

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JAN - 3 2012

S C Supreme Court

CLARENCE ROBINSON,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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VOLUME II OF II
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INDEX

INDEX	1
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	825
RETURN	833
POST-CONVICTION RELIEF HEARING TRANSCRIPT	837
ORDER GRANTING <u>WHITE V STATE</u> APPEAL AND DENYING ALL OTHER ALLEGATIONS	851
ORDER DISMISSING DIRECT APPEAL (DATED JULY 17, 2009)	857
CLERK OF COURT RECORDS	858
NOTICE OF APPEAL	867

一、
二、
三、
四、
五、
六、
七、
八、
九、
十、

1 Q That's a ridge end Is that a ridge end
2 identified as one of the points of reference in your
3 report testimony with one of these?

4 A Yes, it is

5 Q Which one?

6 A Ridge end is this point right here The fact
7 that you are not seeing a blob of black ink is
8 because one is a latent, which is a chance happening
9 So somebody is touching that item

10 The other is a known, rolled impression by an
11 individual who's taking that finger and rolling it
12 from nail to nail Whether their ink is old, whether
13 they put too much ink on the individual, I can't
14 control those circumstances

15 So you can't expect for everything from a
16 latent to a known to be identical because they're not
17 rolled under the same conditions One is a chance
18 happening, one is rolled under controlled
19 circumstances

20 Q I'm sorry it's just hard to see On the
21 control here there appears to be another ridge What
22 would you call that?

23 A I did not call that anything because it's in
24 between two ridges, whether it's excessive inking or
25 whatever, it's not a ridge that dead ends or stops

1 (Whereupon, the jurors exit the courtroom)

2 (Whereupon, a recess was taken)

3 THE COURT Thank you, ladies and gentlemen,
4 we will now resume with the witness's testimony

5 Does she need to come back down there to
6 finish questioning?

7 MR HOWELL I am finished, Judge

8 THE COURT Okay

9 MS Crumey, did you have any questions for the
10 witness?

11 MS CRUMEY No

12 THE COURT Mr Harris?

13 MR HARRIS Briefly, Your Honor

14 THE COURT You may proceed

15 CROSS-EXAMINATION

16 BY MR HARRIS

17 Q When you get fingerprints, do you run those
18 through -- SCAFIS is what? South Carolina -- I don't
19 know exactly what that means

20 A The Automated Fingerprint Identification
21 System is know as AFIS SCAFIS is something totally
22 different

23 Q Okay So what is -- because on a rap sheet it
24 will say, fingerprints images on this subject are
25 stored in SCAFIS Is that South Carolina AFIS?

1 Seems like it would be

2 A It should, but I don't really look at the rap
3 sheets

4 Q Do you run the prints through AFIS?

5 A Those that possess the quantity and quality to
6 be run through AFIS, yes

7 Q Okay On these seven prints from the first
8 envelope, I don't want to talk about this print
9 anymore

10 A Okay

11 Q On the seven prints that were on the first
12 envelope, okay, that was a print from the side of the
13 cash register, right?

14 A Right

15 Q The inside of the door, right?

16 A Yes

17 Q The back of the cash register drawer?

18 A Yes

19 Q And inside of the door again? I'm going off
20 my memory, I apologize if I skipped one

21 A You did That's fine, yes

22 Q But these are from the incident location,
23 right?

24 A Yes

25 Q Okay Were those distinguishable or usable

1 prints?

2 A I would need to see the envelope

3 Q Okay

4 MR HARRIS May I approach with these for
5 identification

6 THE COURT You may

7 A Thank you

8 Latent lift number five was AFIS quality,
9 which means, yes, it was searched through the
10 fingerprint -- AFIS, the Automated Fingerprint
11 Identification System Latent lift number seven was
12 only comparable, did not contain enough to be
13 searched against the database Latent
14 lift number two is a comparable palm, it's not enough
15 to search the database Latent left number three is
16 non comparable, which means you cannot identify it to
17 any individual Latent lift number six is comparable
18 palm, was not able to be searched against the
19 database

20 Latent lift number four is non-comparable, it
21 cannot be ID'd to anyone And latent lift number one
22 was comparable, it could not be searched through the
23 Automated Fingerprints Identification System

24 So there was one that could be searched

25 Q And so you personally reviewed all those

1 fingerprints, all eight?

2 A Yes Seven, in the envelope there are seven

3 Q On this case eight, one there and seven?

4 A Yes

5 Q Okay So if someone's fingerprints are -- you
6 call them matching fingerprints? What do you call
7 it, a made fingerprint? What is the term you all
8 use?

9 A Known fingerprints?

10 Q Known fingerprint, I'm sorry It's known
11 because they're in AFIS, right? Or you have their
12 card in front of you?

13 A Yes

14 Q In some way they have been fingerprinted
15 before?

16 A For some reason they have been fingerprinted

17 Q But out of that envelope of those seven
18 fingerprints from the scene, none of them matched my
19 client, Clarence Robinson?

20 A No, sir

21 Q And from the scene none of them matched David
22 Brown?

23 A No, sir

24 Q And from the scene none of them matched Colin
25 Boston?

1 A No

2 MR HARRIS Okay No further questions

3 THE COURT Any redirect?

4 MR SAVAGE Yes, Your Honor

5 REDIRECT EXAMINATION

6 BY MR SAVAGE

7 Q Ms Butler, Mr Harris just asked you about
8 those seven prints there from the actual scene Just
9 so I am clear on this, could you run a match to those
10 defendants in the courtroom based on the prints there
11 or were they not of the quality to be able to do
12 that? I'm trying to understand

13 A When you search the database, you are
14 searching everybody's When you do a one-to-one
15 comparison the names of individuals are given to you,
16 you collect those ten-print cards and you do a
17 one-to-one comparison with the magnifiers

18 So I'm not quite sure what you were asking
19 because you said searched

20 Q You went through print number seven, print
21 number two, and I think you responded there was not
22 enough detail to run it through AFIS?

23 A Through the Automated Fingerprint
24 Identification System, yes

25 Q So that means that those prints that you

1 couldn't run them through the AFIS system to make, I
2 guess, a comparison because there wasn't enough
3 detail or something in the print? Can you explain
4 that, please?

5 A Okay You want to search a fingerprint that
6 possesses really good quality where it has this
7 criteria They would like at least eight points to
8 search the database

9 The way the new system works is that the
10 computer has to mark five of those, and then a human
11 can come behind and pick several other points It
12 will not give you good search results if you cannot
13 put at least eight or more points in there So they
14 have to be somewhat clear, yes

15 If you also cannot tell what type of pattern
16 you are searching, if I open it up to every single
17 pattern, plus every single finger, there are ten
18 fingers, the search results are going to be bad

19 The other thing is if the ten-print that is in
20 the system and the latent searching against, if that
21 was not properly rolled and it is not really clear,
22 the area I need is not clear, then it's not going to
23 match up That's why investigators turn around and
24 say, will you look at this individual, will you look
25 at that individual, because I can look and see how

1 many ten-prints were available to me and pull every
2 one of them if I need to

3 Q And so the one print that you did compare in
4 this case, who was that to again? The comparison,
5 who was that made to? which defendant?

6 A That was made to David Lee Brown

7 MR SAVAGE Court's indulgence, Your Honor

8 I have no further questions, Your Honor

9 THE COURT Any cross-examination -- any
10 further questions of the witness, Mr Howell?

11 MR HOWELL None, Your Honor

12 THE COURT Ms Crumey?

13 MS CRUMEY No, ma'am

14 THE COURT Mr Harris?

15 MR HARRIS Briefly, Your Honor

16 THE COURT You may proceed

17 RECROSS-EXAMINATION

18 BY MR HARRIS

19 Q Okay, but the seven prints from the envelope
20 you physically, as a fingerprint expert, you looked
21 at them against the fingerprint cards, the
22 hand-rolled fingerprint cards of these three
23 individuals?

24 A Yes, I did

25 Q And they did not match these three

1 individuals?

2 A The seven from envelope one did not match any
3 of those individuals

4 Q Okay But just because they're not comparable
5 in AFIS does not mean you can't look at them, right?

6 A Right

7 MR HARRIS Okay No further questions

8 THE COURT Any further questions from the
9 State?

10 MR SAVAGE No, Your Honor

11 THE COURT Any objection to the witness being
12 excused from the State?

13 MR SAVAGE No, Your Honor

14 THE COURT Mr Howell?

15 MR HOWELL None, Your Honor

16 THE COURT Ms Crumey?

17 MS CRUMEY None, Your Honor

18 THE COURT Mr Harris?

19 MR HARRIS None, Your Honor

20 THE COURT You are excused, ma'am

21 You may call your next witness

22 MR SAHN State calls Officer Koegler

23 THE COURT Pass those fingerprints, those
24 were for demonstrative purposes only Pass them down
25 to the bailiff

1 MR CHRISTOPHER KOEGLER,
2 after having first been duly sworn to state the
3 truth, the whole truth and nothing but the truth,
4 testified on his oath as follows

5 THE COURT You may proceed

6 MR SAHN Thank you, Your Honor

7 THE COURT You are welcome

8 DIRECT EXAMINATION

9 BY MR SAHN

10 Q Officer Koegler, where do you work?

11 A Charleston City Police Department

12 Q About how long have you worked there?

13 A Four and a half years

14 Q Please tell us your duties and
15 responsibilities at the Charleston Police Department?

16 A I, right now I am Team 4 power shift, which is
17 we do specialize in certain areas that have problems

18 Q Could I ask you to lean forward a little bit
19 to the microphone and speak a little louder if you
20 would

21 Q What about on February 26, 2008, what were
22 your responsibilities at that time?

23 A I was on the Team 3 power shift which is the
24 same responsibilities just a different area, which
25 was James and Johns Island

1 Q And did you become involved in an armed
2 robbery at the Bender's Bar at that time in February
3 of 2008?

4 A Yes, sir

5 Q And how did you first hear about that armed
6 robbery on that date?

7 A The call went out over the air And myself
8 and my partner went over to the Team 4 area to assist
9 over there in case they were still in that area

10 Q Again where is the Team 4 area?

11 A Team 4 is West Ashley It would have been up
12 on 17 close to Wappoo

13 Q And did you end up responding to James Island
14 Christian School?

15 A Yes, sir

16 Q When you arrived at that scene, were there
17 other officers already on scene there?

18 A Yes, sir I believe it was three

19 Q Do you remember who they were?

20 A Officer Bonanni, Cpl Ray at the time, and
21 Morrell

22 Q And when you arrive at the scene, did you see
23 the defendants in this case?

24 A Yes, sir

25 Q Did you see the defendant Colin Boston?

1 A Yes, sir

2 Q Where was Colin Boston when you first saw him
3 on the scene that night?

4 A When we first came up they were, all the
5 defendants at the time were being detained at the
6 rear of the vehicle

7 Q Did you ask Colin Boston anything when you
8 first saw him?

9 A When I first saw him I asked him whose car it
10 was

11 Q What was his answer?

12 A It was his car

13 Q Did you ask him anything after that?

14 A I asked him later was -- where the key to the
15 trunk was

16 Q Where the key was What was his response to
17 where the key was?

18 A He goes, I don't know

19 Q Excuse me?

20 A He said, I don't know

21 Q Okay Did you say anything else to Colin
22 Boston at that time?

23 A I do not believe so I asked him several
24 times where the key was throughout

25 Q And his response every time was the same?

1 A Yeah

2 Q After you finished that brief conversation,
3 did you look into the car at all?

4 A Yes, sir I was told to search the vehicle

5 Q During that time when you were searching the
6 vehicle, where was Colin Boston standing?

7 A He was on the -- his back was facing the
8 trunk, he was leaning against the back of the
9 vehicle I believe he was talking to other officers

10 Q Which side of the vehicle would that be?

11 A I believe right back It would be the
12 driver's side in the back

13 Q Okay while you were searching the car, could
14 you see Colin Boston during that time?

15 A Well at first my partner was searching the
16 vehicle and I was standing back just being the cover
17 officer making sure the defendants don't go anywhere

18 Q Did you make any observations of Colin Boston
19 during that time?

20 A Yes

21 Q What were those?

22 A While my partner was searching the car he was
23 completely fine, standing normal Every time he got
24 to the passenger side rear, back by the back seat, my
25 partner touched the seat, Mr Boston would turn his

1 head around extremely quickly just to see what was
2 going on

3 Then my partner would leave and he would act
4 completely normal again search the rest of the car
5 and pop the hood and he was just standing straight
6 and fine And then every time my partner went back
7 to that rear seat Mr Boston would turn around and
8 look to see what was going on

9 Q After you finished looking around the
10 passenger compartment of the car, did you see
11 anything near the backseat area?

12 A Yes, sir I went and searched the car and my
13 partner did the same thing, he observed Mr Boston
14 And we came to the determination that when we looked
15 at top of the seat there was a little space So we
16 went in and we slightly pulled the seat, you could
17 look straight down and you saw three firearms

18 Q Did you personally pull the seat back?

19 A I did, yes

20 Q What did you see when you looked through that
21 gap?

22 A I saw three firearms down, directly down below
23 where the seat was

24 Q Okay

25 A In the trunk is where they would have been

1 Q While you were looking through that backseat
2 into the trunk at the three guns, were you able to
3 see what Colin Boston was doing at that time?

4 A He was turned around trying to see what we were
5 doing

6 MR SAHN Court's indulgence

7 No further questions at this time

8 THE COURT Mr Howell?

9 CROSS-EXAMINATION

10 BY MR HOWELL

11 Q Did you take a picture of the space that you
12 are talking about?

13 A I have no idea, sir

14 Q When the space was by itself without being
15 pulled on, what were you able to see?

16 A You could see a gap

17 Q You could see a gap?

18 A Yeah, you could see a gap

19 Q Put your hands in it and pull the seat down?

20 A What's that?

21 Q You could put your hands in the gap and pull
22 the seat back?

23 A You could see in the gap before, yes, sir

24 Q To see what you saw you actually pulled down
25 to look in the trunk?

1 A Slightly, yes, sir

2 Q And do you know of any pictures that were
3 taken of the backseat?

4 A I have no idea, sir

5 Q Did you write a report in any way involving
6 this case?

7 A No, sir

8 MR HOWELL That's all the questions

9 THE COURT Ms Crumey, any questions?

10 MS CRUMEY No questions

11 THE COURT Mr Harris, any questions?

12 MR HARRIS None, Your Honor

13 THE COURT Any redirect?

14 MR SAHN No, Your Honor

15 THE COURT Any objection to the witness being
16 excused from the State?

17 MR SAHN No, Your Honor

18 THE COURT Mr Howell?

19 MR HOWELL None, Your Honor

20 THE COURT Ms Crumey?

21 MS CRUMEY None, Your Honor

22 THE COURT Mr Harris?

23 MR HARRIS No objection

24 THE COURT Sir, you are excused

25 Madam Forelady, ladies and gentlemen, we are

1 going to take advantage of this break in testimony to
2 take our luncheon recess It's about 12 35, we are
3 going to break until 2 00

4 During that break please do not discuss the
5 case among yourselves or with anyone else Please
6 don't have any contact with anyone in or about the
7 courthouse Please leave your notepads in your
8 seats, and again, please don't allow yourselves to be
9 exposed to any media coverage

10 I hope you enjoy your lunch We will see you
11 promptly at 2 00, and please return directly to your
12 jury room

13 (Whereupon, the jurors exit the courtroom)

14 THE COURT Anything from the State before we
15 adjourn for lunch?

16 MR SAVAGE No, Your Honor I appreciate you
17 making accommodations to get that extra witness

18 THE COURT Not a problem Anything further
19 from the defense, Mr Howell?

20 MR HOWELL No, ma'am, Your Honor

21 THE COURT Ms Crumey?

22 MS CRUMEY No, Your Honor

23 THE COURT Mr Harris?

24 MR HARRIS No, Your Honor

25 THE COURT Have a good lunch, I will see you

1 at 2 00

2 (Whereupon, a recess was taken)

3 THE COURT Is the State ready to proceed?

4 MR SAVAGE Yes, Your Honor

5 THE COURT Defense, Mr Howell, ready to
6 proceed?

7 MR HOWELL Yes, ma'am

8 THE COURT Ms Crumey?

9 MS CRUMEY Yes, ma'am

10 THE COURT Mr Harris?

11 MR HARRIS Yes, Your Honor

12 THE COURT Okay Please bring in the jury

13 (Whereupon, the jurors enter the courtroom)

14 THE COURT Thank you, ladies and gentlemen, I
15 hope you enjoyed your luncheon recess We will now
16 resume with the trial testimony

17 You may call your next witness

18 MR SAVAGE Thank you, Your Honor State
19 calls Harold Peterson

20 MR HAROLD PETERSON,
21 after having first been duly sworn to state the
22 truth, the whole truth and nothing but the truth,
23 testified on his oath as follows

24 THE COURT You may proceed

25 MR SAVAGE Thank you, Your Honor

1 THE COURT You're welcome

2 DIRECT EXAMINATION

3 BY MR SAVAGE

4 Q Good afternoon, Mr Peterson Where do you
5 live?

6 A 2836 Roseville Road, Wadmalaw Island, South
7 Carolina

8 Q And how long have you lived in Wadmalaw Island
9 for?

10 A All my life

11 Q Just so, I guess, we have met before and
12 discussed this case, I asked you to come to my

13 office? A Yeah

14 Q And you came to my office?

15 A Uh-hum

16 Q And you were there with me and also my
17 investigator, Jim Nesmith was there?

18 A Yeah

19 Q We discussed some of the issues in this case?

20 A Uh-

21 Q Do you remember that?

22 A Yeah

23 Q How long have you known the defendant David
24 Brown?

25 A Since elementary school

1 Q And did you guys go to high school together?

2 A Yeah

3 Q What high school was that?

4 A St John's High School

5 Q Let's go back to the day of the robbery,
6 February 26, 2008 Did you see Mr Brown on that
7 day?

8 A Yes

9 Q Where did you see him?

10 A At my grandma's house

11 Q Where is your grandmother's house?

12 A Bohicket Road

13 Q And is that in Wadmalaw or is that in Johns
14 Island?

15 A Johns Island

16 Q And approximately what time did you see Mr
17 Brown that day?

18 A I want to say about 6 00, 6 30 It was still
19 daytime

20 Q It was still daytime?

21 A Yeah

22 Q How did he get there?

23 A I think he walked

24 Q Okay Did he know you were there at your
25 grandmother's house?

1 A No

2 Q So is there any particular reason why he came
3 to your grandmother's house?

4 A He always come there

5 Q Okay How long did he stay there for?

6 A Not that long

7 Q When you say not that long is that a couple of
8 minutes, 30 minutes, an hour?

9 A About 30 minutes

10 Q About 30 minutes?

11 A Yeah

12 Q Then he left?

13 A Yeah

14 Q Do you know where he went after that?

15 A No

16 Q Did you see him again at all that night?

17 A No

18 Q Did you talk to him at all again that night?

19 A No

20 Q Since Mr Brown was arrested in this case,
21 have you visited him in jail?

22 A Yeah, like one time

23 Q And have you sent him money to -- sent him
24 money at jail? Given him money while he is in jail?

25 A Yeah

1 Q And has he written you letters from jail?

2 A Like one, like one letter

3 Q So, yes?

4 A Yeah

5 Q And he has called you from the jail on the
6 telephone?

7 A Yes

8 Q And you've spoken to him?

9 A Yeah

10 Q During those conversations, did -- just before
11 we get there

12 MR SAVAGE Your Honor, we may have an issue
13 of law here

14 THE COURT Madam Forelady, ladies and
15 gentlemen, we have a matter of law that will be
16 brief During the break police don't discuss the
17 case and please leave your notepads in your seats
18 Thank you

19 (Whereupon, the jurors exit the courtroom)

20 THE COURT Are you seeking to introduce some
21 phone conversations between this witness and one of
22 the defendants?

23 MR SAVAGE Yes, Your Honor

24 THE COURT Who is it between?

25 MR SAVAGE It's between Mr Peterson and Mr

1 David Brown

2 THE COURT Who is David Brown? David Brown
3 is not a defendant?

4 MR SAVAGE Yes, David Lee Brown

5 THE COURT David Brown, I'm sorry

6 MR HOWELL My client

7 THE COURT I keep getting him confused with
8 the other Brown who is not --

9 MR SAVAGE The other one is Darnel

10 THE COURT Okay The phone conversation are
11 between Mr Peterson and Mr Brown, Mr Howell's
12 client

13 MR SAVAGE That's correct

14 MR HOWELL Correct, Your Honor

15 THE COURT What -- how long are the
16 recordings?

17 MR SAVAGE The recordings last for 15
18 minutes But the substance of the conversation is
19 nowhere near that length

20 THE COURT What parts of it would you be
21 seeking to play?

22 MR SAVAGE Okay One of the parts is Mr
23 Peterson asked him on the telephone, he says to him,
24 are you going to work your magic this time Mr
25 Brown says --

1 THE COURT I'm asking because I want to
2 listen to it That's why I'm asking the question I
3 want you to summarize it for me I'm trying to
4 figure out how long is it for me to listen to it?
5 How much of it is really germane to what you're
6 seeking to introduce?

7 MR SAVAGE I'm thinking probably three to
8 five minutes that portion that I'm looking at
9 introducing There are other portions that have to
10 be taken out because --

11 THE COURT I need you to play for me what you
12 would be seeking to introduce

13 MR SAVAGE Okay would you like me to do
14 that for you now?

15 THE COURT Uh-hum

16 MR SAVAGE Very well

17 Can you let me know if you can hear this when
18 it plays?

19 THE COURT Uh-hum, I will

20 (Whereupon, the audiotape is played)

21 MR SAVAGE Let me fast forward to the other
22 section

23 (Whereupon, the audiotape is played)

24 MR SAVAGE That's the substance of this
25 particular conversation, Your Honor

1 THE COURT That's all you are going to be
2 seeking to introduce?

3 MR SAVAGE Not even all that Obviously
4 some of that is going to have to be redacted out He
5 mentions in there about the drugs and stuff,
6 obviously I realize that needs to come out

7 So there are portions of that that need to be
8 edited, so as far as this tape, yes This particular
9 conversation, yes

10 THE COURT There was not a motion filed
11 regarding these recordings Is there some motion
12 that I am supposed to be considering regarding this?

13 MR HOWELL I think the motion that would
14 cover those would be the motion about proffered
15 cases, Bruten --

16 MR SAVAGE There was a motion filed, Your
17 Honor I forwarded it to Elizabeth I think last --

18 THE COURT He makes reference to
19 codefendants, but some of that is muffled

20 MR SAVAGE He doesn't make reference to
21 codefendant's here What -- he does

22 THE COURT What I heard he was talking about
23 was he by himself or was he helping somebody else

24 MR SAVAGE Let me -- portions of it
25 sometimes he talks about other codefendants, but I'm

1 not looking to get --

2 THE COURT I understand he's saying that they
3 tell themselves --

4 MR SAVAGE He's talking about, he said, I'll
5 manage When he asked, are you going to work your
6 magic this time He says, I think this time I'm F'd

7 THE COURT I need to listen to it myself
8 where I can hear it clearly

9 MR SAVAGE Okay But the other portions or
10 part that I think is pertinent and probative is where
11 he is talking about him hiding his money He gets
12 put in the police car --

13 THE COURT Let's make this simple What are
14 you seeking to introduce against this defendant?

15 MR SAVAGE This statement about where he is
16 talking about hiding his money in his sock and the
17 police didn't get it And he did not get it right
18 away, it went through the jail, and it got put into
19 the canteen when he went into the jail

20 THE COURT Okay And what else?

21 MR SAVAGE And the other statement when he
22 asked him about the situation and he says, are you
23 going to work your magic this time? And he says,
24 this time I think I'm F'd

25 THE COURT Okay Is that the extent of what

1 you are seeking to introduce?

2 MR SAVAGE For this particular conversation,
3 yes

4 THE COURT And you would be redacting the
5 rest of it?

6 MR SAVAGE Yes And also --

7 THE COURT Any references he makes to his
8 codefendants you would redact?

9 MR SAVAGE Yes

10 THE COURT I assume that eliminates any
11 objections you all would have otherwise, you have no
12 standing to him making a statement that incriminates
13 him You only have standing if there's a Bruton
14 issue He's going to redact any reference he makes
15 to your clients So I guess that means you all can
16 sit down

17 Mr Howell, do you have an objection?

18 You have no standing to object to anything he
19 says that incriminates him, only if he incriminates
20 your client and then not subject to
21 cross-examination He said he's going to redact
22 every reference to your client So that makes any
23 issues you all want to raise at this point moot

24 I need to hear from Mr Howell what is the
25 basis of his objection

1 MR HOWELL My objections would be as to the,
2 are you going to work your magic this time, that
3 obviously refers to some prior criminal act or
4 something which tends to put his character in
5 evidence and would not be proper That would be the
6 basis of my objection

7 Because he's in jail, are you going to work
8 your magic this time --

9 THE COURT I don't know, some people have a
10 charismatic personality, Mr Howell They have
11 tendency in their life to sort of skate through
12 That doesn't necessarily mean -- I've heard people
13 make reference to people who aren't in trouble say
14 that to each other about business deals, about --

15 MR HOWELL And if he was in his office
16 working a business deal, I believe that would be a
17 fair characterization But when you are in jail
18 calling somebody about being in jail, and the guy
19 says, can you work your magic this time --

20 THE COURT Well you know when you talk on the
21 jail phone you talk at your own peril When you sign
22 a statement that says everything you say is going to
23 be recorded, and as you're talking it tells you every
24 couple seconds that what you are saying is being
25 recorded and that it could be used against you

1 MR HOWELL It still has to cross certain
2 evidentiary hurdles, and the hurdle that I believe
3 exists is one about putting his character in evidence
4 and that's the basis of my objection

5 THE COURT Would the State like to respond?

6 MR SAVAGE Yes, Your Honor I don't believe
7 that statement is putting his character into
8 evidence He basically, like you said, are you going
9 to work your magic this time That's not referring
10 to another crime I don't know what that's referring
11 to

12 There is no mention of any other crimes I
13 think that's what Mr Howell is concerned about is a
14 reference to another crime, there is no mention of
15 it And it is what it is He has that conversation
16 He knows he is being recorded He is having a
17 conversation with a long-time friend

18 There is one other statement in there I would
19 like to introduce that is when Harold asked him, why
20 did you stop there? And he starts talking about, you
21 know, he wanted to go to McDonald's and we are just
22 about to leave and the police pulled up

23 THE COURT The statements are admissible
24 The only time that this evidence is not being offered
25 for proof of his character, it's not being offered to

1 show he is acting in conformity with a particular
2 character trait

3 what you are relying upon does not govern the
4 admissibility of character evidence when it is
5 offered circumstantial proof of something other than
6 conforming conduct The State is offering this in
7 the nature of an admission against his own interest
8 In other words, an admission of his own culpability
9 which is different than character

10 They're not offering this to say that he is
11 acting in conformity with some character trait
12 They're offering it this as, as I have listened to
13 what they have presented, as circumstantial proof of
14 something other than confirming conduct, which is
15 different

16 MR HOWELL Just note my objection

17 THE COURT Your objection is noted for the
18 record Now you all need to clean that up because I
19 don't want any reference to the cocaine You
20 actually need to take this time now to redact it so
21 that we can listen to exactly what's going to be
22 offered

23 MR SAVAGE Obviously I will do that and play
24 a copy for the defense attorneys before we --

25 THE COURT I need you to go ahead and do it

1 now

2 MR SAVAGE I have to go back to my office to
3 do that because I need to put it onto a cassette
4 tape I don't have any of the equipment to do it on
5 CD That's why I said I think it's going to get
6 bogged down I need to take it back to my office

7 THE COURT So what, you are going to dismiss
8 this witness subject to being recalled?

9 MR SAVAGE I think we are going to have to
10 Because I need to -- to be able to do that I need to
11 go back and put it onto cassette tape and edit it out
12 so we don't have anything inappropriate on there So
13 I need to go through that whole sort of process

14 That's why I said I think -- I don't think we
15 will finish up today and I think we might get bogged
16 down, that's kind of what I was referring to I
17 thought this may happen

18 THE COURT Is there a reason the two of you
19 are standing?

20 MS CRUMEY Yes, ma'am Because after we
21 talked about redacting and going back to removing any
22 references, then there was another request to have a
23 portion about wanting him to go to McDonald's and
24 before he left the police pulled up on them So at
25 that point it's no longer just talking about himself,

1 he is talking about --

2 THE COURT He is not saying something
3 specific that they did or said He is simply stating
4 a matter

5 of his own observation which is, I wanted to go to
6 McDonald's, which is about him And the police came
7 up before they could leave

8 He doesn't make reference to your clients
9 specifically That doesn't, under my reading, prove
10 or cause a Bruton issue

11 MS CRUMEY But where --

12 MR SAVAGE Do you want me to clarify that,
13 Your Honor? I think --

14 THE COURT Well I haven't heard it It's
15 premature I want the tape redacted I want to
16 listen to it myself, and then I will make a decision
17 I can't deal in speculation of what might be said,
18 what could be said

19 I have had people paraphrase things to me too
20 much during the breadth of my 14-year career And
21 when I hear it, it was never what I was told I want
22 to hear it for myself So you all need to redact the
23 tape

24 Can we excuse this witness and have him
25 recalled in the morning?

1 MR SAVAGE Yes, Your Honor

2 THE COURT Sir, you are excused I need you
3 to return in the morning by 9 30 During this break
4 I need you to not discuss your testimony with anyone,
5 okay? That includes the solicitor's office, the
6 defense office, any members of your family, any of
7 your friends, okay?

8 THE WITNESS All right

9 THE COURT All right We appreciate your
10 patience, I hope we haven't inconvenienced you too
11 much

12 MR SAVAGE Your Honor, may my investigator
13 call him to tell him what time to be here tomorrow
14 morning?

15 THE COURT Well he needs to be here at 9 30
16 I would imagine we are going to take him up first
17 Sir, are you working?

18 THE WITNESS Yeah

19 THE COURT We need to take him first so that
20 he can go back to his job Okay, so we will see you
21 at 9 30 We appreciate your patience Who would
22 your next witness be?

23 MR SAHN State will call Trey Chisolm,
24 Trevielle Chisolm

25 THE COURT Is he going to have any issues?

1 MR SAVAGE We are going to have same sort of
2 issue, Your Honor

3 THE COURT What is the -- are you seeking to
4 introduce the tape with Treviellé Chisolm?

5 MR SAVAGE Yes

6 THE COURT What is that tape, what is that --
7 we might as well go ahead and deal with that too
8 What does that tape say?

9 THE COURT Who is Mr Chisolm a friend of?

10 MR SAHN David Brown

11 THE COURT Okay And do you have the
12 recording?

13 MR SAHN We do, Your Honor

14 THE COURT I need -- what parts of it -- I
15 need you to play for me what you would be seeking to
16 introduce

17 MR SAHN Yes, Your Honor

18 MR SAVAGE Do you want to call him first?

19 THE COURT I want to hear the tape I need
20 to hear it because you are going to have to do the
21 very same thing

22 MR SAVAGE Yes, Your Honor

23 THE COURT I don't think there is any
24 question about the authenticity of who's on the tape
25 or where the conversation took place The issue is

1 the admissability of the tape or what portions of it
2 would be admissible

3 MR SAVAGE Everyone on these tapes, on the
4 other end of the tapes, has come into my office and
5 verified it's them and that they're talking to --

6 THE COURT I don't think they're contesting
7 that

8 MR SAVAGE Okay

9 (Whereupon, the audiotape is played)

10 THE COURT What are you offering it for?

11 MR SAVAGE It's a statement against
12 interest It's also an admission

13 THE COURT It was muffled, I could barely
14 hear it

15 MR SAVAGE Yes, Trey had read in the
16 newspaper, in the newspaper it stated that one of the
17 -- I don't know what they quoted from -- it said
18 someone in the bar said, I feel like shooting a
19 mother fucker tonight Tray asked him, who the fuck
20 said, I feel like shooting a mother fucker tonight
21 His response is, Lenny's brother man, and he feeled
22 the bitch

23 THE COURT Lenny's brother, who is that?

24 MR SAVAGE Lenny's bother is Clarence Montez
25 Robinson

1 THE COURT The problem is you create a Bruton
2 issue when you play that because unless he testifies
3 he can't cross-examine

4 MR SAVAGE And I think that's the substance
5 of my motion that I submitted to Elizabeth last week
6 for you to have a look at

7 THE COURT My initial impression is that it's
8 not admissible until they've put it in play If he
9 gets on the stand that's a whole 'nother issue
10 Because then they open the door

11 MR SAVAGE I guess my argument, obviously
12 you've read my motion, it's not testimonial based on
13 the --

14 THE COURT Oh, it's testimonial because you
15 want them to rely on it And they're subject to be
16 able to cross-examine him about the veracity and
17 credibility of it They're entitled to question him
18 about exactly how he saw, how he had the opportunity
19 to see it

20 They're entitled to go into his credibility
21 and his believability Because as the fact finders
22 of the jury, you want them to rely on his testimony
23 They have no way of questioning the veracity of that
24 testimony It is a Bruton issue

25 Now if he gets on the stand and he says

1 something else and he opens the door -- frankly, he
2 doesn't have to say anything If he gets on the
3 stand you can use that tape to impeach him if you
4 want to You can use that tape to impeach any one of
5 them pretty much that's involved in that recording

6 But short of that, it's not admissible at this
7 point Because they're entitled to full
8 cross-examination of any inculpatory statements that
9 is made against them

10 So once you play a recording that he says that
11 he did this and he observed it, they have a right to
12 cross-examine about what he say, what was the
13 lighting, how could you have seen it, whether they
14 have any problems in their relationship that would
15 affect him, that would cause him to be prejudiced or
16 biased against him

17 And frankly they're entitled to inquire as to
18 what his motive would be to give him the testimony
19 Maybe he is trying to shift the blame from himself to
20 somebody else They're entitled to go into all of
21 that They're not limited to -- the short of it is
22 they're entitled to cross-examine him and it is
23 testimonial

24 MR SAVAGE Am I being invited to argue that
25 or is it that's your decision and move on

1 THE COURT I guess to some extent sometimes,
2 I think lawyers have gotten so used to judges not
3 reading before they come to court

4 I say that sort of jovially I study before I
5 come to court And I read And I sort of try to
6 anticipate everything that's going on I mean you
7 can argue it I've read your memo

8 But really it's a problem whenever you have --
9 I mean it's just one of those difficulties in trying
10 more than one defendant But even if you tried --
11 let's just even take out the multiple defendant
12 issue Even if you were simply trying the sole
13 defendant, I'm not certain you would be able to get
14 that tape in without it being able to cross-examine
15 the person who made the statement

16 Because you want the jury to rely on the
17 truthfulness of that statement You want them to
18 rely on the person who's reporting it saw it That
19 he had a firsthand account of it You want the jury
20 to believe that this defendant did it based on that
21 statement And that defendant is entitled to
22 cross-examine the person who's inculpatng him

23 MR SAVAGE I understand you're saying it's a
24 Sixth Amendment right to violation I will
25 respectfully disagree with that position based on

1 what the U S Supreme Court's decision has been I
2 don't believe it's testimony, it's not subject to
3 police interrogation The Sixth Amendment right is
4 those -- the accused have the right to confront those
5 who gave testimony against them

6 I believe that the case law that I have cited
7 in my brief is clearly sort of outlined what is
8 testimonial and what is not testimonial

9 THE COURT I'm clear on what's testimonial
10 and what's not testimonial

11 MR SAVAGE Okay

12 THE COURT I'm familiar with the proffered
13 and its full line of cases

14 The issue -- there are sperate issues involved
15 here and you are mixing apples and oranges There is
16 the testimonial and non-testimonial issue, and
17 there's a fact finder issue about the credibility of
18 the witness Whenever you have the credibility of
19 witnesses, motivation, prejudice, bias If there is
20 an issue and a person can't cross-examine them about
21 it, it's a problem

22 He is entitled to cross-examine him about it
23 so that the jury can weigh the credibility of those
24 statements It's not like a situation when you are
25 on a tape, you know you have no expectation of

1 privacy when you talk on a jail telephone and you
2 inculcate yourself That's different That's an
3 admission against interest That comes in all day
4 long To the extent of course that it's not subject
5 to the court weighing its probative value

6 But it's rare that you have to go that far
7 because usually, for whatever reason, people get
8 board in jail, and they chat a lot, and they chat on
9 the telephone, and they make a lot of inculcating
10 statements about themselves

11 But here you have a person making a statement
12 about the guilt of someone else who's his
13 codefendant And the issue becomes the probative
14 value of his statement, his credibility, his
15 veracity They're entitled to question him about
16 that And they are denied that opportunity if he
17 doesn't get on the stand

18 I'm not saying it's not admissable forever
19 If they get on the stand that's a whole 'nother
20 issue I don't know if they're going to testify I
21 have no idea But if they testify, it's a whole
22 'nother set of circumstances The field is wide
23 open

24 MR SAVAGE My position is that that
25 statement is inculpatory because not only does he

1 state who said it, he also added additional
2 information He wasn't asked it but he stated, he
3 feeled the bitch We have had testimony in this
4 courtroom about Adina Walden --

5 THE COURT There was testimony in front of
6 the jury, you want the jury to believe him without
7 withstanding the test of being cross-examination

8 MR SAVAGE The hearsay exception allow for
9 that to be -- believability to be admissible because
10 it's a statement against interest

11 THE COURT It's not a statement against his
12 interest

13 MR SAVAGE It is because he has specific
14 knowledge about who said it The only people who
15 knew who said it --

16 THE COURT That's created

17 MR SAVAGE -- were the people that were
18 inside that bar And he had the additional
19 information that wasn't asked of him He also added
20 that he feeled the bitch as well

21 The only people who knew that were Adina
22 Walden Nobody in the bar knew that, but he knew
23 that because he was there

24 Andre Thompson, his friend Adina Walden was
25 there He saw her walk into the bar He saw her get

1 grabbed He did not see her --

2 THE COURT I have no doubt that corroborates
3 the testimony But they still get to cross-examine
4 the witness against them It's just basic black
5 letter constitutional rights

6 You do not ask the jury to rely on a statement
7 without the person that is being inculcated not
8 having the ability to cross-examine and contest the
9 veracity of that person's statement and that's what
10 you are asking to do Two separate things

11 Our supreme court and our Court of Appeals is
12 big on prejudice, credibility, veracity and not
13 limiting those rights Level playing field

14 MR SAVAGE I agree And I think our Supreme
15 Court has been clear and that comes to whether it's
16 testimonial or not testimonial

17 THE COURT Two separate things

18 MR SAVAGE I do and I have been going
19 through those layers This is not testimonial It's
20 not through police interrogation, therefore is it
21 admissable under the hearsay exception My position
22 is it does get admissable under hearsay exception
23 because it's a statement against interest for the
24 reasons that I stated before

25 Therefore, the truth and veracity of that come

1 in because of that hearsay exception

2 THE COURT It's not a hearsay exception
3 because it's not an admission against his own
4 interest It's an admission against somebody else's
5 interest

6 He is not saying he felt her He is saying he
7 observed someone else feel her He doesn't say, we
8 were in it together and I watched him feel her That
9 is admitting accomplice liability He could argue,
10 merely I was there and I saw it, which is mere
11 presence I have ruled That's the end of it

12 Now, however, if they get on the stand it's a
13 whole different ballgame I will take it up again at
14 that time

15 who would your next witness be?

