us to lose.

4 Q. Mr. Robinson alleges there was mug shot that was
5 brought to you the Friday before trial. Can you explain
6 that?

7 A. Yeah. There was a co-defendant who was
8 represented by Jeff Dunn and as I recall what happened
9 is Jeff Dunn's client somehow obtained a mug shot out of
10 the Charlotte Mecklenburg jail of an individual who Jeff
11 provided to me to see if my client knew who this
12 individual was and sent the investigator down with the
13 mug should and basically got the report back that this
14 was the actual shooter. This is right before trial.
15 And that confirmed -- that also concurred with what Mr.
16 Dunn's client was telling him. This was the individual.
17 The individual was an African American male with roughly
18 the same body type as Travis. Looked a little bit like
19 Travis. A little bit darker skin as I recall, but
20 looked very similar to him. And that is the biggest
21 thing is that we had been prepared for trial. The
22 defense had pretty much what I thought put together, but
23 in looking back in the case the one thing that I wish I
24 would have done that could have been significant would
25 have been pursued that particular lead better. I don't

1 think I did pursue that adequately at this point. Just
2 in looking back.

3 Q. Did you ask for a continuance in this case?

4 A. I did not ask for a continuance. I don't know
5 why. I can't tell you why I didn't ask for a
6 continuance at that point in time to explore that. I
7 know Mr. Dunn and I talked about it. I know we talked
8 about the difficulties we would have because it would
9 have been a cross state subpoena to try to get somebody
10 else down here to testify about their role. We didn't
11 know whether this individual would admit it or not. If
12 he doesn't admit it you run into all sorts of issues at
13 that point of time with third party guilt. Which the
14 law hadn't been developed quite as well as it is now.
15 How far would Judge Hayes let us get into that. Judge
16 Hayes was notoriously restrictive on the issue of third
17 party guilt.

18 As a matter of fact I think the case that ended
19 up coming out was actually his case if I am not
20 mistaken. So Mr. Dunn and I did discuss the
21 difficulties of it. Ultimately decided that basically
22 we didn't have enough time to pursue it and we did not
23 ask for a continuous to do so.

24 Q. Do you believe that request would have been
25 successful with Judge Hayes?

1 A. For a continuance, probably not, unfortunately.
2 Judge Hayes when cases are scheduled for trial was not
3 apt to grant continuances.

4 MR. JOHNSON: Beg the Court's indulgence.

5 THE COURT: All right. Take your time.

6 Q. Let me ask you, they were independent
7 identifications in this case, weren't there?

8 A. There were three witnesses who ID him.

9 Q. Three. That would be the passenger, the
10 victim --

11 A. Yes.

12 Q. -- and a store clerk?

13 A. Correct.

14 Q. Because there were two store clerks there?

15 A. Correct. One store clerk was never outside.

16 Q. But there was video from case?

17 A. There was a video. It was somewhat typical of a
18 convenient store video. Not clear at all. It basically
19 showed very sort of -- you can make out it was an
20 African American male with dreadlocks. Could not see
21 any facial features whatsoever of any of the individuals
22 there. You really -- you just couldn't recognize an
23 individual.

24 Q. And as Mr. Robinson alleged you didn't ask for a
25 clean copy of this?

1 A. Yeah, we did talk about it. I remember he and I
2 talked about whether we could get a clean copy. It was
3 my opinion because of the nature of how it was recorded.
4 It was a digital recording. It was not film. It was
5 very pixelated and it simply looked as if the resolution
6 of -- there was no way to zoomed in. When you zoomed in
7 on a person's face what you got was a bigger blur as the
8 pixels expanded. It didn't clarify it. That is the
9 disadvantage of digital. You can't zoom in. You just
10 have a block of data that is a brown square which is
11 basically what we had as the face.

12 In my opinion I did not see that there was going
13 to be ability to enhance that beyond what it was, which
14 is just a pixel of a brown square where the person's
15 face was in this case. So I would have loved to have
16 been able to do that. Didn't request funds to do it.
17 But in my opinion admittedly I am not an expert. I am
18 not digital technical expert, but having seen a lot of
19 video like that trying to zoom in myself being unable to
20 do so seeing the results of that I did not believe that
21 we could get it enhanced.

22 Q. If it was able to be enhanced and you were
23 ascertain a copy and you were able to show Mr. Robinson
24 --

25 A. Obviously we would have been in a totally

1 different position and wouldn't have asked for a trial.

2 Q. Mr. Robinson alleges you did not ask for DNA to
3 be tested?

4 A. That is correct.

5 Q. And had you asked for DNA to be tested and it
6 comes back to Mr. Robertson?

7 A. Obviously that is a negative. The DNA from
8 inside the car, is what I am assuming you are referring
9 to. They talked about a beer can and some other things
10 that they took fingerprints on and things like that, you
11 know, really for what our defense emerged as as in terms
12 of the incompetence of the police investigation and even
13 as I argued in my closing, I am not one to throw a lot
14 of stones at police unless I think they have done a bad
15 job. And there was a lot of very bad job done in this
16 case as was argued pretty extensively to the jury. And
17 quite frankly the failure to do that, the failure to
18 complete a very basic piece of investigation was another
19 thing that I thought we were better off leaving it at.
20 We don't know the answer to that and it was my belief
21 that a jury should have questions that should have
22 raised reasonable doubt in their mind. If we get one,
23 it is Mr. Robinson's in which case that is bad for us,
24 or two, it is just some other individuals which doesn't
25 answer the question of who was there. It just shows

1 that at some point in time some other individual touched
2 that object.

3 So, it is not like DNA in a sexual assault case
4 where you are testing fluids from inside somebody's body
5 to confirm who it is. So, in my opinion it was better
6 to use that as a tactical issue to approach the quality
7 of the investigation rather than confirm something that
8 wouldn't exactly help us that much.

9 Q. Last question. Mr. Robinson alleges that you
10 never explained hand of one, hand of all principal. Is
11 there a reason?

12 A. Yeah, I probably never did discuss that with him.
13 I will admit that. The reason why is basically was that
14 he was not part of the State's case in any way, shape or
15 form, that he was under that.

16 The allegation was always directly against him,
17 not that he acted in concert with any other individual.
18 My understanding when you are saying in terms of had we
19 had third party guilt issues could the State then
20 potentially pursued a hand of one is a hand of all.
21 That was possible. So I understand that. But because
22 that was never really in the Discovery, it wasn't argued
23 at trial. There wasn't a charge given because no part
24 of the evidence that really came out addressed hand of
25 one is hand of all.

