

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County
Alexander S. Macaulay, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2013-UP-272 (S.C. Ct. App. filed 6/19/2013)

08-CP-07-02188

JAMES BOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002000

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Bowers, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-152167

ON WRIT OF CERTIORARI

Appeal From Beaufort County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2013-UP-272
Heard April 9, 2013 – Filed June 19, 2013

AFFIRMED

Kathrine Haggard Hudgins, of Columbia, for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Attorney General
Matthew J. Friedman, and Assistant Attorney Ashleigh
R. Wilson, all of Columbia, for Respondent.

PER CURIAM: This post-conviction relief (PCR) appeal arises out of Petitioner James Bowers' conviction for armed robbery. Bowers was sentenced to life without parole (LWOP) pursuant to section 17-25-45(A) of the South Carolina Code (2003), also known as the two-strikes law. On appeal, Bowers argues the PCR court erred by finding trial counsel was not ineffective when trial counsel failed to challenge his prior conviction for assault with intent to ravish as a "most serious offense" for purposes of imposing a LWOP sentence pursuant to the two-strikes law. Because we find the issue unpreserved for review, we must affirm the PCR court's denial of Bowers' application.

The PCR court ruled trial counsel sufficiently challenged the use of Bowers' prior convictions for purposes of the trial court imposing LWOP pursuant to the two-strikes law. At the hearing, the PCR court found trial counsel raised to the trial court the issue of whether assault with intent to ravish was the same offense as the most serious offenses of assault with intent to commit first or second-degree criminal sexual conduct (CSC). The record indicates that at sentencing, trial counsel objected to the trial court using Bowers' prior assault with intent to ravish conviction to enhance his conviction, arguing the two-strikes law is unconstitutional and the conviction was too remote. Trial counsel also objected to using Bowers' prior robbery conviction to enhance Bowers' conviction. The State explained it was relying on the assault with intent to ravish conviction to enhance Bowers' conviction pursuant to the two-strikes law. Trial counsel responded, "I am satisfied [that the assault with intent to ravish conviction] was the same offense, basically, that we have here today and our laws concerning criminal sexual conduct." In ruling the prior assault with intent to ravish conviction could enhance Bowers' sentence to LWOP, the trial court found "as [Bowers' counsel] indicated, this particular offense, that is, assault with intent to ravish, is the same as assault with intent to commit criminal sexual conduct in either the first or the second degree which comes within the most serious crime classification." Trial counsel did not object to this ruling, and the trial court sentenced Bowers to LWOP. Based on the foregoing, we have concerns trial counsel did not challenge the use of the prior assault with intent to ravish conviction on the basis that it was not the equivalent to first or second-degree CSC. Instead, trial counsel actually agreed with the State that the prior conviction is equivalent to first or second-degree CSC and could be used as a "most serious offense" to impose LWOP pursuant to the two-strikes law.

However, we need not address whether the PCR court's finding is clearly erroneous. *Despite the foregoing*, PCR counsel did not raise the issue of the use of

the assault with intent to ravish prior conviction as a "most serious offense" to the PCR court. At the PCR hearing, PCR counsel argued Bowers' only ground for challenging sentencing was trial counsel's failure to challenge the sentence based on the prior conviction of common law robbery. PCR counsel did not provide the PCR court with any arguments, testimony, objections, or case law that trial counsel was ineffective in challenging the LWOP sentence based on the use of Bowers' prior conviction for assault with intent to ravish as a "most serious offense." Similarly, PCR counsel did not provide the PCR court with any arguments that trial counsel's errors prejudiced Bowers or subjected him to an increased sentence. *See Patrick v. State*, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002) (noting the burden of proof is on a PCR applicant to prove trial counsel was ineffective and trial counsel's errors prejudiced the applicant). Additionally, in Bowers' two Rule 59(e), SCRCR motions to alter or amend the judgment, PCR counsel alleged trial counsel was ineffective for failing to challenge the LWOP sentence based upon his prior conviction for common law robbery, but did not allege trial counsel was ineffective for failing to challenge the LWOP sentence based upon the prior assault with intent to ravish conviction. Further, the Rule 59(e) motions did not challenge the PCR court's finding on trial counsel's challenge to the use of the prior assault with intent to ravish conviction as a "most serious offense." Because Bowers failed to meet his burden of proof, we hereby affirm the decision of the PCR court.¹ *See Terry v. State*, 394 S.C. 62, 66, 714 S.E.2d 326, 329 (2011) ("A PCR applicant bears the burden of establishing he is entitled to relief."); *id.* ("To prove counsel was ineffective, the applicant must show counsel's performance was deficient and the deficient performance caused prejudice to the applicant's case.")²

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

¹ It is possible the prior conviction could have met the elements of only third-degree CSC, and therefore, was not properly utilized for LWOP purposes; however, the details of the prior conviction are not reflected in the record.

² The availability of any other collateral relief proceeding arising from the current PCR action, such as habeas corpus, is not before us.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

JAMES BOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2010-152167

Appeal from Beaufort County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2013-UP-272

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for James Bowers petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that the issue presented in the petition for writ of certiorari is preserved for appellate review because the PCR judge ruled on the issue. The PCR judge found that trial counsel had properly challenged Applicant's prior strike conviction. This was error. The finding is wholly unsupported by the record and constitutes an error of law requiring a new sentencing.

Trial counsel challenged the prior conviction from 1976 for assault with intent to ravish as being too remote and argued that imposition of a sentence of life without parole based on the remote prior conviction constituted cruel and unusual punishment. (App. pp. 275 – 278). Trial counsel did **not** challenge the trial judge's finding, and in fact conceded, that assault with intent to ravish was the equivalent of assault with intent to commit criminal sexual conduct in either the first or second degree. Trial counsel did not properly challenge the prior conviction. Trial counsel was ineffective in failing to argue that the prior assault with intent to ravish conviction was the equivalent of assault with intent to commit criminal sexual conduct in the third degree which would not qualify as a most serious offense triggering a sentence of life without parole.

In the order of dismissal the PCR judge wrote, "This Court finds that counsel properly challenged Applicant's prior strike conviction. The trial judge found that Applicant's prior conviction for assault with intent to ravish was the equivalent of assault with intent to commit CSC." (App. pp. 349-350). The trial judge, however, was not asked to determine if the prior conviction for assault with intent to ravish was the equivalent of assault with intent to commit CSC for purposes of the strike law. Trial counsel failed to argue that assault with intent to ravish was **not** the equivalent of assault with intent to commit criminal sexual conduct. To the contrary, counsel conceded that the two offenses were the same. "I, I am satisfied was the same offense, basically, that we have here today and our laws concerning criminal sexual conduct." (App. p. 275, lines 13-15). As a result, the trial judge sentenced Bowers as if he had a prior most serious conviction. Counsel was ineffective in failing to argue that assault with intent to ravish was **not** the equivalent of assault with intent to commit criminal sexual conduct. The PCR judge erred in finding that trial counsel properly challenged the prior conviction.

This Court found that the issue was not preserved for review. This Court wrote, "However, we need not address whether the PCR court's finding is clearly erroneous. Despite the foregoing, PCR counsel did not raise the issue of the use of the assault with intent to ravish prior conviction as a 'most serious offense' to the PCR court." Bowers v. State, No. 2013-UP-272 (S.C.Ct.App, filed June 19, 2013). The issue is preserved for appellate review because the PCR judge ruled on the issue. In the order of dismissal the PCR judge wrote, "This Court finds that counsel properly challenged Applicant's prior strike conviction. The trial judge found that Applicant's prior conviction for assault with intent to ravish was the equivalent of assault with intent to commit CSC." (App. pp. 349-350). This Court can and should review and correct the erroneous finding made by the PCR judge.

Further, in the *pro se* PCR application Bowers argued that the trial court lacked jurisdiction to sentence under S.C. Code §17-25-45. During the PCR hearing the following dialogue took place between the State and the PCR judge:

Mr. Friedman: Your Honor, looking at page 280, it looks like the state was relying on the assault with intent to ravish.

The Court: That's what I was looking at.

Mr. Friedman: They seem to say it was the same as today as - - -

The Court: Criminal sexual conduct.

Mr. Friedman: - - - assault, intent to commit criminal sexual conduct.

The Court: All right, is there anything else? Argument?

(App. p. 340, lines 18 – p. 341, lines 1-3). PCR counsel then noted that the issue raised on direct appeal concerned identification and did not challenge the prior conviction. (App. p. 341, lines 9-11). The PCR judge then stated:

But again, in this case the one that concerns the court is whether or not the life without parole provisions applied, whether or not the trial counsel was ineffective in not addressing that. But from my view, and I do think the court, was - - I mean, counsel - it's unfortunate the index doesn't have - - well, it references to the argument there at the end, and I thank you for finding it.

But looking at it, it does seem that Mr. Hood [trial counsel] raised the question, not only of the robbery which the court apparently didn't rely on, but the assault with intent to ravish, which I think he said was 1976. Might be some question about appellate counsel, but that's - here the ineffective assistance of counsel is trial counsel.

(App. p. 341, lines 12-25). Appellate counsel could not have challenged the use of the prior conviction as a most serious offense because that issue was not raised to the trial judge.

The judge later said, "All right, is there anything else on the issue of whether or not the matter of the prior -- and it was -- well, that -- the question is whether the assault with intent to commit, commit -- assault with intent to ravish is the equivalent of criminal sexual conduct, assault with intent to commit criminal sexual conduct. Apparently, not only did the trial counsel raise it, but also the trial judge addressed it at length." (App. p. 342, lines 1-8). The issue was before the PCR court and is preserved for appellate review. The PCR judge erred in finding that trial counsel properly challenged the prior strike conviction.

"The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct.App. 2010). The issue of whether trial counsel properly challenged the prior conviction was ruled upon by the PCR judge. The issue is preserved for appellate review. A Rule 59(e) motion was not necessary because the PCR judge already ruled on the issue in the order.

Trial counsel was ineffective in failing to argue that the prior assault with intent to ravish conviction was the equivalent of assault with intent to commit criminal sexual conduct in the third degree, which would **not** qualify as a most serious offense triggering a sentence of life without

parole. Bowers was prejudiced by counsel's deficient performance because he was sentenced to life without parole under the two strikes law when the State failed to prove that he had a prior most serious offense.

In State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000), the Court found that common law burglary, not listed in S.C. Code §17-25-45 as a most serious offense, qualified as a most serious offense because it contained all of the elements of first-degree burglary, as defined in S.C. Code Ann. § 16-11-311(a)(3) and listed as a most serious offense. In State v. Lindsey, 355 S.C. 15, 583 S.E.2d 740 (2003), the Court found that a 1976 rape conviction, not listed in S.C. Code §17-25-45 as a most serious offense, did not qualify as a most serious offense because it did not contain all of the elements of criminal sexual conduct first or second degree, listed as most serious offenses.

In Lindsey the Court wrote:

Under S.C. Code Ann. § 16-3-652(1)(1985), first degree CSC requires (1) a sexual battery and (2) **aggravated force** or forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or "any other similar offense or act." State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000). Second degree CSC requires the use of **aggravated coercion** to accomplish sexual battery. S.C. Code Ann. § 16-3-653 (1985). Third degree CSC (which is not listed as a "most serious offense" in § 17-25-45(C)) occurs where the actor engages in sexual battery with the victim and one or more of the following circumstances are proven: a) the actor uses **force** or coercion to accomplish the sexual battery **in the absence of aggravating** circumstances or b) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

355 S.C. at 19, 583 S.E.2d at 742.

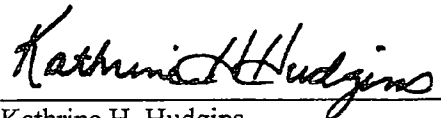
In Lindsey, as in the present case, there was no evidence in the record concerning the 1976 conviction. As there was no evidence that the prior conviction involved aggravated force or coercion, as required for the most serious offense of criminal sexual conduct first or second

degree, the prior conviction could have been the equivalent of criminal sexual conduct third degree, which is not a most serious offense. The 1976 rape conviction in Lindsey could not be considered a most serious offense, because the prior conviction could have been the equivalent of the updated criminal sexual conduct third degree, a charge not listed as a most serious offense.

Assault with intent to commit criminal sexual conduct first and second degree are listed as most serious offenses in S.C. Code §17-25-45. Assault with intent to commit criminal conduct third degree is **not** listed as a most serious offense. Following the reasoning of Lindsey, Bowers' 1976 conviction for assault with intent to ravish could have been the equivalent of assault with intent to commit criminal sexual conduct third degree and therefore not a most serious offense. There was no evidence that Bowers' prior conviction involved aggravated force or coercion.

Counsel was ineffective for failing to challenge the prior conviction as not being a most serious offense. Bowers was erroneously sentenced to life without parole because of counsel's deficient performance. The PCR judge erred in refusing to find counsel ineffective for not challenging petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law when the State failed to prove that the prior conviction contained all of the elements necessary for a most serious assault with intent to commit criminal sexual conduct. The sentence should be reversed and the case remanded for re-sentencing.

Respectfully submitted,

A handwritten signature in black ink, reading "Kathrine H. Hudgins", written over a horizontal line.

Kathrine H. Hudgins
Appellate Defender

This 3rd day of July, 2013.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

JAMES BOWERS,

PETITIONER,

V.

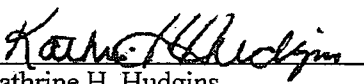
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2010-152167

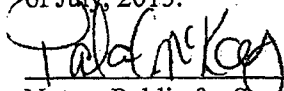
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Ashleigh R. Wilson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Mr. James Bowers McCormick Correctional Institution 386 Redemption Way McCormick, SC 29899 this 3rd day of July, 2013.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 3rd day
of July, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

The South Carolina Court of Appeals

James Bowers, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-152167

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr.

J.

Paul W. Thomas

J.

Daniel G. Pieper

J.

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins
Ashleigh Rayanna Wilson
Alexander S. Macaulay

FILED

August 22, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Alexander S. Macaulay, Circuit Court Judge

JAMES BOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

THE STATE OF SOUTH)
CAROLINA)

-vs-)

JAMES BOWERS)

TRANSCRIPT OF RECORD

OCTOBER 25, 2004
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE;
AND A JURY

APPEARANCES:

STEVEN H. KNIGHT, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

GENE G. HOOD, PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

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County: Boone
 Date: 10/25/04

Case No: 03-BB07-2097

YOUR DIRE

L/Seccs: _____

Judge: T. W. Cooper

State/Pl's. Accy: Steve Knight

Indant: James Bowers

Defense Accy: Gene Hood

Reporter: Harley

Jurat No.	Name	Sex	Race	Cause	Strikes Plaintiff	Defense	Accept
7	Jerry B. Colen	M	AA				
24	Timothy C. Cipplowski	M	W				1
194	Kyleen S. Thomas	F	W			1	
180	Linda S. Tucker	F	W				2
188	Linda D. Shuler	F	W				3
81	Marian Kline	F	W		2		
42	Myrtle B. Brown	F	W				4
155	Donald B. Keith II	M	W				5
8	Linda M. Bishop	F	W			3	
199	Richardson Hodge	F	AA	1			
61	Christa W. Hodge	F	AA				6
109	Timothy B. Owsen	M	W				7
150	Larry H. Wicks	M	W			4	
185	Carolee O. Umbarger	F	W			5	
74	James H. Johnson	F	AA				8
54	Corrie Hammett	F	AA			6	
				2			

of the Court column, indicate who made the motion to strike the jurors
 of cause". C-Court, P-Plaintiff, D-Defense

or the Court column, indicate who made the motion to strike the jurors or cause". C-Court, P-Plaintiff, D-Defense

1 MR. KNIGHT: STATE'S READY IN INDICTMENT
2 2003-GS-07-02097. IT'S THE STATE VERSUS JAMES BOWERS. IT'S
3 AN INDICTMENT FOR ARMED ROBBERY.

4 AND I'VE SUBMITTED TO THE COURT A LIST OF
5 PROPOSED WITNESSES.

6 THE COURT: THANK YOU.

7 LADIES AND GENTLEMEN OF THE JURY, GIVE
8 ME YOUR ATTENTION FOR A FEW MOMENTS, PLEASE.

9 AS YOU HAVE HEARD THE SOLICITOR, HE HAS
10 CALLED THE CASE OF THE STATE VERSUS JAMES BOWERS.

11 MR. BOWERS HAS BEEN INDICTED BY THE
12 GRAND JURY OF BEAUFORT COUNTY. THE INDICTMENT CHARGES
13 MR. BOWERS WE THE CRIME OF ARMED ROBBERY. THE
14 INDICTMENT SAYS THAT ON OR ABOUT NOVEMBER 1, 2003, AT
15 APPROXIMATELY 1:25 A.M., WHILE IN THE LOT OF BROAD RIVER
16 SEAFOOD AT 2601 BOUNDARY STREET HERE IN BEAUFORT THE
17 DEFENDANT JAMES BOWERS DID COMMIT THE VIOLENT CRIME OF
18 ARMED ROBBERY IN THAT WHILE ARMED WITH A KNIFE HE
19 PRESENTED AND POINTED THE KNIFE AT CLARE ROBESON. HE
20 DEMANDED THAT SHE GIVE UP HER PURSE AND CONTENTS
21 VALUED AT SOME \$560.00. AND HE FLED WITH HER PROPERTY
22 THEREBY DEPRIVING THE RIGHTFUL OWNER OF THE SAME HERE
23 IN THE COUNTY OF BEAUFORT.

24 NOW, LADIES AND GENTLEMEN, THE
25 INDICTMENT IS NOT EVIDENCE NOR IS IT PROOF OF THE

1 CHARGES IT CONTAINS. IT IS SIMPLY A PIECE OF PAPER, A
2 CHARGING. IT HAS THE CHARGES WRITTEN DOWN ON IT SO
3 THAT YOU OR I OR ANYONE ELSE THAT READS THE INDICTMENT
4 WILL KNOW WHAT THIS CASE IS ALL ABOUT.

5 TO THE CHARGES CONTAINED IN THE
6 INDICTMENT MR. BOWERS HAS ENTERED A PLEA OF NOT GUILTY
7 AND HAS ASKED FOR A JURY TRIAL.

8 MR. BOWERS, WOULD YOU PLEASE STAND AND
9 FACE THE JURY BEHIND YOU.

10 THANK YOU. YOU CAN BE SEATED.

11 LADIES AND GENTLEMEN, ARE ANY OF YOU ALL
12 RELATED BY BLOOD OR CONNECTED BY MARRIAGE; THAT IS, KIN
13 TO MR. JAMES BOWERS? OR ARE YOU A FRIEND OF HIS? OR A
14 BUSINESS ASSOCIATE? OR A CASUAL ACQUAINTANCE? OR A
15 PERSONAL ACQUAINTANCE? OR A PERSON WHO HAS ANY DIRECT
16 OR INDIRECT CONTACT WITH MR. BOWERS? IF SO, PLEASE
17 STAND.

18 (NO RESPONSE.)

19 THE COURT: THANK YOU.

20 LADIES AND GENTLEMEN, POTENTIAL
21 WITNESSES WHO MAY TESTIFY IN THE TRIAL OF THIS CASE ARE
22 CLARE ROBESON , THE ALLEGED VICTIM IN THE INDICTMENT
23 THAT I JUST READ TO YOU. MICHAEL KENNINGER; DANIEL
24 THOMPSON; DARRELL GRUEL, G-R-U-E-L. DAVID OTT; JEFF
25 BORCISCH, F-O -EXCUSE ME. B-O-R-C-I-S-C-H. STEVE MURPHY;

1 MICHAEL KING; BRYAN CHAPMAN; RONALD VIDETTO, V-I-D-E-T-T-O;
2 CARL SHULTZ; MISTY CARTER.

3 ARE ANY OF YOU ALL RELATED BY BLOOD OR
4 CONNECTED BY MARRIAGE TO ANY OF THOSE POTENTIAL
5 WITNESSES? OR FRIENDS OF THEIRS? OR BUSINESS
6 ASSOCIATES OR CASUAL ACQUAINTANCES OR PERSONAL
7 ACQUAINTANCES OR PEOPLE WHO HAVE ANY DIRECT OR
8 INDIRECT CONTACT WITH ANY OF THOSE POTENTIAL
9 WITNESSES? IF SO, PLEASE STAND.

10 YES, SIR.

11 JUROR NUMBER 24, TIMOTHY C. CIEPLOWSKI:
12 TIMOTHY CIEPLOWSKI.

13 THE COURT: MR. CIEPLOWSKI, TELL ME ABOUT
14 THE CONNECTION, PLEASE, SIR.

15 JUROR NUMBER 24 TIMOTHY C. CIEPLOWSKI:
16 JUST CASUAL ACQUAINTANCES WITH DARRELL. DARRELL AND I
17 COACH TOGETHER. LIVE IN THE SAME NEIGHBORHOOD.

18 THE COURT: ALL RIGHT.

19 CASUAL ACQUAINTANCES WITH WHOM?

20 JUROR NUMBER 24, TIMOTHY C. CIEPLOWSKI:
21 DARRELL GRUEL.

22 THE COURT: OKAY.

23 NOW, THE ASSOCIATION THAT YOU JUST
24 DESCRIBED TO ME, MR. CIEPLOWSKI, IS THAT THE TYPE THAT
25 WOULD MAKE IT DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL

1 AS A JUROR IN THE TRIAL OF A CASE IN WHICH MR. GRUEL MIGHT
2 TESTIFY?

3 JUROR NUMBER 24, TIMOTHY C. CIEPLOWSKI:

4 NO, SIR.

5 THE COURT: WOULD YOU BE ABLE TO SET
6 ASIDE THAT ASSOCIATION THEN AND DECIDE THIS CASE ON THE
7 BASIS OF THE EVIDENCE THAT YOU WILL HEAR IN COURT
8 WITHOUT REGARD TO THAT ASSOCIATION?

9 JUROR NUMBER 24, TIMOTHY C. CIEPLOWSKI:

10 YES, SIR.

11 THE COURT: WILL YOU DO THAT, PLEASE, SIR?

12 JUROR NUMBER 24, TIMOTHY C. CIEPLOWSKI:

13 YES, SIR.

14 THE COURT: THANK YOU, SIR.

15 LADIES AND GENTLEMEN, THE LAWYERS WHO
16 WILL BE INVOLVED IN THE TRIAL OF THIS CASE ON BEHALF OF
17 THE STATE, THE CASE WILL BE PRESENTED BY DEPUTY
18 SOLICITOR STEVE KNIGHT OF THE FOURTEENTH JUDICIAL
19 CIRCUIT SOLICITOR'S OFFICE HERE IN BEAUFORT COUNTY.

20 THE DEFENDANT MR. BOWERS IS
21 REPRESENTED BY MR. GENE HOOD, PUBLIC DEFENDER FOR
22 BEAUFORT COUNTY.

23 ARE ANY OF YOU ALL RELATED BY BLOOD OR
24 CONNECTED BY MARRIAGE TO ANY OF THESE LAWYERS?
25 FRIENDS OF THEIRS OR BUSINESS ASSOCIATES OF THEIRS OR

1 CASUAL ACQUAINTANCES, HAVE ANY DIRECT OR INDIRECT
2 CONTACT WITH THEM, INCLUDING EVER HAVING BEEN
3 REPRESENTED BY EITHER OF THEM IN THE PAST? IF SO, PLEASE
4 STAND.

5 AND YOUR NAME, PLEASE, MA'AM?

6 JUROR NUMBER 190, CHERYL L. BOTWICK:

7 CHERYL BOTWICK, JUROR 190.

8 I'M A BUSINESS ACQUAINTANCE OF MR. HOOD.

9 THE COURT: ALL RIGHT.

10 MISS BOTWICK. MISS BOTWICK, THAT - THE
11 ASSOCIATION, THEN, IS CONFINED TO A BUSINESS
12 RELATIONSHIP, IS THAT RIGHT?

13 JUROR NUMBER 190, CHERYL L. BOTWICK: YES,
14 IT IS. I'M AN ATTORNEY.

15 THE COURT: MA'AM?

16 JUROR NUMBER 190, CHERYL L. BOTWICK: I'M
17 AN ATTORNEY.

18 THE COURT: I SEE. I'M SORRY. THAT'S WHAT I
19 GET FOR COMING IN FROM OUT OF TOWN AND NOT KNOWING
20 THE BAR AND I APOLOGIZE.

21 MISS BOTWICK, WOULD THAT ASSOCIATION
22 MAKE IT DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL AS A
23 JUROR IN THE TRIAL OF A CASE IN WHICH MR. HOOD
24 REPRESENTS ONE SIDE.

25 JUROR NUMBER 190, CHERYL L. BOTWICK: I'M

1 NOT - I'M NOT SURE. I DON'T REALLY NOW.

2 THE COURT: WELL, LET ME PUT IT ANOTHER
3 WAY.

4 IF YOU'RE ASKED TO SERVE AS A JUROR IN
5 THIS CASE DO YOU THINK THAT YOUR DECISION IN THIS CASE
6 MIGHT BE INFLUENCED IN SOME WAY BE THE FACT THAT YOU
7 HAVE A PROFESSIONAL RELATIONSHIP WITH MR. HOOD?

8 JUROR NUMBER 190, CHERYL L. BOTWICK:
9 MIGHT BE. BECAUSE I'VE KNOW MR. HOOD FOR A LONG TIME.

10 THE COURT: I SEE.

11 WELL, WE'LL STAND YOU ASIDE AS A JUROR IN
12 THE TRIAL OF THIS CASE. WE, WE DON'T WANT TO PUT YOU IN A
13 POSITION TO MAKE YOU FEEL UNCOMFORTABLE AND,
14 OBVIOUSLY, WE NEED THE CERTAINTY, WHICH I'M SURE YOU
15 APPRECIATE.

16 SO WE WILL STAND ASIDE MISS BOTWICK,
17 NUMBER 190, IN THE TRIAL OF THIS CASE.

18 THANK YOU, MISS BOTWICK.

19 DON'T LEAVE US. STAY WITH US.

20 JUROR NUMBER 190, CHERYL L. BOTWICK:

21 THANK YOU.

22 THE COURT: WE MIGHT HAVE YOU IN
23 ANOTHER CASE.

24 YES, SIR, YOUR NAME, PLEASE, SIR.

25 JUROR NUMBER 74, JAMES D. JOHNSON:

1 JAMES JOHNSON.

2 THE COURT: MR. JOHNSON, TELL ME ABOUT
3 THE ASSOCIATION, PLEASE, SIR.

4 JUROR NUMBER JAMES D. JOHNSON: I'M
5 FAMILIAR WITH THE SOLICITOR AND THE, THE ATTORNEY.

6 THE COURT: BOTH OF THEM?

7 IS IT A PROFESSIONAL RELATIONSHIP?

8 I NOTICED YOU USED TO WRECK WITH THE
9 SHERIFF'S DEPARTMENT, IS THAT RIGHT?

10 JUROR NUMBER 74, JAMES D. JOHNSON: YES, I
11 DID.

12 THE COURT: WOULD THAT PRIOR
13 ASSOCIATION MAKE IT DIFFICULT FOR YOU TO BE FAIR AND
14 IMPARTIAL AS A JUROR IN THIS PARTICULAR CASE IN WHICH THE
15 LAWYERS YOU KNOW AND HAVE SOME ACQUAINTANCE WITH
16 WORK ON BOTH SIDES OF THIS CASE?

17 JUROR NUMBER 74, JAMES D. JOHNSON: NO.

18 THE COURT: CAN YOU SET ASIDE THAT PRIOR
19 RELATIONSHIP AND DECIDE THIS CASE BASED ON JUST WHAT
20 YOU HEAR IN COURT?

21 JUROR NUMBER 74, JAMES D. JOHNSON: YES,
22 SIR.

23 THE COURT: WOULD YOU DO THAT, PLEASE,
24 SIR?

25 JUROR NUMBER 74, JAMES D. JOHNSON: YES,

1 SIR.

2 THE COURT: THANK YOU, MR. JOHNSON.

3 LADIES AND GENTLEMEN, I READ THE
4 INDICTMENT TO YOU, REMINDING YOU ONCE AGAIN THAT THE
5 INDICTMENT IS NOT EVIDENCE NOR IF IT PROOF OF THE
6 CHARGES IT CONTAINS. I READ IT TO YOU SO THAT YOU WOULD
7 KNOW WHAT THIS CASE IS ALL ABOUT, SO THAT YOU COULD TELL
8 ME IF YOU KNOW ANYTHING ABOUT THIS CASE; THAT IS, IF YOU
9 HAVE SEEN OR HEARD OR READ ANYTHING ABOUT THIS CASE OR
10 IF YOU HAVE ANY KNOWLEDGE ABOUT THIS CASE FROM ANY
11 SOURCE AT ALL WOULD YOU PLEASE STAND.

12 (NO RESPONSE.)

13 THE COURT: THANK YOU.

14 LADIES AND GENTLEMEN, YOU UNDERSTAND
15 THAT THE CHARGE IN THIS CASE IS THE CHARGE OF ARMED
16 ROBBERY. ARMED ROBBERY IS A CRIME OF PERSONAL
17 VIOLENCE. AND SO I NEED TO KNOW IF ANY OF YOU ALL OR ANY
18 MEMBERS OF YOUR IMMEDIATE FAMILY - THAT IS TO SAY YOUR
19 HOUSEHOLD - HAVE EVER HAD ANY CONNECTION WITH A CRIME
20 OF PERSONAL VIOLENCE.

21 NOW, CRIMES OF PERSONAL VIOLENCE ARE
22 CRIMES LIKE MURDER, MANSLAUGHTER, ASSAULT AND BATTERY
23 OF A HIGH AND AGGRAVATED NATURE AND ASSAULT AND
24 BATTERY WITH INTENT TO KILL. KIDNAPING, CRIMINAL SEXUAL
25 CONDUCT. THAT'S JUST SORT OF A GENERALIZATION OF THE

1 TYPES OF CRIMES THAT COME UNDER THE UMBRELLA OF
2 CRIMES OF PERSONAL VIOLENCE.

3 SO I NEED TO KNOW IF YOU OR ANY FAMILY
4 MEMBER - WHEN I SAY FAMILY MEMBER, I MEAN HOUSEHOLD
5 MEMBER - HAVE ANY ASSOCIATION WITH ANY CRIME OF
6 PERSONAL VIOLENCE.

7 FIRST OF ALL, THE QUESTION APPLIES NOT
8 ONLY TO YOU, IT APPLIES TO ANY MEMBERS OF YOUR
9 HOUSEHOLD. AND SECONDLY, IT APPLIES NOT ONLY TO THE
10 CRIME OF ARMED ROBBERY, AS THE CRIME CHARGED IN THIS
11 PARTICULAR INDICTMENT, BUT ANY OTHER CRIME OF PERSONAL
12 VIOLENCE AS I'VE DESCRIBED THAT TO YOU.

13 AND, FINALLY, THE QUESTION APPLIES TO A
14 WIDE RANGE OF POSSIBLE INVOLVEMENT WITH THAT TYPE OF
15 CRIME. YOU OR YOUR FAMILY MEMBER COULD'VE BEEN A VICTIM
16 OF A CRIME. YOU OR YOUR FAMILY MEMBER COULD'VE BEEN A
17 DEFENDANT IN THE CRIME. YOU OR YOUR FAMILY MEMBER
18 MIGHT'VE BEEN A WITNESS IN THE CRIME.

19 IF THAT QUESTION APPLIES TO YOU IN ANY
20 WAY WHATSOEVER, I WANT YOU TO STAND RIGHT NOW WHERE
21 YOU ARE AND LET ME GET YOUR NAME AND JUROR NUMBER AND
22 THEN I'LL BRING YOU DOWN INDIVIDUALLY AND ASK YOU ABOUT
23 YOUR SITUATION PRIVATELY HERE AT THE SIDEBAR.

24 IF THAT QUESTION APPLIES TO YOU WOULD
25 YOU PLEASE STAND.

1 MA'AM, YOU WERE STANDING A MINUTE AGO.
2 JUROR NUMBER 75 JULIA P. JOHNSON: YES.
3 THE COURT: YOUR NAME, PLEASE, MA'AM.
4 JUROR NUMBER 74, JULIA P. JOHNSON: I HAD A
5 SON --
6 THE COURT: NO, MA'AM. I, I JUST NEED YOUR
7 NAME RIGHT NOW AND I'LL GET YOU TO COME FORWARD; WE'LL
8 TALK PRIVATELY ABOUT YOUR SITUATION.
9 JUROR NUMBER 75, JULIA P. JOHNSON: OKAY.
10 MY NAME IS JULIA JOHNSON.
11 THE COURT: MISS JOHNSON. ALL RIGHT.
12 LET ME GET YOUR -- SEVENTY-FIVE.
13 MISS JOHNSON, WOULD YOU MIND COMING
14 AROUND, PLEASE. YOU'LL BE FIRST IN LINE, RIGHT AROUND
15 HERE. WHEN I START TALKING TO FOLKS IN JUST A MOMENT.
16 JUROR NUMBER 82, THOMAS H. LAULAND, III:
17 NUMBER 82.
18 THE COURT: MR. LAULAND, JUROR NUMBER
19 82.
20 ALL RIGHT.
21 MR. LAULAND, YOU'RE SECOND IN LINE,
22 PLEASE, SIR.
23 YES, SIR, YOUR NAME.
24 JUROR NUMBER 67, CLARK H. HUTTON, III:
25 JUROR NUMBER 67, CLARK HUTTON.

1 THE COURT: MR. HUTTON, YOU'RE NEXT IN
2 LINE, PLEASE, SIR.

3 YES, MA'AM, YOUR NAME, PLEASE.

4 JUROR NUMBER 114, MARY E. PIZZO: MARY
5 PIZZO.

6 THE COURT: DO YOU KNOW YOUR JUROR
7 NUMBER?

8 JUROR NUMBER 114, MARY E. PIZZO: ONE
9 FOURTEEN.

10 THE COURT: MISS PIZZO, YOU'RE ALREADY IN
11 LINE.

12 THANK YOU, MA'AM.

13 YES, SIR, YOUR NAME, PLEASE, SIR.

14 JUROR NUMBER 150, GARY H. UKSHE: ONE FIVE
15 OH.

16 THE COURT: THANK YOU.

17 MR. UKSHE, IS THAT RIGHT?

18 JUROR NUMBER 150, GARY H. UKSHE: RIGHT.

19 THE COURT: IF YOU'LL GET IN LINE NEXT,
20 PLEASE, SIR.

21 COUNSEL, IF YOU'D APPROACH, PLEASE.

22 THANK YOU.

23 (THE FOLLOWING TAKES PLACE IN THE
24 PRESENCE OF THE JURY VENIRE BUT OUT OF THE HEARING OF
25 THE JURY VENIRE.)

1 THE COURT: OKAY.

2 BAILIFF: JUROR NUMBER 75. SEVEN FIVE.

3 THE COURT: MISS JOHNSON, COME RIGHT
4 HERE, PLEASE. STAND RIGHT THERE. SPEAK SO SHE AND I BOTH
5 CAN HEAR YOU.

6 TELL ME ABOUT YOUR SITUATION, PLEASE,
7 MA'AM.

8 JUROR NUMBER 75, JULIA P. JOHNSON: MY SON
9 WAS INCARCERATED FOR TWENTY YEARS FOR BREAKING AND
10 ENTERING AND SEXUAL ASSAULT.

11 THE COURT: ALL RIGHT.

12 WAS THAT HERE IN —

13 JUROR NUMBER 75, JULIA P. JOHNSON:
14 BEAUFORT COUNTY COURT.

15 THE COURT: — BEAUFORT COUNTY?

16 JUROR NUMBER 75, JULIA P. JOHNSON: UH-HUH.

17 THE COURT: WHAT IS YOUR SON'S NAME,
18 PLEASE, MA'AM?

19 JUROR NUMBER 75, JULIA P. JOHNSON:
20 CARLOS SANTO PERRY (PHON.).

21 THE COURT: CARLOS SANTO PERRY. OKAY.

22 MISS JOHNSON, WOULD THE FACT THAT YOUR
23 SON HAS BEEN TRIED AND CONVICTED HERE IN THIS
24 COURTROOM FOR A CRIMINAL CHARGE, PROSECUTED BY THE
25 SAME SOLICITOR'S OFFICE, ALTHOUGH PERHAPS NOT BY MR.

1 KNIGHT, WOULD THAT MAKE IT DIFFICULT FOR YOU TO BE FAIR
2 AND IMPARTIAL AS A JUROR IN THIS TRIAL?

3 JUROR NUMBER 75, JULIA P. JOHNSON: NO.

4 THE COURT: WOULD YOU BE ABLE TO SET
5 ASIDE YOUR ASSOCIATION AND YOUR EXPERIENCE THROUGH
6 YOUR SON AND DECIDE THIS CASE BASED JUST ON WHAT YOU
7 WOULD HERE IN COURT?

8 JUROR NUMBER 75, JULIA P. JOHNSON: UH-HUH.

9 THE COURT: WILL YOU DO THAT, PLEASE,
10 MA'AM?

11 JUROR NUMBER 75, JULIA P. JOHNSON: YES.

12 THE COURT: THANK YOU, MA'AM.

13 GO BACK AND HAVE A SEAT.

14 BAILIFF: JUROR NUMBER 82. EIGHT TWO.

15 THE COURT: MR. LAULAND, TELL ME ABOUT
16 YOUR SITUATION, PLEASE, SIR.

17 JUROR NUMBER 82, THOMAS H. LAULAND, III:

18 BACK IN, I THINK IT WAS '71, I WAS WORKING IN AN ALL-NIGHT
19 GAS STATION IN COLUMBUS, OHIO. I WAS GOING TO SCHOOL.
20 AND IT GOT ROBBED AT GUNPOINT.

21 THE COURT: OKAY.

22 WAS ANYBODY EVER CAUGHT, CONVICTED?

23 JUROR NUMBER 82, THOMAS H. LAULAND, III:

24 THAT, I HAVE NO IDEA BECAUSE A COUPLE MONTHS LATER I LEFT
25 SCHOOL. CAME BACK TO BEAUFORT.

1 THE COURT: WOULD THAT SITUATION AND
2 THE FACT THAT YOU WERE A VICTIM IN A CRIME SIMILAR TO THE
3 ONE CONTAINED IN THIS INDICTMENT MAKE IT HARD FOR YOU TO
4 BE FAIR AND IMPARTIAL IN THIS TRIAL IF YOU —

5 JUROR NUMBER 82, THOMAS H. LAULAND, III: I
6 DON'T THINK SO BECAUSE I'D FORGOTTEN ABOUT IT TILL YOU
7 BROUGHT IT UP.

8 THE COURT: OKAY. ALL RIGHT.

9 WOULD YOU BE ABLE TO CONTINUE TO SET IT
10 ASIDE AND BASE YOUR DECISION IN THIS CASE JUST ON WHAT
11 YOU WOULD HEAR IN THE COURT WITHOUT REGARD TO THAT?

12 JUROR NUMBER 82, THOMAS H. LAULAND, III: I
13 THINK I COULD.

14 THE COURT: CAN YOU TELL ME THAT YOU
15 WILL?

16 JUROR NUMBER 82, THOMAS H. LAULAND, III:
17 YES, SIR.

18 THE COURT: ALL RIGHT, SIR. THANK YOU.
19 YOU CAN GO BACK AND HAVE A SEAT.

20 BAILIFF: JUROR NUMBER 67. SIX SEVEN.

21 THE COURT: MR. HUTTON, TELL ME ABOUT
22 YOUR SITUATION.

23 JUROR NUMBER CLARK H. HUTTON, III: COUPLE
24 OF INSTANCES. MY WIFE WAS MUGGED AT KNIFE-POINT. I
25 CONFRONTED A BURGLAR IN OUR HOUSE. I HAD TO FRIGHTEN

1 HIM BACK OUT A WINDOW. THIS ALL OCCURRED ABOUT THIRTY
2 YEARS AGO IN NEW YORK CITY.

3 THE COURT: IN NEW YORK. THANK
4 GOODNESS, IT DIDN'T HAPPEN IN BEAUFORT. NOT THE KIND OF
5 PLACE YOU'D WANT TO RETIRE TO, IF YOU'RE CONFRONTED LIKE
6 THAT.