16 MR SAVAGE Natash Brown We have a tape,
17 let me find it

18 THE COURT What is that person's name?

19 MR SAVAGE Natash Brown

20 THE COURT Is that also Mr Brown?

21 MR SAVAGE No, it's Colin Boston

22 THE COURT Do you have another tape you
23 wanted to play?

24 MR SAVAGE Yes I am just loading it

25 THE COURT That's fine I wanted to make

1 sure you weren't waiting on me

2 MR SAVAGE No, Your Honor

3 (Whereupon, the audiotape is played)

4 MR SAVAGE That's it

5 THE COURT I need you to turn it up so that I
6 can hear it

7 THE COURT Okay So you want to play the
8 fact he said, I'm going plead and try to get four
9 years

10 MR SAVAGE (Affirmative head shake)

11 THE COURT For what purpose would that be
12 offered?

13 MR SAVAGE I think that's an admission of
14 guilt why would you agree to plea to something you
15 are saying you didn't do it

16 THE COURT You shouldn't ask me that
17 question People do it for a myriad of reasons I
18 have to say grace on that and think about that

19 MR SAVAGE Okay

20 THE COURT You would be seeking to introduce
21 that against Mr Boston?

22 MR SAVAGE Yes, Your Honor

23 THE COURT I have to think about that

24 MR HOWELL Your Honor, could I add some food
25 for thought, please

1 THE COURT Absolutely

2 MR HOWELL I would like it to be marked and
3 part of the Court's exhibits as well

4 THE COURT What's that?

5 MR HOWELL That is, I don't know exactly
6 what time and date that particular thing is so I have
7 to go back and look Mr Boston was actually charged
8 originally with armed robbery, unlawful carrying of a
9 pistol, that was the search incident to arrest,
10 obliterated serial number, possession of a pistol
11 under 21 So there is actually several different
12 things In other words he says, I'm pleading -- for
13 cross-examination I would need to clarify what was he
14 talking -- what is he admitting to because there's --

15 THE COURT You wouldn't have any standing to
16 object against anything Mr Boston said against his
17 own interest Only he can object to any statements
18 that would inculcate him Nothing he says inculcates
19 your client

20 MR HOWELL If he says, I was there and I did
21 an armed robbery, their whole point, Judge, is that
22 this was 16 minutes before And I think under those
23 circumstances --

24 THE COURT What was 16 minute before?

25 MR HOWELL This robbery was within 20

1 minutes before the time the police got these guys and
2 right down the street It's the closeness in time

3 I think if he says he was there, they were all
4 together, that evidence comes in and I am entitled to
5 clarify what he is talking about He may very well
6 be talking about, yeah, the serial number, which I
7 think is five-year charge, and the other gun and
8 those things, yeah, I might be guilty of that But
9 that's what he's talking about

10 Anyway I would like these marked so you can
11 take a look at them

12 THE COURT I don't think there is any
13 question about what he's charged with

14 MR HOWELL Right

15 MS CRUMEY Actually, Your Honor, his
16 original charges were not what he was indicted for
17 so there is --

18 THE COURT Okay, we will mark them as Court's
19 Exhibit

20 Is there more I need to listen to?

21 MR SAVAGE Yeah, I'm trying to

22 (Whereupon, the audiotape is played)

23 MR SAVAGE That portion, her --

24 THE COURT Her saying, they didn't find no
25 money they didn't find no this, it was in the paper

1 What was his response?

2 MR SAVAGE In the trunk she was telling him
3 they did not find none of that I will explain the
4 next portion may help clarify that for you

5 THE COURT Okay, play the next portion

6 MS CRUMEY Your Honor, I guess --

7 THE COURT I want to hear the whole thing I
8 need to hear everything

9 MS CRUMEY I am just trying to figure out
10 are we piecemealing this or is it just it's going to
11 the portions I think everything will be taken out
12 of context if we are just going to keep going through
13 snippets of one conversation

14 THE COURT I don't know I need to hear
15 exactly what he is seeking to introduce and then we
16 will see

17 (Whereupon, the audiotape is played)

18 MR SAVAGE That's that portion of it, Your
19 Honor And there is one more section

20 THE COURT Talking about her looking at TV
21 and what articles were taken from the car?

22 MR SAVAGE No She had gone and she got the
23 car back two days after the robbery, or a day and a
24 half back after the robbery Colin's mother gets the
25 car back and gives it back to Natash who's living

1 with COLIN at the time, it's his girlfriend

2 she gets the car back and she throws away
3 stocking cap, bullets, pills, gloves, all that stuff
4 from the trunk and she is telling him this and his
5 response is, damn, I might take this to trial then

6 THE COURT what I need you to do really, to
7 be completely honest, is I need you to redact all of
8 these tapes down to what you plan to use so I can
9 listen to them myself with a more clear device
10 Because I cannot piecemeal it like that I need you
11 to play -- you should have already put these on
12 something in the continuity of how you planned to use
13 them and have given them to me in advance of trial so
14 I could -- because normally I listen to them at home
15 because I have the software for the jail installed on
16 my computer

17 MR SAVAGE I tried to do that, Your Honor
18 I requested -- I spoke to Elizabeth, I wanted to talk
19 to you about this before trial but I did not hear a
20 response back

21 THE COURT You know, my secretary was out for
22 three weeks, she was sick and we were trying to man
23 court And we have court everyday

24 MR SAVAGE The problem with that, Your
25 Honor, I don't know what to submit to you Because

1 obviously I brought this to the attention of the
2 defense attorneys, they had this and I mentioned this
3 to them leading up to trial

4 I don't know what to submit to you and what
5 not to

6 THE COURT what you need to do is for each of
7 these recordings you need to put them on a cassette

8 MR SAVAGE Okay

9 THE COURT You need to boil it down to what
10 you would be seeking to introduce at trial and then I
11 will listen to them

12 MR SAVAGE Very well

13 THE COURT Then you need to give them copies
14 And then I will listen to them independently and tell
15 you what I think should be redacted from them, or
16 what I think should be admissable or not admissable
17 And then if you all disagree with me then we will
18 hear argument on it

19 That's probably the fastest way to deal with
20 it Now did all the witnesses you plan to call that
21 dealt with recordings, and let me see if I'm clear,
22 would be Natasha Brown, who's associated with the
23 recording of Mr Boston?

24 MR SAVAGE Correct

25 THE COURT Trevielle Chisolm who's associated

1 with Mr Brown?

2 MR SAVAGE Correct

3 THE COURT And Harold Peterson who's
4 associated with Mr Brown?

5 MR SAVAGE Correct

6 THE COURT would that be the sum total of the
7 recordings?

8 MR SAVAGE Court's indulgence, Your Honor
9 And maybe Janice Chisolm, which is Colin Boston's
10 mother

11 THE COURT That is Mr Boston's mother

12 MR SAVAGE I have thought it was Janice
13 Boston but when I spoke to her she told me it was
14 Janice Chisolm I believe

15 THE COURT You all had her listed as a member
16 of the Charleston Police Department but that is
17 incorrect, right?

18 MR SAVAGE No, she's not

19 THE COURT So it's Janice Chisolm, not Janice
20 Boston And that's number four on the witness list,
21 Anne, so you can correct that And that is the mother
22 of Mr Boston

23 MR SAVAGE Correct

24 THE COURT And you have a recording regarding
25 her also?

1 MR SAVAGE Correct

2 THE COURT Okay And that would be all of
3 the recordings?

4 MR SAVAGE And one more, Tracy Flowers,
5 who's the -- or was the girlfriend of David Brown

6 THE COURT So that would be one, two, three

7 MR SAVAGE Before we get to that one, that
8 one there, David Brown on that statement makes --
9 well that tape makes the statement that when someone
10 asked him about feeling the girl in the bar, this
11 time he says -- instead of saying Lenny's brother he
12 says, Monty grabbed the bitch's ass

13 THE COURT I want to listen to the recording
14 before I hear any argument It puts me at a deficit
15 because you all have been living with this case a lot
16 longer than me

17 So when you start making arguments about the
18 factual nuances of the recording, I have no idea what
19 you are talking about because I haven't heard them
20 so until I hear them, all of it is for not

21 MR SAVAGE Very well

22 THE COURT So I need you to reduce to a
23 tape-recording what you would be seeking to introduce
24 against each of these individuals, you need to
25 provide their counsel with a copy, you need to give

1 me a copy so that I can listen to them, and probably
2 we need to call -- how many witnesses do you have
3 other than these witnesses?

4 MR SAVAGE I may have another two or three,
5 I'm not sure

6 THE COURT Are they here today?

7 MR SAVAGE No, they're not because I didn't
8 anticipate

9 THE COURT Who are those two or three
10 witnesses?

11 MR SAVAGE Let me check, Your Honor

12 THE COURT Let me ask it this way, do you
13 intend to call Cpl Larry Brown?

14 MR SAVAGE No

15 THE COURT Renee Charles?

16 MR SAVAGE No

17 THE COURT Ronald Fuller?

18 MR SAVAGE I don't know yet, Your Honor

19 THE COURT Richard Frierson?

20 MR SAVAGE No

21 THE COURT Andre Finkley?

22 MR SAVAGE Andre Finkley No, Your Honor

23 THE COURT Cpl Tony Garland?

24 MR SAVAGE No, Your Honor

25 THE COURT Marvin Hancock?

1 MR SAVAGE Possibly It depends on whether
2 we have an issue with the jail tapes' admissability
3 He has been subpoenaed

4 THE COURT Is he at the jail or something?

5 MR SAVAGE He is the one that produces the
6 jail recordings to our office And so he is the one
7 that can authenticate PIN number and dates and times
8 and that stuff if that comes in

9 I don't believe we are going to get into that
10 because we will have the people who will authenticate
11 who's on the tapes, but that's why he is here in case
12 there is an issue with that

13 THE COURT Brian Hinton?

14 MR SAVAGE No He was the evidence
15 custodian and the drugs got severed so that's taken
16 out of the picture

17 That will also take out Susan Moody and
18 Elizabeth Higgins-Mitchell, the chain of custody
19 people

20 THE COURT Okay George Mackey?

21 MR SAVAGE No, Your Honor

22 THE COURT Officer Chris Morrell?

23 MR SAVAGE Maybe, I don't know yet

24 THE COURT Officer William Olsen?

25 MR SAVAGE No, Your Honor

1 THE COURT Latrell, Trell Peterson?

2 MR SAVAGE Maybe, I'm not sure yet

3 THE COURT Officer Brian Sigmon?

4 MR SAVAGE No, Your Honor

5 THE COURT Charles Turner?

6 MR SAVAGE Possibly, yes, Your Honor

7 THE COURT And Sean Woolridge?

8 MR SAVAGE That's also possible, Your Honor

9 THE COURT So you have nine potential
10 witnesses, five of whom deal with recordings,
11 correct?

12 MR SAVAGE Yes, Your Honor

13 THE COURT What I would suggest we do, and
14 you are probably going to need to call Mr Peterson
15 depending on how long it's going to take you to do
16 your other witnesses We probably need to go ahead
17 and call those other witnesses in the morning unless
18 you have them here now

19 MR SAVAGE I don't, Your Honor

20 THE COURT Go ahead and call those witnesses
21 and get them out of the way Then we will take a
22 break, a mid-morning break for me to listen to the
23 recordings Then we can knock out all the rest of
24 the witnesses with your recordings And that will
25 take you to the conclusion of your case, correct?

1 MR SAVAGE I believe so, Your Honor, yes

2 THE COURT Now let me ask another question
3 while we're here Are there going to be anymore
4 identification witnesses?

5 MR SAVAGE Possibly, yes, Your Honor That
6 will include with the ones that -- the ones you've
7 already stated

8 THE COURT Is the State going to be seeking
9 to introduce any convictions, prior convictions to
10 impeach the defendants' credibility starting with Mr
11 Brown?

12 MR SAVAGE Maybe against David Brown, Your
13 Honor

14 THE COURT What would they be?

15 MR SAVAGE He has three prior burg seconds
16 in '02 I believe it is

17 THE COURT Just for the benefit of Mr
18 Howell, I am not at the point where I'm going to
19 question your client, but I'd like to ask early so
20 you can go ahead and begin to talk to your client
21 about it

22 Those three burglary seconds would be
23 admissible against him under -- they're not subject
24 to the balancing test unless they're ten years old,
25 which they're not, they come in to impeach his

1 credibility

2 MR HOWELL I agree with Your Honor I will
3 double-check, I think there might just be two

4 THE COURT You can check the number, but the
5 burglary seconds would come in to impeach his
6 credibility They're not subject to the balancing
7 test as they involve thefts and they would affect his
8 credibility

9 MR HOWELL I agree, Your Honor

10 THE COURT What would you be seeking to admit
11 against Mr Boston?

12 MR SAVAGE Mr Boston doesn't have a prior
13 He was due, I believe, to start PTI the day after
14 this arrest So he has a possession of cocaine, I
15 believe it was, and resisting arrest charge, but
16 that's not a conviction because he was going into the
17 PTI program

18 THE COURT And even if they were they would
19 not be admissible against him --

20 MR SAVAGE That's correct, Your Honor

21 THE COURT -- because they would not be
22 probative on the truthfulness, at least the cocaine
23 would not And the resisting arrest, it depends on
24 the section if it carried over a year

25 As regards to Mr Robinson?

1 MR SAVAGE I think we have the same
2 situation as Mr Boston He has a pending lynching
3 second charge, not a conviction

4 THE COURT We don't have any issues about bad
5 acts not the subject of convictions, correct?

6 MR SAVAGE Are you asking me or the
7 defendants?

8 THE COURT I'm asking you I need to know
9 exactly what you would be seeking to introduce
10 against them so that they can have some meaningful
11 conversations with them prior to me getting to the
12 point of questioning them about it

13 MR SAVAGE No I have nothing to add right
14 now, Your Honor

15 THE COURT Is it acceptable that we proceed
16 in that manner? In other words to give you all the
17 time to do the tapes and redact them, provides
18 copies If you get them done earlier -- well it's
19 going to take you a little while

20 But if you get them to me first thing in the
21 morning, I'm here, I might be able to listen to them
22 before we get started in the morning, depending on
23 how early you get them to me I'm usually here

24 So if you get them to me first thing in the
25 morning I might be able to listen to them before we

1 start court If you get them to me early enough I
2 can do that, then we won't to spend the time out for
3 me to listen to them

4 MR SAVAGE I have been here at the office at
5 7 00 every day this week

6 THE COURT The sooner you get them to me the
7 sooner I can listen to them

8 MR SAVAGE Where should I bring them to,
9 what is the earliest time?

10 THE COURT We are here at 8 00

11 MR SAVAGE Okay Where do I bring them to

12 THE COURT You can leave them in our box We
13 check the box every 15, 20 minutes just down in the
14 clerk's office Or you can leave them with the
15 ladies at the scanner, they will call us and we will
16 come get them

17 MR SAVAGE Do you want me to provide the
18 transcript of what I interpreted is being said or
19 not?

20 THE COURT The tapes are what they say They
21 speak for themselves, they're self-authenticating

22 MR SAVAGE Very well I will have that
23 done, those tapes done, my version of it, tonight I
24 will make that promise to you

25 THE COURT And then get copies to defense

1 counsel so that they can listen to them as well

2 We have done limited research about, with the
3 pressed time we deal with, I'm always going to
4 everything when making a ruling On some days I do
5 better than others

6 But we have found a line of cases, some which
7 predate Crawford, but are still good law which
8 indicate -- that are factually on point -- that deal
9 with one codefendant making an inculpatory statement
10 against another codefendant and our Supreme Court
11 said that does not come within the hearsay exception,
12 it's not contemplated by the hearsay exception, and
13 it does not qualify as an admission against interest

14 Okay, we will stand in recess until 9 30

15 MR SAVAGE Your Honor, can I direct the
16 Court's attention, South Carolina State v Dennis I
17 think I cited that

18 THE COURT I've read them all Excited
19 utterance is a whole different ball of wax Excited
20 utterances have a whole different indicia of
21 reliability They do not have time for reflection
22 and for a person to lie I'm not going to sugar-coat
23 it, it's another one the Supreme Court says -- and
24 this is not an excited utterance This is many, many
25 days later, cool reflection and the ability to have

1 made it up

2 I have got to let go of the jury You all
3 stay I forgot about my jury They're going to be
4 happy they're going home, so bring them in

5 (Whereupon, the jurors enter the courtroom)

6 THE COURT Thank you Ladies and gentlemen,
7 we appreciate your patience We have been dealing
8 with some matters of law and I have determined that
9 it's probably going to take us the rest of the
10 afternoon to do that

11 So instead of having you all wait while we do
12 that, I'm going to go ahead and excuse you for the
13 afternoon This is going to enable us to work
14 through some thing and then be able to basically run
15 a little more seamlessly through some of the
16 remaining witnesses on tomorrow

17 So please know that we do not take your time
18 for granted We truly appreciate your patience We
19 know what a sacrifice jury service is to you and we
20 are trying to make it as efficient as possible It's
21 just the nature of the beast I guess, the way things
22 sometimes work out

23 So we appreciate your patience Again as I
24 have indicated we will adjourn for the evening and
25 you all will return in the morning at 9 30 directly

1 to the jury room Again, please don't have any
2 contact with anyone in or about the courthouse
3 Don't have any extraneous conversations I would not
4 want them to be misconstrued

5 Please don't allow yourselves to be exposed to
6 any media reports about this case Anything in the
7 newspaper, radio, television, especially on the
8 Internet, doing any kind of independent searches of
9 any type As I have indicated, you will return
10 directly to the jury room by 9 30 We appreciate
11 your patience, you all have a wonderful afternoon

12 You're excused Leave your notepads in your
13 seats for me

14 (Whereupon, the jurors exit the courtroom)

15 THE COURT Anything else before we adjourn
16 for the afternoon from the State?

17 MR SAVAGE No, Your Honor

18 THE COURT From the defendant, Mr Howell?

19 MR HOWELL No, Your Honor

20 THE COURT Defense, Ms Crumey?

21 MS CRUMEY No, ma'am

22 THE COURT Defense, Mr Harris?

23 MR HARRIS Nothing further

24 THE COURT And we did research that matter,
25 Mr Savage We got your memo and there was not

1 indication -- and we got it and we read it, but there
2 was no indication you wanted us to take it up before
3 trial So we apologize for any miscommunication on
4 our part

5 MR SAVAGE I apologize I knew this was
6 going to be a problem

7 THE COURT I just wanted to apologize You
8 all have a wonderful afternoon, I'll see you in the
9 morning

10 (Whereupon, the proceedings in this matter
11 before the Court were adjourned for the evening)

12 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the week of June 22nd through June 26th, 2009

I do further certify that I am neither of kin, counsel, nor interest to any party hereto

-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-10-3832, 3845

STATE OF SOUTH CAROLINA
Plaintiff

V

DAVID BROWN, COLIN BOSTON)
and CLARENCE ROBINSON)
Defendant

TRANSCRIPT OF RECORD

JUNE 25, 2009
Charleston, South Carolina
VOLUME 4

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

MR DALE SAVAGE, Assistant Solicitor
MR MICHAEL SAHN, Assistant Solicitor
Representing the State

MR DONALD HOWELL, Esquire Representing the
Defendant Brown

MS SHARI CRUMEY, Esquire
Representing the Defendant Boston

MR STEPHEN HARRIS, Esquire
Representing the Defendant Robinson

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT Now, have you all listened to the
2 redacted tapes, Mr Howell, those regarding your
3 client -- wait, let me do this in reverse order

4 THE COURT Mr Howell, have you listened to
5 the redacted tapes, those being the ones marked David
6 to Trey and David to Harold?

7 MR HOWELL I have, Your Honor

8 THE COURT Do you have any objection to the
9 playing of the redacted tapes?

10 MR HOWELL I do, Your Honor

11 THE COURT And what is the basis of that
12 objection?

13 MR HOWELL As to the one --

14 THE COURT There is one that talks about his
15 dollars -- the money being in his socks and being
16 given to the canteen And there's another one about
17 working your magic

18 MR HOWELL Right And I'm looking at my
19 notes to make sure I'm straight, Your Honor The one
20 to Trey, I got locked up with \$100 I hid, there is no
21 problem with that

22 THE COURT So that one comes in without
23 objection

24 Do you have that marked as an exhibit already?

25 MR SAVAGE No, Your Honor

1 THE COURT You need to have it marked

2 MR SAVAGE I didn't know whether it was
3 going to be an exhibit I wasn't sure

4 THE COURT I'm telling you now I want it
5 marked

6 MR SAVAGE Okay Do you want your copy or
7 my copy?

8 THE COURT Doesn't matter We can use my
9 copy We'll have the court reporter mark and admit
10 that without objection

11 (Whereupon, State's Exhibit No 39 is marked
12 and admitted into evidence)

13 THE COURT What was to objection to the other
14 one?

15 MR HOWELL As to the tape with Harold
16 Peterson, I think it was the young fellow that
17 testified yesterday, there are two references which
18 especially taken together I think put his character
19 in evidence

20 We argued yesterday, but as I see the whole
21 tape it starts out he says, what's up, hey man
22 Somebody says, you calm down Then Mr Peterson
23 seems to say, what are you going to say about this
24 one? And when you are talking to somebody in jail
25 who has been arrested --

1 THE COURT I didn't hear that It was so
2 muffled

3 MR HOWELL They're hard, Judge I had to
4 listen

5 THE COURT It's amazing to me they don't have
6 a better quality system Even though it's digital,
7 they've changed it

8 MR HOWELL It's right at the beginning he
9 says, hey, what you going to say about this one? He
10 says, I got F'd And then they go back and forth
11 And then he says, well are you going to work your
12 magic this time

13 And so the cumulative effect of those, if you
14 are talking about somebody in jail on charges, and
15 what are you going to do about this one, sounds like
16 this charge, and brings in other potential or the
17 suggestion -- or even more than just suggestion I
18 think -- about the prior bad acts and charges

19 And he says, what are you going to do about
20 this one, for this arrest --

21 THE COURT Well you are putting emphasis on
22 it like he said it like that and he didn't They
23 were having a casual conversation

24 MR HOWELL I disagree with you

25 THE COURT No You are adding emphasis to a

1 term that the emphasis isn't given to it on the tape
2 Their conversation is very fluid, just like two
3 buddies who talk He doesn't put emphasis on it that
4 way

5 MR HOWELL Well, the problem even if you
6 emphasize it in the least, what are you going to do
7 about this one, this one still means some arrest,
8 some trouble, some being in jail, and I think that's
9 inadmissible if it's his character

10 THE COURT Mr Savage, would you like to
11 respond?

12 MR SAVAGE Yes, Your Honor I don't believe
13 it is character evidence He is asking, what are you
14 going to do about this one It's a casual
15 conversation he is having with a friend, a long-time
16 friend He doesn't imply another crime He doesn't
17 talk about another crime He doesn't even talk about
18 this crime, really He just says, what are you going
19 to do about this one And he says, I be F'd

20 THE COURT For what purpose are you offering
21 it?

22 MR SAVAGE I think it goes to his state of
23 mind It's what he's thinking about at the time, and
24 I think it's also an admission He's basically
25 saying, his response is, I'm F'd

1 MR HOWELL Your Honor, I have one other
2 addition when you make an admission I think it's
3 got to be clear about what it is an admission to
4 They want to offer it for an admission to an armed
5 robbery charge This young man had a variety of
6 charges against him at the time

7 And if he is saying, this one, you don't even
8 know what they may be referring to

9 THE COURT They were clearly talking about
10 the armed robbery in the other part of the tape
11 that's not redacted from what I heard yesterday

12 MR HOWELL It's the first part of their
13 conversation It's --

14 THE COURT I have listened to it several
15 times, I'm going to listen to it again But an
16 admission doesn't have to be direct, it can be
17 circumstantial, it can be inferential

18 People rarely come out and say -- like the old
19 adage, people rarely kill folk in front of somebody
20 You don't have to directly say something It can be
21 inferential, it can be circumstantial, it can be a
22 passing reference in code to something, which people
23 generally lots of times talk in code about things

24 So I don't think it necessarily has to be --
25 he doesn't have to say, I committed an armed robbery

1 MR HOWELL I agree with Your Honor on that
2 where I see the distinction that I want to make sure
3 I'm clear on is that when there is table full of
4 files and I say, yeah that file is malpractice, that
5 doesn't mean I've admitted to all -- or there has got
6 to be some specificity to the evidence

7 And in the context of this evidence, we don't
8 know what, this one, might even be because he has got
9 a number of charges One is the cocaine charge that
10 isn't being tried, one is the obliteration of the
11 serial number which is not being tried, and one was
12 the possession of a weapon which he was arrested for
13 at the scene which is not being tried So those
14 three

15 THE COURT I have listened to the tape
16 several times this morning But I have listened to
17 it again The first part of the tape makes no
18 reference to this time He is telling him to calm
19 down and making reference to seeing what the police
20 might have on him And then he says, I'm F'd

21 And then further in the conversation they're
22 talking about some extraneous stuff about putting
23 money in a canteen And then he says, you going to
24 work your magic this time And he says, yeah That
25 could refer to many things I do not take it within

1 its context to mean other charges or other times It
2 could simply mean a charismatic, you know, that he
3 has a way of living or doing things where he has the
4 ability to be charismatic

5 I don't know that that refers to other charges
6 in its context, and the word is not referred to as
7 emphasis has been placed in argument this time And
8 it's only referred to once on the tape as I listened
9 to it And I will listen to it again before it's
10 played to make sure that I'm accurate I will have
11 somebody else listen to it to make sure I'm accurate
12 because most of it is really muffled

13 As I observed on yesterday, of course it is
14 not appropriate for the State to bring a defendant's
15 character into evidence unless proof of that -- if
16 they're trying to prove some action in conformity
17 with that character trait

18 However, when it is being offered as
19 circumstantial proof of something other than
20 conforming conduct, it does not come within Rule
21 404(A) And the State is offering it as an
22 admission, so to speak, and I'm not certain that I --
23 I'm going to have to think about that one a little
24 bit more

25 I am not certain that I agree with that, work

1 your magic this time, I don't know that that is --
2 I'm not certain how that can be construed as an
3 admission I'm just -- I mean that's -- you going to
4 work your magic this time

5 MR SAVAGE Let me see if I can clarify it
6 for Your Honor The reason why is because this tape
7 obviously has been redacted Mr Howell brings up,
8 we don't know which, he's charged with a bunch of
9 things

10 But the full context of the tape and the
11 conversation where he talks about the drug charge,
12 which obviously is not an issue But he talks about,
13 you know, they're charging me with possession with
14 intent to distribute He says, I'm going to get that
15 shit dropped down to possession

16 He talks about the gun charge I got that
17 beat, I'm not worried about a little gun charge, I
18 can get time served for that So he talks about the
19 other charges and discusses those and gives his view
20 on it

21 And then we have this discussion here which
22 does kind of leave the process of elimination that's
23 where we are going to I think what happens is they
24 want it redacted, they don't want --

25 THE COURT How is, you going to work your

1 magic this time, yeah, an admission? What is he
2 admitting?

3 MR SAVAGE That's what I'm saying Here's
4 the problem, when you redact all the rest of the
5 stuff out, that's kind of what you are left with

6 THE COURT No, I listened to the whole thing
7 You played it yesterday Still, how is that an
8 admission? That's like somebody saying to me --

9 MR SAVAGE Because he is in jail, he is
10 charged with a crime He says, hey, what are you
11 going to do with this one? And he says, I be F'd

12 THE COURT That part I don't have a problem
13 with That's an admission The work your magic, I
14 just don't see how that has anything to do with how
15 that becomes an admission When somebody says, I'm
16 F'd, that means, yeah, I got problems, I got a lot of
17 evidence against me That is an admission of
18 culpability

19 Because otherwise you'd say, I'm not guilty, I
20 didn't do this That's the natural -- with the
21 converse being, I got issues

22 MR SAVAGE I did not look into that one
23 because I thought you agreed yesterday that the work
24 your magic was coming in

25 THE COURT Well, but I thought about it some

1 more I had a chance to listen to it, and more
2 closely than having to hear it all muffled

3 I don't have a problem with working your
4 magic I don't think it's character, but you still
5 have to prove to me it's an admission against his
6 interest for it to be relevant And I'm trying to
7 figure out how it is relevant, other than them just
8 having a banter about -- typical jailhouse banter,
9 I'm going beat this charge

10 People say that to each other all the time on
11 the telephone from jail I mean I don't know what
12 people say in their private conversations, I don't
13 have privy to those, nor would I particularly care
14 to

15 MR HOWELL As a followup along that line,
16 working your magic, talks about something that's
17 going to happen in the future as opposed to something
18 that has happened in the past

19 And an admission has to do with something that
20 has already occurred Working your magic has to do
21 -- you could easily have said, I'm going to go hire a
22 great lawyer Or I'm going to need a good lawyer for
23 this case That doesn't mean necessarily it's an
24 admission So I think that might be part of the
25 distinction

1 THE COURT You working your magic, without
2 more, I'm just not certain it's an admission But I
3 don't have a problem with the first part of the tape
4 where he says -- his friend's telling him, calm down,
5 man And he's saying, you know, I don't know what
6 they got You don't know what they have, or
7 whatever And he's saying, whatever

8 MR SAVAGE I think it is an admission, Your
9 Honor I think in the context of it he's clearly
10 saying, are you going to get out from under this
11 charge He is saying, yeah, I am He is talking
12 about his ability to be able to get out from under
13 this charge

14 THE COURT I will think about it while I'm
15 talking to Ms Crumey about her client But the
16 first part of it comes in It is not character, it
17 is an admission, it is circumstantial and
18 inferentially an admission And it is also
19 circumstantial proof of something other than
20 conforming conduct, so it is not character

21 Ms Crumey, did you have any objection to the
22 tape from Colin to Janice, which I assume is from
23 your client to his mother, talking to his mother?

24 MS CRUMEY In terms of -- I am assuming
25 that's being offered as an admission

1 THE COURT Yeah, because he basically says,
2 I'm not going to talk about this on the phone He
3 doesn't deny that he did it She is asking him if he
4 did it And he is basically saying, I messed up He
5 says, but I'm not going to discuss this anymore on
6 the phone

7 MS CRUMEY She said, if you didn't do it
8 then you don't have to --

9 THE COURT Yeah, she says that too I'm just
10 going to the part of it, the guts of it that deals
11 with what could be considered an admission against
12 his own interest

13 I'm trying to figure out, do you have an
14 exception to the recording being admitted into
15 evidence?

16 MS CRUMEY As an admission, yes

17 THE COURT For any purpose, I need to know if
18 you have an objection to the recording

19 MS CRUMEY Yes, I am objecting for the
20 reasons that it is being offered

21 THE COURT What is the basis of your
22 objection?

23 MS CRUMEY The fact that when he says, I
24 messed up We are dealing with a situation where he
25 is -- I guess it's going to be taken out of context

1 in that saying, I messed up, without -- well, him
2 actually saying, I messed up, prior to her even
3 asking him any questions And then in response to
4 that just saying, I messed up and I'm not going to
5 talk on this phone, doesn't, like I said, doesn't
6 acknowledge that he did anything

7 Doesn't necessarily -- it's essentially saying
8 that I am not going to speak I think that roles
9 over to because we are talking about this being a
10 jail tape, which is subject to surveillance, him at
11 that point exercising his right to be silent --

12 THE COURT That does not apply He has no
13 expectation of privacy It's not a seizure When
14 you talk on a jail phone you do so at your own peril

15 MS CRUMEY But exactly And if you choose
16 not to, I don't think that that in itself can be used
17 as an admission against you when you say, I don't
18 want to talk on this phone

19 I mean, the same thing if you are saying that
20 you have no expectation of privacy, then you're not
21 acknowledging, you're saying --

22 THE COURT I don't think him saying, I'm not
23 going to talk on the phone, is the issue I think
24 what they want to admit is the fact that he says, I
25 messed up That's what they're asking

1 MS CRUMEY But the fact -- but he said, I
2 messed up, prior to the question The question when
3 she asked about it, if you didn't have anything to do
4 with this, then there was nothing to put on you And
5 he said, I'm not going talk like this on the phone
6 That was in response to that question

7 THE COURT Uh-hum And his spontaneously
8 saying, I messed up, that's an admission I mean
9 however you all -- it could be characterized in many
10 different ways, but you need to tell me what the
11 basis of the objection would be for it not to be
12 admissible And I haven't -- you need to articulate
13 that for me

14 MS CRUMEY Well, obviously at the beginning
15 we are dealing with a person that has -- that is in
16 PTI, that has some charges, and basically getting
17 rearrested, he messed up as far as that is concerned

18 I would say the problem with that, because
19 there is more than one interpretation just to say
20 that I messed up, when you're not dealing with just
21 this charge, but you're dealing with the situation
22 that happened prior to that, you are dealing with the
23 gun charge automatically, which he admitted to
24 messing him up, that doesn't admit to an armed
25 robbery, doesn't admit to anything dealing with the

1 armed robbery

2 Just saying, I messed up, because he did in
3 fact mess up when in fact he was charged with a gun
4 charge, he already got a PTI And like I said,
5 because he didn't want to talk on the phone like
6 that, that eliminated any ability to even expound on
7 that anymore

8 THE COURT He could have expounded He could
9 have said, I didn't do it There are many ways he
10 could have expounded If I'm taking the converse of
11 your argument

12 MS CRUMEY But she didn't say, did you do
13 it She said, if you didn't do it

14 THE COURT No, she said, did you do this
15 That was part of what she asked him And she said
16 what you're saying

17 MS CRUMEY But then he said, I'm not going
18 to talk on the phone like this

19 THE COURT Which is reasonable It was smart
20 on his part I agree Because his conversations
21 were being recorded, but by the converse they could
22 still argue the opposite of that assertion which is
23 when he says, I messed up, he equally could have
24 said, I'm innocent, or, I didn't do anything

25 I'm just playing devil's advocate I have to

1 see both sides of this coin when you are talking
2 about an admission against interest when someone
3 says, I messed up, that's clearly an admission of
4 something

5 MS CRUMEY Something

6 THE COURT Culpability

7 MS CRUMEY Admission of something but at
8 that point then the jury has to speculate on what he
9 messed up to It don't say, I messed up and I
10 committed an armed robbery It just has to be a leap
11 when you --

12 THE COURT Well, that's a weight issue You
13 all will then argue what he really meant You can
14 say, I messed up by hanging out with the wrong
15 people I messed up by making the wrong decision to
16 go out that night I messed up

17 I mean it could mean lots of things But
18 still it's an admission of something But some
19 culpability at some level It's not for me to
20 determine what his culpability is, it's for the jury
21 to determine that When a person says, I messed up,
22 it could mean a myriad of things It could mean, I
23 messed up I ran my mouth too much today It could
24 mean, I messed up, I told somebody something I
25 shouldn't have told them

1 It could mean, I messed up, I picked the wrong
2 night to go out with the wrong people

3 Certainly you can be free to argue that
4 There is nothing that stops you from doing that, but
5 that's a weight issue That doesn't take it out of
6 the ambit of being an admission

7 MS CRUMEY With all due respect, Your Honor
8 My own issue is that when the Court says that there
9 is a myriad of ways that that could be interpreted,
10 then it's just not so clearly against the person's
11 interest when they acknowledge -- when they say they
12 messed up, if it's a myriad of ways that that I
13 messed up can be interpreted That's the problem

14 It has to be strictly that they're
15 acknowledging culpability to some particular event
16 And to say there is a number of ways it could be
17 interpreted then --

18 THE COURT I'm simply pointing out to you
19 that there is no prejudice in that and there are many
20 ways that you can neutralize it

21 MS CRUMEY I understand, Your Honor Thank
22 you

23 THE COURT Anything further on your motion --
24 well we need to deal with two I will deal with them
25 one at a time, because that's easier for me to do it

1 that way

2 Does the State have any response to Ms
3 Crumey's argument regarding this is not an admission
4 against interest, and her objection to the recording
5 being admitted?

6 MR SAVAGE Your Honor, I think it's a case
7 again, Your Honor, they want it both ways There is
8 obviously talk beforehand about PTI, that has to be
9 redacted out Then obviously the subject turns
10 clearly to the more serious charge

11 And the whole context of this question, she's
12 arguing about context, the very next question after,
13 and she asked it twice, two times in a row, are you
14 telling me you did this? And she asked him again
15 clearly the context is talking about the armed
16 robbery There is -- they can argue whatever, but he
17 knows what she is asking him and she knows what she
18 is asking him

19 THE COURT Okay The case law, and the case
20 at least that is applicable to this argument, is that
21 our case law has drawn a distinction between an
22 admission against interest and what would be
23 considered a confession which it seems to be the
24 distinction, Ms Crumey, that you were drawing in
25 your argument

1 An admission against interest does not have to
2 amount to a confession. A confession admits all of
3 the elements of an offense. An admission against
4 interest need only be either by circumstantial or
5 direct inference of culpability. And I'm
6 paraphrasing it.

7 Judge Anderson has actually has written a very
8 good opinion on it and going through the distinctions
9 between what an admission against interest is and
10 what a confession is. And that our rules of evidence
11 do not require that an admission against interest
12 rise to the level of a confession.

13 And in making that distinction he uses Black's
14 Law Dictionary which indicates. Admissions are
15 statements by a party of the existence of a fact
16 which is relevant to the cause of his adversary. An
17 admission is an avowal or acknowledgment of a fact or
18 circumstance in which guilt may be inferred, tending
19 only to prove the offense charged but not amounting
20 to a confession of guilt.

21 An admission against interest is any statement
22 made by or attributable to a party to an action which
23 constitutes an admission against his interest, and
24 tends to establish or disprove any material facts in
25 the case. As opposed to a confession, which a

1 statement admitting or acknowledging all facts
2 necessary for conviction of a crime

3 An admission, on the other hand, is an
4 acknowledgment of a fact or facts tending to prove
5 guilt which falls short of an acknowledgment of all
6 essential elements of the crime

7 And he indicates that admissions are usually
8 applied in matters of fact in criminal cases which do
9 not involve criminal intent while the term
10 confession is generally restricted to acknowledgment
11 of guilt Whereas, a confession is the full
12 acknowledgment of guilt, while an admission is an
13 incriminating statement from which fewer than all
14 elements of the crime can be inferred

15 He goes on to distinguish, in an incriminating
16 statement or admission only one or more facts
17 entering into the criminal act are admitted while
18 in a confession the entire criminal act is confessed

19 And even further extrapolating on that matter
20 he talks about the necessity in the case of
21 corroboration that the distinction should be made
22 between confessions of guilt and admissions of
23 incriminating facts And that an admission merely
24 admits some fact which connects or tends to connect
25 the defendant with the offense, but not all the

1 elements of the crime

2 And the case that he -- and the factual
3 scenario of this case is where without being
4 Mirandized or -- I don't know whether he was
5 Mirandized or not, I don't want to misspeak -- but
6 sort of spontaneously this gentleman admits that he
7 was driving the vehicle and that was the crux of his
8 conviction, where he admitted to driving the vehicle
9 and later of course his breathalyzer showed that he
10 was -- he's referring to actually a different case
11 other than the one that I am reading right now But
12 that he -- really the only evidence against him was
13 his own statement that he was driving the vehicle

14 And that such an admission against interest is
15 one where that tends merely to establish one material
16 fact and does not acknowledge guilt And that the
17 law, of course, when we look at admissions against
18 interest presumes that the one making the statement
19 would not have done so unless the statement was true

20 Now I don't know necessarily that this case,
21 in terms of its findings, are necessarily on point
22 with this case, but I think it is very instructive
23 for us on the distinction between admission against
24 interest and a confession And that an admission
25 against interest does not have to rise to the level

1 of a confession to be admissible

2 And it deals with many other legal theories
3 that really are not germane to this discussion But
4 I think it does give us some guidance And actually,
5 without backpedaling, I think it applies to the
6 second portion of Mr Brown's statement where he
7 says, are you going to work your magic this time, and
8 he says yes I don't think it's an admission under
9 this definition, and therefore I am ruling that it is
10 not admissible The other part where he says he's
11 whatever --

12 MR SAVAGE I'm F'd

13 THE COURT Yeah, that would come in

14 Now as regards Ms Crumey's client's statement
15 about where he says, I messed up Actually this is
16 one of Judge Goldstein's opinions, I apologize I
17 think I might have said it was Judge Anderson's but
18 it's one of Judge Goldstein's

19 MR HOWELL It must have gone a little long
20 and you just assumed it

21 THE COURT It was the terminology actually
22 They sound very much alike I frequently refer to
23 Judge Anderson's opinions as law for dummies I love
24 it He does not ever assume or make assumptions
25 about what you know or you don't know I find them

1 very instructive I enjoy them

2 I was -- I was looking at Judge Anderson's
3 concurring opinion, it was him

4 I'm going to think about that one a little bit
5 while I hear argument on the second one, which is the
6 Colin to Natasha

7 Do you have any objection to the admission of
8 the tape, Ms Crumey? That's where he is talking to
9 Natasha I assume she is a romantic interest She's
10 talking about the things she disposed of

11 Are you all calling her as a witness?

12 MR SAVAGE Yes, Your Honor

13 THE COURT What is she going to testify to?
14 That she disposed of these things? I'm asking
15 because does she have a lawyer?

16 MR SAVAGE No, Your Honor

17 THE COURT I'm going to have to get her one,
18 because she's admitting to a criminal offense I
19 have to get someone to advise her of her right
20 against incrimination

21 MR SAVAGE The State is prepared to give her
22 immunity if that's what you want

23 THE COURT Yeah, but I still have to have a
24 lawyer discuss immunity with her I cannot get
25 somebody from the public defender's office

1 MR HARRIS We are all appointed on this
2 THE COURT I know because it's a conflict,
3 that's why I can't use the PD's office I have to
4 find out what other private counsel is up here so I
5 don't have to call somebody to come over, so I can
6 grab somebody out of plea court to do that for me

7 But we'll go ahead with the other witnesses,
8 but I'm going to have to have someone advise her of
9 what immunity means and all that, and her right
10 against self-incrimination because she admits to a
11 criminal offense on this tape

12 MR SAVAGE I'm going to take a shot in the
13 dark here There's probably a real good chance Mr
14 Smiley is around here

15 THE COURT I know he is, I saw him yesterday

16 MR SAVAGE I don't want to put him in this,
17 and volunteer him for something, but he's a private
18 lawyer

19 THE COURT That's going to be my first choice
20 if he's over there But I think there are some other
21 folk over there today too, we will figure it out

22 MS CRUMEY Your Honor, my only other -- at
23 that point, where we are talking about before we get
24 to what she is going to testify to, I don't see the
25 grounds where that --

1 THE COURT It's relevant, it's an admission,
2 they're colluding to destroy evidence relevant to
3 this case potentially

4 MS CRUMEY What I would respectfully
5 disagree in that, there has been, like I said, no
6 indication that there was going to be a follow-up
7 investigation or anything of that nature

8 And the things that they're talking about are
9 not even acknowledged or even in any way mentioned as
10 evidence in this case There was no mention of
11 stocking cap, no mention of a gray sweatshirt, pills,
12 or anything about -- none of those things were
13 mentioned as potential evidence in this case

14 And furthermore, there is some conflict in
15 terms of what the solicitor is asking to be
16 interpreted as, work gloves working with when he said
17 working gloves, it is something totally different
18 He asked her about items that -- his items that were
19 in the car that he wanted, not talking about,
20 specifically talking about evidence

21 And that was clear from the context of the --

22 THE COURT She's also asking him for
23 directions to the dump so that she can get rid of it
24 why would you get rid of something that's not
25 incriminating?

1 MS CRUMEY Things that were not
2 incriminating were removed None of these things --

3 THE COURT It doesn't have to be, but they
4 can argue it, they can infer it was incriminating and
5 that's why she is trying to get rid of it That's
6 why they are colluding to get rid of it That's why
7 she is asking for directions to the dump

8 It's a problematic conversation

9 Okay, I got a list of who's next door See if
10 Mr Prentes is available, and if not see if Mr
11 Smiley is available

12 MR HARRIS Your Honor

13 THE COURT You don't have standing to object
14 to a recording with her client that makes no
15 reference to your client

16 MR HARRIS My client was in that car,
17 driving that car

18 THE COURT But she's not talking about his
19 items, she's talking about his items They make no
20 reference to her client

21 MS CRUMEY But I guess the only thing is
22 that if we are talking about items in the car, if
23 items in the car were used against --

24 THE COURT That's not the context of the
25 conversation The context of the conversation is

1 that they belong to him and she is getting rid of
2 them for him

3 MS CRUMEY And that becomes a problem
4 because any items that were in the car, I mean it's
5 his car and the items that he has in the car prior to
6 any alleged crime So as far as making an inference
7 about items that were never even mentioned in any way
8 in this case would be highly prejudicial

9 THE COURT Let me interrupt you one second
10 Is Natasha Brown here?

11 MR SAVAGE Yes, she is

12 THE COURT Mr Smiley, I need a big favor I
13 have an individual in a case that may well -- she has
14 made -- had a discussion on a tape where she is
15 talking potentially about destroying some evidence
16 And she is going to testify

17 The State is willing to give her immunity I
18 just need you to go over that with her

19 MR SMILEY Be glad to

20 THE COURT I appreciate it Could you please
21 point him in the direction of Ms Brown

22 Does the State wish to respond to Ms Crumey's
23 objection?

24 MR SAVAGE Yes, Your Honor The bandana is
25 there I introduced photos in that photo taken by

1 crime scene there are two pieces of T-shirts in
2 there That bandana is torn from one of them, the
3 other part of that T-shirt is in that photo which has
4 been admitted into evidence So it's clearly in the
5 trunk at the time of the car

6 So to say it's not there, he is claiming --
7 and he said, it's my gray T-shirt It's there They
8 know what they're talking about

9 So, you know, it's an admission He's talking
10 about -- I think the earlier part of that
11 conversation, I am trying to think what's on the tape
12 now, the early part, but I think it's where he is
13 saying, get the car and check the trunk

14 He is doing all that, that's a signal to her
15 to go and do it because, you know what, I don't know
16 what's in there, I'm not sure what they have found,
17 but I know -- I sure know what's in there

18 There are guns, there's my bandana from the
19 T-shirt I ripped up, he knows all that He is
20 signalling to her to go and do that, to get it and
21 find out, he wants to find out what the police have
22 and what the police don't have

23 THE COURT I'm going to listen just one more
24 time now that I've had the benefit of your argument
25 If you all bear with me one moment

1 I assume you have to redact this tape again,
2 are you going to work your magic this time Can you
3 take that off this tape and then have that one
4 marked?