1 If we had brought in the other individual and
2 that had been fully explored could the State had then
3 asked that and would we have gone into it then, yes. I
4 could see that if everything had fallen better in terms
5 of that other individual from Charlotte then it might
6 become more relevant. But as it stood, as we went
7 forward with the case, I would have seen no reason to
8 talk to him about that because it just wasn't a factor.

9 Q. And hind site is always 20/20?

10 A. Especially in a case like this. This was a very
11 difficult for us to loss.

12 MR. JOHNSON: Thank you, Your Honor. No
13 further questions at this time.

14 THE COURT: Anything on cross examination?

15 MS. BASS: Yes, Your Honor, please.

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. BASS:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Okay. No questions in regards to the trial
22 continuance. You did not ask Judge Hayes for a
23 continuance?

24 A. Did not ask. No.

25 Q. And let's be clear. You stated to Mr. Johnson,

1 that you thought that development with both Mr. Quinton
2 Toby and my client, Travis Robinson, saying that the mug
3 shot from Charlotte was in fact the shooter. Was quote,
4 unquote, you just testified, significant?

5 A. Yes.

6 Q. And although it was significant you never
7 approached the judge and said listen, Your Honor, my
8 client is now telling us who the shooter. Is Mr. Dunn's
9 client is telling us who the shooter is. Could we
10 please have couple of weeks to pursue this because my
11 client said he didn't do it.

12 You didn't think it was important to ask for an
13 continuance?

14 A. I did not ask. I can only tell you I did not ask
15 for the continuance.

16 Q. Okay.

17 A. In retrospect, yes, I think it was an important
18 fact.

19 Q. Okay. Judge Hayes does continue cases when
20 attorney plead their cases to them. You are not saying
21 that Judge Hayes doesn't continue cases?

22 A. I have seen him continue cases. That is correct.

23 Q. And you never asked him even though you thought
24 it was significant?

25 A. I did not ask him. Yes, ma'am.

1 Q. And I want to make sure we are clear. The only
2 two that were arrested were Quinton Toby and Mr. Travis
3 Robinson?

4 A. That is correct.

5 Q. And Mr. Dunn told you, Jeff Dunn, who was
6 retained to represent Quinton Toby, he told you that his
7 client was saying that he ID'd the same actual shooter
8 as your client did to the public defender's
9 investigator?

10 A. As I recall, yes, it was Mr. Dunn that provided
11 us the photograph and basically asked me to ask Travis
12 whether Travis had any idea who this individual was and
13 then after the investigator talked with him and Travis
14 did confirm that it was the individual they were in the
15 car with that night. It was the actual shooter. Went
16 back and confirmed that with Mr. Dunn that afternoon and
17 that's when we began talking with that.

18 Q. And respectfully, we have no idea what the
19 outcome would have been had you asked for a continuance
20 or had you pursued that lead, is that correct?

21 A. Yes, ma'am, that's correct.

22 Q. We will never know, correct?

23 A. Correct. Unless his PCR is granted and that
24 issue is explored.

25 Q. And Travis received a 20-year sentence; is that

1 correct?

2 A. Yes, ma'am.

3 Q. So Travis has plenty of time for this to be
4 pursued; is that correct?

5 A. Yes, ma'am.

6 Q. And you did request funds on Travis's behalf to
7 for Miss -- Dr. Lori Van --

8 A. Wanadale (phonetics).

9 Q. Wanadale. And she testified. She is a professor
10 at University of North Carolina Chapel Hill.

11 A. No, Charlotte. UNCC. Charlotte.

12 Q. Okay. UNC, Charlotte. She is a professor. She
13 also worked with Charlotte Mecklenburg Police
14 Department?

15 A. Yes, ma'am.

16 Q. On phasing them from impermissible show-ups to
17 actual line-ups.

18 A. Yes, ma'am. She basilically very instrumental in
19 setting up and reviewing. They not only set up the
20 process but they were going through a constant review to
21 try to make their identification processes not so
22 vulnerable to the problems that we had in this case.

23 Q. And she helped the Charlotte Mecklenburg Police
24 Department while at UNC Charlotte in that to move from
25 show-ups and show-ups was what Travis was forced to

1 endure in this case?

2 A. Yes, ma'am.

3 Q. Okay. And you received funding for that. You
4 also received funding to have a former decorated sled
5 agent to testify on Travis's behalf?

6 A. Yes, ma'am about the gunshot residue issue.

7 Q. Because there was no gunshot residue found on
8 him?

9 A. Correct.

10 Q. And he was alleged to be the shooter?

11 A. Correct.

12 Q. Couldn't it have been a benefit to Travis, yet we
13 will never know that, that you didn't request any
14 funding to try to hire an expert to enlarge or enhance
15 that horrible video tape?

16 A. Yes, ma'am. Yeah.

17 Q. No question we can all agree it was a black male
18 with dreadlocks on the video tape?

19 A. Yes, ma'am.

20 Q. With no facial features recognizable?

21 A. Nothing that you could distinguish.

22 Q. And that would black mail dreadlocks at the time
23 five years ago, would -- with no height or weight ID
24 positive could fit tens of thousands of young black
25 males in Upstate South Carolina or the Charlotte area?

1 A. Yes, ma'am. That was one of the major issues
2 that we dealt with with Wanadale, was how inaccurate a
3 description of black male, dark skin, broad nose, mug
4 shots, the dreadlocks, how completely inaccurate that
5 was and how much of a problem that was, typically
6 cross-racially for purposes of making an identification.

7 That kind of description sort of formed the basis
8 of all the problems that we have with identification.

9 Q. And this was at night?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. I will say this, while it was at night it was
13 also in a very well lit area. There is no problem with
14 the darkness standpoint of the video.

15 Q. But the assistant attorney general asked you if
16 it had been proven to be Travis it would be a problem,
17 correct?

18 A. Yes, ma'am.

19 Q. But if you had had it -- he has told he is
20 innocent?

21 A. Yes.

22 Q. You went to trial for three days because he said
23 he was innocent?

24 A. Yes, ma'am.

25 Q. Okay. Eighteen-year old guy?

1 A. Yes, ma'am.

2 Q. If it could have shown that it wasn't him you
3 might not have been going to trial either?

4 A. I would have hoped that if we had produced that
5 kind of video tape that any solicitor worth their salt
6 would have not pursued this case. I am not going to
7 speak as to the quality of the particular solicitor in
8 this case.