7 WAS ANYBODY EVER CAUSE AND CONVICTED IN
8 THOSE CASES, MR. HUTTON.

9 JUROR NUMBER 67, CLARK H. HUTTON, III: NO.

10 THE COURT: WITH YOUR PRIOR EXPERIENCE
11 IN THAT REGARD MAKE IT DIFFICULT FOR YOU TO BE FAIR AND
12 IMPARTIAL AS A JUROR IN THIS TYPE OF CASE IF YOU WERE
13 ASKED TO SERVE?

14 JUROR NUMBER 67, CLARK H. HUTTON, III: I
15 DON'T THINK SO.

16 THE COURT: COULD YOU SET ASIDE THAT
17 EXPERIENCE AND THAT MEMORY THEN – WELL, NOT FORGET IT.
18 THAT'S NOT WHAT I MEAN.

19 SET ASIDE THAT EXPERIENCE AND DECIDE THIS
20 CASE BASED JUST ON WHAT YOU HEAR IN COURT?

21 JUROR NUMBER 67, CLARK H. HUTTON, III: I
22 BELIEVE SO.

23 THE COURT: WILL YOU DO THAT, PLEASE, SIR.

24 JUROR NUMBER 67, CLARK H. HUTTON, III: YES,
25 SIR.

1 THE COURT: THANK YOU, MR. HUTTON.

2 BAILIFF: JUROR NUMBER 114. ONE ONE FOUR.

3 THE COURT: MISS PIZZO, TELL ME ABOUT
4 YOUR SITUATION.

5 JUROR NUMBER 114, MARY E. PIZZO: IT WAS
6 BACK IN THE LATE '70'S. I GOT SEXUALLY ASSAULTED BY A
7 SCHIZOPHRENIC WHEN I WORKED FOR THE MENTAL HEALTH
8 SYSTEM.

9 THE COURT: WHERE WAS THAT?

10 JUROR NUMBER 114, MARY E. PIZZO: THIS WAS
11 IN ATASCADERO, CALIFORNIA.

12 THE COURT: OKAY. ALL RIGHT.

13 OBVIOUSLY SOMEBODY WAS CAUGHT AND
14 CONVICTED.

15 JUROR NUMBER 114, MARY E. PIZZO: YES, HE
16 WAS CONVICTED.

17 THE COURT: YES, MA'AM.

18 MISS PIZZO, WOULD THAT PRIOR EXPERIENCE,
19 AND EVEN THOUGH IT MAY HAVE BEEN SOME TIME AGO, WOULD
20 THAT MAKE IT DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL AS
21 A JUROR IN THIS CASE IF YOU WERE ASKED TO SERVE?

22 JUROR NUMBER MARY E. PIZZO: NOT THIS
23 CASE, NO.

24 THE COURT: YOU COULD SET THAT ASIDE FOR
25 THE PURPOSE OF REACHING YOUR DECISION IN THIS CASE AND

1 DECIDE IT BASED ON EVIDENCE YOU WOULD HEAR?

2 JUROR NUMBER 114, MARY E. PIZZO: UH-HUH.

3 THE COURT: AND YOU'LL DO THAT, PLEASE,

4 MA'AM?

5 JUROR NUMBER 114, MARY E. PIZZO: YES.

6 THE COURT: THANK YOU, MISS PIZZO.

7 BAILIFF: JUROR NUMBER 150. ONE FIVE ZERO.

8 THE COURT: TELL ME ABOUT YOUR SITUATION,

9 PLEASE, SIR.

10 JUROR NUMBER GARY H. UKSHE: WHEN I WAS

11 A YOUNG BOY I BROUGHT CHARGES AGAINST A CHILD MOLESTER.

12 HE LIVED IN THE SAME APARTMENT HOUSE.

13 THE COURT: WHERE WAS THAT? WHICH

14 STATE?

15 JUROR NUMBER 150 GARY H. UKSHE: NEW

16 YORK.

17 THE COURT: OKAY.

18 AND WAS HE PROSECUTED AND CONVICTED AS

19 A RESULT OF THAT?

20 JUROR NUMBER 150 GARY H. UKSHE: HE WAS

21 PROSECUTED BUT NOT CONVICTED.

22 THE COURT: I SEE.

23 WITH YOUR EXPERIENCE IN THAT REGARD,

24 WITH THAT PARTICULAR INSTANCE AND WITH THE JUSTICE

25 SYSTEM IN GENERAL, MAKE IT DIFFICULT FOR YOU TO BE FAIR

1 AND IMPARTIAL AS A JUROR IN THIS CASE IF YOU WERE TO
2 SERVE?

3 JUROR NUMBER 150, GARY H. UKSHE: NO, NO,
4 IT WOULD NOT.

5 THE COURT: YOU COULD SET ASIDE THAT AND
6 DECIDE THIS CASE JUST ON WHAT YOU HEAR IN COURT?

7 JUROR NUMBER 150, GARY H. UKSHE: YES?

8 THE COURT: AND YOU'LL DO THAT?

9 JUROR NUMBER 150, GARY H. UKSHE: UH-HUH.

10 THE COURT: THANK YOU, SIR.

11 (THE FOLLOWING TAKES IN THE PRESENCE OF
12 THE JURY VENIRE BUT OUT OF THE HEARING OF THE JURY
13 VENIRE.)

14 THE COURT: GENTLEMEN, ANY MOTIONS,
15 EXCEPTIONS TO ANY OF THOSE?

16 MR. KNIGHT: I HAVE NONE.

17 THE COURT: MR. HOOD.

18 MR. HOOD: NONE.

19 THE COURT: THANK YOU.

20 (END OF BENCH CONFERENCE.)

21 THE COURT: LADIES AND GENTLEMEN, THANK
22 YOU VERY MUCH FOR YOUR CORPORATION AND YOUR CANDOR,
23 SHARING THOSE EXPERIENCES WITH US. WE APPRECIATE THAT.
24 IT'S NECESSARY FOR OUR SYSTEM AND TO OUR SELECTION
25 PROCESS, AS YOU CAN WELL IMAGINE.

1 LADIES AND GENTLEMEN, ARE ANY OF YOU
2 ALL RELATED BY BLOOD OR MARRIAGE TO ANY MEMBER OF ANY
3 LAW ENFORCEMENT AGENCY? IF SO, PLEASE STAND.

4 YES, MA'AM, YOUR NAME, HERE, PLEASE,
5 MA'AM.

6 JUROR NUMBER 196, POLLY A. JACKSON:
7 POLLY JACKSON.

8 MY DAUGHTER'S A FEDERAL AGENT.

9 THE COURT: ALL RIGHT.

10 MS. JACKSON, DO YOU HAVE YOUR NUMBER?

11 I'M SORRY.

12 JUROR NUMBER 196, POLLY A. JACKSON: ONE
13 NINETY - ONE NINETY SIX.

14 THE COURT: THANK YOU.

15 AND YOU SAY YOUR DAUGHTER IS . . .

16 JUROR NUMBER 196 POLLY A. JACKSON: A
17 FEDERAL AGENT.

18 THE COURT: OKAY.

19 WE'RE GONE BE REAL GOOD TO YOU, MS.
20 JACKSON.

21 YES, MA'AM, AND YOUR NAME, PLEASE.

22 JUROR NUMBER 115, JOANNA P. PRANC: ONE
23 ONE FIVE. I'M JOANNA PRANC.

24 AND MY BROTHER IS A SECRET SERVICE
25 AGENT.

1 THE COURT: OKAY.

2 THANK YOU, MISS PRANC.

3 YES, MA'AM, ON THE AISLE. YOUR NAME,

4 PLEASE.

5 JUROR NUMBER 51, DELORES GURGANIOUS:

6 FIFTY-ONE. DELORES GURGANIOUS.

7 MY BROTHER-IN-LAW IS A DEPUTY SHERIFF.

8 THE COURT: OKAY.

9 THANK YOU.

10 YOUR NAME, IN THE BACK, PLEASE, MA'AM.

11 JUROR NUMBER 152, DAMARIS VALENTIN:

12 DAMARIS VALENTIN.

13 MY HUSBAND'S AN OFFICER OF BLUFFTON P.D.

14 THE COURT: ALL RIGHT.

15 YOUR NAME AGAIN, PLEASE.

16 JUROR NUMBER 152, DAMARIS VALENTIN:

17 DAMARIS VALENTIN.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MS. VALENTIN, YOUR HUSBAND WORKS FOR

20 WHAT AGENCY?

21 JUROR NUMBER 152, DAMARIS VALENTIN:

22 BLUFFTON PES

23 THE COURT: ALL RIGHT. THANK YOU.

24 YES, MA'AM, YOUR NAME, PLEASE.

25 JUROR NUMBER 187, JANET C. BETTS: JANET

1 BETTS.

2 I HAVE A BROTHER-IN-LAW THAT'S A POLICE

3 OFFICER.

4 ONE EIGHTY-SEVEN.

5 THE COURT: THANK YOU, MA'AM.

6 ONE EIGHTY-SEVEN.

7 ALL RIGHT.

8 YES, MA'AM, ON THE FRONT. YOUR NAME,

9 PLEASE.

10 JUROR NUMBER 177, ALICE M. WITTMANN:

11 ALICE WITTMANN.

12 I DON'T KNOW MY NUMBER.

13 THE COURT: THAT'S ALL RIGHT. I CAN FIND IT.

14 JUROR NUMBER 177, ALICE M. WITTMANN: ONE

15 SEVENTY-SEVEN.

16 THE COURT: THANK YOU.

17 JUROR NUMBER 177, ALICE M. WITTMANN: I

18 HAVE A STEPSON THAT'S A POLICE OFFICER WITH THE CITY OF

19 ROME, NEW YORK.

20 THE COURT: OKAY.

21 THANK YOU, MA'AM.

22 JUROR NUMBER 114, MARY E. PIZZO: ONE ONE

23 FOUR.

24 I HAVE A BROTHER-IN-LAW WHO'S A

25 MAGISTRATE JUDGE.

1 THE COURT: OKAY.

2 THANK YOU.

3 FOLKS, THOSE OF YOU WHO JUST STOOD,
4 WOULD THE FACT THAT YOU ARE RELATED TO A LAW
5 ENFORCEMENT OFFICER, ONE AGENCY OR ANOTHER, MAKE IT
6 DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL IN THE TRIAL A
7 CASE IN WHICH LAW ENFORCEMENT OFFICERS ARE GONNA BE
8 TESTIFYING? IF IT WOULD, WOULD YOU PLEASE STAND.

9 (NO RESPONSE.)

10 THE COURT: THANK YOU.

11 LADIES AND GENTLEMEN, ARE ANY OF YOU ALL
12 RELATED BY BLOOD OR BY MARRIAGE OR EMPLOYED YOURSELF
13 BY AN ATTORNEY GENERAL'S OFFICE, SOLICITOR'S OFFICE, ANY
14 PROSECUTING OFFICE, ANY PUBLIC DEFENDER'S OFFICE; STATE,
15 LOCAL OR FEDERAL? IF SO, PLEASE STAND.

16 (NO RESPONSE.)

17 THE COURT: HAVE ANY OF YOU – IF HAVEN'T
18 ALREADY ENCOMPASSED THIS QUESTION IN OTHER QUESTIONS,
19 HAVE ANY OF YOU EVER BEEN EMPLOYED BY ANY CIVILIAN OR
20 MILITARY LAW ENFORCEMENT AGENCY YOURSELF? IF SO,
21 PLEASE STAND.

22 YES, MA'AM, YOUR NAME, PLEASE.

23 JUROR NUMBER 124, JUDITH S. RICHTER:

24 RICHTER, JUDITH RICHTER. ONE TWENTY-FOUR, I BELIEVE.

25 THE COURT: ALL RIGHT.

1 JUROR NUMBER 124, JUDITH S. RICHTER: I WAS
2 A PROBATION AGENT IN PRINCE GEORGE COUNTY, MARYLAND.
3 MANY YEARS AGO.

4 THE COURT: ALL RIGHT.

5 MS. RICHTER IS IT?

6 JUROR NUMBER 124, JUDITH S. RICHTER: YES.

7 THE COURT: THANK YOU, MA'AM.

8 ALL RIGHT.

9 MISS RICHTER, WOULD THAT MAKE IT
10 DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL IN THIS CASE?

11 JUROR NUMBER 124, JUDITH S. RICHTER: NO.

12 THE COURT: THANK YOU.

13 YES, SIR.

14 I HAVE ALREADY INQUIRED ABOUT MR.
15 JOHNSON, IS IT?

16 MR. JOHNSON HIMSELF IS EMPLOYED – WAS A
17 RETIRED SHERIFF'S DEPUTY.

18 I THINK HE'S ALREADY ANSWERED THE
19 QUESTIONS SUFFICIENTLY.

20 THANK YOU, SIR.

21 LADIES AND GENTLEMEN, HAVE ANY OF YOU
22 FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR THE
23 INNOCENCE OF THE DEFENDANT MR. BOWERS? IF SO, PLEASE
24 STAND.

25 (NO RESPONSE.)

1 THE COURT: ARE ANY OF YOU AWARE OF,
2 THAT IS TO SAY, CONSCIENCE OF ANY BIAS OR PREJUDICE THAT
3 YOU MIGHT HAVE FOR OR AGAINST THE STATE OR FOR OR
4 AGAINST THE DEFENDANT IN THIS CASE? IF YOU ARE SO AWARE,
5 WOULD YOU PLEASE STAND.

6 (NO RESPONSE.)

7 THE COURT: DO ANY OF YOU, THEN, KNOW OF
8 ANY REASON OF ANY KIND ATOLL THAT WOULD KEEP YOU FROM
9 SERVING FAIRLY AND IMPARTIALLY AS A JUROR IN THIS CASE? IF
10 YOU KNOW OF ANY SUCH REASON WOULD YOU PLEASE STAND.

11 (NO RESPONSE.)

12 THANK YOU.

13 MR. KNIGHT, ANY FURTHER QUESTIONS FROM
14 THE STATE?

15 MR. KNIGHT: NONE FROM THE STATE, YOUR
16 HONOR.

17 THE COURT: MR. HOOD, OTHER THAN THE
18 PREVIOUSLY NOTED ON THE VOIR DIRE, WHICH WILL BE MADE A
19 COURT RECORD, ANY ADDITIONAL QUESTIONS FROM THE
20 DEFENSE?

21 MR. HOOD: NO.

22 THE COURT: THANK YOU.

23 (DEFENDANT'S REQUESTED VOIR DIRE MARKED
24 AS COURT'S EXHIBIT 1.)

25 THE COURT: MADAME CLERK, YOU CAN GIVE

1 US A JURY. THE STRIKES WILL BE FIVE FOR THE STATE, TEN FOR
2 THE DEFENSE. WE WILL SELECT TWO ALTERNATES FOR THIS
3 TRIAL. STRIKES WILL BE ONE FOR THE STATE, TWO FOR THE
4 DEFENSE AS TO EACH ALTERNATE.

5 CLERK OF COURT: LADIES AND GENTLEMEN,
6 WHEN I CALL YOUR NAME AND NUMBER, PLEASE COME AND
7 STAND RIGHT OVER HERE. IN THE FRONT.

8 NUMBER 7, TERRY COHEN.

9 WHAT SAYS THE STATE?

10 MR. KNIGHT: PRESENT THE JUROR.

11 CLERK OF COURT: WHAT SAYS THE
12 DEFENSE??

13 MR. HOOD: SEAT THE JUROR.

14 CLERK OF COURT: NUMBER 24, TIMOTHY
15 CIEPLOWSKI.

16 WHAT SAYS THE STATE?

17 MR. KNIGHT: PRESENT THE JUROR.

18 CLERK OF COURT: WHAT SAYS DEFENSE?

19 MR. HOOD: PLEASE EXCUSE THE JUROR FROM
20 THE TRIAL OF THIS CASE.

21 CLERK OF COURT: NUMBER 194, KYLEEN
22 THOMAS.

23 WHAT SAYS THE STATE?

24 MR. KNIGHT: PRESENT THE JUROR.

25 CLERK OF COURT: WHAT SAYS DEFENSE?

1 MR. HOOD: PLEASE SEAT THE JUROR.

2 CLERK OF COURT: PLEASE HAVE A SEAT.

3 NUMBER 180, LINDA HARKER.

4 WHAT SAYS THE STATE?

5 MR. KNIGHT: PRESENT THE JUROR.

6 CLERK OF COURT: WHAT SAYS DEFENSE?

7 MR. HOOD: PLEASE SEAT THE JUROR.

8 CLERK OF COURT: NUMBER 188, LINDA

9 SHEVLIN.

10 WHAT SAYS THE STATE?

11 MR. KNIGHT: PRESENT THE JUROR.

12 CLERK OF COURT: WHAT SAYS DEFENSE?

13 MR. HOOD: PLEASE EXCUSE THE JUROR.

14 CLERK OF COURT: NUMBER 81, MARIANE

15 KRUSE.

16 WHAT SAYS THE STATE?

17 MR. KNIGHT: PRESENT THE JUROR.

18 CLERK OF COURT: WHAT SAYS DEFENSE?

19 MR. HOOD: PLEASE PRESENT THE JUROR.

20 CLERK OF COURT: NUMBER 42, MYRTLE

21 GARVIN.

22 WHAT SAYS THE STATE?

23 MR. KNIGHT: PRESENT THE JUROR.

24 CLERK OF COURT: WHAT SAYS DEFENSE?

25 MR. HOOD: PLEASE SEAT THE JUROR.

1 CLERK OF COURT: NUMBER 155, DONALD
2 VEITCH.

3 WHAT SAYS THE STATE?

4 MR. KNIGHT: PRESENT THE JUROR

5 CLERK OF COURT: WHAT SAYS DEFENSE?

6 MR. HOOD: PLEASE EXCUSE THE JUROR.

7 CLERK OF COURT: NUMBER 8, SANDRA

8 BRABHAM.

9 WHAT SAYS THE STATE?

10 MR. KNIGHT: EXCUSE THE JUROR FROM THE
11 TRIAL OF THIS CASE.

12 CLERK OF COURT: NUMBER 199, RICHARDEAN
13 HODGE.

14 WHAT SAYS THE STATE?

15 MR. KNIGHT: PRESENT THE JUROR.

16 CLERK OF COURT: WHAT SAYS DEFENSE?

17 MR. HOOD: PLEASE SEAT THE JUROR.

18 CLERK OF COURT: NUMBER 109, TIMOTHY

19 OLANDER.

20 WHAT SAYS THE STATE?

21 MR. JOHNSON: PRESENT THE JUROR.

22 CLERK OF COURT: WHAT SAYS DEFENSE?

23 MR. HOOD: PLEASE EXCUSE THE JUROR.

24 CLERK OF COURT: NUMBER 150, GARY UKSHE.

25 WHAT SAYS THE STATE?

1 MR. KNIGHT: PRESENT THE JUROR.

2 CLERK OF COURT: WHAT SAYS DEFENSE?

3 MR. HOOD: PLEASE EXCUSE THE JUROR.

4 CLERK OF COURT: NUMBER 185, CANDACE

5 UMBARGER.

6 WHAT SAYS THE STATE?

7 MR. KNIGHT: PRESENT THE JUROR.

8 CLERK OF COURT: WHAT SAYS DEFENSE?

9 MR. HOOD: PLEASE SEAT THE JUROR.

10 CLERK OF COURT: NUMBER 74, JAMES

11 JOHNSON.

12 WHAT SAYS THE STATE?

13 MR. KNIGHT: PRESENT THE JUROR.

14 CLERK OF COURT: WHAT SAYS DEFENSE?

15 MR. HOOD: PLEASE EXCUSE THE JUROR.

16 CLERK OF COURT: NUMBER 54, CONNIE

17 HAMILTON.

18 WHAT SAYS THE STATE?

19 MR. KNIGHT: PLEASE EXCUSE THE JUROR

20 FROM THE TRIAL OF THIS CASE.

21 CLERK OF COURT: NUMBER 133, VICTOR

22 SCARPELLO.

23 WHAT SAYS THE STATE?

24 MR. KNIGHT: PRESENT THE JUROR.

25 CLERK OF COURT: WHAT SAYS DEFENSE?

1 MR. HOOD: PLEASE EXCUSE THE JUROR FROM
2 THE TRIAL OF THIS CASE.

3 CLERK OF COURT: NUMBER 144, JOHN STIENE.

4 WHAT SAYS THE STATE?

5 MR. KNIGHT: PRESENT THE JUROR.

6 CLERK OF COURT: WHAT SAYS DEFENSE?

7 MR. HOOD: PLEASE SEAT THE JUROR.

8 CLERK OF COURT: NUMBER 5, B.O. BLACK.

9 WHAT SAYS THE STATE?

10 MR. KNIGHT: PRESENT THE JUROR.

11 CLERK OF COURT: WHAT SAYS DEFENSE?

12 MR. HOOD: PLEASE EXCUSE THE JUROR.

13 CLERK OF COURT: NUMBER 197, ALAN

14 SUTTON.

15 WHAT SAYS THE STATE?

16 MR. KNIGHT: PRESENT THE JUROR.

17 CLERK OF COURT: WHAT SAYS DEFENSE?

18 MR. HOOD: PLEASE SEAT THE JUROR.

19 CLERK OF COURT: NUMBER 114, MARY PIZZO.

20 WHAT SAYS THE STATE?

21 MR. KNIGHT: PRESENT THE JUROR.

22 CLERK OF COURT: WHAT SAYS DEFENSE?

23 MR. HOOD: PLEASE EXCUSE THE JUROR.

24 CLERK OF COURT: NUMBER 186, PATRICIA

25 LITTELL.

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WHAT SAYS THE STATE?

MR. KNIGHT: PRESENT THE JUROR.

CLERK OF COURT: WHAT SAYS DEFENSE?

MR. HOOD: PLEASE SEAT THE JUROR.

CLERK OF COURT: NUMBER 58, RUTH JETER.

HAUCK.

WHAT SAYS THE STATE?

MR. KNIGHT: PRESENT THE JUROR.

CLERK OF COURT: WHAT SAYS DEFENSE?

MR. HOOD: PLEASE SEAT THE JUROR.

THE COURT: SELECT TWO ALTERNATES,

MADAME CLERK. STRIKES WILL BE ONE FOR THE STATE AND
TWO FOR THE DEFENSE AS TO EACH OF THE TWO ALTERNATES.

CLERK OF COURT: NUMBER 64, RUTH HUFF.

WHAT SAYS THE STATE?

MR. KNIGHT: PRESENT THE JUROR

CLERK OF COURT: WHAT SAYS DEFENSE?

MR. HOOD: PLEASE SEAT THE JUROR.

CLERK OF COURT: NUMBER 198, ALAN

TRUDEAU.

WHAT SAYS THE STATE?

MR. KNIGHT: PRESENT THE JUROR.

CLERK OF COURT: WHAT SAYS DEFENSE?

MR. HOOD: PLEASE SEAT THE JUROR.

CLERK OF COURT: PLEASE HAVE A SEAT IN

1 THE JURY BOX.

2 THE COURT: MR. KNIGHT, ARE THERE ANY
3 MATTERS OF LAW REGARDING THE JURY SELECTION PROCESS
4 FROM THE STATE?

5 MR. KNIGHT: NONE FROM THE STATE, YOUR
6 HONOR.

7 THE COURT: THANK YOU.

8 MR. HOOD, FROM THE DEFENSE?

9 MR. HOOD: NONE, YOUR HONOR.

10 THE COURT: THANK YOU.

11 (THE REMAINING JURY VENIRE WAS
12 DISMISSED.)

13 (THE FOLLOWING TAKES PLACE OUTSIDE THE
14 PRESENCE OF THE JURY.)

15 THE COURT: ALL RIGHT, FOLKS.

16 WE'VE GOT SOME PRELIMINARY MATTERS. I
17 UNDERSTAND THAT THERE ARE – THERE'S A MOTION TO
18 SUPPRESS AND A MOTION UNDER – FOR IDENTIFICATION UNDER
19 NEAL VERSUS BIGGERS. LET'S DEAL WITH THOSE MATTERS, IF
20 WE – IF WE CAN.

21 MR. HOOD, I TAKE IT YOU'RE THE MOVING
22 PARTY IN BOTH OF THOSE INSTANCES, IS THAT RIGHT?

23 MR. HOOD: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. KNIGHT, ON THE IDENTIFICATION ISSUE, DO

1 WE HAVE ALL THE PEOPLE IN THE COURT THAT YOU NEED TO
2 DEAL WITH THAT?

3 MR. KNIGHT: YES, SIR.

4 THE COURT: ALL RIGHT.

5 MR. HOOD, YOU READY TO GO FORWARD ON
6 THAT MATTER?

7
8 MR. HOOD: I AM, YOUR HONOR.

9 THE COURT: ALL RIGHT, SIR.

10 DO WE NEED TO PUT ANYTHING ON THE
11 RECORD AS A MATTER OF LAW BEFORE WE ACTUALLY BEGIN THE
12 TESTIMONY IN THAT REGARD?

13 MR. HOOD: NOT THAT I'M AWARE, YOUR
14 HONOR.

15 THE COURT: OKAY.

16 MR. HOOD: YOUR HONOR, THERE, THERE WAS
17 A MOTION ALSO TO SUPPRESS CERTAIN EVIDENCE THAT WAS
18 TAKEN.

19 THE COURT: YES, SIR.

20 MR. HOOD: I THINK WE COULD PROBABLY
21 TAKE UP THE - BOTH OF THOSE ISSUES AT, AT THE SAME TIME
22 WE DO THE IDENTIFICATION, IF MR. KNIGHT WANTS TO DO IT
23 THAT WAY.

24 THE COURT: OKAY.

25 MR. HOOD: CONSIDERING IT'S PROBABLY

1 GONE BE SEVERAL OF THE SAME WITNESSES.

2 THE COURT: I UNDERSTAND.

3 OKAY.

4 HAVE A PROBLEM WITH THAT, MR. KNIGHT?

5 MR. KNIGHT: NO, SIR.

6 I'VE GOT THE ID ISSUE HERE. I'VE GOT THE
7 WITNESS ON THE SUPPRESSION OF THE EVIDENCE HERE. AND
8 I'VE GOT THE VICTIM HERE SO I THINK - WHICH ONE DO YOU
9 WANT TO DO FIRST?

10 THE COURT: LET'S DO THE ID ISSUE FIRST AND
11 THEN IF YOU'VE GOT AN ID WITNESS ON THE STAND WHO
12 HAPPENS TO BE INVOLVED WITH SUPPRESSION ISSUE, WE
13 CAN - WE CAN DEAL WITH THAT AT THE SAME TIME, IS THAT
14 OKAY?

15 ALL RIGHT.

16 ALL RIGHT, MR. KNIGHT.

17 MR. KNIGHT: CALL CLARE ROBESON.

18 THE COURT: MS. ROBESON. COME AROUND,
19 PLEASE, MA'AM, AND BE SWORN.

20 CLARE ROBESON,

21 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

22 EXAMINATION BY MR. KNIGHT:

23 Q. MISS ROBESON, CAN YOU HEAR ME?

24 A. YES.

25 MR. KNIGHT: THAT GOOD? THAT TURNED ON?

1 Q. MISS ROBESON, WERE YOU THE VICTIM OF AN ARMED
2 ROBBERY ON NOVEMBER 1 OF 2003? IN THE PARKING LOT OF
3 THE BOUNDARY STREET – BROAD RIVER SEAFOOD HERE IN THE
4 CITY OF BEAUFORT AND THE COUNTY OF BEAUFORT?

5 A. YES.

6 Q. AND WAS THAT APPROXIMATELY 1:30 IN THE MORNING
7 HOURS?

8 A. YES.

9 Q. DID YOU GIVE A DESCRIPTION OF THE PERSON THAT ROBBED
10 YOU TO LAW ENFORCEMENT?

11 A. YES, I DID.

12 Q. YOU RECALL THAT DESCRIPTION, PLEASE, MA'AM?

13 A. TELL YOU IT?

14 Q. YES, PLEASE.

15 A. SAID A BLACK MALE AROUND FIVE FOOT FIVE INCHES. HE HAD
16 SALT AND PEPPER HAIR COLOR, SCRAGGLY BEARD, AS WELL.
17 AND SCRAGGLY HAIR.

18 HE HAD A PLAID JACKET OR A SHIRT ON AND HE
19 HAD LIGHT, LIKE A KHAKI-COLORED PANTS ON.

20 Q. HOW WAS THE LIGHTING OUT THERE THAT NIGHT?

21 A. IT WAS VERY GOOD.

22 Q. VERY GOOD. OKAY.

23 WHAT WAS THE DISTANCE BETWEEN YOU AND
24 THE PERSON THAT ROBBED YOU WITH THE KNIFE?

25 A. A FEW INCHES.

1 MR. KNIGHT: WITH THE COURT'S PERMISSION,
2 COULD SHE STAND DOWN?

3 THE COURT: SURE.

4 MS. - IS IT ROBESON?

5 A. YES.

6 THE COURT: I'M SORRY.

7 MS. ROBESON, IF YOU'LL STAND DOWN,
8 PLEASE, MA'AM.

9 Q. COME AS CLOSE TO ME AS YOU WERE TO HIM.

10 THAT'S ABOUT THREE OR FOUR INCHES?

11 THE COURT: RIGHT. WELL, RIGHT.

12 OKAY.

13 Q. WHERE DID THE PERSON THAT ROBBED YOU POINT THE
14 KNIFE AT, AT YOU?

15 A. IN MY RIBS.

16 Q. WERE YOU LOOKING AT HIM IN HIS FACE?

17 A. YES.

18 Q. I'M SORRY?

19 A. YES.

20 Q. OKAY.

21 WAS ANYTHING OBSTRUCTING YOUR VIEW?

22 A. NO.

23 Q. APPROXIMATELY HOW LONG WAS THIS PERSON THAT
24 ROBBED YOU STANDING IN FRONT OF YOU WITH THIS KNIFE?
25 APPROXIMATELY?

1 A. (NO RESPONSE.)

2 Q. IF YOU CAN'T SAY, JUST . . .

3 A. I'M NOT SURE.

4 Q. OKAY.

5 I NOTICE THAT YOU'RE WEARING GLASSES
6 TODAY. WERE YOU WEARING GLASSES ON NOVEMBER 1 OF 2003,
7 AT ABOUT 1:30 IN THE MORNING?

8 A. YES, I WAS.

9 Q. HAD YOU HAD ANYTHING TO DRINK EARLIER THAT EVENING?

10 A. YES, I DID.

11 Q. YOU RECALL HOW MUCH YOU HAD TO DRINK?

12 A. YES. I HAD A GLASS OF WINE WITH DINNER. IT WAS AROUND
13 EIGHT A.M. IN THE EVENING.

14 THE COURT: A.M? P.M?

15 A. OH, P.M. SORRY. IT WAS P.M.

16 AND I HAD ONE BEER. ABOUT AN HOUR AND A
17 HALF BEFORE. AN HOUR – AN HOUR AND A HALF, TWO HOURS
18 BEFORE THAT.

19 Q. LATER THAT EVENING, I SHOULD SAY EARLY MORNING, WERE
20 YOU CALLED BY THE POLICE TO COME BACK AND LOOK AT AN
21 INDIVIDUAL?

22 A. YES.

23 Q. YOU RECALL APPROXIMATELY HOW LONG IT WAS?

24 A. NOT QUITE AN HOUR, I BELIEVE.

25 Q. FROM THE TIME OF THE ROBBERY?

1 A. YES.

2 Q. AND DID THE POLICE SUGGEST TO YOU ANYTHING?

3 A. NO.

4 Q. DID THE POLICE BRING THE INDIVIDUAL OUT OF THE VEHICLE?

5 A. YES.

6 Q. AND DID YOU IDENTIFY THE VEHICLE? I MEAN THE
7 INDIVIDUAL?

8 A. YES.

9 Q. WERE YOU POSITIVE THAT WAS THE PERSON THAT ROBBED
10 YOU?

11 A. YES.

12 Q. WAS HE WEARING THE SAME CLOTHES, APPROXIMATELY,
13 WHEN HE ROBBED YOU?

14 A. YES.

15 Q. IS THAT PERSON IN THE COURTROOM TODAY?

16 A. YES.

17 Q. WOULD YOU POINT HIM OUT FOR THE JUDGE, PLEASE?

18 A. IT'S THE DEFENDANT.

19 MR. KNIGHT: THE DEFENDANT. OKAY.

20 YOUR HONOR, I AS TO THIS WITNESS ON THIS
21 ISSUE, I THINK WE'VE COVERED IT ALL.

22 THE COURT: ALL RIGHT. THANK YOU.

23 MR. HOOD, YOU CAN CROSS-EXAMINE.

24 EXAMINATION BY MR. HOOD:

25 Q. NOW, MISS ROBESON, WHAT TIME DID YOU ARRIVE AT, AT

1 COCONUTS?

2 A. AROUND 11:30.

3 Q. AROUND 11:30?

4 ARE YOU SURE OF THE TIME?

5 A. PRETTY SURE.

6 Q. WHAT WERE YOU DOING PRIOR TO ARRIVING AT 11:30?

7 A. EARLIER IN THE EVENING I'D TAKEN YOU DAUGHTER - MY
8 FRIEND AND I TOOK OUR DAUGHTERS TRICK-OR-TREATING. THEN
9 WE WENT TO DINNER AT OUTBACK. AND WENT BACK TO MY
10 FRIEND CHRISTEN'S (PHON.) HOUSE. AND THEN WE WENT TO
11 COCONUTS LATER THAT EVENING.

12 Q. WELL, DID SHE GO TO COCONUTS WITH YOU?

13 A. YES, SIR.

14 Q. AND WHEN YOU PARKED IN THE PARKING LOT OF, OF WHERE?

15 A. THE - THERE'S A CATERING BUSINESS. OR A SEAFOOD
16 RESTAURANT PLACE. AND I WAS PARKED NEXT DOOR TO THAT.

17 Q. AND SHE WAS WITH YOU, IS THAT CORRECT?

18 A. NO. SHE DROVE HER CAR; I DROVE MY CAR.

19 Q. OH, SO YOU WERE IN SEPARATE CARS?

20 A. YES, SIR.

21 Q. OKAY. OKAY.

22 AND YOU THINK YOU GOT THERE AROUND

23 11:30, IS THAT CORRECT?

24 A. YES.

25 Q. AND YOU WENT INSIDE THE BAR, IS THAT CORRECT?

1 A. YES.

2 Q. AND YOU INDICATED YOU HAD WHAT TO DRINK THERE?

3 A. I HAD A BEER THERE.

4 Q. AND YOU'D HAD WINE WITH YOUR DINNER, IS THAT CORRECT?
5 AT OUTBACK?

6 A. A FEW HOURS BEFORE, YES.

7 Q. AND HOW MUCH WINE DID YOU DRINK AT OUTBACK?

8 A. I HAD ONE GLASS OF WINE.

9 Q. ONE GLASS?

10 NOW, YOU EXITED COCONUTS SOME TIME
11 AROUND 1:30, IS THAT CORRECT?

12 A. YES.

13 Q. AND WAS THERE ANYBODY WITH YOU WHEN YOU EXITED
14 COCONUTS?

15 A. NO.

16 Q. AND WHERE DID YOU GO?

17 A. I WENT DIRECTLY THROUGH ALL THE PARKING LOTS LEADING
18 TO THE ONE THAT I WAS PARKED IN.

19 Q. AND DID YOUR FRIEND GO WITH YOU, TOO?

20 A. NO, SHE STAYED IN COCONUTS.

21 Q. SHE STAYED IN COCONUTS?

22 A. YES.

23 Q. NOW, HAD YOU MET, MET SOME PEOPLE THERE IN
24 COCONUTS? WAS THAT THE REASON YOU WERE GOING TO
25 COCONUTS?

1 A. MY FRIEND JUST LIKES COCONUTS. AND I DON'T LIKE IT SO
2 WE DROVE SEPARATELY BECAUSE I KNEW I WOULD BE LEAVING.
3 BEFORE HER.

4 WE HAVE MET OTHER FRIENDS THERE AND
5 WHEN SHE MET OTHER FRIENDS I TOLD HER I WAS LEAVING. I
6 DIDN'T WANT TO LEAVE HER UNLESS, YOU KNOW, SHE KNEW
7 OTHER PEOPLE.

8 Q. SO SHE STAYED AND YOU LEFT, IS THAT CORRECT?

9 A. YES.

10 Q. OKAY.

11 NOW, YOU GET OUTSIDE AND THIS, THIS EVENT
12 OCCURS. AND DO YOU SEE THE DIRECTION IN WHICH THIS
13 PERSON GOES?

14 A. YES.

15 Q. NOW, IF YOU'RE STANDING IN THE PARKING LOT OF THIS
16 CATERING BUSINESS – I ASSUME THAT'S WHERE THIS OCCURRED
17 AT, IS THAT CORRECT?

18 A. IT'S A PARKING LOT REGARD NEXT TO THE CATERING
19 BUSINESS. I DON'T KNOW IF IT'S A REAL PARKING LOT. IT'S A
20 PARKING LOT.

21 Q. OKAY.

22 WHICH WAY DID THE INDIVIDUAL GO AFTER HE
23 DEPARTED?

24 A. HE WENT DIAGONALLY ACROSS THE STREET.

25 Q. DIAGONALLY ACROSS THE STREET.

1 NOW, HOW LONG DID YOU WATCH HIM AS HE –
2 AS HE WENT IN THAT DIRECTION?

3 A. UNTIL HE GOT TO THE OTHER SIDE OF THE HIGHWAY. AND
4 THEN I TOOK OFF RUNNING.

5 Q. YOU TOOK OFF RUNNING?

6 A. YES.

7 Q. AND WHERE DID YOU RUN TO?

8 A. TO THE NEXT PARKING LOT. WHERE I FOUND PEOPLE WITH A
9 CELL PHONE.

10 Q. AND THOSE PEOPLE WERE STANDING THERE AT THE TIME
11 THIS EVENT WAS TAKING PLACE WITH THE ROBBER?

12 A. YES.

13 Q. AND DID YOU HAVE A CONVERSATION WITH THOSE PEOPLE
14 THAT WERE STANDING THERE DURING THE COURSE OF THIS
15 ROBBERY?

16 A. NO. THEY WERE – THEY WERE NOT VERY CLOSE. THERE
17 IS – IT'S A LONG PARKING LOT. ALL THE WAY TO COCONUTS.

18 Q. BUT THEY COULD SEE YOU, IS THAT CORRECT?

19 A. NO.

20 Q. THEY COULDN'T SEE YOU?

21 A. NO.

22 Q. FROM WHERE THEY WERE AT IN THE PARKING LOT?

23 A. NO.

24 Q. WELL, HOW FAR WERE THEY FROM WHERE YOU WERE AT AT
25 THE TIME THIS EVENT TOOK PLACE?

1 A. THEY WERE IN THE COCONUTS PARKING LOT.

2 Q. YOU COULD SEE THEM?

3 A. NOT DURING THE ROBBERY, NO.

4 Q. YOU COULDN'T SEE THEM?

5 A. NO.

6 Q. SO YOU EXIT THE PLEA WHICH IS NEXT DOOR TO THE
7 RESTAURANT AND COCONUTS, CORRECT?

8 A. YES.

9 Q. YOU RUN OVER THERE AND WHAT DO YOU DO?

10 A. I ASKED THEM FOR A CELL PHONE. BECAUSE MY CELL PHONE
11 WAS IN THE PURSE THAT I HAD STOLEN.

12 Q. OKAY.

13 NOW, YOU CALLED 9-1-1, IS THAT CORRECT?

14 A. YES.

15 Q. OKAY.

16 AND WOULD YOU SAY THAT THE POLICE
17 ARRIVED WITHIN, SAY THREE MINUTES OR SO?

18 A. PROBABLY LESS THAN THAT. THEY WERE THERE VERY
19 QUICKLY.

20 Q. VERY QUICKLY?

21 A. YES.

22 Q. OKAY.

23 AND DID YOU NOTIFY THEM WHAT DIRECTION IN
24 INDIVIDUAL WHO HAS ACCOSTED YOU WENT IN?

25 A. YES.

1 Q. OKAY.

2 AND DID THEY GO IN THAT DIRECTION?

3 A. I'M NOT SURE. MY FRIEND CAME OUT AS SOON AS I GAVE A
4 DESCRIPTION OF THE PERSON WHO MUGGED ME. AND I TALKED
5 TO HER AFTER THAT.