5 MR SAVAGE Yes, I can do that

6 THE COURT It will be marked and admitted
7 subject to Mr Howell's objection to the first part
8 of it The first part of it I've already ruled is an
9 admission against his interest

10 MR SAVAGE Do you want me to go do that now?

11 THE COURT Do you plan to call him as your
12 first witness?

13 MR SAVAGE Who is it?

14 THE COURT Harold

15 MR SAVAGE Yes, Harold was on the stand
16 yesterday

17 THE COURT I think you can play it without
18 going and doing that right now Before it goes back
19 to the jury, the second part of it needs to be
20 redacted so that will be marked and admitted
21 subject to the objection, as well as the other one
22 marked and admitted well, no, that one was without
23 objection

24 MR SAVAGE I think I left enough tape space
25 in there

1 THE COURT There is There is a lapse in
2 there where you can simply erase it

3 The tape between Mr Boston and his mother is
4 admitted subject to Ms Crumey's objection It's
5 clearly an admission against interest As I have
6 already noted for the record, his statement does not
7 have to rise to the level of a confession where he
8 admits all of the elements of the offense

9 Under the rules it needs only to acknowledge a
10 fact or a circumstance from which guilt may be
11 inferred, tending only to prove the offense charged
12 but not amounting to a confession of guilt

13 Clearly from the tape he has a discussion with
14 his mother about what may or may not be in the trunk
15 He doesn't know, it depends on what kind of evidence
16 they have And that when he left they were trying to
17 get in the trunk

18 And contrary to what has been argued, it is
19 not about other or multiple offenses It is clear
20 from the context of this tape and his mother's
21 statements that they are talking about the armed
22 robbery And she says, they can't pin something on
23 you you didn't do And he says, I already told you I
24 messed up And she says, are you telling me you did
25 it? And he says, I ain't going to talk about that on

1 the telephone

2 That's clearly an admission against interest
3 It's admitted subject to the objection

4 (Whereupon, State's Exhibit No 41 is marked
5 and admitted into evidence)

6 MR HOWELL Your Honor, before you start on
7 Natasha, I would like -- there are two references
8 that I'd like to highlight before you get there
9 rather than wait until later

10 THE COURT Uh-hum

11 MR HOWELL There is twice where he says
12 something about others, they did it, I didn't do it

13 THE COURT Who are you referring to?

14 MR HOWELL When Mr Boston is talking to
15 Natasha on that tape

16 THE COURT Oh, okay

17 MR HOWELL It's hard for me to tell which
18 tape you are listening to I wanted to bring it

19 THE COURT Can I listen to it first?

20 MR HOWELL Okay, fine

21 THE COURT Because some of it is so muffled
22 And I really I have listened to this with this tape
23 recorder, I've listened to it with a big tape
24 recorder My secretary is sick of me listening to
25 it I was playing it in her office and she was

1 probably that I went upstairs and left her alone

2 These -- I have heard a lot of jail tapes, but
3 these probably are one of the worst quality I have
4 ever heard

5 They did this, man -- something That can be
6 redacted easily though from the rest of it I'm
7 going to listen to the rest of it I was listening
8 specifically for that

9 Mr Smiley, you had a chance to speak with
10 her?

11 MR SMILEY Yes, ma'am I've spoken with
12 her, explained it to her, she is willing to testify
13 and accept complete immunity from the State I told
14 her I will be present during her testimony

15 THE COURT Thank you We will try to get you
16 out of here as soon as possible And if you need me
17 to appoint so that you can be paid, just let me know

18 MR SMILEY That's okay

19 THE COURT You're kind I appreciate it

20 The they part of it also could be referring --
21 it's to what the police did when they were in the
22 car They clearly were talking about getting behind
23 the seat and taking things out of the car

24 So I'm not sure he's referring to they did it
25 like they did the armed robbery, or they did it, they

1 took whatever out of the vehicle within the context
2 of the conversation But I'm going to listen to it
3 one more time to make sure I'm accurate

4 okay, when he talks about the police he says,
5 they get the seat open And then he said, they did
6 this But it really is not a reference -- it's not
7 within the context of the crime being committed,
8 it's more about what the police were doing to the
9 vehicle

10 And then there is reference to him saying, you
11 cannot control the dogs, the dogs are not listening
12 Then he tells her -- because she says, why are you so
13 concerned about your stuff, it's just materialistic
14 And he says -- well, then they start talking about
15 what's in the car She has to get another key He
16 tells her she is not understanding And basically
17 she tells him, they ain't going to find nothing
18 because I done thrown it all away

19 Then they continue to have a conversation
20 about what was thrown away, and she goes through a
21 whole litany of things, that being the gray shirt,
22 stocking cap, hat, shirts, pills, bullets And then
23 she says, all that, and they ain't going to find
24 nothing because I've thrown it away

25 Then he says, even my work gloves, or work

1 gloves? And she says, yes, I've thrown those away
2 Then she says, I have thrown it all away And then
3 they start talking about going to the dump Then he
4 talks about his shirt, gray shirt, being in several
5 pieces, which does serve to corroborate the evidence
6 that was found by the police

7 So it is clearly an admission against
8 interest Again it does not have to be a full
9 acknowledgment of guilt, but to come within the ambit
10 of an admission it is certainly an avowal or an
11 acknowledgment of a fact or a circumstance from which
12 guilt may be inferred tending only to prove the
13 offense charged but not amounting to a confession of
14 guilt

15 That's clearly an admission against interest
16 And I feel comfortable in that Mr Smiley has spoken
17 with her about any incriminating nature of that
18 evidence against her, and her immunity

19 MR SAVAGE Just to be open, I know we've
20 discussed the drugs not being talked about The
21 pills in that conversation, she is not going to
22 testify and say that they're illegal --

23 THE COURT I would assume they were -- I
24 assumed they were prescription

25 MR SAVAGE she doesn't know When I asked

1 her --

2 THE COURT From the context of it, it does
3 not appear that it was something illegal Sounds
4 like it was a prescription

5 MR SAVAGE I'm not going to make a reference
6 or she's going to say it was Ecstasy She is not
7 going to

8 THE COURT She shouldn't extrapolate because
9 frankly we don't have the pills, we don't know what
10 they were But from the context of what they were
11 talking about, it's like a prescription not something
12 illicit

13 MR SAVAGE I just wanted to be clear She
14 is not going into it

15 THE COURT I didn't hear any references today
16 when I listened to it The only reference today was
17 about the police pulling the seat, and about they, it
18 appears that within the context of it it's about the
19 police doing what they did to the vehicle Not about
20 these defendants committing a crime

21 MR HOWELL I have to say, they are hard to
22 hear and so it's --

23 THE COURT No But I've listened and this is
24 my court reporter's equipment, it's the most
25 sensitive

1 MR HOWELL I sat in my car all morning
2 There is one other reference that I just want to put
3 my specificity of my objection so that I don't waive
4 it That my hearing of it was that they did it meant
5 that they did the robbery

6 THE COURT I did not hear that on here And
7 if it's on here I did not hear it I'm sure they
8 would be jumping up and down and they would have
9 pointed that out to me if that was on here

10 MR HOWELL And the second one is about the
11 shirts He said something, that nigger robbed him,
12 blank, blank, I never could understand it

13 THE COURT That's not on here either I have
14 listened to this like eight times this morning

15 MR HOWELL Okay, fine If that's not on
16 there, it's not a problem If it is, I would like to
17 be heard

18 THE COURT You all want to listen to my
19 version of it? It's not on here

20 MR SAVAGE He asked me about it, that's not
21 what I heard

22 THE COURT The only conversation he has is
23 with her She says, I don't understand what's about
24 the car, why are you worried about stuff, it's just
25 material things And he says, you are not

1 understanding She says, well I got to go get
2 another key And he says, well you know they were
3 trying to get in the vehicle in the trunk, and the
4 police were in there pulling the seat back and they
5 did -- and he doesn't make reference to the robbery

6 It's more like the police, whatever the police
7 did to the vehicle That's the reference I heard on
8 the tape

9 MR HOWELL The case I found last night was
10 Gray versus Maryland, which is 118 Supreme Court
11 1151 And it basically says even if -- it's a little
12 bit different situation, but the bottom line is if
13 there is a vague reference to people other than the
14 defendant making the admission, but the vague
15 reference is clear as to who it is, then the right of
16 cross-examination comes up

17 THE COURT This vague reference is cleary to
18 the police doing whatever they were doing to the
19 vehicle If he says, they did the robbery or they
20 did it, it's not on my tape I didn't hear it

21 Is that on this tape?

22 MR SAVAGE I told him I did not hear that
23 reference

24 THE COURT Is there any reference to, they
25 did it, on this tape?

1 MR SAVAGE Not that I heard

2 THE COURT I will listen to it again before
3 she testifies

4 MR HOWELL I guess you got a little more --

5 THE COURT This will be now the 12th time I
6 have listened to it And I have not heard any
7 reference to, they did it, or they did the robbery,
8 or it's just a conversation between the two of them
9 about destroying evidence basically and her throwing
10 it away And the police not being able to find
11 anything because she has thrown it all away

12 MR SAVAGE I tried to redact everything out
13 to avoid that

14 THE COURT That's clearly an admission
15 against interest and it's marked subject to the
16 exception And I will listen to it again out of an
17 abundance of caution, but I heard no reference to
18 robbery or his codefendants on there I'll listen to
19 with a fresh ear before she testifies

20 Are we ready to proceed? Those are all the
21 tapes, correct, from the State?

22 MR SAVAGE I'm trying to think is that
23 everything we have with the tapes Did we discuss
24 Trey

25 THE COURT I'm sorry? I cannot hear you

1 MR SAVAGE We went over the one with Trey?

2 THE COURT I have gone over all the tapes, I
3 have ruled on all of them

4 MR SAVAGE The one where you want me to
5 redact it, obviously, do you want me to do that now

6 THE COURT If he wants to There is no
7 necessity that he do it right this minute You get
8 to that point and stop

9 It's not going to go back without being
10 redacted, without me listening to it again to make
11 sure it has been redacted

12 MR SAVAGE Okay The State is ready, Your
13 Honor

14 THE COURT Defense, Mr Howell, ready to
15 proceed?

16 MR HOWELL Ready, Your Honor, thank you

17 THE COURT Defense, Ms Crumey, ready to
18 proceed?

19 MS CRUMEY Yes, ma'am

20 THE COURT Mr Harris, ready to proceed?

21 MR HARRIS Yes, Your Honor

22 MR SAVAGE Your Honor, could I have a two
23 minute break?

24 THE COURT Yes I'm not breaking again
25 before lunch

1 (Whereupon, a recess was taken)

2 THE COURT Is the State ready to proceed?

3 MR SAVAGE Yes, Your Honor

4 THE COURT Is the defense ready to proceed,

5 Mr Howell?

6 MR HOWELL Yes, Your Honor

7 THE COURT Defense ready to proceed, Ms

8 Crumey?

9 MS CRUMEY Yes, Your Honor

10 THE COURT And, Mr Harris?

11 MR HARRIS Yes, Your Honor

12 THE COURT Please bring in the jury

13 (Whereupon, the jurors enter the courtroom)

14 THE COURT Ladies and gentlemen, I hope that

15 you all had a restful evening We appreciate your

16 patience The matters of law that we needed to

17 conclude took a little longer this morning than we

18 anticipated I also had a matter separate and

19 unrelated to this case that I needed to dispose of

20 from the trial roster

21 We will now hopefully be able to proceed with

22 very little interruption as a result of that extended

23 break And we again appreciate your patience and we

24 do not take your time for granted

25 Is the State ready to proceed?

1 MR SAVAGE Yes, Your Honor

2 THE COURT You can call your next witness

3 MR SAVAGE State calls Harold Peterson

4 MR HAROLD PETERSON, JR ,

5 after having first been duly sworn to state the
6 truth, the whole truth and nothing but the truth,
7 testified on his oath as follows

8 THE COURT You may proceed, Mr Savage

9 MR SAVAGE Thank you, Your Honor

10 DIRECT EXAMINATION

11 BY MR SAVAGE

12 Q Good morning, Mr Peterson Briefly you
13 testified yesterday You know the defendant, David
14 Brown?

15 A Yeah

16 Q And you've known him for most of your life?

17 A Yeah

18 Q You went to school together?

19 A Yeah

20 Q Live in he same area?

21 A No, not the same area But went to the same
22 school

23 Q General You lived close by You live on
24 Wadmalaw Island, is that correct?

25 A Yeah

1 Q And since he was arrested you've visited him
2 in jail?

3 A Yeah, like one time

4 Q And you've spoken to him?

5 A Yeah

6 Q Through the telephone while he was there?

7 A Yeah

8 Q And during some of those telephone calls you
9 discussed certain aspects about what happened the
10 night he was arrested?

11 MR HOWELL Objection, Your Honor

12 THE COURT Basis?

13 MR HOWELL Lead

14 THE COURT Sustained, leading Rephrase

15 Q (By Mr Savage) Did you talk to him about --
16 have you spoken to him about the night he was
17 arrested?

18 A Yeah

19 Q Did you ask him why he didn't high-speed it
20 out of there?

21 MR HOWELL Objection

22 THE COURT Sustained, leading Rephrase and
23 the characterization

24 Q (By Mr Savage) Did you talk to him about why
25 he did not leave?

1 A Yeah

2 THE COURT Sustained, leading Rephrase

3 Q (By Mr Savage) What did you talk to him
4 about? What did you talk to him about?

5 A I just asked him why they went to McDonald's

6 Q I'm sorry?

7 A I asked him why did they went -- why did they
8 stop

9 Q Okay And what was -- did you say anything
10 else?

11 A No, not as far as I can remember

12 Q Okay Do you remember saying to him about why
13 you didn't high-speed it out of there?

14 A Yeah

15 MR HOWELL Objection, Your Honor

16 THE COURT Sustained, leading

17 MR SAVAGE Your Honor, may I approach for a
18 second?

19 THE COURT You may

20 (Whereupon, a discussion was held at the bench
21 off the record)

22 Q (By Mr Savage) Mr Peterson, did David ever
23 tell you anything about having any money that night?

24 MR HOWELL Objection, Your Honor

25 THE COURT Sustained, leading Rephrase

1 Q (By Mr Savage) Did you talk to him on the
2 jail tapes?

3 A Yeah

4 Q Okay

5 MR SAVAGE Your Honor, may I approach?

6 THE COURT You may

7 (Whereupon, the audiotape is played)

8 Q (By Mr Savage) Do you recognize those
9 voices?

10 A Yeah

11 Q Who is that?

12 THE COURT Sir, I need you to speak directly
13 into the microphone Thank you

14 A That's me

15 Q (By Mr Savage) And who are you talking to?

16 A David

17 Q David who?

18 A Brown

19 Q And that's the defendant in the courtroom
20 today?

21 A Yeah

22 (Whereupon, the audiotape is played)

23 MR SAVAGE Your Honor, may I approach for a
24 second?

25 THE COURT Uh-hum

1 (Whereupon, a discussion was held at the bench
2 off the record)

3 MR SAVAGE Actually, Your Honor, may I
4 approach again just for a second?

5 THE COURT You may

6 (Whereupon, a discussion was held at the bench
7 off the record)

8 (Whereupon, the audiotape is played)

9 Q (By Mr Savage) What was that conversation
10 about?

11 A I asked him did they take his money

12 Q What did he say?

13 A No

14 Q Why didn't -- do you know why he didn't?

15 A No

16 Q You don't know why?

17 A Uh-uh

18 Q Did you hear him say anything about hiding it
19 in his sock?

20 A Oh, yeah

21 Q Yes?

22 A Yes

23 Q And is that possibly the reason why they
24 didn't take his money?

25 A Yeah

1 MS CRUMEY Objection, Your Honor

2 THE COURT Basis of the objection?

3 MS CRUMEY Speculation

4 THE COURT Please approach

5 (Whereupon, a discussion was held at the bench
6 off the record)

7 Q (By Mr Savage) Mr Peterson, in that
8 conversation where did David Brown say his money was?

9 A In his socks

10 Q In his socks And what did he do with it?

11 A He said he put it in his canteen

12 Q Do know what the canteen means? What is that?

13 A I don't -- when they put money in the canteen
14 just for food

15 Q Where?

16 A In jail

17 Q Okay And is that the canteen where you
18 brought money to David Brown before in jail and given
19 him money to put money into that canteen?

20 A Huh?

21 Q You mentioned earlier in your testimony that
22 you've given or brought money to the jail for Mr
23 Brown to put in his canteen Is that the same sort
24 of canteen?

25 A Yeah

1 MR SAVAGE Court's indulgence, Your Honor

2 THE COURT Uh-hum

3 MR SAVAGE I have nothing further at this
4 point, Your Honor

5 THE COURT Any questions, Mr Howell?

6 MR HOWELL None, Your Honor

7 THE COURT Any questions, Mr Crumey?

8 MS CRUMEY No, ma'am

9 THE COURT Any questions, Mr Harris?

10 MR HARRIS Briefly, Your Honor

11 CROSS-EXAMINATION

12 BY MR HARRIS

13 Q You really good friends with Mr Brown?

14 A Yeah

15 Q Really good friends, you all grew up together?

16 A Yeah

17 Q You drop money in his canteen, you brought him
18 money while he was in jail?

19 A Yeah

20 Q You talked to him on the phone a lot?

21 A No, not that much Probably a couple of
22 times

Q Okay But that wasn't the only
23 time, you talked to him on the phone before?

24 A No

25 Q You have not talked to him on the phone

1 before?

2 A Yeah, yeah, I talked him on the phone before
3 MR HARRIS Okay, just making sure Thank
4 you

5 THE COURT Any redirect?

6 MR SAVAGE No, Your Honor

7 THE COURT Any objection to the witness being
8 excused from the State?

9 MR SAVAGE No, Your Honor

10 THE COURT From the defense, Mr Howell?

11 MR HOWELL None, Your Honor

12 THE COURT From the defense, Ms Crumey?

13 MS CRUMEY None, Your Honor

14 THE COURT From the defense, Mr Harris?

15 MR HARRIS None, Your Honor

16 THE COURT Sir, you are excused

17 You may call your next witness

18 MR SAHN State calls Trevielle Chisolm

19 MR TREVIELLE CHISOLM,

20 after having first been duly sworn to state the
21 truth, the whole truth and nothing but the truth,
22 testified on his oath as follows

23 THE COURT You may proceed

24 MR SAHN Thank you, Your Honor

25 DIRECT EXAMINATION

1 BY MR SAHN

2 Q Good morning, Trevielle Do you go by
3 Trevielle or Trey?

4 A Trey

5 Q Okay How old are you, Trey?

6 A 24

7 Q where do you live?

8 A wadmalaw

9 Q How long have you lived in wadmalaw?

10 A 14 years

11 Q Do you currently work?

12 A Yeah

13 Q Where do you work?

14 A Kiawah

15 Q You work on Kiawah Island?

16 A Yeah

17 Q What company?

18 A KIC

19 Q What is that?

20 A That's a landscape company

21 Q Okay Do you do landscape work for them?

22 A Yeah

23 Q Do you have any other jobs?

24 A Yeah

25 Q Where is that?

1 A At Starfish Grill

2 Q What do you do at Starfish?

3 A I wash dishes and prep

4 Q Trey, I'd like to turn your attention now to
5 why you are here this morning Do you know the
6 defendant, David Brown?

7 A Yeah

8 Q How do you know him?

9 A My cousin

10 Q It's your cousin?

11 A Yeah

12 Q How long have you known him?

13 A About 14 years

14 Q Did you hear about an armed robbery at Benders
15 Bar in which the defendant was arrested for?

16 A Huh?

17 Q Did you hear about an armed robbery at Benders
18 Bar in which the defendant, David Brown, was arrested
19 for it?

20 A Yeah

21 Q How did you first hear about that?

22 A The news

23 Q The newspaper, television show?

24 A Yeah, paper -- I mean TV

25 Q The TV Were you pretty close to the

1 defendant, David Brown, at the time he was arrested?

2 A What does that mean?

3 Q It means, did you know him pretty well, were
4 you close friends?

5 A Yeah

6 Q Close enough that he might call you from jail?

7 A Yeah

8 Q In fact has David Brown called you from jail
9 since his arrest from this charge?

10 A Huh?

11 Q Has David Brown called you from jail since he
12 has been arrested on this charge?

13 A Yeah

14 Q Has he called you on more than one occasion?

15 A Yeah

16 Q Do you remember a telephone call that you
17 received from the defendants, David Brown, shortly
18 after this armed robbery occurred?

19 A What I was reading the paper, yeah

20 Q Okay Specifically I'm referring to a
21 telephone call made to you on March 1st, 2008, from
22 David Brown Do you remember that telephone call?

23 A No

24 MR SAHN Your Honor, at this time I ask
25 permission to refresh the witness's memory by playing

1 the tape for him

2 THE COURT You may proceed

3 MR SAHN May I approach?

4 THE COURT You may

5 MR HOWELL Your Honor, we stipulate to the
6 voices if that will shorten it up

7 THE COURT So --

8 MR SAHN To refresh his memory, Your Honor
9 He said he doesn't remember the conversation

10 THE COURT You may proceed in that regard
11 Mr Howell has indicated they stipulate to the
12 authenticity of the voices

13 MR SAHN Sure

14 (Whereupon, the audiotape is played)

15 Q (By Mr Sahn) Trey, on that tape what does
16 the defendant David Brown say to you? What's the
17 first thing he says to you?

18 A He just talking about at the time of the
19 arrest how much money he had

20 Q How much money did he tell you he had?

21 A I guess the tape said 100-something He did
22 not tell me how much money he had on him, that's all
23 I know

24 Q You don't remember what he told you?

25 A Listen, you just played it right now

1 Q That's all you remember? Do you want me to
2 play it again?

3 A Yes, play them again

4 MR HOWELL Your Honor, becomes cumulative at
5 this point The tape is in evidence

6 THE COURT Is there an objection?

7 MR HOWELL Objection

8 THE COURT And the basis of the objection?
9 Is the objection that it's cumulative?

10 MR HOWELL That's correct

11 THE COURT Please approach

12 (Whereupon, a discussion was held at the bench
13 off the record)

14 THE COURT Ladies and gentlemen, the parties
15 will stipulate that the amount of money that is being
16 discussed is \$190 A stipulation is an agreement,
17 and it requires no further proof

18 You may proceed

19 MR SAHN Thank you, Your Honor

20 THE COURT You're welcome

21 Q (By Mr Sahn) After he tells you it was \$190,
22 what did he say? What did David Brown say after
23 that?

24 A I can't even remember

25 Q You can't remember from just listening to the

1 tape?

2 A Play it again because I did not even hear what
3 he said after he said that I did not hear

4 MR SAHN Permission to play the tape one
5 more time, Your Honor?

6 THE COURT Approach, please

7 (Whereupon, a discussion was held at the bench
8 off the record)

9 THE COURT You may proceed

10 MR SAHN Thank you, Your Honor

11 Q (By Mr Sahn) Did David Brown tell you what
12 he did with the \$190 dollars once he got in jail?

13 A Not to my knowledge -- oh, I think the tape
14 says something about canteen I guess that's what
15 the tape said

16 Q Okay Did David Brown say anything after
17 that?

18 A Not to my knowledge

19 MR SAHN Court's indulgence

20 THE COURT Yes

21 MR SAHN No further questions

22 THE COURT Any questions, Mr Howell?

23 MR HOWELL None, Your Honor

24 THE COURT Ms Crumey?

25 MS CRUMEY No, ma'am

1 THE COURT And, Mr Harris?

2 MR HARRIS None, Your Honor

3 THE COURT Any redirect -- well, no
4 questions Any objection to the witness being
5 excused from the State?

6 MR SAHN None, Your Honor

7 THE COURT Mr Howell?

8 MR HOWELL None, Your Honor

9 THE COURT Ms Crumey?

10 MS CRUMEY No, Your Honor

11 THE COURT Mr Harris?

12 MR HARRIS No, none, Your Honor

13 THE COURT Sir, you are excused
14 who's the State's next witness?

15 MR SAVAGE State calls Janice Chisolm

16 MS JANICE CHISOLM,

17 after having first been duly sworn to state the
18 truth, the whole truth and nothing but the truth,
19 testified on her oath as follows

20 THE COURT You may proceed

21 MR SAVAGE Thank you, Your Honor, may it
22 please the Court

23 DIRECT EXAMINATION

24 BY MR SAVAGE

25 Q Ms Chisolm, where do you live?

1 A 4636 Bear's Bluff Road, Wadmalaw Island

2 Q What is your relationship to the defendant
3 Colin Boston?

4 A That's my son

5 Q Do you know any of the other codefendants here
6 today?

7 A I know David but not personally And Clarence
8 Robinson because him and my son went to school
9 together

10 Q At the time when Colin was arrested, where was
11 he living?

12 A 5302 Maybank Highway

13 Q And where was that in relation to where you
14 lived at the time?

15 A It's on Wadmalaw, it's past where we live at

16 Q How far from where you were living was it
17 approximately?

18 A Maybe about two miles

19 Q Okay Was Colin living with anyone at that
20 time?

21 A Yes

22 Q Who was he living with?

23 A Tasha Brown

24 Q On the day of the robbery, did you see or
25 speak to Colin?

1 A Yes, I did

2 Q And where was that?

3 A I saw him earlier that day and earlier that
4 evening

5 Q Okay Let's start with earlier that day Did
6 you speak to him or did you see him earlier that day
7 or both?

8 A No, he came to my house

9 Q Approximately what time was that?

10 A The first time he came I really don't remember
11 the time it was

12 Q Morning or afternoon?

13 A It was afternoon, like late afternoon

14 Q Okay Still daylight or dark?

15 A Still daylight

16 Q Okay And the second time?

17 A It was in the evening

18 Q Okay Approximately what time was that?

19 A About between 6 00 and 6 15

20 Q Okay And you saw him around 6 15 or is that
21 you spoke to him around 6 15?

22 A No, he was at my house

23 Q He was at your house And how long did he
24 stay at your house for?

25 A He stayed at -- it wasn't quite 7 00 before he

1 left

2 Q Okay And did you see him again after 7 00
3 that night?

4 A No

5 Q After Colin left your house that night, was he
6 supposed to do anything for you?

7 A Not for me but for my sister

8 Q What was that?

9 A He was supposed to take my niece to the church
10 for youth night

11 Q Okay And do you know what time he was
12 supposed to take her there?

13 A Well it starts about 6 30, 7 00

14 Q Okay And did he do that?

15 A Yes, he did

16 Q He did take her to the youth group?

17 A Yes, he did

18 Q Okay Was he supposed to pick her up as well?

19 A From my understanding he called and said,
20 asked me did my sister call about picking my niece
21 up

22 Q Okay But was he supposed to pick her up, or
23 you don't know?

24 A Well he asked me was he supposed to so I'm not
25 sure if he was supposed to or was he -- from my

1 understanding he was checking with me to see if my
2 sister contacted me to conform if he was supposed to
3 pick her up or not

4 Q Did you call -- who was it that Colin was
5 living with at that time?

6 A Tasha Brown

7 Q Did you call Tasha Brown that night?

8 A Yes, I did

9 Q Do you know approximately what time it was?

10 A About around 8 30 or so

11 Q Okay why did you call Tasha Brown?

12 A Because my niece called me

13 Q okay why did you call Tasha Brown?

14 A My niece called and asked me who was coming to
15 pick her up

16 Q Okay And so was Colin, were you calling to
17 see where Colin was or what was the purpose of
18 calling Tasha Brown?

19 A Yes, I was calling to see if Colin was there

20 Q Was Colin at Tasha Brown's house at that point
21 when you called?

22 A No She said he just left

23 Q He just left Do you know where he left to?

24 A No, I don't

25 Q Was it to go pick up the niece? Did she say

1 he was going to pick up the niece or you don't know?

2 MS CRUMEY I'm going to object

3 THE COURT Basis

4 MS CRUMEY Speculation

5 THE COURT Please rephrase

6 Q (By Mr Savage) Did she say where he left to?

7 A No I didn't ask her where did he go

8 Q Okay But she didn't say where, she just said
9 that he left?

10 A No When I called and asked was here there
11 she said, no, he just left, you just missed him

12 Q Okay Since the time of Colin's arrest, have
13 you spoken to him over the telephone regarding this?

14 A Yes

15 Q And at times have you asked him about the
16 evidence that may be involved in this case?

17 A I don't recall ever asking him about any
18 evidence

19 Q Okay Have you every asked him whether he was
20 involved in this case?

21 A I'm thinking I may have asked

22 Q Okay And when you asked him that do you
23 remember what his response was? Or did he respond I
24 guess?

25 A I don't think I actually asked him if he was

1 involved I mean I remember arguing with him just
2 about the fact that he was arrested

3 Q Okay At some point did you ask him whether
4 he did it?

5 A I don't think I asked him if he did it I
6 know I asked why that the police officer arrested
7 him What made them think that

8 MR SAVAGE Your Honor, may I approach?

9 THE COURT You may

10 (Whereupon, the audiotape is played)

11 MS CRUMEY I have got a point, she asked him
12 anything playing the tape I don't think we set the
13 proper foundation

14 (Whereupon, a discussion was held at the bench
15 off the record)

16 THE COURT Sustained, foundation

17 Q (By Mr Savage) Ms Chisolm, do you recognize
18 the voices on that tape?

19 A I understand my son's voice

20 Q Did you recognize the other person?

21 A No because I was saying I couldn't understand
22 The tape, it doesn't sound clear

23 Q Okay Let me rewind and I will play that
24 portion again

25 (Whereupon, the audiotape is played)

1 Q (By Mr Savage) Do you recognize that voice?

2 A Yes

3 Q Who is that voice?

4 A I am talking to him

5 Q That's you talking to your son?

6 A Uh-hum, my son

7 Q What are you talking about there?

8 A Well, like I said, I was asking him why would

9 they think this is him or them that did this

10 Q Okay

11 (Whereupon, the audiotape is played)

12 Q (By Mr Savage) What was he talking about
13 there?

14 A Well from what I hear he says something about
15 they don't know what they got inside the trunk

16 Q Is that the trunk of his car?

17 A I am assuming because that's the car they
18 arrested him in

19 Q Okay

20 (Whereupon, the audiotape is played)

21 Q (By Mr Savage) What did Colin say just then?

22 A What did you ask me?

23 Q What did Colin say just then?

24 A Can you play it again? I'm hearing it but
25 some of the words is not clear to me

1 Q Do you want the volume up?

2 A No, the volume is loud It's just not
3 (Whereupon, the audiotape is played)

4 Q (By Mr Savage) Just then?

5 A Okay what was your question?

6 Q what did he say just then?

7 A He said, I messed up

8 Q Okay Did you hear what you asked him there?

9 A No, I can't hear that

10 Q Okay

11 (Whereupon, the audiotape is played)

12 Q (By Mr Savage) Right there, what did you ask
13 him?

14 A I asked him if he was trying to say if he did
15 it or not

16 Q what was his response?

17 A He said he wasn't going to talk over the phone
18 about anything

19 MR SAVAGE Okay Court's indulgence, Your
20 Honor

21 I have no further questions, Your Honor

22 THE COURT Mr Howell, any questions for
23 witness?

24 MR HOWELL No, Your Honor

25 THE COURT Ms Crumey, any questions for the

1 witness?

2 MS CRUMEY No

3 THE COURT Any questions for the witness, Mr
4 Harris?

5 MR HARRIS Yes, Your Honor

6 THE COURT You may proceed

7 CROSS-EXAMINATION

8 BY MR HARRIS

9 Q Ms Chisolm, you mentioned earlier that you
10 wanted to find out if your son was -- I believe you
11 said why he was involved with the police?

12 A Right

13 Q The day before this, your son was expected to
14 be in what they call PTI, right?

15 A Yes

16 Q Because he --

17 MR SAVAGE Objection, Your Honor May we
18 approach?

19 THE COURT Be very careful, Mr Harris

20 MR HARRIS Your Honor, may we approach?

21 THE COURT You may approach

22 (Whereupon, a discussion was held at the bench
23 off the record)

24 THE COURT The Court will note Ms Crumey's
25 objection for the record and will sustain the

1 objection

2 Ladies and gentlemen, you will disregard the
3 last question in its entirety and you will disabuse
4 it from your mind and you will give it absolutely no
5 consideration in your deliberations It is not to be
6 discussed in any manner whatsoever in the jury room

7 You may proceed, Mr Harris

8 MR HARRIS Your Honor, I have no further
9 questions

10 THE COURT I assume there is no redirect from
11 the State?

12 MR SAVAGE Correct, Your Honor

13 THE COURT Any objection to the witness being
14 excused from the State?

15 MR SAVAGE No, Your Honor

16 THE COURT From the defense, Mr Howell?

17 MR HOWELL No, Your Honor

18 THE COURT From the defense, Ms Crumey?

19 MS CRUMEY No, Your Honor

20 THE COURT From the defense, Mr Harris?

21 MR HARRIS No, Your Honor

22 THE COURT Ma'am, you are excused

23 Who would the State's next witness be?

24 MR SAVAGE Natasha Brown

25 THE COURT Madam Forelady, ladies and

1 gentlemen, I'm going to give you a very brief recess
2 to use the restroom since you all have been sitting
3 for a moment During this break please do not
4 discuss the case among yourselves, leave your
5 notepads in your seats, and as soon as anyone who
6 needs to use the restroom has completed that, knock
7 on the door and let the bailiffs know and I will
8 immediately bring you back into the courtroom

9 I anticipate that we will have another two
10 witnesses before we break for lunch I do anticipate
11 that we will finish this trial today, however I'm not
12 certain When I say finish I mean with testimony
13 I'm not certain, however, based on scheduling whether
14 we will be having closing argument and instruction
15 today, or on tomorrow morning

16 So I just give you that so that you will know
17 any potential scheduling issues that you may need to
18 address If you would go with the bailiffs and
19 please leave your notepads in your seats

20 (Whereupon, the jurors exit the courtroom)

21 THE COURT I have had my clerk listen to the
22 tape again with the discussion between Tasha and
23 Colin and they agree with me, there is no reference
24 to they meaning his codefendants

25 There is a reference to they which really most

1 generously interpreted is referring to the police
2 doing something with the car And there is some
3 reference to the end to they are not watching them,
4 or something like that, or they are not watching
5 But it has no reference to his codefendants

6 So the tape will be admitted pursuant to the
7 Court's earlier ruling subject to the objection I
8 will have the court reporter mark it and admit it
9 And I suggest you all go use the restroom as well
10 quickly

11 How many other witnesses do you have other
12 than Natasha? We are going to take her in like 5
13 minute, Mr Smiley, so that you can get on with your
14 day

15 MR SMILEY Before she testified in front of
16 the jury, once she's sworn, if we could just put on
17 the record that she's being given complete immunity

18 THE COURT Absolutely I plan to do that
19 Five minutes

20 (Whereupon, a recess was taken)

21 THE COURT Is the State ready to proceed?

22 MR SAVAGE Your Honor, we have an issue that
23 I want to bring to the Court's attention

24 THE COURT Does it deal with the next
25 witness?

1 MR SAVAGE Yes, Your Honor

2 THE COURT Okay

3 MR SAVAGE It's been brought to my attention
4 that Mr Howell intends to cross-examine her on Colin
5 Boston's PTI involvement

6 THE COURT Who's your next witness?

7 MR SAVAGE Tasha Brown She was Colin
8 Boston's girlfriend at the time

9 THE COURT Okay And he is -- they're
10 talking about disposing the stuff, his stuff in the
11 car?

12 MR SAVAGE Yes

13 THE COURT On what premise would you be
14 allowed to ask him that question? That creates a
15 problem for Mr Boston It brings prior bad acts
16 that are not the subject of a conviction before this
17 jury which have to be proven by clear and convincing
18 evidence And you have to have a separate hearing on
19 that before that even would be admissible

20 And what standing would you have to ask her
21 that question? There is no reference in the
22 recording to your client or to Mr Harris's client

23 MR HOWELL I think that cross-examination is
24 broad --

25 THE COURT It is broad, but it still has to

1 be relevant

2 MR HOWELL And relevant to any issue that
3 has been brought up in the trial that this witness
4 has --

5 THE COURT What standing do you have to
6 incriminate him about a prior bad act that is not the
7 subject of a conviction?

8 MR HOWELL It explains damaging evidence
9 that comes back to hurt my client

10 THE COURT How?

11 MR HOWELL Because the tape says, I messed
12 up And there are a variety of reasons that can
13 explain, I messed up He flunked out of PTI, he had
14 these other charges It's helpful to my client to
15 bring that up and to have that explained as part of
16 my right of cross-examination

17 THE COURT He said -- him saying, I messed
18 up, is related solely to him There is only been
19 circumstantial evidence to this point that there were
20 three gentleman in this bar There has been no
21 direct testimony identifying any of them being in the
22 bar together

23 The other evidence that has been elicited is
24 that they each gave stories that they were all in
25 different places The only thing tying them together

1 is that they were found in the car together
2 Therefore that reasoning -- it just doesn't logically
3 flow

4 The tape is an admission against his own
5 interest where he says, I messed up If Ms Crumey
6 wants to explore that, that's fine because it's
7 inculminating to her client It does not inculminate
8 your client or Mr Harris's client

9 However, it does create a problem for Ms
10 Crumey's client because you are asking me to allow
11 acts before this jury that are not the subject of a
12 conviction And in order for you to meet that
13 burden, you have to prove those acts by clear and
14 convincing evidence And I have to have a separate
15 hearing for you to provide that evidence, clear and
16 convincing, before you can even ask that question

17 So what clear and convincing evidence do you
18 have that he committed an offense, a prior bad act
19 that was not subject of a --

20 MR HOWELL I'm not asking about a prior bad
21 act

22 THE COURT You are

23 MR HOWELL I'm asking about, was he in PTI

24 THE COURT Same thing

25 MR HOWELL It is not the same thing I'm

1 asking about did he have other charges pending

2 THE COURT Same thing, prior bad acts not the
3 subject of a conviction

4 MR HOWELL Right, for her purposes But for
5 my client without cross-examination -- I'll move for
6 a severance at this time

7 THE COURT When the Court talks you do not
8 talk

9 MR HOWELL Okay

10 THE COURT It's too late to move for a
11 severance We have already sworn the jury You
12 should have made that motion prior to them being
13 tried It's not timely It's not appropriate for
14 the Court to consider

15 I have to, when I have three codefendants
16 which this is always the problem, there is always the
17 possibility of antagonistic defenses And at some
18 point there is always the problem or -- problem
19 really is not the word I want to use There is
20 always the possibility that at some point as the case
21 rocks along, and it looks less beneficial to each
22 person, that they will start pointing the finger at
23 one another

24 In addition to that, there is always the
25 possibility, even prior to the case -- the State

1 resting their case, even after the State has rested
2 their case, that one of the defendants may get on the
3 stand and point the finger at his other codefendants
4 There is always that possibility

5 But you do not, in violation of his rights,
6 get to say to a jury, or bring before the jury, prior
7 bad acts that are not the subject of a conviction
8 unless you can preliminarily meet that first prong of
9 that requirement which is can you prove those by
10 clear and convincing evidence

11 You have the burden He does not have one
12 And even beyond that, I still have to weigh whether
13 that is more probative than prejudicial to him

14 So there are other ways that you can attack
15 her credibility But you are not attacking her
16 credibility, you are attacking his credibility He
17 is the one that says, I messed up So absent him
18 getting on the stand, you can't ask him about it

19 MR HOWELL That's the problem

20 THE COURT You can ask her about her
21 knowledge, and her veracity, her motivation
22 Anything that bears on her credibility you are
23 absolutely correct, the rules give you wide latitude
24 to attack that

25 Anything that deals with prejudice, motive,

1 credibility, all of those things But that is not
2 what you are asking to do You are asking to impugn
3 his credibility, and he is not a witness He is
4 simply on the tape making an admission against his
5 own interest

6 Now if he gets on the stand you can ask him
7 about PTI all day long As long as you can meet that
8 other burden But that's a whole different -- these
9 things are not increment -- you're trying to lump it
10 all together and it's not It's very different
11 levels of this situation I have to weigh them all

12 As far as I am concerned, these are three
13 different individual people being tried on three
14 separate sets of charges where the State has to meet
15 the elements beyond a reasonable doubt as to each and
16 every one of them

17 This jury can convict one of them, let two of
18 them go, can convict all three, let none of them go,
19 acquit all three of them

20 As far as I will instruct them these are three
21 separate defendants with three separate charges and
22 they have to prove beyond a reasonable doubt, with
23 the exception of course hand of one, hand of all,
24 without me getting into too much detail that is
25 really tangential to this discourse

1 But the bottom line is you are trying to
2 attack his credibility through a witness who really
3 doesn't know She has -- she cannot answer for him

4 MR HOWELL I understand your ruling, just
5 note my exception

6 THE COURT And I'm not going to do anything
7 that is going to allow you now to prejudice him or
8 violate or aggregate his constitutional rights You
9 can ask anything you want to ask her about impugning
10 her credibility I don't have a problem with that

11 Anything that you want to ask that impugns her
12 credibility about what she says on this tape But
13 when he says, I messed up, that's highly speculative
14 She doesn't know why he messed up Or why he would
15 -- or him saying, I messed up, to his mother, she
16 wasn't even a party to that conversation

17 MR HOWELL But she would know of additional
18 reasons that that might apply I understand your
19 ruling

20 THE COURT I don't know what she would
21 answer I don't know if she has been asked that
22 questions You might want to ask, do you know of
23 other reasons why he would -- but you can't ask that

24 First of all, you would have to establish that
25 she was privy to that conversation You cannot even

1 mention that because that would be hearsay, what Ms
2 Janice Chisolm said to her son, that's ripe hearsay
3 That's an out-of-court statement which you want the
4 jury to rely upon for its truth, that she was not
5 even a party to

6 So getting even beyond the foundation hurdle,
7 you cannot ask her about a conversation that she
8 wasn't privy to So now you want to ask this witness
9 -- now if you'd asked Ms Thompson this question
10 that's a whole different scenario, I don't know how
11 that would have turned out and I can't speculate
12 about it because the witness has been excused I
13 have no idea

14 But you're not going to be able to ask this
15 witness about a conversation she was not privy to,
16 that she doesn't have any idea -- at least I have to
17 make these assumptions because of the tape she wasn't
18 a party to the conversation, she was not a part of
19 it, and he did not make the admission to her

20 So it would be highly improper and it would be
21 extremely prejudicial to Mr Boston, especially since
22 you are trying to use this witness to impugn his
23 credibility on a conversation she wasn't even a part
24 of and did not participate in

25 MR HOWELL I guess my only distinction, I

1 don't see it as a credibility issue I see it as a
2 matter of explaining --

3 THE COURT It is a credibility issue

4 MR HOWELL -- where I differ with Your Honor
5 is I see it as a matter of explaining --

6 THE COURT You should have asked his mother
7 that question as to why do you think he would have
8 said he messed up

9 MR HOWELL But I don't think the law
10 restricts me to the facts --

11 THE COURT It does when you're talking about
12 a conversation she wasn't a party to

13 MR HOWELL I'd just like to finish that To
14 facts that are true facts that she would know about
15 that are --

16 THE COURT How would she know about him
17 saying to his Mama on a tape that he messed up when
18 she wasn't a party to the conversation?