9 Q. Well, if you would have been able to show that
10 the solicitor, Solicitor Springs was a fruitcake for
11 taking a case to trial, that it wasn't the defendant on
12 tape, correct?

13 A. I would think if that was presented to a jury
14 that no jury, no reasonable jury, would have not had a
15 reasonable doubt in that scenario.

16 Q. And there is also a possibility that Judge Hayes
17 would have taken off his glasses, come down and looked
18 at it and said, that is not him and he could have
19 granted a directed verdict?

20 A. Uh --

21 Q. Because he did grant one directed verdict to the
22 co-defendant, did he not?

23 A. I kind of disagree with you whether Judge Hayes
24 would have interjected himself on a factual question
25 like that. I don't think Judge Hayes would have granted

1 a directed a verdict if there was any evidence to
2 support the State's case because he does try to follow
3 the law on that. He would have basically said that is a
4 factual question for the jury. So I disagree that Judge
5 Hayes would have granted a directed verdict.

6 Q. But he did in the same exact trial after watching
7 this horrible video and after listening to testimony he
8 granted a directed verdict as to the co-defendant?

9 A. Right, on a totally different issue where there
10 was no evidence produced with regard to that all.

11 Q. Okay.

12 A. So you are asking Judge Hayes to talk about the
13 facts in that situation.

14 Q.. We will skip Judge Hayes?

15 A. I just disagree with that. Just the last
16 question.

17 Q. Cause I haven't tried a case in front of him in
18 couple of years.

19 So, let's do this. The bottom line is you didn't
20 request funds to enhance the video tape even though you
21 admit there were no facial features and you don't know
22 if it would have -- it could exonerated your client and
23 that is what we are interested in, right?

24 A. Correct. That is correct. I did not request
25 those funds and had that gone in front of a jury I do

1 believe -- assuming it could have been enhanced and it
2 would have shown the facial features of an individual
3 there that of course would have had, in my opinion, that
4 would have had a major impact in the outcome of this
5 case.

6 A. And you don't always have to retain an expert.
7 You can send tapes to SLED. SLED will forward them to
8 the FBI; is that correct? You could have made a motion
9 in front of Judge Hayes to have it sent off.

10 A. We could have.

11 THE COURT: Just ask one question at a time.
12 I am trying to take notes and I just can't keep up
13 as fast.

14 MR. JOHNSON: She is hurrying for me I am
15 sure.

16 THE COURT: One question at a time.

17 A. Yes, that can be done if you trust SLED to do it,
18 but we did not ask for any of that.

19 Q. Okay. Thank you sir.

20 In regards to the hand of one is the hand of all.
21 You said you never discussed it with your client?

22 A. Correct.

23 Q. So you never told Mr. Robinson, okay, listen
24 buddy, I know you say you didn't do it, but the bottom
25 line is if the solicitor gets up there and asks for hand

1 of one, hand of all charge and the solicitor says hey,
2 he was in the car. He acted in concert. He still could
3 have been convicted and gotten at least four years,
4 correct? He could have been convicted hand of one, hand
5 of all on ABI charge and the armed robbery, correct?

6 A. I guess in theory yes, ma'am. The question would
7 have come up was there any real proof of hand of one,
8 hand of all. If that whole situation played like you
9 laid out yes, ma'am.

10 That was never a scenario that ever came up so we
11 didn't discuss it.

12 Q. Even though your client told you he didn't do it
13 and the guy in the front seat did?

14 A. Yes, ma'am.

15 Q. Okay.

16 A. Simple because -- just to clarify, that was not
17 the theory that the State pursued in any way.

18 Q. But you are not bound to prepare your cases --

19 THE COURT: We do not need to argue that
20 point. I understand. He understands.

21 MS. BASS: Okay. Thank you, Your Honor.

22 Q. In regards to the DNA samples, I believe Officer
23 Todd Gardner somewhere in volume two, starting around
24 474, page 474 during the trial, he testifies that he did
25 as the reporting officer, he did DNA samples of a beer

1 can in the car. Icehouse beer can. He did
2 fingerprints. He also did touch DNA swabs on the
3 steering wheel and I believe took some cell phones --

4 A. Yes, ma'am.

5 Q. Into custody, is that correct?

6 A. Yes, ma'am, that is correct.

7 Q. And those were never sent off to sled, is that
8 correct?

9 A. That is my understanding, yes, ma'am. That is
10 what his testimony was.

11 Q. Okay. Did you know that prior to going to trial
12 or did you find that out during trial?

13 A. Honestly, I can't remember at this point in time.
14 I would assume we knew that before. We knew of their
15 existence before trial because there was reports that
16 they had taken these things. We did not have any
17 results back I will tell you that before going to trial.
18 So, I would assume we did know before the trial that
19 there were no results turned over to us.

20 Q. And you talked about in your direct what adverse
21 consequences could be if any of that linked up to either
22 one of the defendants on trial, but you did not -- I
23 know you said it was tactical position, but you did not
24 retain any DNA expert? You didn't move for a
25 continuance because the DNA results were not back?

1 A. No, ma'am, we did not.

2 Q. So, we don't have any clue as to whether those
3 samples are still available for testing or whether or
4 not they used up the samples? We don't even know what
5 happened to then after Officer Gardner turned them in to
6 evidence; is that correct.

7 A. Yes, ma'am. The only I can tell you is he
8 testified that they hadn't been tested in any way.

9 MS. BASS: And Your Honor, if I could have
10 one moment to confer with Travis I maybe
11 finished.

12 THE COURT: Okay.

13 Q. Okay. And when there were some other
14 fingerprints found in the car not and this is the car
15 that was allegedly driven away after the shooting of
16 savala dood, correct?

17 A. Yes, ma'am.

18 Q. There were fingerprints that came back to a Mammo
19 Beam, M-a-m-m-o B-e-a-m, I believe, and a Hiawatha Beam?

20 A. Yes, ma'am.

21 Q. And you didn't call them to testify, is that
22 correct?

23 A. No.

24 MS. BASS: Nothing further, Your Honor.

25 Thank you, so much.

1 MR. JOHNSON: Just two questions.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q. Counsel talked about Judge Hayes granting a
5 continuance. In your experience does Judge Hayes likely
6 grant continuances close to the eve of trial?