6 Q. YOU TALKED TO WHO AFTER THAT?

7 A. MY FRIEND WHO CAME - WELL, I LEFT IN COCONUTS. SHE
8 CAME OUT OF THE BUILDING. I DID NOT WATCH THE POLICE
9 LEAVE.

10 Q. WERE YOU THERE - YOU SAID SOMETHING ABOUT THE
11 POLICE PICKING YOU UP OR SOMETHING. I MEAN YOU DIDN'T GO
12 HOME, DID YOU?

13 A. YES.

14 Q. YOU WENT HOME?

15 A. YES.

16 Q. WHEN DID YOU GO HOME? I MEAN AND HOW LONG - HOW
17 LONG DID YOU STAY THERE IN THE PARKING LOT OF COCONUTS?

18 A. NOT VERY LONG.

19 Q. AND DID THE POLICE TELL YOU TO GO AHEAD HOME?

20 A. THEY TOOK THE DESCRIPTION.

21 I'M NOT SURE IF THEY TOLD ME TO GO HOME.
22 MY FRIEND TOOK ME HOME WITH HER. SHE DROVE ME HOME.

23 Q. AND DID - HOW LONG AFTER YOU GOT HOME WAS IT THAT
24 YOU GOT THIS PHONE CALL?

25 A. NOT LONG BECAUSE I TALKED TO MY HUSBAND

1 AND – TWENTY MINUTES, MAYBE, IF EVEN.

2 Q. AND WHERE WAS YOUR HUSBAND LOCATED AT?

3 A. YOUR HOUSE.

4 Q. YOUR HOUSE?

5 A. YES.

6 Q. OKAY.

7 AND YOU THINK ABOUT AN HOUR LATER THE
8 POLICE CALLED, IS THAT CORRECT?

9 A. NO, LESS THAN AN HOUR BECAUSE WE WERE THERE – THEY
10 CALLED MAYBE TWENTY MINUTES AFTER I GOT HOME. WE WENT
11 BACK DOWNTOWN. TO – AND IDENTIFY THE MAN WHO MUGGED
12 ME.

13 Q. WELL, DID YOU DRIVE PHYSICALLY BACK DOWN TO THE AREA
14 OR DID THE POLICE PICK YOU UP OR WHAT?

15 A. MY HUSBAND DROVE ME.

16 Q. AND WHERE DID HE DRIVE YOU TO?

17 A. THE ENMARK STATION. ON RIBAUT – NO, BOUNDARY STREET,
18 SORRY. ON BOUNDARY STREET.

19 Q. ON BOUNDARY STREET?

20 A. UH-HUH.

21 Q. AND HAD YOU HAD AN CONVERSATION WITH ANY POLICE
22 OFFICERS PRIOR TO ARRIVING THERE?

23 A. NOT SINCE I GAVE A DESCRIPTION AT COCONUTS.

24 Q. WELL, HOW DO YOU KNOW TO GO TO THE ENMARK STATION?

25 A. THEY CALLED MY HUSBAND'S PHONE. I GAVE THEM MY

1 HUSBAND'S CELL PHONE NUMBER. AND THEY CALLED MY
2 HUSBAND'S CELL PHONE.

3 I WAS IN THE BATHROOM WHEN THEY CALLED.
4 A LITTLE UPSET SO I WAS IN THE BATHROOM. AND THEY CALLED
5 MY HUSBAND'S CELL PHONE, SAID THAT THEY HAD FOUND - THEY
6 BELIEVED THEY MIGHT'VE FOUND SOMEONE THAT FIT THE
7 DESCRIPTION AND FOR US TO COME DOWN AND CHECK.

8 Q. NOW, SO YOU DIDN'T HAVE ANY CONVERSATION WITH THE
9 POLICE AT ALL?

10 A. NO.

11 Q. SO YOUR HUSBAND TELLS THEY THINK THEY FOUND A
12 SUSPECT DOWNTOWN AND THEY WANT YOU TO COME DOWN
13 AND TAKE A LOOK AT HIM, IS THAT CORRECT? WEARING THE
14 SAME TYPE CLOTHES?

15 A. YES.

16 Q. THAT'S WHAT YOUR HUSBAND TELLS YOU, IS THAT CORRECT?

17 A. YES.

18 Q. THAT'S APPARENTLY WHAT THE POLICE HAD TOLD HIM, IS
19 THAT CORRECT?

20 A. YES.

21 Q. OKAY.

22 SO YOU RIDE DOWN TO THE ENMARK STATION .
23 AND WHEN YOU GET TO THE ENMARK STATION DO YOU KNOW
24 THAT YOU WERE GOING THERE TO LOOK AT THIS PERSON? IS
25 THAT CORRECT?

1 A. YES.

2 Q. OKAY.

3 AND WHEN YOU FIRST ARRIVED AT THE
4 ENMARK STATION DID YOU GET OUT OF THE VEHICLE?

5 A. WE SAT IN THE VEHICLE FOR A SECOND A POLICE OFFICER
6 CAME OVER, ASKED US TO GET OUT AND THEN WE GOT OUT.

7 Q. OKAY.

8 AND WHAT DID THEY TELL YOU TO DO?

9 A. THEY ASKED ME TO IDENTIFY THE MAN, IF IT WAS HIM OR NOT.

10 Q. AND THIS MAN THAT WE'RE TALKING ABOUT, WHERE DID YOU
11 FIRST SEE HIM AT WHEN YOU ARRIVED THERE AT THE ENMARK
12 STATION ?

13 A. THEY TOOK HIM OUT OF THE POLICE CAR A, A FEW FEET
14 AWAY. AND SHINED A BRIGHT LIGHT ON HIM.

15 Q. THEY SHINED A BRIGHT LIGHT ON HIM. WAS THAT THE
16 HEADLIGHTS OF A VEHICLE?

17 A. NO, SIR. IT WAS - I'M NOT SURE WHAT IT WAS. A BIG LIGHT
18 THING.

19 Q. A BIG LIGHT THING.

20 NOW, WAS HE STANDING IN - IN OTHER
21 WORDS, THEY TOOK HIM OUT OF THE BACK OF A PATROL - OF
22 A - OF A LAW ENFORCEMENT OFFICER'S CAR, IS THAT CORRECT?

23 A. YES.

24 Q. OKAY.

25 AND HE'S STANDING IN BETWEEN TWO

1 OFFICERS, IS THAT CORRECT?

2 A. YES.

3 Q. AND THEY'RE SHINING A LIGHT ON HIM, IS THAT CORRECT?

4 A. YES.

5 Q. AND THEY ASK YOU - AND, NOW, HOW FAR ARE YOU FROM
6 THIS PARTICULAR INDIVIDUAL AT THIS TIME?

7 A. I'M SURE.

8 Q. WELL, AS FAR AWAY AT YOU AND I NOW?

9 A. PROBABLY A LITTLE FARTHER BACK. NOT QUITE AS FAR
10 AWAY AS, AS THE BAILIFF. NOT QUITE THAT FAR AWAY.

11 Q. AS THE BELIEF? YOU MEAN THIS OFFICER STANDING —

12 A. UH-HUH.

13 OH, SORRY, THAT OFFICER.

14 Q. — IN THE BACK?

15 A. YES.

16 NOT, NOT QUITE THAT FAR AWAY. LITTLE
17 CLOSER THAN THAT.

18 Q. WELL, AS HE GETS UP THERE, YOU TELL HIM WHERE TO
19 STOP.

20 A. ABOUT THERE.

21 Q. THAT DISTANCE?

22 A. UH-HUH.

23 Q. OKAY.

24 SO YOU SEE THIS GUY. HE'S HANDCUFFED
25 BEHIND HIS BACK, IS THAT CORRECT?

1 A. I BELIEVE SO.

2 Q. OKAY.

3 NOW, YOU SAID YOU WERE UPSET, IS THAT
4 CORRECT?

5 A. YES.

6 Q. WERE YOU STILL UPSET AT THAT TIME?

7 A. AT THAT TIME I JUST REALLY WANTED MY MONEY BACK. I
8 WAS MORE UPSET ABOUT THAT.

9 Q. WELL, WERE YOU CONCERNED ABOUT YOUR MONEY OR
10 WHAT ELSE WERE YOU CONCERNED ABOUT?

11 A. WELL, EARLIER IN THE EVENING I WAS CONCERNED ABOUT
12 MY LIFE AND THEN WHEN I REALIZED THAT I HAD NO MONEY LEFT
13 AND NO CELL PHONE AND NO PURSE AND NO CREDIT CARDS,
14 THEN I WAS UPSET ABOUT THAT.

15 Q. OKAY.

16 SO THAT – THOSE WERE THE ONLY THINGS
17 THAT YOU WERE UPSET ABOUT?

18 A. AT THAT MOMENT, YES. I WAS HOPING THAT THEY HAD
19 FOUND MY STUFF BECAUSE I HAD TAKEN THE REST OF MY
20 MONEY OUT OF MY ACCOUNT THAT EVENING. AND WE HAD NONE
21 LEFT.

22 Q. YOU HAD TAKEN ALL OF THE MONEY OUT OF THE ACCOUNT,
23 IS THAT CORRECT?

24 A. MOST OF OUR MONEY, YES.

25 Q. NOW, I'M GONNA ASK YOU A QUESTION ABOUT THIS

1 IDENTIFICATION BUSINESS.

2 THE PERSON THAT YOU SAW GET OUT OF THE
3 BACK OF THE CAR, YOU WERE TOLD BY THE POLICE OFFICERS
4 THAT HE WAS A SUSPECT IN THIS PARTICULAR ARMED ROBBERY
5 OR MUGGING OF YOU THAT PARTICULAR NIGHT, IS THAT
6 CORRECT?

7 A. NO. THEY JUST SAID HE FIT THE DESCRIPTION.

8 Q. HE FIT THE DESCRIPTION.

9 A. THAT I GAVE THEM, YES.

10 Q. AND WHEN YOU LOOKED THERE AT THIS INDIVIDUAL, YOU
11 SAW THE, THE CLOTHING OF THE INDIVIDUAL, ISN'T THAT
12 CORRECT?

13 A. YES.

14 Q. AND IT MATCHED, IS THAT CORRECT?

15 A. YES.

16 Q. IN YOUR MIND, FROM WHAT YOU REMEMBERED, IS THAT
17 CORRECT?

18 A. NO, IT MATCHED.

19 Q. IT MATCHED.

20 BUT YOU DIDN'T IDENTIFY THE FACE AT ALL, DID
21 YOU?

22 A. YES, I DID.

23 Q. OH, YOU DID?

24 A. YES.

25 Q. FROM THAT DISTANCE?

1 A. YES, EASILY.

2 Q. EASILY.

3 AND HE HAS THAT SALT AND PEPPER HAIR AND
4 BEARD AT THAT TIME, IS THAT CORRECT?

5 A. YES.

6 Q. AND IT'S VERY DISTINCTIVE SALT AND PEPPER HAIR, ISN'T
7 THAT CORRECT?

8 A. IT WAS SCRAGGILY. HE DEFINITELY NEEDED A HAIRCUT.

9 Q. OKAY.

10 BUT IT WAS SALT AND PEPPER, YOU NOTICE
11 THAT RIGHT OFF THE BAT.

12 OKAY. NEVER MIND.

13 NOW, DID YOU HAVE ANYTHING ELSE IN YOUR
14 PURSE?

15 A. OH, YES, I DID.

16 Q. WHAT ELSE DID YOU HAVE IN YOUR PURSE?

17 A. I HAD -- A LIST OF EVERYTHING I HAD IN MY PURSE?

18 Q. WELL, YOU HAD SOME OTHER THINGS IN YOUR PURSE --

19 A. I HAD MY CELL PHONE, A DEBIT CARD, CREDIT CARDS,
20 WEDDING RINGS, CASH. MY VARIOUS JUST JUNK IN IT.

21 Q. HOW MUCH CASH DID YOU HAVE IN YOUR WALLET?

22 A. ABOUT A HUNDRED AND TWENTY DOLLARS.

23 Q. ABOUT A HUNDRED AND TWENTY DOLLARS?

24 A. UH-HUH.

25 Q. SO IT WAS LESS THAN A HUNDRED AND TWENTY DOLLARS, IS

1 THAT WHAT —

2 A. NO. I'M SAYING IT WAS A LITTLE MORE THAN A HUNDRED AND
3 TWENTY DOLLARS.

4 Q. MORE THAN A HUNDRED AND TWENTY DOLLARS?

5 A. GIVE OR — YES. THE CHANGE. AND I PROBABLY HAD SOME
6 DOLLAR BILLS IN THERE. MAYBE.

7 Q. NOW, HOW LONG DID YOU — HOW LONG DID THEY HAVE THIS
8 INDIVIDUAL OUTSIDE OF THE AUTOMOBILE SHINING THIS LENGTH
9 ON HIM?

10 A. COUPLE OF MINUTES.

11 Q. COUPLE OF MINUTES?

12 AND WHO DID YOU TALK TO SPECIFICALLY?

13 THE OFFICER THAT WAS INVOLVED IN THIS? DO YOU REMEMBER?

14 A. NO, I DON'T.

15 Q. WAS THERE MORE THAN ONE OFFICER THAT YOU SPOKE TO?

16 A. THERE WAS A COUPLE OF OFFICERS THERE.

17 Q. AND WHILE YOU WERE THERE DID ANYTHING OCCUR WITH
18 RESPECT TO ANY OF YOUR PROPERTY?

19 A. COULD YOU REPHRASE THAT?

20 Q. WELL, YOU CLAIM THAT YOU HAD SEVERAL ITEMS THAT WERE
21 TAKEN FROM YOU AS A PART OF YOUR POCKETBOOK, IS THAT
22 CORRECT?

23 A. YES.

24 Q. OKAY.

25 WHILE YOU WERE THERE DID YOU — WERE ANY

1 OF THOSE ITEMS RETURNED TO YOU?

2 A. YES.

3 Q. DID YOU IDENTIFY ANY ITEMS?

4 A. YES.

5 Q. OKAY.

6 NOW, WHAT ITEMS DID THEY GIVE BACK TO
7 YOU?

8 A. MY RINGS AND CASH.

9 Q. CASH?

10 A. UH-HUH.

11 Q. RINGS AND CASH.

12 AND YOU, YOU IDENTIFIED EACH ONE OF THOSE
13 ITEMS, IS THAT CORRECT?

14 A. YES. I DID FOR MY RINGS AND I HAD BEEN TO THE BANK
15 EARLIER. AND I HAD BRAND NEW TWENTY-DOLLAR BILLS. AND
16 THEY WERE ALL BRAND NEW TWENTY-DOLLAR BILLS.

17 Q. AND, AND DID - HAD YOU DONE ANYTHING TO THOSE
18 TWENTY-DOLLAR BILLS TO BE ABLE TO SHOW THAT THEY WERE
19 SOMEHOW UNIQUE TO THE ONES THAT YOU HAD?

20 A. NO, BUT IT WAS A YEAR AGO AND TWENTY-DOLLAR BILLS
21 WERE JUST NOW BECOMING - THE NEW TWENTIES WERE JUST
22 BECOMING POPULAR. IT WASN'T EVERY TIME YOU WENT TO THE
23 BANK THAT YOU GOT NEW TWENTIES.

24 Q. AND WERE THEY JUST ALL LAYING FLAT? WERE THEY
25 FOLDED? BENT?

1 A. THEY WERE - NO.

2 Q. HOW, HOW WERE THEY?

3 A. IN?

4 Q. WHEN YOU HAD THEM.

5 A. OH, WHEN I HAD THEM? THEY WERE FLAT, I SUPPOSE. THEY
6 WERE STILL - YEAH, THEY WERE FLAT.

7 Q. THEY WERE JUST FLAT ALL TOGETHER, IS THAT CORRECT?

8 A. YES.

9 Q. OKAY.

10 NOW, AFTER YOU GOT BACK THIS PROPERTY
11 DID YOU DEPART THE AREA?

12 A. YES.

13 Q. OKAY.

14 SO YOU GO BACK HOME, IS THAT CORRECT?

15 A. YES.

16 MR. HOOD: OKAY.

17 THAT'S ALL THE QUESTIONS THAT I HAVE.

18 THE COURT: THANK YOU.

19 REDIRECT, MR. KNIGHT?

20 MR. KNIGHT: NONE, YOUR HONOR.

21 THE COURT: THANK YOU.

22 MR. KNIGHT: COME DOWN, MISS —

23 THE COURT: YOU MAY STEP DOWN.

24 MR. KNIGHT: CALL RONALD VIDETTO.

25 THE COURT: MR. VIDETTO, COME FORWARD,

1 SIR.

2 CLERK OF COURT: PLACE YOUR LEFT HAND ON
3 THE BIBLE AND RAISE YOUR RIGHT HAND.

4 RONALD VIDETTO,
5 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

6 CLERK OF COURT: PLEASE BE SEATED. STATE
7 YOUR NAME AND SPELL IT FOR THE COURT.

8 A. RONALD VIDETTO. R-O-N-A-L-D V-I-D-E-T-T-O.

9 EXAMINATION BY MR. KNIGHT:

10 Q. MR. VIDETTO, OBVIOUSLY YOU'RE EMPLOYED WITH THE CITY
11 OF BEAUFORT POLICE DEPARTMENT?

12 A. YES, SIR.

13 Q. WERE YOU ON DUTY ON NOVEMBER 1, 2003, THE CITY OF
14 BEAUFORT?

15 A. YES, SIR.

16 Q. DID YOU RECEIVE A CALL TO GO TO THE ENMARK STATION ON
17 BOUNDARY STREET HERE IN THE CITY OF BEAUFORT?

18 A. YES, SIR.

19 Q. AND WHAT WAS THE PURPOSE OF YOU GOING THERE?

20 A. SERGEANT GRUEL HAS CALLED ME, ASKED ME FOR
21 ASSISTANCE TO MEET WITH THE VICTIM OF AN ARMED ROBBERY.
22 TO ASSIST HER IN IDENTIFICATION OF A POSSIBLE SUSPECT.

23 Q. AND DID YOU, IN FACT, DO THAT?

24 A. YES, I DID.

25 Q. AND WOULD YOU IDENTIFY THE VICTIM, PLEASE, SIR.

1 A. MISS ROBESON OR ROBESON.

2 Q. MISS ROBESON HERE?

3 A. YES, SIR.

4 Q. OKAY.

5 DID YOU BRING HER TO THE ENMARK STATION ?

6 A. NO, SIR.

7 Q. DID SHE ARRIVE AT THE ENMARK STATION:

8 A. SHE ARRIVED AT THE ENMARK, ENMARK STATION WITH HER
9 HUSBAND, DRIVING, I BELIEVE, A JEEP WRANGLER.

10 Q. OKAY.

11 AND WHAT DID YOU TELL MISS ROBESON?

12 A. I WALKED UP TO THE WRANGLER, ASKED HER TO STEP
13 OUTSIDE. ADVISE HER THAT WE HAVE A POSSIBLE SUSPECT, I
14 NEEDED HER TO MAKE AN IDENTIFICATION FOR ME. AT WHICH
15 TIME I CALLED SERGEANT GRUEL ON THE RADIO, ASKED HIM TO
16 BRING THE PERSON OUTSIDE OF THE POLICE VEHICLE. SO WE
17 CAN MAKE THE IDENTIFICATION.

18 I TOOK MY SPOTLIGHT, PUT IT ON THE
19 INDIVIDUAL AND ASKED HER IF SHE RECOGNIZED THE INDIVIDUAL.

20 Q. AND WHAT WAS HER RESPONSE?

21 A. SHE SAID, THAT'S HIM. IMMEDIATELY.

22 Q. IMMEDIATELY?

23 A. AS SOON AS I ASKED HER, SHE IMMEDIATELY SAID, THAT IS
24 HIM.

25 Q. OKAY.

1 WHAT WERE THE DIFFERENCE BETWEEN - THE
2 DISTANCE BETWEEN THE DEFENDANT AND MISS ROBESON AT
3 THE TIME YOU HAD THE SPOTLIGHT ON HIM?

4 A. SHE WAS PROBABLY MIDWAY BETWEEN BY MYSELF AND THE
5 BACK WALL, MIDWAY BETWEEN US HERE.

6 Q. ABOUT WHERE THE DEPUTY CAME AWHILE AGO?

7 A. YES, SIR.

8 Q. THAT BE FAIR?

9 A. YES, SIR.

10 Q. OKAY.

11 NOW, COCONUTS IS ON BOUNDARY STREET?

12 A. YES, SIR.

13 Q. DOES IT HAVE A PARKING LOT?

14 A. YES, SIR.

15 Q. NOW, WHAT IS THE BUSINESS ESTABLISHMENT NEXT TO
16 COCONUTS?

17 A. BROAD RIVER - BROAD RIVER SEAFOOD.

18 Q. AND DO THEY HAVE A PARKING LOT?

19 A. YES, SIR, THEY DO.

20 Q. OKAY.

21 SO THERE'S TWO PARKING LOTS?

22 A. YES, SIR.

23 MR. KNIGHT: THANK YOU, SIR. THAT'S ALL I

24 HAVE.

25 THE COURT: MR. HOOD. CROSS-EXAMINE.

1 EXAMINATION BY MR. HOOD:

2 Q. NOW, DID YOU EVER TAKE CUSTODY OF ANY TYPE OF ITEMS,
3 RINGS, MONEY OR ANYTHING OF THAT NATURE?

4 A. NO, SIR.

5 Q. SO YOU NEVER TOUCHED ANY —

6 A. NO, SIR.

7 Q. IS THAT CORRECT?

8 YOU JUST TOLD HER THAT YOU HAD A
9 POSSIBLE SUSPECT AND YOU WANTED TO SEE IF SHE COULD
10 IDENTIFY HIM, IS THAT CORRECT?

11 A. YES, SIR.

12 MR. HOOD: OKAY.

13 THAT'S ALL I HAVE.

14 THE COURT: ALL RIGHT.

15 MR. KNIGHT.

16 MR. KNIGHT: NO REDIRECT, YOUR HONOR.

17 MAY HE STAND DOWN AT THIS TIME?

18 THE COURT: YES, SIR.

19 MR. KNIGHT: YOUR HONOR, THOSE — THAT'S
20 THE TESTIMONY ON BEHALF OF THE STATE ON THE
21 IDENTIFICATION ISSUE.

22 THE COURT: ALL RIGHT. THANK YOU.

23 MR. HOOD.

24 MR. HOOD: YOUR HONOR, WITH RESPECT TO
25 THE IDENTIFICATION, FROM WHAT WE HAVE, WE HAVE A

1 SITUATION WHERE A WITNESS IN THIS CASE, THE VICTIM IN A
2 CASE HAS IDENTIFIED MY CLIENT STANDING OUTSIDE OF A
3 POLICE OFFICER'S CAR. APPROXIMATELY AN HOUR AFTER THIS
4 EVENT OCCURS, ACCORDING TO HER. AT A DISTANCE WHICH IS,
5 IN MY OPINION, EXTREMELY CONSIDERABLE UNDER THE
6 CIRCUMSTANCES.

7 IT IS DARK. APPARENTLY THEY SHINE A LIGHT
8 ON HIM A SPOTLIGHT, WHICH OBVIOUSLY PUT HIM IN THE FOCAL
9 POINT OF THIS. HE'S WEARING SIMILAR TYPE CLOTHING. BUT
10 IDENTIFIES HIM AS HAVING SALT AND PEPPER HAIR AND BEARD.

11 HE'S IN THE SAME CONDITION HE WAS IN
12 ABOUT A YEAR AGO WHEN THIS EVENT OCCURRED BUT IT SEEMS
13 PRETTY OBVIOUS TO ME THAT THE INDIVIDUAL DOES NOT HAVE
14 SALT AND PEPPER HAIR.

15 I THINK THAT WHAT WE HAVE IS A SITUATION
16 WHERE THE POSSIBLE SUSPECT – ONCE THE POLICE NOTIFY THE
17 VICTIM THAT WE HAVE A POSSIBLE SUSPECT WEARING THE SAME
18 TYPE OF CLOTHING – APPARENTLY SHE AND HER HUSBAND HAD
19 A CONVERSATION ABOUT THAT AS THEY'RE ARRIVING AT THIS
20 PARTICULAR AREA.

21 WE KNOW THAT IT'S NOT THE SAME LOCATION
22 THAT THE EVENT OCCURRED IN AND IT'S SOME DISTANCE FROM
23 THAT. WE KNOW THAT IT IS APPROXIMATELY AN HOUR
24 AFTERWARDS. WE KNOW THAT SHE IS STANDING AT A
25 CONSIDERABLE DISTANCE FROM THIS PARTICULAR INDIVIDUAL.

1 AND IT WOULD BE MY OPINION, BASED UPON
2 THE TOTALITY OF ALL OF THOSE CIRCUMSTANCES THAT,
3 BASICALLY, WHAT WE HAVE IS AN IDENTIFICATION OF CLOTHES.
4 AND A - YOU KNOW, WE HAVE THE POLICE OFFICERS TELLING
5 HER THAT WE HAVE A PERSON MATCHING THE DESCRIPTION.
6 SHE LOOKS AT THE DESCRIPTION; THE DESCRIPTION MATCHES
7 AND, LO AND BEHOLD, YOU HAVE AN IDENTIFICATION.

8 FROM THAT DISTANCE, BASED ON THE
9 INFORMATION THAT WE HAVE AND ON THE MISIDENTIFICATION OF
10 THE CLOSET FEATURES SUCH AS THE HAIR AND THINGS OF THAT
11 NATURE, IT SEEMS PRETTY, PRETTY OBVIOUS THAT ALL SHE DID
12 WAS IDENTIFY THE, THE CLOTHING AND OR STATUE OF THE
13 INDIVIDUAL AND THAT'S WAS BASICALLY IT. AND IT WASN'T A
14 FACIAL IDENTIFICATION AT ALL.

15 THE COURT: ALL RIGHT, SIR. THANK YOU.

16 MR. KNIGHT.

17 MR. KNIGHT: YOUR HONOR, I THINK YOU'VE
18 HEARD THE TESTIMONY. THE VICTIM HAD THE OPPORTUNITY TO
19 VIEW THE DEFENDANT AT THE TIME OF THE INCIDENT. WE'VE
20 HEARD ABOUT HER DEGREE OF ATTENTION AS HE WAS
21 STANDING THERE WITH A KNIFE, THE ACCURACY OF HER
22 DESCRIPTION OF THE DEFENDANT THAT SHE GAVE LAW
23 ENFORCEMENT AND THEN AN HOUR LATER MATCHED UP WITH
24 THE DESCRIPTION LAW ENFORCEMENT SHOWED HER.

25 ALSO ENMARK PARKING LOT, IT'S NOT IN THERE

1 BUT THEY HAVE LOTS OF LIGHTS, ALSO, AT THAT GAS STATION AT
2 NIGHT.

3 AND THEN HER LEVEL, LEVEL OF CERTAINTY
4 WHEN SHE SAID, THAT'S THE GUY, YOU KNOW, IT'S WHAT - WELL,
5 I'M NOT - SHE DIDN'T SAY, I THINK, MAYBE, COULD BE. AND EVEN
6 I THINK ON CROSS-EXAMINATION SHE SAID, NO, MR. HOOD,
7 IDENTIFIED HIM AS THE ONE, NOT ONLY WITH THE CLOTHING BUT
8 SHE SAID, THAT WAS IT, HE WAS THE FELLOW.

9 NOW, WE HAVE GOT APPROXIMATELY AN HOUR
10 AFTER THE TIME OF THE ROBBERY, I THINK FITS IN A
11 REASONABLE TIME FOR THIS SHOW-UP IDENTIFICATION.

12 THANK YOU, YOUR HONOR.

13 THE COURT: THANK YOU.

14 MR. HOOD, AS MOVING PARTY YOU HAVE LAST
15 WORDS.

16 MR. HOOD: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: THANK YOU.

18 THE TEST OF ADMISSIBILITY OF AN IN-COURT
19 IDENTIFICATION IS WHETHER OR NOT THE IN-COURT
20 IDENTIFICATION IS BASED ON A WITNESS' RECOLLECTION. OR IS
21 THE PRODUCT OF SOME SUGGESTION THAT'S BEEN INSTILLED
22 DURING THE COURSE OF PRETRIAL INVESTIGATION. AND THE
23 TRIAL COURT HAS TO BE CONVINCED THAT THE OUT-OF-COURT
24 IDENTIFICATION WAS NOT SO UNNECESSARILY SUGGESTIVE AND
25 CONDUCTIVE AS TO AN IRREPARABLE MISTAKEN IDENTITY THAT

1 DENIED DUE PROCESS TO THE DEFENDANT IN THIS CASE.

2 IN THIS PARTICULAR CASE, WHILE THE
3 METHODOLOGY INVOLVED IN THE, IN THE LINEUP SHOW-UP
4 ITSELF WAS SUGGESTIVE, OBVIOUSLY, THERE WAS NOBODY
5 ELSE THERE; HE WAS IN POLICE CUSTODY, HANDCUFFED, IN THE
6 CAR OF THE POLICE OFFICERS' THEN TAKEN OUT IN THE – IN THE
7 SPOTLIGHT, AS MR. HOOD HAS INDICATED, AND CLEARLY THERE
8 WAS A SUGGESTIVE – AN OBVIOUS SUGGESTIVE ELEMENT TO
9 THE – TO THE – TO THE SHOW-UP ITSELF; HOWEVER, THAT IN
10 AND OF ITSELF IS NOT DETERMINATIVE OF THE ISSUE.

11 RECENT CASE THAT JUST CAME DOWN A
12 COUPLE OF MONTHS AGO, STATE VERSUS TRAYLOR,
13 T-R-A-Y-L-O-R, DEALS WITH THIS ISSUE IN WHICH THE SUPREME
14 COURT REVERSED THE COURT OF APPEALS ON AN – ON AN ISSUE
15 IN WHICH THE POLICE OFFICERS IN THIS PARTICULAR CASE, OR A
16 POLICE OFFICER, HAD, HAD, SHOWN A MUG SHOT, CLEARLY
17 IDENTIFIED AS A MUG SHOT, TO NOT ONE BUT THREE VICTIMS ALL
18 IN THE SAME ROOM IN CLOSE PROXIMITY TO EACH OTHER. AND
19 THE SUPREME COURT IN THIS PARTICULAR CASE ADMONISHED
20 LAW ENFORCEMENT OFFICERS AND, AND THE STATE GENERALLY
21 FOR, FOR THAT SORT OF SUGGESTIVE NATURE BUT IT SAID THAT
22 THE INQUIRY DOES NOT STOP THERE.

23 BEYOND THAT, THERE HAS TO BE A QUESTION
24 AS TO WHETHER OR NOT THE, THE – IN THE TOTALITY OF THE
25 CIRCUMSTANCES THERE IS SUCH A – AN UNNECESSARY

1 SUGGESTION. AND, AND AN IRREPARABLE MISTAKEN IDENTITY
2 THAT RESULTS AS A RESULT OF THE, THE CONDUCTIVE NATURE
3 OF THE - OF THE SHOW-UP ITSELF.

4 AND SO WHEN WE LOOK AT THE TOTALITY OF
5 THE CIRCUMSTANCES WE EVALUATE THOSE ELEMENTS THAT WE
6 ALL ARE FAMILIAR WITH FROM, FROM PRIOR CASES. THE
7 OPPORTUNITY OF THE WITNESS TO VIEW THE CRIME AT THE TIME
8 OF THE CRIME. MS. ROBESON INDICATED HERE, WHEN SHE
9 STOOD DOWN, THAT SHE WAS - PRACTICALLY WITHIN ARM'S
10 LENGTH, CLOSE ENOUGH TO BE DANCING, OBVIOUSLY, ALMOST,
11 WITH THE - WITH THE INDIVIDUAL. HER DEGREE OF ATTENTION
12 OBVIOUSLY WAS FOCUSED ON HIM.

13 THE HEIGHT OF THE - OF THE DEFENDANT IS
14 NOT IN THE RECORD. MS. ROBESON STATED THAT HE WAS
15 ABOUT FIVE FEET FIVE, WHICH IS PROBABLY JUST A LITTLE BIT
16 TALLER THAN SHE IS. I WOULD IMAGINE THAT TO A CERTAIN
17 EXTENT SHE BASED HER, HER ESTIMATE OF HIS HEIGHT ON A
18 RELATION TO HER OWN.

19 I DON'T HAVE THAT TO GO ON EXCEPT THE
20 FACT THAT, THAT IF HE WAS FIVE FIVE AND SHE WOULD BE
21 ALMOST LOOKING EYE TO EYE WITH HIM UNDER THOSE
22 CIRCUMSTANCES.

23 THE LEVEL OF CERTAINTY WAS, WAS, WAS
24 CLEARLY A HIGH LEVEL OF CERTAINTY. THERE WAS NO DOUBT IN
25 HER MIND AS SHE IDENTIFIED HIM. SHE SAID THAT WAS HIM. ON

1 CROSS-EXAMINATION, WHEN MS. ROBESON WAS ASKED IF THE
2 CLOTHES WERE SIMILAR SHE SAID THEY WERE THE CLOTHES.
3 AND THAT HE WAS THE, THE PERSON.

4 THE LENGTH OF TIME BETWEEN THE CRIME
5 AND THE CONFRONTATION ITSELF, AN HOUR, IS NOT – IS NOT SO
6 LENGTHY IN MY VIEW AS TO TAINT THIS PROCESS OR TO
7 MAKE – TO MAKE IT QUESTIONABLE UNDER THE
8 CIRCUMSTANCES.

9 AND SO I FIND THAT THE – THAT THE
10 SUGGESTIVE NATURE OF THE SHOW-UP PROCESS ITSELF WAS
11 NOT SO UNNECESSARILY SUGGESTIVE AND CONDUCTIVE AS TO
12 IRREPARABLE MISTAKEN IDENTIFICATION THAT IT DENIED DUE
13 PROCESS AND THE MOTION, THEN, TO SUPPRESS THE IN-COURT
14 IDENTIFICATION OF THE DEFENDANT IS RESPECTFULLY DENIED.

15 ALL RIGHT.

16 LET'S NOW GO TO THE SUPPRESSION ISSUES.

17 MR. KNIGHT: THIS IS A COPY OF MR. HOOD'S
18 MOTION, YOUR HONOR.

19 CALL MICHAEL KING.

20 THE COURT: MR. KING. COME FORWARD,
21 PLEASE, AND BE SWORN.

22 MICHAEL KING,
23 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

24 CLERK OF COURT: STATE YOUR FULL NAME
25 AND SPELL IT FOR THE COURT, PLEASE.

1 A. MY NAME IS MICHAEL KING, M-I-C-H-A-E-L K-I-N-G.

2 EXAMINATION BY MR. KNIGHT:

3 Q. MR. KING, IT'S OBVIOUS THAT YOU WERE EMPLOYED WITH
4 THE POLICE DEPARTMENT WITH THE CITY OF BEAUFORT, IS THAT
5 CORRECT?

6 A. YES, SIR.

7 Q. WERE YOU ON DUTY ON OR ABOUT NOVEMBER 1, 2003, IN THE
8 CITY OF BEAUFORT ?

9 A. YES, SIR, I WAS.

10 Q. AND DID YOU RECEIVE A CALL CONCERNING AN ARMED
11 ROBBERY AT THE AREA OF COCONUTS?

12 A. YES, I DID.

13 Q. AND WHAT, IF ANYTHING, DID YOU DO ONCE YOU RECEIVED
14 THAT CALL?

15 A. I WENT STRAIGHT TO THE LOCATION TO LOCATE THE VICTIM. I
16 FOUND HER IN THE BROAD RIVER SEAFOOD PARKING LOT.

17 Q. AND WHAT WAS THE NEXT THING YOU DID? AFTER TAKING A
18 DESCRIPTION, OBVIOUSLY.

19 A. AFTER I ASKED FOR A DESCRIPTION I NEEDED TO TALK TO
20 HER TO GET PROPERTY - AND THERE WERE ALREADY OTHER
21 UNITS ON THE WAY - TO GET A DESCRIPTION OF WHAT MIGHT'VE
22 BEEN IN HER PURSE.

23 Q. WHAT PROPERTY DID SHE DESCRIBE TO YOU?

24 A. SHE TOLD ME SHE HAD SOME CASH, CELL PHONE, WEDDING
25 RING, VARIOUS OTHER PROPERTY.

1 Q. AND DID SHE GIVE YOU A DESCRIPTION, OBVIOUSLY, OF THE
2 DEFENDANT?

3 A. YES, SIR.

4 Q. AND HIS CLOTHING?

5 A. YES, SIR.

6 Q. OKAY.

7 AND WHAT WAS THE NEXT THING YOU DID
8 RELATIVE TO THIS ARMED ROBBERY INVESTIGATION?

9 A. NEXT THING I DID WAS PASS THE INFORMATION ON TO THE
10 OTHER OFFICERS THAT WERE LOOKING IN THE AREA FOR THE
11 SUSPECT.

12 Q. OKAY.

13 AND DID YOU, IN FACT, FIND THE SUSPECT?

14 A. AFTER WE HAD CLEARED FROM THAT SCENE I RECEIVED A
15 CALL FROM OFFICER KENNINGER SAYING HE SHOW SOMEONE
16 THAT FIT THE DESCRIPTION AND WHEN HE TURNED AROUND THE
17 SUBJECT RAN. IN THE AREA OF CAROLINA COVE. AND I
18 IMMEDIATELY WENT THAT DIRECTION.

19 Q. OKAY.

20 WHERE IS CAROLINA COVE AT?

21 A. RIGHT BEHIND THE ENMARK STATION YOU WERE TALKING
22 ABOUT EARLIER, ON BOUNDARY STREET.

23 Q. ON BOUNDARY STREET?

24 A. YES, SIR.

25 Q. OKAY.

25 HE'S SITTING RIGHT THERE, SIR.

1 Q. NEXT TO MR. HOOD?

2 A. YES, SIR.

3 Q. OKAY.

4 DID HE FIT THE DESCRIPTION THAT YOU HAD
5 RECEIVED FROM MISS ROBESON?

6 A. YES, SIR, HE DID.

7 Q. OKAY.

8 AND DID YOU FIND ANY OTHER ARTICLES
9 WHICH WERE A RESULT OF THIS ROBBERY IN THE AREA ?

10 A. YES, SIR.

11 Q. WHAT, IF ANYTHING, DID YOU FIND?

12 A. THERE WAS SOME - A STACK OF TWENTY-DOLLAR BILLS ON
13 THE GROUND. NEXT TO WHERE HE WAS PUT ON THE GROUND BY
14 OFFICER THOMSPON.

15 Q. OKAY.

16 AND DID YOU RECOVER THE - THAT MONEY?

17 A. NO, SIR.

18 Q. WHO RECOVERED IT?

19 A. I BELIEVE IT WAS SERGEANT OTT, AFTER PICTURES WERE
20 THINK.

21 Q. OKAY.

22 AT THIS POINT DID YOU PLACE THE DEFENDANT
23 UNDER ARREST?

24 A. YES, I DID.

25 Q. AND WHAT DID YOU PLACE HIM UNDER ARREST?

1 A. YES, I DID.

2 Q. AND WHAT DID YOU PLACE HIM UNDER ARREST FOR?

3 A. FOR ARMED ROBBERY, SIR.

4 Q. ARMED ROBBERY.

5 A. YES.

6 Q. BASED, BASED UPON WHAT?

7 A. BASED UPON THE DESCRIPTION AND THE PROPERTY, THE
8 MONEY ON THE GROUND.

9 Q. OKAY.

10 DID YOU SEARCH HIM INCIDENT TO THE
11 ARREST?

12 A. YES, SIR, I SEARCHED AND ALSO SERGEANT GRUEL
13 SEARCHED.

14 Q. WHAT, IF ANYTHING, DID YOU FIND ON HIM WHEN YOU
15 SEARCHED HIM?

16 A. ALL I PULLED OUT WAS - ONE POCKET WAS SOME RAGS.

17 Q. UH-HUH.

18 A. AND COUPLE LIGHTERS.

19 SERGEANT GRUEL FINISHED THE SEARCH.

20 MR. HOOD: THAT'S ALL I HAVE OF THIS

21 WITNESS.

22 THE COURT: THANK YOU.

23 MR. HOOD.

24 EXAMINATION BY MR. HOOD:

25 Q. AND THIS, THIS ARREST THAT YOU SUPPOSEDLY MADE WAS

1 PRIOR TO THIS VICTIM ARRIVING AND IDENTIFYING THIS PERSON?

2 A. YES, SIR, IT WAS.

3 Q. BUT YOU DIDN'T - YOU DIDN'T TAKE ANY ITEMS PHYSICALLY
4 FROM THIS INDIVIDUAL YOURSELF, IS THAT CORRECT?

5 A. I TOOK SOME RAGS OUT OF HIS POCKET AND A LIGHTER, YES,
6 SIR.

7 Q. OKAY.

8 AND WERE YOU THE OFFICER WHO ARRIVED AT
9 THE ENMARK STATION AS HE WAS PASSING THROUGH THAT
10 AREA?

11 A. NO, SIR, I WASN'T.

12 Q. OKAY.

13 SO YOU ARRIVED AFTER THE OTHER OFFICER
14 HAD ALREADY APPREHENDED OR WAS RESTRAINING THIS
15 PERSON?

16 A. HE HAD HIM ON THE GROUND, I BELIEVE AT GUNPOINT, SIR,
17 AND I WAS THE ONE THAT PLACED THE HANDCUFFS ON HIM.

18 MR. HOOD: OKAY. OKAY. ALL RIGHT.

19 THANK YOU.

20 A. YES, SIR.

21 THE COURT: MR. KNIGHT.

22 MR. KNIGHT: WE'D CALLED DARRELL GRUEL.

23 THAT'S ALL I HAVE OF THIS WITNESS.

24 THE COURT: YOU CAN STEP DOWN.

25 THANK YOU.

1 MR. GRUEL, COME FORWARD, PLEASE, SIR, AND
2 BE SWORN.

3 DARRELL A. GRUEL,
4 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

5 CLERK OF COURT: PLEASE BE SEATED.

6 STATE YOUR FULL NAME AND SPELL IT FOR THE
7 COURT.

8 A. MY NAME IS DARRELL GRUEL AND THE MIDDLE NAME IS ONLY
9 A, WHICH IS ONLY INITIAL, DARRELL A. GRUEL. G-R-U-E-L IS THE
10 LAST NAME. FIRST NAME IS D-A-R-R-E-L-L.