19 MR HOWELL I'm not offering in any way that
20 that is what I would attempt to elicit from her

21 THE COURT What would you be attempting to
22 elicit?

23 MR HOWELL Did you know that this guy you
24 lived with was in the PTI Program? Did you know that
25 this guy you lived with and talking on the phone had

1 other charges pending against him Did you know that
2 this guy that you lived with worked at MUSC and had
3 other reasons to be worried that he would lose his
4 job That was my intent

5 THE COURT You still have to prove to me that
6 it's relevant in cross-examination from the direct
7 that that would even be an appropriate line of
8 questioning

9 And I will have to take it up The State will
10 have to make a contemporaneous objection But from
11 what I understand the context of her testimony will
12 be about this tape and the conversations that they
13 had about destroying evidence or throwing away
14 evidence that was in the trunk of a vehicle

15 what you're talking about is stuff that went
16 on between a conversation with he and his mother
17 And unless they raise some issue about his fear of
18 losing his job or something else, it wouldn't even be
19 appropriate in cross-examination no matter how wide
20 the latitude is

21 It still has to be relevant to the direct
22 examination, or within the scope of the direct
23 examination

24 MR HOWELL So you can proceed as you like
25 Be very careful, do not mention PTI After the

1 state, after they elicit direct testimony I will see
2 if any of it is relevant to their direct and I will
3 give additional instructions But at this point it's
4 not relevant to anything that is going to be elicited
5 on direct

6 MR HOWELL The only other thing I could
7 think that could possibly come up, I understand your
8 ruling but I want to make sure, is there were some
9 pills in the trunk that she talks about And of
10 course that could be something if they're illegal

11 THE COURT I got the impression from the tape
12 that they were prescription type pills

13 MR HOWELL Just said pills so I did not have
14 any idea

15 THE COURT From the context of what they were
16 talking about if they were illegal the police had
17 already been through that trunk, they would have
18 seized them and they would have been charged with
19 something else So apparently it was some kind of
20 prescription

21 MR HOWELL I would say that's speculation,
22 but we would hope so

23 THE COURT They wouldn't have -- anyway,
24 please bring in the jury

25 where is the witness?

1 MR SAVAGE Just for the record, Your Honor,
2 the State has advised the witness not to talk

3 THE COURT Wait the door is open Yes, sir

4 MR SAVAGE Just wanted to note for the
5 record, Your Honor, I have instructed the witness not
6 to mention or speak of anything to do with cocaine
7 base, knowledge of or lack of knowledge of So I
8 just wanted the Court to be aware of it

9 THE COURT Mr Harris

10 MR HARRIS Just for the record I wanted to
11 join with Mr Howell's

12 THE COURT And it's overruled subject to it
13 being in some way germane to direct examination

14 MR HARRIS I understand For the record I
15 join

16 THE COURT Those questions should have been
17 addressed to his mother

18 Bring in the jury please

19 MR SMILEY Were we going to go on the record
20 first

21 THE COURT We will do it, Mr Smiley I have
22 already done it previously, but we will do it again

23 (Whereupon, the jurors enter the courtroom)

24 THE COURT Ladies and gentlemen, we
25 appreciate your patience Please give the State your

1 attention You may proceed

2 MR SAVAGE Thank you, Your Honor State
3 calls Natasha Brown

4 THE COURT Ma'am, if you come to the witness
5 stand to be sworn

6 MS NATASHA BROWN,
7 after having first been duly sworn to state the
8 truth, the whole truth and nothing but the truth,
9 testified on her oath as follows

10 THE COURT Thank you, you may proceed

11 MR SAVAGE Thank you, Your Honor, may it
12 please the Court

13 DIRECT EXAMINATION

14 BY MR SAVAGE

15 Q MS Brown, where do you live?

16 A On Johns Island

17 Q And do you know the defendant Colin Boston?

18 A Yes

19 Q Were you living with Colin Boston at a point
20 in time?

21 A Yes

22 Q Were you living with him at the time of the
23 armed robbery?

24 A Yes

25 Q Do you know any other defendants in this case?

1 A Other than Clarence Robinson

2 Q Yes

3 A Uh-hum Clarence Robinson

4 Q Okay Does Clarence go by any other names?

5 A Swerve

6 Q Any others?

7 A Not if I know of

8 Q Have you ever heard anyone refer to him as

9 Monty?

10 A Oh, yeah

11 Q Okay On the day of the robbery, or the night
12 of the robbery, did you see or speak to Colin that
13 night?

14 A Uh-hum

15 THE COURT Ma'am, could you please say yes or
16 no

17 A Yes

18 Q (By Mr Savage) What time was that?

19 A About 9 30 I asked him to go and pick up my
20 cousin

21 Q Did you receive a telephone call from Colin's
22 mother that night?

23 A No

24 Q No telephone call?

25 A Uh-uh, not that night

1 Q Okay At some point before this robbery, did
2 you purchase a firearm?

3 A Yes

4 Q What was that?

5 A That was a 38

6 Q Is that a pistol, a rifle, what is it?

7 A A pistol

8 Q Okay When did you purchase that in relation
9 to when the robbery occurred?

10 A I think at the beginning or at the end of
11 January, something like that

12 Q So a month, month or two, four to six weeks
13 give or take?

14 A Something like that

15 Q Where did you purchase that gun from?

16 A Money Man Pawn

17 Q Where did that gun end up on the night of the
18 robbery?

19 A Inside my car

20 Q I'm sorry?

21 A Inside the car

22 Q Okay And did you -- did Colin Boston have
23 permission to have that firearm that night?

24 A I don't think so

25 Q Did he ask you to take it?

1 A No, not to my knowledge I was sleeping when
2 he went out by himself so really I don't know

3 Q Where did you keep the gun?

4 A Either inside my -- we either had it inside
5 the closet or inside our drawer

6 Q So when he left that night you were asleep?

7 A Uh-hum

8 Q So you are not really sure what time he left
9 then?

10 A I know it was probably like around 9 30

11 Q And how do you know that?

12 A Because my cousin had called for us to pick
13 him up, but I was tired so I told him to go

14 Q Your cousin called to pick him up?

15 A Uh-hum

16 Q Who was that?

17 A Darnel Brown

18 Q Darnel Brown?

19 A Uh-hum

20 Q Do you remember having a conversation with me
21 in my office with my investigator?

22 A Uh-hum

23 Q And do you remember me asking you questions
24 about this case?

25 A Uh-hum

1 Q And do you remember me asking you whether
2 anyone picked Colin up that night?

3 A

4 Q And what was your response to that question?

5 A You said if anyone pick Colin up?

6 Q Yes

7 A No

8 Q There was no -- no one picked Colin up?

9 A No

10 Q Colin left in his car, is that correct?

11 A Correct

12 Q And is your testimony now that Colin, when he
13 left that night, he didn't leave in his car he was
14 picked up by Darnel Brown?

15 A No, he drove He was supposed to go picking
16 Darnel Brown up from his girlfriend Kisha's house
17 over on West Ashley

18 Q Okay Let me see if I sort of understand So
19 when he left, he was going to go pick up Darnel? '

20 A Yeah

21 Q Darnel didn't come to your house and pick up
22 Colin?

23 A Right

24 Q So I misunderstood All right I will move
25 on

1 Do you know whether he picked up Darnel Brown?

2 A Behind Chuck E Cheese

3 Q No I said, do you know whether he picked up
4 Darnel?

5 A Oh, yeah, he picked him up

6 Q He did?

7 A Uh-hum

8 Q And where was that?

9 A Over there on West Ashley behind Chuck E
10 Cheese

11 Q And how do you know that?

12 A Because they called

13 Q They called you?

14 A Uh-hum

15 Q What time, who called you?

16 A Colin called me

17 Q What time did he call you?

18 A I don't know what time

19 Q Did he call you that night before he was
20 arrested?

21 A No, he called me like the very next morning

22 Q Next morning he told you that?

23 A Uh-hum

24 Q Did he tell you that on the jail tape?

25 A What?

1 Q That he picked up Darnel Brown from Chuck E
2 Cheese?

3 A No, off his cell phone

4 Q I'm sorry?

5 A Off his cell phone

6 Q Colon called you off his cell phone?

7 A Uh-hum

8 Q Did he have his cell phone in jail?

9 A No

10 Q How did he call you off his cell phone if he
11 was in jail?

12 A He called me after he picked Darnel up

13 Q What time?

14 A I don't know what time

15 Q Didn't you say it was the next morning?

16 A No You asked me if he called me after he had
17 picked Darnel up, I told you yeah He call me the
18 next morning and told me he was in jail

19 Q Okay So when he called you that he picked up
20 Darnel at Chuck E Cheese's, what time was that?

21 A I don't know

22 Q Okay Do you know whether it was before or
23 after he was arrested?

24 A It had to have been before

25 Q Okay Do you remember talking at my office

1 and me asking -- do you remember talking in my office
2 and you telling me that he went -- your understanding
3 was he was going -- Colin was going to go pick up
4 Darnel as his girlfriend's Kisha?

5 A Right

6 Q And do you remember me asking whether you knew
7 if he did that? Do you remember what your response
8 was?

9 A Yeah, I told you I don't know

10 Q You don't know And do you remember when I
11 asked you whether you knew whether he picked up any
12 of the other defendants what your response was to
13 that?

14 A I don't know

15 Q You don't know what your response was or your
16 response was I don't know?

17 A I told you I didn't know

18 Q Okay And today your testimony is that now
19 you do know that he went and picked up Darnel from
20 Chuck E Cheese?

21 A Yeah, I know he picked up Darnel from Chuck E
22 Cheese

23 Q Okay Do you know anything about the other
24 guns that were recovered in Colin's car that night?

25 A No

1 Q You don't?

2 A Uh-uh

3 Q You don't know anything about the 22 revolver
4 that was recovered from that car?

5 A Yeah, I know about that one

6 Q Tell me about what you know about that gun?

7 A I know my cousin Darnel had that gun

8 Something about a serial number scratched off

9 Q Do you know where that gun came from?

10 A Supposedly from someone by the name of Black

11 Q Do you know who got that from Black?

12 A Supposedly Colin

13 Q Supposedly Colin When did Colin get that, do
14 you know?

15 A I don't know when

16 MR HOWELL Objection

17 THE COURT Basis

18 MR HOWELL Speculative

19 THE COURT Overruled But be very careful

20 Q (By Mr Savage) When did Colin get that, do
21 you know?

22 A I don't know when he get it I know he had
23 it

24 Q You saw him with it?

25 A Uh-hum

1 Q Okay Since Colin has been arrested, have you
2 visited him in jail?

3 A A couple of times

4 Q And spoken to him on the telephone, I guess,
5 numerous times?

6 A Yeah

7 Q Did Colin ask you about -- did Colin ask you
8 to get the car back?

9 A Yes

10 Q Did you get the car back?

11 A No, his parents got the car back

12 Q Did you get the car back from his parents?

13 A Yeah

14 Q Was -- did Colin stress any importance about
15 getting the car back?

16 A Hum?

17 Q Did Colin stress any importance about getting
18 that car back to you?

19 A I don't remember

20 Q You don't remember Did he stress anything
21 about anything to do with the trunk of that vehicle?

22 A I know he had said something about the trunk,
23 that the police was trying to get in the trunk and he
24 had lost the key

25 Q Okay Do you know where that key went?

1 A No

2 MR SAVAGE Your Honor, may I approach?

3 THE COURT Uh-hum

4 (Whereupon, the audiotape is played)

5 THE COURT Are you going to lay the
6 appropriate foundation?

7 MR SAVAGE Yes

8 Q (By Mr Savage) Do you recognize the voice
9 on that tape?

10 A Uh-hum

11 Q Who is that?

12 A Me and Colin

13 Q And is that Colin Boston, the defendant in the
14 courtroom today?

15 A Uh-hum

16 THE COURT Ma'am, please say yes or no

17 THE WITNESS Yes

18 Q (By Mr Savage) The only reason why is the
19 court reporter sitting next to you, she is writing
20 down everything you say So if you sort of nod your
21 head or don't give a verbal response, she can't write
22 that down

23 A okay

24 Q That's all

25 (Whereupon, the audiotape is played)

1 Q (By Mr Savage) Do you remember that
2 conversation?

3 A A little bit

4 Q Okay And was part of that conversation Colin
5 asking you to go and get into the trunk of that car?

6 A Yes, sir

7 Q At some point did you get into the trunk of
8 that car? I know you said there wasn't a key, at
9 some point did you get into the trunk?

10 A Yeah, I had to go and get another key

11 Q And when you got into the truck, what did you
12 do?

13 A I get my mama's sweater that was in the trunk
14 and wash it and gave it to her

15 Q Okay Did you do anything else?

16 A Inside the car I just throw away, like clean
17 the car or whatever inside

18 Q Okay Just for now, specifically just talking
19 about the trunk of the car, did you do anything with
20 items that were inside the truck of the car?

21 A No, just the sweater I just wash it and gave
22 it back to my mama That was all inside the trunk

23 Q Okay Do you remember that conversation?

24 A Uh-hum Yes, sir

25 Q Now what was it you just said there?

1 A I throw everything away

2 Q What are you talking about?

3 A I was talking about the sweater and the stuff
4 that was inside the car

5 Q Okay, inside the car or inside the trunk?

6 A Inside the car

7 Q Okay what stuff did you throw away, do you
8 remember?

9 A Yeah, his work gloves and some stuff that was
10 on the floor in a bucket

11 Q What stuff?

12 A Like cigarettes, his work gloves and a bullet
13 and other stuff that was on the floor

14 Q Okay

15 (Whereupon, the audiotape is played)

16 Q (By Mr Savage) What was it he asked you if
17 you threw away just then?

18 A Everything, because I told him I throw away my
19 old knit sweater

20 (Whereupon, the audiotape is played)

21 Q (By Mr Savage) What was that?

22 A I think he said stocking cap

23 Q Okay

24 (Whereupon, the audiotape is played)

25 Q (By Mr Savage) What were those items you

1 threw away?

2 A All of the items I was telling him on the
3 tape

4 Q Okay And did they come from the trunk or
5 from inside the car, do you remember?

6 A The inside of the car

7 Q Do you remember talking to me in my office
8 about this?

9 A Yes

10 Q And do you remember when we spoke in my office
11 and I asked you where those items come from, do you
12 remember whether you told me the trunk or the inside
13 of the passenger compartment of the car?

14 A I told you the inside of the car and
15 everything I told you what came out of the
16 trunk was the sweater

17 Q That is your recollection?

18 A Huh?

19 Q That's your testimony today?

20 A Yes

21 Q Okay

22 (Whereupon, the audiotape is played)

23 Q (By Mr Savage) What was that you just threw
24 away?

25 A His work gloves

1 Q Okay Any reason why you are throwing those
2 items away?

3 A I thought being that he already get locked up
4 that he didn't had need them so I just throw it away
5 I thought you all had the evidence that you all need

6 (Whereupon, the audiotape is played)

7 Q (By Mr Savage) What are you asking him
8 there?

9 A How to get to the dump

10 Q Which dump is that?

11 A Over there on Wadmalaw

12 Q Why are you asking him that?

13 A To throw it away

14 Q Okay

15 (Whereupon, the audiotape is played)

16 Q (By Mr Savage) What was it Colin just said
17 then?

18 A If his ripped up gray shirt was in there

19 Q Okay Was it?

20 A I threw it in the trash

21 Q Okay Why did you throw his gray shirt in the
22 trash?

23 A It had a hole in it

24 Q Okay

25 (Whereupon, the audiotape is played)

1 Q (By Mr Savage) What was it he said just
2 then?

3 A I don't know what he said just now

4 Q Okay If he said it was in two pieces, would
5 you disagree with me?

6 A No It was in two pieces

7 Q Do you know why it was in two pieces?

8 A No

9 MR SAVAGE Court's indulgence, Your Honor
10 THE COURT Uh-hum

11 Q (By Mr Savage) Just to be clear, when I
12 asked you, first asked you what you threw away you
13 stated just a brown sweater Is it now all those
14 such things as bullets? Did you throw away bullets?

15 A Yes

16 Q Gloves?

17 A Yes

18 Q Stocking cap?

19 A Yes

20 Q Gray T-shirt?

21 A Yes

22 Q Actually Colin's gray T-shirt ripped up in two
23 pieces?

24 A Yes

25 Q And is it your testimony that that gray

1 T-shirt was not in the trunk but was in the passenger
2 compartment?

3 A Yes

4 MR SAVAGE I have no further questions, Your
5 Honor

6 THE COURT Any questions, Mr Howell?

7 MR HOWELL Just one

8 CROSS-EXAMINATION

9 BY MR HOWELL

10 Q Sweater is what you cleaned and gave back to
11 your mom, isn't that right?

12 A Yes

13 Q Okay You never said you threw that away?

14 A No I said no, I didn't throw it away

15 MR HOWELL Thank you Subject to my earlier
16 motion, that's all I have

17 THE COURT And the Court will take that up,
18 and the Court will find for the record that it would
19 not be in responsive to direct examination

20 Any questions, Ms Crumey?

21 CROSS-EXAMINATION

22 BY MS CRUMEY

23 Q Ms Brown, last February you said you were
24 living on Johns Island?

25 A I was living on Wadmalaw

1 Q Wadmalaw And you said that the night that
2 Colin was arrested he'd left home, you said, about
3 9 30?

4 A Yes, ma'am

5 Q And the home that you're talking about, that's
6 on Wadmalaw Island?

7 A Yes, ma'am

8 Q Do you know about how many miles Wadmalaw
9 Island is from West Ashley?

10 A I'd say about 45-minute drive

11 MS CRUMEY That's all the questions I have

12 THE COURT Mr Harris, any questions for the
13 witness?

14 MR HARRIS Briefly, Your Honor

15 THE COURT You may proceed

16 MR HARRIS May it please the Court

17 THE COURT Yes, sir

18 CROSS-EXAMINATION

19 BY MR HARRIS

20 Q His parents went and picked up the car at the
21 police impound?

22 A Yes, sir

23 Q Then you got it back from them?

24 A Yes, sir

25 Q So the police had had the car in their

1 impound?

2 A Yes, sir

3 Q How many days after the arrest was this?

4 A I'm not sure

5 Q Okay But there were pills inside the car
6 that you threw away?

7 A Yes, sir

8 Q Bullets in the passenger compartment where
9 people sit?

10 A It was in the backseat, it was all over the
11 floor

12 Q All over the floor?

13 A Yeah Back seat, front seat, all over the
14 car

15 Q Okay, and you clean the car?

16 A Yes, sir

17 Q Did they have any fingerprint dust, black dust
18 on the car?

19 A No, sir

20 Q Okay because you were cleaning the car out
21 just from it being impounded, getting all the garbage
22 out?

23 A Yes, sir

24 Q And you said that he called you, he left about
25 9 30 from wadmalaw?

1 A Uh-hum

2 Q Went to Chuck E Cheese's in West Ashley,
3 which is over there off of Sam Rittenberg, right,
4 over by the shopping center over there?

5 A Yes, sir

6 Q Okay You said it takes about 45 minutes?

7 A Yeah

8 Q Okay

9 MR SAVAGE Your Honor, may we approach for a
10 minute?

11 THE COURT You may

12 (Whereupon, a discussion was held at the bench
13 off the record)

14 THE COURT Overruled Ma'am, you may answer
15 the question

16 Q (By Mr Harris) So again that's Chuck E
17 Cheese on Sam Rittenberg?

18 A Yes, sir

19 Q And you said from where you live in Wadmalaw,
20 you said it's about 45 minutes?

21 A Yeah

22 MR HARRIS No further questions

23 THE COURT Thank you

24 Any redirect?

25 MR SAVAGE Yes, Your Honor

REDIRECT EXAMINATION

BY MR SAVAGE

Q Ms Brown, you stated in your testimony that you were asleep at 9 30?

A I was sleeping before 9 30 I said my cousin Darnel called about 9 30 and that's when he went up the road to get him

Q Okay But you were asleep So when Colin left your house you did not see him walk out the door?

A Uh-uh

Q And your testimony is that at 8 30 that night you never received a phone call from his mother looking for him?

A Not that I remember

MR SAVAGE Court's indulgence, Your Honor

Q (By Mr Savage) Ms Brown, at the time of the robbery, or on the night of the robbery, what was your relationship with Colin Boston?

A He was my boyfriend

Q Were you pregnant with his child at that time?

A Yes

MR SAVAGE I have no further questions, Your Honor

THE COURT Any objection to the witness being

1 excused from the State?

2 MR SAVAGE No, Your Honor

3 MS CRUMEY May I have a followup?

4 THE COURT Yes, absolutely

5 RECROSS-EXAMINATION

6 BY MS CRUMEY

7 Q Now since the time that you've had the baby,
8 you and Colin have not had the best relationship,
9 have you?

10 A Right

11 Q And you actually are not on good terms at this
12 point?

13 A Yes

14 Q And he actually has requested paternity tests
15 and that has caused problems between the two of you?

16 A Right

17 MS CRUMEY That's all the questions

18 THE COURT Any further questions from the
19 State?

20 MR SAVAGE Yes, Your Honor

21 REDIRECT EXAMINATION

22 BY MR SAVAGE

23 Q At the time of the robbery, had Colin asked
24 you for any paternity test?

25 A No

1 MR SAVAGE Nothing further, Your Honor

2 MS CRUMEY Your Honor

3 THE COURT You may proceed

4 RECROSS-EXAMINATION

5 BY MS CRUMEY

6 Q You indicated at that time you were pregnant,
7 is that correct?

8 A Yes

9 Q You hadn't had the baby yet?

10 A No, I didn't have the baby, yet

11 THE COURT Could counsel approach for me,
12 please

13 (whereupon, a discussion was held at the bench
14 off the record)

15 THE COURT Ladies and gentlemen, we are going
16 to take advantage of this break in testimony to take
17 our luncheon recess I have 12 43 which puts us
18 really at quarter to 1 00 We are going to break
19 until 2 00 That gives you an hour and 15 minutes
20 for lunch

21 During the break please do not discuss the
22 case among yourselves or with anyone else Please
23 don't allow yourselves to be exposed to any media
24 coverage about the case And again, please don't
25 have any contact with anyone in or about the

1 courthouse

2 You will return directly to your jury room
3 We appreciate your patience this morning I know
4 that that break took a lot longer than I anticipated,
5 and I know how frustrating it is to be sitting in
6 that jury room I'm a little claustrophobic myself,
7 so I know -- I think that I have a great deal of not
8 just empathy but sympathy for how you feel being
9 stuck in there

10 So please know that we do not take your time
11 for granted and we appreciate your patience Again
12 as I've indicated, I'm fairly certain that we will
13 finish testimony today I'm uncertain whether we
14 will have closing argument and instruction today or
15 in the morning I'm leaning more toward us, at least
16 as far as scheduling, thinking that it may be in the
17 morning

18 But I tell you that just so that you all can
19 plan for the remainder of your week And I will know
20 something definite probably shortly after the
21 luncheon recess and give you more details I hope
22 you all enjoy your lunch Please leave your notepads
23 in your seats and we will see you at 2 00

24 (Whereupon, the jurors exit the courtroom)

25 THE COURT Okay Mr Smiley, at the Court's

1 request, you have, for this limited purpose, advised
2 this witness concerning her rights against
3 self-incrimination as well as the State's offer to
4 her of immunity, is that correct?

5 MR SMILEY I have, Your Honor

6 THE COURT Do you believe she understands
7 both of those concepts?

8 MR SMILEY She does

9 THE COURT Ma'am, is it correct that Mr
10 Smiley has gone over with you the immunity that was
11 offered to you by the State?

12 THE WITNESS Yes, ma'am

13 THE COURT As well as your right against
14 self-incrimination?

15 THE WITNESS Yes, ma'am

16 THE COURT Okay Do you understand what he
17 explained to you?

18 THE WITNESS Yes, ma'am

19 THE COURT Okay Anything further, Mr
20 Smiley?

21 MR SMILEY Just on the record is my
22 understanding that the immunity that was granted by
23 the State covered was complete immunity from any
24 prosecution regarding this case

25 THE COURT That was my understanding as well

1 MR SMILEY Based on that she waives her
2 Fifth Amendment right

3 THE COURT And I misunderstood because I
4 thought that the things were disposed of -- the
5 timeline was not clear until she testified But
6 certainly the police had already had -- but out of an
7 abundance of caution I felt that was the better
8 course, way to handle it

9 MR SMILEY Absolutely May she be excused,
10 Your Honor?

11 THE COURT Yes, sir She is excused I
12 assume there is no exception from the State?

13 MR SAVAGE No, Your Honor

14 THE COURT From the defense, Mr Howell?

15 MR HOWELL None, Your Honor

16 THE COURT From the defense, Ms Crumey?

17 MS CRUMEY No, Your Honor

18 THE COURT From the defense, Mr Harris?

19 MR HARRIS No, Your Honor

20 THE COURT The Court notes the objection and
21 now that I have heard the context of the witness's
22 testimony, the Court stands by its earlier ruling
23 that asking her regarding any PTI of Mr Boston or
24 otherwise would have been inappropriate

25 First, it would not have been responsive to

1 direct examination Second it would not have borne
2 on her credibility in any manner And it would have
3 been an impermissible comment on Mr Boston's
4 credibility And it also would have brought up bad
5 acts which were not the subject of a conviction which
6 there is no indication that the burden of proof,
7 clear and convincing evidence, could have been met

8 The Court will note both Mr Howell and Mr
9 Harris's exception for the record regarding that line
10 of questioning

11 Now, how many additional witnesses does the
12 State have, Mr Savage?

13 MR SAVAGE May I have just a moment, Your
14 Honor?

15 THE COURT Yes

16 MR SAVAGE Possibly two, Your Honor

17 THE COURT Then the State will be resting,
18 correct?

19 MR SAVAGE Probably, Your Honor, yes

20 THE COURT Mr Brown, stand for me please and
21 raise your right hand to be sworn

22 (Whereupon, the defendant David Brown is
23 placed under oath by the Judge)

24 THE COURT You can put right hand down Sir,
25 state your full name for the record

1 THE DEFENDANT David Brown

2 THE COURT Mr Brown, I am -- and actually I
3 am going to do this all collectively instead of me
4 repeating this three times I was going to do it
5 individually, but thought better of it just at that
6 moment

7 Mr Boston, if you would raise your right hand
8 to be sworn, please

9 (Whereupon, the defendant Colin Boston is
10 placed under oath by the Judge)

11 THE COURT You can put your right hand down
12 Sir, state your full name for the record

13 THE DEFENDANT Colin Boston

14 THE COURT Okay, Mr Robinson, please raise
15 your right hand to be sworn

16 (Whereupon, the defendant Clarence Robinson is
17 placed under oath by the Judge)

18 THE COURT You can put your right hand down
19 Sir, state your full name for the record

20 THE DEFENDANT Clarence Robinson

21 THE COURT Okay Right now, gentlemen, I'm
22 going to explain to you certain of your rights
23 because I anticipate that the State will be resting
24 their case shortly, and that will then be the
25 opportunity for you all to present any defense if you

1 so desire

2 of course there is no mandate on you to
3 present any defense You don't have any burden of
4 proof in this case It is the State's requirement to
5 prove your guilt beyond a reasonable doubt, and it is
6 your prerogative and your right to remain silent if
7 you so desire And there is no requirement for you
8 to say anything during the course of this trial

9 However, I need to advise you of your rights
10 so that during the luncheon, I'm certain that your
11 lawyers have already discussed this with you, but I
12 need to advise you of your rights so that you can
13 discuss these rights again with them within the
14 context of what has been presented thus far, so that
15 you can make a meaningful decision as to whether you
16 would want to testify or not testify in this case

17 And that is why I asked the State earlier what
18 record they would be seeking to use against you to
19 impeach your credibility I will go over that with
20 you shortly

21 As I have indicated, at this time I am going
22 to explain to you certain of your rights If you do
23 not understand anything that I say, please let me
24 know If you want me to explain something in more
25 detail, please feel free to let me know

1 Do you understand, Mr Brown?

2 THE DEFENDANT Yes, ma'am

3 THE COURT Mr Boston?

4 THE DEFENDANT Yes, ma'am

5 THE COURT Mr Robinson?

6 THE DEFENDANT Yes, ma'am

7 THE COURT We have now, and we will shortly,
8 reach the stage of the trial where you may present
9 your defense You have the right to claim the
10 protections given to you by the Fifth Amendment to
11 the constitution of the United States And that
12 amendment states in part that no person shall be
13 compelled to be a witness against themselves or to
14 testify against themselves

15 You have the right to testify on your own
16 behalf, however no one can make you testify This is
17 a personal right, and no one can waive this right
18 except you If you decide to testify, you will be
19 subject to the same rules that govern other
20 witnesses, and you may be examined and cross-examined
21 on any relevant issue in this case

22 In addition, if you have any convictions
23 involving dishonesty or false statement, or for
24 crimes punishable by imprisonment for more than one
25 year and this Court determines that the probative

1 value of admitting this evidence outweighs its
2 prejudicial effect to you, the solicitor will be able
3 to introduce your record to attack your credibility

4 If you decide to testify, this decision on
5 your part must be made freely, voluntarily and
6 intelligently with the knowledge of the protections
7 given to you by the Fifth Amendment and the
8 consequences of your decision to testify

9 If you decide not to testify, I will instruct
10 the jury that they cannot give the fact that you did
11 not testify any consideration whatsoever And that
12 there is to be absolutely no prejudice to you because
13 you did not testify In fact, I will instruct them
14 that it cannot be discussed in the jury room in any
15 manner whatsoever

16 It is left entirely up to you whether or not
17 you testify You may talk to your family members,
18 your friends, your attorneys or anyone else, but the
19 final decision will be left entirely up to you

20 Do you understand your rights as I have just
21 explained them to you, Mr Brown?

22 THE DEFENDANT Yes, ma'am

23 THE COURT Mr Boston?

24 THE DEFENDANT Yes, ma'am

25 THE COURT Mr Robinson?

1 THE DEFENDANT Yes, ma'am

2 THE COURT For purposes of the record, Mr
3 Boston, you have no record therefore there is no
4 record for the State to use to impeach your
5 credibility Nor have they advised the Court of any
6 prior bad acts that are not the subject of a
7 conviction that they can prove by clear and
8 convincing evidence that they would be seeking to
9 introduce against you

10 Mr Robinson, likewise the same would be
11 applicable to you You have no record, therefore
12 there is no record for the State to use to impeach
13 your credibility Nor have they advised the Court of
14 any prior bad acts that are not the subject of a
15 conviction that they can prove by clear and
16 convincing evidence that would be admissible against
17 you

18 Mr Brown, you have three prior burglary
19 seconds in 2002 Under our rules that comes within
20 the ten-year time limit And in addition to that I
21 would -- those would not be subject to the balancing
22 under the applicable evidentiary rule Under our
23 rules and our case law they come in regardless of
24 punishment because they involved a theft and our
25 courts have said that bears directly on your

1 credibility, okay, or your believability as a
2 witnesses

3 So they would come in And I need to advise
4 you that the State will be allowed to ask you about
5 each of those to attack your credibility if you
6 should decide to testify

7 Now I am going to allow you all over -- I did
8 this so that you all will have a meaningful
9 opportunity to discuss with your lawyers whether you
10 want to testify or whether you don't want to testify
11 Again I emphasize, you have no burden of proof in
12 this case Whether you decide to testify or not to
13 testify is a matter solely left up to you You can
14 discuss it with whomever you like, but ultimately it
15 is your decision

16 When the State rests their case, after I've
17 heard motions, I will then again question you as to
18 your desire as to whether you want to testify I
19 will ask you whether you had an adequate opportunity
20 to discuss it with your lawyer, whether you want to
21 discuss it with them anymore, and whether you wish to
22 testify or not

23 Do you understand, Mr Brown?

24 THE DEFENDANT Yes, ma'am

25 THE COURT Do you understand, Mr Boston?

1 THE DEFENDANT Yes, ma'am

2 THE COURT And do you understand, Mr
3 Robinson?

4 THE DEFENDANT Yes, ma'am

5 THE COURT Okay You all have a good lunch,
6 I will see you at 2 00

7 (Whereupon, a recess was taken)

8 THE COURT Is the State ready to proceed?

9 MR SAVAGE State rests, Your Honor

10 THE COURT State rests?

11 MR SAVAGE Yes, Your Honor

12 THE COURT Are there any motions?

13 MR HOWELL I don't want to go into lengthy
14 argument, but I'll just for the record make a motion
15 for directed verdict based on the State has failed to
16 carry its burden of proof beyond a reasonable doubt
17 And I can stand a little bit if you like

18 THE COURT I think you need to do whatever
19 you think is appropriate to make your record I
20 don't ever limit folk and their argument, or how
21 they're going to present their argument

22 MR HOWELL I'll just renew the earlier
23 motions I made as to admissability, our desire to
24 cross-examine, and we feel like basically it's a
25 circumstantial case, particularly as to Mr Brown

1 And that the circumstances do not rise to the level
2 of beyond a reasonable doubt

3 It's the old charge, but it's still a
4 different way to say the law is that circumstantial
5 case the evidence must point unerringly in the
6 direction of guilt of the defendant to the exclusion
7 of every other reasonable hypothesis, and there are
8 just a number of other reasonable hypothesis There
9 are just a lot of things that don't link these
10 particular people on James Island with a robbery that
11 happened at Benders across the bridge

12 Some of it has to do with evidence and things
13 not seen such as the Scarface jacket, and just --
14 there's too many loose ends, Judge That's all I
15 think I need to argue at this time, thank you

16 THE COURT Would the State like to respond to
17 Mr Howell's argument regarding motion for directed
18 verdict?

19 MR SAVAGE Yes, Your Honor

20 THE COURT You may proceed

21 MR SAVAGE It seems it's typical of defense
22 to talk about what's not there as opposed to what is
23 there Circumstantial evidence is evidence And in
24 this case there is a whole table full of it, as well
25 as the witnesses that testified

1 The Timberland shoes that are on the ground
2 there, they were seen in the bar by Colleen Denham
3 she was down on the ground She saw those shoes on
4 the person, on the robber at the bar who had the gun
5 pointed at her friend's head

6 The other pair of shoes there, Andre Thompson
7 saw those shoes in the bar there, and on the person
8 that actually the pointed the gun at his head He
9 also stated that that person had a red bandana
10 Those items were found in the car with the
11 defendants, and one of those pairs of shoes was
12 actually came off one of the defendants

13 The gun that was in the car, all the guns in
14 the car We know that Colin Boston had the 38
15 pistol We know that Darnel Brown is the one who had
16 the 22 He know that the 9mm had David Brown's
17 fingerprint on it

18 There was approximately \$875 in cash taken
19 The defendants had roughly \$870 in cash on their
20 person at the scene when you count the money that
21 David Brown tried to hide, or did hide from the
22 police

23 I think there is ample evidence here for a
24 jury to be able to be entitled to be able to hear
25 this decision and go to a verdict

1 THE COURT Anything further, Mr Howell?

2 MR HOWELL Yes, ma'am, Your Honor Just
3 making sure I phrase this correctly In a civil
4 setting when there is circumstantial evidence to get
5 to the jury, all you have got to show is that you
6 have a reasonable theory It works completely
7 opposite in the criminal setting which is where we
8 are You have got to exclude other reasonable
9 theories And you cannot just have one little string
10 of maybe, or even probably You've got to have
11 something beyond a reasonable doubt

12 And this case, for instance, he says that the
13 shoes, the Timberlakes (sic) showed up There is no
14 evidence She never picked up and said, I saw those
15 shoes The only shoes she said she saw were black
16 shoes And so those shoes weren't identified
17 They're some Timberlakes (sic), but they changed
18 color from Benders to James Island

19 Likewise with the red, black and white shoes
20 They changed color from black to red, black and
21 white And those, all those pieces just do not add
22 up to prove other explanations that they could have
23 been stopped there for legitimate purposes, or they
24 could have been stopped there for other illegitimate
25 purposes

1 There is a robbery of a certain kind one
2 place, they find these guys There is no get-away
3 car There is no ID of any defendant, and the only
4 admission that came in was that of Colin Boston And
5 that goes to Colin Boston, not to my client And
6 based on those things we think that we are entitled
7 to a directed verdict Thank you

8 THE COURT You're welcome

9 In considering a motion for directed verdict,
10 the Court is only concerned with the existence or
11 nonexistence of evidence and not its weight It is
12 not for the Court to act as the fact finder It is
13 not within the Court's province

14 The motion should be granted if the evidence
15 merely raises a suspicion of the defendant's guilt,
16 however if the State presents any evidence which
17 reasonably tends to prove the defendant's guilt, or
18 from which the defendant's guilt can be fairly and
19 logically deduced, the case must go to the jury

20 And again the Court is only concerned with the
21 existence or nonexistence of evidence and not its
22 weight Mr Howell has eloquently stated the grounds
23 for his motion, and all of those issues raised go to
24 the weight of the evidence, not whether -- not as to
25 the existence or nonexistence of that evidence

1 All of those things certainly he can
2 appropriately argue to the jury as to whether the
3 State has met its burden beyond a reasonable doubt
4 The Court would find that there is substantial
5 circumstantial evidence, as well as -- depending on
6 how you look at the items that were seized -- as
7 direct evidence that reasonably tends to prove the
8 defendant's guilt, or from which his guilt may be
9 fairly and logically deduced Therefore, his motion
10 is denied

11 Ms Crumey, do you have any motions now that
12 the State has rests its case?

13 MS CRUMEY Your Honor, I would just join in
14 Mr Howell's motion for directed verdict on both
15 counts, the armed robbery and possession of the
16 pistol during a crime of violence Looking at the
17 evidence in the light most favorable to the State,
18 some of the evidence that the State indicated this
19 argument has not been presented in the way that they
20 indicated

21 There was a question about drawing an
22 inference in the amount of money, however I don't
23 believe that all of the money that the State alleges
24 was stolen has been testified to or presented in any
25 manner from testimony

1 Other than that, the only other inference or
2 evidence that was presented was some indication of
3 footwear

4 For those reasons and the reasons previously
5 stated by Mr Howell, I ask the Court to grant a
6 directed verdict as to both counts

7 THE COURT I'm sorry, I didn't hear the last
8 thing you said

9 MS CRUMEY For those reasons and the reasons
10 previously stated by Mr Howell, I would ask the
11 Court to grant a directed verdict on both counts

12 THE COURT Mr Savage, would you like to
13 respond?

14 MR SAVAGE Yes, Your Honor The evidence
15 there is not the only evidence that was mentioned
16 during the crime There was also the bandana Colin
17 Boston talked about ripping off his gray T-shirt,
18 that's in the back of the car, the bandana

19 You know, as far as the money count, I suggest
20 counsel go back and review her notes, I think she is
21 mistaken Andre Thompson testified to the amount of
22 money David Alsbrooks testified to a rough amount
23 of money that was taken The amount of money that
24 was taken from the defendants is up on the table
25 there And I just renew my motion from before I

1 think there is enough here to go to a jury

2 THE COURT Anything further, Ms Crumey?

3 MS CRUMEY No, ma'am

4 THE COURT The Court, without reciting the
5 exact ruling again, and the Court would incorporate
6 its ruling regarding the Defendant Brown, and simply
7 state for the record again in the interest of time
8 that the Court is only concerned with the existence
9 or nonexistence of evidence and not its weight It
10 is not for the Court to act as a fact finder

11 The issues that have been raised are issues of
12 weight to be accorded to the evidence, and certainly
13 the defense can argue that as reasonable doubt and
14 can certainly argue that the State has failed to meet
15 its burden by beyond a reasonable doubt

16 However, there exists in the record direct, as
17 well as substantial circumstantial evidence, which
18 reasonably tends to prove the defendant's guilt from
19 which his guilt may be fairly and logically deduced
20 and therefore the motion is denied

21 Mr Harris, any motions now that the State has
22 rested their case?

23 MR HARRIS Yes, Your Honor I would also
24 motion for directed verdict on both counts And I'm
25 not necessarily joining in the other two, because I

1 think mine is significantly different

2 The evidence that Mr Savage and the
3 prosecution has put forward, as he just said, those
4 shoes taken that match from David Brown, and the ones
5 they're claiming match Darnel Brown and Colin Boston
6 The guns, one has been claimed by Darnel Brown,
7 fingerprint by David Brown, and car owned -- and
8 Colin Boston has claimed one of those guns There is
9 no evidence put forth so far other than mere presence
10 for my client

11 They have not used the name Clarence Robinson,
12 not a piece of clothing taken from him that match
13 anything that has been testified to other than dark
14 clothing None of the guns have matched up to my
15 client He had money on him, which as far as I know
16 is not a crime

17 He had just said he was at his girlfriend's
18 house in James Island, they're in James Island I
19 mean it's mere presence I don't see where they put
20 him through any evidence other than people that were
21 in the car with him and an armed robbery

22 THE COURT Would the State like to respond?

23 MR SAVAGE Yes, Your Honor Adina Walden
24 stated that the person that grabbed her and felt her
25 up and, for lack of a better term, harassed her was

1 the person with the silver gun The only silver gun
2 here is the 38 special

3 He also had money on him The witnesses
4 testified there were four robbers involved with this
5 He was in the car with the four people with the cash
6 with the guns, and with the bullets Under the hand
7 of one the hand of all theory, he is there

8 Each one of them gave a different account to
9 where they were when they were separated
10 individually All of them had different stories as
11 to where they were at the time of the crime So I
12 think that goes to showing their ability to not be
13 able -- basically to be not truthful with the police
14 when they spoke to them

15 THE COURT Anything further, Mr Harris?

16 MR HARRIS Your Honor, I still don't see how
17 the silver gun is put in my client's hand There is
18 no description by Adina Walden of the person that
19 walked up to her other than a black male with a mask
20 on There is no description of shoes, clothing All
21 there is is a silver gun that's found in the trunk of
22 a -- the broken trunk of a car that my client is
23 driving He can't even reach to Or he is not even
24 driving, he is sitting --

25 THE COURT I don't think that the evidence

1 supports that the trunk was broken There's evidence
2 that supports that the key was lost

3 MR HARRIS Okay, key was lost, I'm sorry
4 He is sitting in the driver's seat of the car when
5 the police pull up Like I said, other than money
6 and being in a car 16 minutes after an armed robbery
7 in another part of town where he had said he was to
8 the officers, I mean he could have been a block away
9 at his girlfriend's house and seen his friends and
10 walked over

11 They have not shown any evidence that puts him
12 at Benders Bar and Grill other than a black male with
13 a silver gun She said it was 1,500 armed robberies
14 a year I'm sure one of them was a black male with a
15 silver gun also I'm guessing that's a description
16 that can probably fit a lot of those armed robberies

17 So I don't believe I've seen evidence, either
18 his clothing, fingerprints, anything that shows that
19 he is part of this -- if this is true he is a
20 separate codefendants, like we talked about during
21 this trial, I don't believe that he has a part in
22 this And I move for directed verdict on both
23 charges

24 THE COURT Anything further from the State?

25 MR SAVAGE Yes, Your Honor I think that

1 defense counsel stated rightly, he is the driver of
2 the car That man right there is the one who drove
3 the car away He was sitting in the driver's seat
4 He is with the three other people with the guns, the
5 cash, the money, proximity, 10 00 at night in a
6 church parking lot that was closed somewhere where
7 you wouldn't be normally with all those items in
8 there

9 There's a reason why they were sitting in that
10 church parking lot, and there's a reason why they all
11 have roughly the same amount of money They stopped
12 there and they split up the proceeds and the money,
13 and that's what they were doing there

14 There's time, there's proximity They keep on
15 talking about how far a distance and time, like, oh,
16 you have to cross over a bridge Oh, there's a river
17 there, you have to cross over a river like it's the
18 biggest river in the world

19 They were within four miles of the scene and
20 they were caught roughly 16 to 20 minutes after the
21 robbery with the cash, with the guns, all of it
22 inside that car And under the hand of one the hand
23 of all theory, I believe that he is involved and this
24 jury is entitled to decide it

25 THE COURT Again the Court is concerned with

1 the existence or nonexistence of evidence and not its
2 weight The Court incorporates its previous finding
3 regarding the Defendant Brown regarding the Defendant
4 Robinson

5 There is direct as well as substantial
6 circumstantial evidence reasonably tending to prove
7 the defendant's guilt or from which his guilt could
8 be fairly and logically deduced

9 Again it is not for the Court to weigh the
10 evidence I'm not the fact finder, that is for the
11 jury The issues that have been raised, certainly
12 the Court will charge mere presence, Mr Harris, you
13 can argue that And the Court will instruct that
14 mere presence is not sufficient to prove guilt

15 Certainly that goes to the weight of the
16 circumstantial evidence that has been presented And
17 you certainly are free to argue that to the jury, and
18 argue it strenuously regarding your position that
19 they have failed to meet their burden beyond a
20 reasonable doubt

21 Therefore, the motion is denied

22 Now is there anything further, any further
23 motions before we proceed with my questioning the
24 defendants regarding their desire to testify or not
25 to testify from the State?