7 A. No.

8 Q. And this video, weren't there three other
9 witnesses that personally identified Mr. Robinson?

10 A. There were three individual that identified Mr.
11 Robinson, that's correct.

12 Q. And she asked about not call the Beams to
13 testify. Do you see them in the courtroom today?

14 A. No, sir. I would not know them if they were. I
15 would not know if they were.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: Anything on recross examination?

18 MS. BASS: Your Honor, just two questions.

19 RECROSS EXAMINATION

20 BY MS. BASS:

21 Q. He asked you about three eye-witnesses. These
22 were three eye-witnesses. One, none of them were ever
23 shown a line-up?

24 A. Correct.

25 Q. A physical line-up; is that correct?

1 A. Any sort of line-up.

2 Q. None of them were ever shown a sequential line-up
3 at a booking? Mugshots, correct?

4 A. Correct. No, ma'am.

5 Q. None of them were ever shown a six pack; is that
6 correct?

7 A. No, ma'am.

8 Q. These were all shown in Charlotte with him,
9 Travis Robinson, getting out in hand cuffs and standing
10 in the bright lights of the police car from York and
11 Charlotte. That is how they were ID'd?

12 A. Surrounded by police officers.

13 Q. Okay. And he was the only person they were
14 shown, out of one car, correct?

15 MR. JOHNSON: And Your Honor, Judge Hayes
16 allowed that in as admissible.

17 THE COURT: I understand, and it was
18 appealed.

19 Q. Is that correct?

20 A. Yes, ma'am.

21 Q. And isn't it also true those witnesses were
22 calling him Travis in Court when they admitted they had
23 never met him before, but during their testimony they
24 were calling him Travis and Mr. Robinson when they never
25 met him?

1 A. Yes, ma'am.

2 MS. BASS: No further questions Your Honor.

3 Thank you.

4 THE COURT: Thank you.

5 Thank you, sir. You may step down..

6 THE COURT: Any further witnesses from the
7 State?

8 MR. JOHNSON: No, Your Honor.

9 THE COURT: Okay. All right. This will
10 prove to be interesting reading to me. What I
11 will do, I will read the transcript and I will
12 get back to you with my decision, thank you.

13 MS. BASS: Thank you.

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for Spartanburg County, South Carolina, on the 10th day of October, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 30, 2013

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Travis D. Robinson, #330152,

2011-CP-46-4651

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 13, 2011. The Respondent made its Return on April 6, 2012. An evidentiary hearing into the matter was convened on October 10, 2012, at the Moss Justice Center in York, SC. Julia M. Bass, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Gary Lemel, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2008 term of the York County Grand Jury for Attempted Armed Robbery (2008-GS-46-0856), Assault and Battery with Intent to Kill (ABWIK) (2008-GS-46-0854), and Possession of a firearm during the commission of a violent crime (2008-GS-46-0855). Gary Lemel, Esquire, represented

him, with Melissa Inzerillo, Esquire assisting. On August 6, 2008, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for twenty (20) years for Attempted Armed Robbery, twenty (20) years, concurrent, for ABWIK, and five (5) years, concurrent, for Possession of a firearm during the commission of a violent crime.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Robinson, Op. No. 2011-UP-022 (filed January 25, 2011). The Remittitur was issued on February 18, 2011.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counselor"
 - a. "Trial counsel fail(sic) to properly investigate, as well as review Applicant previous file and history and prepare for trial"
 - b. "Trial counsel failed to call expert witness and lay witness from the crime scene on Applicants behalf"
 - c. "Trial counsel failed to suppress the states(sic) evidence"
 - d. "Trial counsel failed to present exculpatory evidence which was a video that was not clean enough to show the real culprit photograph"
 - e. "Failure to object and challenge the states(sic) eyewitness testimony and credibility of the eyewitness statements"
 - f. "Failure to challenge the Forensic experts(sic) testimony"
 - g. "Failure to properly conduct Discovery."
 - h. "Trial counsel failure and refusal to object to improper malice charge which switched the burden of proof, from State to Defendant"
2. "Violation of Applicant Due Process rights"/ After Discovered Evidence
3. "Ineffective assistance of appellate counsel"
 - a. "Appellate counsel failed to properly research case and present proper issues."
4. "Applicant Request an Evidentiary Hearing to bring forth Exculpatory Evidence to be presented to the Court."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility. The Court finds the testimony of Gary Lemel, Applicant's trial counsel, very credible. This Court finds the Applicant's testimony concerning ineffectiveness of trial counsel is not credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300

S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. 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.

Failure to request a continuance

The Applicant alleges Counsel was ineffective for failing to request a continuance in his case.

At the PCR hearing, the Applicant testified Counsel (Lemel) failed to request a continuance to investigate a "mugshot" of the "actual shooter." The Applicant testified he met with the investigator for the Public Defender's office one or two days before the beginning of his trial and identified a booking photo of the "actual shooter." He also stated he spoke with Counsel on the morning of his trial concerning this picture.

Counsel testified this picture of the "actual shooter" was obtained by one of the Applicant's co-defendants and showed a person who was processed in the Charlotte-Mecklenburg County jail system. Counsel testified the Applicant discussed this photo with him on the morning of the trial, prior to jury selection. Counsel also stated he wished he was given this picture with more advance notice. Counsel testified this picture could have been an important item in the case. Counsel did admit he did not request a continuance. However, Counsel testified, although he has witnessed Judge John C. Hayes, III grant continuances, in his experience, Judge Hayes was unlikely to grant a continuance in this case so close to trial.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998); *Skeen v. State*, 325

S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

In this case, the only evidence presented at the PCR hearing was the Applicant's testimony that he viewed the "mugshot" of the "actual shooter" with Counsel's investigator the day before trial, and Counsel's testimony that he received this picture and discussed it with the Applicant on the morning of trial. However, the Applicant failed to produce this "mugshot," any testimony from the co-defendant who gave him this picture, or, most importantly, any testimony from the "actual shooter" in this case. Furthermore, although Counsel testified he would have liked to have this picture for use at trial, he also testified, in his experience, Judge Hayes was unlikely to grant a continuance in this case, especially on the eve before or the morning of trial.

This Court finds the Applicant has failed to show that the outcome of his case would have been different had Counsel requested a continuance to further investigate this "mugshot." Skeen, *supra*. Moreover, there were three independent witnesses that identified the Applicant as the shooter in this case; further eliminating any effect this "mugshot" would have had on the Applicant's trial. Further, the Applicant failed to produce this photo or any other testimony of his co-defendant or the "actual shooter," and thus, no prejudice can be shown. Therefore, the Applicant has failed to prove any resulting prejudice from Counsel's failure to request a continuance in this case. Accordingly, this allegation is denied.