11 EXAMINATION BY MR. KNIGHT:

12 Q. MR. GRUEL, YOU'RE EMPLOYED WITH THE CITY OF BEAUFORT
13 POLICE DEPARTMENT?

14 A. THAT'S CORRECT.

15 Q. WERE YOU ON DUTY ON OR ABOUT NOVEMBER 1, 2003?

16 A. YES, SIR.

17 Q. DID YOU RESPOND TO A CALL AT THE ENMARK GAS STATION
18 ON BOUNDARY STREET HERE IN THE CITY OF BEAUFORT ?

19 A. YES, SIR.

20 Q. YOU RESPONDED AT - FOR WHAT REASON, SIR?

21 A. THERE WAS A REPORT FROM A ROAD OFFICER THAT HE
22 SPOTTED A POSSIBLE SUSPECT FROM AN EARLIER ROBBERY AT
23 THE BROAD RIVER SEAFOOD.

24 Q. DID YOU MAKE THE ARREST OF THE DEFENDANT?

25 A. NO, SIR.

1 Q. WHO MADE THE ARREST OF THE DEFENDANT?

2 A. WHEN I ARRIVED – I INITIALLY CAME ON THE SCENE, I, I WAS
3 TRAVELING DOWN BOUNDARY STREET TOWARDS THAT
4 DIRECTION AND I INITIALLY SAW THE SUSPECT RUNNING
5 THROUGH THE VACANT FIELD BETWEEN THE MEXICAN
6 RESTAURANT AND THE ENMARK, THROUGH THE ENMARK.

7 RESERVE OFFICER DAN THOMPSON WAS IN
8 FOOT PURSUIT OF HIM AND WHEN I HAD PULLED INTO THE
9 CHURCH PARKING LOT WHERE THE ARREST ACTUAL TOOK
10 PLACE, OFFICER THOMPSON APPARENTLY HAD CAUGHT HIM AND
11 HE WAS IN HANDCUFFS. WHEN I GOT THERE HE WAS ALREADY
12 ON THE GROUND HANDCUFFED.

13 Q. AND OFFICER KING ARRESTED HIM?

14 A. YES, SIR.

15 Q. AND DO YOU RECALL WHAT OFFICER KING – WHAT THE
16 CHARGE WAS, SIR?

17 A. YES, SIR. WE HAD – I HAD ASKED HIM IF IT – WHAT, YOU
18 KNOW – HE WAS PLACED UNDER ARREST FOR ARMED ROBBERY.

19 Q. OKAY.

20 NOW, DID YOU SEARCH THE DEFENDANT
21 INCIDENT TO HIS ARREST?

22 A. YES, SIR. AFTER I ARRIVED AND HE WAS ON THE GROUND
23 AND I HELPED THE DEFENDANT BACK UP TO HIS FEET AND
24 SEARCHED HIM INCIDENT TO ARREST.

25 Q. WHAT ITEMS, IF ANY, DID YOU FIND AS A RESULT OF YOUR

1 SEARCH, SIR?

2 A. INSIDE HIS POCKET I FOUND A BLACK-HANDLED
3 FOLD - FOLDING POCKETKNIFE. AND A WEDDING - A WOMAN'S
4 SIZE SOLITAIRE DIAMOND WEDDING RING AND A DIAMOND - I'M
5 SORRY, A WEDDING BAND.

6 AMONGST OTHER THINGS. HE ALSO HAD
7 SOME - AN INMATE INVENTORY LIST FROM THE DETENTION
8 CENTER WHERE HE APPARENTLY RECENTLY GOT RELEASED AND
9 SOME MISCELLANEOUS PROPERTY THAT WAS LISTED ON THAT.

10 Q. AND WHAT DO YOU DO WITH THE DIAMOND RING AND THE
11 KNIFE THAT YOU FOUND ON THE DEFENDANT?

12 A. EVERYTHING I PULLED OUT OF HIS POCKET WAS PLACED ON A
13 NEARBY PATROL CAR. AND IT WAS JUST - IT WAS - WE - I LEFT IT
14 RIGHT THERE UNTIL WE CONTACTED THE INVESTIGATOR ON
15 DUTY OR HE, HE WAS ON THE WAY ANYWAY.

16 MR. KNIGHT: THANK YOU, SIR.

17 ANSWER ANY QUESTIONS MR. HOOD MAY HAVE.

18 THE COURT: MR. HOOD.

19 EXAMINATION BY MR. HOOD:

20 Q. SO YOU ACTUALLY DIDN'T MAKE THE ARREST, OFFICER
21 GRUEL? IT WAS MADE BY ANOTHER OFFICER, IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND HE WAS ARRESTED AT THAT TIME FOR ARMED ROBBERY,
24 IS THAT CORRECT?

25 A. THE BEST I - I MEAN YEAH, I WOULD ASSUME.

1 Q. AND DID -- YOU SAID THAT YOU SEARCHED HIS POCKETS. DID
2 YOU TAKE CUSTODY OF ANY OTHER ITEMS? THAT, THAT HE
3 SUPPOSEDLY HAD?

4 A. WELL, I MEAN --

5 Q. THE MONEY, DID YOU SEE THE MONEY?

6 A. YES.

7 Q. AND DID YOU TAKE CUSTODY OF THE MONEY AND DO
8 SOMETHING WITH THAT ALSO?

9 A. NO. I, I DIRECTED OFFICERS TO LEAVE THE MONEY WHERE IT
10 LAID UNTIL WE COULD DOCUMENT IT WITH PHOTOS.

11 THE MONEY WAS IN THE BUSHES OF WHICH
12 THE SUSPECT HAD RAN THROUGH.

13 Q. SO THE MONEY WAS INSIDE THE BUSHES?

14 A. WELL, JUST OUTSIDE THE BUSHES.

15 I'M NOT -- IT WASN'T A BIG, THICK SET OF
16 BRUSH.

17 Q. OKAY.

18 SO HE'S ARRESTED, PLACED UNDER ARREST
19 FOR ARMED ROBBERY. YOU SEARCH HIM, FIND SOME ITEMS,
20 TAKE THOSE ITEMS AND SET THEM ON THE HOOD OF A CAR, IS
21 THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. OKAY.

24 AND THAT'S THE ONLY CONTACT THAT YOU HAD
25 WITH THOSE ITEMS AFTER YOU TOOK THEM FROM HIM, IS THAT

1 CORRECT?

2 A. RIGHT.

3 MR. HOOD: YOUR HONOR, JUST AS A
4 PRECAUTIONARY MATTER, I ALSO HAD A MOTION IN LIMINE —

5 THE COURT: RIGHT.

6 MR. HOOD: — THAT I INTENDED TO MAKE WITH
7 RESPECT TO THIS INMATE RECEIPT MATTER.

8 THE COURT: YES, SIR. A GOOD POINT AND I
9 WAS GONNA CLEAR THAT UP, MAKE SURE THAT THERE WAS NO
10 TESTIMONY OFFERED REGARDING THAT DURING THE COURSE
11 OF —

12 MR. HOOD: I HAVE THAT BUT —

13 MR. KNIGHT: WE'LL, WE'LL CLEAR THAT OUT.
14 NO QUESTION ABOUT IT.

15 THE COURT: I UNDERSTAND. YES, SIR.

16 MR. HOOD: IF WE AVOID THAT,

17 I — CERTAINLY —

18 THE COURT: YES, SIR.

19 MR. HOOD: — HIGHLY PREJUDICIAL.

20 THE COURT: IT WOULD BE AND, AND I'M SURE
21 THAT BY THE TIME OFFICER GRUEL TESTIFIES THAT WON'T
22 BE — IT WON'T BE MENTIONED.

23 THANK YOU.

24 MR. HOOD: I DON'T HAVE ANY OTHER
25 QUESTIONS.

1 MR. HOOD: THANK YOU.

2 MR. KNIGHT: YOU MAY STEP DOWN.

3 THAT'S ALL I HAVE.

4 THAT'S THE ONLY WITNESSES I HAVE ON THE
5 MOTION TO SUPPRESS THE EVIDENCE.

6 THE COURT: ALL RIGHT, SIR. THANK YOU.

7 MR. HOOD, I'LL BE HAPPY NOW TO HEAR
8 ARGUMENT FROM YOU OR ANY, ANY EVIDENCE THAT YOU WISH
9 TO OFFER ON THE ISSUE.

10 MR. HOOD: WELL, YOUR HONOR, MY, MY
11 MOTION ACTUALLY WAS TO SUPPRESS THE EVIDENCE BASED ON
12 THE CHANGE OF CUSTODY FOR THAT PARTICULAR EVIDENCE
13 HAVING BEEN DESTROYED.

14 THE COURT: ALL RIGHT.

15 MR. HOOD: THAT, THAT THAT WAS WHAT WAS
16 STATED IN MY – IN MY MOTION TO BEGIN WITH.

17 THE COURT: ALL RIGHT.

18 WELL, WHAT, WHAT DO YOU SEEK TO
19 INTRODUCE, MR. KNIGHT? IN THIS TRIAL? WHAT —

20 MR. KNIGHT: THE RINGS THAT WERE TAKEN
21 OUT OF THE POCKET.

22 THE COURT: RIGHT.

23 MR. KNIGHT: OF THE DEFENDANT.

24 THE COURT: RIGHT.

25 MR. KNIGHT: THE HUNDRED AND TWENTY

1 DOLLARS IN CASH.

2 THE COURT: RIGHT.

3 OKAY.

4 RIGHT.

5 THE KNIFE'S NOT GONE BE —

6 MR. KNIGHT: THE KNIFE, TOO, YES,

7 OBVIOUSLY.

8 THE COURT: ALL RIGHT, SIR. OKAY.

9 MR. HOOD, OKAY. LET'S TALK ABOUT THAT.

10 MR. HOOD: WELL, IT, IT APPEARS AS THOUGH,

11 BASED ON THE INFORMATION THAT WE HAVE — NOW, I HAVE

12 NOT — I'M NOT — I'M NOT PRIVY — PRIVY AS TO EXACTLY WHAT

13 THEY INTEND TO INTRODUCE. BUT MY OBJECTION IS TO THE

14 EVIDENCE CONCERNING ANYTHING TO DO WITH THE RINGS,

15 ANYTHING TO DO WITH THE MONEY.

16 AND THE FACT THAT WHAT HAS OCCURRED

17 WITH THESE ITEMS IS THESE ITEMS WERE GIVEN TO A PERSON

18 WHEN THEY WERE EVIDENCE AS FAR AS THIS CASE WAS

19 CONCERNED.

20 THE COURT: RIGHT.

21 MR. HOOD: THAT EVIDENCE NO LONGER

22 EXISTS AS FAR AS THE STATE IS CONCERNED.

23 THE COURT: RIGHT.

24 MR. HOOD: AND THE CHANGE OF CUSTODY

25 FOR THOSE ITEMS TO SAY HOW THEY WERE IDENTIFIED BY THE

1 VICTIM AND THINGS OF THIS NATURE, YOU KNOW, IT MAKES IT
2 IMPOSSIBLE FOR THE DEFENSE TO SHOW THAT THERE WAS A
3 MISIDENTIFICATION OF THE RINGS, IF THERE WAS ANYTHING
4 UNIQUE ABOUT THEM, WHATEVER THAT MAKES IT SO UNIQUE
5 THAT THIS PERSON ONLY HAS THE ONLY SET IN THE WORLD.

6 THE COURT: RIGHT.

7 MR. HOOD: YOU KNOW, IN THIS PARTICULAR
8 TYPE OF SETTING OR WHATEVER.

9 THE COURT: RIGHT.

10 MR. HOOD: SAME THING WITH THE MONEY.
11 THE MONEY IS – YOU KNOW, HOW, YOU DO YOU IDENTIFY MONEY
12 OTHER THAN SERIAL NUMBERS?

13 THE COURT: RIGHT.

14 MR. HOOD: THE OTHER IMPORTANT THING
15 ABOUT THE MONEY IS, IS THE MONEY HAD FINGERPRINTS,
16 POTENTIAL FINGERPRINTS TO EITHER INCLUDE OR PERHAPS
17 EXCLUDE A PERSON FROM HAVING HANDLED THOSE PARTICULAR
18 ITEMS.

19 THE COURT: RIGHT.

20 MR. HOOD: AND NOW THAT PARTICULAR
21 EVIDENCE HAS BEEN DESTROYED. IT'S BEEN COMPLETELY LOST
22 FOREVER. WITH RESPECT TO THE MONEY AND WITH RESPECT
23 TO THE RINGS.

24 AND WITHOUT GIVING THE DEFENSE AN
25 OPPORTUNITY TO EXAMINE THE EVIDENCE, THEN WE'RE UNABLE

1 TO, TO AVAIL OURSELVES TO THAT OPPORTUNITY TO SHOW THAT
2 IN FACT HE HAD NOT TOUCHED THIS MONEY, THAT IN FACT HE
3 OWNED THESE RINGS HIMSELF AND THERE WAS NOTHING
4 UNIQUE ABOUT THEM THAT BELONGS SPECIFICALLY TO
5 SOMEBODY ELSE WHO, WHO CLAIMS POSSESSION OF THE — OF
6 THE RINGS.

7 THE COURT: RIGHT.

8 MR. HOOD: SO, SO WHAT WE HAVE NOW IS
9 SOME TESTIMONY ABOUT THINGS THAT PEOPLE ARE GONNA SAY,
10 THAT WAS MINE, A VICTIM IN THE CASE, AND WE HAVE NO WAY
11 OF DEFENDING AGAINST THAT BECAUSE WITH DON'T HAVE THE
12 PROPERTY TO SHOW.

13 THE COURT: NOW, MR. KNIGHT, I
14 UNDERSTOOD THAT MS. ROBESON RECOVERED THE RINGS THAT
15 NIGHT AND THE CASH AS WELL, IS THAT RIGHT?

16 MR. KNIGHT: YES, SIR.

17 BY THE WAY, THE STATE HAS PHOTOGRAPHS
18 THAT WERE TAKEN THAT NIGHT OF THE MONEY AND THE
19 RINGS —

20 THE COURT: RIGHT.

21 MR. KNIGHT: — WHICH HAVE BEEN AVAILABLE
22 IN EVIDENCE FOREVER.

23 BUT SHE CLEARLY IDENTIFIED THOSE AS HER
24 RINGS, THAT I THINK SOMEBODY TESTIFIED WERE SITTING ON
25 THE HOOD OF A CAR.

1 THE COURT: RIGHT.

2 THE, THE RINGS DON'T CAUSE ME QUITE THE
3 CONCERN THAT THE - THAT THE MONEY MIGHT BE.

4 THE MONEY WAS TURNED BACK OVER TO MS.
5 ROBESON?

6 MR. KNIGHT: YES, SIR.

7 I THINK THAT'S WHAT SHE TESTIFIED TO.

8 THE COURT: SHE DID.

9 AND, AND, OBVIOUSLY, THAT MONEY HASN'T
10 BEEN KEPT INTACT UNTIL TODAY.

11 MR. KNIGHT: THAT'S CORRECT. I -

12 THE COURT: ALL RIGHT. ALL RIGHT, SIR.

13 SO YOU'VE GOT PHOTOGRAPHS OF THE MONEY
14 THAT YOU WISH -

15 MR. KNIGHT: YES, SIR.

16 THE COURT: OKAY. ALL RIGHT.

17 THE - NOW, INsofar AS THE RINGS
18 THEMSELVES ARE CONCERNED. THERE WERE TWO RINGS, I, I
19 RECALL HER TESTIFYING, A WEDDING BAND AND SOME SORT OF
20 A JEWELLED RING.

21 MR. KNIGHT: YES, SIR.

22 THEY'RE RIGHT HERE. WHITE GOLD.

23 THE COURT: OKAY. ALL RIGHT.

24 MR. HOOD, SHE TESTIFIED, OF COURSE, THAT
25 THEY WERE - IT WAS A WEDDING - A WEDDING RING AND, AND

1 ONE OTHER RING WHICH SHE -- WHICH SHE STILL HAS ON, WHICH
2 WAS GIVEN TO HER -- BACK TO HER THAT, THAT EVENING.

3 AND, OF COURSE, THIS IS NOT SOMETHING
4 THAT'S FUNGIBLE, THAT CAN CHANGE ITS CHARACTER. AND THE
5 ARGUMENT THAT IF THE DEFENDANT WERE TO SUGGEST THAT
6 THOSE RINGS WERE HIS, HE CAN MAKE THE SAME SUGGESTION
7 IF THEY'RE ON HER FINGER THAT HE COULD'VE MADE THAT NIGHT
8 IF THEY'D BEEN KEPT IN CUSTODY.

9 SHE'S IDENTIFIED THEM AS HERS. AND, OF
10 COURSE, SHE'S BEEN WEARING THEM EVERY SINCE AND, AND SO
11 TELL ME WHERE, WHERE YOU VIEW THE PROBLEM WITHIN THAT
12 FACTUAL SCENARIO SO THAT I CAN . . .

13 MR. HOOD: YOUR HONOR, THESE, THESE TWO
14 RINGS AND THE STATE'S DISCOVERY WHICH IS PROVIDED TO ME
15 AND THE INVESTIGATION BY THE POLICE OFFICERS, THEY TOOK
16 AN INVENTORY SHEET. AND THEY LISTED THE ITEMS THAT, THAT
17 WERE SUPPOSEDLY INSIDE OF HER PURSE. AND THIS PURSE
18 CONTAINED CELL PHONE, SOME OTHER ITEMS. AND THE VALUE
19 OF THESE ITEMS WAS LISTED BY THE VICTIM IN THE CASE.

20 THE COURT: RIGHT.

21 MR. HOOD: THE VALUE OF THE RING IS JUST
22 DESCRIBED AS A WHITE GOLD RING. WEDDING BAND. IT DID NOT
23 INDICATE ANY IDENTIFYING MARKINGS OR INITIALS OR ANYTHING
24 UNIQUE TO THAT PARTICULAR RING.

25 THE VALUE OF THE RING WAS LISTED ON

1 DOCUMENT AS \$200.00, ON ANOTHER DOCUMENT AS A HUNDRED
2 DOLLARS.

3 THE OTHER RING WAS LISTED BASICALLY THE
4 SAME AND IT'S VALUE WAS 250 ON ONE OF THE DOCUMENTS.
5 AND, AND NO VALUE ON THE OTHER ONE, IF I RECALL
6 CORRECTLY.

7 THE COURT: ALL RIGHT.

8 MR. HOOD: BUT WHAT WE HAVE IS TWO RINGS
9 THAT ARE - IN NO WAY DOES THE VICTIM - NOR IS THERE
10 ANYTHING IN THE REPORTS OR ANYTHING OF THAT NATURE - SAY
11 THAT'S MY RINGS AND THEY'RE MY RINGS BECAUSE OF THIS
12 PARTICULAR MARK ON THEM. AND, AND - THAT IS UNIQUE TO
13 THIS RING. WHEN I BOUGHT IT I HAD MY INITIALS INSCRIBED IN IT.

14 THE COURT: RIGHT.

15 MR. HOOD: OR MY HUSBAND PUT WITH LOVE,
16 FRANK INSIDE OF IT. OR SOMETHING THAT WOULD MAKE THESE
17 RINGS THEIR PROPERTY.

18 NOW, AT THAT VALUE - YOU KNOW, RINGS ARE
19 MASSED PRODUCED.

20 THE COURT: RIGHT.

21 MR. HOOD: AND, AND, CERTAINLY, PEOPLE
22 COULD HAVE RINGS THAT ARE EXACTLY THE SAME. SO IN ORDER
23 TO BE ABLE TO SAY THAT THAT IS MY PROPERTY, THEN THEY
24 NEED TO BE ABLE TO SPECIFICALLY IDENTIFY IT.

25 NOW, I CAN SAY THAT THE RINGS LOOK SIMILAR

1 TO MY RINGS. BUT THAT DOES MEAN THAT THEY ARE MY RINGS.
2 THE SAME RINGS.

3 NOW, OVER A YEAR - THIS THING HAPPENED
4 OVER A YEAR AGO AND SHE'S HAD CUSTODY OF THIS PROPERTY
5 FOR OVER A YEAR.

6 RINGS DO CHANGE. JEWELRY CHANGES. I
7 HAVE RINGS THAT I'VE WORN FOR YEARS AND YEARS AND
8 YEARS. I KNOW SOME THINGS ABOUT SOME OF THESE RINGS
9 THAT HAVE UNIQUE MARKS ON THEM, SCRATCHES, THINGS THAT
10 I HAVE ACCIDENTALLY DONE TO IT MYSELF OR THINGS OF THAT
11 NATURE WHICH I COULD PROBABLY SAY NOW - IN GOOD
12 CONSCIENCE I COULD LOOK AT THIS RING AND SAY, THAT'S MY
13 RING BECAUSE IT'S GOT THIS LITTLE THING UP UNDERNEATH IT
14 HERE THAT ALWAYS, YOU KNOW, KIND OF BOTHERED ME, OR
15 WHATEVER IT IS.

16 THAT'S UNIQUE AND I CAN - I CAN IDENTIFY
17 THAT RING BUT WITHOUT THAT UNIQUENESS, I CAN'T SAY
18 ANYTHING OTHER THAN IT'S CLOSE, LOOKS LIKE, BUT I CAN'T SAY
19 POSITIVELY THAT'S MY RING.

20 AND WE HAVE THE SAME SITUATION HERE,
21 WHERE THERE'S NOTHING IN THE RECORD THAT INDICATE THAT
22 SHE HAD SOME WAY OF IDENTIFYING THESE RINGS AS BEING HER
23 RINGS, NOT SIMILAR TO. OR THEY LOOK THE SAME. SOMETHING
24 OF THAT NATURE. AND, AND THAT'S NOT GOOD ENOUGH. THAT'S
25 SIMPLY NOT GOOD ENOUGH.

1 THERE MAY HAVE BEEN OTHER MARKINGS
2 INSIDE OF THAT RING WHICH WOULD'VE MADE IT EASY FOR THE
3 DEFENSE TO BE ABLE TO TIE IT TO THE DEFENDANT. BELONGING
4 TO HIM AS HIS PROPERTY. AS OPPOSED TO HER PROPERTY.

5 NOW, THIS HAS ALL CHANGED. WE, WE DON'T
6 HAVE ANY CONTROL OVER THESE RINGS. THESE RINGS HAVE
7 BEEN GONE NOW FOR A YEAR, AS THE MONEY HAS BEEN DONE.

8 THE FINGERPRINTS WERE THE OTHER ISSUE
9 WITH RESPECT TO THE RINGS. WE CERTAINLY DIDN'T EXPECT TO
10 FIND ANY ON THE RINGS BUT WE EXPECTED TO FIND
11 FINGERPRINTS ON THESE CRISP NEW DOLLAR - TWENTY-DOLLAR
12 BILLS THAT SUPPOSEDLY WERE THERE.

13 NOW, THEY'RE BRAND-SPANKING NEW AND, AS
14 THE COURT WELL KNOWS, WE CAN GET FINGERPRINTS OFF OF
15 MONEY. AND IF IT'S BRAND-SPANKING NEW MONEY, WE'D
16 EXPECT TO SEE SOME BRAND-SPANKING NEW FINGERPRINTS OF
17 THIS INDIVIDUAL IF HE HAD CUSTODY OF THIS PARTICULAR
18 MONEY. OR THE VICTIM IN THE CASE IF SHE HAD CUSTODY OF
19 THE MONEY.

20 BUT IF THE VICTIMS PRINTS AREN'T THERE AND
21 HIS ARE THE ONLY PRINTS THERE, IT APPEARS AS THOUGH THE
22 MONEY MIGHT BELONG TO HIM. JUST AS THE RINGS MIGHT
23 BELONG TO HIM BECAUSE THERE IS SOMETHING IN THERE THAT
24 WE CAN SAY MAKES THIS PROPERTY HIS.

25 AND THAT'S WHAT I'M CONCERN ABOUT. I'M

1 CONCERN ABOUT ANY TESTIMONY ABOUT THIS BEING HER
2 PROPERTY OR I MEAN ANYTHING TO DO WITH IT BEING HER
3 PROPERTY.

4 THE COURT: ALL RIGHT.

5 MR. HOOD: BECAUSE THE CHAIN HAS BEEN
6 BROKEN. WE CANNOT NOW, YOU KNOW, GO BACK AND, AND FIX
7 IT.

8 THE COURT: ALL RIGHT.

9 MR. KNIGHT: REGARDING THE RINGS, ARE, ARE
10 THE RINGS ENGRAVED AND, AND DO YOU INTEND TO, TO OFFER
11 ANY ...

12 MR. KNIGHT: YOUR HONOR, A, SHE'S - SHE
13 IDENTIFIED THAT NIGHT.

14 THE COURT: RIGHT.

15 MR. KNIGHT: THOSE ARE THE RINGS. NUMBER
16 2, SHE, SHE WILL TESTIFY, OBVIOUSLY, NOW, THAT THE RINGS
17 WERE MADE FOR HER SPECIFICALLY AND SHE HAD THE DIAMOND
18 PLACED ON IT.

19 THE COURT: OKAY.

20 MR. KNIGHT: ON TOP OF THE, THE WEDDING
21 BAND. YOU KNOW, IT'S - THAT IS UNIQUE TO HER.

22 THE COURT: RIGHT.

23 MR. KNIGHT: AND SHE SAYS THESE ARE MY
24 RINGS.

25 I DON'T KNOW SOME OTHER THEORY -

1 THE COURT: RIGHT.

2 MR. KNIGHT: — OUT THERE IN THE WORLD
3 THERE'RE OTHER RINGS.

4 THE COURT: THAT'S, THAT'S NOT — THAT'S
5 NOT — THAT'S NOT MY CONCERN. REALLY NOT WHAT I'M — WHAT
6 I'M GETTING AT.

7 I, I CAN APPRECIATE THE, THE ABILITY OF, OF
8 MOST WOMEN BEING PERCEPTIVE AS THEY ARE, TO BE ABLE TO
9 IDENTIFY THEIR RINGS.

10 MR. KNIGHT: THEIR RINGS.

11 THE COURT: AND, AND WITH SOME DEGREE OF
12 EXACTITUDE. AND SHE DID IT THAT NIGHT, AS YOU SAY.

13 AND, AND WHAT, WHAT I'M CONCERNED ABOUT
14 IS, AS — TO ADDRESS A POINT THAT MR. HOOD HAS RAISED, ARE
15 THERE ENGRAVINGS IN THERE WHICH WOULD TEND TO BE
16 OFFERED TODAY TO PROVE THAT THEY WERE HERS, BEYOND
17 HER OWN IDENTIFICATION OF THEM?

18 MR. KNIGHT: I DON'T THINK THERE'S
19 ENGRAVING BUT THERE'S —

20 MS. CLARE ROBESON: IT'S LIKE THAT BECAUSE
21 IT WAS MADE.

22 MR. KNIGHT: YOU'VE, YOU'VE HEARD MOST OF
23 WHAT SHE JUST SAID.

24 OBVIOUSLY, IN THE RING, THERE WAS A
25 MISSING PART, IT WAS RESOLDERED.

1 THE COURT: RIGHT.

2 MR. KNIGHT: THIS THE FIRST TIME I'VE
3 ADDRESSED THIS ISSUE.

4 THE COURT: RIGHT.

5 MR. KNIGHT: THAT THE RESOLDERING WAS
6 DONE PRIOR TO THE ROBBERY AND THAT WOULD BE ANOTHER
7 WAY THAT SHE COULD IDENTIFY AS BEING HER RING.

8 THE COURT: RIGHT.

9 MR. HOOD, THE - WHAT WE'RE CONFRONTED
10 WITH UNDER THE - UNDER THIS SCENARIO IS IF THOSE RINGS
11 HAD BEEN TAKEN INTO CUSTODY THAT NIGHT, APPARENTLY THEY
12 WOULD BE IN LARGELY THE SAME CONDITION THAT THEY'RE IN
13 TODAY. AND SO IF THERE WERE ANY MARKINGS ON THEM THAT,
14 THAT WOULD IDENTIFY THEM AS, AS YOUR CLIENT'S, THEN THEY
15 WOULD STILL BE THERE.

16 MY CONCERN, TO ADDRESS THE POINTS THAT
17 YOU RAISED, WOULD BE IF THOSE RINGS HAD ENGRAVINGS ON
18 THEM THAT HAD NOT BEEN IDENTIFIED EARLIER, THEN, THEN
19 THAT WOULD - THAT WOULD MAKE IT DIFFICULT FOR YOUR
20 CLIENT TO ASSERT OWNERSHIP IN SOMETHING THAT HAD MS.
21 ROBESON'S INITIALS ON IT, OR WEDDING DATE OR SOMETHING
22 LIKE THAT IN THEM BUT APPARENTLY THAT'S NOT THE CASE. SO
23 THE, THE DEGREE OF PREJUDICE, IF ANY, THAT RESULTS FROM
24 THE FACT THAT THEY'VE BEEN HER HAND DURING THIS YEAR
25 INSTEAD OF IN SOME EVIDENCE LOCKER IS, IS RELATIVELY

1 SMALL, IF IT EXISTS ATOLL UNDER THAT FACTUAL SCENARIO.

2 AND, YOU KNOW, IF - TO, TO COMPLETE THE
3 ARGUMENT THAT, THAT YOU WERE - THAT YOU WERE MAKING, IF
4 YOUR CLIENT WISHED TO ASSERT OWNERSHIP AS TO THOSE
5 RINGS, THEN HIS - HE HAS THE SAME ABILITY TO DO THAT TODAY
6 THAT HE WOULD HAVE OTHERWISE.

7 AS FAR AS THE MONEY IS CONCERNED, OF
8 COURSE, THE POINTS ABOUT NO FINGERPRINTS AND THINGS OF
9 THAT NATURE, CERTAINTY THOSE ARE VALID JURY ISSUES FOR
10 THIS JURY TO, TO CONSIDER WHEN IT STRUGGLES WITH
11 THE - WITH THE ISSUES OF GUILT AND INNOCENCE IN THIS CASE.

12 BUT NONETHELESS, THE FACT THAT SHE TOLD
13 THE POLICE OFFICER SHE WAS MISSING A HUNDRED AND
14 TWENTY DOLLARS AND THAT THEY FOUND A HUNDRED AND
15 TWENTY DOLLARS ON OR NEAR THE DEFENDANT. AND THEY
16 PHOTOGRAPH A HUNDRED AND TWENTY DOLLARS, CERTAINLY, I
17 THINK MAKES THOSE PHOTOGRAPHS PROPERLY
18 AUTHENTICATED. ADMISSIBLE. SO THE MOTION TO SUPPRESS
19 THE, THE INTRODUCTION OF EITHER THE EVIDENCE OF THE
20 PHOTOGRAPHS OF THE MONEY OR THE, THE RINGS THEMSELVES
21 IS RESPECTFULLY DENIED.

22 ALL RIGHT.

23 MR. KNIGHT: THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU.

25 MR. HOOD: YOUR HONOR, I'D - IF I COULD JUST

1 MAKE ONE LAST POINT, JUST —

2 THE COURT: SURE.

3 MR. HOOD: — FOR THE RECORD.

4 THE COURT: ALL RIGHT.

5 MR. HOOD: WE'RE TALKING ABOUT WHETHER
6 OR NOT IT'S HIS PROPERTY.

7 THE COURT: RIGHT.

8 MR. HOOD: THOSE ITEMS WERE TAKEN FROM
9 HIS POCKETS.

10 THE COURT: RIGHT.

11 MR. HOOD: AND, THEREFORE, THEY WERE
12 ALWAYS HIS PROPERTY —

13 THE COURT: RIGHT.

14 MR. HOOD: — AT THE POINT IN TIME UNTIL
15 SOMEBODY ELSE WITH A GREATER RIGHT COULD COME IN AND
16 SAY, THAT'S MY PROPERTY.

17 THE COURT: THAT'S RIGHT.

18 MR. HOOD: AND I CAN TELL YOU WHY.

19 THE COURT: AND, AND THAT WILL BE — I THINK
20 WILL BE A JURY ISSUE. FOR THIS JURY. SHE SAYS THEY'RE HERS
21 AND SHE CAN IDENTIFY THEM BY SOME SOLDERING THAT WAS
22 DONE PRIOR TO THIS AND, AND I TAKE IT THAT THEY FIT HER
23 WHEN SHE PUT THEM ONE.

24 OF COURSE, THAT'S NOT — YOU KNOW, THE
25 FACT THAT A RING FITS IS NOT LIKE CINDERELLA AND THE GLASS

1 SLIPPER. THERE'RE A LOT OF RINGS THAT FIT DIFFERENT
2 PEOPLE BUT, BUT NONETHELESS, THAT'S SOME EVIDENCE,
3 OBVIOUSLY, THAT, THAT THE JURY CAN CONSIDER. IN THAT
4 REGARD.

5 ALL RIGHT.

6 MR. HOOD, ARE THERE ANY OF PRETRIAL
7 MOTIONS FROM THE DEFENSE PERSPECTIVE WE NEED TO DEAL
8 WITH?

9 MR. HOOD: YOUR HONOR, OTHER THAN THE
10 MOTION IN LIMINE, TALKING ABOUT CONCERNING THE — YOU
11 KNOW, THE STATE NOT BRINGING ANY TESTIMONY IN ABOUT
12 HAVING AN INMATE INVENTORY RECEIPT IN THE POCKET —

13 THE COURT: RIGHT.

14 MR. HOOD: — OF THE DEFENDANT WHEN THEY
15 ARRESTED HIM.

16 THE COURT: RIGHT.

17 MR. KNIGHT: YOUR HONOR, SERGEANT GRUEL
18 IS HERE IN THE COURTROOM. HE'S ALREADY ACKNOWLEDGED
19 THAT WHEN HE TESTIFIES HE'S NOT GONE MENTION THAT.

20 THE COURT: OKAY.

21 MR. KNIGHT: THE COURT ADDRESSED THAT
22 ABOUT FIFTEEN MINUTES AGO; I'VE ADDRESSED IT WITH HIM.

23 THE COURT: WELL.

24 MR. KNIGHT: IN FRONT OF THE JURY.

25 THE COURT: UNLESS THERE HAPPENED TO BE

1 TWO WEDDING RINGS ON THAT INVENTORY LIST, I SUPPOSE THAT
2 WE WOULD —

3 MR. KNIGHT: NO, SIR, I DON'T THINK SO.

4 THE COURT: — PROBABLY LEAVE IT OUT.

5 OKAY. ALL RIGHT.

6 GENTLEMEN, THE JURY WILL BE BACK IN ABOUT
7 FORTY-FIVE MINUTES AND, AND THEY'LL BE BROUGHT BACK IN;
8 I'LL APPOINT A FOREPERSON; THEY'LL BE SWORN. I'LL MAKE A
9 FEW INTRODUCTORY COMMENTS AND ALLOW YOU ALL OPENING
10 STATEMENTS AND WE'RE BE PREPARED TO START AT THAT TIME
11 UNLESS THERE'S SOMETHING ELSE I NEED TO DEAL WITH IN
12 ADVANCE.

13 MR. HOOD: YOUR HONOR, THE ONLY OTHER
14 THING WAS I HAD A MOTION TO SEQUESTER THE WITNESSES IN
15 THIS CASE. UNFORTUNATELY, WE STARTED THE MOTIONS
16 BEFORE I MADE THAT BUT THAT'S NOTHING HERE OR THERE BUT
17 I'D STILL LIKE TO REQUEST IT.

18 THE COURT: ALL RIGHT, SIR.

19 THE, THE — OBVIOUSLY, THE VICTIM WILL
20 REMAIN IN THE COURTROOM. YOU CAN DESIGNATE A CHIEF
21 OFFICER, INVESTIGATING OFFICER, WHOEVER IN CHARGE TO SIT
22 WITH YOU.

23 MR. KNIGHT: OKAY.

24 THE COURT: AND THE OTHER FACT
25 WITNESSES WILL BE SEQUESTERED UNTIL THEY TESTIFY.

1 MR. KNIGHT: YES, SIR. THEY'RE, THEY'RE IN
2 THE BACK.

3 THE COURT: ALL RIGHT. GOOD. OKAY.

4 ALL RIGHT, MR. KNIGHT, ANYTHING FURTHER
5 FROM THE STATE?

6 MR. KNIGHT: NO, SIR.

7 THE COURT: THANK YOU.

8 ALL RIGHT, FOLKS, WE'LL BE IN RECESS THEN
9 UNTIL 2:15.

10 (COURT RECESSED FOR LUNCH.)

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: BRING US THE JURY, PLEASE.

14 BAILIFF: JURY'S ENTERING.

15 (THE JURY RETURNED TO OPEN COURT.)

16 THE COURT: MISS UMBARGER, CAN I GET YOU
17 TO SIT IN THIS FIRST CHAIR ON THIS FIRST ROW, PLEASE, MA'AM.
18 I'LL TELL YOU WHY IN JUST A MINUTE.

19 BAILIFF: YOUR HONOR, ALL JURORS ARE
20 PRESENCE.

21 THE COURT: THANK YOU, MR. DORSEY.

22 LADIES AND GENTLEMEN, THANK YOU FOR
23 YOUR PROMPT RETURN FROM LUNCH AND WE'RE NOW READY TO
24 BEGIN THE TRIAL OF THIS CASE. THERE'RE A FEW
25 HOUSEKEEPING MATTERS THAT WE NEED TO TAKE CARE OF

1 BEFORE WE GET TO THAT STAGE.

2 MS. UMBARGER, I'VE ASKED YOU TO SIT IN THAT
3 CHAIR, MA'AM, BECAUSE I WANT YOU TO SERVE AS THE
4 FORELADY OF THIS JURY. AND ALL THAT MEANS IS YOU'LL BE
5 THE JURY'S SPOKESPERSON HERE IN COURT. AND WHEN THE
6 TRIAL IS OVER YOU'LL BE IN CHARGE OF WRITING THE VERDICT
7 OF THE JURY BUT I'LL TELL YOU MORE ABOUT THAT BEFORE YOU
8 HAVE TO DO. DON'T WORRY ABOUT THAT NOW.

9 ALL YOU HAVE NEED TO CONCERN YOURSELF
10 ABOUT NOW IS YOU'VE GOT A RESERVED CHAIR, THAT CHAIR
11 RIGHT THERE. YOU'LL OCCUPY THAT THROUGHOUT THE TRIAL
12 OF THIS CASE.