1 MR SAVAGE No, Your Honor

2 THE COURT From the defense, Mr Howell?

3 MR HOWELL None, Your Honor

4 THE COURT From the defense, Ms Crumey?

5 MS CRUMEY No, ma'am

6 THE COURT From the defense, Mr Harris?

7 MR HARRIS None, Your Honor

8 THE COURT Mr Brown, if you would stand for
9 me please I'll remind you that you are still under
10 oath

11 Sir, have you had sufficient time to discuss
12 with your lawyer whether you should or should not
13 testify?

14 THE DEFENDANT Yes, ma'am

15 THE COURT Do you need to speak with him any
16 further at this time?

17 THE DEFENDANT No, ma'am

18 THE COURT Sir, do you wish to testify?

19 THE DEFENDANT No, ma'am

20 THE COURT You may take your seat

21 Mr Boston, if you would stand for me please
22 Sir, I'll remind you you are still under oath Have
23 you had sufficient time to discuss with your lawyer
24 whether you should or should not testify?

25 THE DEFENDANT Yes, ma'am

1 THE COURT Sir, do you need to speak with her
2 any further at this time?

3 THE DEFENDANT No, ma'am

4 THE COURT Sir, do you wish to testify?

5 THE DEFENDANT No, ma'am

6 THE COURT Thank you, sir, you may take your
7 seat

8 Mr Robinson, if you would stand for me
9 please Sir, I will remind you that you are still
10 under oath Have you had a full opportunity to
11 discuss with your lawyer whether you should or should
12 not testify?

13 THE DEFENDANT Yes, ma'am

14 THE COURT Sir, do you need to speak with him
15 any further at this time?

16 THE DEFENDANT No, ma'am

17 THE COURT Sir, do you wish to testify?

18 THE DEFENDANT No, ma'am

19 THE COURT You may take your seat

20 Mr Howell, do you wish to present any other
21 witnesses other than -- let me rephrase that Is
22 there anything that you wish to present on behalf of
23 your client?

24 MR HOWELL No, Your Honor, thank you

25 THE COURT You're welcome Ms Crumey, is

1 there anything that you wish to present on behalf of
2 your client?

3 MS CRUMEY No, ma'am

4 THE COURT Mr Harris, same question

5 MR HARRIS No, Your Honor

6 THE COURT So therefore each defendant will
7 have rested at this time, is that correct, Mr
8 Howell?

9 MR HOWELL Yes, Your Honor

10 THE COURT Ms Crumey?

11 MS CRUMEY That's correct

12 THE COURT And Mr Harris?

13 MR HARRIS Yes, Your Honor

14 THE COURT And I'm going to let you rest in
15 the presence of the jury, I'm just doing this for
16 expediency of time

17 Now that the defense has rested, are there any
18 motions?

19 MR SAVAGE Not from the State, Your Honor

20 THE COURT Mr Howell?

21 MR HOWELL Nothing, Your Honor

22 THE COURT Ms Crumey?

23 MS CRUMEY Just for the record I just wanted
24 to again renew my directed verdict motion as
25 previously indicated on the record at the rest of the

1 State's case

2 THE COURT And the Court will deny it based
3 on its previous ruling

4 Mr Harris?

5 MR HARRIS Same, Your Honor, I just renew my
6 previous motion

7 MR HOWELL In case I need to, I don't think
8 I do, but just in case I do

9 THE COURT The Court will note that each
10 defendant has renewed their previous motions and
11 they're each denied based on the Court's previous
12 ruling

13 MR SAVAGE I do have one motion, Your Honor,
14 I apologize I ask for a motion in limine for any
15 defense counsel referring to PTI in their closing
16 arguments

17 THE COURT I don't think they can They can
18 only argue the evidence, and it wasn't presented in
19 the evidence

20 MR HOWELL Not a problem

21 THE COURT If you all will give me just one
22 moment we will have charge conference And then I
23 need to ask, how long does the State anticipate its
24 closing argument will be?

25 I guess the defendants now get last argument

1 because they haven't presented any evidence I don't
2 recall them entering anything in the record, any
3 exhibits or anything

4 MR SAVAGE Not to my recollection

5 THE COURT How long will the State's closing
6 argument be?

7 MR SAVAGE Fifteen minutes

8 THE COURT Mr Howell, how long?

9 MR HOWELL Fifteen

10 THE COURT Ms Crumey?

11 MS CRUMEY Fifteen, twenty

12 THE COURT Mr Harris?

13 MR HARRIS I will be safe, it really
14 depends

15 THE COURT I'm not limiting you I'm asking
16 for purposes of time because I'm trying to gauge
17 whether we'll just go forward and do it Because if
18 we can do it safely within the margin before 5 00
19 then I'm going to put you all on notice that if we
20 get around 6 00 I'm going to give the jury the option
21 to go home if they want and come back in the morning

22 And I let them vote on that, I don't direct
23 it I let them discuss it, and if they say they want
24 to go home I let them go home And then I let them
25 come back in the morning

1 I think based on what you all have said we
2 should -- charge conference is only going to take
3 about five minutes Then I'll have you all look at
4 the verdict forms Then I think we can be safe to go
5 ahead -- I don't like to close and charge after 3 00
6 because it gets to be too late But if we can do it,
7 we are probably in a safe margin to go forward

8 Everybody in agreement with me?

9 MR SAVAGE Yes, Your Honor

10 THE COURT I see nodding heads

11 MR HARRIS Yes, Your Honor

12 THE COURT All right If you all give me one
13 moment I need to print two things

14 I will give the jury an instruction regarding
15 their function and my function, how they're to judge
16 witness credibility and believability, as well as a
17 general instruction regarding the expert witness
18 testimony As well as how they are to use prior
19 records of witnesses, that being as against their
20 believability and their credibility

21 In addition the general instruction also tells
22 them that they are to follow the law as I instruct
23 it And that they of course are the fact finders and
24 they are to disregard anything that they could
25 remotely perceive that the Court may be thinking

1 about the facts because the Court has no opinion
2 regarding the facts of the case

3 I will then also instruct them regarding any
4 alleged statements made by the defendants and how
5 they are to judge those statements And the State
6 has to prove beyond a reasonable doubt that those
7 statements were in fact made And they have to take
8 into effect the elements of Miranda, and whether they
9 believe the defendants were Mirandized

10 I will also instruct them regarding
11 identification testimony, how they are to judge that
12 And with the usual factors regarding lighting, et
13 cetera, and the opportunity for the witness to have
14 seen the things they testified about, how long,
15 short, whether they had the opportunity to know the
16 witness in the past, et cetera

17 Then give an instruction regarding direct and
18 circumstantial evidence from State versus Griffon
19 Then give a general instruction regarding that the
20 indictment is not evidence and it's not to be given
21 any such weight And then I will instruct regarding
22 the presumption of innocence And then I will
23 instruct Victor versus Nebraska on reasonable doubt

24 I will then instruct regarding the fact that
25 the defendants did not testify, that that cannot be

1 considered against them in any manner whatsoever,
2 that it cannot be discussed in any manner whatsoever
3 And that they have a constitutional right to remain
4 silent and they have absolutely no burden of proof in
5 this case

6 Then I will instruct on the elements of armed
7 robbery which is found at 16-11-330 As I understand
8 it there are no requests for less-included charges,
9 correct?

10 MR HOWELL No, Your Honor

11 THE COURT Ms Crumey?

12 MS CRUMEY No, ma'am

13 THE COURT Mr Harris?

14 MR HARRIS None, Your Honor

15 THE COURT I'll instruct on the elements of
16 armed robbery I will then instruct on the elements
17 of possession of a firearm during the commission or
18 attempt to commit a violent crime

19 I will also instruct the hand of one, which is
20 accomplice liability I will then instruct regarding
21 multiple defendants and multiple charges, which is a
22 general instruction regarding multiple charges means
23 that the defendant can be acquitted or convicted of
24 one or the other, that each has separate and
25 independent elements all of which must be met beyond

1 a reasonable doubt

2 And as regards to multiple defendants, that
3 each defendant is charged, and that they should judge
4 each one of them independently according to the
5 evidence and the law And that their verdict can be
6 for one or all or none or any combination And that
7 depends on their view of the evidence

8 I will then instruct on the forms of the
9 verdict which my clerk is going to get that printed,
10 a copy of the verdict, so that you all can look at
11 it

12 Are there any exceptions to the charges
13 proposed from the state?

14 MR SAVAGE No, Your Honor

15 THE COURT Any exceptions to the charges
16 proposed from the defendants?

17 MR HOWELL No, Your Honor, not from --

18 THE COURT I'm sorry, Defendant Howell?

19 MR HOWELL No, Your Honor

20 THE COURT Defendant Crumey? Defense Crumey,
21 I apologize

22 MS CRUMEY No, ma'am

23 THE COURT Defense, Mr Harris?

24 MR HARRIS No, Your Honor Did I hear you
25 say we are going to do the mere presence charge?

1 THE COURT That's within the hand of one is
2 the hand of all And I think it may also be within
3 the body of the armed robbery charge, but I need to
4 look I'm going to look at it right now to make sure
5 I'm being accurate

6 MR HARRIS Okay

7 THE COURT However, mere presence at the
8 scene of the crime is not sufficient to convict one
9 of -- on as a principal of a theory of aiding and
10 abetting But I think it's also within -- I may also
11 charge, let me make sure that that is within -- it's
12 not within the body of my regular armed robbery
13 charge

14 I may give my standard mere presence charge,
15 which is mere presence at the scene is not sufficient
16 to prove someone guilty of a crime The defendants'
17 presence where a crime is being committed, or mere
18 association with a person who commits a crime, does
19 not make a defendant an accomplice of an aider and
20 abettor of the person committing the crime And that
21 the burden is on the State to prove each and every
22 element of the offense

23 That if you find that he was only present,
24 that you have to -- they have not proven beyond a
25 reasonable doubt any other participation in the

1 crime, then you must find the defendant not guilty
2 Proof of at the scene crime is not sufficient to find
3 someone guilty I am going to instruct that My
4 standard mere presence charge

5 Are there -- is there any exception to the
6 Court charging mere presence from the State?

7 MR SAVAGE No, Your Honor

8 THE COURT From the defense, Mr Howell?

9 MR HOWELL None, Your Honor

10 THE COURT From the defense, Ms Crumey?

11 MS CRUMEY None, Your Honor

12 THE COURT From the defense, Mr Harris?

13 MR HARRIS No objection

14 THE COURT All right You give us all one
15 second, Elizabeth will be back with the verdict
16 forms And what I normally do is stable those to the
17 inside of the indictment, and then the foreperson
18 will sign the indictment after the case is concluded

19 This might be the opportunity for you all to
20 use the restroom if you like By the time she comes
21 back up we are going to get started with closing
22 arguments and instructions

23 Did you all redact -- before you all leave,
24 did you redact the tape?

25 MR SAVAGE No I put it back here, I have

1 not touched it since

2 THE COURT You might need to send somebody to
3 do that while you are doing closing

4 (Whereupon, a recess was taken)

5 THE COURT Counsel, approach for me and
6 review the verdict forms applicable to your clients

7 Is there any exception to the verdict form for
8 Mr Brown, Mr Howell?

9 MR HOWELL None, Your Honor

10 THE COURT And, Mr Savage?

11 MR SAVAGE None, Your Honor

12 THE COURT Okay Any exception to the forms
13 of the verdict for Mr Boston, Ms Crumey?

14 MS CRUMEY No, ma'am

15 THE COURT And, Mr Savage?

16 MR SAVAGE None, Your Honor

17 THE COURT Any exception to the forms of the
18 verdict regarding Mr Robinson, Mr Harris?

19 MR HARRIS None, Your Honor

20 THE COURT Any exception from the State?

21 MR SAVAGE None, Your Honor

22 THE COURT Okay

23 You need to plug that up so they can erase the
24 part of the tape The defense can hear it to make
25 sure it has been redacted

1 (Whereupon, the audiotape is redacted)

2 THE COURT Okay Are we all in agreement it
3 has been redacted as instructed from the State?

4 MR SAVAGE Yes, Your Honor

5 THE COURT Mr Howell?

6 MR HOWELL Yes, ma'am

7 THE COURT Ms Crumey?

8 MS CRUMEY Yes

9 THE COURT Mr Harris?

10 MR HARRIS Yes, ma'am

11 THE COURT Okay Are we ready to proceed
12 with closing arguments from the State?

13 MR SAVAGE Yes, Your Honor

14 THE COURT Defense, Mr Howell?

15 MR HOWELL Yes, ma'am

16 THE COURT Defense, Ms Crumey?

17 MS CRUMEY Yes, Your Honor

18 THE COURT Defense, Mr Harris?

19 MR HARRIS Yes, Your Honor

20 THE COURT Okay, please bring in the jury

21 I'm going to let the State rest, then defense
22 rest, and then I will instruct the jury, and then we
23 will begin closing arguments

24 (Whereupon, the jurors enter the courtroom)

25 THE COURT Madam Forelady, ladies and

1 gentlemen, we appreciate your patience We will now
2 resume with the trial State may proceed

3 MR SAVAGE State rests, Your Honor

4 THE COURT Ladies and gentlemen, the State
5 has rested

6 Mr Howell, you may proceed

7 MR HOWELL Your Honor, subject to the
8 motions we made earlier, just renewing those, we rest
9 at this time We have no evidence to provide

10 THE COURT MS Crumey, you may proceed

11 MS CRUMEY Your Honor, defense rests as
12 well

13 THE COURT Mr Harris, you may proceed

14 MR HARRIS Defendant Clarence Robinson
15 rests

16 THE COURT Ladies and gentlemen, both the
17 state and the defense have rested their cases We
18 have now reached the stage of the trial where we will
19 hear closing arguments and the Court's instruction on
20 the law

21 You'll hear from the State, follow by Mr
22 Howell, Mr Crumey, and Mr Harris I would ask that
23 you give the attorneys your undivided attention

24 You may proceed, Mr Savage

25 MR SAVAGE Thank you, Your Honor May it

1 please the Court

2 THE COURT Yes, sir

3 MR SAVAGE Thank you Mr Howell, Ms
4 Crumey, Mr Harris

5 Ladies and gentlemen of the jury, at the
6 beginning of this trial I said this case was about
7 taking It was about four men armed with guns,
8 bandanas, and how they robbed the Benders Bar and
9 Grill, and the patrons inside And that's what
10 happened here

11 They took away the money from the bar And
12 they took the cash from the patrons inside More
13 important than that, they took away their sense of
14 security and their right to be safe where they were

15 You've seen and heard all the evidence in this
16 case I'm not going to go over all of it, but I am
17 going to go over the evidence that you need to
18 convict David Brown, Colin Boston and Clarence
19 Robinson

20 Basically it comes down to two forms, physical
21 evidence and testimonial The physical evidence that
22 we saw in this case starts off with the time,
23 distance and location of where they were Officer
24 Danik told us that she responded to the Benders Bar
25 two minutes after the robbery She responded there

1 at 9 51 p m

2 At 10 06, the defendants were in the James
3 Island Christian School parking lot when it was
4 closed, four miles from the robbery We heard that
5 from Officer Bonanni, who was the first officer on
6 the scene

7 Next we have the defendants' car We know the
8 owner of that car was Colin Boston The driver, the
9 get away driver in this case, was Clarence Robinson
10 He was sitting in the driver's seat when the police
11 pulled up Inside that passenger compartment was the
12 22 revolver that the police found on the floorboard,
13 one pair of black gloves, a red bandana, this is what
14 they found inside that car, and also the yellow Nike
15 knit cap

16 Inside the trunk we have three guns, three
17 gloves, two of those gloves were black, and the other
18 pair was the latex gloves We also had Colin
19 Boston's gray bandana

20 What do we know about the guns? We know that
21 the 9mm that in the drunk had David Brown's
22 fingerprint on it, on the magazine inside the gun
23 The 38 semi-auto, Tasha testified that it was her
24 gun, Colin Boston took it that night The 22
25 revolver, that was Darnel Brown's gun He's the

1 defendant who's not here today Tasha told us he's
2 the one that had that gun, and he's the one that's in
3 the backseat and it was on the floorboard next to
4 him

5 Lastly we have the 38 special That's the
6 one silver revolver that was in the trunk We heard
7 Adina Walden testify that when the person came up to
8 her and grabbed her breast and felt her groin area,
9 he was the person with the silver gun

10 Next we have the money Colin Boston had \$210
11 on his person Clarence Robinson, \$225 David
12 Brown, he had \$190 that he had hidden in his sock
13 We heard that on the jail tape, we heard him talking
14 about that to his cousin Darnel Brown, he had \$230
15 What do we know about this? There was also \$20 in
16 the glove box That totals \$875

17 Andre Thompson testified there was roughly
18 \$200 in the cash register Adina Walden, she's the
19 girl that was felt up and got pulled into the bar,
20 she testified that she had \$20 in her apron from when
21 she left work Lastly, we had David Alsbrooks He
22 is the older gentleman in his 70's who mentioned that
23 he takes out every month \$700, that's how he lives
24 He's an older man, he lives on \$700 a month He had
25 approximately anywhere from \$650 to \$700 on him that

1 night That totals \$870 That's one heck of a
2 coincidence

3 Next we have the jail calls Colin Boston, he
4 was asked, what evidence do they have against you I
5 don't know until I see what is in the trunk Officer
6 Koegler testified that when they were out there and
7 Colin Boston was at the back of that car and they
8 were looking in that trunk, Colin Boston is the one
9 who kept throwing his head back, seeing what the heck
10 is going on whenever they got near that trunk

11 He knew what was in that trunk He knew that
12 when he was talking on the phone, and he didn't know
13 whether the cops had gotten in it because it was
14 locked He knows what's going on He knows the guns
15 are in there, he knows his bandana is in there
16 because he just robbed the place

17 Spoke to his mother When she asked him, did
18 you have anything to do with this? His words were, I
19 messed up Are you saying you didn't do it? What's
20 his response? He does not deny it, he doesn't say,
21 no, mom, it's not me I can't understand how this
22 happened I cannot believe I'm charged with this

23 MS CRUMEY Objection

24 THE COURT Basis

25 MS CRUMEY Burden shifting

1 THE COURT Please approach

2 (Whereupon, a discussion was held at the bench
3 off the record)

4 THE COURT Objection is sustained You may
5 proceed, Mr Savage

6 MR SAVAGE Thank you, Your Honor

7 THE COURT You're welcome

8 MR SAVAGE Colin Boston's girlfriend

9 Natasha What did Tasha tell you? They found
10 nothing because I threw it all away What did she
11 throw away? Stocking cap, Colin Boston's gray
12 T-shirt in two pieces, and bullets

13 Why is that important? You'll have a chance
14 to look at this back in the jury room, Exhibit 33
15 When you look at that picture you'll see gray
16 bandana, and on the other side you'll see that gray
17 piece of T-shirt that that bandana was ripped from

18 That's what Colin Boston is talking about,
19 right there He knows that's in the trunk He
20 doesn't know whether the police have got it, but
21 right now he thinks Tasha has thrown that away
22 There it is right there for your eyes That's the
23 photo crime scene took when they responded to the
24 scene

25 Jail calls, David Brown What did he say? I

1 hid my money The police didn't find it Why didn't
2 they find it? Because it was in his sock He told
3 that to Trey Chisolm when he spoke to him on the jail
4 phone He also said, I hide my money, and moved on
5 from there

6 what is important about this physical evidence
7 is that it doesn't rely on memory Those items right
8 there don't fluctuate with how people remember them,
9 or how people distort the views of what they saw
10 They don't --

11 MR HARRIS Objection, Your Honor

12 THE COURT Basis

13 MR HARRIS I think we need to approach on
14 something that was just on that slide

15 (Whereupon, a discussion was held at the bench
16 off the record)

17 THE COURT Sustained Outside of the
18 evidence

19 MR SAVAGE Andre Thompson, he was the bar
20 manager who was at the bar, Benders Bar, on the night
21 of the robbery Where was he? He was at the front
22 near the door He was sitting over at the stage area
23 watching the TV He is the one who testified, said
24 he was watching the democratic debates on TV that
25 night

1 He heard, they walked in and when they rushed
2 into the bar someone yelled out, I feel like shooting
3 an MF'er tonight They came in there and took
4 control of that scene The first initial reaction
5 was to scare everyone inside that bar They came in
6 with guns, and straightaway they threatened to shoot
7 people

8 What do we know about how they acted? Two of
9 the defendants stayed near the front of the door, and
10 the other two went to the back near the cash
11 register They were organized This was planned

12 The defendant with the gray gun on him, he
13 spoke that when he was on the ground the person who
14 was standing above him with the gun had a gray gun
15 He also told -- testified too that that person had
16 the same shoes as him He told that to Officer Danik
17 first when she spoke to him And then he also
18 testified to it here in trial

19 Who had those shoes? Darnel Brown He also
20 testified that the person with the gun on him had a
21 red bandana That red bandana is sitting right there
22 and was in Colin Boston's car on the night they were
23 caught He also testified there was roughly \$200
24 stolen from the cash register

25 Next we have Adina Walden She was the poor

1 girl that was pulled into the bar when the robbery
2 was in progress She had no idea what she was
3 walking into when she came up to the front door that
4 night She is the girl that had two guns pointed at
5 her head, the person that was standing as a lookout,
6 and then the other defendant who approached her while
7 she was inside the bar

8 She was robbed of \$20 She was humiliated,
9 she stated, by the tall defendant I think in her
10 statement she stated somewhere around 5'7" to 5'8"
11 Mr Harris asked her on the stand, could it have been
12 someone taller than 6 foot she testified it could
13 have been She couldn't say it was someone shorter
14 than 6 feet tall

15 Colleen Denham She was the poor girl that
16 was at the bar and hid behind the barstool because
17 she couldn't find anything else for protection She
18 told us that she saw four men with guns One robber
19 had something yellow on his head, that's all she
20 could remember What was recovered from inside Colin
21 Boston's car? The yellow knit Nike cap

22 She also testified that the defendant with
23 Timberland shoes had a gun to her friend's head on
24 the floor What is important about this statement is
25 that she was down on the ground Her eyesight is

1 what she's looking at When she's on the floor,
2 she's looking at shoes

3 And she was so close to those pair of shoes,
4 she could identify them by brand Those shoes from
5 the defendant, David Brown, who was in Colin Boston's
6 car at the time of his arrest

7 This tells us the defendants had a plan This
8 was organized They knew what they were doing, and
9 they executed They entered the bar together, they
10 acted together, and they all had guns

11 Two at the door, one acted as a lookout, and
12 that's the one who pulled in Adina Walden And the
13 other two went to the end of bar to hold the rest of
14 the people who told them where the cash was

15 Purpose, preparation They had a car, guns,
16 bullets, and bandanas This was organized This
17 wasn't a spur-of-the-moment decision They knew what
18 they were doing

19 What the car tell us Clarence Robinson was
20 the getaway driver He was sitting in the car when
21 the police rolled up Colin Boston, David Brown and
22 Darnel Brown were right there with him Colin Boston
23 owned the car, and he knew the evidence was in the
24 trunk He knew about the guns, he knew about the
25 bandana That's what he was talking about with Tasha

1 on the jail phones

2 He was extremely nervous when the police
3 searched that car, as Officer Koegler testified, and
4 that's why He knew what was inside there, and he
5 knew it was going to lead back to him

6 The police found four guns and bandanas in
7 that vehicle There were four defendants, and there
8 were four defendants inside that bar that night
9 Colin Boston knew the evidence was destroyed And
10 Tasha -- knew that Tasha threw it away He even told
11 her, my gray T-shirt It wasn't anyone else's, my
12 gray T-shirt She threw that away

13 All the defendants had almost the same amount
14 of money why is that? Because when they stopped
15 there they were splitting up the proceeds of the
16 take Colin Boston had \$210 in his pocket, and used
17 the 38 semi-auto David Brown had \$190 hidden in
18 his sock, and he used the 9mm auto that had his
19 fingerprint on it

20 Clarence Robinson, he had \$225, and he used
21 the silver 38 special that he held to Adina Walden's
22 head when he felt her up Darnel Brown, he had \$230,
23 and it was his 22 revolver on the floorboard of the
24 car when the police rolled up

25 Andre Thompson told us he had the gray gun

1 pointed at him There was a red bandana, and the
2 person had the same pair of shoes that he owned
3 A 22 revolver in the car, shoes were on the
4 defendant Darnel Brown

5 Colleen Denham She testified, I saw the
6 yellow on the robber's head She also testified
7 about the Timberland shoes that were pointed at her
8 friend, worn by the person with the gun that was
9 pointing it at her friend on the ground

10 Colin Boston, my gray T-shirt in two pieces in
11 the trunk That gray bandana is his, and he knew it
12 The 9mm pistol, that's David Brown's His
13 fingerprint is on the magazine clip, the gun was in
14 the trunk and it was in the trunk of the getaway car

15 The robber had a gray gun, red bandana, same
16 shoes as me A 22 revolver on the floor next to
17 Darnel Brown, red bandana in the passenger
18 compartment along side with Darnel Brown in that car
19 That's what he was wearing that night

20 Timberland shoes Colleen Denham saw them on
21 the floor She saw them on the defendant who was
22 pointing the gun at her friend on the floor That's
23 what David Brown was wearing at the time of his
24 arrest

25 Colin Boston When he was asked if he did

1 this, his response was, I ain't talking like that on
2 the phone The money \$875 was robbed
3 approximately, and \$870 was inside that car when they
4 were caught four miles from the robbery scene, 15 to
5 20 minutes after the robbery in a church parking lot
6 that was closed just after 10 00 at night

7 Defendant's statements at the time of the
8 arrest Clarence Robinson said he was at a girl's
9 house on James Island Colin Boston said the car is
10 mine, I found the 22 two days ago That was also
11 verified by Tasha She came in and told us they
12 found that gun on someone I think she called Black
13 David Brown, at a girl's house, Bayside, downtown
14 Charleston All three of them were at three
15 different places at the same time

16 The Judge is going to instruct you on the law
17 in this case, but basically what it's going to come
18 down to, the hand of one, is the hand of all The
19 State doesn't have to prove who went in and robbed
20 that bar and the cash register out there What we do
21 show though is everyone who was inside that bar,
22 these three men along with Darnel Brown, all acted
23 together to achieve the same result, to rob that bar
24 and the people inside it

25 when two of more persons combine to commit an

1 unlawful act, and in execution of that criminal act,
2 an armed robbery is committed by one of the actors as
3 the probable and natural consequence of those acts,
4 all present and participating in the unlawful act are
5 guilty of the armed robbery

6 Now the defense is going to go through and the
7 first thing that they're going to go to is ID No
8 one saw their faces And there's a good reason why
9 no one saw their faces These boys here made sure
10 they didn't They wore gloves, they wore bandanas,
11 they knew what they were doing They made sure those
12 people in that bar were not going to see what they
13 looked like

14 You probably remember from during testimony
15 the black shoes that Andre Thompson was talking
16 about He had the same pair of black shoes Mr
17 Harris put those shoes up on the screen there and
18 asked him what color they were He said, they're
19 black shoes And they got into a big argument about,
20 are they black or are they black and red

21 And the fingerprints, the fingerprint that was
22 found on the gun We had some fun and games with the
23 poor lady that was up here testifying about that
24 The gun (sic) was in the magazine clip and it was
25 David Brown's gun, it was his fingerprint

1 When you hear the defense attorneys talk about
2 this, ask yourselves, are they talking about the
3 facts of this case or are they just going to ignore
4 the guns, ignore the cash, ignore the clothing and
5 the evidence inside that car

6 And finally, they are going to start talking
7 to you about beyond a reasonable doubt The burden
8 that we have to prove to prove this case that all
9 these men here did this robbery They're going to
10 try and make it sound like it's almost impossible to
11 achieve

12 All you really have to know is when you back
13 in that jury room and deliberate on this, if you are
14 firmly convinced that these men did it, we have met
15 our burden

16 Basically comes down to this, the robbery
17 occurred about 9 49 p m The defendants were caught
18 four miles away from the bar 17 to 20 minutes after
19 the robbery and are parked in a closed Christian
20 school that night

21 In the car were four guns, bandanas, gloves,
22 bullets, and cash That's exactly what you'd expect
23 to find in a car after someone has robbed a place
24 with guns Shoes on Darnel Brown and David Brown
25 match the description And then Tasha destroys the

1 evidence for Colin Boston

2 Once you go back into your jury deliberations
3 look at the evidence, look at the facts And I ask
4 you to find the defendants guilty of armed robbery in
5 this case Thank you

6 THE COURT Mr Howell

7 MR HOWELL Yes, ma'am I'm not as
8 high-tech

9 THE COURT You can use the dry-erase board
10 that's behind you

11 MR HOWELL This is my power point
12 production, I apologize First of all let me say
13 that I do very much appreciate your time and your
14 attention to this case

15 If the facts were as limited as to what Mr
16 Savage has said, and if you can put a blinders, if
17 those were all the facts that he talked about, and if
18 you could put on some blinders and ignore other
19 facts, then you can work a theory, as he has done
20 very effectively and it's a great presentation, but
21 as Paul Harvey used to say, you have to go to the
22 next page You have to see what the context is

23 So I am going to go over some of these other
24 facts with you Just by way of background, so I
25 don't get off my -- the point that we are at right

1 now is that the lawyers are going to talk to you
2 about what we have seen, what we suggest to you are
3 things that you should consider

4 And I do want to apologize, you have been sort
5 of cooped up a little bit more than we like to do
6 that But the process is designed to make sure that
7 you get all the proper, necessary, relevant evidence
8 that you can consider before you undertake what would
9 indeed is a very awesome responsibility

10 You are about to make a decision that will be
11 the most important decision you will make about
12 another human being, perhaps other than somebody you
13 know When David Brown sits here, he is 100 percent
14 innocent unless you are absolutely convinced beyond a
15 reasonable doubt that he is not

16 This awesome responsibility that you have, we
17 have spent four days being very careful that you do
18 get everything you can think about, that it does come
19 to you in the correct form, and we have taken great
20 time and great effort And Judge Jefferson has done
21 a wonderful job at preserving the integrity of this
22 system which you have taken an oath to uphold

23 And when we give this to you in a little
24 while, you will have some principles to be guided by
25 before you make the most important decision in this

1 young man's life The most important decision you
2 will make about another human being maybe for the
3 rest of your life

4 There is some guidance And where I disagree
5 with Mr Savage is this is not a little reasonable
6 doubt over here These are not flippant things
7 This is important stuff These are fundamental
8 rights, principles He takes on the burden of proof,
9 if it's not willingly he should not be in that chair,
10 if it's not absolutely, he should not be in that
11 chair

12 And the Judge will instruct you, you consider
13 all of the evidence, not just the evidence Mr Savage
14 talked about, put it in a little bit of a balance,
15 you tug it and you pull it and you do what we all do
16 and use your common sense

17 There are professionals all over this
18 courtroom, professional prosecutors, professional
19 lawyers, court reporters, law clerks, clerks of
20 court, sheriffs, all here with their professions
21 But there is one profession you have that we don't
22 have any weight with and that is common sense

23 So look at these facts with your common sense
24 Bring your everyday experience to these facts and do
25 what we talked about earlier, be challenging

1 Question Don't assume

2 Did a little sentence comparison for you to
3 see Again my power point, if I was to show you this
4 sentence I left my mother at the store If you
5 look under it you see a sentence that's really close,
6 don't you?

7 MR SAVAGE Your Honor, I apologize I
8 haven't seen this, I'm not sure what it is he is
9 showing

10 THE COURT Is there any exception?

11 MR SAVAGE No, Your Honor I just did not
12 know what he was showing, Your Honor

13 THE COURT You may proceed

14 MR HOWELL Just a sentence, I left my mother
15 at the store And you see, you can use all the same
16 letters except for one, two, three, four, five, keep
17 the blanks in the same place And if you assume, if
18 you look at that you say, well, surely that sentence
19 has got to be the same sentence because the letters,
20 you know, the random But you can also say, I lost
21 my mother in the storm, if you make those
22 assumptions

23 In a case in America at the criminal court
24 when you are talking about beyond a reasonable doubt,
25 you don't assume So let's look at the facts for a

1 little bit, and let's be challenging, and let's be
2 critical, and let's be fair

3 Number one, as I was going back to my map, we
4 have got a bar, Benders, and we have got James
5 Island And there is no doubt that something really
6 bad happened at Benders There is no doubt about
7 that There is not a whole lot of doubt about what
8 happened inside of the bar We really don't take
9 issue with that

10 And you have some young men that are found in
11 a car over on James Island And the question is,
12 what are the things that link these two beyond a
13 reasonable doubt? What are the facts, not the
14 assumptions? Facts, not assumptions

15 So as I went down this evidence, I saw that
16 obviously there is no identification where somebody
17 says, oh, I saw that guy Nobody saw the faces
18 That may be because whoever did this hid their faces
19 But their didn't, there aren't any faces

20 Nobody said, I saw a red Chevrolet Somebody
21 did say, I saw a SUV go by, or a truck kind of thing
22 So the only possible ID on a vehicle would have been
23 inconsistent with that link

24 Now, and this is where I take -- and I like
25 Mr Savage personally, I take great exception to one

1 of the things he did, and that is with Ms Colleen
2 Denham's, I saw it over and over, she said those
3 black Timberlakes, these Timberlakes, these
4 Timberlakes, these Timberlakes That Ms Denham
5 identified these Timberlakes, these Timberlakes here,
6 and she saw them here

7 If you will go back and think about what you
8 heard, you will remember that Ms Denham talked
9 specifically not about black and gray Timberlakes
10 she talked about how well she saw them She said
11 they were black She said the second man, all black
12 with black Timberlakes -- Timberlands, sorry All
13 black, because a lot of them had on all black, with
14 black Timberlands

15 We know that my client -- number one -- so
16 black Timberlands changes to black and gray That's
17 a reasonable doubt right there, they change It's a
18 slight change, maybe she's right there But what
19 about all black? He's got on blue jeans He has got
20 on a white T-shirt

21 So where she is consistent, if you stop at the
22 fact of Timberlands and assume everything else false,
23 you can get there But if you are looking at the
24 other facts you can't get there Because he is not
25 in all black And he has got on a white shirt

1 And you know what I am going to show you next,
2 the Scarface jacket There were 12 to 14 people in
3 this bar And these 14 people -- these four guys
4 came in And this will be back there with you, you
5 can look at it then And the guy comes in with a
6 black and white jacket with Scarface written in red
7 letters across it and a picture of Al Paccino and not
8 one single person noticed that

9 He mentioned the word coincidence That is
10 not a coincidence If somebody came in here right
11 now with this jacket on, someone in this courtroom is
12 going to notice it Somebody, not everybody would
13 miss it That's a reasonable doubt They got the
14 wrong guys Where is he? Where is the jacket?

15 Oh, yeah, by the way, they arrested this guy
16 where is that jacket in evidence? Does not help his
17 case, doesn't come into evidence My dad used to
18 say, my mind is made up don't confuse me with the
19 facts This fact doesn't fit with his case, don't
20 bring it into evidence before you

21 Let's look at some of the other facts real
22 quick Yellow bandana I don't remember the lady's
23 name, she was very specific when she came in, the guy
24 had a yellow bandana A bandana is something that
25 comes from the chin up A hat is something that goes

1 from the head down A bandana would be something you
2 would tie around, because if you're a robber you've
3 got to use both your hands And that same lady said,
4 he immediately grabbed me and dragged me across the
5 bar

6 where is that third hand? He is holding a
7 bandana up here and he's got a gun, where is his
8 third hand? That's not a bandana, that's a hat The
9 red bandana, very interestingly, probably did not
10 hear any single fact presented by Mr Savage more
11 than the red bandana

12 It's very interesting that the guy that he
13 chose was the same guy that took black shoes and
14 turned them into the red and black with white laces
15 Now there are two things about that I want to point
16 out to you Number one, he was so specific about the
17 fact that he remembered these shoes because they were
18 just like his

19 Well if they're just like yours, you would
20 tend to talk about what is distinctive about these
21 shoes What is the two most distinctive things about
22 the shoes? They got red on them, and they have got
23 white laces on them He said they were black shoes
24 why would you leave off the two most distinctive
25 things about the shoes?