Failure to request an enhanced version of the video/surveillance tape

The Applicant also alleges Counsel was ineffective for not requesting an enhanced version of the surveillance tape from the gas station where this crime occurred.

The Applicant testified he asked Counsel several times to request an enhanced version of the

surveillance tape which the Applicant claimed would have proven he was not the shooter in this incident. Counsel testified the video was pixelated and one could not make out the faces of those involved. Counsel admitted he did not request a "enhanced" copy of this video. However, Counsel also testified had the video been enhancing^{ed} and clearly shown the Applicant as the shooter, it would have been very detrimental to the Applicant's defense.

This Court finds Counsel was not ineffective for not ordering an enhanced copy of the surveillance video. Counsel testified had he ordered the video and it clearly showed the Applicant as the shooter, it would have been devastating to the defense. Further, as stated above, there were three independent witnesses that identified the Applicant as the shooter in this case. This Court finds the Applicant has failed to meet his burden of proving the outcome of his trial would have been different had Counsel ordered the enhanced version of this video. Cherry, supra. This Court further finds no resulting prejudice in this case as the Applicant failed to produce the video at the hearing or any testimony concerning the contents of the video. Accordingly, this allegation is denied.

Failure to call witnesses

Additionally, the Applicant alleges Counsel was ineffective for not calling certain witnesses on his behalf at trial.

The Applicant testified Counsel did not call Todd Gardner (fingerprint expert), a DNA analyst, or Detective Strait at trial. The Applicant stated had Counsel called Mr. Gardner at trial, he would have testified the State did not attempt to match DNA samples/fingerprints found on the steering wheel of the getaway car. However, the transcript reflects Mr. Gardner testified there were no identifiable fingerprints found inside the victim's car, on the getaway car, and around the gas station which matched the Applicant. (Tr. p. 466 lines 8-22). The transcript also reflects Counsel

thoroughly cross-examined Mr. Gardner concerning fingerprints and other forensic evidence in this case. (Tr. pp. 462-480). The Applicant further testified Counsel should have called all three of these witnesses on his behalf. On cross-examination, the Applicant admitted he did not bring these witnesses to testify at the PCR hearing.

Counsel testified he hired and interviewed expert witnesses on the Applicant's behalf, including Jeff Hollifield, a gun-shot residue expert and Dr. Lori Van Wallendael, an expert on eyewitness psychology. Both of these witnesses testified at the trial. Counsel also testified had DNA evidence been tested and positively matched the Applicant, it would have been detrimental to the defense. Counsel, further, stated he was in a better position not knowing the results of any DNA testing as he could use this lack of testing as a tactical attack on the State's case.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

This Court finds the Applicant's claim on this issue meritless. First, Counsel would not have called Mr. Gardner on the Applicant's behalf as he was a State's witness. Additionally, Counsel thoroughly and artfully cross-examined Mr. Gardner about his testimony on direct examination, getting Mr. Gardner to admit there was no DNA/fingerprint evidence, found either at the scene or on either of the cars, that matched the Applicant. So, calling another witness to refute the fingerprint analysis would be futile and/or redundant. Second, Counsel interviewed and called other witnesses

on the Applicant's behalf ^{who} ~~which~~ attacked the State's case, attempting to illustrate (Hollifield) the Applicant was not the shooter because there was no gun-shot residue found on the Applicant. (Tr. p. 618 lines 3-4). Also, Counsel called Dr. Van Wallendael to explain how the identification process used by the State and police in this case was inherently flawed. See Tr. pp. 576-604. Further, the Applicant failed to produce any testimony from any other witnesses he claimed Counsel failed to call at trial. This Court finds Counsel did not render ineffective assistance of counsel on this issue. Further, the Applicant cannot prove resulting prejudice because the witnesses did not testify at the PCR hearing. Accordingly, this allegation is denied.

Failure to discuss 'Hand of one, Hand of all'

The Applicant further alleges Counsel is ineffective for failing to advise him concerning the 'Hand of one, Hand of all' theory of accomplice liability.

The Applicant testified Counsel never discussed with him accomplice liability. On cross-examination, the Applicant admitted there were three witnesses that identified him as the shooter in this case. Counsel testified he did not discuss this theory with the Applicant because accomplice liability was not part of the State's theory of the case.

"Under accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.' " State v. Mattison, 388 S.C. 469, 479-80, 697 S.E.2d 578, 584 (2010) (quoting State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)).

This Court finds this allegation is wholly meritless. Because the State's theory of the case was that the Applicant was the shooter and thus, the principal actor, accomplice liability is

completely inapplicable. Therefore, not only is Counsel not ineffective for not discussing accomplice liability with the Applicant, but also the Applicant can prove no resulting prejudice by Counsel's lack of advice.

Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

2/7, 2013

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS DENIELE ROBINSON,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in allowing the in-court identification of appellant by two witnesses when the trial judge ruled that the out-of-court identification was unconstitutionally suggestive and in-court eyewitness identification was the only evidence against appellant?

STATEMENT OF THE CASE

On June 12, 2008, the York County Grand Jury indicted Travis Deniele Robinson on the charges of assault and battery with intent to kill (ABWIK), attempted armed robbery, and possession of a firearm during the commission of a violent crime. On August 4 – 6, 2008, appellant and his co-defendant, Quinton Lawrence Tobbie, proceeded to trial before the Honorable John C. Hayes, III, and a jury. Robinson was represented by Gary Lemel, Esquire, and Melissa Inzerillo, Esquire. The jury returned verdicts of guilty as indicted. Judge Hayes sentenced Robinson to twenty years on the ABWIK, twenty years on the attempted armed robbery, and five years on the possession of a firearm. All sentences were to run concurrently. Robinson's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in allowing the in-court identification of appellant by two witnesses when the trial judge ruled that the out-of-court identification was unconstitutionally suggestive, and in-court eyewitness identification was the only evidence against appellant.

Travis Robinson and his co-defendant, Quinton Tobbie, left Charlotte on the night of September 7, 2008, and rode with friends to South Carolina to buy gas. In his statement to police, Robinson said that the front passenger got out and pumped the gas. When the front passenger finished pumping the gas, he went to a black vehicle parked on the other side of the pumps, tried to rob the passenger, and then shot the passenger in the black vehicle. ROA.. 12, ll. 1 – 25; ROA. 13, ll. 1 – 8; ROA.. 14, ll. 21 – 25; ROA. 15, ll. 1 – 25; ROA. 18, ll. 20 – 25; ROA. 19, ll. 1 – 15.