13 MISS HUFF AND MR. TRUDEAU, YOU ALL WILL
14 OCCUPY THOSE TWO CHAIRS THROUGHOUT THE TRIAL OF THE
15 CASE, UNLESS SOMETIME DURING THE TRIAL I ASK YOU TO SIT
16 SOMEWHAT ELSE.

17 THE REST OF YOU, LADIES AND GENTLEMEN,
18 DON'T HAVE RESERVED SEATS; YOU JUST GOT GENERAL
19 ADMISSION. YOU GOT TO DO THE BEST YOU CAN WHEN YOU
20 COME IN FROM TIME TO TIME. ALL THOSE SEATS ARE EQUALLY
21 COMFORTABLE AND ALL OF THEM GIVE YOU AN EQUAL VIEW OF
22 WHAT'S GOING ON IN THE COURTROOM SO IT'S ALWAYS A GOOD
23 IDEA TO MOVE ALL THE WAY DOWN BEFORE YOU SIT DOWN
24 BECAUSE IF YOU LEAVE AN OPEN CHAIR BEHIND YOU
25 SOMEBODY'S GONE HAVE TO STEP ON YOUR FEET TO GET TO IT

1 SO THAT COULD GET KIND OF PAINFUL DURING THE COURSE OF A
2 TRIAL.

3 LADIES AND GENTLEMEN YOU'RE GONNA BE
4 SWORN IN NOW A JURORS. I WANT YOU TO PAY PARTICULAR
5 ATTENTION TO THE OATH YOU'RE ABOUT TO TAKE. IT IS A TIME-
6 HONORED AND ARTFULLY WORDED OATH. AND IT DESCRIBES
7 VERY SUCCINCTLY BUT YET AT THE SAME TIME VERY
8 COMPLETELY WHAT YOUR RESPONSIBILITIES ARE GONNA BE AS
9 JURORS IN THIS CASE. AND I WILL BE REMINDING YOU DURING
10 THIS TRIAL AND AFTER THE TRIAL AS TO EXACTLY WHAT YOU
11 HAVE SWORN TO DO AS JURORS IN THIS CASE.

12 MADAME CLERK, IF YOU WILL KINDLY SWEAR
13 THE JURY.

14 (THE JURY WAS DULY SWORN.)

15 THE COURT: LADIES AND GENTLEMEN,
16 BEFORE WE ACTUALLY BEGIN THE TRIAL ITSELF, LET ME TAKE
17 JUST A COUPLE OF MINUTES TO TELL YOU WHAT THE
18 PROCEDURE WILL BE THAT WE WILL FOLLOW DURING THE
19 COURSE OF THIS TRIAL THE REST OF THE DAY AND PERHAPS
20 INTO TOMORROW MORNING AND TELL YOU WHAT YOUR ROLE
21 WILL BE AS JURORS IN THAT PROCESS.

22 HOW MANY OF YOU HAVE EVER HAD A CHANCE
23 TO SERVE AS JURORS IN ANY TYPE OF CASE BEFORE? IF YOU
24 HAVE, WOULD YOU RAISE YOUR HANDS.

25 THAT'S A PRETTY BIG BIT OF EXPERIENCE. A

1 LOT MORE THAN USUAL.

2 BUT FOR THOSE OF YOU WHO DID NOT RAISE
3 YOUR HAND, LET ME TELL YOU THAT YOU DON'T HAVE TO HAVE
4 EXPERIENCE IN ORDER TO SERVE EFFICIENTLY AND EFFECTIVELY
5 AS JURORS. YOU'LL BE WELL QUALIFIED, EVEN THOUGH YOU'VE
6 NEVER SERVED BEFORE, TO DO THE TASK THAT WE ARE ASKING
7 YOU TO DO AND I THINK IN JUST A FEW MOMENTS IT WILL BE
8 OBVIOUS WHY.

9 AS A PROCEDURAL MATTER, WHEN I FINISH
10 TALKING TO YOU IN JUST A MOMENT MR. KNIGHT, ON BEHALF OF
11 THE STATE, IS GOING TO STAND BEFORE YOU AND MAKE A BRIEF
12 OPENING STATEMENT. AND IN THAT OPENING STATEMENT HE'S
13 GOING TO OUTLINE FOR YOU IN SOMETHING OF A PREVIEW
14 FASHION WHAT THIS CASE IS ALL ABOUT FROM THE STATE'S
15 POINT OF VIEW AND MAY EVEN INDICATE TO YOU SOME OF WHAT
16 THE STATE INTENDS TO OFFER BY WAY OF PROOF IN SUPPORT
17 OF THE CHARGES THAT IT HAS BROUGHT IN THIS CASE.

18 AND WHEN HE IS FINISHED MAKING HIS
19 OPENING STATEMENT ON BEHALF OF THE STATE, THEN MR.
20 HOOD, ON BEHALF OF – ON BEHALF OF THE DEFENDANT, HAS THE
21 RIGHT TO MAKE AN OPENING STATEMENT BUT HE IS UNDER NO
22 OBLIGATION TO DO THAT. I'LL TELL YOU WHY IN JUST A MINUTE.

23 AND AFTER THE OPENING STATEMENTS HAVE
24 BEEN OFFERED, THEN YOU WILL ACTUALLY BEGIN TO SEE AND
25 HEAR THE EVIDENCE THAT WILL BE PRESENTED.

1 EVIDENCE WILL TAKE THE FORM OF TESTIMONY
2 FROM THIS WITNESS CHAIR. THE WITNESS WILL TAKE AN OATH
3 AND SIT IN THIS CHAIR AND WILL ANSWER QUESTIONS THAT THE
4 LAWYERS FOR BOTH SIDES WILL PUT TO THEM.

5 EVIDENCE MAY ALSO TAKE THE FORM OF
6 DOCUMENTS OR ITEMS OR PHOTOGRAPHS OR CHARTS OR MAPS.
7 I DON'T KNOW WHAT THE EVIDENCE IS GONNA BE IN THIS CASE
8 BUT IT WOULD NOT BE UNUSUAL FOR THOSE SORTS OF THINGS
9 TO BE OFFERED AS EVIDENCE IN THIS CASE.

10 THE STATE WILL OFFER EVIDENCE AND
11 TESTIMONY FIRST. AND WHEN THE STATE HAS FINISHED
12 OFFERING ITS EVIDENCE AND TESTIMONY THEN THE DEFENDANT
13 HAS THE OPPORTUNITY TO OFFER EVIDENCE AND TESTIMONY
14 BUT, ONCE AGAIN, IS UNDER NO OBLIGATION TO DO THAT.

15 AND AFTER ALL OF THE EVIDENCE AND
16 TESTIMONY HAS BEEN OFFERED, THEN THE LAWYERS WILL COME
17 BACK BEFORE YOU AND MAKE THE CLOSING STATEMENTS, THEIR
18 FINAL ARGUMENTS, THEY'RE SOMETIMES CALLED.

19 AND AFTER THAT HAS BEEN DONE, THEN I WILL
20 INSTRUCT YOU OR CHARGE YOU AS TO WHAT THE LAW IS IN THIS
21 CASE. AND THEN YOU WILL BE ABLE TO GO ACROSS THE HALL
22 INTO THE JURY ROOM AND START TO TALK ABOUT THIS CASE
23 AMONG YOURSELVES AND DELIBERATE AND REACH A VERDICT.

24 I REMIND YOU AGAIN THAT YOU CANNOT
25 DISCUSS THIS CASE AMONG YOURSELVES AT ANY TIME DURING

1 THE TRIAL. YOU CAN'T DISCUSS IT AMONG YOURSELVES; YOU
2 CAN'T DISCUSS IT WITH ANYBODY ELSE; YOU CAN'T ALLOW
3 ANYBODY ELSE TO TALK WITH YOU ABOUT IT AND YOU CAN'T TRY
4 TO FIND OUT ANYTHING ON YOUR OWN ABOUT THIS CASE FROM
5 ANY SOURCE OUTSIDE OF THIS COURTROOM. IF YOU WERE TO
6 DO THAT YOU WOULD VIOLATE THE OATH THAT YOU JUST TOOK
7 JUST A MOMENT AGO TO WELL AND TRULY TRY THIS CASE AND
8 TO RENDER A TRUE VERDICT ACCORDING TO THE EVIDENCE, SO
9 HELP YOU GOD.

10 THE EVIDENCE WILL NOT COME FROM OUT OF
11 THIS COURTROOM. IT WILL COME ONLY FROM THIS WITNESS
12 CHAIR RIGHT HERE, ALONG WITH THOSE ITEMS AND THOSE
13 DOCUMENTS THAT MIGHT BE OFFERED IN THE COURSE OF THIS
14 TRIAL. IN OTHER WORDS, THE OPENING STATEMENTS ARE NOT
15 EVIDENCE. AND THE CLOSING STATEMENTS ARE NOT EVIDENCE.
16 AND THE QUESTIONS THAT THE LAWYERS ASK ARE NOT
17 EVIDENCE. ALL OF THOSE THINGS ARE HELPFUL AND THEY ARE A
18 NECESSARY PART OF THIS PROCESS BUT THEY THEMSELVES
19 ARE NOT EVIDENCE AND YOUR VERDICT CAN'T REST ON THOSE
20 THINGS. IT HAS TO REST NOT ON THE QUESTIONS, BUT ON THE
21 ANSWERS TO THOSE QUESTIONS THAT COME UNDER OATH FROM
22 THIS WITNESS CHAIR RIGHT HERE, ALONG WITH THOSE ITEMS
23 AND THOSE DOCUMENTS THAT MIGHT COME IN TO THE TRIAL OF
24 THE CASE.

25 NOW, IT'S IMPORTANT THAT YOU UNDERSTAND

1 THE DISTINCTION BETWEEN WHAT IS AND WHAT IS NOT
2 EVIDENCE BECAUSE YOU, LADIES AND GENTLEMEN, ARE THE
3 JUDGES OF THE EVIDENCE. THAT'S WHAT YOU DO.

4 NOW, YOU'RE JUST GETTING A JUROR'S PAY
5 AND IT'S NOT A WHOLE LOT OF MONEY, I CAN TELL YOU THAT.
6 BUT WHEN IT COMES TO EVIDENCE, YOU ACTUALLY ACT AS
7 JUDGES.

8 I'M THE JUDGE OF THE LAW. AND I'VE REALLY
9 GOT AN EASY JOB. ALL I'VE GOT TO DO IS DECIDE WHETHER YOU
10 CAN HEAR SOMEBODY TELL YOU SOMETHING FROM THIS
11 WITNESS CHAIR OR WHETHER YOU CAN LOOK AT AN ITEM OR A
12 PIECE OF EVIDENCE. BUT ONCE I DECIDE THAT YOU CAN HEAR
13 THE TESTIMONY OR LOOK AT THE EVIDENCE, THEN FROM THAT
14 POINT ON, WHAT YOU DO WITH IT AS A JUROR IS ENTIRELY UP TO
15 YOU. YOU'VE GOT THE RIGHT TO BELIEVE IT OR NOT TO BELIEVE
16 IT.

17 AND IF YOU DECIDE TO BELIEVE IT, THEN
18 YOU'VE GOT THE RIGHT TO DECIDE HOW IMPORTANT IT IS TO THE
19 DECISION THAT YOU HAVE TO MAKE.

20 NOBODY ELSE CAN DO THAT BUT YOU SO
21 OBVIOUSLY YOU'RE GONE HAVE TO PAY ATTENTION. OR ELSE
22 YOU'RE NOT GONE BE IN POSITION WHEN THIS TRIAL IS OVER TO
23 GO ACROSS THE HALL AND START TALKING ABOUT THIS CASE
24 AMONG YOURSELVES AND DECIDING WHAT YOUR VERDICT
25 SHOULD BE.

1 NOW, LADIES AND GENTLEMEN, YOU'RE
2 QUALIFIED TO PERFORM THE TASK THAT IS YOURS, NOT
3 BECAUSE OF YOUR PRIOR EXPERIENCE AS JURORS, BUT
4 BECAUSE OF, REALLY, WHAT YOU TOLD US OUT THERE THIS
5 MORNING WHEN YOU WERE ANSWERING THE ROLL CALL AND
6 TELLING ABOUT YOURSELF AND WHERE YOU LIVE AND WHAT YOU
7 DID FOR A LIVING, WHETHER YOU WERE YOU EMPLOYED OR NOT.

8 ALL THAT WE ASK YOU TO DO IN COURT IS TO
9 USE THE SAME ABILITIES IN THIS COURTROOM THAT YOU USE
10 OUTSIDE OF THIS COURTROOM EVERY DAY.

11 NOW, THIS IS FOREIGN TERRITORY TO MOST OF
12 YOU. IT'S NOT WHERE YOU – WHERE YOU COME A WHOLE LOT
13 OF TIMES. MANY OF YOU HAVE NEVER BEEN HERE OR IN A PLACE
14 LIKE THIS BEFORE. BUT THE FACT THAT YOU NEVER HAVE BEEN
15 HERE BEFORE AND MIGHT BE UNFAMILIAR WITH THESE
16 SURROUNDINGS AND UNFAMILIAR WITH OUR RULES DOES NOT
17 MEAN THAT YOU'RE NOT QUALIFIED AS A JUROR.

18 AS A MATTER OF FACT, THE FACT THAT YOU
19 ARE UNFAMILIAR WITH THESE SURROUNDINGS AND THAT YOU
20 DON'T COME HERE EVERY DAY IS ONE OF THE THINGS THAT
21 UNIQUELY QUALIFIES YOU. BECAUSE WHAT WE ASK YOU TO DO
22 IS TO BRING YOUR GOOD COMMON SENSE TO BEAR IN THIS
23 COURTROOM. AND BRING THAT TO BEAR ON THE TESTIMONY
24 THAT YOU HEAR OFFERED. AND DECIDE ON WHAT YOU THINK
25 THE TRUTH OF THE CASE IS. THAT'S WHAT YOU DO. YOU DECIDE

1 THE TRUTHFULNESS OF WHAT YOU HEAR. AS WELL AS HOW
2 IMPORTANT IT IS.

3 AND OBVIOUSLY YOU'RE EQUIPPED TO DO THAT
4 BECAUSE THAT'S WHAT YOU'VE BEEN DOING EVERY DAY OF
5 YOUR LIFE FROM THE TIME THAT YOU WERE OLD ENOUGH TO
6 THINK ON YOUR OWN, EITHER IN RAISING YOUR CHILDREN OR
7 WORKING OR CHOOSING A LIFE PARTNER OR WHATEVER YOU
8 DO, FROM THE MOST INSIGNIFICANT TO THE MOST IMPORTANT
9 DECISIONS THAT YOU HAVE TO MAKE. YOU APPLY THE SAME
10 ABILITIES THAT WE ASK YOU TO APPLY IN THIS COURTROOM.

11 AN EXAMPLE THAT I USE FOR JURORS IS
12 PROBABLY A LITTLE TOO MUNDANE FOR – AND SIMPLISTIC FOR
13 BEAUFORT COUNTY BUT I USE IT NONETHELESS. I COME FROM A
14 MORE RURAL AREA, UP WHERE I'M FROM AND SOMETIMES WE
15 HAVE TO KEEP THINGS RATHER BASIC.

16 BUT NONETHELESS, IN THE MORNING WHEN I
17 DECIDE WHAT I'M GONNA WEAR AND WHEN I LEAVE THE HOUSE
18 THAT DAY I TURN ON THE TELEVISION AND I WATCH THE NEWS
19 AND THE WEATHER. AND I LISTEN TO CHANNEL 10 UP IN OUR
20 AREA, OUT OF COLUMBIA AND THEY HAVE THE WEATHER REPORT
21 ON AT TWENTY-FIVE MINUTES AFTER THE HOUR AND, AND I FIND
22 OUT WHAT THE TEMPERATURES GONNA BE, WHAT THE
23 WEATHERS GONNA BE. AND BASED ON THAT, I DECIDE WHETHER
24 I'M GONE WEAR LONG SLEEVES OR SHORT SLEEVES OR A
25 JACKET OR A SWEATER OR WHATEVER IT HAPPENS TO BE.

1 IF THE WEATHERMAN TELLS ME, HOWEVER, IT'S
2 GONNA BE SUNNY AND WARM THAT DAY AND I LOOK OUTSIDE
3 AND SEE THE RAIN POURING DOWN AND THE WIND BLOWING,
4 THEN I DISREGARD WHAT HE TELLS ME BECAUSE I RELY ON MY
5 GOOD COMMON SENSE.

6 AND, AS I SAID, THAT'S A VERY SIMPLISTIC
7 EXAMPLE OF WHAT WE ASK YOU TO DO IN THIS COURTROOM.
8 WE ASK YOU TO BRING YOUR GOOD COMMON SENSE TO BEAR
9 ON WHAT YOU HEAR SOMEBODY TELL YOU FROM THIS WITNESS
10 STAND. AND ASK YOURSELF IF THAT TESTIMONY HAS THE RING
11 OF TRUTH TO YOU. IF IT MEETS WITH YOUR TEST OF LOGIC,
12 YOUR SENSE OF LOGIC AND REASONING. YOUR EXPERIENCES IN
13 LIFE. ALL OF THOSE THINGS, YOUR COMMON SENSE. YOU'LL
14 BRING THESE ITS TO BEAR ON WHAT HAPPENS IN THIS
15 COURTROOM AND YOU'LL BE ABLE TO DECIDE WHAT THE TRUTH
16 OF THIS CASE IS.

17 AND WHEN THE TRIAL IS OVER YOU'VE BE ABLE
18 TO BACK ACROSS THAT HALL AND TALKING ABOUT THIS CASE
19 AMONG YOURSELVES. AND ONCE YOU ALL HAVE DETERMINED
20 AMONG YOURSELVES WHAT THE TRUTH OF THIS CASE IS, YOU
21 WILL TAKE THAT TRUTH AND YOU WILL APPLY THE LAW THAT I
22 GIVE YOU TO THAT TRUTH. AND THOSE TWO THINGS WILL COME
23 TOGETHER TO RESULT IN A VERDICT WHICH WILL SPEAK THE
24 TRUTH OF THIS CASE.

25 FINALLY, LADIES AND GENTLEMEN, LET ME TELL

1 YOU, A FEW MOMENTS AGO I TOLD YOU THAT THE DEFENDANT IN
2 THE CASE DOES NOT HAVE TO MAKE AN OPENING STATEMENT,
3 DOESN'T HAVE TO OFFER EVIDENCE AND TESTIMONY IF HE
4 CHOOSES NOT TO DO SO. AND THE REASON FOR THAT, OF
5 COURSE, IS THAT HE HAS PLED NOT GUILTY TO THESE CHARGES.
6 AND UNDER OUR LAW, WHEN SOMEONE PLEADS NOT GUILTY TO
7 THE CHARGES IN A CRIMINAL CASE, THAT PERSON IS PRESUMED
8 TO BE NOT GUILTY OF THOSE CHARGES. IS PRESUMED TO BE
9 INNOCENT, IF.

10 THE PRESUMPTION OF INNOCENCE MEANS
11 THAT THAT PERSON DOES NOT HAVE TO PROVE HIS INNOCENCE.
12 HE DOESN'T HAVE TO TAKE THIS STAND AND TRY TO CONVINCE
13 YOU THAT HE DID NOT DO THE THINGS THAT HE IS CHARGED
14 WITH DOING IN THIS INDICTMENT. HE DOESN'T HAVE TO BRING
15 OTHER WITNESSES IN HERE TO TRY TO CONVINCE YOU THAT HE
16 DID NOT DO THE THINGS THAT HE'S ACCUSED OF DOING IN THE
17 INDICTMENT. HE HAS NO BURDEN OF PROVING HIS INNOCENCE.

18 THE BURDEN OF PROOF IS ON THE STATE TO
19 PROVE HIS GUILT AND TO PROVE IT TO THE SATISFACTION OF
20 EACH OF YOU BEYOND A REASONABLE DOUBT BEFORE YOU CAN
21 CONVICT HIM AND FIND HIM GUILTY.

22 WHEN THE TRIAL IS OVER I WILL EXPLAIN TO
23 YOU IN GREATER DETAIL WHAT WE MEAN BY PROOF BEYOND A
24 REASONABLE DOUBT. FOR OUR PURPOSES RIGHT NOW IN THE
25 PRELIMINARY DISCUSSION LET ME TELL YOU THAT PROOF

1 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
2 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

3 NOW, THE LAW DOES NOT REQUIRE PROOF
4 THAT OVERCOMES EVERY POSSIBLE DOUBT BECAUSE THERE
5 ARE VERY FEW IT IN THIS WORLD THAT YOU AND I KNOW WITH
6 ABSOLUTE CERTAINTY. AND SO THE BURDEN OF PROOF IS NOT
7 ON THE STATE TO PROVE BEYOND ALL DOUBT OR BEYOND EVERY
8 POSSIBLE DOUBT BUT BEYOND EVERY REASONABLE DOUBT.

9 AND SO YOU WILL LISTEN TO THE EVIDENCE
10 AND TESTIMONY THAT WILL BE OFFERED IN THE TRIAL OF THIS
11 CASE AND WHEN ALL HAS BEEN SAID AND DONE YOU'LL GO BACK
12 ACROSS THE HALL AND TALK ABOUT IT AND YOU WILL DECIDE
13 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF.

14 IF IT IS ABLE TO FIRMLY CONVINCE YOU OF THE
15 DEFENDANT'S GUILT IN THIS CASE, THE STATE HAS MET ITS
16 BURDEN OF PROOF, WOULD BE ENTITLED TO A VERDICT OF
17 GUILTY. BUT AFTER YOU HAVE HEARD EVERYTHING THAT'S
18 GONNA BE SAID ABOUT THIS CASE, IF YOU STILL BELIEVE
19 THERE'S A REAL POSSIBILITY THAT THE DEFENDANT IS NOT
20 GUILTY, THE STATE HAS NOT MET IT BURDEN OF PROOF AND THE
21 DEFENDANT THEN WOULD BE ENTITLED TO A VERDICT OF NOT
22 GUILTY.

23 SO LISTEN TO THE EVIDENCE AND THE
24 TESTIMONY. AND THEN TALK ABOUT IT AMONG YOURSELVES
25 WHEN YOU HAVE A CHANCE. AND THEN YOU WILL EXPRESS

1 YOUR OPINION AS TO WHETHER OR NOT THE STATE HAS MET ITS
2 BURDEN OF PROOF BY WRITING A VERDICT OF EITHER GUILTY OR
3 NOT GUILTY ACCORDING TO YOUR VIEW OF THE EVIDENCE.

4 THANK YOU, FOLKS, FOR YOU ATTENTION TO
5 THESE REMARKS. NOW PLEASE LISTEN TO THE LAWYERS AS
6 THEY PRESENT THEIR OPENING STATEMENTS TO YOU.

7 MR. KNIGHT.

8 MR. KNIGHT: MAY IT PLEASE THE COURT,
9 YOUR HONOR.

10 THE COURT: YES, SIR.

11 MR. KNIGHT: MADAME FOREMAN AND LADIES
12 AND GENTLEMEN OF THE JURY, THIS CASE IS ABOUT ARMED
13 ROBBERY. AND ARMED ROBBERY IS THE TAKING AND CARRYING
14 AWAY OF PERSONAL PROPERTY OF ANOTHER THROUGH USE OF
15 FORCE, THREAT, INTIMIDATION WHILE ARMED WITH A DEADLY
16 WEAPON. HERE IN BEAUFORT COUNTY. THAT'S ALL IT IS.

17 NOW, THE TESTIMONY YOU'RE GONE
18 ESSENTIAL HEAR IS THAT ON OR ABOUT NOVEMBER 1, 2003, AT
19 ABOUT 1:30 IN THE MORNING, THE VICTIM, MISS ROBESON WAS
20 LEAVING COCONUTS UP HERE ON THE RIGHT, ON BOUNDARY
21 STREET, GOING TO HER CAR - HER CAR WAS PARKED OVER IN
22 THE BROAD RIVER SEAFOOD PARKING LOT - WHEN SHE WAS
23 APPROACHED BY AN INDIVIDUAL. STANDING ABOUT FIVE
24 FOOT - FIVE FOOT FIVE, FIVE EIGHT, WITH A KNIFE, PRESENTED A
25 KNIFE AT HER DEMANDING HER WALLET. SHE SAID SHE DIDN'T

1 HAVE A WALLET. HE THEN TOOK HER POCKETBOOK WHICH HAD
2 CERTAIN ITEMS IN IT.

3 IN THAT POCKETBOOK WAS HER WEDDING
4 BAND OR WEDDING RING, THE MONEY, CELL PHONE AND, AND
5 DIFFERENT THINGS OF THAT NATURE.

6 TOLD HER, YOU KNOW, YOU DON'T GIVE IT TO
7 ME AND IF YOU CALL THE POLICE I'M GONE KILL YOU. GOT A
8 KNIFE STICKING RIGHT AT HER.

9 CALLS LAW ENFORCEMENT AFTER HER GOES
10 ACROSS THE ROAD, GIVES A DESCRIPTION TO LAW
11 ENFORCEMENT. BEAUFORT POLICE DEPARTMENT. FIVE FOOT
12 FIVE, SCRAGGLY BEARD, PLAID-COLOR JACKET, LIGHT-COLOR
13 PANTS AND THAT HE TOOK MY POCKETBOOK WITH THESE ITEMS
14 IN IT.

15 ABOUT AN HOUR LATER BEAUFORT POLICE
16 DEPARTMENT CALLS HER AND SAY, COME TO THE ENMARK
17 STATION ; WE'VE GOT SOMEBODY HERE WANT YOU TO LOOK AT.

18 THEY POINT HIM OUT TO HER. SHE PICKS THE
19 PERSON THAT ROBBED HER. AND THE TESTIMONY'S GONE BE
20 THAT THE DEFENDANT IS THE ONE THAT ROBBED HER WITH A
21 KNIFE ABOUT AN HOUR EARLIER.

22 IN ADDITION, HE WAS SEARCHED INCIDENT TO
23 ARREST - HE, BEING THE DEFENDANT - AND FOUND IN THERE
24 WAS HER WEDDING BAND AND WEDDING RING.

25 THERE'LL BE OTHER TESTIMONY INVOLVED IN

1 THIS CASE. I'M JUST GIVING YOU HIGHLIGHT OF WHAT WE
2 INTEND TO PROVE.

3 AND IT'S A BURDEN THAT WE GLADLY ACCEPT
4 TO PROVE IN THIS CASE.

5 NOW, YOU HEARD THE JUDGE TALK ABOUT IT
6 AND YOU HEARD THE CLERK TALK TO YOU ABOUT ACCEPTING
7 THE OATH OF TRULY TRYING THE CASE BETWEEN THE STATE OF
8 SOUTH CAROLINA AND THE DEFENDANT. WHICH I WANT YOU TO
9 DO.

10 BUT IN THAT, THERE'S ALSO DIFFERENT LITTLE
11 ELEMENTS. THAT YOU WILL LOOK. YOU WILL LISTEN. AND YOU
12 WILL RECALL THE TESTIMONY THAT COMES TO YOU FROM THAT
13 WITNESS STAND. THAT'S WHAT THIS IS ALL ABOUT.

14 NOW, YOU'RE ON A JOURNEY SEEKING THE
15 TRUTH BECAUSE THE WORD VERDICT MEANS TO SPEAK THE
16 TRUTH. YOU'RE NOT, YOU'RE NOT ON A JOURNEY LOOKING FOR
17 DOUBT. YOU CAN HAVE DOUBT ON ANYTHING. AGAIN, YOUR
18 JOURNEY TODAY AND PROBABLY TOMORROW IS TO SEEK THE
19 TRUTH AND NOT DOUBT.

20 THANK YOU SO MUCH.

21 THE COURT: THANK YOU, MR. KNIGHT.

22 MR. HOOD: MAY IT PLEASE THE COURT.

23 THE COURT: MR. HOOD. YES, SIR.

24 MR. HOOD: IN OUR SYSTEM WE HAVE A
25 VARIETY OF NAMES THAT WE USE TO IDENTIFY CERTAIN PEOPLE.

1 AND IN THIS PARTICULAR CASE YOU'RE GONNA HEAR THE WORD
2 SUSPECT. SUSPECT IS JUST WHAT IT IS, SUSPECT. IN OTHER
3 WORDS, YOU SUSPECT THAT A PERSON HAS COMMITTED A
4 CRIME BECAUSE THEY HAVE CERTAIN CHARACTERISTICS OR
5 SOMETHING OF THAT NATURE. BUT THAT'S WHAT IT IS, A MERE
6 SUSPICION THAT THAT PERSON COMMITTED THE CRIME THAT
7 YOU'RE PARTICULARLY INTERESTED IN. THEY CALL THOSE
8 BOLO'S BE ON THE LOOKOUT FOR A PERSON MATCHING THIS
9 DESCRIPTION.

10 THERE'S SOMETHING YOUR GONNA HEAR
11 DURING THE COURSE OF THIS CASE AND AGAIN WE GO BACK TO
12 OBSERVATIONS OF PEOPLE. AND PARTICULARLY THE VICTIM IN
13 THIS CASE.

14 SHE INDICATES THAT THIS PERSON IS VERY
15 CLOSE TO HER. AND CLOSE ENOUGH FOR HER TO BE ABLE TO
16 VERY EASILY SEE EVERYTHING ABOUT THEM. A PART OF HER
17 DESCRIPTION SHE DESCRIBES THAT PERSON AS PERSON WITH
18 SALT AND PEPPER BEARD AND HAIR.

19 NOW, I HAVE SALT AND PEPPER HAIR. AND IT'S
20 PRETTY EASY FOR ANYBODY TO BE ABLE TO SEE THAT. YOU
21 RIGHT OFF THE BAT SAY SALT AND PEPPER, YEAH. NO QUESTION
22 IN MY MIND. AND I'D REMEMBER THAT PARTICULAR THING ABOUT
23 THE PERSON. PERSON'S BLACK, PERSON'S WHITE. EASY TO
24 REMEMBER. OKAY?

25 BUT DISTINCTIVE THINGS, SUCH AS THE COLOR

1 OF THE HAIR, THE MIXTURE OF THEIR HAIR AND THINGS OF THAT
2 NATURE. AND THERE BEARD ARE THINGS THAT ARE UNIQUE TO
3 THAT PARTICULAR PERSON BECAUSE YOU SEE IT. AND YOU
4 IDENTIFY WITH IT.

5 I DON'T LOOK TO CHECK THE COLOR OF YOUR
6 EYES. I LOOK, BASICALLY, AND SEE THAT, BOOM, WHITE. THIS
7 PERSON'S BLACK; THIS PERSON'S WHITE. YOU KNOW, THINGS OF
8 THAT NATURE JUST AUTOMATICALLY POP RIGHT INTO YOUR
9 MIND. YOU ALREADY - YOU ALREADY HAVE THAT PICTURE. WE
10 KNOW THAT.

11 BUT THEN THERE ARE OTHER DETAILS THAT
12 YOU LOOK FOR. AND THAT'S THE DETAILS WITH THE HAIR. AND
13 THE BEARD. AND THINGS OF THAT NATURE.

14 NOW, MR. KNIGHT MENTIONED SOMETHING
15 ABOUT EVIDENCE AND SOMETHING ABOUT YOU'RE NOT
16 SUPPOSED TO LOOK FOR DOUBT OR WHATEVER. WELL, WE'RE
17 TALKING ABOUT A CASE WHERE WE HAVE TO RELY UPON
18 SOMEBODY WHO SAYS THIS PERSON IS THE PERSON THAT
19 COMMITTED THIS CRIME.

20 NOW, YOU HAVE TO ABLE TO PUT TOGETHER
21 OTHER FACTS WHICH WOULD BASICALLY CONFIRM THAT
22 PERSON'S SUSPICION THAT THAT'S THE PERSON. SO WHAT DO
23 WE HAVE? OTHER FACTS THAT ADD UP, BOOM, THAT INDICATE
24 THIS PERSON IS IN FACT THE PERSON THAT THIS PERSON 'S
25 TALKING ABOUT. SO WE LOOK FOR OTHER EVIDENCE TO

1 CONNECT THAT PERSON WITH THE CRIME.

2 WE ALSO LOOK FOR AND – HOPEFULLY, THE
3 DEFENSE IS THE MOST IMPORTANT PERSON IN THIS PARTICULAR
4 TIME, IS BECAUSE WE LOOK FOR EVIDENCE THAT EXONERATES
5 THIS PERSON , WHICH ELIMINATES THIS PERSON AS BEING A
6 SUSPECT.

7 AND THAT'S THE WORD, SUSPECT.

8 LISTEN TO THE EVIDENCE IN THIS CASE.
9 YOU'RE GONNA HEAR ALL KINDS OF THINGS THAT THE STATE
10 DOES TO THIS PARTICULAR PERSON, MR. JAMES BOWERS.

11 JAMES BOWERS IS JUST LIKE YOU AND I.
12 JAMES BOWERS HAS A RIGHT TO HAVE MONEY. IN HIS
13 POSSESSION. HE HAS A RIGHT TO HAVE A KNIFE, A POCKETKNIFE
14 IN IS POSSESSION. HE HAS A RIGHT TO HAVE RINGS IN HIS
15 POSSESSION. ALL OF THESE ITEMS ARE THINGS THAT WE HAVE A
16 RIGHT TO POSSESS.

17 NOW, HOW DOES SOMEONE ELSE GAIN A
18 SUPERIOR RIGHT TO THAT PROPERTY? WHEN THAT PROPERTY
19 CAN BE POSITIVELY IDENTIFIED AS THEIR PROPERTY. OKAY? A
20 RIGHT OF OWNERSHIP. I OWN IT, I POSSESS IT, IT'S IN MY
21 POCKETS. AND UNTIL SOMEBODY ELSE CAN ESTABLISH BEYOND
22 A REASONABLE DOUBT THAT THAT PROPERTY IS THEIRS, IT
23 BELONGS TO ME.

24 NOW, YOU'LL NOTICE IN THIS PARTICULAR
25 CASE UNIQUE THINGS HAPPEN. WHICH COMPLETELY DESTROY

1 THE DEFENSE'S OPPORTUNITY TO BE ABLE TO SHOW YOU THAT
2 THAT PROPERTY MAY HAVE BELONGED TO AND WAS RIGHTFULLY
3 THE PROPERTY OF THE DEFENDANT IN THIS CASE. SUCH AS,
4 MONEY. THEY TAKE MONEY. THEY GIVE IT TO WHO? THAT
5 NIGHT. TO THE VICTIM WHO ALLEGED THAT SOMEBODY TOOK
6 MONEY FROM HER.

7 RINGS. THEY GIVE THEM TO THE VICTIM.
8 BOOM. WE NO LONGER HAVE AN OPPORTUNITY TO BE ABLE TO
9 SEE WHAT THAT ITEM LOOKED LIKE ON THAT PARTICULAR NIGHT.
10 NOR DO WE HAVE AN OPPORTUNITY TO TAKE THAT MONEY,
11 WHICH THEY CLAIM IS GONNA BE CRISP, BRAND-NEW DOLLARS
12 TAKEN - TWENTY-DOLLAR BILLS TAKEN OUT OF THE ATM
13 MACHINE, JUST NICE AND CRISP AND BRAND-NEW.

14 FINGERPRINTS. LORD, YOU CAN GET
15 FINGERPRINTS OFF OF ANYTHING JUST ABOUT, PARTICULARLY
16 BRAND-NEW MONEY. IT ALL CONTAINS FINGERPRINTS. EVERY
17 TIME YOU TOUCH THEM YOU LEAVE YOUR FINGERPRINTS.

18 SO WE HAVE THIS MONEY. THEY GIVE IT TO
19 THE VICTIM. WE HAVE THIS, BOOM, RINGS. THEY GIVE THEM TO
20 THE VICTIM.

21 WE'LL HEAR IT LATER ON, HOPEFULLY - I DON'T
22 KNOW WHETHER THE STATE WILL PRESENT IT OR NOT - THEY
23 FIND A POCKETBOOK. THE NEXT DAY. SOME DISTANCE FROM
24 WHERE THEY ARREST THIS SUSPECT.

25 WHAT DO THEY DO WITH THE POCKETBOOK?

1 THEY CALL THE VICTIM AND SAY, LOOK, WE'VE FOUND SOME
2 IDENTIFICATION IN HERE AND WE - ONE OF IT'S YOUR CREDIT
3 CARD; THERE'S A CELL PHONE IN HERE AND SOME OTHER ITEMS
4 IN HERE. AND IT'S GOT YOUR NAME ON IT. COME DOWN, TAKE A
5 LOOK AT IT. SHE SAYS, THAT'S MY POCKETBOOK.

6 WHAT DO THEY DO WITH THE EVIDENCE?

7 WHAT DO THEY DO WITH THE EVIDENCE? THEY GIVE IT TO HER.
8 IT'S GONE.

9 THIS HAS HAPPENED OVER A YEAR AGO. ALL
10 OF THESE THINGS HAVE PRINTS ON THEM. THEY HAVE GOOD
11 OLD FINGERPRINTS. WHICH COULD EXONERATE MR. JAMES
12 BOWERS. WHICH COULD ALSO SHOW THAT THAT PROPERTY
13 DIDN'T BELONG TO THE VICTIM IN THE CASE. THERE ARE ALL
14 KINDS OF THINGS HERE THAT WHAT WE'RE TALKING ABOUT IS
15 THEY JUST SIMPLY DISREGARD THE FAIRNESS, OKAY? BECAUSE
16 WE'RE TALKING ABOUT FAIRNESS HERE.

17 I HAVE RINGS. AND I HAVE A RING RIGHT HERE.
18 YOU HAVE RINGS. ALL OF YOU HAVE RINGS. YOU TELL ME IF YOU
19 CAN SAY POSITIVELY THAT THAT RING IS YOUR OR THAT ITEM IS
20 YOURS WITHOUT SOME UNIQUENESS, SOME IDENTIFYING MARK,
21 SUCH AS, AN INSCRIPTION. UNFORTUNATELY, WE DON'T EVER
22 HAVE ONE IN THIS ONE.

23 AND I WOULDN'T BE ABLE TO TELL YOU IF THIS
24 WAS MY RING OR NOT, POSITIVELY. I COULD SAY IT LOOKS LIKE,
25 SMELLS LIKE, IT'S SIMILAR TO MY RING. BUT IS IT MY RING?

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1 MR. KNIGHT.

2 MR. KNIGHT: STATE WOULD CALL CLARE
3 ROBESON .

4 THE COURT: MS. ROBESON. COME FROM,
5 PLEASE, MA'AM, AND BE SWORN.

6 CLARE ROBESON ,
7 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

8 CLERK OF COURT: PLEASE BE SEATED. STATE
9 YOUR NAME AND SPELL IT FOR THE COURT.

10 A. CLARE ROBESON, C-L-A-R-E R-O-B-E-S-O-N.

11 DIRECT EXAMINATION BY MR. KNIGHT:

12 Q. MISS ROBESON, DO YOU RESIDE IN BEAUFORT COUNTY?

13 A. YES.

14 Q. AND WHAT DO YOU DO FOR A LIVING, MA'AM?

15 A. I'M A STUDENT.

16 Q. STUDENT?

17 A. A STUDENT AT USCB. AND A MOTHER.

18 Q. IS THAT WORKING? BECAUSE I CAN'T HEAR YOU.

19 A. STUDENT AND A MOTHER.

20 Q. OKAY.

21 DO YOU RECALL OCTOBER 31, 2003?

22 A. YES, SIR.

23 Q. AND YOU RECALL WHAT YOU DID IN THE EVENING HOURS OF
24 2000 - OCTOBER 31, 2003?

25 A. YES. IN THE EARLIER EVENING MY FRIEND CHRISTEN (PHON.)

1 AND I, MY HUSBAND TOOK OUR DAUGHTERS TRICK-OR-TREATING.
2 AFTER THAT, MY FRIEND AND I WENT TO DINNER AT OUTBACK.
3 THEN WE WENT BACK TO HER HOUSE. AND THEN SHE WANTED
4 TO GO TO COCONUTS SO WE WENT TO COCONUTS. LATER THAT
5 EVENING.