1 So we know this guy will fill in the blanks
2 I'm not saying he is a bad person, these are very
3 tense situations You want to believe, you want to
4 get something You take him out there and he says,
5 black shoes, black shoes, black shoes And he gets
6 up and goes, yeah, those are the red and black and
7 white shoes I was talking about That's what our
8 mind does

9 This robbery occurred in February a year ago
10 And the first time the word red bandana came out of
11 his mouth anywhere was on the witness stand He
12 never mentioned it to any policeman He never put it
13 in any statement He just filled in another blank

14 How would he have known about it? Because
15 they took him out on the scene, and he is out and
16 around, he has been looking at this case for a long
17 time, they probably interviewed him at the police
18 department He is a sharp guy, keeps his ears open
19 That came up out of nowhere

20 Okay, what about the fingerprint? This is a
21 great example of something that shows a leap this far
22 that he wants to make this far I am not a hunter
23 But I have held my brother's shotgun I have handed
24 him bullets to stick in his shotgun to go hunting
25 There's a pretty good chance my fingerprints are on

1 the guns in the back of his truck or in his car when
2 he goes out to go where he is hunting Those
3 fingerprints could be a year old

4 The point there is this A fingerprint on a
5 gun in the trunk of someone's car, it does associate
6 you with the people in the car, but it doesn't
7 associate you with going back to Benders, you see the
8 difference there So, I touch my brother's gun, he
9 puts it in his trunk, he goes up to Georgetown, he
10 gets in some trouble, they find my fingerprints on
11 the gun

12 Yes, he is my brother These guys are his
13 friends, he could have touched that thing any time
14 And by the way dragging teeth to get the lady to just
15 say it could be a year old, that's not hard I don't
16 know why she gave me such a hard time about it, it's
17 just a fact

18 One other thing I have to apologize to you
19 about I got a little gummed up, as you can see,
20 with the fingerprint card And the first time I had
21 seen that card was 15 minutes before we started So
22 it's not like I had a lot of time to prepare and
23 stuff That fingerprint card in a
24 way is a little bit of an analogy to this case They
25 bring this really hard to see image, that I still

1 can't believe it can't be computer-enhanced in some
2 way so that you can see what she's talking about
3 And she says, yeah, you can't really -- you got to
4 just take my word that this is there, take my word
5 that this is there

6 I'm not really debating too much, I don't have
7 any problem with Mr Brown had his fingerprint on a
8 part of the gun that may have belonged to a friend of
9 his But it's that leap of faith, there is that
10 sense of assume what I say is correct, assume my
11 conclusion is correct but I don't have to show the
12 facts to get there

13 Let me turn now -- those were some of the main
14 facts, the physical facts, which do some of them
15 link? Possibly But in the end they don't If you
16 say just Timberlands, you can link it But if you
17 say black Timberlands with black pants, all back
18 clothes, it does not link It points to innocence,
19 not to guilt And right down the line

20 But what about some of these statements? Well
21 they have got a statement that Mr Brown said he hid
22 some money in his sock And they have got a
23 statement at the scene that he said he went in his
24 girlfriend's house earlier that night It's a very
25 interesting thing, and a little slight of hand here,

1 but see if I can get that straight

2 Remember the facts They're in their car

3 The policeman pulls up, pulls in right behind them

4 Asks them to get out -- the two other cops come

5 First he goes up and just gets the license Never

6 mentions any nervousness, never mentions any dis-ease

7 with anybody, no fidgeting, no nothing

8 Other groups of cops comes up and say, you all

9 got to get out of the car They get out of the car

10 They find the gun They place everybody under arrest

11 and they put them in handcuffs for that gun on the

12 floor With me so far?

13 Miss -- I can't remember her last name -- the

14 lady detective comes in, and says, tell me where you

15 were tonight Mr Brown says, well I was with my

16 girlfriend Okay Where were you tonight? well I

17 was with my girlfriend They never say, hey, there's

18 a robbery and we're going after a robber They were

19 arresting them for a gun

20 So, you know, I want to call your girlfriend

21 No, I don't want to get my girlfriend involved in all

22 this I mean that's something you don't get your

23 girlfriend involved in What's wrong with saying

24 that?

25 Then the next thing is you talk about Mr

1 Boston being all nervous about the trunk like that's
2 something sort of terrible, but there's I would think
3 a perfectly reasonable explanation for that, and that
4 has been put before you And that is that one of the
5 guns that was found in the trunk has an obliterated
6 serial number That's not okay That gets you in
7 trouble

8 You know it's in the trunk You know the
9 police are getting ready to look in your trunk If I
10 had a gun with an obliterated serial number and the
11 cops were pulling the seat back and trying to get in
12 there, I think I would be looking over the old
13 shoulder too, right?

14 MR SAVAGE Objection, Your Honor

15 THE COURT Basis

16 MR SAVAGE Misstates the facts in evidence

17 The gun with the obliterated serial number

18 THE COURT Approach

19 (Whereupon, a discussion was held at the bench
20 off the record)

21 THE COURT The objection is sustained

22 MR HOWELL Also the -- I guess I have a
23 couple of other things The gun that was found on
24 the floor, apparently his brother had a handgun If
25 you're an armed robber with a handgun sitting on the

1 floor, it's not the first thing you do is kick it
2 under the seat, right? well, if you are not really
3 thinking about doing anything particularly wrong, you
4 probably are not paying too much attention to get
5 out

6 But if you're on a high alert because
7 everybody is after you because of some armed robbery,
8 that thing is going to be so far back up under that
9 seat his legs going to be scratched up And the cops
10 are going to be seeing this, because they're trained
11 to see all that

12 As for some of the tapes, hiding money in the
13 sock, number one some people do that I have friends
14 in college that did that, one in particular Number
15 two, if you see your friends all losing their money,
16 it might not be a bad idea if you know your are
17 getting ready to be taken off to jail to hide your
18 money in your sock so you do have some money

19 Number three, you talk to a friend, and the
20 guy says something about his situation When you
21 listen to the tape, this is to Mr Peterson, big guy
22 with the soft voice, and I won't use the exact
23 language, he basically said, you know, what are you
24 going to do? He says, man I got screwed Not, boy I
25 did something wrong I got screwed

1 MR SAVAGE Your Honor, objection Misstates
2 the testimony again

3 THE COURT Approach

4 MR HOWELL Listen to the tapes

5 THE COURT Approach, please

6 (Whereupon, a discussion was held at the bench
7 off the record)

8 THE COURT Sustained

9 MR HOWELL You listen to the tapes and see
10 what you think they say

11 Another couple of small things and then I'm
12 done Why stop at this area? Why stop at this
13 church? Well, there are some good reasons I guess
14 and there are some bad reasons

15 One reason is because you are dividing up
16 money But one reason is some guys want to smoke a
17 joint It might not be a good idea, but they do it
18 or they might want to wait on a friend Might want
19 to be hooking up with somebody Or a lot of other
20 things Even the officer who testified I think said,
21 all I did was ask them for their license and go back
22 and check on it He didn't notice anything, quote,
23 illegal about anything that they were doing

24 I do want to comment on two more things I
25 guess Colin Boston's statement to his mom, not my

1 client, but he is still makes a lot sense to me His
2 mom says, what kind of trouble did you get involved
3 in, this armed robbery And he doesn't say, yes, I
4 did this armed robbery He says, I messed up

5 He had messed up He had gun with an
6 obliterated serial number He had a job at MUSC that
7 he was probably going to lose There are a lot of
8 reasons he can say he messed up It does not
9 necessarily equate to armed robbery

10 Again that's that jump they want you to make
11 They want you to ignore those other possibilities
12 There are five possibilities on the table, you cannot
13 just pick out only one and jump back from fact to
14 fact to fact It does not get you from Benders to
15 James Island

16 This case is tragic because of what happened
17 This case is troublesome because they want you to
18 make a journey today that these young men did not
19 make a year ago If they had made that journey,
20 somebody would have seen the Scarface jacket,
21 somebody would have seen the blue jeans There would
22 have been other things

23 Somebody in black Timberlands is out there
24 somewhere Somebody in the Scarface, who was in the
25 Scarface jacket is out there somewhere what

1 happened on that night was a tragedy Convicting
2 these people wrongly does not fix that tragedy That
3 makes the tragedy worse

4 The Judge will instruct you about what your
5 duties are And as I said we have worked very hard
6 this week to make sure you get everything you need to
7 consider to be good jurors and to be fair We ask
8 you to take that responsibility seriously We
9 believe that if you do, you will come back with the
10 proper verdict, and that is a verdict of not guilty
11 Thank you very much

12 THE COURT Ms Crumey

13 MS CRUMEY May it please the Court

14 THE COURT Yes, ma'am, you may proceed

15 MS CRUMEY Mr Savage, opposing counsel

16 Ladies and gentlemen of the jury, thank you
17 for your time and than you for your attention When
18 I stood before you earlier, I asked you just to look
19 at one thing, how does the evidence that the State
20 presented match what you hear from the witness stand
21 and the evidence that was presented

22 I asked you to speculate, guess, or draw any
23 other conclusions other than what the facts point to
24 The most important thing I'd like you to remember is
25 that you had two sets of witnesses that were

1 presented You had witnesses that were present in
2 the bar, and you had police officers or individuals
3 that work in law enforcement

4 At the time of this incident police officers
5 investigated and spoke with these witnesses As a
6 matter of fact there were a number of different
7 officers that spoke with them and got statements
8 almost simultaneously so all of these things were
9 done about the same time

10 And what you should note from those earlier
11 statements is that the information that was contained
12 in those statements that indicates at that time was
13 very different and more specific on this stand Now
14 when you think about how we recollect events, our
15 memories generally are more specific at the time
16 something is heard then some year and a half later

17 Now in terms of preparing for trial, I'm sure
18 these witnesses have gone over this information, seen
19 some of what has been presented However the
20 information that was very specific came more from the
21 officers who were able to view my client who was out
22 there at the time that they were arrested as opposed
23 to individuals that were in the bar were able to
24 visualize the people that actually robbed them

25 The reason I make that point is that these are

1 two different sets of people they're talking about
2 The people that were arrested on James Island are not
3 the same people that robbed this bar And why? Let
4 me go through what we have as far as the evidence is
5 concerned

6 We heard some very generic ID's, black
7 clothing, black shoes, and a description of the guns
8 we heard that there were four, sometimes three
9 individuals that came into the bar That's all that
10 we heard in terms of specificity from the witnesses
11 at the time the crime occurred

12 By the time we got to trial, we now have
13 specific information that somehow miraculously
14 matches what the State has presented As Attorney
15 Howell indicated, the first time when Andre Thompson
16 took the stand he talked about red and black shoes,
17 just like the ones he owned

18 Nowhere in his statement, police statements,
19 police reports, never was that mentioned And to
20 respond to the question about why wasn't it
21 mentioned, well, Jordans only come in red and black
22 well we know that's not the case because Jordans do
23 come in just black

24 And if you're thinking about when you respond
25 to a question why would you say that If in fact

1 they were just red and black Jordans, then he never
2 would have said black Jordans, he would have said
3 Jordans Except for any time you're describing
4 something that the color is common sense you don't
5 normally say hand me an orange orange, or hand me
6 that red Coke can, because the color is inferred

7 So if he only meant that the Jordans, just
8 like the ones he owned, the red and black, that this
9 one having white laces, he would have said, he was
10 wearing Jordans and I know that because they're like
11 the ones I own

12 And as a matter of fact when he went out to
13 the scene, he never said that in any statement, any
14 statement that he had But a year and a half later
15 now it becomes a fact why? Because that's
16 something that the State has in evidence and they
17 wanted to match

18 Another individual that is particularly
19 interesting is Mr David Alsbrooks Why is he so
20 interesting? For the first time in over a year and a
21 half, for the first time we have every heard from
22 him Not one patron in that bar, not one police
23 officer ever mentioned his name Why is that so
24 significant? Because he is the one individual that
25 is claiming this large sum of money that the only way

1 it's going to match what the State wants you to
2 believe

3 He somehow had \$700-some stolen from him, and
4 he has never once reported that to the police Never
5 once filed a report Never once gave any statement
6 You never heard one officer indicate they spoke to
7 him Not one officer indicate they got a statement
8 from him

9 And remember he indicates, well, I was sitting
10 at the bar And the solicitor pointed to it, is that
11 your drink sitting up there? Yeah, that's my drink
12 But I got blind-sided by someone If he got
13 blind-sided by someone, then the chair he is sitting
14 in is miraculously sitting upright

15 We have photographs of the bar where we have
16 the till of the cash register is still on the ground,
17 and a couple of other things are still upset
18 Obviously no one went back and tried to reset the
19 scene

20 So if he in fact had been sitting in this
21 barstool, blind-sided, knocked over, and had his
22 pockets ruffled through, wouldn't his chair be tilted
23 over? Wouldn't someone other than him have noted
24 that? Wouldn't someone make a police report, we have
25 heard about \$700 being taken?

1 That's significant because the \$200-some the
2 solicitor is saying taken from the cash register, the
3 \$20 that was taken from Ms Walden, that's \$220 And
4 it doesn't match their theory, and it doesn't match
5 their case So now we have to add in this large sum
6 of money that came from nowhere

7 And we have Ms Nance testified She briefly
8 testified how she ducked out the back and she went to
9 the back She couldn't really testify about anything
10 happening in the bar But she knows when she looked
11 up she saw a black truck, SUV, something of that sort
12 pulling out of the parking lot area, pulling out of
13 the area That's all she could know There is never
14 identified any red, burgundy car It was always a
15 truck, dark color truck

16 Then we are talking about time, distance and
17 proximity The solicitor wants you to believe that
18 there was a 17 to 20 minute window between the time
19 the crime actually occurred and the time that my
20 client and the others were found on James Island
21 And I want you to analyze that time a little more
22 closely, because that's not quite accurate

23 When Officer -- I forget his name -- Bonanni
24 indicated that he was on James Island, he said he
25 drove past James Island Christian School, and turned

1 back around and came back He saw the car and then
2 pulled into the parking lot when he actually
3 stopped and clocked it in, at that time that was
4 10 06

5 He never said anything about seeing a car pull
6 in, seeing a car pass him, or anything as to that
7 so at that point his car had already been sitting in
8 this spot, actually pulled in facing the gate so in
9 terms of the time, we have already caught off at
10 least a five-minute window from the solicitor's
11 timeframe that he wants you to believe Because as a
12 matter of fact, the car was parked

13 To further go into the solicitor's theory
14 about time, the State's own witness, Ms Natasha
15 Brown, she told you that Mr Boston left the house
16 after he had gotten a call from Mr Darnel Brown
17 asking to pick him up She said it was about 9 30

18 The solicitor would have you believe, well she
19 is going to say something most favorable to Mr
20 Boston because that's the child's father But as she
21 indicated on cross-examination, they aren't on good
22 terms at this point There is a dispute about
23 paternity of the child She is not going to say
24 anything to help

25 She said basically what factually happened is

1 he left the house about 9 30 which gives no time to
2 leave from Wadmalaw Island, pick up Mr Brown in West
3 Ashley, commit an armed robbery, and then sit in this
4 James Island parking lot It just does not logically
5 fit

6 And why is that important? Because we are
7 talking about time This all would have had to
8 happen in a very short timeframe And he questioned
9 her about whether Mr Darnel Brown picked her up or
10 whether or not he drove to -- she specifically
11 stated, no Colin left the house driving his car And
12 went to West Ashley

13 As a matter of fact, she further noted that he
14 called her after he picked up Mr Brown She spoke
15 with him after that So the time just does not fit

16 Then the State also has for you telephone
17 calls from Mr Boston to his mother talking about how
18 he had messed up He acknowledged the night he was
19 arrested that this gun was his well it was in his
20 car Ms Brown indicated that it was her's, but it
21 was his He had the car He's being charged with
22 it

23 He never acknowledged anything about being
24 involved in an armed robbery Never indicated he was
25 involved in an armed robbery As a matter of fact

1 she specifically asked him that, and he did not
2 acknowledge that

3 I don't want to belabor for you the points
4 that Mr Howell has already made But I want to ask
5 you to use your common sense Use your ability to
6 recall all that you've heard Because if you will
7 recall all of the evidence that was presented from
8 the stand, and everything that these witnesses
9 indicated they said and did the night of this
10 incident, and what they now indicate, it does not
11 match

12 It only matches what the State wants to match
13 and how they want it to match This information
14 about bandanas and the things that were indicated now
15 were never indicated previously

16 The final issue I want you to think about in
17 terms of the items that were located in Mr Boston's
18 trunk, the officers there indicated to you, there was
19 never a key or a key that was located in any of the
20 shoes They talked to you about the fact they must
21 have stuffed these items in the trunk

22 we are still talking about additional time
23 that is being added into this timeline the State
24 wants you to fit together

25 Use your common sense Use your logic and

1 your ability to examine all the evidence Don't get
2 side-tracked by the fact that we have individuals in
3 the car with guns Make sure all of the other
4 evidence fits Because if it doesn't, if the fact
5 that Mr Alsbrooks' testimony does not make sense,
6 that it comes a year and a half later, that Mr
7 Thompson's sudden recollection of specific events he
8 didn't recall then doesn't match, that you disregard
9 what Mr Alsbrooks testified to that this money
10 doesn't match

11 If all of that causes you to hesitate to act,
12 as reasonable doubt is defined as, I'm confident that
13 you will be able to come back with a verdict of not
14 guilty on both counts as to Mr Colin Boston and the
15 other individuals I thank you for your time

16 THE COURT Mr Harris

17 MR HARRIS Thank you, Your Honor

18 THE COURT You're welcome

19 MR HARRIS May it please the Court

20 THE COURT Yes, sir

21 MR HARRIS I will move this I know when I
22 have something in front of me I tend to stare at it
23 Not that I'm the best looking guy in the world, but I
24 kind of want you to look at me

25 I mentioned, when we first started this, I

1 said there's going to be a lot circumstantial
2 evidence I don't know if you all remember that, it
3 was a while back It has been a long road and I'm
4 glad you all have been on it with us I know you all
5 are ready to get out of here just like I am

6 Circumstantial evidence is what the whole
7 thing is based on And I sometimes like to, you
8 know, put things in prospective And a popular show
9 back in the '80s and '90s, Seinfeld, they had an
10 episode about the yada, yada episode The woman I
11 remember said, I went into a store, yada, yada, yada,
12 I ended up with a new blouse

13 And the yada, yada, yada, was I put the blouse
14 in my purse and ran out the door She didn't tell
15 you the two facts that are important that she stole
16 it She just told you, I went in the store and I
17 came out with a new blouse

18 The solicitor is wanting to kind of do that
19 with you today with their case They're bringing
20 this up here and they're saying, well we have got a
21 witness that said he had black Jordans on Okay

22 The detective that I spoke with, and I said
23 specifically, I said, Mr Thompson said this
24 word-for-word? He said, yes, word-for-word I said,
25 you write these things word-for-word? He goes, yes

1 If someone says it, I write it down word-for-word
2 verbatim

3 On Mr Thompson's statement it says he had on
4 black Jordans The solicitor asked, how do you know?
5 I was about eight inches away from him They were
6 right in front of my face I said, did you see his
7 face? No None of this? No That was his words on
8 the stand

9 And then I said, well, you know, when you got
10 to the scene you identified red and black Jordans
11 with some blue on them -- you're eight inches away
12 from those -- with big, white bunny rabbit looking
13 laces on them That's the one thing I noticed when I
14 first the picture, that's the first time I've seen
15 the picture I saw it and it's got these big, huge
16 white laces on them

17 What did he say? He said, the difference in
18 those and mine is those don't have -- the Jordans
19 don't normally have white laces

20 MR SAVAGE Your Honor, may we approach for a
21 second? I apologize, Mr Harris

22 THE COURT You may

23 (Whereupon, a discussion was held at the bench
24 off the record)

25 THE COURT You may rephrase

1 MR HARRIS I'm sorry It was the first time
2 that I had looked at those pictures I had those
3 pictures, it was the first time I looked at those
4 pictures

5 Because one reason is, it's the first time
6 that I have heard from anyone that there was red and
7 black Jordans with white laces Because when I had
8 the evidence I was looking for black Jordans that
9 were in the description

10 But when Mr Thompson got to the scene, and
11 walked up and sees the gentleman in handcuffs or
12 standing there with a police officer goes, oh, that's
13 the shoes, yeah That's the shoe that I saw today
14 They weren't black Jordans I said, these are red
15 And he goes, and black And I said, well And he
16 said, well, that's the only color they make Jordans
17 in

18 And I said, okay Unless he did not get these
19 at the store, there is about 70 different colors of
20 Air Jordans Michael Jordan is the reason that Nike
21 is not a small shoe company in Portland, Oregon
22 Michael Jordan is the reason that -- I mean basket
23 ball came back

24 I mean Bird and Magic, yeah, did it But
25 Jordan, everybody knows who Michael Jordan is The

1 franchise is based on the man I mean we are talking
2 about -- he is talking about, oh, I thought that was
3 the only color they came in is red and black, so I
4 just called them black

5 Like Ms Crumey said, if you thought that was
6 the only color they came in, why did you specify
7 black? why wouldn't you say, they're Air Jordans,
8 because that's the only kind they make I have
9 that's the only color they make them in, so I'm just
10 going to call them Jordans

11 I'm not going to tell you, when you are out
12 get me a red can of Coke Because Coca-Cola is red
13 Like she said, you are not going to say, hey, through
14 me that orange orange, I'm kind of hungry right now
15 Because it's an orange It only comes in one color

16 Jordans, there is a pair of black Jordans
17 right there He looked at those They brought them
18 out, he looked at those, he didn't say, that's the
19 black Jordans, those are black Air Jordans He had
20 seen a pair of black Air Jordans that night

21 And if we are talking about rare things, okay,
22 Jordans Out of three people that have testified or
23 are involved in this case today -- or out of all the
24 people who have testified -- three of them have
25 Jordans There are three pairs of Jordans involved

1 in this case Actually four, I'm sorry, there are
2 black ones there too Four pairs of Air Jordans
3 It's a very popular shoe It's like saying, a lawyer
4 wears a suit, you know I mean, come on

5 And then we have got Colleen Colleen says,
6 I'm down on the ground -- first thing, I'm sorry, she
7 says, they walk in the door and this bright yellow
8 bandana is the first thing I see It jumped out at
9 me He's got his face covered with a bright yellow
10 bandana I said, did you see his eyes? No, because
11 he had that yellow bandana over his face

12 Okay, you come in guns blazing, this goes
13 here I'm sorry, it doesn't have eyes It's not a
14 mush-mouth hat like Fat Albert It goes on top of
15 your head If I come in like this, I don't have a
16 hand for a gun, or a hand to grab you with I'm
17 sorry, what this is, is this is something they found
18 in the car that fits their case

19 There wasn't a yellow bandana so they want you
20 to fit in into their case so it's like, well there is
21 something yellow in the car look There is something
22 yellow, let's make it fit what Colleen said It
23 doesn't

24 It's not a bandana, it's not to cover up a
25 face I don't see how It doesn't have a hole in

1 the top, you can't pull it over the top of your head
2 and have it around like this like a turtleneck I
3 guess you'd call that But, I'm sorry, just because
4 something is yellow and it doesn't match what they
5 said, I mean if they said he had a yellow shirt on
6 they pulled that in, look yellow

7 No That's because they want you to think
8 that fits their case Here we go Let's put this in
9 this pile, it fits our case What doesn't from those
10 descriptions? What is not up here right now?

11 Colleen said she saw black and white shoes
12 She said it twice Black and white shoes Twelve
13 minutes later they get pulled over They even find
14 an extra pair of shoes in the trunk, red and black
15 shoes There are no black and white shoes

16 MR SAVAGE Objection, Your Honor, misstating
17 the facts in evidence

18 THE COURT Please approach

19 (Whereupon, a discussion was held at the bench
20 off the record)

21 THE COURT You may proceed and rephrase

22 MR HARRIS I apologize and I will rephrase
23 it Black and white shoes are in evidence And it's
24 the white back of these right here You can see
25 those, those have a little white on them and those

1 are the Jordans she called these black and white,
2 if that's what we are talking about

3 If we want to say that's her black and white
4 shoes, okay These are the shoes that are sitting
5 right next to her, she called those all black So if
6 we are going to say she's calling those black and
7 white, okay And those are about two feet away from
8 her, she is calling those black and white She's
9 calling these all black

10 This one has a lot more gray and white than
11 that one has a white on black shoes I mean there is
12 a little jump man here, there is a little triangle in
13 fact But, I mean, if we are going to get into,
14 okay, she said black and white shoes, but then she
15 calls these all black All black timberlands was
16 her exact description Another popular brand of
17 shoes

18 It's a major company It's not like we are
19 talking about Bruno Magli's, from another popular
20 court case Those are the black Timberlands, all
21 black Timberlands she is talking about

22 I said to her, I said, did you mean all black
23 clothes and black shoes? She goes, all black shoes
24 So, those are not all black Timberlands I mean,
25 they're just not I mean they're gray everywhere

1 So of course to fit into the story, to fit into the
2 case, to make these guys guilty, oh, she said black
3 Timberlands so those must be them They're
4 Timberland shoes and they have got black on them, so
5 they must fit in

6 No, they don't So far we have got no faces,
7 there is not anybody ID'd a face Nobody ID'd hair,
8 tatoos I mean there is no descriptive, except
9 clothing, a yellow bandana, black Jordans and black
10 Timberlands

11 What do we have in the evidence? No yellow
12 bandana Black and red Jordans with white laces
13 And black and gray Timberlands I mean, it doesn't
14 match up I'm sorry It matches if you want the
15 story to say these guys are guilty If you believe
16 that black and gray -- black is okay for black and
17 gray, although she describes all black ones according
18 to, you know, as black and white But circumstantial
19 evidence is what I am trying to say

20 Blue jeans The person in our case wearing
21 these black Timberlands, black and gray Timberlands,
22 I'm sorry, had on blue jeans And they weren't like
23 black blue jeans, they were real blue jeans

24 Look Those are blue jeans Mind you,
25 they're not acid-wash jeans, but they're royal blue

1 jeans They're not gray, they're not black, they're
2 not even dark, they're blue

3 And this is one that Mr Howell brought up
4 too, and I don't understand why it's -- this was
5 taken into evidence, a black and white leather
6 Scarface jacket, with Scarface written in big red
7 letters across the front Scarface, for those who
8 don't know, was a popular movie with Al Pacino right
9 there Most people know about it, but that's a black
10 and white jacket if I've ever seen one Half of it's
11 white, okay

12 That's not in here today because if it was it
13 would not go with the State's case that they were
14 wearing all black Because that, with those two
15 pairs of shoes, don't go along with their case But
16 we are supposed to ignore what one of the victims
17 said when he is talking to the police right after it
18 happened, we are supposed to ignore that, that
19 they're black shoes Year and a half later though,
20 oh, yeah, they were red

21 MR SAVAGE Objection, Your Honor, misstating
22 facts in evidence

23 THE COURT Please approach

24 (Whereupon, a discussion was held at the bench
25 off the record)

1 THE DEFENDANT Let's move to the money The
2 money lined up really nice and neat on the screen
3 over there They took -- we saw testimony from a
4 person that had \$20 taken Then we saw the guy that
5 had \$700 taken, or he said he had \$700, maybe a
6 little less And then Andre Thompson said the till
7 had \$200 to \$300 in it, okay

8 If you notice, what they want you to see is
9 they went with the low end on all of that All of
10 the sudden it's \$650 taken from the old man -- David
11 And the till is \$200, not \$300 It cannot be \$300
12 because if you add it up if it's \$200 and it's \$650
13 and it's \$20, then it's exactly what they had in the
14 car

15 And that's not including -- I mean that's just
16 from the statements of the people we saw here There
17 was 12 to 15 people in the bar during the armed
18 robbery There is no idea, we have -- nobody has an
19 exact number on this money

20 But, if its \$700 and \$300 and 20, then it's
21 over \$1,000 There was not over \$1,000 in the car
22 I mean again that's assuming that none of the other
23 nine people in the bar at least, he said 9, 12 to 15,
24 none of the other 9 people in the bar had anything
25 taken That means that none of them had anything

1 taken They were just the ones that -- the only
2 people that had money were three people according to
3 the case

4 So, yes, that lines up nicely Because we
5 only take this control group and say, here we go,
6 \$970 But if we used the 700 the guy said maybe
7 minus a little money, then we're over 1,000 And I
8 know that they did not spend that type of -- if we
9 are talking about getting them from West Ashley
10 Benders Bar to James Island in about let's say 12 to
11 20 minutes, that's what we have heard, okay? I don't
12 think they spent \$100-plus in 12 to 20 minutes

13 I mean it would take them 12 to 20 minutes
14 going through all those stoplights The officer said
15 -- kind of chuckled, he said, there's a lot of
16 stoplights over there I mean, it's not something
17 you can drive 60 miles an hour This is going from
18 Benders Bar down through all the car dealerships
19 Then through all those lights there by Doshier's

20 Going through West Ashley where there is the
21 light at Triangle, there is -- then you get down to
22 Wappoo and then you go through Windemere, which when
23 you start on Windemere there is at least four right
24 there, back to back to back to back

25 So, if they didn't have time to get rid of

1 this money and get rid of the clothing, we are
2 talking about a short period of time And we don't
3 even know how long they were sitting at this place
4 Because the officer pulls up, they're parked The
5 officer didn't follow them in The officer pulls in,
6 sees the car parked and says, huh, turn around and go
7 back

8 Make sure there's not people -- you know, a
9 couple in there or something like that I think
10 that's what he said, he was just checking it out
11 The timeframe does not match up It's a very short
12 amount of time Nobody saw them driving

13 Another thing that didn't -- you know, got
14 mentioned earlier but then just kind of got buried is
15 this SUV The car that they see taking off down the
16 side street, the person that's outside She is the
17 only person that sees a car and it's an SUV It's
18 not a red car It's not even a car, truck or SUV,
19 I'm sorry

20 Didn't mention a white shirt, nobody mentioned
21 that In the picture you see he's wearing a white
22 shirt That's a black t-shirt with blue jeans, and
23 gray and black shoes Okay Not dark clothing with
24 black pants and black Timberlands

25 I guess what I am trying to say is if you look

1 at it with what they have shown you here, this
2 evidence, then yeah it can add up and look pretty
3 bad But if you look at it with the other stuff
4 brought in, which didn't get brought in today or
5 yesterday or the day before, which is the white and
6 black jacket, black T-shirt, the blue jeans, none of
7 these things are sitting up here, or the yellow
8 bandana, that's not here, the yellow stocking cap is,
9 those --

10 MR SAVAGE Excuse me, Mr Harris Your
11 Honor, may we approach?

12 THE COURT You may

13 (Whereupon, a discussion was held at the bench
14 off the record)

15 MR HARRIS Okay All right I'm almost
16 done here, I promise We can all -- you have the
17 testimony What I want you to do is listen to the
18 people who testified I asked you to listen
19 carefully to everybody who testifies

20 The Judge is going to instruct you, or talk
21 about beyond a reasonable doubt She's going to talk
22 about veracity of witnesses All right The only
23 witness that identified anything by going to that
24 scene is Andre Thompson The story changed from four
25 miles away completely okay?

1 The other person that ID'd anything, we have
2 got an armed robbery case based on two pairs of
3 shoes, no faces, two pairs of shoes and dark
4 clothing The other person is Colleen, she called
5 those black Timberlands And I said, all black? All
6 black

7 Okay That is what this is This is
8 circumstantial evidence, two people that saw it, one
9 of them changed their story, the other one didn't get
10 it right Beyond a reasonable doubt is hesitation to
11 act If you are thinking about something, and all of
12 the sudden you pause and say, wait a minute, that's
13 hesitation to act That's reasonable doubt

14 Because of that hesitation to act, I'd ask you
15 to find Clarence Robinson not guilty of either
16 charge Thank you

17 THE COURT Ladies and gentlemen, why don't
18 you stand up and stretch a little bit Does anyone
19 need to go to the restroom? Speak now

20 During this trial, ladies and gentlemen, you
21 and I have certain duties to perform As the trial
22 Judge it is my responsibility to preside over the
23 trial of this case I also have the duty to rule
24 upon or pass upon the admissibility of evidence that
25 is offered during this trial

1 You are to consider only the competent
2 evidence which has been presented to you, and you are
3 to disregard and disabuse from your mind any
4 testimony that has been ordered stricken from the
5 record in this case during the progress of this
6 trial

7 You are only to consider the testimony which
8 has been presented from the witness stand, together
9 with any exhibits which have been made a part of the
10 record in this case, and any stipulations of counsel
11 made into the record

12 I have the additional responsibility to
13 instruct you, or what we call commonly refer to as
14 charge you, on the law applicable to this case As
15 the presiding Judge, I'm the sole Judge of the law of
16 this case And it is your duties as jurors to accept
17 and apply the law as I now state it to you

18 If you have a preconceived idea as to what law
19 is or what the law ought to be in a case, or in this
20 case, and it should not agree with what I now tell
21 you the law actually is, you are obligated under the
22 oath which you have taken to abandon this
23 preconception on your part because you are sworn to
24 accept the law and apply the law precisely as I now
25 state it to you

1 In every case tried in this court before a
2 jury, the jury becomes the sole and exclusive judges
3 of the facts in a case You, the jury, are the
4 judges of the facts in this case This Court is the
5 judge of the law

6 The constitution of our state has declared
7 that a trial judge shall not intimate, state, comment
8 upon or make any statement to a trial jury about the
9 facts in a case Since you, the jury, are the sole
10 judges of the facts in this case, you are not to
11 infer anything from what I have said during the
12 progress of this trial in ruling upon the
13 admissability of evidence or otherwise, or anything
14 that I say now during the course of this instruction
15 to you that I have any opinion about the facts in
16 this case

17 The law does not permit me to have an opinion
18 about the facts This is a matter solely for you,
19 the jury, to determine As jurors then it is your
20 duty, as I have instructed, to determine the effect,
21 the value, the weight and the truth of the evidence
22 presented during this trial

23 Necessarily you must assess the credibility of
24 witnesses who have testified in this case
25 Credibility is simply a legalistic term that we use

1 referring to the believability of each witness who
2 has testified It becomes your duty as jurors to
3 analyze and to evaluate the evidence, and determine
4 that evidence which convinces you of its truth

5 I instruct you that in determining the
6 question of the credibility or believability of
7 witnesses who have testified, you may believe one
8 witness as against several witnesses, or several
9 witnesses as against one witness You may believe a
10 part of the testimony of a witness and reject the
11 remaining part of the testimony of that same witness

12 If you have a good and sound reason you may
13 believe the testimony of a witness in its entirety,
14 or reject the testimony of a witness in its entirety
15 You may consider whether any witness has exhibited to
16 you any interest, any bias, any prejudice, or other
17 motive in this case You may consider the demeanor
18 of a witness, that is the manner and appearance of
19 the witness from the witness stand

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions An
22 exception to this rule exists for witnesses we call
23 expert witnesses A witness who by education,
24 training, and experience has become an expert in some
25 art, science or profession or calling may state an

1 opinion as to relevant and material matters in which
2 the witness claims to be an expert And may also
3 state the reasons for that opinion

4 You should consider any expert opinion
5 received as evidence like any other evidence Give
6 it the weight you think it deserves If you decide
7 that the opinion of an expert is not based on
8 sufficient education and experience, or if you
9 conclude that the reasons given in support of the
10 opinion are not sound, or that the opinion is
11 outweighed by other evidence, you may disregard the
12 opinion entirely

13 An expert witness's testimony is to be given
14 no greater weight than that of other witnesses simply
15 because the witness is an expert And further, you
16 are not require to accept an expert's opinion even
17 though it is not contradicted

18 I further instruct you, ladies and gentlemen,
19 that a person who has a past criminal record is
20 competent to testify during a trial A past record
21 does not affect the ability of that witness to
22 testify, the past record may only be considered by
23 you, if at all, in determining the witness's
24 believability

25 Remember, ladies and gentlemen, you are the

1 sole judges of the facts in this case, and of the
2 believability of any and all of the witnesses

3 I further instruct you that a statement is
4 alleged -- there are statements alleged to have been
5 made by the defendants which have been admitted into
6 evidence in this case while the Court has
7 determined that the statements are admissible, I
8 instruct you that you make the ultimate decision of
9 whether or not the defendants made the statements

10 If the defendants did not make the statements,
11 you must -- I'm sorry, let me rephrase that If the
12 defendants did make the statements, you must
13 determine whether the statements were made by the
14 defendants voluntarily and of their own free will
15 This means that the statement was not caused by
16 pressure, force, fear, threats, coercion or
17 intimidation, or by a hope or a promise of leniency,
18 or a reward of any kind

19 In determining whether the statement or
20 statements were voluntary, you should consider both
21 the characteristics of the defendants, and the
22 details of the questioning Some of the factors that
23 you must consider are the age of the defendants, the
24 defendants' education or lack of education, the
25 defendants' mental ability or capacity, the

1 defendants' IQ or intelligence, the defendants'
2 background and environment, the place and length of
3 the detention, the nature of the questioning, and the
4 advise or lack thereof to the defendants of their
5 constitutional rights including, but not limited to,
6 the right to remain silent, that any statement could
7 be used against them in a court of law, the right to
8 have a lawyer present, that if he could not afford a
9 lawyer a lawyer would be appointed to represent him
10 without any cost, and that he could stop making a
11 statement at any time

12 You must carefully consider all of the
13 surrounding circumstances before you give any weight
14 to an alleged statement The State has the burden of
15 proving beyond a reasonable doubt that the alleged
16 statement or statements were voluntary If you
17 determine they were, you may give the statements any
18 further consideration that you deem proper You must
19 decide what weight, if any, should be given to any
20 alleged statement

21 If you determine that the alleged statement or
22 statements were not the free and voluntary statements
23 of the defendants, you should not consider the
24 statements at all

25 I instruct you that an issue in this case is

1 the identification of the defendants as the persons
2 who committed the crimes charged The State has the
3 burden of proving identity beyond a reasonable doubt
4 You must be satisfied beyond a reasonable doubt of
5 the accuracy of the identification of the defendants
6 before you may convict the defendant

7 Identification testimony is an expression of
8 belief or impression by a witness You must
9 determine the accuracy of the identification of the
10 defendants You must consider the believability of
11 each identification witness in the same manner --
12 same manner and way as any other witness

13 You may consider whether the witness had an
14 adequate opportunity to observe the offender or
15 offenders at the time of the offense This will be
16 affected by things like how long or short a time was
17 available, how far or close the witness was, the
18 lighting conditions, and whether the witness had the
19 chance to see or know the person in the past, as well
20 as the length of time that may have elapsed between
21 the alleged incident and the actual identification

22 Once again I instruct you the burden of proof
23 on the State extends to every element of the crimes
24 charged And this specifically includes the burden
25 of proving beyond a reasonable doubt the identity of

1 the defendants as the persons who committed the
2 crime If after examining the testimony you have a
3 reasonable doubt as to the accuracy of the
4 identifications, you must find the defendants not
5 guilty

6 Ladies and gentlemen, there are two types of
7 evidence which are generally presented during a
8 trial, direct evidence and circumstantial evidence
9 Direct evidence is the testimony of a person who
10 asserts or claims to have actual knowledge of a fact,
11 such as an eyewitness Circumstantial evidence is
12 proof of a chain of facts and circumstances
13 indicating the existence of a fact

14 The law makes absolutely no distinction
15 between the weight or value to be given to either
16 direct or circumstantial evidence Nor is a greater
17 degree of certainty required of circumstantial
18 evidence than of direct evidence You should weigh
19 all of the evidence in this case After weighing all
20 of the evidence, if you are not convinced of the
21 guilt of the defendants beyond a reasonable doubt,
22 you must find them not guilty Conversely, if you
23 are convinced of the guilt of the defendants beyond a
24 reasonable doubt, then you must find them guilty

25 I instruct you that the fact that the

1 defendants were arrested, charged and indicted is not
2 evidence in this case and cannot be considered by you
3 as evidence of guilt in this case Nor does it
4 create any presumption or inference of guilt

5 The indictments, ladies and gentlemen, are
6 simply the documentation or the formal written
7 instruments which contain the charge or charges made
8 against the defendant They serve as the formal
9 documents by which the case is brought or processed
10 through this court

11 The defendants have pled not guilty to the
12 indictments, and that plea casts the burden on the
13 State to prove the defendants guilty Because a
14 person charged with committing a criminal offense in
15 South Carolina is never required to prove himself or
16 herself innocent

17 I instruct you, Madam Forelady and ladies and
18 gentlemen of the jury, that it is a cardinal and
19 important rule of the law of evidence that the
20 defendant or defendants in a criminal trial, no
21 matter what the seriousness of the charge or charges
22 made against him may be, will always be presumed to
23 be innocent of the crime for which he or she is
24 indicted, unless their guilt has been proven by
25 evidence satisfying you of that guilt beyond a

1 reasonable doubt

2 This presumption of innocence does not cease
3 when you retire to deliberate, but it accompanies the
4 defendants from the time of their appearances,
5 throughout the trial, until you reach a verdict based
6 upon evidence satisfying you beyond a reasonable
7 doubt

8 Our Supreme Court has said that the
9 presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the
11 defendants And it remains with them and assigns
12 them to that class, the innocent, until that
13 presumptive robe of righteousness has been stripped
14 from their person by evidence satisfying you of that
15 guilt beyond a reasonable doubt

16 Madam Forelady, and ladies and gentlemen of
17 the jury, the presumption of innocence is not mere
18 legal theory, it is not just a legal phrase, it is a
19 substantial right to which every defendant is
20 entitled unless you, the jury, are satisfied from the
21 evidence beyond a reasonable doubt

22 You might ask, what is a reasonable doubt in
23 the law? The State has the burden of proving the
24 defendants guilty beyond a reasonable doubt Some of
25 you may have served as jurors in civil cases where

1 you were told that it is only necessary to prove that
2 a fact is more likely true than not true, such as by
3 the greater weight or preponderance of the evidence

4 In criminal cases the state's proof must be
5 more powerful than that, it must be beyond a
6 reasonable doubt Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the
8 defendants' guilt

9 There are very few things in this world that
10 we know with absolute certainty And in criminal
11 cases the law does not require proof that overcomes
12 every possible doubt If based on your consideration
13 of the evidence you are firmly convinced that the
14 defendants are guilty of the crimes charged, you must
15 find the defendants guilty

16 If, on the other hand, you think there is a
17 real possibility that the defendants are not guilty,
18 you must give them the benefit of that doubt and find
19 them not guilty

20 I instruct you and emphasize that the fact
21 that the defendants did not testify is not a factor
22 to be considered by you in any way in your
23 deliberation, and in your consideration on the
24 question of the guilt or the innocence of the
25 defendants It must not be considered by you in any

1 manner whatsoever

2 A defendant has the constitutional right to
3 remain silent And the assertion of this right must
4 not be considered by you in your deliberation I
5 repeat, under your oath, you are to draw absolutely
6 no conclusion whatsoever from the fact that the
7 defendants in this case did not testify The fact
8 that these defendants did not testify should not even
9 be discussed in the jury room in any manner
10 whatsoever

11 The burden of proof, as I have stated to you,
12 is on the State The defendants are not required to
13 prove their innocence The burden of proof remains
14 on the State to prove guilt beyond a reasonable
15 doubt