The front passenger then ran back to the vehicle and they headed back to North Carolina on I-77. They went to a girl's apartment where Robinson called his mother who came and picked up him and Tobbie. As they were leaving, the police stopped them. Robinson had a gun in his rear pocket at that time. ROA. 19, ll. 15 – 25.

The man, who was shot, Savalas Dodd, testified at an in-camera hearing that he was with a female friend, Nicole Howie, who was driving when they stopped for gas. He went into the store first and prepaid. He then pumped the gas and was getting into the car when a black man with dreadlocks approached him with a gun and asked for his money. He said he made eye contact with the gunman. As Savalas Dodd was reaching into his pocket for money, the person shot him in the side of his stomach. He was taken to the hospital at that point without identifying anyone as the shooter. However, he made an in-court identification

of Robinson as the shooter. ROA. 21, ll. 9 – 25; ROA. 22, ll. 1 – 25; ROA. 23, ll. 1 – 25; ROA. 24, ll. 1 – 25; ROA. 25, ll. 1 – 25; ROA. 26, ll. 1 – 25.

Nicole Howie testified at the in-camera hearing that she was driving the black car and Savalas Dodd was the passenger on September 7, 2008 at the Shell gas station where this incident occurred. She said she saw the shooter when he approached the car with a gun. He was a black man with dreadlocks. When asked how long the shooter stood by the car with the gun until he shot, she responded that it took a “split second.” ROA. 86, ll. 13 – 25; ROA. 87, ll. 1 – 25; ROA. 88, ll. 1 – 25; ROA. 89, ll. 1 – 25; ROA. 90, ll. 1 – 25; ROA. 96, ll. 1 – 25.

Later, the police arrived and took her to Charlotte to look at some people. ROA. 92, ll. 2 – 19. She stated that the police told her they had suspects for her to identify. The police took Robinson out of the police car with handcuffs on and had him stand under a street light. She identified him as the shooter. She then identified him in court. ROA. 104, ll. 1 – 18; ROA. 105, ll. 1 – 25; ROA. 106, ll. 1 – 25; ROA. 92, ll. 18 – 25; ROA. 93, ll. 1 – 13.

Melinda Parker was one of the cashiers working at the shell station the night of September 7, 2008. She testified at the in-camera hearing that two male “suspects” came into the store. She said that one of them would not look back at her to make eye contact. She went out to take trash and saw one of the men struggling with Savalas Dodd just before he was shot. She then heard the “pop.” ROA. 41, ll. 1 – 25; ROA. 42, ll. 1 – 15; ROA. 44, ll. 1 – 25; ROA. 45, ll. 1 – 25; ROA. 46, ll. 1 – 25.

When the police arrived, they told Parker they had the shooter and asked her to go to Charlotte to identify him. She went with the police to Charlotte where she remained seated

in the police car. The police took Robinson out of the patrol car in handcuffs and shined the headlights on him. She said he was the shooter. ROA. 60, ll. 1 – 25; ROA. 61, ll. 1 – 25.

When asked if she told the policeman what had happened when they were on the way to Charlotte, she responded that she “was real shaken up so she did not talk much.” She said: “I was too upset.” ROA. 61, ll. 1 – 10.

The judge ruled that the show-up identifications in Charlotte were unduly suggestive because Ms. Parker was told “we have the shooter,” and Ms. Howie was told “we have some suspects.” ROA 115, ll. 13 – 21. However, the judge ruled that the state had provided “clear and convincing” evidence that the identifications made by both Ms. Parker and Ms. Howie were reliable. ROA.. 115, ll. 19 – 25.

The judge described the factors he weighed against the unduly suggestive procedure to find that the identifications were reliable. He said that for Ms. Parker, the lighting was good; she had heightened attention because she tried to make eye contact; and there was a short time span between the incident and the identification in Charlotte. Also, she said she was 99% certain. ROA. 116, ll. 4 – 18.

For Ms. Howie, the judge said there was good lighting; she had heightened attention when she saw the shooter face to face when he held the gun on her friend; and there was a short time span between the incident and the identification. She said she was 100% certain. ROA. 116, ll. 19 – 25; ROA. 117, ll 1 – 14.

When Ms. Parker testified before the jury and identified Robinson as the shooter, defense counsel renewed all their previous objections regarding the identification which the judge overruled. ROA. 178, ll. 1 – 8. Defense counsel objected again when Ms. Howie testified before the jury and identified Robinson as the shooter. ROA. 242, ll. 1 – 15.

Defense counsel called an expert witness, Dr. Lori Van Wallendael, whom the court qualified, over the state's objection, as an expert in the psychology of eyewitness identification memory. ROA. 400, ll. 6 – 8.; ROA. 407, ll. 1 – 19. In arguing for her qualification after the state objected, defense counsel stated that the most important thing in this case was eyewitness identification. He said that was what this case was about. ROA. 405, ll. 1 – 5.

The state argued in citing State v. Whaley, 305 S. C. 138, 406 S.E.2d 369 (1991), that the admission of expert testimony was admissible “where the main issue was eyewitness identification which was not substantially corroborated by other reliable evidence.” The state argued that Robinson’s statement admitting he was at the scene was corroboration. ROA. 402, ll. 20 – 25; ROA. 403, ll. 1 – 25; ROA. 404, ll. 1 – 5.

Defense counsel argued that there was no independent corroboration. He argued that Robinson admitted only to being at the scene in his statement which was the opposite of corroboration. He said Robinson said there were four people in the car, and that someone else had gotten out of the car. The fingerprint analysis suggested there may be other people involved. ROA. 404, ll. 6 – 25; ROA. 405, ll. 1 – 5.

When he qualified the expert, the judge cited the case of People v. McDonald, 37 Cal. 3d 351 (1984), which held that there can be testimony that people who identify can be mistaken as there were factors that jurors would not think about which may influence a person’s ability to identify, such as cross-racial identification or the effects on memory of the witness’s exposure to suggestions. He said that there were suggestions in Robinson’s case when the police told the witnesses they had the shooter or suspects. ROA. 406, ll. 1 – 25; ROA. 407, ll. 1 – 19.