6 Q. NOW, WHAT IS COCONUTS?

7 A. BAR, CLUB, THING.

8 Q. AND WHERE IS COCONUTS LOCATED AT?

9 A. THE END OF BOUNDARY STREET, GOING TOWARDS THE AIR
10 STATION.

11 Q. OKAY.

12 AND HOW LONG DID YOU STAY AT COCONUTS?

13 A. HOUR AND A HALF, MAYBE.

14 Q. WHERE DID YOU PARK YOUR VEHICLE?

15 A. I PARKED AT – COCONUTS HAS A PARKING LOT AND IT WAS
16 HALLOWEEN NIGHT SO IT WAS VERY BUSY.

17 I FEW PARKING LOTS DOWN, THERE'S A
18 SEAFOOD CATERING BUSINESS THERE.

19 Q. YOU PARKED IN A PARKING LOT?

20 A. THE FAR END OF THE PARKING LOT.

21 Q. DID YOU HAVE ANYTHING TO DRINK AT COCONUTS?

22 A. YES, I HAD ONE BEER THERE.

23 Q. YOU INDICATED THAT YOU'D BEEN TO DINNER EARLIER. DID
24 YOU HAVE ANYTHING TO DRINK - ALCOHOLIC BEVERAGES IS
25 WHAT I'M TALKING ABOUT - WHEN YOU WERE HAVING DINNER?

1 A. YES. I HAD A GLASS OF WINE WITH DINNER EARLIER THAT
2 EVENING, AROUND 8:30.

3 Q. YOU RECALL WHAT TIME OF NIGHT OR MORNING YOU
4 DECIDED TO LEAVE COCONUTS?

5 A. AROUND 1:20ISH.

6 Q. ONE TWENTYISH. OKAY.

7 DID YOU LEAVE BY YOURSELF?

8 A. YES.

9 Q. WHAT HAPPENED? AS YOU WERE WALKING TOWARDS YOUR
10 VEHICLE?

11 A. WHEN I GOT THROUGH ALL THE PARKING LOTS - THERE'S BIG
12 BUSHES IN THE PARKING LOTS - SOMEONE YELLED AT ME. FROM
13 BEHIND ONE OF THE BUSHES AND WHEN I TURNED AROUND
14 THERE WAS SOMEONE IN MY FACE, ASKED ME TO GIVE THEM MY
15 WALLET.

16 AT THAT POINT I DID NOT KNOW THERE WAS A
17 KNIFE TO MY RIBS SO I SAID I DID NOT HAVE A WALLET. WHEN I
18 FELT THE KNIFE AND I SAW THE KNIFE AND HE SAID GIVE ME
19 EVERYTHING YOU HAVE OR I'LL KILL YOU. I TOOK - GAVE HIM MY
20 PURSE. HE STILL HAD THE KNIFE. HE SAID, DO YOU HAVE
21 ANYTHING ELSE OR I'LL KILL YOU; CALL THE POLICE AND I'LL KILL
22 YOU; YELL AND I'LL KILL YOU.

23 THEN WHEN HE TURNED AROUND HE WAS STILL
24 HOLDING THE KNIFE AT ME SAYING HE WOULD KILL ME IF I
25 YELLED. HE TURNED HIS BACK AND WENT - WALKED ACROSS

1 THE STREET. AS SOON AS HE WAS ON THE OTHER SIDE OF THE
2 STREET I RAN TO THE OTHER PARKING LOTS AND FOUND
3 SOMEONE WITH A CELL PHONE. TO CALL THE POLICE.

4 Q. AND DID YOU, IN FACT, CALL POLICE?

5 A. YES, I DID.

6 Q. DID THE POLICE ARRIVE? AT THE LOCATION?

7 A. YES. VERY, VERY QUICKLY.

8 Q. DID YOU GIVE A DESCRIPTION TO POLICE OF PERSON THAT
9 HAD ROBBED YOU?

10 A. YES, SIR.

11 Q. AND DO YOU RECALL WHAT THAT DESCRIPTION WAS?

12 A. YES. I SAID HE WAS FIVE FOOT FIVE. AROUND FIVE FOOT
13 FIVE.

14 I'M FIVE THREE AND A HALF AND I HAD BOOTS
15 ON SO HE WAS JUST A LITTLE TALLER THAN ME.

16 HE HAD A LIGHT-COLOR PANTS ON, PLAID COAT
17 OR JACKET. AND I SAID HE HAD SALT AND PEPPER HAIR.

18 WHICH IN MY MIND, THE PROSECUTING - OR
19 THE DEFENSE ATTORNEY HAS GRAY HAIR.

20 Q. TELL WHAT HAPPENED -

21 A. SALT AND PEPPER.

22 Q. - NOT AN OPINION.

23 A. THAT'S - SALT AND PEPPER TO ME WAS A LITTLE BIT OF GRAY
24 IN IT.

25 Q. OKAY.

1 YOU RECALL WHAT ITEMS YOU HAD IN YOUR
2 PURSE?

3 A. YES.

4 Q. WHAT WERE THOSE ITEMS?

5 A. I HAD MY CELL PHONE IN MY PURSE , WEDDING RINGS IN MY
6 PURSE . DEBIT CARD, CREDIT CARDS. A HUNDRED AND TWENTY
7 DOLLARS IN NEW TWENTIES FROM THE BANK EARLIER. CHANGE.
8 I HAD ONE OF MY DAUGHTER'S HAIR THINGIES IN IT.

9 AND I BELIEVE THAT WAS ALL I HAD.

10 Q. WHAT WAS THE DISTANCE BETWEEN YOU AND THE
11 DEFENDANT WHEN HE WAS POKING THE KNIFE AT YOU?

12 A. FEW INCHES.

13 MR. KNIGHT: OKAY.

14 PERMISSION OF THE COURT, COULD SHE
15 STAND DOWN?

16 THE COURT: STEP DOWN, MISS ROBESON.

17 MAKE SURE YOU KEEP YOUR VOICE UP WHEN
18 YOU'RE AWAY FROM THAT MICROPHONE, PLEASE, MA'AM.

19 Q. SHOW ME THE DISTANCE THAT YOU WERE WHEN HE HAD THE
20 KNIFE AT YOU.

21 A. (WITNESS COMPLIES.)

22 Q. RIGHT HERE?

23 THAT'S ABOUT LESS THAN AN ARM'S LENGTH
24 FROM THE COURT REPORTER?

25 A. (NO RESPONSE.)

1 Q. HOW WAS THE LIGHTING CONDITION AT THE TIME OF THE
2 ROBBERY?

3 A. IT WAS VERY GOOD. THERE'S BIG LIGHTS.

4 Q. I'M SORRY?

5 A. THERE'S LIGHTS LIGHTING THE PARKING LOT THERE.

6 Q. I NOTICE THAT YOU HAVE GLASSES ON. TODAY.

7 A. YES.

8 Q. DID YOU HAVE GLASSES ON ABOUT NOVEMBER 1 AT ABOUT
9 1:30?

10 A. YES.

11 I ALWAYS WEAR GLASSES.

12 Q. ASK YOU IF YOU CAN IDENTIFY THESE, PLEASE, MA'AM.

13 A. YES.

14 Q. WHAT ARE THESE?

15 A. THE CLOTHES HE WAS WEARING. THE MAN WHO MUGGED
16 ME WAS WEARING.

17 MR. HOOD: I HAVE NO OBJECTION.

18 MR. KNIGHT: MARK STATE'S EXHIBIT THE
19 PANTS NUMBER 1, THE JACKET NUMBER 2.

20 (PANTS MARKED AND ENTERED INTO EVIDENCE
21 AS STATE'S EXHIBIT 1 WITHOUT OBJECTION. JACKET MARKED
22 AND ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 2 WITHOUT
23 OBJECTION.)

24 Q. I ASK YOU IF YOU CAN IDENTIFY THIS, PLEASE, MA'AM.

25 A. YES.

1 Q. WHAT IS IT?

2 A. IT'S THE KNIFE THAT HE USED TO MUG ME.

3 MR. KNIGHT: OFFER THIS AS STATE'S EXHIBIT
4 NUMBER 3.

5 MR. HOOD: WITH RESPECT TO MY PREVIOUS
6 MOTION, YOUR HONOR. OBVIOUSLY I'M MAKING AN OBJECTION
7 TO THIS PARTICULAR ITEM; HOWEVER —

8 THE COURT: ALL RIGHT, SIR.

9 MR. HOOD: THAT'S THE ONLY OBJECTION I
10 HAVE.

11 THE COURT: I UNDERSTAND.

12 I'LL ADOPT MY EARLIER RULING. WITH NO
13 OBJECTION OTHER THAN THAT, THAT WILL BE RESPECTFULLY
14 OVERRULED AND I'LL ALLOW IT SUBJECT TO YOUR OBJECTION.

15 MR. KNIGHT: THAT WOULD BE STATE'S EXHIBIT
16 — THE KNIFE WOULD BE STATE'S EXHIBIT NUMBER 3, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT, SIR.

19 (KNIFE MARKED AND ENTERED INTO EVIDENCE
20 AS STATE'S EXHIBIT 3 OVER OBJECTION.)

21 Q. WERE YOUR WEDDING RINGS IN THE POCKETBOOK THAT THE
22 DEFENDANT TOOK? THE ROBBER TOOK?

23 A. YES.

24 Q. OKAY.

25 YOU HAVE YOUR WEDDING RINGS ON TODAY?

1 A. YES.

2 Q. OKAY.

3 LET ME SEE.

4 A. YOU WANT THEM?

5 Q. NO. JUST HOLD THEM UP.

6 A. (WITNESS COMPLIES.)

7 Q. ASK YOU IF YOU CAN IDENTIFY THIS PHOTOGRAPH AND WHAT
8 THIS PHOTOGRAPH DEPICTS.

9 A. MY WEDDING BAND AND WEDDING RING.

10 Q. OKAY.

11 HOW CAN YOU IDENTIFY THAT PHOTOGRAPH AS
12 BEING YOUR WEDDING RINGS? IS THERE ANYTHING UNIQUE
13 ABOUT YOUR WEDDING RING?

14 A. YES. MY DAD HAD GIVEN ME A DIAMOND WHEN I WAS
15 YOUNGER. AND MY HUSBAND MADE IT INTO MY WEDDING RING.

16 THE PRONGS ON THE TOP OF, ONE OF THEM IS
17 MISSING AND ONE OF THEM HAS BEEN RESOLDERED. A FEW
18 TIMES AND YOU CAN SEE THAT. IN THE PICTURE.

19 MR. KNIGHT: WITH PERMISSION OF THE
20 COURT, COULD SHE STEP DOWN AND SHOW YOU THE RINGS IN
21 THE PHOTOGRAPH TO ASSIST THE JURY?

22 THE COURT: YES, SIR, SHE CAN DO THAT.

23 ONCE AGAIN, MISS ROBESON, I HAVE TO
24 REMIND YOU TO KEEP YOUR VOICE UP IF YOU HAVE TO SAY
25 ANYTHING SO WE —

1 MR. KNIGHT: WHAT I - WHAT I WILL DO, YOUR
2 HONOR, IS I'LL HOLD THIS AND LET HER DESCRIBE IT.

3 GO JUST THE FIRST SIX AND THEN GO TO THE
4 NEXT SIX.

5 A. ON THIS PICTURE —

6 Q. YOU HAVE TO SPEAK UP.

7 A. OH, SORRY.

8 ON THIS PICTURE YOU CAN SEE WHERE ONE OF
9 THE PRONGS IS LONGER WHERE IT'S BEEN RESOLDERED. YOU
10 CAN SEE THAT SIDE.

11 AND THIS SIDE ISN'T SHOWN ON THIS PICTURE
12 BUT I'M MISSING ONE OF THE OTHER PRONGS.

13 THE COURT: PLEASE KEEP YOUR VOICE UP,
14 PLEASE, MA'AM .

15 Q. YOU HAVE TO SPEAK UP.

16 A. DID YOU HEAR ME?

17 THEY HEARD ME.

18 Q. OKAY.

19 A. THIS IS THE RESOLDERED PRONG AT THE TOP THERE.

20 OH, THIS SIDE, THIS ONE HAS BEEN
21 RESOLDERED.

22 THIS PRONG RIGHT THERE.

23 THIS IS THE RESOLDERED PRONG. IT'S BEEN
24 RESOLDERED A FEW TIMES.

25 SORRY.

1 MR. KNIGHT: DID YOU HEAR?

2 (PHOTOGRAPH OF RINGS MARKED AND

3 ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 4 OVER

4 OBJECTION.)

5 Q. WERE YOU SUBSEQUENTLY CALLED BY LAW ENFORCEMENT

6 TO COME TO THE ENMARK GAS STATION HERE IN THE CITY OF

7 BEAUFORT ?

8 A. YES, I WAS.

9 Q. DO YOU RECALL HOW LONG THAT WAS?

10 A. NOT —

11 Q. AFTER THE ROBBERY?

12 A. NOT QUITE AN HOUR.

13 Q. NOT QUITE AN HOUR.

14 AND WHAT WERE YOU TOLD WHEN YOU
15 ARRIVED AT THE ENMARK GAS STATION?

16 A. THAT THEY HAD FOUND SOMEONE WHO MATCHED MY
17 DESCRIPTION. AND TO COME IDENTIFY HIM.

18 Q. OKAY.

19 HOW WAS THE LIGHTING CONDITIONS AT THE
20 ENMARK GAS STATION ?

21 A. THE LIGHTING WAS GOOD.

22 THEY ALSO HAS A SPOTLIGHT ON HIM.

23 Q. OKAY.

24 AND WHERE WAS THIS PERSON THAT THEY
25 WANTED YOU TO LOOK AT?

1 A. DISTANCE WISE?

2 Q. YEAH, DISTANCE WISE.

3 A. FROM ME TO ABOUT THE MIDDLE OF THE COURTROOM.

4 Q. HAVE TO SPEAK UP SO —

5 A. FROM ME TO ABOUT THE MIDDLE OF THE COURTROOM.

6 Q. OKAY.

7 AND WAS HE THE ONLY PERSON THERE?

8 A. BESIDES — THERE WAS POLICE OFFICERS THERE.

9 Q. AND WHAT DID — DID YOU, IN FACT, LOOK AT THIS PERSON ?

10 A. YES.

11 Q. AND WHAT DID YOU SAY ABOUT HIM?

12 A. THAT HE WAS THE MAN WHO MUGGED ME. EARLIER THAT
13 EVENING.

14 Q. OKAY.

15 IS THAT PERSON THAT YOU PICKED OUT ON
16 NOVEMBER 1, 2003, IN THE COURTROOM TODAY?

17 A. YES, HE IS. YES, HE IS.

18 Q. WOULD YOU POINT HIM OUT FOR THE JURY, PLEASE?

19 A. HE'S THE DEFENDANT.

20 Q. THAT'S THE FELLOW SITTING OVER HERE NEXT TO MR.
21 HOOD? RIGHT HERE?

22 A. YES, SIR.

23 Q. OKAY.

24 NOW, WHEN DID YOU GET YOUR WEDDING
25 RINGS BACK?

1 A. THAT EVENING. AS SOON AS I IDENTIFIED THE DEFENDANT.

2 Q. OKAY.

3 AND THAT'S THE RINGS THAT ARE SHOWN ON
4 STATE'S EXHIBIT NUMBER 4?

5 A. YES, SIR.

6 Q. I UNDERSTAND YOU HAD SOME CASH IN YOUR WALLET - I
7 MEAN YOUR POCKETBOOK AT THE TIME OF THE ROBBERY?

8 A. YES.

9 Q. APPROXIMATELY HOW MUCH MONEY DID YOU HAVE?

10 A. A HUNDRED AND TWENTY DOLLARS.

11 Q. NOW, THIS HUNDRED AND TWENTY DOLLARS, DID YOU GET
12 THAT BACK THE SAME NIGHT, NOVEMBER 1, ABOUT 2:00 IN THE
13 MORNING?

14 A. YES, I DID.

15 Q. OKAY.

16 I SHOW YOU A PHOTOGRAPH, SEE IF YOU CAN
17 IDENTIFY. CAN YOU IDENTIFY IT?

18 A. IT'S THE BRAND-NEW TWENTY-DOLLAR BILLS LIKE I GOT AT
19 THE BANK THAT EVENING.

20 MR. KNIGHT: ANY OBJECTIONS? SAME
21 OBJECTION?

22 MR. HOOD: YES, YOUR HONOR.

23 THE COURT: SUBJECT TO PRIOR OBJECTION.

24 MR. KNIGHT: YES, SIR.

25 STATE'S EXHIBIT NUMBER 4. FIVE, I'M SORRY.

1 (PHOTOGRAPH OF SIX TWENTY-DOLLAR BILLS
2 MARKED AND ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 5
3 OVER OBJECTION.)

4 Q. AND WHEN DID YOU RECEIVE THE HUNDRED AND TWENTY
5 DOLLARS? BACK?

6 A. THAT EVENING, WHEN I IDENTIFIED THE SUSPECT.

7 Q. OKAY.

8 ASK YOU IF YOU CAN IDENTIFY THIS AREA.
9 THAT'S DEPICTED IN THIS PHOTOGRAPH.

10 A. YES.

11 Q. WHAT IS THAT?

12 A. THIS IS OUT FRONT IN THE PARKING LOT. BESIDE THE
13 CATERING BUSINESS.

14 Q. IS THAT THE LOCATION WHERE YOU WERE ROBBED?

15 A. YES.

16 MR. HOOD: YOUR HONOR, I'M NOT SURE
17 WHETHER WE'RE GONE INTRODUCE THIS —

18 MR. KNIGHT: INTRODUCE IT FOR THE PURPOSE
19 OF SHOWING THE LIGHTING CONDITIONS AT THE TIME OF THE
20 ROBBERY.

21 THE COURT: YOU CAN LAY THE FOUNDATION
22 FOR THAT.

23 MR. KNIGHT: I, I WILL LAY IT, ANOTHER
24 WITNESS.

25 THE COURT: ALL RIGHT. ALL RIGHT.

1 LET'S MARK THAT FOR IDENTIFICATION
2 THROUGH THIS WITNESS AND THEN – SIX FOR ID.

3 (PHOTOGRAPH OF PARKING LOT MARKED AS
4 STATE'S EXHIBIT 6 FOR IDENTIFICATION ONLY.)

5 MR. KNIGHT: IF THE COURT WILL INDULGE ME
6 ONE MOMENT.

7 MISS ROBESON, IF YOU'D BE SO KIND TO
8 ANSWER ANY QUESTIONS MR. HOOD HAVE – MAY HAVE, OKAY?

9 A. YES, SIR.

10 THE COURT: MR. HOOD, YOU MAY CROSS-
11 EXAMINE.

12 CROSS-EXAMINATION BY MR. HOOD:

13 Q. NOW, THIS WASN'T YOUR FIRST TIME IN COCONUTS, ISN'T
14 THAT CORRECT?

15 A. I THINK I'D BEEN THERE ONCE BEFORE.

16 Q. AND DO YOU GO THERE WITH THIS SAME GIRLFRIEND? IS
17 THAT CORRECT?

18 A. YES. I'VE BEEN THERE ONCE BEFORE WITH HER.

19 Q. AND THE NIGHT THAT YOU WENT THERE WITH THIS
20 GIRLFRIEND OF YOURS, YOU WERE DRIVING IN SEPARATE CARS,
21 IS THAT CORRECT?

22 A. YES, SIR.

23 Q. OKAY.

24 AND YOU PARKED YOUR CAR OVER IN THE
25 BROAD RIVER SEAFOOD AREA, IS THAT CORRECT?

1 A. YES, SIR.

2 Q. OKAY.

3 NOW, PRIOR TO THIS PERIOD OF TIME HOW
4 LONG HAD YOU BEEN MARRIED?

5 A. SIX YEARS.

6 Q. SIX YEARS. OKAY.

7 NOW, YOUR HUSBAND, HE WAS AT HOME, IS
8 THAT CORRECT?

9 A. YES, SIR.

10 Q. OKAY.

11 AND THE OTHER OCCASIONS THAT YOU WENT
12 TO THE COCONUTS, YOU INDICATED YOU WERE WITH YOUR
13 GIRLFRIEND, IS THAT CORRECT?

14 A. YES, SIR.

15 Q. OKAY.

16 NOW, YOUR GIRLFRIEND DROVE IN HER CAR BY
17 HERSELF, IS THAT CORRECT?

18 A. YES, SIR.

19 Q. OKAY.

20 AND SO WHEN YOU LEFT, IN YOUR STATEMENT I
21 BELIEVE YOU INDICATED THAT YOU LEFT COCONUTS ABOUT 1:30
22 BY YOURSELF, ISN'T THAT CORRECT?

23 A. YES, SIR.

24 Q. AND I BELIEVE THAT WAS YOUR EXACT WORDS, BY
25 YOURSELF, IS THAT CORRECT?

1 A. YES, SIR.

2 Q. OKAY.

3 AND IMMEDIATELY AFTER THIS PERSON
4 TURNED HIS BACK ON YOU AND STARTED AWAY FROM YOU, YOU
5 WENT INTO THE OTHER PARKING LOT, WHICH IS RIGHT NEXT
6 DOOR. IT'S ADJACENT TO IT, IS THAT CORRECT?

7 A. THEY'RE —

8 Q. THEIR PARKING LOT?

9 A. THERE'S THE FAR-END PARKING LOT WHERE I WAS MUGGED.
10 THERE'S A PARKING AREA IN FRONT OF THE CATERING BUSINESS.
11 THERE'S A PARKING AREA. AND THEN THERE'S COCONUTS
12 PARKING AREA .

13 Q. AND YOU, YOU GOT A CELL PHONE FROM THERE, ISN'T THAT
14 CORRECT?

15 A. YES, SIR.

16 Q. AND YOU CALLED 9-1-1 AND THE POLICE ARRIVED WITHIN,
17 YOU TOLD ME, I BELIEVE, LESS THAN — LESS THAN THREE
18 MINUTES, DIDN'T THEY?

19 A. YES, SIR.

20 Q. OH. SO THEY WERE THERE EXTREMELY QUICKLY, ISN'T THAT
21 CORRECT?

22 A. VERY, VERY QUICKLY.

23 Q. AND AT THAT TIME YOU TOLD THEM WHAT HAD HAPPENED
24 AND THE DIRECTION THAT THIS PERSON WENT IN, ISN'T THAT
25 CORRECT?

1 A. YES, SIR.

2 Q. OKAY.

3 NOW, WHEN YOU'RE AT COCONUTS,
4 COCONUTS, IF WE - IF WE GO DOWN BOUNDARY - I MEAN DOWN
5 21 HERE, GOING BACK OUT TOWARDS THE AIR STATION IS ON
6 YOUR RIGHT-HAND SIDE, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. OKAY.

9 AND THE CATERING BUSINESS IS JUST THE
10 NEXT BUILDING DOWN PASSED COCONUTS, ISN'T THAT
11 CORRECT?

12 A. YES.

13 Q. OKAY.

14 NOW, ON THE OPPOSITE SIDE OF THE STREET,
15 THERE'S A RAILROAD TRACK, ISN'T THAT CORRECT? SOME
16 DISTANCE BACK DOWN THE ROAD, ISN'T THAT CORRECT?

17 A. I'VE BEEN TOLD. I HAVE NEVER SEEN A RAILROAD TRACK. I'M
18 NOT SURE.

19 Q. WELL, HOW LONG HAVE YOU BEEN HERE? IN BEAUFORT
20 COUNTY?

21 A. TWO YEARS.

22 Q. TWO YEARS? OKAY.

23 AND AS YOU'RE COMING DOWN 21 HAVE YOU
24 EVER SEEN BERNARD'S TIRES AND THINGS OF THAT NATURE?

25 A. I'M NOT SURE.

1 Q. WELL, AFTER YOU – IF YOU'RE STANDING IN THE PARKING
2 WHERE YOU'RE AT THE FAR-END OF THE CATERING BUSINESS,
3 OKAY? YOU'RE IN THE FAR-END OF THE CATERING BUSINESS.

4 AND THE PERSON, IF I RECALL CORRECTLY
5 FROM YOUR STATEMENT, YOU INDICATED THAT HE WENT
6 TOWARDS THE AIR STATION , IS THAT CORRECT?

7 A. YES, SIR.

8 Q. OKAY

9 AND THE AIR STATION IS TO YOUR RIGHT, IS
10 THAT CORRECT?

11 A. HE WENT AT AN ANGLE. ACROSS THE STREET.

12 Q. ACROSS THE STREET HEADED DOWN TOWARDS – BACK
13 TOWARDS WHERE THE CAR PLACE IS AT, IS THAT CORRECT?
14 CAR DEALERSHIP? THAT'S TOWARDS THE AIR STATION ?

15 A. HE – THE AIR STATION , IF YOU COME OUT OF COCONUTS YOU
16 WOULD TURN RIGHT TO GO TO THE AIR STATION . IF YOU TURN
17 LEFT YOU WOULD COME BACK THIS DIRECTION.

18 HE DIDN'T TAKE AN ANGLE TO THE LEFT. HE
19 ANGLED RIGHT.

20 Q. OKAY.

21 A. SO HE WASN'T GOING – HE DIDN'T TURN RIGHT. HE JUST
22 ANGLED THAT WAY.

23 I DON'T KNOW HOW TO —

24 Q. HE WENT ACROSS THE STREET AT AN ANGLE HEADED
25 TOWARDS THE DIRECTION OF THE AIR STATION ?

1 A. YES, SIR.

2 Q. OKAY. ALL RIGHT.

3 AND YOU TOLD THE POLICE THAT, IS THAT
4 CORRECT?

5 A. YES, SIR.

6 Q. AND WHEN THE POLICE ARRIVED THEY PUT OUT A BOLO OR
7 SOMETHING? WERE YOU PRESENT WHEN THEY DID THAT?

8 A. I'M NOT SURE WHAT A BOLO IS.

9 Q. WELL, WHEN THEY PUT OUT THIS THING SAYING BE ON THE
10 LOOKOUT FOR, WE NEED -- WE'RE SEARCHING FOR A PERSON OF
11 THIS DESCRIPTION WHO HAS JUST COMMITTED A ROBBERY OR
12 SOMETHING OF THAT NATURE.

13 A. I'M NOT SURE IF THEY DID THAT. I HOPE THEY DID.

14 Q. OKAY.

15 NOW, SO, BASICALLY, YOU HAD -- HOW LONG
16 WOULD YOU SAY THE CONVERSATION WAS YOU HAD WITH THE
17 OFFICERS THERE?

18 A. I REALLY COULDN'T SAY. LONG ENOUGH FOR ME TO MAKE A
19 DESCRIPTION OF THE MAN AND MY BELONGINGS.

20 Q. OKAY.

21 AND, AND PART OF YOUR DESCRIPTION AND AS
22 IN YOUR STATEMENT HERE IS THAT YOU DESCRIBED THIS
23 PERSON AS HAVING A SALT AND PEPPER BEARD AND SALT AND
24 PEPPER HAIR. ISN'T THAT CORRECT?

25 A. YES, SIR.

1 Q. OKAY. ALL RIGHT.

2 NOW, YOU LEAVE THE COCONUTS AREA, IS
3 THAT CORRECT?

4 A. YES, SIR.

5 Q. AND THAT'S APPROXIMATELY HOW LONG AFTER THIS EVENT
6 HAS OCCURRED?

7 A. APPROXIMATELY TEN, FIFTEEN MINUTES.

8 Q. OKAY. TEN AND FIFTEEN MINUTES.

9 AND DO YOU LEAVE BY YOURSELF?

10 A. NO. MY FRIEND CAME OUT OF COCONUTS. SAW ME OUTSIDE
11 UPSET AND TOOK ME HOME.

12 Q. OKAY. TOOK YOU HOME.

13 A. YES.

14 Q. NOW, YOU INDICATED THAT, THAT YOU HAD ONE BEER WHILE
15 AT COCONUTS, IS THAT CORRECT?

16 A. YES, SIR.

17 Q. OKAY.

18 AND THAT YOU HAD SOME WINE WHILE YOU
19 WERE EATING DINNER WITH YOUR FRIEND, IS THAT CORRECT?

20 A. NO. I HAD ONE GLASS OF WINE.

21 Q. OKAY.

22 AND THIS WAS AT WHERE?

23 A. THAT WAS OUT - SORRY. THAT WAS OUTBACK.

24 Q. OKAY.

25 SO YOU HAVE ONE DRINK THERE AND WHAT

1 TIME DID YOU ARRIVE AT THE OUTBACK?

2 A. AROUND 8, 8:30.

3 Q. OKAY.

4 AND ABOUT WHAT TIME DID YOU LEAVE THERE?

5 A. NINE-THIRTY.

6 Q. AND WHERE DID YOU GO AFTER YOU LEFT?

7 A. WE WENT TO HER HOUSE.

8 Q. OKAY.

9 AND WHERE IS HER HOUSE LOCATED?

10 A. SHE LIVES IN PORT, PORT ROYAL.

11 Q. OKAY.

12 AND WHAT DID YOU DO WHILE YOU WERE
13 THERE AT HER HOUSE?

14 A. I BELIEVE WE WATCHED E-ENTERTAINMENT TELEVISION.
15 THAT EVENING.

16 Q. AND HOW LONG DID YOU DO THAT?

17 A. A LONG TIME. TILL SHE DECIDED SHE WAS BORED.

18 Q. OKAY.

19 SHE WAS BORED?

20 A. YES.

21 Q. NOW, DID YOU HAVE ANYTHING TO DRINK AT ALL WHILE YOU
22 WERE AT YOUR GIRLFRIEND'S HOUSE?

23 A. NO, I DIDN'T. I WASN'T FEELING WELL THAT NIGHT.

24 Q. YOU WASN'T - YOU WEREN'T FEELING WELL. WELL, DO YOU
25 KNOW WHAT THE CAUSE OF YOUR ILLNESS WAS?

1 A. I THINK I ATE TOO MUCH HALLOWEEN CANDY.

2 Q. OKAY.

3 AND YOU LEAVE THERE AND YOU GO OUT TO
4 COCONUTS, IS THAT CORRECT?

5 A. YES.

6 Q. AND YOU DRIVE IN SEPARATE CARS, IS THAT CORRECT?

7 A. YES.

8 Q. OKAY. ALL RIGHT.

9 NOW, YOU GO INSIDE OF COCONUTS. DO YOU
10 AND YOUR FRIEND GO IN TOGETHER OR SEPARATELY?

11 A. WE GO IN – WE WENT IN TOGETHER. WE DROVE – I, I
12 FOLLOWED HER THERE.

13 Q. YOU FOLLOWED HER THERE?

14 A. YES.

15 Q. OKAY.

16 SO YOU GO IN TOGETHER. AND YOU'RE THERE
17 FOR HOW LONG WOULD YOU SAY?

18 A. AN HOUR, AN HOUR AND A HALF.

19 Q. HOUR, HOUR AND A HALF.

20 AND YOU DECIDED TO LEAVE, IS THAT
21 CORRECT?

22 A. YES. THAT'S WHY I DROVE SEPARATELY.

23 Q. I'M SORRY.

24 A. THAT IS WHY WE TOOK SEPARATE CARS.

25 Q. OKAY.

1 SO YOU LEAVE.

2 NOW, DID YOU SEE ANY PEOPLE INSIDE OF
3 COCONUTS THAT YOUR RECOGNIZED?

4 A. YES.

5 Q. OKAY.

6 AND DID YOU HAVE ANY CONVERSATION WITH
7 THOSE PEOPLE?

8 A. YES.

9 Q. OKAY.

10 AND THE PEOPLE THAT LET YOU USE THEIR
11 CELL PHONE, DID YOU HAVE ANY CONVERSATION WITH THOSE
12 PEOPLE?

13 A. NO. I DIDN'T KNOW THOSE PEOPLE.

14 Q. OKAY.

15 AND DID YOU EVER TELL THE POLICE THE
16 NAMES OF ANY PEOPLE THAT YOU HAD ANY CONVERSATION
17 WITH INSIDE OF COCONUTS?

18 A. I MIGHT'VE MENTIONED MY FRIEND CHRISTEN.

19 SHE GAVE ME A RIDE HOME. SHE CAME OUT
20 WHILE THE POLICE WERE STILL THERE.

21 Q. AND THE POLICE BASICALLY JUST LEFT YOU THERE IN THE
22 PARKING LOT AND YOUR FRIEND TOOK YOU HOME, IS THAT
23 CORRECT?

24 A. NO, THAT - THE POLICE WERE THERE WHEN MY FRIEND TOOK
25 ME HOME.

1 Q. OKAY. ALL RIGHT.

2 NOW, YOU INDICATE THAT ABOUT FORTY-FIVE
3 MINUTES TO AN HOUR LATER, IS THAT CORRECT?

4 A. PROBABLY ABOUT FORTY-FIVE MINUTES.

5 Q. YOU'RE AT HOME, YOU GET A CALL. YOU'RE, YOU'RE
6 APPARENTLY HAVING SOME PROBLEMS. YOU'RE UPSET OR SICK
7 OR SOMETHING OF THAT NATURE, IN THE BATHROOM, IS THAT
8 CORRECT? WHEN THE PHONE RINGS?

9 A. NO, I WAS UPSET.

10 Q. OKAY.

11 A. CRYING KIND OF, YEAH.

12 Q. AND YOUR HUSBAND ANSWERED THE PHONE, DIDN'T HE?

13 A. YES.

14 I GAVE THE POLICE MY HUSBAND'S CELL PHONE
15 NUMBER.

16 Q. OKAY.

17 AND YOUR HUSBAND DRIVES YOU DOWN TO
18 THE ENMARK STATION , IS THAT CORRECT?

19 A. YES, SIR.

20 Q. OKAY.

21 NOW, THE ENMARK STATION IS IN THE
22 COMPLETE OPPOSITE DIRECTION OF THE AIR STATION AND THE
23 DIRECTION IN WHICH THE ASSAILANT WENT, IS THAT CORRECT?
24 AFTER THE INCIDENT OCCURRED?

25 A. IT'S ON THE SAME ROAD.

1 Q. WELL, IT'S THE SAME ROAD BUT IT'S IN THE OPPOSITE
2 DIRECTION OF THE ANGLE, THE DIRECTION THAT THE PERSON
3 WHO COMMITTED THIS, THIS ROBBERY WENT IN, ISN'T THAT
4 CORRECT?

5 A. I COULDN'T SAY WHICH - HE WENT THAT WAY ACROSS THE
6 STREET BUT I TOOK OFF RUNNING AS SOON AS HE GOT ACROSS
7 THE STREET.

8 Q. RIGHT.

9 A. I COULDN'T SAY WHAT HE DID AFTER THAT.

10 Q. OKAY.

11 BUT HE WENT ACROSS THE STREET, AS YOUR
12 STATEMENT SAYS, TOWARDS THE AIR STATION , ISN'T THAT
13 CORRECT?

14 A. ANGLED THAT DIRECTION.

15 Q. AND IT'S THE OPPOSITE DIRECTION OF WHERE THE ENMARK
16 STATION IS LOCATED AT, ISN'T THAT CORRECT?

17 A. SOUNDS REASONABLE.

18 Q. NO. IS IT -

19 A. I -

20 Q. - IN THE OPPOSITE DIRECTION?

21 A. YES, BUT I COULD NOT SAY WHERE, WHERE HE WENT. ALL I
22 KNOW IS THAT'S WHEN I TURNED MY BREAK.

23 Q. YOU WROTE A STATEMENT THAT PARTICULAR - NEXT DAY OR
24 SO, IS THAT CORRECT?

25 A. YES.

1 HE - I THINK - I DON'T KNOW IF YOU'D UNDERSTAND
2 THAT I'M SAYING THAT HE JUST WENT THAT WAY ACROSS THE
3 STREET. HE DID NOT GO STRAIGHT. HE WENT LIKE THIS,
4 ACROSS THE STREET.

5 Q. OKAY. ALL RIGHT.

6 IN YOUR STATEMENT YOU INDICATE THAT HE
7 WENT TOWARDS THE AIR STATION, ISN'T THAT CORRECT?

8 A. NO.

9 Q. WOULD YOU LIKE TO SEE IT?

10 A. HE ANGLED TO THE RIGHT.

11 Q. WELL, BUT THAT IS IN THE DIRECTION OF THE AIR STATION ,
12 ISN'T THAT CORRECT?

13 A. NO, THE AIR STATION IS - YOU TURN OUT OF COCONUTS AND
14 GO RIGHT. THAT'S THE AIR STATION .

15 Q. WELL, ARE YOU SAYING HE WENT TO THE LEFT?

16 A. NO. I'M SAYING HE WENT ACROSS THE STREET. HE DIDN'T
17 GO TOWARDS THE AIR STATION .

18 Q. YOU SAID HE WAS ANGLING TOWARD THE RIGHT, IS THAT
19 CORRECT?

20 A. I HAVE A PROBLEM WITH MY RIGHT AND LEFT. I DON'T
21 KNOW - ALWAYS KNOW MY RIGHT FROM LEFT SO THAT'S WHY I
22 GIVE LANDMARKS. WHATEVER DIRECTION. IF I'M DRIVING I SAY
23 PASSENGER'S SIDE.

24 Q. OKAY.

25 A. OR DRIVER'S SIDE.

1 Q. SO YOU HAVE PROBLEMS WITH LEFT AND RIGHT?

2 A. YES, I DO.

3 Q. BUT YOU WOULD AGREE THAT COCONUTS IS ON THE
4 SIDE – SAME SIDE OF THE ROAD AS THE ENMARK STATION , IS
5 THAT CORRECT? HIGHWAY 21.

6 A. YES.

7 Q. OKAY.

8 AND YOU WOULD AGREE THAT COCONUTS IS
9 SEVERAL BLOCKS FROM THE ENMARK STATION , IS THAT
10 CORRECT?

11 A. I'M NOT SURE HOW FAR BUT IT'S NOT CLOSE, I DON'T THINK.

12 Q. NOT CLOSE, YOU DON'T THINK. OKAY.

13 NOW, WHEN YOU GET THERE, YOU'RE STILL IN
14 YOUR CAR WITH YOUR HUSBAND, IS THAT CORRECT?

15 A. YES, SIR.

16 Q. OKAY.

17 AND YOU INDICATE THAT THEY WANTED YOU
18 TO IDENTIFY A PERSON WEARING SIMILAR CLOTHING WHO WAS
19 SUSPECT IN THIS CASE, IS THAT CORRECT?

20 A. THEY NEVER SAID SIMILAR CLOTHING; THEY SAID SOMEONE
21 WHO FIT THE DESCRIPTION.

22 Q. OKAY. THAT FIT THE DESCRIPTION.

23 A. YES, SIR.

24 Q. AND WHEN YOU ARRIVED THERE, WHAT YOU SEE, AFTER
25 THEY'VE HAD THIS CONVERSATION WITH YOU IS THEY TAKE A

1 PERSON OUT OF THE BACK OF A POLICE OFFICER CAR, ISN'T
2 THAT CORRECT?

3 A. YES, SIR.

4 Q. AND HE'S HANDCUFFED BEHIND HIS BACK, ISN'T THAT
5 CORRECT?

6 A. YES, SIR.

7 Q. AND THERE'S A POLICE OFFICER ON THIS SIDE OF HIM AND ON
8 THE OTHER SIDE OF HIM, ISN'T THAT CORRECT?

9 A. I'M NOT SURE IF THERE WAS A POLICE OFFICER ON BOTH
10 SIDES.

11 Q. AND, AND - OKAY.

12 WOULD IT BE FAIR TO SAY THAT HE IS THE
13 ONLY BLACK PERSON IN THAT PICTURE? THAT WE'RE TALKING
14 ABOUT HERE?

15 A. I'M NOT SURE. THERE COULD'VE BEEN BLACK POLICE
16 OFFICERS.

17 Q. ALL RIGHT. COULD'VE BEEN BLACK POLICE OFFICERS. OKAY.

18 NOW, THIS GUY THAT'S HANDCUFFED BEHIND
19 HIS BACK IS STANDING THERE, YOU INDICATE THAT HE WAS SORT
20 OF ABOUT THE MIDDLE OF THE COURTROOM THERE FROM
21 WHERE YOU ARE NOW, IS THAT CORRECT?