16 The defendants are charged with armed robbery
17 In order to prove this offense, the State must first
18 prove beyond a reasonable doubt that the defendants
19 took personal property from the person or presence of
20 another person Property is in the presence of a
21 person if it is within the person's reach,
22 inspection, observation or control so that the person
23 could, if not overcome with violence or prevented by
24 fear, keep possession of the property

25 The State must also prove beyond a reasonable

1 doubt that the defendants carried the property away
2 intending to permanently deprive the owners of the
3 property, and to keep the property for the
4 defendants' own use The slightest removal of the
5 property or the complete possession of the property,
6 even for an instance, by the defendants is sufficient
7 to show a taking and carrying away of the property

8 The taking and carrying away of the property
9 must have been done with violence, or by putting the
10 owner of the property in fear of violence Finally,
11 the state must prove beyond a reasonable doubt that
12 the defendants were armed with a deadly weapon during
13 the robbery

14 A deadly weapon is any article, instrument or
15 substance which is likely to cause death or great
16 bodily harm Whether an instrument has been used as
17 a deadly weapon depends on the facts and
18 circumstances of each case

19 The following are examples of instruments
20 which may be deadly weapons A pistol, a shotgun, a
21 rifle, a dirk, a dagger, a knife, a sling-shot, metal
22 knuckles, a razor, gasoline, a fire bomb or Molotov
23 cocktail and lighter fluid A gun may be deadly
24 weapon even if it is not operating

25 Ladies and gentlemen, I instruct you that mere

1 presence at the scene is not sufficient to prove
2 someone guilty of a crime A defendant's presence
3 where a crime is being committed, or mere association
4 with a person who commits a crime, does not make a
5 defendant an accomplice or an aider and abettor of
6 the person committing the crime

7 The burden is on the State to prove every
8 element of the crimes charged If you find after
9 reviewing all of the evidence that the State has
10 proven that the defendants were only present at the
11 scene of a crime, and that they have not proven
12 beyond a reasonable doubt any other participation in
13 the crime, then you must find the defendants not
14 guilty The law is that proof of -- proof at the
15 scene of the crime is not sufficient to find someone
16 guilty

17 Ladies and gentlemen, the defendants are also
18 charged with possession of a weapon during the
19 commission of or attempt to commit a violent crime
20 The State must prove beyond a reasonable doubt that
21 the defendants were in possession of a firearm, or
22 visibly displayed what appeared to be a firearm
23 during the commission of a violent crime

24 A firearm means any machine gun, automatic
25 rifle, revolver, pistol or any weapon which will or

1 is designed to or may be readily converted to expel a
2 projectile In order to find the defendants guilty
3 of possession of a weapon during the commission of a
4 violent crime, you must first find the defendants
5 guilty or either committing a violent crime, or
6 attempting to commit a violent crime

7 I instruct you, ladies and gentlemen, that
8 South Carolina code 16-1-60 defines armed robbery as
9 a violent crime

10 Ladies and gentlemen I instruct you that if a
11 crime is committed by two or more people who are
12 acting together in committing a crime, the act of one
13 is the act of all A person who joins with another
14 to accomplish an illegal purpose is criminally
15 responsible for everything done by the other person
16 which occurs as the natural consequence of the acts
17 done in carrying out the common plan and purpose

18 For example, two people can be guilty of
19 killing another person when only one of the two has a
20 gun, there was only one bullet and only one of the
21 two fired the shot that caused the death If two or
22 more people are together, acting together, assisting
23 each other in committing the offense, the act of one
24 is the act of all Or as sometimes said, the hand of
25 one is the hand of all

1 Prior knowledge that a crime is going to be
2 committed without more is not sufficient to make a
3 person guilty of that crime Mere knowledge that a
4 another person is going to commit a crime, even if
5 the defendant is present when the crime is committed,
6 is not sufficient to convict the defendant as a
7 principal

8 Guilt as a principal is shown by actual or
9 constructive presence at the scene as a result of
10 prior arrangement Therefore, a finding of a prior
11 arranged plan or common scheme is necessary for a
12 finding of guilt as a principal

13 The State must prove beyond a reasonable doubt
14 by competent evidence the theory of the hand of one
15 is the hand of all A principal in a crime is one
16 who either actually commits the crime, or who is
17 present aiding, abetting or assisting in committing
18 the crime

19 When a person does an act in the presence of
20 and with the assistance of another, the act is done
21 by both Where two or more acting with a common plan
22 or intent are present at the commission of a crime,
23 it does not matter who actually commits the crime,
24 all are guilty The hand of one is the hand of all

25 Present at the commission of a crime means to

1 be sufficiently near to aid and abet and assist in
2 the commission of the crime However, mere presence
3 at the scene of a crime is not sufficient to convict
4 one as a principal on the theory of aiding and
5 abetting Intent is also a necessary
6 element, for there must have been a common design or
7 intent to commit the crime, and the crime must have
8 been committed pursuant thereto with the person
9 aiding and abetting by some overt act

10 Intent means intending the result which
11 actually occurs, not accidentally or involuntarily
12 Intend may be shown by acts and conduct of the
13 defendant or defendants and other circumstances from
14 which you may naturally and reasonably infer intent
15 The State must prove these elements beyond a
16 reasonable doubt

17 Ladies and gentlemen, the indictments in this
18 case allege two different offenses against each
19 defendant And those charges are armed robbery and
20 possession of a firearm during the commission of
21 violent crime Each indictment charges a separate
22 and distinct offense You must decide each
23 indictment separately on the evidence and the law
24 applicable to it, uninfluenced by your decision as to
25 any other indictment

1 The defendant or defendants may be convicted
2 or acquitted on any or all of the offenses charged
3 You will be asked to write a separate verdict of
4 guilty or not guilty for each indictment Ladies and
5 gentlemen, I further instruct you that there are
6 three defendants in this case, each of whom is
7 charged with armed robbery and possession of a
8 firearm during the commission of a violent crime

9 The case of each defendant and the evidence
10 and the law concerning that defendant should be
11 considered separately and individually Your verdict
12 does not have to be the same for all defendants The
13 fact that you may find one defendant guilty or not
14 guilty should not control your verdict as to the
15 other defendants

16 Where more than one person is charged with a
17 crime, if the evidence warrants it you may convict
18 one and acquit the other or you may acquit all, or
19 you may convict all It will depend upon your view
20 of the testimony and evidence You must take each
21 defendant and consider the evidence as to that
22 defendant and my instructions to you on the law You
23 will write a separate verdict of guilty or not guilty
24 for each individual defendant

25 Ladies and gentlemen, there are two separate

1 verdicts which you may consider for each defendant in
2 this case, and they are as follows And this will go
3 into the jury room with you, so you don't have to try
4 to write this down

5 I instruct you that there is absolutely no
6 significance whatsoever to the order in which I state
7 these verdicts, it is simply that one must be stated
8 first

9 As to State versus David Lee Brown, an
10 indictment for armed robbery, your options are We,
11 the jury, by unanimous consent find the defendant
12 guilty of armed robbery or not guilty As to the
13 indictment for possession of a firearm during the
14 commission of a violent crime We, the jury, by
15 unanimous consent find the defendant guilty of
16 possession of a firearm during the commission of a
17 violent crime, or not guilty

18 As to the defendant Colin Nevel Boston, the
19 options are exactly the same As to armed robbery
20 we, the jury, by unanimous consent find the defendant
21 guilty of armed robbery, or not guilty And as to
22 possession or a firearm during the commission of a
23 violent crime We, the jury, by unanimous consent
24 find the defendant guilty of possession of a firearm
25 during the commission of a violent crime, or not

1 guilty

2 And your options are exactly the same as to
3 Clarence Montez Robinson On the offense of armed
4 robbery We, the jury, by unanimous consent find the
5 defendant guilty of armed robbery, or not guilty
6 And as to the offense of possession of a firearm
7 during the commission of a violent crime We, the
8 jury, by unanimous consent find the defendant guilty
9 of possession of a firearm during the commission of a
10 violent crime, or not guilty

11 Again, ladies and gentlemen, I emphasize that
12 there is absolutely no significance to the order in
13 which I have stated these potential verdicts, it is
14 simply that one must be stated first Ladies and
15 gentlemen, your verdict must be a unanimous one,
16 which means that all 12 you must agree in order to
17 reach a verdict

18 Madam Forelady, it will be your responsibility
19 when the jury agrees on a verdict to fill out the
20 verdict forms It will also be your responsibility
21 to knock on the door and advise the bailiffs when the
22 jury has reached a verdict on each of these
23 indictments

24 Also, if the jury has any questions during
25 deliberations, it will be your responsibility to

1 write those out in longhand Ladies and gentlemen, I
2 will advise you in advance that if you have any
3 questions there will be a delay in our response
4 Please do not think we are ignoring you, there is a
5 procedure that we must follow in answering your
6 questions So know if you have a question and there
7 is a delay, we are simply following that procedure
8 and adhering to it

9 I'm going to ask now that you return to your
10 jury room Again I remind you that your verdict must
11 be unanimous which means that all 12 of you must
12 agree I'm going to ask, however, that you not yet
13 begin your deliberations because I have some matters
14 of law I need to take up with the attorneys that may
15 require further instruction or clarification of an
16 instruction

17 However, if there is no further instruction,
18 we will send in the evidence, your notebooks, as well
19 as the verdict forms and you will then begin your
20 deliberations and we will excuse the alternates
21 I will tell you in advance for scheduling purposes,
22 do not despair, I will not keep you here all night
23 I am going to -- if we have no further matters you
24 will begin your deliberations and around 6 00 or so I
25 will allow you all to determine whether you would

1 like to go home for the evening and resume your
2 deliberations in the morning or not So I will
3 prepare you that I will allow you all to make that
4 decision, and we will abide by whatever decision you
5 provide to us

6 Again, please do not yet begin your
7 deliberations I will deal with these matters of
8 law If there are no further matters for
9 clarification or instruction we will send in the
10 verdict forms, the evidence as well as your
11 notebooks If you will go with the bailiffs for me,
12 please

13 (Whereupon, the jurors exit the courtroom)

14 THE COURT Are there any exceptions from the
15 State?

16 MR SAVAGE No, Your Honor

17 THE COURT From the defense, Mr Howell?

18 MR HOWELL None, Your Honor

19 THE COURT Ms Crumey?

20 MS CRUMEY No, ma'am

21 THE COURT Mr Harris?

22 MR HARRIS None, Your Honor

23 THE COURT If you all could go through the
24 evidence, make sure everything is in order so that
25 the bailiff can take that in for me

1 Mr Howell, do you have any objection to
2 taking the ammo out of the boxes with the guns?

3 MR HOWELL No, ma'am

4 THE COURT Ms Crumey, do you have any
5 objection to us taking the ammo out of the boxes when
6 we send in the gun?

7 MS CRUMEY No, ma'am

8 THE COURT You all don't have any objection,
9 correct?

10 MR SAVAGE I think instruct the foreperson
11 we got the bullets out here if they want to look at
12 them

13 THE COURT Yes Make sure you have them
14 marked sufficiently so that you know which box it
15 goes back in

16 (Whereupon, the alternate jurors enter the
17 courtroom)

18 THE COURT Ladies, we thank you for your time
19 and your attention to this case Madam Forelady, you
20 can stay right there We appreciate alternates so
21 much You serve in the event that someone should get
22 ill or otherwise have to be excused from the panel
23 And we know sometimes it's a thankless job, but I
24 hope you know how much we appreciate your service

25 The both of you are welcome to leave if you

1 like, you are welcome to stay and see how
2 deliberations progress You are also welcome to
3 discuss this case if you like, but I ask that you not
4 to do until the jury has reached a verdict In other
5 words not until after Friday, if you would do that
6 for me I would greatly appreciate it

7 By the same token you do not have to discuss
8 this case And if someone should try to persist in
9 speaking with you and you don't want to speak with
10 them, please call us at the clerk's office and make
11 us aware of that so that we can protect your privacy

12 We have left your notes here If you want I
13 can have the bailiffs destroy them, or you can take
14 them and destroy them yourselves, or keep them if
15 you'd like And also if you need a work excuse, do
16 you have any of those up here?

17 If you need a work excuse, those will probably
18 be mailed out to you tomorrow, but if you need one
19 tonight I will make sure to find some way to get one
20 for you Likewise your checks will be mailed out to
21 you We thank you for your time in this case, you
22 are excused with the Court's thanks

23 Thank you all, have a wonderful day

24 Madam Forelady, I just wanted to make you
25 aware so that you can advise the panel, we have

1 removed all of the ammunition from the guns just for
2 safety purpose However, they are in evidence and if
3 the jury desires to see them, you just need to make
4 us aware of that and we will then remove the guns and
5 bring in the ammo and switch them back out

6 A JUROR Okay

7 THE COURT Thank you You all can begin your
8 deliberations

9 A JUROR Okay

10 THE COURT The record should reflect that the
11 jury has begun their deliberations at 5 08 And as I
12 indicated, at 6 00 I'm going to bring the foreperson
13 in and ask her to discuss with them if they'd like to
14 go home or if they'd like to continue deliberating,
15 and we will abide by whatever they tell us

16 MR HOWELL Yes, ma'am, thank you

17 THE COURT They all for a wonderful trial
18 We will be at ease See what the jury says

19 (Whereupon, a recess was taken)

20 (Whereupon, a jury note was received at 5 45)

21 THE COURT Okay, we got everybody?

22 We have a note from the jury We would like
23 all the witness statements taken by the police,
24 please

25 My response to that would be, Madam Forelady

1 and ladies and gentlemen of the jury, there are
2 certain determinations that I made as the Judge of
3 the law concerning the admission of documents based
4 on the rules of evidence and the rules of procedure
5 All of the documents that you're entitled to review
6 are with you in the jury room

7 You are not to speculate or draw any
8 inferences or conclusions as to why the document has
9 not been sent in with you for purposes of your
10 deliberations If you desire to have any of the
11 testimony re-played, please advise the bailiffs and
12 we will accommodate your request

13 Is there any exception to that from the State?

14 MR SAVAGE No, Your Honor

15 THE COURT From the defense, Mr Howell?

16 MR HOWELL No, Your Honor

17 THE COURT Ms Crumey?

18 MS CRUMEY No, Your Honor

19 THE COURT Mr Harris?

20 MR HARRIS No, Your Honor

21 THE COURT And I sent this in in writing so
22 it will be attached to their note and all of it will
23 be marked as a Court's exhibit and they will be
24 instructed not to dispose it It will be made a part
25 of the record

1 And the other question, they wanted to use the
2 phone to make calls to determine whether or not they
3 wanted to stay past 6 00 So I allowed the bailiffs,
4 under their observations, to make their phone calls
5 So I assume they probably will let us know I'm
6 going to go ahead and have this marked and send it
7 into the jury

8 (Whereupon, Court's Exhibit No 22 is marked
9 for identification)

10 (Whereupon, a recess was taken)

11 (Whereupon, the Forelady enters the
12 courtroom)

13 THE COURT Have you all discussed whether you
14 would like to stay beyond 6 00, or do you need to
15 discuss further with the panel

16 A JUROR We would like to stay beyond 6 00

17 THE COURT Have you all predetermined how
18 long you would like to stay?

19 A JUROR Not sure yet

20 THE COURT Okay Why don't you discuss that
21 with the panel because we can get you some dinner
22 The only option however is pizza, and it takes 45
23 minutes to an hour

24 A JUROR Okay

25 THE COURT So if you could discuss that with

1 them and then knock on the door and let the bailiffs
2 know when you've reached some consensus about it
3 And then based on what you tell us we will decide how
4 we are going to handle dinner

5 A JUROR Okay

6 THE COURT Thank you

7 (Whereupon, a juror note is received)

8 THE COURT We would need some fresh air All
9 right They have told me three things We need some
10 fresh air, around 10 to 15 minutes, which is
11 reasonable We plan on being here until 8 00 p m
12 unless a decision is made prior to this time And,
13 yes, we would like pizza whatever kind you order
14 will be fine with us

15 That was the answer to everything we could
16 have asked for All right, signed the foreperson I
17 guess we will be here for a little while I suggest
18 that you may all find something to eat in the
19 interim

20 (Whereupon, a recess was taken)

21 (Whereupon, the parties reconvened at 7 55
22 p m)

23 THE COURT The jury has reached a verdict
24 Is there anything before we bring in the jury from
25 the State?

1 MR SAVAGE No, Your Honor

2 THE COURT Defense, Mr Howell?

3 MR HOWELL No, Your Honor

4 THE COURT Defense, Ms Crumey?

5 MS CRUMEY No, ma'am

6 THE COURT Defense, Mr Harris?

7 MR HARRIS No, ma'am

8 THE COURT Please bring in the jury

9 (Whereupon, the jurors enter the courtroom)

10 THE COURT Madam Forelady, is it correct that
11 the jury has reached a verdict?

12 A JUROR Yes, Your Honor

13 THE COURT If you would give the verdict
14 forms to the bailiff for me, please

15 Mr Clerk, if would you publish the verdicts
16 If the defendants would stand

17 THE CLERK In the matter of State of South
18 Carolina versus David Lee Brown, as to indictment
19 2008-GS-10-3920 We, the jury, by unanimous consent
20 find the defendant guilty of armed robbery, signed by
21 Madam Foreperson dated June 25, 2009

22 Ladies and gentlemen, if this is your verdict
23 please reply by raising your right hand Thank you
24 You may put it down Let the record reflect all 12
25 jurors have raised their right hand

1 As to indictment 2008-GS-10, the indictment
2 for David Lee Brown We, the jury, by unanimous
3 consent find the defendant guilty of possession of a
4 firearm during the commission of a violent crime,
5 signed by Madam Foreperson, dated June 25, 2009

6 Once again, ladies and gentlemen of the jury,
7 if this is your verdict please reply by raising your
8 right hand Thank you Let the record reflect all
9 12 jurors have raised their right hand

10 THE COURT Is there any request to poll the
11 jury from the State?

12 MR SAVAGE No, Your Honor

13 THE COURT From the defense?

14 MR HOWELL No, Your Honor

15 THE COURT You may take your seats

16 You may continue

17 THE CLERK Yes, Your Honor State of South
18 Carolina versus Clarence Montez Robinson As to
19 indictment 2008-GS-10-3832 We, the jury, by
20 unanimous consent find the defendant guilty of armed
21 robbery, signed by Madam Foreperson, dated June 25,
22 2009

23 Ladies and gentlemen of the jury, again if
24 this is your verdict please reply by raising your
25 right hand Thank you Let the record reflect all

1 12 jurors have raised their right hand

2 As to indictment number 2008-GS-10-3045,
3 Clarence Montez Robinson We, the jury, by unanimous
4 consent find the defendant guilty of possession of a
5 firearm during the commission of a violent crime,
6 signed by Madam Foreperson, dated January 25, 2009

7 Ladies and gentlemen of the jury, again if
8 this is your verdict, please reply by raising your
9 right hand Thank you, you may put it down Let the
10 record reflect all 12 jurors have raised their right
11 hand

12 THE COURT Is there any request to poll the
13 jury from the State?

14 MR SAVAGE No, Your Honor

15 THE COURT From the defense?

16 MR HARRIS No, Your Honor

17 THE COURT You may be take your seats

18 You may continue

19 THE CLERK Yes, Your Honor State of South
20 Carolina versus Colin Nevel Boston, as to indictment
21 number 2009-GS-10-5718 We, the jury, by unanimous
22 consent find the defendant guilty of armed robbery,
23 signed by Madam Foreperson dated June 25, 2009

24 Ladies and gentlemen of the jury, again if this is
25 your verdict, please reply by raising your right

1 hand Thank you, put it down Let the record
2 reflect again all 12 jurors have raised their right
3 hand

4 State of South Carolina versus Colin Nevel
5 Boston, as to indictment 2008-GS-10-4199 We, the
6 jury, by unanimous consent find the defendant guilty
7 of possession of a firearm during the commission of a
8 violent crime, signed by Madam Foreperson, dated June
9 25, 2009

10 Once again, ladies and gentlemen, if this is
11 your verdict, please reply by raising your right
12 hand Thank you Once again let the record reflect
13 that all 12 jurors have raised their right hand

14 THE COURT Is there any request to poll the
15 jury from the State?

16 MR SAVAGE No, Your Honor

17 THE COURT From the defense, Ms Crumey?

18 MS CRUMEY No, ma'am

19 THE COURT You may take your seat

20 Madam Forelady, ladies and gentlemen of the
21 jury, we thank you for your time and your attention
22 to this case We know that jury service is a great
23 sacrifice to you We know it's a great sacrifice to
24 both your family responsibilities as well as your
25 professional responsibilities

1 I hope however this has been an educational
2 week for you I hope that you've learned how
3 important you are to the system And as I said
4 during jury qualification, real court is nothing like
5 what you see on television

6 Our system is the only system where 12
7 individuals sit as fact finders and apply the law to
8 those facts and rendered verdicts It is a very
9 unique system, and it is the only one like it in the
10 world I have a great deal of confidence in it

11 And my confidence stems from individuals like
12 you who are willing to serve really for what is a
13 pittance I'm almost ashamed that that's all the
14 State pays for jury duty

15 But nevertheless, it is no indication of our
16 appreciation for your service

17 If you need a work excuse, as well as your
18 checks, they will be mailed out to you on tomorrow
19 They should reach you by Saturday You are welcome
20 to discuss this case if you would like By the same
21 token if someone should persist in trying to speak
22 with you and you don't wish to speak with them,
23 please contact the clerk's office and make us aware
24 of it so that we can protect your privacy

25 I am going to hear post-trial motions as well

1 as sentencing You are welcome to remain for that
2 process if you would like You are also welcome to
3 be excused if you would like

4 I know it's getting a little late It's
5 probably getting dusk or dark If any of you would
6 like to be escorted by the sheriff's deputy to the
7 parking garage, I will make sure that you are
8 attended to and that your needs are met

9 For those who would like to remain, is there
10 anyone that wishes to remain for those proceedings if
11 you would raise your hand for me Okay You all
12 then are excused with the Court's profound thanks I
13 will hear post-trial motions and sentencing in a
14 moment

15 (Whereupon, the jurors exit the courtroom)

16 THE COURT Do you have sentencing sheets?

17 MR SAVAGE Yes, Your Honor

18 THE COURT Are there any post-trial motions
19 from the defense, Mr Howell?

20 MR HOWELL Yes, ma'am On behalf of Mr
21 David Brown we would move for judgment
22 notwithstanding the verdict, or in the alternative a
23 new trial for the reasons I have argued earlier,
24 renew those motions for the record at this time I
25 don't believe I need to be heard, I'm satisfied with

1 making the motion

2 THE COURT Would the State like to respond?

3 MR SAVAGE I would just restate I think
4 there was enough evidence to convict him I think the
5 jury reached a true and just verdict

6 THE COURT Anything further, Mr Howell?

7 MR HOWELL No, Your Honor

8 THE COURT Okay It is well-settled that the
9 grant or refusal of a new trial is within the
10 discretion of the Court And of course abuse of
11 discretion is one without evidentiary support, or one
12 based on an error of law

13 However, where there is competent evidence to
14 sustain the jury's verdict, the Court cannot
15 substitute its judgment for that of the jury And
16 that is cited in State versus Prince

17 Clearly there is substantial circumstantial
18 evidence in the record to support the jury's
19 conclusion and to support the conviction And to do
20 otherwise would be asking the Court to substitute its
21 judgment for that of the jury who acted as the fact
22 finders and who weighed the evidence and determined
23 that the State had met their burden beyond a
24 reasonable doubt Therefore the motion is denied

25 Are there any post-trial motions from the

1 defendant Boston, Ms Crumey?

2 MS CRUMEY Your Honor, I would join in the
3 motion of Attorney Howell I'm requesting judgment
4 notwithstanding the verdict, in the alternative
5 request for a new trial based on the factors outlined
6 in my directed verdict motion

7 THE COURT The Court would deny the motion
8 based on the same finding without restating it
9 Again, this case came down to the weight the jurors
10 gave the witnesses' testimony as well as the weight
11 they gave the circumstantial evidence regarding the
12 circumstances surrounding this event

13 It is not for the Court to substitute its
14 judgment for that of the jury Therefore the motion
15 for a new trial is denied Both motions are denied

16 Any post-trial motions, Mr Harris?

17 MR HARRIS Your Honor, I join in those
18 motions and reiterate my directed verdict motion,
19 statements from my direct verdict motion

20 THE COURT The Court would note the motion
21 for the record is denied on the same basis as the
22 other two motions I'm referring to the motions made
23 by co-counsel

24 I need the sentencing sheets

25 other than the record that has been published,

1 that being the two -- the burglaries that Mr Brown
2 was convicted of or pled guilty to, either way, that
3 is the only record Mr Brown has, correct?

4 Three prior burglary seconds in 2002?

5 MR SAVAGE Yes, Your Honor

6 THE COURT I would assume he got a youthful
7 offender for that, wouldn't he?

8 MR HOWELL That's what I was just asking to
9 make sure His thinking was that he was arrested on
10 three, pled to two, got a youthful offender

11 THE COURT In 2002 I'm just guesstimating
12 what his age would have been, I would have to make
13 the assumption they were YOA sentences

14 MR HOWELL He's 23 now

15 THE COURT Yes He is how old now?

16 MR HOWELL Almost 24

17 THE COURT Seven years ago How old were you
18 then?

19 THE DEFENDANT I was 16

20 THE COURT He would have been charged as an
21 adult Okay

22 I would be glad to hear, does the State have
23 anything it wants to present in form of sentencing in
24 regard to each of the defendant? Actually, I will do
25 them one at a time, just as I have done I think

1 that makes it easier for the court reporter and for
2 the record

3 Does the State have anything further as it
4 regards Mr Brown?

5 MR SAVAGE Yes, Your Honor The State would
6 ask the Court to consider a sentence in the range of
7 15 to 25 years Darnel Brown, who pled guilty, took
8 responsibility for his involvement in this case, took
9 responsibility, he received 15 years

10 At no point was Mr David Brown --

11 THE COURT Was that a negotiated plea?

12 MR SAVAGE No, it wasn't He pled straight
13 up, Your Honor

14 THE COURT who did he plead in front of?

15 MR SAVAGE Judge Houston

16 MR HOWELL It was two counts, Judge

17 THE COURT Two counts of armed robbery?

18 MR HOWELL Yes

19 THE COURT He got 15 concurrent Were they
20 two separate events?

21 MR SAVAGE Yes, there was

22 THE COURT So he was pleading to another
23 armed robbery that had nothing to do with this one?

24 MR SAVAGE Correct It was an armed robbery
25 that had occurred --

1 THE COURT So that would have really been an
2 enhancement for him I can't imagine Judge Houston
3 giving him 15 years for this

4 MR SAVAGE No, it was for both He pled to
5 both at once

6 THE COURT Okay Did he ever -- I'm just
7 curious, did he ever indicate to you he was going to
8 cooperate with the State?

9 MR SAVAGE At no point has any defendant in
10 this case ever stepped up in order to help themselves
11 out or cooperate in the case That's probably part
12 of the reason why we're here

13 THE COURT What was the codefendant's name
14 again?

15 MR SAVAGE Darnel Brown

16 THE COURT How is he related to this
17 defendant? Or are they not related?

18 MR HOWELL Unrelated, Your Honor That was
19 the confusion earlier

20 THE COURT Okay And he pled guilty when?

21 MR SAVAGE April 8th, I believe I know Mr
22 Howell's co-counsel was present there I believe it
23 was --

24 THE COURT April 8th of this year?

25 MR SAVAGE Yes, Your Honor

1 THE COURT But he pled guilty to two armed
2 robberies, both of which were unrelated to one
3 another?

4 MR SAVAGE Yes, Your Honor

5 THE COURT I guess instead of having two
6 separate strikes

7 MR SAVAGE He was looking at a WOP sentence
8 if he did not plead

9 THE COURT Anything further as regards Mr
10 Brown?

11 MR SAVAGE Just, Your Honor, what's
12 troubling about this case is not just that these
13 defendants robbed people, it's the violence they
14 enacted, what they did once they were in there

15 Adina Walden, she was pulled in there I
16 don't believe it was by Mr Brown, but she was in
17 there They --

18 THE COURT Do you have any indication who
19 pulled her in there?

20 MR SAVAGE I believe -- I don't know 100
21 percent, but I believe it was probably Colin Boston
22 I think he was at the door And then I believe it
23 was Clarence Robinson that came up, and he was the
24 one who decided to grab her breasts and feel her
25 behind and between her legs

1 That's what has been stated on the jail tapes
2 David Brown has said a couple of times that it was --
3 to one person he said it was Lenny's brother who made
4 the comment, I feel like shooting a mother fucker
5 tonight And also that he grabbed the bitch

6 And another time he said it was Monty who
7 grabbed the bitch's ass to a person by the name of
8 Trevielle in a three-way call with David Brown's
9 girlfriend Tracy Flowers

10 That's the information that I have there
11 Apart from Adina Walden, I know she said in her
12 statement that she thought someone was probably 5'7"
13 or 5'8" But it was someone taller than when she
14 testified today -- not today

15 I know when she did testify this week, Mr
16 Harris asked her could it be someone taller than 6'
17 and she said she couldn't say that I do believe
18 that it was someone taller than her Based on the
19 telephone conversation I believe it was Clarence
20 Robinson that did that

21 I'll leave that for now He has a prior
22 record I think it's either two or three burglaries
23 I think based on the 15 years and above is where we
24 should start with him

25 THE COURT Do -- I would assume none of the

1 victims are present and wish to be heard?

2 MR SAVAGE They're too scared to be here
3 We had problems getting them in the courtroom in the
4 first place We had to actually constantly shuffle
5 our witnesses around outside there At times they
6 were too hysterical to even come in the courtroom
7 They did not want to be here

8 We had a very hard time even putting this case
9 together A number of witnesses did not show up and
10 would not show up through fear And it just goes to
11 the violent nature of this act

12 And the facts it was group mentality, all four
13 of them with guns, just it scared the living crap out
14 of everyone in that bar And, you know, rightfully
15 so they're in fear of their lives They were in fear
16 of their lives that night, and they're in fear of
17 their lives right now

18 We deal with this on a day-to-day basis We
19 see it Sometimes I think we get a little blase with
20 what happens But when you have a case like this and
21 you talk to the victims on a constant basis, those
22 that are affected, and you see how it affects them,
23 especially you come closer towards trial you see the
24 stress and the strain it puts on them, it kind of
25 brings it back home from outside of things

1 You know, it just makes me flat-out mad
2 sometimes to be honest

3 THE COURT Mr Howell, is there anything you
4 wish to present on your client's behalf?

5 MR HOWELL Very briefly, Your Honor Mr
6 Brown is 23 years old He turns 24 this coming July

7 He does have a record as you see, but I don't
8 know of any prior crimes of violence of any sort
9 Not to totally minimize the burglaries, I know
10 they're serious, but they're not in this category in
11 terms of any personal violence

12 He was born and raised on Johns Island His
13 mother is here in court with him She has been here
14 throughout And we just ask -- I think you
15 understand the facts and circumstances about the
16 case

17 There is no reason for me to debate anything
18 that Mr Savage said He does not seem to be either
19 of the individuals who took liberties or did anything
20 extraordinary under the circumstances And that's
21 all I have at this time

22 THE COURT Sir, is there anything you want to
23 state for the record on your own behalf?

24 THE DEFENDANT No, ma'am

25 THE COURT I'm sorry, I couldn't hear you

1 THE DEFENDANT No, ma'am

2 THE COURT Okay I'm going to do it all at
3 the same time

4 Mr Savage, anything further you'd like to
5 state for the record as it regards Mr Boston?

6 MR SAVAGE Again, Your Honor, I would be
7 asking for a sentence between 15 to 25 years He was
8 asked to cooperate at least twice in this case He
9 refused to do so on both times

10 He provided at least two guns in this case
11 He provided the car, and he also helped get rid of
12 evidence after the fact And he knowingly knew that
13 He thought he got rid of the evidence, we weren't
14 listening, we won't find out and he was wrong

15 I believe he is the one who actually pulled
16 the girl in He had a major role in this armed
17 robbery He was currently I believe he was due to
18 start PTI the day after that for possession of crack
19 and resisting arrest charge So he clearly knew he
20 should not be doing what he was doing

21 He had already been given by the justice
22 system a chance, a second chance at PTI and he chose
23 to ignore that and he chose to ignore that in a big
24 way I ask the Court --

25 THE COURT What's the underlying charge for

1 the PTI?

2 MR SAVAGE The possession of crack and
3 resisting arrest

4 THE COURT Is there anything further?

5 MR SAVAGE No, Your Honor

6 THE COURT I needed to ask this question
7 Mr Howell, does your client want to dispose of the
8 pending possession of cocaine charge, or does he want
9 to leave it hanging out there? Have you had any
10 discussion with him about what he wants to do with
11 it?

12 MR HOWELL If you go to the next one, I'll
13 discuss it with him

14 THE COURT And, Ms Crumey, I'm going to ask
15 your client the same thing about pending charges he
16 has for PTI The reason I ask is because it makes
17 more sense for them to be able to get credit for any
18 time that they have already served and for those
19 sentences to run concurrent versus those sentences
20 hanging out there and them being, you know,
21 arbitrarily at some point -- theoretically they could
22 wait until they serve their whole sentence and try
23 them and then they have to go back It just might
24 help them, that makes a little more sense

25 MR SAVAGE Your Honor, can I say something

1 further?

2 THE COURT Yes Or do you plan to non-pros
3 the charges?

4 MR SAVAGE Not the crack charge with David
5 Brown

6 THE COURT Okay

7 MR SAVAGE With Colin Boston, this is not so
8 much to him but it is more regards to his family I
9 met with his mother in this case She came and spoke
10 to me She is as nice as can be She was honest
11 with me She was open with me She spoke in detail
12 about this

13 I asked her to come in and do the right thing
14 and testify I can't imagine how difficult that must
15 have been for her I told her, I don't sit here and
16 pretend I understand what you are going through
17 because I don't I don't have children, that's not
18 my son up there, and I just can't imagine the
19 situation I put her into

20 I don't understand how Colin ended up in the
21 position that he did He was working Not that I'm
22 trying to deflate what I said before because he is
23 certainly was active in there But I just give
24 credit where credit is due

25 I'm asking for a lot from this Court as far as

1 punishment, but I am also wanting to respect the fact
2 that those did step forward and agree to help they
3 need to be -- it needs to be recognized and I do
4 that

5 I just want the Court -- just want that for the
6 record

7 THE COURT Okay Ms Crumey

8 MS CRUMEY May it please the Court, Your
9 Honor Colin is 20 years old He is 21 in July He
10 graduated from high school Does have one child, a
11 one-year-old daughter At the time of the arrest I
12 believe he was employed at MUSC

13 His mother and his stepfather are present in
14 the courtroom His mother has been concerned about
15 the case ever since I have had it, and quite
16 concerned about him Understanding that obviously
17 there is a minimum sentence in this case

18 We just ask the Court to consider that minimum
19 sentence And considering the fact that the
20 codefendant pled to two charges and received a
21 15-year sentence, obviously it's his constitutional
22 right to exercise his jury trial and shouldn't being
23 punished for doing so, we ask the Court to consider
24 that minimum sentence

25 THE COURT Just so that -- you all know this

1 probably better than anyone because you all have
2 contact with me We're in the business of doing
3 this, we see each other all the time But for the
4 benefit of those who do not know, I'm a great
5 believer in the trial system I never penalize
6 people for exercising their right to a jury trial
7 If I didn't believe in it, I wouldn't be doing what I
8 do for a living, would never feel comfortable

9 And I believe the sentence that is appropriate
10 if someone is going to plead guilty is the same
11 sentence that is appropriate if they go to trial So
12 I never penalize people for exercising their right to
13 trial and feel very adamant about that

14 And try to weigh what I think is appropriate
15 whether they pled guilty or whether they have a jury
16 trial That's why we have the jury trial system So
17 I don't think it's appropriate to penalize people for
18 that or enhance their sentences because of that

19 So to the extent that that allays your
20 concerns, I hope that does

21 MS CRUMEY No, I'm just basically
22 responding And in addition I do know that he wants
23 to dispose of the other charges, I don't not know --

24 THE COURT Maybe you all can talk while I
25 think for a couple minutes But I think that it's in

1 their better -- I cannot speak for what is in their
2 best interest I have a global view of it You
3 know, I don't have anybody to reward or punish, I'm
4 not an advocate But I would think that if I were in
5 their position I would want -- it just wouldn't make
6 sense to me to go to the department of corrections
7 having this other charge hanging over my head, not
8 knowing when it's going to be tried, and
9 theoretically it could be tried before my parole and
10 I have to go right back to jail And you're not
11 going to get credit for the time you served at SCDC
12 Not for that charge because it's not pre-detention
13 time

14 So, you know, the clock stops today for that
15 purpose Because they're going to be processed out
16 and sent to the department of corrections Not
17 tonight, but I'm sure in the morning sometime
18 whenever they have the resources to send them And
19 it just doesn't make a whole lot of sense to me

20 Now of course having said that, I take no
21 position on it I don't know whether they feel they
22 want to plead guilty to it or not Again, I take no
23 position one way or the other If they want to, I
24 need them to know that that is available to them and
25 it may be well be beneficial for you all to discuss

1 it with Mr Savage and see if you all can work out a
2 negotiated plea on it, or if you all can work out a
3 range

4 MR SAVAGE This is going to be of little
5 consolation to his family, but I told his family I
6 wasn't interested -- in regards to Colin Boston -- I
7 wasn't interested in his possession of crack or the
8 resisting arrest charge

9 THE COURT So are you going to non-pros
10 those?

11 MR SAVAGE I will non-pros those charges

12 THE COURT Okay, then that's a non-issue for
13 Mr Boston then

14 Okay Now how long has your client been in
15 pre-detention time, Mr Howell?

16 MR HOWELL Since the date of his arrest

17 THE COURT Which was?

18 MR SAVAGE February 26, 2008

19 THE COURT He hasn't been in jail quite a
20 year Oh, this is 2009

21 MR HOWELL About 16 months

22 THE COURT As a practical matter he has
23 already maxed out the sentence on possession of
24 cocaine anyway because it only carries 3 years and/or
25 \$5,000 And at 65 percent, he is -- I won't speak

1 for the department of corrections but I think I can
2 safely say he has already maxed it out So it might
3 be in his benefit to deal with it

4 Anything further, Ms Crumey?

5 MS CRUMEY No, ma'am

6 THE COURT Sir, is there anything you wish to
7 state for the record on your own behalf?

8 MS CRUMEY No

9 THE COURT Sir, you may take your seat

10 Does the State have anything further as
11 regards to Mr Robinson?

12 MR SAVAGE Yes, Your Honor As you've heard
13 from the jail tapes that weren't admitted into
14 evidence, there is evidence to suggest that it's Mr
15 Robinson who was the one who put a gun to the side of
16 Adina Walden's head and then grabbed her breasts and
17 her groin area

18 He also has a pending lynching second charge
19 where I believe it's a pistol-whip incident where he
20 hit someone in the head with a gun This is clearly
21 someone who has a violent tendency in his nature

22 He doesn't have any charges, convictions But
23 what he has pending, including this charge, he's
24 certainly getting down the wrong path and I think the
25 sentence range of 15 to 25 years is appropriate

1 THE COURT You said he has a pending lynching
2 second and what else?

3 MR SAVAGE That's it

4 THE COURT Okay

5 MR SAVAGE And it is my understanding he was
6 the getaway driver in this car

7 THE COURT Also, I would suggest that you
8 discuss the same as I have already gone over

9 MR HARRIS I have, Your Honor I have
10 discussed that with him

11 THE COURT And again, I take no position I
12 just want them to know that that's available to them
13 if that's something they desire to do so that they --

14 MR SAVAGE I can say as to the lynching
15 second we offered a package deal in a plea to the
16 lynching second and the armed robbery which was
17 rejected, so we will be issuing the lynching second
18 charge in regards to Mr Robinson

19 THE COURT What did you offer him?

20 MR SAVAGE 12 years

21 THE COURT Oh, for everything

22 MR SAVAGE Yeah

23 THE COURT Lynching only carries zero to ten,
24 doesn't it?

25 MR SAVAGE I think it's zero to twenty but

1 I'm not sure

2 THE COURT Lynching second

3 MR SAVAGE It was a package deal of 12 years
4 which he rejected

5 THE COURT Okay Mr Harris

6 MR HARRIS Thank you, Your Honor, may it
7 please the Court

8 Your Honor, one reason that he did not take
9 that deal is because as he did before, and he does
10 now, he still proclaims his innocence in this And I
11 do appreciate what Your Honor said about not
12 penalizing somebody for going to court because this
13 is our system and this is the way we do it

14 If somebody says they didn't do something, I
15 am going to fight for them in any way, I'm going to
16 bring them to trial because that's what happens here
17 The results were obviously not what I wanted or Mr
18 Robinson wanted

19 But I don't feel that he should be penalized
20 anymore than somebody who had two armed robberies,
21 because the person who had two pending Like you
22 said before, if he would have gone to trial on both
23 of them, he would be looking at life without And I
24 think 15 on two armed robberies is a greet deal

25 Like you said, Judge Houston doesn't normally

1 give out 15 years on something like that He did
2 because he realized --

3 THE COURT I figured it was something more,
4 you know, different factually somehow

5 MR HARRIS Judge, he's 21 He has got a
6 two-year-old daughter His mother is here His
7 mother has been here throughout this trial She has
8 been to every plea, she has been to everything No
9 record

10 THE COURT How far has he gone in school?

11 MR HARRIS He graduated He was working at
12 Walmart before this happened Obviously he is not
13 working now, he has been in jail for 16 months But
14 I would ask you to consider the ten-year sentence as
15 the minimum on this case because it's only five fewer
16 than the guy that pled to two

17 And like he said there is no record, first
18 offense, I mean ten years is not -- obviously is not
19 a slap on the wrist This is 10, 8-and-a-half years
20 at 85 percent And it's a no-parole offense, no
21 probation offense so

22 THE COURT And also, have you all explained
23 to your clients that this will be a strike on their
24 record, a most serious strike And that if they
25 receive an additional most serious strike or two

1 serious strikes that they could face life without the
2 possibility of parole with any further convictions?