The expert, Dr. Van Wallendaal, testified at length concerning the problems with eyewitness identifications. ROA. 391 – ROA. 439, ll. 1 – 4. She said she had worked with the Innocence Project which started with the National Institute of Justice. This project developed from situations where people who had already been convicted were exonerated by some sort of forensic evidence which was usually DNA. She testified that one thing all of the DNA exonerations had in common was “that a large percentage of them involved an erroneous eyewitness identification.” She was called in to talk to the Actual Innocence Commission about eyewitness identification. ROA. 395, ll. 25; ROA. 396, ll. 1 – 25; ROA. 397, ll. 1 – 25; ROA. 398, ll. 1 – 21.

Ken Whittler, an expert in firearms identification, testified that the bullet removed from the victim did not come from the gun found on Robinson. ROA. 440, ll. 3 – 25; ROA. 441, ll. 1 – 13; ROA. 442, ll. 8 – 23; ROA. 337, ll. 11 – 22. The SLED expert in gunshot residue testified that no gunshot residue was found on Robinson. ROA. 331, ll. 18 – 25; ROA. 332, ll. 16; ROA. 333, ll. 6 – 13. Police Officer Todd Gardner who worked with the York County Forensic Services testified that no identifiable prints were found at the scene but he did find identifiable prints from two other people in the car. The people were Manno Heshumi Beam and Hiawatha Carol Beam. Robinsons’ prints were not found anywhere. ROA. 334, ll. 3 – 25; ROA. 335, ll. 1 – 25; ROA. 336, ll. 1 – 25.

In Neil v. Biggers, 409 U.S. 188 (1972), the United States Supreme Court named a two prong process to determine if an out-of-court identification was admissible: (1) if the identification process was unduly suggestive and (2) if the identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Neil v. Biggers, id.; State

v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (2003).

An in-court identification of an accused is inadmissible if an out-of court identification was so unduly suggestive that it created a very substantial likelihood of irreparable misidentification. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). Neil v. Biggers cites five factors to determine reliability: (1) opportunity of witness to view criminal at time of crime (2) witness' degree of attention (3) accuracy of witness's prior description of criminal (4) level of certainty by witness at time of confrontation (5) length of time between crime and confrontation. Neil v. Biggers, *supra*.

In State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007), the South Carolina Supreme Court held that a criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification.

In Robinson's case, the only real evidence against him was the eyewitness identifications. These identifications were unduly suggestive as the trial judge found, and should not have been allowed into evidence. The in court identifications by Ms. Parker and Ms. Howie were the "fruit of the poisonous tree" and should not have been allowed into evidence. Ms. Parker admitted that she was "shaken up" and "very upset." Ms. Howie said the incident took only a "split second."

There was a reasonable probability that the identification by Savalas Dodd was influenced by his friend, Ms. Howie, after she was told the police had the suspects. In addition, Robinson was the one in court on trial. This identification was not reliable. Without the corroboration by the two other witnesses, the defense had a greater chance to

convince the jury of erroneous identification by Savalas Dodd through the expert testimony of Dr. Van Wallendael.

In the statement he gave to police, Robinson admitted only to being present at the scene. He said that the front passenger was the one who got out to pump gas and who shot the man in the black car. ROA. 18, ll. 20 – 25; ROA. 19, ll. 1 – 25. The trial judge did charge the jury on mere presence. ROA. 444, ll. 1 – 25; ROA. 443, ll. 1 – 8; ROA. 464, ll. 9 – 18.

In his statement to police, the co-defendant, Tobbie, said he and “Trap” got in the back seat and the driver and another person were in the front seat. He said that the front passenger was the one who got out and shot the victim and tried to rob him. ROA. 16, ll. 12 – 25; ROA. 17, ll. 1 – 25.

CONCLUSION

Based on the above, the convictions and sentences of the trial court should be reversed and the case remanded for a new trial.

Respectfully submitted,

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT.

This 28th day of January, 2010.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Travis Deniele Robinson, Appellant.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2011-UP-022
Submitted January 1, 2011 – Filed January 25, 2011

AFFIRMED

Chief Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Senior
Assistant Attorney General Harold M. Coombs,
Jr., all of Columbia; and Solicitor Kevin S.
Brackett, of York, for Respondent.

PER CURIAM: Travis Deniele Robinson appeals his convictions for attempted armed robbery, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime, arguing the circuit court erroneously admitted unreliable in-court identifications by eyewitnesses after determining the out-of-court identification procedures were unduly suggestive. We affirm.[1]

When assessing the admissibility of an eyewitness identification, a court must apply a two-prong test. State v. Moore, 343 S.C. 282, 287, 540 S.E.2d 445, 447 (2000). First, it must determine whether the confrontation procedure used by the police was unduly suggestive. Id. Only if the procedure was unduly suggestive must a court focus on whether "under [the totality of] the circumstances the identification was reliable notwithstanding any suggestive

procedure." Id. at 287, 540 S.E.2d at 447-48 (quoting Jefferson v. State, 425 S.E.2d 915, 918 (Ga. Ct. App. 1992)). Factors to consider in "evaluating the likelihood of [a] misidentification" include the following:

[T]he opportunity of the witness to view the criminal at the time of the crime, the witness'[s] degree of attention, the accuracy of the witness'[s] prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

Neil v. Biggers, 409 U.S. 188, 199-200 (1972).

Here, the circuit court did not abuse its discretion by admitting the eyewitnesses' in-court identifications. After finding the show-up procedure performed by the police was unduly suggestive, the circuit court properly considered the Neil v. Biggers factors to assess the reliability of the eyewitnesses' identifications. As to the first witness's identification: first, she testified she saw Robinson when he walked into and back out of the gas station, and throughout the course of his struggle with the victim; second, she testified she was suspicious of Robinson and witnessed the struggle and shooting unfold, indicating a heightened degree of attention; third, she told police the shooter had dreadlocks; fourth, she was "99 percent sure" Robinson was the shooter; and finally only a "little while" had passed until she identified Robinson at the show-up that night. As to the second witness's identification: first, she testified she saw Robinson when he walked into and back out of the gas station, and she looked him in the eyes during the attempted robbery; second, her attention was focused on Robinson during the course of the attempted robbery; third, she was a "hundred percent certain" Robinson was the shooter; and finally, only a "little while" had passed before she identified Robinson as the shooter later that night.

Under the totality of the circumstances, the unduly suggestive show-up procedures did not unconstitutionally taint the reliability of the eyewitnesses' in-court identifications of Robinson. Thus, the circuit court did not err in allowing both eyewitnesses to identify Robinson in court as the shooter. Accordingly, the decision of the circuit court is

AFFIRMED.