22 A. YES, SIR.

23 Q. AND THEY HAD A BIG SPOTLIGHT ON HIM, ISN'T THAT
24 CORRECT?

25 A. YES, SIR.

1 Q. YOU COULDN'T POSSIBLY HAVE MISSED HIM AS BEING THE
2 PERSON THAT THEY WANTED YOU TO SEE, ISN'T THAT CORRECT?

3 A. NO, SIR. HE IS THE PERSON THEY WANTED ME TO SEE.

4 Q. ALL RIGHT, ALL RIGHT.

5 SO YOU SAID, THAT'S THE GUY, IS THAT
6 CORRECT?

7 A. YES, I DID.

8 Q. OH, OKAY.

9 NOW, WHILE YOU'RE THERE AT THE ENMARK
10 STATION THEY GIVE YOU YOUR RINGS, IS THAT CORRECT?

11 A. THEY LAID THEM OUT ON THE HOOD OF A POLICE CAR FIRST.

12 Q. AND THEN GAVE THEM TO YOU LATER ON, IS THAT CORRECT?

13 A. YES, SIR.

14 Q. AND THEY GAVE YOU SOME MONEY, ISN'T THAT CORRECT?

15 A. YES, SIR.

16 Q. OKAY.

17 AND YOU TOOK THOSE ITEMS AND WENT HOME,
18 IS THAT CORRECT?

19 A. YES, SIR.

20 Q. THANK YOU.

21 NOW, THE NEXT DAY, DID YOU RECEIVE A
22 TELEPHONE CALL FROM THE POLICE CONCERNING YOUR
23 POCKETBOOK?

24 A. MY HUSBAND RECEIVED A - I - MY CELL PHONE WAS IN MY
25 PURSE THAT WAS STOLEN. SO MY HUSBAND RECEIVED A

1 TELEPHONE CALL.

2 Q. AND DID YOU, LATER ON THAT DAY, GO DOWN TO A POLICE
3 DEPARTMENT?

4 A. NO. THEY BOUGHT IT TO MY HOUSE.

5 Q. OH, THEY BOUGHT IT TO YOUR HOUSE? THAT WAS NICE OF
6 THEM.

7 A. YES, SIR.

8 Q. THEY, THEY BROUGHT YOUR POCKETBOOK —

9 A. WELL, THEY CAME TO ASK ME IF IT — WELL, IT WAS MINE.

10 Q. OKAY.

11 A. HAD MY STUFF IN IT.

12 Q. SO THEY BROUGHT IT TO YOUR HOUSE AND, AND WHAT DID
13 YOU SEE WHEN, WHEN THEY BROUGHT IT TO YOU?

14 A. WHAT DID I SEE INSIDE OF IT?

15 Q. WELL, I MEAN WAS IT YOUR POCKETBOOK ?

16 A. YES. IT WAS A BROWN PURSE WITH A FLOWER.

17 Q. AND, AND HOW YOU KNOW IT WAS YOURS?

18 A. IT WAS MY PURSE.

19 Q. OKAY.

20 AND DID YOU EXAMINE THE CONTENTS OF IT?

21 A. YES, SIR.

22 Q. OKAY.

23 AND WERE THOSE — THE CONTENTS WERE THE
24 SAME CONTENTS THAT YOU HAD HAD IN IT THE PREVIOUS NIGHT?

25 A. EXCEPT FOR MY CASH AND WEDDING RINGS.

1 Q. OKAY.

2 NOW, THE OFFICER WHO RETURNED THIS TO
3 YOU, DID HE GIVE YOU THIS POCKETBOOK AT THAT TIME OR DID
4 HE TAKE IT AWAY WITH HIM?

5 A. SHE GAVE IT TO ME.

6 Q. SHE GAVE IT TO YOU.

7 AND YOU'VE HAD THAT EVER SINCE, IS THAT
8 CORRECT?

9 A. YES, SIR.

10 Q. OKAY. ALL RIGHT.

11 NOW, DID THEY INDICATE TO YOU WHERE THEY
12 FOUND THAT POCKETBOOK AT?

13 A. YES, SIR. THEY FOUND IT ON THE RAILROAD TRACKS.

14 Q. ON THE RAILROAD TRACKS?

15 A. BEHIND - I DON'T KNOW HER.

16 Q. YOU DON'T KNOW?

17 BUT ON THE RAILROAD TRACKS, IS THAT
18 CORRECT?

19 A. YES, SIR.

20 Q. NOW, WAS YOUR - WAS YOUR HUSBAND UPSET OVER THIS
21 PARTICULAR MATTER?

22 A. MEANING?

23 Q. WELL, I MEAN WAS HE UPSET? I MEAN YOU, YOU, YOU RODE
24 WITH HIM IN A CAR; HE TOLD YOU SOME THINGS ABOUT, YOU
25 KNOW, WHAT THEY WERE - YOU WERE GOING OUT THERE TO DO,

1 TO IDENTIFY THIS PERSON AND THINGS OF THAT NATURE.

2 WAS HE UPSET ABOUT THE EVENT THAT
3 OCCURRED?

4 A. HE WAS, ACTUALLY, JUST THANKFUL THAT I WAS ALL RIGHT.

5 Q. AND DID YOU TRY TO PROVIDE ANY EXPLANATION TO HIM AS
6 TO HOW YOUR RINGS GOT INSIDE OF YOUR PURSE?

7 A. NO, SIR.

8 Q. DID YOU TAKE YOUR RINGS OFF JUST PRIOR TO GOING TO
9 COCONUTS OR DID YOU TAKE THEM OFF WHEN YOU AND YOUR
10 GIRLFRIEND WENT TO THE OUTBACK?

11 A. I'M NOT SURE. I THINK I TOOK THEM OFF EARLIER WHEN I
12 PLAYED GOLF.

13 Q. OKAY.

14 AND YOU PUT THEM IN YOUR PURSE ?

15 A. YES, SIR.

16 MR. HOOD: OKAY.

17 NEVER MIND.

18 THANK YOU. I HAVE NO FURTHER QUESTIONS.

19 THE COURT: THANK YOU.

20 MR. KNIGHT, REDIRECT.

21 MR. KNIGHT: I'M NOT SURE I HEARD THE
22 ANSWER TO THE QUESTION.

23 REDIRECT EXAMINATION BY MR. KNIGHT:

24 Q. MR. HOOD ASKED YOU, I BELIEVE, WHEN YOU TOOK THE
25 RINGS OFF.

1 A. I'M NOT SURE. I PLAYED GOLF EARLIER THAT DAY. WITH MY
2 HUSBAND. I BELIEVE I TOOK THEM OFF THEN.

3 MR. KNIGHT: I JUST DIDN'T HEAR.

4 THAT'S ALL I HAVE.

5 THE COURT: THANK YOU.

6 YOU CAN STEP DOWN, MS. ROBESON. THANK
7 YOU.

8 MR. KNIGHT: RONALD VIDETTO.

9 THE COURT: COME FORWARD.

10 MR. KNIGHT: WE'VE GOT THEM ALL OUTSIDE.

11 THE COURT: OKAY. GOOD. OKAY.

12 MR. KNIGHT: YOUR HONOR, MAY SHE BE
13 EXCUSED, GO ATTEND TO HER DAUGHTER?

14 THE COURT: YES. SHE NEEDS TO GO TAKE
15 CARE OF THAT CHILD.

16 MR. KNIGHT: MR. HOOD?

17 MR. HOOD: I HAVE NO OBJECTION.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MR. VIDETTO, PLEASE. RONALD VIDETTO.

20 MR. KNIGHT: RONALD VIDETTO. RONALD
21 VIDETTO.

22 THE COURT: COME FORWARD, MR. VIDETTO,
23 PLEASE, AND BE SWORN.

24 **RONALD VIDETTO,**
25 **FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:**

1 CLERK OF COURT: PLEASE TAKE YOUR SEAT.
2 PLEASE STATE AND SPELL YOUR WHOLE NAME FOR THE COURT.

3 A. RONALD VIDETTO, R-O-N-A-L-D V-I-D-E-T-T-O.

4 DIRECT EXAMINATION BY MR. KNIGHT:

5 Q. MR. VIDETTO, WHO ARE YOU EMPLOYED WITH, SIR?

6 A. BEAUFORT CITY POLICE DEPARTMENT.

7 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE
8 POLICE DEPARTMENT?

9 A. THREE YEARS ONE MONTH.

10 Q. THREE YEARS ONE MONTH?

11 A. YES, SIR.

12 Q. WERE YOU ON DUTY ON NOVEMBER 1, 2003?

13 A. YES, SIR.

14 Q. DID YOU RESPOND TO THE ENMARK GAS STATION HERE IN
15 THE CITY OF BEAUFORT?

16 A. YES, SIR, I DID.

17 Q. AND FOR WHAT PURPOSE DID YOU RESPOND TO THE ENMARK
18 GAS STATION?

19 A. I WAS CALLED FROM MY SUPERVISOR TO COME HELP HIM.
20 AND ASSIST HIM. WITH - I WAS TOLD THE VICTIM WAS COMING
21 BACK. AND SHE WAS GOING TO TRY TO IDENTIFY A POSSIBLE
22 SUSPECT.

23 Q. DID YOU SPEAK TO THAT VICTIM?

24 A. YES, I DID.

25 Q. AND WHO WAS THAT VICTIM?

1 A. MISS ROBESON.

2 Q. WHAT DID YOU TELL MISS ROBESON?

3 A. WHEN SHE PULLED UP IN A - HER AND HER HUSBAND PULLED
4 UP IN A JEEP WRANGLER TO THE ENMARK GAS STATION. I ASKED
5 HER TO STEP OUT OF THE VEHICLE. I EXPLAINED TO HER THAT
6 WE HAD A POSSIBLE SUSPECT AND SHE NEEDED TO LOOK AT HIM
7 AND SEE IF THAT WAS IN FACT THE PERSON THAT HAD ROBBED
8 HER EARLIER.

9 Q. WHAT WAS THE NEXT THING THAT OCCURRED, MR. VIDETTO?

10 A. AS SOON AS I TOLD MY SUPERVISOR WE WERE READY TO
11 HAVE HIM STEP OUT OF THE VEHICLE, AS SOON AS HE STEPPED
12 OUT SHE SAID, THAT'S HIM.

13 Q. AND WERE YOU HOLDING A SPOTLIGHT OR ANYTHING OF
14 THAT NATURE?

15 A. YES, SIR, I HAD A SPOTLIGHT ON HIM.

16 Q. AND WHERE WAS THE SPOTLIGHT POINTED AT?

17 A. IT WAS POINTED DIRECTLY AT HIM. I USUALLY PUT THE
18 SPOTLIGHT IN THE MIDDLE OF THE PERSON'S BODY.

19 Q. AND WHAT WAS THE DISTANCE BETWEEN THAT PERSON AND
20 MISS ROBESON?

21 A. APPROXIMATELY HALFWAY BETWEEN HERE AND THE BACK
22 WALL.

23 Q. AND WHO WAS THE PERSON THAT SHE PICKED OUT
24 INSTANTANEOUSLY?

25 A. IT WAS MR. BOWERS, THE PERSON THAT WE HAD IN CUSTODY

1 AT THE TIME.

2 Q. OKAY.

3 NOW, THAT MR. BOWERS THAT SHE PICKED
4 OUT ON NOVEMBER 1 OF 2003, IS HE IN THE COURTROOM TODAY,
5 SIR?

6 A. YES, SIR. HE'S SITTING OVER HERE.

7 Q. POINT HIM OUT TO THE JURY, PLEASE, SIR.

8 A. HE'S SITTING AT THE TABLE OVER HERE, SIR.

9 Q. THAT'S THIS GENTLEMEN HERE IN THE WHITE SHIRT WITH
10 THE PLAID TIE?

11 A. YES, SIR.

12 Q. HOW WAS THE LIGHTING AT THE ENMARK GAS STATION?

13 A. IT WAS VERY WELL LIT. ALL THE LIGHTS WERE ON. THE
14 STREET LIGHTS WERE ALL LIT.

15 Q. DID YOU SEARCH THE DEFENDANT?

16 A. NO, SIR, I DID NOT.

17 Q. IS THIS YOUR ONLY INVOLVEMENT IN THIS CASE?

18 A. THIS IS MY ONLY INVOLVEMENT.

19 MR. KNIGHT: IF YOU'D BE SO KIND TO ANSWER
20 ANY QUESTIONS MR. HOOD MAY HAVE.

21 A. YES, SIR.

22 THE COURT: MR. HOOD.

23 MR. HOOD: THANK YOU, YOUR HONOR.

24 I ONLY HAVE, I THINK, PROBABLY ONE
25 QUESTION.

1 CROSS-EXAMINATION BY MR. HOOD:

2 Q. YOU, YOU DID NOT HAVE ANY CONTACT WITH THE VICTIM AT
3 COCONUTS, IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. OKAY.

6 DID YOU PARTICIPATE IN ANY OF THE
7 PATROLLING OF THE AREA FROM COCONUTS BACK TOWARDS
8 THE AIR STATION FOR A SUSPECT IN THIS CASE?

9 A. NO, SIR. I WAS ASSIGNED TO A DISTRICT ON THE OTHER SIDE
10 OF TOWN, PRIMARILY RIBAUT ROAD. AND I STAYED IN MY AREA
11 DUE TO THE FACT THAT ALL THE OFFICERS WERE IN THE OTHER
12 AREA.

13 Q. RIGHT.

14 A. THEN WE HAVE TO COVER ANOTHER PART OF TOWN, ALSO.

15 Q. AND THE PERSON THAT SHE IDENTIFIED WAS JAMES
16 BOWERS, THIS PERSON THAT'S SITTING RIGHT THERE, IS THAT
17 CORRECT?

18 A. YES, SIR.

19 Q. AND HE LOOKS THE SAME AS HE DID THAT PARTICULAR
20 NIGHT, IS THAT CORRECT?

21 A. NO, SIR. HE'S HAD A HAIRCUT AND HE'S SHAVED HIS BEARD.

22 Q. HE SHAVED HIS BEARD?

23 A. HE HAD - HIS BEARD WAS A LITTLE MORE SCRUFFY. I
24 BELIEVE.

25 BECAUSE IT HAD - IT WAS SALT AND PEPPER.

1 IT HAD A LITTLE GRAY IN IT.

2 Q. OH, IT'S SALT AND PEPPER?

3 MR. HOOD: NO, SIR. THAT'S MISLEADING.

4 THAT'S NOT THE WAY HE ANSWERED. THAT'S NOT WHAT HE
5 TESTIFIED TO.

6 MR. HOOD: THAT'S FINE.

7 THE COURT: JURY, JURY WILL – HEARD THE
8 TESTIMONY. THEY CAN – WHAT HE JUST SAID.

9 THANK YOU.

10 ALL RIGHT.

11 MR. KNIGHT, REDIRECT.

12 MR. KNIGHT: OKAY.

13 REDIRECT EXAMINATION BY MR. KNIGHT:

14 Q. WHAT KIND OF BEARD WOULD YOU DESCRIBE HIS BEARD ON
15 NOVEMBER 1, 2003?

16 A. IT WAS SCRUFFY.

17 Q. SCRUFFY.

18 ANY OTHER COLOR?

19 A. IT HAD GRAY, LITTLE BIT OF GRAY IN IT.

20 MR. KNIGHT: THANK YOU, SIR.

21 THAT'S ALL I HAVE.

22 THE COURT: ALL RIGHT.

23 MR. HOOD, YOU WANT TO FOLLOW UP ON THAT
24 POINT?

25 MR. HOOD: I HAVE ONE QUESTION. IT'S NOT

1 REALLY THAT IMPORTANT BUT ...

2 RECROSS EXAMINATION BY MR. HOOD:

3 Q. THAT THE PERSON YOU TALKING ABOUT?

4 A. IT WAS DIMLY LIT BUT THERE IS GRAY IN THE BEARD. IT'S
5 CLEARLY VISIBLE.

6 MR. KNIGHT: WITHOUT OBJECTION, MR. HOOD.

7 MR. HOOD: I, I DON'T - I JUST ASKED THE
8 QUESTION.

9 THE COURT: ALL RIGHT.

10 ANY FOLLOWUP?

11 MR. KNIGHT: NOTHING, YOUR HONOR. THAT'S
12 ALL I HAVE OF THIS WITNESS.

13 THE COURT: THANK YOU, MR. VIDETTO. YOU
14 CAN STEP DOWN.

15 MR. KNIGHT.

16 MR. KNIGHT: MICHAEL KENNINGER.

17 THE COURT: MR. KENNINGER.

18 MR. KNIGHT: MAY HE BE EXCUSED, YOUR
19 HONOR? GO BACK ON THE ROAD?

20 MR. HOOD: I HAVE NO OBJECTION, YOUR
21 HONOR.

22 THE COURT: WITHOUT OBJECTION, SIR, YOU
23 CAN GO BACK TO WORK. THANK YOU.

24 MR. KENNINGER, COME FORWARD, PLEASE,
25 AND BE SWORN.

MICHAEL EDWARD KENNINGER,

FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

CLERK OF COURT: TAKE YOUR SEAT AND

**STATE YOUR WHOLE NAME, SPELLING YOUR LAST FOR THE
COURT.**

**A. MY NAME IS MICHAEL EDWARD KENNINGER. LAST NAME IS
K-E-N-N-I-N-G-E-R.**

DIRECT EXAMINATION BY MR. KNIGHT:

**Q. MR. KENNINGER, YOU'RE EMPLOYED WITH THE BEAUFORT
POLICE DEPARTMENT?**

A. YES, SIR.

**Q. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE POLICE
DEPARTMENT, SIR?**

A. APPROXIMATELY FOUR YEARS.

Q. FOUR YEARS?

WERE YOU ON DUTY ON NOVEMBER 1, 2003,

SIR?

A. YES, SIR, I WAS.

**Q. WERE YOU PATROLLING IN THE CITY LIMITS OF THE CITY OF
BEAUFORT?**

A. YES, SIR.

Q. HERE IN BEAUFORT?

A. YES, SIR.

**Q. YOU RECEIVE ANY INFORMATION ABOUT AN ARMED
ROBBERY, SIR?**

1 A. YES, SIR, I DID.

2 Q. WHAT DO YOU DO AS A RESULT OF RECEIVING THAT
3 INFORMATION, SIR?

4 A. INITIALLY I RESPONDED TO THE, THE ACTUAL SCENE. OF THE
5 ARMED ROBBERY?

6 Q. WHERE WAS THE ACTUAL SCENE OF THE ARMED ROBBERY?

7 A. WAS IN THE PARKING LOT OF THE BROAD RIVER SEAFOOD.

8 Q. IS THAT IN THE CITY OF BEAUFORT ?

9 A. YES, SIR, IT IS.

10 Q. IS THAT IN THE COUNTY OF BEAUFORT?

11 A. YES, SIR, IT IS.

12 Q. OKAY.

13 I'M SORRY. GO AHEAD AND CONTINUE.

14 A. I RESPONDED TO THE INCIDENT LOCATION WHICH WOULD BE
15 THE BROAD RIVER SEAFOOD PARKING LOT. I GATHERED
16 INFORMATION FROM OFFICER KING, GAVE ME A DESCRIPTION.

17 INITIALLY WE LOOKED IN THE AREA FOR THE
18 SUSPECT. WE DIDN'T FIND, LOCATE HIM NEAR THE SCENE SO I
19 CLEARED UP AS WELL AS OTHER OFFICER. WE HAD CALLS
20 COMING IN SO WE CLEARED UP.

21 AND AS I WAS ON PATROL, TRAVELING UP US
22 21, BOUNDARY STREET, AT WHICH POINT I MADE CONTACT
23 WITH - OR I SHOULD SAY I ATTEMPTED TO MAKE CONTACT WITH
24 THE DEFENDANT IN FRONT OF LA HACIENDA. RESTAURANT.

25 Q. WHAT DID YOU DO WHEN YOU ATTEMPTED TO MAKE

1 CONTACT?

2 A. I WAS TRAVELING EASTBOUND ON BOUNDARY STREET —

3 Q. EASTBOUND IS WHICH WAY, SIR?

4 A. COMING TOWARDS RIBAUT ROAD.

5 Q. OKAY.

6 A. AND THE DEFENDANT WAS ALSO WALKING EASTBOUND ON
7 THE NORTH-SIDE OF THE ROAD. HE WAS DIRECTLY IN FRONT OF
8 CAROLINA COVE APARTMENTS, WHICH IS RIGHT NEXT TO
9 ENMARK AND LA HACIENDA RESTAURANT.

10 I OBSERVED HIM WALKING ON THE SIDEWALK.

11 MY ATTENTION WAS TO DO A FIELD INTERVIEW.

12 WHEN I TURNED MY VEHICLE AROUND AT THE VERY — THE
13 ENTRANCE THAT GOES BEHIND K-MART IS WHERE I DID A U-TURN
14 IN THE MIDDLE OF THE ROAD. THE DEFENDANT TOOK OFF
15 RUNNING AT WHICH POINT I LOST VISUAL CONTACT WITH HIM.

16 AT THAT POINT I ASKED FOR OTHER OFFICERS
17 RESPOND TO THE AREA OF THE PERIMETER SO WE COULD
18 ATTEMPT TO DO A CANINE TRACK. AND THAT'S AT WHICH POINT
19 OFFICER KING NOTIFIED ME ON THE AIR THAT HE OBSERVED THE
20 SUSPECT , OR THE DEFENDANT IN — BEHIND A TREE IN SOME
21 BUSHES RIGHT THERE BEHIND LA HACIENDA.

22 MR. KNIGHT: ANSWER ANY QUESTIONS MR.
23 HOOD MAY HAVE.

24 A. YES, SIR.

25 THE COURT: MR. HOOD.

1 CROSS-EXAMINATION BY MR. HOOD:

2 Q. NOW, YOU INDICATED YOU WERE ON BOUNDARY STREET, IS
3 THAT CORRECT?

4 A. YES, SIR, THAT'S CORRECT.

5 Q. AND WERE YOU COMING FROM THE DOWNTOWN AREA OF
6 BOUNDARY STREET?

7 A. NO, SIR. I WAS COMING FROM THE BEAUFORT PLAZA END OF
8 BOUNDARY STREET.

9 Q. BEAUFORT PLAZA?

10 A. YES, SIR.

11 Q. AND YOU PASSED BY A PERSON WALKING IN THE DIRECTION
12 THAT YOU WERE DRIVING IN, IS THAT CORRECT?

13 A. YES, SIR, HE WAS WALKING IN THE SAME DIRECTION.

14 Q. OKAY.

15 SO HE'S WALKING BACK TOWARDS WHERE?

16 A. HE'S WALKING TOWARDS DOWNTOWN, SAME DIRECTION
17 THAT I WAS TRAVELING, EASTBOUND ON US 21.

18 Q. AND HE'S ON THE SIDE - THE SIDEWALK, IS THAT CORRECT?

19 A. THAT'S CORRECT, SIR.

20 Q. OKAY.

21 NOW, YOU DIDN'T TAKE ANY PROPERTY OR
22 ANYTHING OF THAT NATURE FROM THIS INDIVIDUAL, DID YOU?

23 A. I'M SORRY?

24 Q. YOU DIDN'T - YOU DIDN'T TAKE ANY PROPERTY OR ANYTHING
25 LIKE THAT FROM —

1 A. NO, SIR, I DID NOT.

2 Q. SO YOU WEREN'T - YOU WEREN'T ACTUALLY A PART OF THE
3 ARREST, IS THAT CORRECT?

4 A. NO, SIR, I WAS NOT.

5 MR. HOOD: OKAY.

6 THANK YOU.

7 THE COURT: MR. KNIGHT.

8 MR. KNIGHT: THAT'S ALL I HAVE, YOUR HONOR.

9 THE COURT: THANK YOU.

10 MR. KENNINGER, YOU CAN STEP DOWN.

11 A. THANK YOU, YOUR HONOR.

12 MR. KNIGHT: MAY HE BE EXCUSED, YOUR
13 HONOR, TO GO BACK ON PATROL?

14 MR. HOOD: I HAVE NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION YOU CAN
16 GO BACK TO WORK.

17 THANK YOU, SIR.

18 THE COURT: YOU WANT TO TAKE A BREAK
19 NOW?

20 THE COURT: WE CAN. THIS IS A LOGICAL TIME
21 TO DO IT.

22 LADIES AND GENTLEMEN, AT THIS TIME FOR
23 THE AFTERNOON BREAK WE'LL TAKE A BREAK FOR ABOUT
24 FIFTEEN MINUTES AND START BACK AT 4:00.

25 PLEASE DO NOT DISCUSS THIS CASE AMONG

1 YOURSELVES WHICH YOU'RE IN THE JURY ROOM.

2 WE'LL GET YOU OUT SHORTLY TO CONCLUDE
3 THE AFTERNOON'S WORK.

4 THANK YOU.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE
6 PRESENCE OF THE JURY.)

7 THE COURT: ALL RIGHT.

8 COURT'S GONE BE IN RECESS FOR FIFTEEN
9 MINUTES.

10 MR. KNIGHT: THANK YOU, YOUR HONOR.

11 (COURT RECESSED FOR APPROXIMATELY
12 FIFTEEN MINUTES.)

13 (THE FOLLOWING TAKES PLACE OUTSIDE THE
14 PRESENCE OF THE JURY.)

15 THE COURT: MR. KNIGHT, ARE YOU READY FOR
16 THE JURY?

17 MR. KNIGHT: YES, SIR.

18 THE COURT: MR. HOOD?

19 MR. HOOD: YES, YOUR HONOR.

20 THE COURT: THANK YOU.

21 YOU CAN BRING US THE JURY, PLEASE, SIR.

22 BAILIFF: JURY ENTERING.

23 (THE JURY RETURNED TO OPEN COURT.)

24 BAILIFF: YOUR HONOR, ALL THE JURORS ARE
25 PRESENT.

1 THE COURT: THANK YOU, SIR.

2 LADIES AND GENTLEMEN, WE PICK UP WHERE
3 WE LEFT OFF BEFORE THE BREAK AND AS THE STATE CONTINUES
4 TO OFFER EVIDENCE AND TESTIMONY IN THIS REGARD.

5 MR. KNIGHT, YOU CAN CALL YOUR —

6 MR. KNIGHT: DANIEL THOMPSON. DANIEL
7 THOMPSON.

8 THE COURT: MR. THOMPSON, COME AROUND,
9 PLEASE, SIR, BE SWORN.

10 DANIEL SCOTT THOMPSON,
11 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

12 CLERK OF COURT: PLEASE TAKE YOUR SEAT
13 AND STATE YOUR WHOLE NAME FOR THE RECORD, SPELLING
14 YOUR LAST.

15 A. MY NAME IS DANIEL SCOTT THOMPSON. LAST NAME IS
16 SPELLED T-H-O-M-P-S-O-N.

17 DIRECT EXAMINATION BY MR. KNIGHT:

18 Q. MR. THOMPSON, WHO ARE YOU EMPLOYED WITH, SIR?

19 A. I'M A RESERVE OFFICER WITH THE BEAUFORT CITY POLICE
20 DEPARTMENT, SIR.

21 Q. HOW LONG HAVE YOU BEEN A RESERVE OFFICER WITH THE
22 BEAUFORT CITY POLICE DEPARTMENT?

23 A. FOUR YEARS NOW.

24 Q. WERE YOU ON DUTY ON OR ABOUT NOVEMBER 1, 2004?

25 A. YES, SIR.

1 Q. DID YOU RESPOND TO A BOLO ABOUT AN ARMED ROBBERY?

2 A. YES, SIR.

3 Q. AND WHAT, IF ANYTHING, AS A RESULT OF THAT BOLO DID
4 YOU DO?

5 A. INITIAL CONTACT AT THE INCIDENT LOCATION, WE DIDN'T
6 HAVE ANY LUCK FINDING THE -- ANYBODY MATCHING THAT
7 DESCRIPTION.

8 Q. THE INCIDENT LOCATION, YOU MEAN --

9 A. OVER THERE BY BROAD RIVER SEAFOOD, SIR.

10 Q. OKAY.

11 A. SHORTLY -- OKAY.

12 SHORTLY THEREAFTER I WENT ON BACK TO
13 NORMAL PATROL, CHECKING OUT BI-LO'S AND THAT AREA OUT
14 THERE, JUST NORMAL PATROL STUFF. HEARD OFFICER
15 KENNINGER CALL FOR OFFICER KING. TO MEET HIM OVER BY
16 CAROLINA COVE, THE ENTRANCE LANDMARK.

17 HE STATED THAT HE SAW SOMEBODY WHO
18 MATCHED THE DESCRIPTION OF THE SUSPECT AND HE TURNED
19 AROUND, THE GUY RAN AS HE WAS TURNING AROUND.

20 SO I HEADED THAT DIRECTION. WHEN I GOT
21 THERE I TURNED INTO CAROLINA COVE ENTRANCE. AND THE
22 SUBJECT RAN RIGHT IN FRONT OF MY PATROL CAR.

23 AT THAT POINT I HIT THE BLUE LIGHTS. I DROVE
24 AROUND THE BACK OF THE ENMARK GAS STATION IN AN
25 ATTEMPT TO CUT THE INDIVIDUAL OFF. AS I WAS GETTING OUT

1 OF PATROL CAR, I YELLED AT THE INDIVIDUAL, STOP, POLICE. HE
2 LOOKED AT ME, CHANGED DIRECTIONS, WENT AROUND THE
3 FRONT OF MY PATROL CAR. THEN MADE A RIGHT TURN DOWN
4 THE WOOD LINES TOWARD CAROLINA COVE.

5 I WENT AROUND THE BACK OF MY PATROL CAR.
6 AND GAVE PURSUIT. THE SUBJECT —

7 Q. WHAT DO YOU MEAN BY PURSUIT, SIR?

8 A. EXCUSE ME?

9 Q. WHAT DO YOU MEAN BY PURSUIT?

10 A. OH. I GAVE A FOOT CHASE, SIR.

11 Q. OKAY.

12 AHEAD.

13 A. THE SUBJECT HUGGED THE BUSHES THERE BY CAROLINA
14 COVE. I WAS A LITTLE FARTHER OUT WHEN I CAME AROUND THE
15 CORNER THERE. I WAS ORDERING THE SUSPECT TO STOP.
16 STOP, POLICE; STOP, POLICE, LIKE THREE OR FOUR TIMES.

17 THE WHOLE TIME, FROM THE TIME I FIRST
18 OBSERVED HIM HE HAD HIS HAND IN HIS POCKET. AND HE WAS
19 HUGGING THE BUSHES ALONG THERE. AND ALL OF A SUDDEN HE
20 JUST STOPPED. AND HE TURN AROUND AND WALKED OUT OF
21 THE BUSHES TOWARDS ME AND HIS HAND WAS NO LONGER IN
22 HIS POCKET. SO I DREW MY SERVICE WEAPON, ORDERED THE
23 SUBJECT TO THE GROUND. WHICH HE DID COMPLY.

24 SHORTLY THEREAFTER OFFICER KING CAME UP
25 AND STARTED TO HANDCUFF THE SUSPECT. AT THAT POINT I

1 PUT MY SERVICE REVOLVER AWAY AND ASSISTED HIM IN THE
2 HANDCUFFING. OF THE SUBJECT THAT I SAW RUN BY MY CAR.

3 Q. WHAT DID HE DO WITH HIS HAND WHEN HE TOOK IT OUT OF
4 HIS POCKET ?

5 A. NOTHING I COULD SEE AT THAT TIME, SIR, WHICH WAS DOWN.

6 Q. AND DID YOU SEARCH THE AREA WHERE YOU WERE CHASING
7 HIM?

8 A. YES, SIR. AFTER, AFTER HE WAS IN CUFFS ON THE GROUND I
9 WALKED BE TO THE BUSHES AND SEARCHED THE - ALONG THE
10 BUSHES WHERE HE'D BEEN RUNNING. AND WHERE HE HAD
11 STOPPED AND CAME STRAIGHT OUT TOWARDS ME THERE WAS
12 STACK OF MONEY.

13 I DON'T KNOW HOW MUCH. IT WAS JUST
14 FOLDED. THE ONLY THING I COULD SEE WAS THE TOP BILL, THAT
15 I COULD SEE A TWENTY-DOLLAR BILL.

16 Q. ASK YOU IF YOU CAN IDENTIFY THIS PHOTO AND WHAT DOES
17 IT DEPICT, SIR?

18 A. IT, IT DEPICTS THE BACK HALF OF A TWENTY-DOLLAR BILL.
19 YOU CAN SEE SUBSEQUENT BILLS FOLDING UNDERNEATH IT.
20 YOU CAN'T SEE WHAT THEY ARE.

21 AND IT'S LAYING IN THE BRUSH, UNDERNEATH
22 THE BUSHES.

23 Q. IS THAT WHERE YOU FOUND THE MONEY?

24 A. YES, SIR.

25 MR. KNIGHT: MR. HOOD.

1 MR. HOOD: SUBJECT TO MY PREVIOUS —

2 THE COURT: OKAY.

3 SUBJECT TO EARLIER OBJECTIONS. STATE'S

4 NEXT.

5 MR. KNIGHT: NUMBER SEVEN, YOUR HONOR.

6 (PHOTOGRAPH OF MONEY IN BRUSH MARKED

7 AND ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 7 OVER

8 OBJECTION.)

9 MR. KNIGHT: ANSWER ANY QUESTIONS MR.

10 HOOD MAY HAVE.

11 THE COURT: MR. HOOD, CROSS-EXAMINE.

12 CROSS-EXAMINATION BY MR. HOOD:

13 Q. NOW, DID YOU — DID YOU QUESTION MR. BOWERS?

14 A. NO, SIR. HAD NO — HAD NO VERBAL CONVERSATION WITH HIM

15 AT ALL. OTHER THAN THE ORDERS I'D GIVEN HIM TO THE

16 GROUND AND STUFF LIKE THAT.

17 Q. UH-HUH.

18 AND SO DID YOU — WERE YOU ABLE TO

19 OBSERVE WHETHER OR NOT HE WAS INTOXICATED OR NOT

20 INTOXICATED OR THINGS OF THAT NATURE?

21 A. NO, SIR.

22 Q. WELL, YOU WERE — YOU WERE CLOSE TO HIM, IS THAT

23 CORRECT?

24 A. YES, SIR. AS WE WERE GOING ALONG THOSE BUSHES I WAS

25 PROBABLY SIX FEET FROM HIM.

1 Q. AND DID YOU ASSIST IN THE HANDCUFFING OF HIS AND
2 THINGS OF THAT NATURE?

3 A. WELL, WHAT I DID, SIR, IS AFTER OFFICER KING HAD HIS ONE
4 ARM AND WAS PULLING IT BEHIND HIS BACK TO PUT THE
5 HANDCUFF ON I REACHED DOWN AND GRABBED HIS OTHER ARM.
6 AND PULLED IT BACK BEHIND HIM. OFFICER KING CUFFED HIM.

7 AT THAT POINT I WENT TO THE BUSHES.

8 A. OKAY.

9 SO THIS PERSON IS RUNNING
10 TOWARDS – WELL, FROM DOWNTOWN TOWARDS – BACK UP
11 TOWARDS WHERE COCONUTS IS LOCATED, IS THAT CORRECT?

12 A. YES, SIR. HE WAS RUNNING BETWEEN LA HACIENDA AND THE
13 CHURCH THERE.

14 Q. OKAY.

15 SO HE'S RUNNING BACK IN THE DIRECTION OF
16 WHERE THE ROBBERY TOOK PLACE, IS THAT —

17 A. YES, SIR.

18 Q. OKAY.

19 NOW, THE – YOU SAW YOU SEARCHED THE
20 AREA AFTER YOU RECEIVED THE CALL OF THIS INCIDENT AT
21 COCONUTS, IS THAT CORRECT?

22 A. YES, SIR.

23 MOST OF THE OFFICERS THAT RESPONDED
24 THERE DROVE AROUND LOOKING FOR ANYBODY IN THE AREA
25 THAT MAY MATCH THAT DESCRIPTION.

1 Q. AND WERE YOU TOLD IN WHICH DIRECTION THE INDIVIDUAL
2 HAD GONE?

3 A. YES, SIR.

4 Q. WHICH DIRECTION HAD HE GONE?

5 A. SHE SAID THAT HE HAD CROSSED THE STREET. HEADED UP
6 TOWARDS THE AIR STATION DIRECTION WHEN HE CROSSED THE
7 STREET.

8 Q. OKAY.

9 AND DID YOU SEARCH UP IN THAT AREA?

10 A. YES, SIR. I, MYSELF, PERSONALLY WENT DOWN HIGHWAY 21,
11 ALL THE WAY TO HIGHWAY 280 WHERE IT COMES IN. AND CAME
12 BACK AND WENT DOWN BURTON HILL ROAD. AND PART OF THE
13 WAY DOWN BROAD RIVER THERE AND DIDN'T SEE ANYTHING.

14 Q. OKAY.

15 NOW, THE RAILROAD TRACKS ARE DOWN
16 THERE JUST A LITTLE PAST THE SEAFOOD PLACE, IS THAT
17 CORRECT?

18 A. THEY RUN PARALLEL UP THAT SECTION WITH HIGHWAY 21,
19 SIR.

20 Q. AND THEY RUN BACK TOWARDS THE AIR STATION , IS THAT
21 CORRECT?

22 A. YES, SIR.

23 Q. OKAY.

24 AND DID YOU SEARCH THAT AREA THAT
25 PARTICULAR NIGHT?

1 A. BY THE -- BY THE RAILROAD TRACKS THERE, SIR?

2 Q. YES.

3 A. NO, SIR.

4 AFTER THE SUBJECT WAS CAUGHT THERE AND
5 I SAW THE MONEY, SERGEANT GRUEL TOLD US TO LEAVE IT
6 ALONE. THAT WAS PRETTY MUCH THE END OF MY INVOLVEMENT
7 IN THE INCIDENT.

8 Q. SO YOU DIDN'T TOUCH THE MONEY, IS THAT CORRECT?

9 A. NO, SIR. WE WERE TOLD TO LEAVE IT WHERE IT LAY.

10 Q. UH-HUH.

11 AND WHY, WHY DID THEY TELL YOU TO DO
12 THAT? DO YOU KNOW?

13 A. NO, SIR. THEY -- SERGEANT GRUEL SAID THEY WANTED TO
14 GET PICTURES AND STUFF FOR EVIDENCE, JUST LEAVE IT WHERE
15 IT WAS.

16 Q. UH-HUH.

17 YOU HAD NOTHING TO DO WITH THE VICTIM'S
18 POCKETBOOK OR ANYTHING OF THAT NATURE, IS THAT
19 CORRECT?

20 A. THAT'S CORRECT, SIR.

21 MR. HOOD: OKAY.

22 THANK YOU.

23 THE COURT: MR. KNIGHT.

24 MR. KNIGHT: THAT'S ALL I HAVE.

25 MAY HE BE EXCUSED?

1 THE COURT: THANK YOU.

2 SURE.

3 MR. THOMPSON, YOU ARE NOW FREE TO BE
4 EXCUSED.

5 A. YES, SIR.

6 MR. KNIGHT: MICHAEL KING.

7 MICHAEL LESLIE KING,
8 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

9 CLERK OF COURT: PLEASE TAKE YOUR SEAT
10 AND STATE YOUR WHOLE NAME FOR THE RECORD AND SPELLING
11 YOUR LAST.

12 A. IT'S MICHAEL LESLIE KING. LAST NAME, K-I-N-G.

13 DIRECT EXAMINATION BY MR. KNIGHT?

14 Q. WHO ARE YOU EMPLOYED WITH, MR. KING?

15 A. BEAUFORT CITY POLICE DEPARTMENT, SIR.

16 Q. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE BEAUFORT
17 CITY POLICE DEPARTMENT?

18 A. ABOUT A YEAR AND TEN MONTHS.

19 Q. WERE YOU ON DUTY ON NOVEMBER 1 OF 2003?

20 A. YES.

21 Q. DID YOU RESPOND TO A CALL OF AN ARMED ROBBERY IN THE
22 PARKING LOT OF THE BROAD RIVER SEAFOOD?

23 A. YES.

24 Q. DID YOU TALK TO THE VICTIM THAT NIGHT, SIR? AT THAT
25 LOCATION?

1 A. YES, I DID.

2 Q. AND IF THAT LOCATION IN THE CITY OF BEAUFORT, THE
3 COUNTY OF BEAUFORT?

4 A. YES, IT IS.

5 Q. DID SHE GIVE YOU DESCRIPTION, SIR?

6 A. YES, SIR.

7 Q. DID YOU PUT THAT DESCRIPTION OUT ON BOLO, SIR?

8 A. YES, SIR.

9 Q. DO YOU RECALL WHAT THAT DESCRIPTION WAS?

10 A. YES, SIR. SHE SAID A BLACK MALE APPROXIMATELY, SHE
11 THOUGHT, FIVE FOOT FIVE. HER WORDS WERE SCRAGGILY
12 BEARD AND HAIR. SHE SAID SALT AND PEPPER.