3 MR HARRIS I did, yes, Your Honor

4 THE COURT Mr Crumey, did you explain that
5 to Mr Boston?

6 MS CRUMEY Yes, Your Honor

7 THE COURT Mr Howell, have you explained
8 that to Mr Brown?

9 MR HOWELL I'm have not, Your Honor, gone
10 over that but I will I think he understands it

11 THE COURT Mr Robinson, is there anything
12 you want to state for the record on your own behalf?

13 THE DEFENDANT No, ma'am

14 THE COURT Okay, you may take your seat

15 Mr Howell, have you had an opportunity to
16 discuss with your client what he would like to do
17 with his possession?

18 MR HOWELL I think he would like to go ahead
19 and dispose of that

20 THE COURT Okay Can you all get a sentence
21 sheet quickly? I have the indictment right here

22 MR SAVAGE I can The problem is I don't
23 have access through our normal channel at this time
24 of night I have to go all the way down

25 THE COURT There is a guard still out there

1 They have to be here as long as I'm here

2 MR HOWELL If you don't, I'm glad to put it
3 on the record and you can write it up tomorrow

4 THE COURT You got the indictment, don't you,
5 for the possession of cocaine? I gave it back to
6 you, the one I severed It's indictment
7 2008-GS-10-3919, an indictment for possession of
8 cocaine base, which is crack, is what we refer to as
9 crack

10 Are you all reducing it to powder or are you
11 going to leave it as crack?

12 MR SAVAGE Crack, Your Honor

13 THE COURT 2008-GS-10-3919 Is it correct,
14 Mr Howell, that your client wishes to enter a plea
15 on that indictment, which was true billed on May 5,
16 2008?

17 MR HOWELL That's correct, Your Honor

18 THE COURT Are there any recommendations or
19 negotiations from the State?

20 MR SAVAGE None, Your Honor

21 THE COURT Mr Howell, have you explained to
22 your client the charges contained in the indictment,
23 the possible punishment and his constitutional
24 rights?

25 MR HOWELL I believe he understands those

1 and we've discussed it

2 THE COURT Do you believe he understands the
3 charges, punishments and his rights?

4 MR HOWELL I believe he does

5 THE COURT And he wishes to plead guilty, is
6 that correct?

7 MR HOWELL That's correct, Your Honor

8 THE COURT Do you agree with that decision?

9 MR HOWELL I do, Your Honor

10 THE COURT To your knowledge has your client
11 ever had to be evaluated to determine his competency?

12 MR HOWELL No, Your Honor

13 THE COURT Sir, raise your right hand to be
14 sworn

15 MR HOWELL He's locked from behind

16 THE COURT I'm sorry Sir, I will just
17 remind you I swore you earlier regarding your rights
18 Do you remember that you are still under oath?

19 THE DEFENDANT Yes, ma'am

20 THE COURT Sir, on the charge of cocaine
21 base, how do you plead, guilty or not guilty?

22 THE DEFENDANT Guilty

23 THE COURT Have you every been treated for
24 the abuse of alcohol, drugs or mental illnesses?

25 THE DEFENDANT No, ma'am

1 THE COURT Have you had any drugs, alcohol or
2 medication in the last 72 hours?

3 THE DEFENDANT No, ma'am

4 THE COURT Are you aware of any physical,
5 emotional or nervous problem that might keep you from
6 understanding where you are right now or what you are
7 doing?

8 THE DEFENDANT No, ma'am

9 THE COURT Is it correct that you are
10 currently 23 years old?

11 THE DEFENDANT Yes, ma'am

12 THE COURT That you graduated from high
13 school?

14 THE DEFENDANT Yes, ma'am

15 THE COURT And that at the time, what type
16 work did you do before the arrest?

17 THE DEFENDANT None

18 THE COURT Okay, you've never been employed?

19 THE DEFENDANT Yes, ma'am I did masonry

20 THE COURT Okay Sir, are you aware of any
21 physical, emotional or nervous problems that might
22 keep you from understanding where you are right now
23 or what you are doing?

24 THE DEFENDANT No, ma'am

25 THE COURT On the offense of possession of

1 cocaine base, how do you plead, guilty or not guilty?

2 THE DEFENDANT Guilty

3 THE COURT Do you understand that that
4 carries a maximum penalty of three years and/or a
5 maximum fine or \$5,000?

6 THE DEFENDANT Yes, ma'am

7 THE COURT Do you understand that your
8 driver's license will be suspended for 12 months?

9 THE DEFENDANT Yes, ma'am

10 THE COURT I want you to listen carefully to
11 the facts Mr Savage

12 MR SAVAGE Are we talking about the crack
13 charge?

14 THE COURT Yes

15 MR SAVAGE Your Honor, related to this
16 incident when the officers pulled up to the vehicle
17 in James Island Christian School, the crack cocaine
18 was found inside the front in front of the pocket of
19 the front seat, I guess the rear of the front seat
20 pocket The defendant claimed the drugs
21 as the officer recovered them I think he asked -- I
22 think he stated, the crack is mine He legally
23 claimed ownership of those drugs in conversations on
24 the jail tapes

25 THE COURT Sir, do you agree or disagree with

1 the facts?

2 THE DEFENDANT Agree

3 THE COURT Do you feel anything needs to be
4 changed or added to the facts?

5 THE DEFENDANT No, ma'am

6 THE COURT Are you pleading guilty, sir,
7 because you are guilty?

8 THE DEFENDANT Yes, ma'am

9 THE COURT I want you to listen very
10 carefully When you plead guilty you give up certain
11 important constitutional rights Those rights
12 include your right to a jury trial At a jury trial
13 you're entitled to a presumption that you are
14 innocent

15 The State has the burden of proving your guilt
16 beyond a reasonable doubt You would have the right
17 to confront and cross-examine the State's witnesses
18 and call witnesses in your own defense You'd have
19 the right to present any defenses that you may have
20 If you've made any confessions or other incriminating
21 statements you would have the right to challenge
22 those statements

23 You also have the right to remain silent And
24 if you exercised that right your silence can never be
25 used against you

1 Sir, do you understand your rights as I have
2 just explained them to you?

3 THE DEFENDANT , ma'am

4 THE COURT Do you understand that you're
5 giving up each and every one of those rights?

6 THE DEFENDANT Yes, ma'am

7 THE COURT Other than what has been stated
8 for the record, there have not been any plea
9 negotiations made on your behalf, correct?

10 THE DEFENDANT No, ma'am

11 THE COURT Mr Sahn, you might want to go get
12 the sentence sheet done because they're going to
13 transport him Then once I leave this building
14 they're all going to leave

15 MR SAHN I'll go grab it

16 THE COURT Usually I hang around late but
17 tonight, I'm not I'm sorry, I wanted to be able to
18 have that available for him to sign before we got
19 done

20 MR HOWELL Your Honor, I just briefly even
21 at the time with, although he is challenging these
22 other charges, that on the scene when it came out he
23 took responsibility so that he didn't expose his
24 friends to something he did not feel they should be
25 exposed to we all know, and I think

1 David knew, as the gun got charged to everybody, the
2 cocaine would have been charged to everybody And he
3 stepped up to the plate and took responsibility

4 THE COURT Sir, have you been satisfied with
5 your lawyer's services?

6 THE DEFENDANT Yes, ma'am

7 THE COURT Has he answered all of your
8 questions?

9 THE DEFENDANT Yes, ma'am

10 THE COURT Done everything you asked or
11 expected in representing you?

12 THE DEFENDANT Yes, ma'am

13 THE COURT Is there anything more you would
14 have him do that he has not already done?

15 THE DEFENDANT No, ma'am

16 THE COURT Do you have any complaints about
17 his services?

18 THE DEFENDANT No, ma'am

19 THE COURT Has anyone promised you anything
20 or held out any hope of a reward to cause you to
21 plead guilty?

22 THE DEFENDANT No, ma'am

23 THE COURT Has anyone used threats, coercion,
24 force, pressure, intimidation or duress to cause you
25 to plead guilty?

1 THE DEFENDANT No, ma'am

2 THE COURT Are you pleading guilty freely and
3 voluntarily and of your own will?

4 THE DEFENDANT Yes, ma'am

5 THE COURT Sir, have you understood my
6 questions?

7 THE DEFENDANT Yes, ma'am

8 THE COURT Do you need to ask me about
9 anything that we have been over?

10 THE DEFENDANT No, ma'am

11 THE COURT Have you been absolutely truthful
12 on each and every answer that you've given to the
13 court?

14 THE DEFENDANT Yes, ma'am

15 THE COURT Do you understand that you have
16 the right to appeal this guilty plea and sentence of
17 the Court, but that you must do so in writing within
18 ten days of today?

19 THE DEFENDANT Yes, ma'am

20 THE COURT Do you understand that if you
21 cannot afford an attorney for this process that one
22 will be appointed to you at no cost?

23 THE DEFENDANT Yes, ma'am

24 THE COURT I find there is a substantial
25 factual basis for the plea That the defendant has

1 entered the plea freely, voluntarily, knowingly and
2 intelligently That he has had the advise and
3 assistance of counsel with whom he has indicated to
4 the Court he is satisfied I will accept his plea

5 In a moment, Mr Brown, the State is preparing
6 what we call a sentence sheet You will have to sign
7 that, as well as Mr Howell and Mr Savage, and at
8 that time I will impose sentence on that offense
9 But I'm going to impose the sentence of two years
10 suspended to time served, because you've already
11 maxed it out, and running concurrent to whatever you
12 receive on the armed robbery and possession of a
13 firearm during the commission of a violent offense

14 THE DEFENDANT Thank you

15 THE COURT You're welcome, sir

16 Do you know how many days you've served Can
17 you all count it up to how many days that amounts to
18 since February of last year

19 MR SAVAGE February 26th was the date of the
20 offense, Your Honor

21 THE COURT I'm just going to wait until Mr
22 Sahn gets back with that, then we can do it all at
23 one time We are going to have to wait anyway We
24 will be at ease for just a moment until Mr Sahn
25 comes back Do we need to mark this note where the

1 jury asked for fresh air, how long they plan to be
2 here? I read it verbatim into the record

3 MR SAVAGE No objection to throwing it away

4 MR HARRIS No objection

5 THE COURT Thank you

6 (Whereupon, a recess was taken)

7 THE COURT Ms Crumey, how many days did you
8 say that was?

9 MS CRUMEY 485

10 THE COURT If the defendants could rise for
11 sentencing

12 As I have already indicated, Mr Brown, you
13 will receive two years suspended to 485 days
14 time-served on the offense of possession of cocaine
15 base, first degree, which you've entered a plea of
16 guilty

17 Do any of your clients need drug treatment?
18 Mr Howell?

19 MR HOWELL No, ma'am

20 THE COURT Mr Crumey?

21 MS CRUMEY No, ma'am

22 THE COURT Mr Harris?

23 MR HARRIS No, ma'am

24 THE COURT On each of the offenses of Mr
25 David Lee Brown, Colin Nevel Boston, and Clarence

1 Montez Robinson, on each of offenses of possession of
2 a firearm during the commission of a violent crime,
3 you are each sentenced to five years in the state
4 department of corrections

5 To each of you on the charge of armed robbery
6 you are sentenced to the state department of
7 corrections for a period of 12 years These
8 sentences are all concurrent with one another, and
9 you'll get credit for any time that you have served

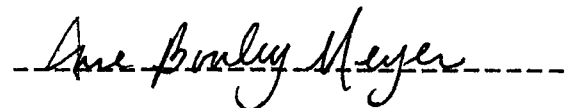
10 (Whereupon, the proceedings in the matter
11 before the Court were adjourned)

12 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of the
record of all the proceedings had and evidence
introduced in the trial of the captioned case,
relative to appeal, in the Circuit Court for
Charleston County, South Carolina, in the General
Sessions Court for the week of June 22nd through
June 26th, 2009

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto

-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)2010-CP-10-1101
IN THE COURT OF COMMON PLEASClarence Montez Robinson #335542)

Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2010 FEB -9 AM 10:34
JULIE J. AUSTIN
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1 Place of detention South Carolina Department of Corrections
ie, Kershaw Correctional Institution.
- 2 Name and location of Court which imposed sentence Charleston County
Court of General Sessions; 9th Circuit; Honorable Debra Jefferson
- 3 Name(s) of co-defendant(s) (if any) Colin Neville Boston, Parnell Brown, and
David Lee Brown.
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
(a) 2008 GS 10-3832

(b) 2008 GS 10-3845

(c) _____

5 The date upon which sentence was imposed and the terms of the sentence

(a) 7 years Armed Robbery(b) 5 years The Gun(c) June 25-2009

6 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes by Jury Trial

(c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?

Please See (b) #8; Yes I Appealed.

8 If you answered "yes" to (7), list

(a) the name of each Court to which you appealed

1 South Carolina Court of Appeals.

11 _____

111 _____

(b) the result in each such Court to which you appealed

1 Dismissed; July 17, 2009; Honorable Kaye Hearn

11 _____

111 _____

(c) the date of each such result

1 July 17, 2009

11 _____

111 _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

1 Please See Attached "REMITTITUR"

11 _____

111 _____

9 If you answered "no" to (7), state your reasons for not so appealing

(a) N/A

- (b) _____
- (c) _____
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) Attorney filed a late Appeal; thus Appeal was
~~(x)~~ dismissed; See, Appeal and see also dates,
~~(x)~~ See also, attached documents.
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10)
- (a) White v. State, 263 SC 110, 208 S.E.2d 35 (1974);
~~(x)~~ Rule 243(i) SCACR
- (c) _____
- 12 Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? See # 8
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Just # 8
- (d) any other petitions, motions or applications in this or any other Court? No
- 13 If you answered "yes" to any part of (12), list with respect to each petition, motion or application
- (a) the specific nature thereof
- I _____
- 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

- 14 Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

- 15 If you answered "yes" to (14) identify

(a) which grounds have been presented

I

II

III

(b) the proceedings in which each ground was raised

I

II

III

- 16 If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented

(a) Only the Appellate Court; Sec. 8(i).
 (b) _____
 (c) _____

- 17 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? Yes
 (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? See, No. 10(a)
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? See, 10(a)

- 18 If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you

1 Stephen Harris, Esquire
P.O. Box 30402 Charleston, SC 29417
 11 IThiss J. Jenkins, Esquire
215 East Bay Street - Suite 203
 X Charleston, SC 29401

(b) the proceedings at which each such attorney represented you

1 the above (a)(i) after the Preliminary
Hearing right through the filing of late appeal
 11 Mostly at the Preliminary Hearing, partition
the Court for removal from case - Money Issue

19 State clearly the relief you seek in filing this application

Direct Appeal > Accordingly to White v. State
263 S.C. 110, 208 S.E. 2d 35 > Rule 243
(1) SCACR; Please See Attached Documents

20 Are you now under sentence from any other court that you have not challenged?

NO.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Clarence 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

Clarence Robinson

SWORN to and subscribed before me this Jan 29, 2010
 day of

Florence M. Kline (I S)
 Notary Public

My Commission Expires 1/31/18

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Clarence 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 said proceeding or give security thereof

Clarence Robinson
Applicant

SWORN or affirmed to and subscribed before me this

29 day of Jan, 2010

Flarence M. Kline
Notary Public

My Commission Expires

1/31/18

The South Carolina Court of Appeals

The State,

Respondent,

v

Clarence Montez Robinson,

Appellant

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No 2008-GS-10-03832
2008-GS-10-03845

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated July 17, 2009,

IT IS SO ORDERED that the above appeal be and hereby is dismissed

KAYE G. HEARN, CHIEF JUDGE

BY *V. Anne Allen, Deputy*
Clerk

Columbia, South Carolina
8/6/2009

Original to The Honorable Julie Armstrong

cc Chief Appellate Defender Joseph L. Savitz, III
Stephen Harris
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Julie J. Armstrong

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Clarence M Robinson, #335542,	)	2010-CP-10-1101
	)	
Applicant,	)	
	)	
v	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent	)	

The Respondent, making its Return to the application for post-conviction relief filed February 9, 2010, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the May 2008 term of the Charleston County Grand Jury for armed robbery (2008-GS-10-3832) and possession of a firearm during commission of a violent crime (2008-GS-10-3845). Stephen Harris, Esquire, represented the Applicant. Applicant proceeded to trial on June 22-25, 2009, after which a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for twelve (12) years for armed robbery and five (5) years for possession of a firearm. The sentences were to run concurrently.

Trial counsel filed a Notice of Appeal on Applicant's behalf on July 7, 2009. By Order of Dismissal dated July 17, 2009, the Court of Appeals dismissed the appeal based on Applicant's failure to timely serve the notice of appeal on opposing counsel.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, and the appellate records

II

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of trial counsel in that counsel filed a late appeal Applicant is entitled to a belated appeal pursuant to White v State, 263 S C 110, 208 S E 2d 35 (1974)

III

The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case Roe v Flores-Ortega, 528 U S 470, 120 S Ct 1029 (2000) The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal Id

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered Id In examining the totality of the circumstances, courts should consider (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing Id Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v State, 263 S C 110, 208 S E 2d 35 (1974) See Rule 227(g)(1), SCACR, Davis v State, 288 S C 290, 342 S E 2d 60 (1986)

Trial counsel is not required to file a notice of appeal without specifically being asked to do so Roe, 528 U S 470 In the present case, it appears that trial counsel filed a Notice of

Appeal, but the appeal was dismissed for failure to serve opposing counsel. The allegation of ineffective assistance of counsel for failure to file an appeal raises questions of fact that cannot be conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By Matt J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
Telephone (803) 734-3737

7/14, 2010

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2010-CP-10-1101

Clarence M Robinson, 335542,

)

Applicant,

)

)

vs

) AFFIDAVIT OF SERVICE BY MAIL

)

State of South Carolina,

)

)

Respondent

)

)

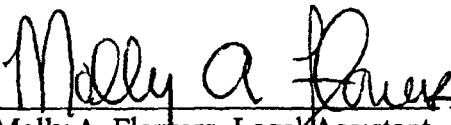
1 I am an employee of the Respondent in the above-captioned action

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 of the Respondent in the above-captioned
matter on the following person(s) by depositing same in the United States mail, postage prepaid

Tiarna Harman, Esquire
Nelson Mullins Riley & Scarborough, LLP
P O Box 1806
Charleston, SC 29402

DATED this 14th day of July, 2010


Molly A Flowers, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF COMMON PLEAS
No 10 CP 10 01101

3

4 CLARENCE ROBINSON)
5 Applicant)
6 versus) TRANSCRIPT OF RECORD
7)
8)

8 STATE OF SOUTH CAROLINA)

9 Charleston, South Carolina
November 18, 2010

10

11

12 B E F O R E

13 HONORABLE KRISTI LEA HARRINGTON, Judge

14

A P P E A R A N C E S

15

For the State

MATTHEW J FRIEDMAN, Esq
Office of the Attorney General

16

17 For the Applicant

TIARNA HARMAN, Esq

18

Reporter

BRENDA COOLEY

19

20

21

22

HARRIET P BENNETT
Reporter, S C Court Administration
P O Box 86
Ladson, S C 29456

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25

I N D E X

DIRECT-REDIRECT CROSS-RECROSS

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APPLICANT

By Ms Harman

6

No Cross Exam

STEPHEN HARRIS

By Ms Harman

9

No Cross Exam

EXHIBITS

For ID In EV

NOTE NO EXHIBITS WERE PROFFERED OR MARKED

1 (The within matter came before the Court on
2 November 18, 2010)

3 THE COURT All right, Mr Friedman

4 MR FRIEDMAN Clarence Robinson

5 THE COURT Please state your name for the re-
6 cord

7 MS HARMAN Your Honor, I'm Tiarna Harman,
8 here for Clarence Robinson, the Petitioner

9 THE COURT Are you Clarence Robinson?

10 APPLICANT Yes, maam

11 THE COURT Ms Harman, have you advised your
12 client what would happen should I grant his request
13 for post conviction relief?

14 MS HARMAN I have, Your Honor Several times

15 THE COURT And he still wishes to go forward
16 here today?

17 MS HARMAN Yes, Your Honor

18 THE COURT What is your client going forward
19 on? What issues?

20 MS HARMAN He is wanting to reinstate his
21 right to direct appeal He informed counsel that he
22 wanted to file an appeal

23 THE COURT And, Ms Harman, were there any
24 charges dismissed as a result of this plea?

25 MS HARMAN I don't believe any charges were

1 dismissed It was a trial

2 THE COURT Mr Friedman, were any charges dis-
3 missed?

4 MR FRIEDMAN I don't think so, Your Honor

5 THE COURT All right, thank you

6 Ms Harman, have you advised your client that
7 armed robbery carries a minimum of ten and up to
8 thirty years?

9 MS HARMAN Yes, Your Honor

10 THE COURT And that possession of a firearm
11 during a crime is a five year sentence?

12 MS HARMAN Yes, Your Honor

13 THE COURT He received twelve years, but he
14 could receive thirty-five if they were to be run
15 consecutively?

16 MS HARMAN Yes, I have advised him of that

17 THE COURT Mr Robinson, do you understand
18 that should I grant this application the charges are
19 not being dismissed, but you would face a retrial
20 and could face a potential of thirty-five years?

21 APPLICANT Yes, maam

22 THE COURT And you still wish to go forward at
23 this time? APPLICANT Yes, maam

24 THE COURT All right Ms Harman, are you pre-
25 pared?

1 MS HARMAN Yes, Your Honor

2 THE COURT All right

3 MS HARMAN We would first call Clarence
4 Robinson to the stand

5 CLARENCE ROBINSON, being duly
6 sworn, testified as follows

7 CLERK Please be seated on the stand and state
8 your full name

9 WITNESS Clarence Robinson

10 DIRECT EXAMINATION

11 BY MS HARMAN

12 Q Good morning, Mr Robinson You are the Defen-
13 dant in the matter of the State versus Clarence
14 Robinson, correct?

15 A Yes, maam

16 Q And who was your trial counsel for that matter?

17 A Cliff Harris

18 Q And what crimes were you charged with?

19 A Possession of a firearm and violent crime

20 Q And you were sentenced to how many years?

21 A Twelve years

22 Q And did you want to appeal this outcome?

23 A Yes, maam

24 Q Why did you want to appeal that outcome?

25 A Because when we went to trial he violated my

APPLICANT ON DIRECT

1 -- when I see at the trial that they violated my
2 Fourth Amendment and I see that they didn't have a
3 search warrant for the trunk they searched

4 I see that my attorney was ineffective counsel
5 and he could have brought things out that he didn't,
6 and there was things brought out that he made no
7 objection

8 The Judge -- I mean, one of the officers said
9 they had a warrant to search the vehicle and they
10 did not, and he could have proved it

11 Q And so you are filing for PCR because you feel
12 your counsel should have raised those issues with
13 the Court or should have objected to some things?

14 A There was a lot of issues that he could have
15 raise up that would show how the police officer who
16 was investigating -- he came and lied about -- like
17 he came and talked to another police officer that
18 was there, and he got on the stand, and I heard --
19 I was watching and I know they not supposed to be
20 communicating with each other right there

21 And on top of that, he raise up nothing about
22 the firearm not being in my possession and I have no
23 way to raise it up myself

24 Q And those are among the issues that you would
25 have wanted your counsel to bring up during the trial

APPLICANT ON DIRECT

1 when you were in Court?

2 A Yes, maam

3 Q And did you inform your counsel that you did
4 want to pursue your right to appeal?

5 A Yes, maam

6 Q And did you understand that he would file your
7 appeal?

8 A Yes, maam

9 Q And when did you find out that there was a prob-
10 lem with the appeal?

11 A I found out there was a problem with the appeal
12 when I asked my mom to send me my Rule Fives so I
13 can look at it

14 And I look at it, and I saw where my appeal was
15 dismissed, so I put in, you know, for PCR so that
16 I could get -- you know, try to^{go} for it

17 Q And did you speak with Mr Harris after you
18 found that out?

19 A Yes, maam

20 Q And what did he say?

21 A He ask me if I suppose to fill out a form, and
22 at the same time I was telling him that they dismiss
23 my appeal

24 And he said he had done that and done a good job
25 like he was supposed to, so I ask what I can do for

APPLICANT ON DIRECT

1 myself, and if I could file an appeal for myself,
2 but he say that it was too late

3 So I found out I can fill out these forms and
4 put in another request but by the time it went to the
5 mail room it was too late

6 So I filed for PCR to see if I could get back
7

8 Q So at any time did you know you were giving
9 up your right to an appeal?

10 A No, maam

11 Q Is there anything else you want to tell the
12 Court as to why you feel you are entitled to post
13 conviction relief?

14 A Yes, maam I would say that I would like to
15 have a chance to get back because I have people who
16 need me out there, and on top of that I would say
17 that I see a lot of errors in my case and I wasn't
18 given my full rights

19 (Witness difficult to hear)

20 I would like a retrial

21 Q Thank you, Mr Robinson

22 THE COURT Mr Friedman?

23 MR FRIEDMAN I have no questions, Your Honor

24 THE COURT You may step down, sir

25 (Witness excused from stand)

1 THE COURT Call your next witness

2 MS HARMAN Thank you, Your Honor We would
3 call Steven Harris

4 STEPHEN HARRIS, being duly
5 sworn, testified as follows

6 CLERK Please have a seat on the witness stand
7 and state your name

8 WITNES My name is Stephen Harris, spelled

9 H A R R I S

10 DIRECT EXAMINATION

11 BY MS HARMAN

12 Q Good morning, Mr Harris

13 A Good morning

14 Q You represented Clarence Robinson here in his
15 trial?

16 A I did

17 Q Now, following the trial did he actually inform
18 you that he wanted to file an appeal?

19 A Yes I actually filed a notice for him

20 Q And what happened with that appeal?

21 A I did file a notice of appeal with the Court of
22 Appeals and with Indigent Defense or Appellate De-
23 fense, the Office of Indigent Defense

24 I did file it in what I thought was inside the
25 ten days but it was the first appeal I ever filed

MR HARRIS ON DIRECT

1 I was informed I filed it in twelve days, but I had
2 not counted on the weekend coming into play

3 Q When did you find out there was a defect in
4 the appeal?

5 A When I called Appellate Defense and spoke with
6 -- well, I got a letter from Appellate Defense and I
7 spoke with Joe Savitz He informed me that I had
8 not filed the appeal timely

9 Q And did you speak with Mr Robinson at this
10 point?

11 A I did

12 Q And what was his -- what did you say to him?

13 A I informed him that I would see what we could
14 do, and I then spoke with another lawyer about it,
15 and then I spoke with him again and advised him I
16 would be more than happy to admit that it was my mis-
17 take

18 Q And it was always your impression that Mr
19 Robinson wanted to pursue a direct appeal?

20 A Yes, and I said it was my mistake, and I agree
21 I made a mistake I believed I did it properly at
22 the time but I did not

23 Q Thank you No further questions

24 THE COURT Mr Friedman?

25 MR FRIEDMAN I have no questions

1 MS HARMAN No, Your Honor

2 THE COURT Mr Friedman, any witnesses?

3 MR FRIEDMAN No, Your Honor

4 THE COURT I'll be happy to hear from you, Ms
5 Harman

6 MS HARMAN Judge, under Wright v State, the
7 Petitioner is entitled to reinstatement of his right
8 to appeal when he did not give that right up volun-
9 tarily He has the right to his appeal, and he did
10 not waive that right, as he said

11 Mr Robinson was under the impression that coun-
12 sel was taking care of his appeal, and he was not
13 aware of the problem until he wanted to move forward
14 with the appeal The Court of Appeals filed dismissal

15 THE COURT Mr Friedman

16 MR FRIEDMAN Thank you, Your Honor

17 The State would also agree with Ms Harman that
18 he is entitled to reinstatement of his right to ap-
19 peal

20 Mr Harris has testified that it was his fault
21 that the appeal did not get filed within ten days

22 The State would only ask that his relief be a
23 reinstatement of his appeal rather than a new trial
24 He has failed to show any ineffective assistance of
25 counsel that would warrant a new trial

1 All the search warrant issues and other issues
2 could be handled on his direct appeal So we would
3 ask that his relief be reinstatement of his appeal

4 THE COURT Ms Harman?

5 MS HARMAN Nothing further This is quite
6 unusual

7 THE COURT Will a form Order be sufficient?

8 MR FRIEDMAN I will be glad to draft a short
9 Order, Your Honor

10 THE COURT If you would have the Order drafted
11 within ten days, that would be great Thank you, and
12 good luck to you, Mr Robinson

13 _____END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P BENNETT, Official Court Reporter
3 for South Carolina Court Administration, do hereby cer-
4 tify that the foregoing Transcript was prepared from the
5 records of Brenda Cooley to the best of my ability, hav-
6 ing been heard in the Court of Common Pleas, Charleston
7 County, on November 18, 2010

8 FURTHER, I certify that I am neither of kin nor
9 counsel to any party to this action, nor do I have any
10 interest in the matter

11 Dated August 1, 2011

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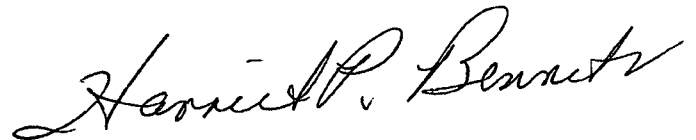
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Clarence Robinson, #335542,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS

2010-CP-10-11018Y

FILED
2010 DEC 23 AM 9 38
JULIE J ARMSTRONG
CLERK OF COURT

**ORDER GRANTING WHITE V STATE
APPEAL AND DENYING ALL OTHER
ALLEGATIONS**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 9, 2010. The Respondent made its Return on July 14, 2010. An evidentiary hearing into the matter was convened on November 18, 2010 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Tiarna Harman, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant and Stephen Harris, Esquire, testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the appellate records, the PCR application, and the Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the May 2008 term of the Charleston County Grand Jury for armed robbery (2008-GS-10-3832) and possession of a firearm during commission of a violent crime (2008-GS-

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10-3845) Stephen Harris, Esquire, represented the Applicant. Applicant proceeded to trial on June 22-25, 2009, after which a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for twelve (12) years for armed robbery and five (5) years for possession of a firearm. The sentences were to run concurrently.

Trial counsel filed a Notice of Appeal on Applicant's behalf on July 7, 2009. By Order of Dismissal dated July 17, 2009, the Court of Appeals dismissed the appeal based on Applicant's failure to timely serve the notice of appeal on opposing counsel.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel filed a late appeal. Applicant is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. At the PCR hearing, Applicant alleged ineffective assistance of counsel for letting the jury convict Applicant for a pistol that was not in his possession.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Trial counsel testified that he represented Applicant at trial. He testified that he discussed the right to appeal with Applicant and filed a Notice of Appeal. Counsel asserted that he did not believe the weekend counted as part of the maximum ten (10) days to file so he inadvertently filed the Notice of Appeal twelve (12) days after the conviction.

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Ineffective Assistance of Counsel

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71 1(e), SCRCF, Butler v State, 286 S C 441, 334 S E 2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U S 668 (1984), Butler, 334 S E 2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U S 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S E 2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U S 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. 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).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney

3/26
JLT

demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina State v Pendergrass, 270 S C 1, 239 S E 2d 750 (1977), Strickland, 466 U S at 668, Butler, 286 S C 441, 334 S E 2d 813 This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation This Court finds that counsel's representation did not fall below an objective standard of reasonableness

Accordingly, this Court finds Applicant has failed to prove the first prong of Strickland, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed

White v State Appeal

Counsel has indicated that Applicant asked him to file a direct appeal and he inadvertently failed to file a timely Notice of Appeal The State agreed that the Applicant is entitled to a review of direct appeal issues as permitted by White v State, 263 S C 110, 108 S E 2d 35 (1974) In White v State, our Supreme Court determined that, where the post-conviction relief judge finds the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues Based upon the agreement of the parties, this Court concludes the Applicant is entitled to a review of his convictions pursuant to White v State In order to secure this review, however, the Applicant must appeal from this Order

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KLT

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, with the exception of the White v. State issue, this application for PCR must be denied and dismissed with prejudice.

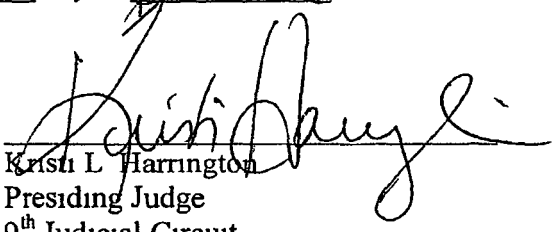
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

5/8/16

IT IS THEREFORE ORDERED

- 1 That the Applicant is granted review of direct appeal issues pursuant to White v. State,
- 2 That the other allegations in the application for post-conviction relief be denied and dismissed with prejudice, and
- 3 That the Applicant be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 15th day of December, 2010


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

March Canon South Carolina

The South Carolina Court of Appeals

The State,

Respondent

v

Clarence Montez Robinson,

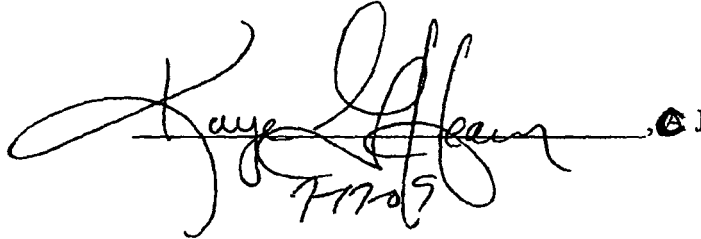
Appellant

The Honorable Deadra L. Jefferson
 Charleston County
 Trial Court Case No 2008-GS-10-03832
 2008-GS-10-03845

ORDER of DISMISSAL

The Notice of Appeal was not filed in the above matter due to the failure of Appellant to timely serve the notice of appeal on opposing counsel, as provided for in Rule 203 of the South Carolina Appellate Court Rules. The Court cannot extend the time for service of the Notice of Appeal (Rule 263(b), SCACR).

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Charleston County after fifteen (15) days, exclusive of the date of filing this Order.



Columbia, South Carolina

7/1/2009

FILED


cc Chief Appellate Defender Joseph L. Savitz, III
 Stephen Harris
 Assistant Deputy Attorney General Salley W. Elliott
 The Honorable Julie J. Armstrong

MCS20080201339

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0803889

ARREST WARRANT NUMBER

DIRIND0146

DATE OF ARREST

2008-03-26

ACTION OF GRAND JURY

TRUE BILL

Edwin Cochran
Foreperson of Grand Jury

Date

MAY 5 2008

VERDICT

Guilty

Maia Reed
Foreperson of Petit Jury

6/25/09
Date

INDICT

DOCKET NO 2008GS1003845

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2008

THE STATE

VS

CLARENCE MONTEZ ROBINSON ✓

DOB 1987-11-24

B/M

Indictment for

Possession Of A firearm During The
Commission Of A Violent Crime

2008 MAY 12 PM 3 28
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath

Possession Of A firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about February 26, 2008, the Defendant, CLARENCE MONTEZ ROBINSON, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime to wit Armed Robbery, in violation of Section 16-23-490, Code of Laws of South Carolina, (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided



MICHAEL SAHN
ASSISTANT SOLICITOR

MCE20080201339

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0803889

ARREST WARRANT NUMBER

K297709

DATE OF ARREST

2008-02-27

ACTION OF GRAND JURY

FILED BILL

Eddie Cochran

Foreperson of Grand Jury

Date

MAY 5 2008

VERDICT

Guilty

Maria Smith
Foreperson of Petit Jury

6/25/09
Date

INDICT

DOCKET NO 2008GS1003832

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2008

THE STATE

vs

CLARENCE MONTEZ ROBINSON

DOB 1987-11-24

B/M

08-1367(61)

Indictment for

Armed Robbery

2008 MAY 12 PM 3 28
JULIE J ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

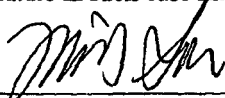
INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath

Armed Robbery

That on or about February 26, 2008, in Charleston County, South Carolina, at 1750 Savannah Highway, Bender's Bar and Grill, by use of force, threats or intimidation and while armed with a deadly weapon, to wit handgun, the Defendant, CLARENCE MONTEZ ROBINSON, did take and carry away goods and/or monies from Bender's Bar and Grill and the patrons with the intent to permanently deprive them of their possessions thereof, in violation of Section 16-11 330(A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



MICHAEL SAHN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

362
COUNTY OF Charleston
STATE VS

CLARENCE MONTEZ ROBINSON

AKA

Race B Sex M Age 21DOB 11-24-1987 SS#

Address

WADMALAW ISLA, SC 294870000DL# 100 - ID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2008GS1003832A/W# K297709Date of Offense 2/26/2008S C Code § 16-11-0330(A)CDR Code # 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO Armed Robbery

in violation of § 16-11-0330(A) of the S C Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant initial)The plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

Savage, DaleSC Bar# 75420

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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. all of 6/25/09☒ 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 _____

☐ set by SCDPPPS _____

Recipient _____

*Fine

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 35-13 (Public Def/Prob)

§ 73-3, 1B TP (Law Enforce Funding)

§ 33-7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90-11 TP (SCCJA Surcharge)

TOTAL

	\$	
	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$25	\$	
\$500	\$	
\$25	\$	25.00
\$100	\$	
\$50	\$	
\$40/ea	\$	
\$	\$	3.90
\$5	\$	5.00
	\$	133.90

Clerk of Court/ Deputy Clerk

_____ 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 A.L. JeffersonJudge Code 21-1-100-218Sentence Date 6-25-09

Sentence Date

ARREST WARRANT

K- 297709

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 THE STATE
 against
CLARENCE MONTEZ ROBINSON
 Address
WADMALAW ISLAND, SC 29487

 Phone _____ SSN _____
 Sex **M** Race **B** Height **6'1** Weight **155**
 DL State **SC** DL# _____
 DOB **11-24-1987** Agency ORI# _____
 Prosecuting Agency **CPD**
 Prosecuting Officer **BONANNI**
 Offense **ARMED ROBBERY**
 Offense Code _____
 Code/Ordinance Sec **16-11-330**

 This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law

Signature of Judge _____ (LS)

Date _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant _____
 on _____

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO

864

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 Personally appeared before me the affiant DAVID VARGO who
 being duly sworn deposes and says that defendant **CLARENCE MONTEZ ROBINSON**
 did within this county and state on **02-26-2008** violate the criminal laws of the

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **CHARLESTON**)
 in the following particulars

DESCRIPTION OF OFFENSE

ARMED ROBBERY**16-11-330**
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 Affiant's Address **CHARLESTON, SC 29403**

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe the
 on **02-26-2008** defendant **CLARENCE MONTEZ ROBINSON**
 did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of **CHARLESTON** as set forth below

DESCRIPTION OF OFFENSE

ARMED ROBBERY**16-11-330**
 Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me

on **February 27, 2008**

Signature of Issuing Judge

Judge Code

7004/LSL/AEC

ORIGINAL

Judge's Address **3870 LEEDS AVENUE, SUITE 106**Judge's Telephone **N CHARLESTON, SC 29405**
 Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

BAIL set by

Judge LOMBARD

on FEB 27 1987

Type and Amount NO BOND

Name of Surety _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney _____

Decision _____

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition _____

Sentence _____

JURORS

CHECKLIST

SUM. CRT. CASE # 2175

OW CASE # 1361

REPORT COPIES 10

X

WITNESSES

Name _____
Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

CODEFENDANTS

1000121/EC

CHARLESTON

CLARENCE MONTES ROBINSON

ADAMALAW ISLAND 20487

M B 122

100174034

11-24-1987

(P.D)

BONANNI

ARMED ROBBERY

10-11-130

CHARLESTON

ARMED ROBBERY

10-11-330

February 27 1987

CHARLESTON POLICE DEPARTMENT**STATE OF SOUTH CAROLINA****COUNTY OF CHARLESTON****AFFIDAVIT**
David Vargo

Personally appeared before me, a magistrate of this county, one _____ who first being duly sworn deposes and says that **Clarence Montez Robinson** did within this county and state on February 26th, 2008, violate the criminal laws of the State of South Carolina in the following particulars

DESCRIPTION OF OFFENSE**ARMED ROBBERY**
(16-11 330)

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts

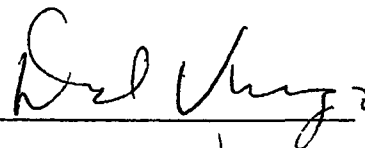
That on the 26th day of February, 2008 at approximately 2150 hours the above defendant along with three co-defendants did enter Bender's Bar and Grill located at 1750 Savannah Highway Charleston, SC 29407 armed with handguns and ordered patrons to the ground. The defendant and co-defendants did steal and take away US Currency from the cash register drawer and some of the patrons. The defendants were located in a parked vehicle in a Church parking lot at 12 Sawgrass Road Charleston, SC 29412 at 2206 hours on the 26th day of February, 2008. The defendants were in possession of a total of \$685 00 US Currency and four handguns. The above is true and believable based on the written and verbal statements provided by the victims and witnesses to the above incident. The defendant and co-defendants were positively identified by two of the victim/witnesses.

SWORN TO AND SUBSCRIBED BEFORE ME

Date _____

FEB 27 2008_____
SIGNATURE OF JUDGE

Case # 0803889



180 Lockwood Blvd
Charleston, SC 29403
(843) 720-2487

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No 2010-CP-10-1101

State of South Carolina,

Respondent,

v

Clarence Robinson, #335542,

Appellant

RECEIVED
JAN 12 2011
NOTICE OF APPEALS S.C. SUPREME COURT

Pursuant to South Carolina Rule of Appellate Practice 203, Appellant Clarence Robinson ("Robinson") hereby gives Notice of Appeal to the Supreme Court of South Carolina from the Order of Judge Kristi Lea Harrington in the Charleston County Circuit Court of South Carolina, entered on December 15, 2010 and received by Robinson through mail on December 23, 2010, in the above-captioned case *See Order*, attached as Exhibit A. As set forth more fully in the Order, Robinson is entitled to a direct appeal in the Supreme Court pursuant to *White v State*, 263 S C 110, 108 S E 2d 135 (1974). This appeal is timely because it is made within thirty days of the receipt of the Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By



Tiarna Harman

SC Bar No 76144

E-Mail tiarna.harman@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for Clarence Robinson

Charleston, South Carolina

January 11, 2011

Other counsel of record

Matthew J. Friedman, Esq
Assistant Attorney General
Rembert C. Dennis Building
P O Box 11549

Columbia, SC 29211-1549

(803) 734-3970

Attorneys for State of South Carolina

[illegible]