FEW, C.J., SHORT and WILLIAMS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

/CSD/Strait

INDEXED DOCKET NO. 2008-GS-46-008

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

June 12, Term 2008

Defendant

ARREST WARRANT NUMBER

I-152118

THE STATE

Witness:

C.C.C. PLS. AND G.S.

VS.

TRAVIS DENIELE ROBINSON

ACTION OF GRAND JURY

s/ Patricia Moss

12-14-08 True Bill

TRUE BILL

Quinn R. Murray
Foreperson of Grand Jury
6-12-08

VERDICT

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

Foreperson of Petit Jury

Date:

844

8/6/08

SC Code: 16-3-620
CDR Code: 0014

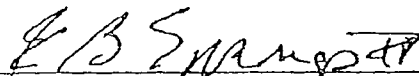
STATE OF SOUTH CAROLINA)
CERTIFIED TRUE COPY) INDICTMENT
COUNTY OF YORK 2008 DEC 13 PM 2:23

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
At a Court of General Sessions convened on June 12, 2008, the Grand Jurors of York County present upon their oath.

ASSAULT AND BATTERY WITH INTENT TO KILL

That the Defendant, Travis Deniele Robinson, did in York County, South Carolina on or about September 7, 2007, with malice aforethought, commit an unlawful assault and battery upon Savalas Dodd, causing his violent injury, in that the Defendant intentionally shot Savalas Dodd with a pistol in the parking lot of a gasoline station. All in violation of §16-3-620, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

FCSD Miller

The State of South Carolina

County of York

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

June 12, Term 2008

Defendant:

Witness:

C.C.C. PLS. AND G.S.

THE STATE

VS.

TRAVIS DENIELE ROBINSON

ACTION OF GRAND JURY

/s/ Patricia Moss

TRUE BILL

02-14-08 True Billed

Foreperson of Grand Jury

June 12, 2008

VERDICT

Indictment for

ATTEMPTED ARMED ROBBERY

Foreperson of Petit Jury

Date: 8/6/08

SC Code: 16-11-330
CDR Code: 0026

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY, INDICTMENT
 COUNTY OF YORK.) 2011 DEC 13 02:23

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

The Defendant, Travis Deniele Robinson, did in York County, South Carolina, on or about September 7, 2007, while armed with a deadly weapon, to wit: a handgun, attempted to feloniously take and carry away personal property belonging to Savalas Dodd, in that the Defendant, by means of force or intimidation put Savalas Dodd in fear by pointing a pistol at Savalas Dodd and demanding his money, while at Fort Mill, South Carolina. All in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. B. Sprague
 ASSISTANT SOLICITOR

WITNESSES
YCSD\Strait

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 12, Term 2008

ARREST WARRANT NUMBER

J-152119

THE STATE

vs.

TRAVIS DENIELE ROBINSON

ACTION OF GRAND JURY

/s/ Patricia Moss

02-14-08 True Billed

TRUE BILL

Quack K. Muthan
For person of Grand Jury

6-12-08

VERDICT

Indictment for

POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 0549

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

For person of Petit Jury
Date: 8/6/08

STATE OF SOUTH CAROLINA TRUE COPY

INDICTMENT

COUNTY OF YORK

2011 DEC 13 PM 2:24

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Travis Deniele Robinson, did in York County on or about September 7, 2007, while committing the crimes of Attempted Armed Robbery and/or Assault and Battery with Intent to Kill, have in his possession a handgun, all in violation of §16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. B. Spang

ASSISTANT SOLICITOR

SOUTH CAROLINA

York

VS.

Travis Deniele Robinson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4600854

A/W#: J152118

Date of Offense: 9/7/2007

S.C. Code §: 16-03-0620

CDR Code #: 0014

AKA:

Race: B

Sex: M

Age: 18

DOB: -

SS#: -

Address:

Clover, SC 29710

DL#:

SID#: NC1209306A

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: ASSAULT AND BATTERY WITH INTENT TO KILL☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620

of the S.C. Code of Laws, bearing CDR Code # 0014

☐ 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:

Solicitor

Springs, E.B.

Defendant

Attorney for Defendant

SC Bar#

BEFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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: 8/16/08☐ 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: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

[] at by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 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

\$

§ 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)

\$

§ 90.11 TP (SCJA Surcharge)

\$5

\$

TOTAL

\$130

David Hamilton
Clerk of Court/ Deputy Clerk

Court Reporter:

James Rich

PRESIDING JUDGE

Judge Code: 26

Sentence Date: 8/16/08

_____ 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.

11/23 CAROLINA

IN THE COURT OF GENERAL SESSIONS 851

York

VS.

Travis Deniele Robinson

INDICTMENT/CASE#: 2008GS4600856

A/W#: J164121

Date of Offense: 9/7/2007

SC Code § : 16-11-330(B)

CDR Code #: 026

Race: B Sex: M Age: 2011 DEC 13

DOB: SS:

Address: Clover, SC 29710

DL#: SID#: NC1209306

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET #1

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ATTEMPTED ARMED ROBBERY

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 026

☐ 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: *A v E*

Solicitor Spring, E.B. Defendant Attorney for Defendant SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 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: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment.

Payment Terms: Obtain GED _____

Set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____

Recipient: May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 35.13 (Public Def/Prob) \$500 \$ _____ Other: _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 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) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 130

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

David Hamilton
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE *John A. Hays*
Judge Code: 21
Sentence Date: 8/6/08

Court Reporter: *Annex Rich*

SOUTH CAROLINA
COUNTY OF York
STATE VS.

Travis Deniele Robinson

INDICTMENT/CASE#: 2008GS4600855

A/W#: J152119

Date of Offense: 9/7/2007

S.C. Code § : 16-23-0490

CDR Code #: 0549

AKA:

Race: B

Sex: M

Age: 18

DOB:

SS#:

Address:

Clover, SC 29710

DL#:

SID#:

NC1209306A

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: POSSESSION OF FIREARM DURING THE COMMISSION OF VIOLENT CRIME

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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:

Solicitor

Springs, E.B.

Defendant

Attorney for Defendant

SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/6/08

☐ 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: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ pay by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 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
§ 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)		\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5
TOTAL		\$ 130

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

David Hamilton
Clerk of Court/ Deputy Clerk

Danet Rich

John C. Hays
8/6/08