13 PLAID OR FLANNEL JACKET OR SHIRT. AND
14 LIGHT-COLOR PANTS.

15 Q. AND DID YOU PLACE A BOLO GIVING THAT DESCRIPTION OUT?

16 A. YES, SIR, I PUT IT ON THE AIR TO THE RADIO.

17 Q. WHAT WAS THE NEXT THING YOU DID AS A RESULT OF YOUR
18 INVESTIGATION OF THIS ARMED ROBBERY?

19 A. I CONTINUED TO TALK TO THE VICTIM, TRIED TO GET FURTHER
20 INFORMATION AS FAR AS DIRECTION OF TRAVEL AND CONTENTS
21 THAT MAY HAVE BEEN TAKEN, WEAPONS USED, THINGS LIKE
22 THAT.

23 Q. AND WHAT WAS YOUR NEXT INVOLVEMENT IN THE CASE, SIR?

24 A. AFTER SPEAKING WITH THE VICTIM, I TOOK INFORMATION FOR
25 THE REPORT, GAVE HER A VICTIM'S FORM. AND THEN I CLEARED.

1 Q. WHERE DID YOU GO AFTER THAT? YOU SAY YOU CLEARED.

2 A. I WENT BACK TO NORMAL PATROL. I DIDN'T GET VERY FAR
3 BEFORE I RECEIVED A CALL FROM OFFICER KENNINGER. STATED
4 THAT HE SAW SOMEONE MEETING THE DESCRIPTION AND HAD
5 RAN - AND THAT THIS PERSON HAD RAN FROM HIM. AND TO
6 MEET HIM AT CAROLINA COVE.

7 Q. AND DID YOU GO TO THE CAROLINA COVE?

8 A. YES, SIR, I DID.

9 Q. WHAT WAS YOUR INVOLVEMENT AT THE CAROLINA COVE IN
10 INVESTIGATING THIS ARMED ROBBERY?

11 A. I PULLED IN THROUGH K-MART, STARTED COME IN THE BACK
12 WAY. AND AS WE PULLED INTO K-MART - PATROLMAN CARTER
13 WAS RIDING WITH ME - SHE SAID THERE WAS A MAN HIDING
14 IN - BEHIND A TREE AND BUSHES BEHIND LA HACIENDA
15 RESTAURANT SO I PULLED THROUGH TO - STOPPED RIGHT IN
16 FRONT OF THE TREE, EXITED MY VEHICLE AND ORDERED THE
17 PERSON OUT OF THE TREE. AT THIS TIME HE RAN ACROSS THE
18 FIELD TOWARDS THE ENMARK.

19 Q. WHAT DID YOU DO AT THAT POINT?

20 A. THAT POINT, SINCE PATROLMAN KENNINGER HAD HIS DOG
21 AND I DIDN'T WANT TO GET BIT BY THE DOG, I STAYED AT MY
22 VEHICLE. AND WATCHED THE MAN RUN ACROSS THE FIELD.

23 Q. DID YOU APPREHEND THE INDIVIDUAL?

24 A. NO, SIR. OFFICER THOMPSON DID.

25 Q. AND DID OFFICER THOMPSON BRING THE INDIVIDUAL TO YOU?

1 A. NO. I - WHEN I SAW MR. - OFFICER THOMPSON CUT HIM OFF I
2 RAN TO HIM. HE HAD HIM ON THE GROUND AT GUNPOINT. I THEN
3 PLACED THE SUSPECT IN HANDCUFFS.

4 Q. DID YOU PLACE THIS SUSPECT UNDER ARREST?

5 A. YES, SIR. OFFICER THOMPSON POINTED OUT THE MONEY.
6 AND I SAW A DESCRIPTION. I PLACED HIM UNDER ARREST AND
7 ADVISED HIM OF HIS MIRANDA RIGHTS.

8 Q. OKAY.

9 THAT PERSON YOU PLACED UNDER - WHAT DID
10 YOU PLACE HIM UNDER ARREST FOR?

11 A. ARMED ROBBERY, SIR.

12 Q. OKAY.

13 THAT PERSON YOU PLACED UNDER ARMED
14 ROBBERY ON NOVEMBER 1 OF 2003, IS HE IN THE COURTROOM
15 TODAY, SIR?

16 A. YES, HE IS.

17 Q. WOULD YOU POINT HIM OUT FOR THE JURY, PLEASE, SIR?

18 A. MR. BOWERS, THE DEFENDANT, SIR.

19 Q. HOW WAS THE LIGHTING ON NOVEMBER 1, 2003, IN THE
20 PARKING LOT OF THE BROAD RIVER SEAFOOD?

21 A. THE BROAD RIVER SEAFOOD PARKING LOT IS LIGHTED VERY
22 WELL.

23 Q. DO YOU KNOW HOW LONG IT'S BEEN LIGHTED VERY WELL?

24 A. SINCE I CAN REMEMBER. I'VE LIVED HERE, MAYBE, FIVE, FIVE
25 AND A HALF YEARS.

1 Q. I ASK YOU IF YOU CAN – STATE'S EXHIBIT FOR ID NUMBER 6.
2 DOES THAT DEPICT WHAT THE LIGHTING WAS ON – OR SIMILAR
3 OR THAT ON NOVEMBER 1, 2003?

4 A. YES, SIR.

5 Q. STATE'S EXHIBIT NUMBER 4, WHICH IS IN EVIDENCE, YOU
6 RECOGNIZE THAT?

7 A. YES, SIR.

8 Q. WHAT IS THAT?

9 A. THOSE ARE RINGS SERGEANT GRUEL TOOK OUT OF THE
10 POCKET OF THE SUSPECT, SIR.

11 Q. AND STATE'S EXHIBIT NUMBER 5, DO YOU RECOGNIZE THAT,
12 SIR?

13 A. TWENTY-DOLLAR BILLS, SIR.

14 Q. THAT WAS THERE THAT NIGHT?

15 A. YES, SIR.

16 Q. STATE'S EXHIBIT NUMBER 3, SIR. CAN YOU IDENTIFY IT, SIR?

17 A. YES, SIR. THE KNIFE THAT SERGEANT GRUEL TOOK OUT OF
18 THE POCKET OF MR. BOWERS.

19 Q. STATE'S EXHIBIT NUMBER 1, SIR. DO YOU RECOGNIZE THIS?

20 A. YES, SIR.

21 Q. HOW DO YOU RECOGNIZE THAT?

22 A. THOSE ARE THE PANTS MR. BOWERS WAS WEARING AT THE
23 TIME WHEN HE WAS ARRESTED.

24 Q. BY YOU?

25 A. YES, SIR.

1 MR. KNIGHT: I THINK THIS SAYS STATE'S
2 EXHIBIT NUMBER 2 SOMEWHERE. BUT I WANT TO MAKE SURE.

3 OH, I'M SORRY. RIGHT HERE.

4 Q. STATE'S EXHIBIT NUMBER 2. DO YOU RECOGNIZE THIS, SIR?

5 A. YES, SIR. THAT WOULD BE THE JACKET MR. BOWERS WAS
6 WEARING AT THE SAME TIME AS THE PANTS.

7 Q. DID HE TAKE THESE OFF OF MR. —

8 A. THEY WERE TAKEN OFF AT THE JAIL, YES, SIR.

9 MR. KNIGHT: OKAY.

10 COURT WILL INDULGE ME ONE MOMENT, ONE
11 SECOND, YOUR HONOR.

12 MR. KING, IF YOU'D BE SO KIND, SIR, PLEASE
13 ANSWER ANY QUESTIONS MR. HOOD MAY HAVE.

14 A. YES, SIR.

15 THE COURT: MR. HOOD.

16 CROSS-EXAMINATION BY MR. HOOD:

17 Q. MR. KING, YOU FILLED OUT AN INCIDENT REPORT IN THIS
18 CASE, DIDN'T YOU?

19 A. YES, SIR, I DID.

20 Q. ALL RIGHT.

21 AND I BELIEVE YOU MARKED DOWN HERE, AS
22 FAR AS SUSPECT IS CONCERNED, JAMES BOWERS, THAT
23 WHETHER OR NOT HE HAD BEEN USING ALCOHOL AND OR
24 PERHAPS DRUGS, YES, IS THAT CORRECT?

25 A. YES, SIR.

1 Q. OKAY.

2 SO HE WAS UNDER THE INFLUENCE, IS THAT
3 CORRECT?

4 A. YES, SIR.

5 Q. OKAY.

6 NOW, AT THE TIME YOU WENT TO THE
7 LOCATION OF THE PERSON WHO MADE THE CALL, THE 9-1-1 CALL,
8 AND I BELIEVE YOU SPOKE TO HER, IS THAT CORRECT?

9 A. YES, SIR, I DID.

10 Q. AND YOU INDICATE ON YOUR REPORT HERE THAT SHE WAS
11 NOT USING ANY TYPE OF ALCOHOL AND OR DRUGS, IS THAT
12 CORRECT?

13 A. YES, SIR.

14 Q. OKAY.

15 SO YOU DIDN'T SMELL ANY ALCOHOL ON HER?

16 A. NO, SIR, I DID NOT.

17 Q. OKAY.

18 DID YOU TALK TO HER AND GET ANY NAMES OR
19 ANYTHING OF THAT NATURE FROM ANYBODY INSIDE OF THE CLUB
20 OR ANYTHING OF THAT NATURE ?

21 A. NO, I DID NOT ASK FOR NAMES OF ANYONE INSIDE, SIR.

22 Q. OKAY.

23 AND YOU WERE THERE WITH HER THE WHOLE
24 TIME THAT THE OTHER OFFICERS WERE OUT ON THE ROAD
25 LOOKING IN THE DIRECTION OF WHERE THIS INDIVIDUAL WENT, IS

1 THAT CORRECT?

2 A. YES, SIR. I STAYED WITH HER UNTIL SHE LEFT WITH HER
3 FRIEND.

4 Q. OKAY.

5 AND AT THE TIME SHE DEPARTED WAS WHEN
6 YOU DEPARTED, IS THAT CORRECT?

7 A. YES, SIR, SHORTLY AFTER.

8 Q. OKAY.

9 HOW LONG WOULD YOU SAY SHORTLY AFTER?
10 I MEAN SHE LEAVES AND DO YOU LEAVE THEN OR DO YOU WAIT
11 THERE FOR SOME REASON?

12 A. MAYBE TWO MINUTES AFTER SHE LEFT I LEFT, SIR.

13 Q. OKAY.

14 AND AS YOU'RE PULLING OUT, THAT'S WHEN
15 GET THIS BOLO ON THE GUY WHO'S DOWN SOMEWHERE AROUND
16 THE ENMARK OR —

17 A. I DROVE AS FAR AS 21, 170. THAT'S WHEN I RECEIVED THE
18 CALL.

19 Q. OKAY. OKAY.

20 NOW, DID YOU — YOU SAY YOU — DID YOU
21 GATHER ANY EVIDENCE IN THIS CASE?

22 A. YES, SIR, I DID.

23 Q. OKAY.

24 AND DID YOU TURN THAT EVIDENCE INTO THE
25 EVIDENCE CUSTODIAN?

1 A. I GAVE THE EVIDENCE STRAIGHT TO SERGEANT OTT AT THE
2 SCENE.

3 Q. AT THE SCENE?

4 A. YES, SIR.

5 Q. SO YOU GAVE UP CUSTODY OF IT, IS THAT CORRECT?

6 A. YES, SIR.

7 Q. OKAY.

8 AT THE TIME PRIOR TO GIVING UP CUSTODY OF
9 THOSE ITEMS DID YOU AT ANY TIME FINGERPRINT ANY OF THE
10 ITEMS THAT YOU TURNED OVER TO SERGEANT OTT?

11 A. NO, I DID NOT.

12 Q. OKAY.

13 DID YOU QUESTION MR. BOWERS ABOUT THIS
14 INCIDENT?

15 A. I BELIEVE I DID, YES.

16 Q. OKAY.

17 AND I BELIEVE HE TOLD YOU THAT HE DID NOT
18 KNOW ANYTHING ABOUT ANY ARMED ROBBERY, ISN'T THAT
19 CORRECT?

20 A. YES, SIR.

21 MR. HOOD: OKAY.

22 THANK YOU.

23 THE COURT: MR. KNIGHT.

24 MR. KNIGHT: THAT'S ALL I HAVE OF THIS

25 WITNESS.

1 THE COURT: THANK YOU.

2 MR. KING, YOU CAN STEP DOWN.

3 A. YES, SIR.

4 MR. KNIGHT: MISTY CARTER.

5 THE COURT: MISS CARTER, COME FORWARD,
6 PLEASE, MA'AM, AND BE SWORN.

7 MISTY SHARP CARTER,
8 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

9 CLERK OF COURT: PLEASE TAKE YOUR SEAT
10 AND STATE YOUR WHOLE NAME FOR THE RECORD, SPELLING
11 YOUR LAST.

12 A. MY NAME IS MISTY SHARP CARTER. LAST NAME IS SPELLED
13 C-A-R-T-E-R.

14 DIRECT EXAMINATION BY MR. KNIGHT:

15 Q. MISS CARTER, YOU LIVE HERE IN BEAUFORT?

16 A. YES, I DO, SIR.

17 Q. WHO ARE YOU EMPLOYED WITH?

18 A. CURRENTLY I'M EMPLOYED WITH NCC ABOARD PARRIS ISLAND
19 WITH THE LOSS-PREVENTION DIVISION.

20 Q. ON NOVEMBER 1 OF 2003 WHO WERE YOU EMPLOYED WITH?

21 A. BEAUFORT CITY POLICE DEPARTMENT.

22 Q. AND WERE YOU WORKING ON THAT DAY OR NIGHT?

23 A. I WAS.

24 Q. AND WHO, WHO WERE YOU WORKING WITH?

25 A. OFFICER MICHAEL KING.

1 Q. MICHAEL KING.

2 WERE YOU RIDING IN HIS VEHICLE?

3 A. YES, SIR.

4 Q. Y'ALL RESPOND TO A BOLO ABOUT AN ARMED ROBBERY ?

5 A. YES, SIR.

6 Q. COULD YOU DESCRIBE WHAT YOU OBSERVED DURING THE
7 COURSE OF THIS INVESTIGATION?

8 A. THE CALL WENT OUT TO DISPATCH. OFFICER KING AND I HAD
9 CHARLIE THAT EVENING. AND WE RESPONDED TO, I BELIEVE IT
10 WAS BROAD RIVER SEAFOOD, WHICH IS LOCATED RIGHT BESIDE
11 COCONUTS.

12 THE VICTIM WAS OUTSIDE. THERE WERE
13 SEVERAL RESPONDING OFFICERS.

14 I GOT OUT OF THE VEHICLE. OFFICER KING
15 WENT UP TO SPEAK WITH THE VICTIM. AND OFFICER VIDETTO
16 WAS THERE AS WELL AND HE AND I LOOKED ALONG ASIDE OF
17 THE ROAD GOING IN A DIRECTION OUT OF TOWN, LOOKING ON
18 THE SIDE OF THE ROAD FOR DEBRIS, ANYTHING THAT MAY HAVE
19 BELONGED TO THE VICTIM.

20 Q. YOU AND OFFICER KING GET BACK INTO HIS VEHICLE AND GO
21 ON PATROL?

22 A. WE DID.

23 THERE WAS A CALL THAT CAME OUT. OFFICER
24 KENNINGER, THAT HE BELIEVED HE SPOTTED THE SUSPECT. SO
25 WE GOT BACK IN THE VICTIM (SIC) AND HEADED THE DIRECTION

1 THAT HE WAS IN.

2 Q. AND WHERE DID YOU GO TO?

3 A. WE HEADED IN THE DIRECTION OF THE HESS MARK AND LA
4 HACIENDA. HE STATED THAT HE WAS AT LA HACIENDA PARKING
5 LOT. AND SO WE HEADED IN THAT DIRECTION.

6 WE TURNED OUR VEHICLE INTO THE PARKING
7 LOT AREA AND THE, WHAT I BELIEVED AT THE TIME WAS THE
8 SUSPECT BECAUSE IT WAS STATED OVER THE RADIO THAT HE
9 WAS ON FOOT AND THAT HE WAS REASONING. AND AS WE
10 TURNED INTO THE PARKING LOT I THOUGHT I SAW SOMEONE
11 BEHIND THE BUSHES. I SAW MOVEMENT WHICH APPEARED TO BE
12 LEG MOVEMENT. AND I WAS DIRECTING OFFICER KING IN THAT
13 DIRECTION WHERE I WAS SEEING THE MOVEMENT.

14 HE WAS PULLING UP IN THAT AREA. AND WE
15 GOT OUT OF OUR VEHICLES. AND HEADED IN THE AREA WHERE
16 HE WAS RUNNING.

17 Q. DID YOU APPREHEND THE SUSPECT ?

18 A. NO.

19 Q. WAS THE SUSPECT APPREHENDED?

20 A. YES, SIR.

21 Q. CAN YOU IDENTIFY THE PERSON THAT WAS APPREHENDED
22 ON NOVEMBER 1 OF 2003, THAT NIGHT AT ENMARK?

23 A. YES, SIR.

24 Q. IS HE IN THE COURTROOM TODAY, MA'AM?

25 A. YES, SIR.

1 Q. WOULD YOU POINT HIM OUT? FOR THE JURY, MA'AM.

2 A. THE GENTLEMAN SEATED OVER THERE, SIR. AT THE TABLE.

3 Q. THE DEFENDANT MR. BOWERS?

4 A. YES, SIR.

5 Q. IS THAT THE EXTENT OF YOUR INVOLVEMENT IN THIS CASE,
6 MA'AM?

7 A. I BELIEVE SO, SIR. I STAYED BEHIND AFTER THE SUSPECT
8 WAS APPREHENDED AND WAS JUST VIEWING EVERYTHING THAT
9 WAS GOING ON.

10 MR. KNIGHT: THANK YOU, MA'AM.

11 WOULD YOU ANSWER ANYTHING MR. HOOD
12 MAY HAVE, MA'AM?

13 A. ABSOLUTELY, SIR.

14 MR. KNIGHT: THANK YOU, MA'AM.

15 THE COURT: MR. HOOD.

16 MR. HOOD: THANK YOU, YOUR HONOR.

17 CROSS-EXAMINATION BY MR. HOOD:

18 Q. DID YOU PARTICIPATE IN ANY WAY IN THE RECOVERY OF ANY
19 EVIDENCE IN THIS CASE?

20 A. NO, SIR.

21 Q. OKAY.

22 DID YOU THE FOLLOWING DAY IN ANY WAY
23 PARTICIPATE IN THE RECOVERY OF A POCKETBOOK?

24 A. NO, SIR.

25 Q. WERE THERE A LOT OF PEOPLE AT COCONUTS THAT NIGHT

1 WHEN YOU GOT THERE?

2 A. IN THE PARKING LOT OR INSIDE THE ESTABLISHMENT?

3 Q. INSIDE OR OUTSIDE.

4 A. I'M NOT SURE HOW MANY PEOPLE WERE IN THE
5 ESTABLISHMENT. THERE WERE QUITE A NUMBER OF CARS OUT
6 THERE. IT WASN'T PACKED BUT IT WAS RELATIVELY - IT
7 WASN'T - IT WASN'T TOO FULL BUT THERE WERE QUITE A FEW
8 CARS OUT THERE.

9 BECAUSE THE PARKING LOT OBVIOUSLY
10 OVERFLOWED BECAUSE THE PEOPLE WERE PARKING IN A BROAD
11 RIVER PARKING LOT AREA AND THEN THE DIRT PARKING LOT
12 AREA THAT EXTENDED OUTSIDE OF THAT, THERE WERE CARS
13 ALL OUT THERE AS WELL.

14 MR. HOOD: OKAY.

15 THANK YOU.

16 A. THANK YOU.

17 MR. KNIGHT: THAT'S ALL I HAVE OF THIS
18 WITNESS. MAY SHE BE EXCUSED, YOUR HONOR?

19 THE COURT: MR. HOOD, WITHOUT OBJECTION?

20 MR. HOOD: I HAVE NO OBJECTION.

21 THE COURT: MISS CARTER, YOU CAN STEP
22 DOWN AND BE EXCUSED.

23 THANK YOU FOR COMING.

24 A. THANK YOU.

25 MR. KNIGHT: DARRELL GRUEL.

1 THE COURT: MR. GRUEL, IF YOU'LL COME
2 FORWARD AND BE SWORN.

3 DARRELL A. GRUEL,
4 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

5 CLERK OF COURT: PLEASE TAKE YOUR SEAT
6 AND STATE YOUR WHOLE NAME FOR THE RECORD, SPELLING
7 YOUR LAST NAME.

8 A. MY NAME IS DARREL A. GRUEL. LAST NAME IS G-R-U-E-L.

9 THE COURT: SERGEANT GRUEL, WE'LL WAIT
10 JUST A MINUTE.

11 A. OKAY.

12 MR. KNIGHT: MAY I PROCEED?

13 THE COURT: YES, SIR.

14 DIRECT EXAMINATION BY MR. KNIGHT:

15 Q. MR. GRUEL, WHO ARE YOU EMPLOYED WITH, SIR?

16 A. I WORK FOR THE CITY OF BEAUFORT POLICE DEPARTMENT.

17 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE CITY
18 OF BEAUFORT POLICE DEPARTMENT?

19 A. THIRTEEN YEARS AND TEN MONTHS.

20 Q. WERE YOU ON DUTY ON NOVEMBER 1 OF 2003, SIR?

21 A. YES.

22 Q. DID YOU RESPOND TO A CALL TO GO TO ENMARK, SIR?

23 A. YES, SIR.

24 Q. IN REFERENCE TO AN ARMED ROBBERY ?

25 A. THAT'S CORRECT.

1 Q. WHEN YOU GO THERE, WHERE WAS THE DEFENDANT?

2 A. WHEN I -- WHEN I ORIGINALLY GOT IN THE VICINITY THE
3 DEFENDANT WAS RUNNING THROUGH AN EMPTY LOT BETWEEN
4 LA HACIENDA RESTAURANT INTO THE ENMARK PARKING LOT AND
5 THROUGH THE ENMARK PARKING LOT.

6 Q. NOW, THE DEFENDANT BEING MR. BOWERS?

7 A. YES, SIR. MR. BOWERS.

8 Q. OKAY. OKAY.

9 DID YOU APPREHEND MR. BOWERS?

10 A. NO, SIR.

11 Q. DO YOU RECALL WHO APPREHENDED MR. BOWERS?

12 A. WHEN I GOT ON SCENE MR. BOWERS WAS LAID OUT ON THE
13 GROUND IN, IN HANDCUFFS. WITH TWO OFFICERS OVER TOP OF
14 HIM, OFFICER KING AND OFFICER THOMPSON.

15 Q. AND SUBSEQUENTLY MR. BOWERS WAS ARRESTED, IS THAT
16 CORRECT?

17 A. THAT'S CORRECT.

18 Q. BY OFFICER KING?

19 A. THAT'S CORRECT.

20 Q. INCIDENT TO THE ARREST DID YOU SEARCH THE DEFENDANT
21 MR. JAMES HAROLD BOWERS?

22 A. YES, SIR.

23 Q. AND WHAT DID YOU REMOVE FROM MR. BOWERS'
24 POSSESSION, PANTS?

25 A. IN HIS PANTS POCKETS HE HAD ON A BLACK-HANDLED

1 FOLDING POCKETKNIFE.

2 Q. OKAY.

3 I ASK YOU IF YOU CAN IDENTIFY STATE'S
4 EXHIBIT NUMBER 3.

5 A. YES, SIR. THAT'S THE KNIFE THAT HE HAD IN HIS POCKET.

6 Q. YOU REMOVED IT?

7 A. YES, SIR.

8 Q. OKAY.

9 WHAT ELSE, SIR?

10 A. HE ALSO HAD A, A SOLITARY DIAMOND RING AND WEDDING
11 BAND. WHICH WAS OBVIOUS TO ME TO BE A LADY'S SIZE.

12 Q. I ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT NUMBER 4.

13 A. YES, SIR. THAT'S THE RINGS THAT I REMOVED FROM HIS
14 POCKET .

15 Q. YOU REMOVED THESE RINGS, STATE'S EXHIBIT NUMBER 4,
16 FATHER THE DEFENDANT'S POCKET?

17 A. THAT'S CORRECT.

18 Q. WHAT DO YOU DO WITH STATE'S EXHIBIT NUMBER —

19 MR. KNIGHT: EXCUSE ME, YOUR HONOR.

20 Q. — THREE AND FOUR? WHAT DO YOU DO WITH THOSE?

21 A. AFTER I HAD REMOVED ITEMS FROM HIS POCKET I PLACED
22 BOTH ITEMS ON THE PATROL CAR LIKED. IT WAS EITHER HOOD
23 OR THE TRUNK. OF THE PATROL CAR.

24 Q. OKAY.

25 WAS THIS THE EXTENT OF YOUR INVOLVEMENT

1 IN THIS CASE, SIR?

2 A. YES, SIR.

3 MR. KNIGHT: IF YOU'D ANSWER ANY
4 QUESTIONS MR. HOOD MAY HAVE, SIR.

5 THE COURT: MR. HOOD.

6 CROSS-EXAMINATION BY MR. HOOD:

7 A. OFFICER GRUEL, DID YOU COME IN CONTACT WITH ANY
8 OTHER SUPPOSED EVIDENCE IN THIS CASE?

9 A. I DID, YES, SIR. I SAW - I - IT WAS DIRECTED BY OTHER
10 OFFICER THAT WAS SOME MONEY LAYING ON THE GROUND. AND
11 I, I DID VIEW THAT ON THE GROUND, YES, SIR.

12 Q. AND THAT WAS BACK OUT IN THE BUSHES, IS THAT
13 CORRECT?

14 A. YES, SIR.

15 Q. YOU DIDN'T - YOU DIDN'T TOUCH ANY OF THOSE THINGS, IS
16 THAT CORRECT?

17 A. I DID NOT TOUCH THE MONEY, NO, SIR.

18 MR. HOOD: OKAY.

19 THE COURT: MR. KNIGHT.

20 MR. KNIGHT: THAT'S ALL I HAVE FOR THIS
21 WITNESS. MAY HE BE EXCUSED, YOUR HONOR?

22 THE COURT: SIR?

23 MR. HOOD: NO OBJECTION.

24 THE COURT: SERGEANT GRUEL, YOU CAN
25 STEP DOWN AND BE EXCUSED.

1 A. THANK YOU.

2 MR. KNIGHT: DAVID OTT.

3 THE COURT: MR. OTT, COME FORWARD AND
4 BE SWORN.

5 DAVID OTT,
6 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

7 CLERK OF COURT: PLEASE TAKE YOUR SEAT
8 AND STATE YOUR WHOLE NAME FOR THE RECORD, SPELLING
9 YOUR LAST NAME.

10 A. YOUR HONOR.

11 I'M SERGEANT DAVID OTT, THE BEAUFORT
12 SHERIFF'S - BEAUFORT CITY. POLICE.

13 O-T-T IS THE SPELLING OF MY LAST NAME.

14 DIRECT EXAMINATION BY MR. KNIGHT:

15 Q. SERGEANT OTT, HOW LONG HAVE YOU BEEN EMPLOYED WITH
16 THE BEAUFORT CITY POLICE DEPARTMENT?

17 A. THIS DEPARTMENT, ABOUT NINE YEARS.

18 Q. PRIOR TO THAT YOU WERE EMPLOYED WITH WHO?

19 A. I'VE BEEN WITH A DIFFERENT COUPLE AGENCIES.

20 I'M LACKING FIVE MONTHS FROM RETIREMENT
21 WITH TWENTY-FIVE YEARS IN.

22 Q. LAW ENFORCEMENT?

23 A. YES, SIR.

24 Q. WERE YOU ON DUTY ON NOVEMBER 1 OF 2003?

25 A. YES, SIR, I WAS.

1 Q. AND DID YOU RECEIVE A CALL OR A BOLO ABOUT AN ARMED
2 ROBBERY ?

3 A. YES, SIR, I DID.

4 Q. AND WHAT, IF ANYTHING, DID YOU DO AS A RESULT OF THAT
5 INFORMATION YOU RECEIVED?

6 A. I RESPONDED TO BROAD RIVER SEAFOOD AREA. THE DIRT
7 PARKING LOT. WE KNOW IT AS EMPLOYEE PARKING LOT.

8 UPON ARRIVAL THERE WAS MULTIPLE OTHER
9 UNITS THERE. PATROL OFFICERS. OUT WITH THE, THE VICTIM
10 WHO STATED SHE HAD - WAS ROBBED BY A BLACK MALE.

11 Q. I SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION
12 STATE'S EXHIBIT NUMBER 6.

13 A. YES, SIR.

14 Q. CAN YOU IDENTIFY THAT?

15 A. YES, SIR. IT APPEARS TO BE THE GRASS PARKING LOT THAT I
16 WAS TALKING ABOUT AT BROAD RIVER SEAFOOD, WHERE THE
17 EMPLOYEES PARK.

18 Q. IS THAT A FAIR DEPICTION OF THAT PARKING LOT?

19 A. YES, IT IS.

20 Q. AND THE LIGHTING CONDITIONS AT NIGHT?

21 A. YES, SIR.

22 Q. I ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT NUMBER 4,
23 SIR.

24 A. YES, SIR. THIS IS A, A PHOTOGRAPH THAT I TOOK OF A
25 WEDDING BAND AND A WEDDING RING, DIAMOND ON IT.

1 Q. WHEN DID YOU TAKE THAT PHOTOGRAPH, SIR?

2 A. IT WAS AFTER THE ROBBERY. WHERE THE SUSPECT WAS
3 APPREHENDED AT THE -- RIGHT NEXT TO THE MEXICAN
4 RESTAURANT, THE CHURCH AND I CAN'T RECALL THE NAME OF
5 THE CHURCH. RIGHT, RIGHT NEXT TO THE ENMARK GAS STATION,
6 LITTLE CHURCH SITTING RIGHT THERE.

7 I, I LEFT BROAD RIVER SEAFOOD AND WENT TO
8 ANSWER AN ALARM AT COASTAL CONTRACTORS AND, AND WHILE
9 I WAS GONE I HEARD OVER THE RADIO THEY HAD STOPPED HIM
10 AND I WENT BACK DOWN THERE AND THEY WANTED ME TO
11 PHOTOGRAPH IT. AND, AND THAT'S THE REASON I WENT BACK.

12 Q. YOU TOOK THOSE --

13 A. YES, SIR, THAT'S MY PHOTOGRAPH.

14 Q. OKAY.

15 ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT
16 NUMBER 4.

17 A. YES, SIR. THIS IS ALSO A PHOTOGRAPH THAT I TOOK OF THE
18 CASH THAT WAS RECOVERED ON THE, THE GROUND.

19 Q. AND WHEN DID YOU TAKE THAT PHOTOGRAPH, SIR?

20 A. AT THE SAME TIME, WHEN I RESPONDED BACK AFTER HE WAS
21 APPREHENDED.

22 Q. I ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT NUMBER 7,
23 SIR.

24 A. YES, SIR. THIS IS A PHOTOGRAPH I'VE ALSO TAKEN. THIS
25 PHOTOGRAPH IS THE SAME MONEY AS THE EXHIBIT YOU JUST

1 SHOWED ME THAT WAS LYING ON THE GROUND PRIOR TO IT
2 BEING OPENED UP AND, AND PHOTOGRAPHED IN AN OPEN
3 POSITION.

4 Q. WHEN DID YOU TAKE THAT PHOTOGRAPH, SIR?

5 A. THE SAME NIGHT. WHEN, WHEN I —

6 Q. NOVEMBER 1?

7 A. YES, SIR.

8 THE COURT: STATE THE PHOTOGRAPH
9 NUMBER.

10 MR. KNIGHT: IT SAID SEVEN.

11 THE COURT: PLEASE. ON THE CASH.

12 MR. KNIGHT: ON THE CASH?
13 NUMBER 5.

14 THE COURT: OKAY.

15 THANK YOU.

16 MR. KNIGHT: AND THIS ONE WAS NUMBER 7.

17 THE COURT: ALL RIGHT.

18 Q. DID YOU TAKE IN CUSTODY AND CONTROL OF WHAT'S BEEN
19 DEPICTED ON, ON ITEMS 6 AND 7? THE MONEY?

20 A. THE MONEY?

21 Q. YES, SIR.

22 A. NO, SIR.

23 Q. OKAY.

24 HOW ABOUT DID YOU TAKE CONTROL OF
25 STATE'S EXHIBIT NUMBER 3, WHICH IS THE KNIFE?

1 A. NO, SIR.

2 IF, IF - GO AHEAD.

3 Q. DID YOU - YOU DIDN'T TAKE CONTROL OF IT?

4 A. NO, SIR.

5 MR. KNIGHT: IF YOU'D ANSWER ANY
6 QUESTIONS MR. HOOD MAY HAVE.

7 A. THANK YOU.

8 THE COURT: MR. HOOD. CROSS-EXAMINE.
9 CROSS-EXAMINATION BY MR. HOOD:

10 Q. NOW, DID - YOU WERE THE LEAD INVESTIGATOR, THE
11 DETECTIVE INVOLVED IN THIS PARTICULAR CASE, IS THAT
12 CORRECT?

13 A. MR. HOOD, I RESPONDED TO IT. AND, AND AS FAR AS THE
14 LEAD INVESTIGATOR, I WAS THE ONLY INVESTIGATOR OUT THAT
15 NIGHT.

16 Q. NOW, DID ANYBODY, TO YOUR KNOWLEDGE, OR YOURSELF
17 TAKE ANY FINGERPRINTS, DUST ANY OF THE, THE BILLS OR
18 ANYTHING OF THAT NATURE FOR FINGERPRINTS?

19 A. NO, NO, SIR, THEY DID NOT.

20 Q. OKAY.

21 NOW, WERE YOU A PART OF OR INVOLVED IN
22 THE RECOVERY OF THE PURSE THAT WAS LATER RETURNED?

23 A. NO, SIR. I HAD - HAD NO KNOWLEDGE OF THAT.

24 Q. SO YOU DON'T KNOW WHERE IT WAS FOUND OR ANYTHING
25 OF THAT NATURE, IS THAT CORRECT?

1 A. NO, SIR.

2 I DO BELIEVE THAT THAT WAS RECOVERED BY
3 THE SHERIFF'S DEPARTMENT, IF I'M NOT MISTAKEN.

4 Q. AND NO ONE EVER DID ANYTHING AS FAR AS CONTACTING
5 YOU ABOUT THESE ITEMS, IS THAT CORRECT?

6 A. THAT IS CORRECT.

7 I WENT ON VACATION THE, THE NEXT MORNING
8 FOR TWO WEEKS. I, I WAS OUT AND WHEN I GOT BACK THE
9 PURSE HAD ALREADY BEEN RECOVERED.

10 Q. NOW, THE SCENE AT THE BROAD RIVER SEAFOOD THAT
11 PARTICULAR NIGHT, THE LOCATION OF WHERE THIS INCIDENT
12 SUPPOSEDLY OCCURRED, DID YOU TAKE ANY PICTURES THAT
13 PARTICULAR NIGHT?

14 A. NO, SIR.

15 MR. HOOD: THANK YOU.

16 MR. KNIGHT: THAT'S ALL I HAVE OF THIS
17 WITNESS. MAY HE BE EXCUSED, YOUR HONOR?

18 MR. HOOD: I HAVE NO OBJECTION .

19 THE COURT: ALL RIGHT.

20 MR. OTT, WITHOUT OBJECTION YOU ARE
21 EXCUSED.

22 A. THANK YOU, YOUR HONOR.

23 MR. KNIGHT: CARL SHULTZ.

24 THE COURT: MR. SHULTZ, COME FORWARD,
25 PLEASE, SIR, AND BE SWORN .

CARL WAYNE SHULTZ,

FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

CLERK OF COURT: PLEASE TAKE YOUR SEAT
AND STATE YOUR WHOLE NAME FOR THE RECORD, SPELLING
YOUR LAST NAME.

A. CARL WAYNE SHULTZ, S-H-U-L-T-Z.

DIRECT EXAMINATION BY MR. KNIGHT:

Q. WHO ARE YOU EMPLOYED WITH, MR. SHULTZ?

A. BEAUFORT CITY POLICE DEPARTMENT .

Q. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE POLICE
DEPARTMENT?

A. SIX YEARS.

Q. SIX YEARS?

ASK IF YOU CAN IDENTIFY STATE'S EXHIBIT
NUMBER 6.

A. YES, SIR, I CAN.

Q. HOW CAN YOU IDENTIFY THAT, SIR?

A. THAT IS A PHOTOGRAPH, 35 MILLIMETER PHOTOGRAPH I
TOOK. OF SERGEANT MCDORMANT IN A PARKING LOT. JUST
ADJACENT TO BROAD RIVER SEAFOOD.

Q. IS THAT IN THE CITY OF BEAUFORT , SIR?

A. IT IS, SIR.

Q. IT THAT IN THE COUNTY OF BEAUFORT, SIR?

A. YES, SIR.

MR. KNIGHT: I'D MOVE IT IN EVIDENCE.

1 THE COURT: THANK YOU.

2 MR. HOOD, ANY OBJECTION?

3 MR. HOOD: WHEN DID HE TAKE THAT PICTURE?

4 MR. KNIGHT: LAST WEEK.

5 A. GET THE EXACT DATE FOR YOU.

6 IT WOULD'VE BEEN SUNDAY NIGHT, THE
7 SEVENTEENTH.

8 ON THE - ON - I'M SORRY. OCTOBER 17, 2004.

9 CROSS-EXAMINATION BY MR. HOOD:

10 Q. 2004?

11 A. YES, SIR.

12 Q. SO ABOUT A YEAR AFTER THE EVENT OCCURRED, IS THAT
13 CORRECT?

14 A. I'M NOT AWARE WHEN THE ORIGINAL EVENT OCCURRED, SIR.

15 MR. HOOD: OKAY.

16 I'D OBJECT TO IT, YOUR HONOR, BASED ON THE
17 POSSIBILITY OF CHANGE IN TIME, CONDITIONS, THINGS OF THAT
18 NATURE. WE'VE GOT A PASSAGE OF ABOUT A YEAR. AND THEY
19 WANT TO INTRODUCE A PHOTOGRAPH THAT DEPICTS A FEW
20 DAYS AGO.

21 THE COURT: ONE OF THE OTHER WITNESSES
22 TESTIFIED THAT THE PHOTOGRAPH WAS REPRESENTATIVE OF
23 THE SCENE AT THE TIME OF THE INCIDENT.

24 I NOTE YOUR OBJECTION. I THINK THIS IS A
25 MATTER FOR THE JURY TO HAVE TO DETERMINE. IT GOES TO

1 THE WEIGHT RATHER THAN ADMISSIBILITY.

2 STATE 6 IN EVIDENCE OVER OBJECTION OF
3 DEFENSE COUNSEL.

4 THANK YOU.

5 (STATE'S EXHIBIT 6 RECEIVED INTO EVIDENCE
6 OVER OBJECTION.

7 MR. KNIGHT: THAT'S ALL I HAVE FOR MR.
8 SHULTZ. MAY HE BE EXCUSED?

9 MR. HOOD: NO OBJECTION, YOUR HONOR.

10 THE COURT: THANK YOU.

11 A. THANK YOU.

12 THE COURT: YOU MAY STEP DOWN.

13 MR. KNIGHT: MAY I AND MR. HOOD APPROACH?

14 THE COURT: CERTAINLY.

15 (A BENCH CONFERENCE WAS HELD OFF THE
16 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
17 HEARING OF THE JURY.)

18 THE COURT: LADIES AND GENTLEMEN, I
19 APOLOGIZE FOR US RUDELY WHISPERING BEHIND YOUR BACK
20 OVER THERE. WE WERE PLANNING YOUR IMMEDIATE FUTURE, AS
21 A MATTER OF FACT.

22 IT'S - WHEN WE ENGAGE IN THOSE SORTS OF
23 ACTIVITIES I FEEL THAT A JURY IS OWED SOME EXPLANATION.
24 WE'RE REALLY TALKING ABOUT MATTERS OF SCHEDULING.

25 THERE ARE TWO OTHER WITNESSES ON THE

1 WITNESS LIST WHO DID NOT HAVE ANY PART IN THE ACTIVE
2 INVESTIGATION. THEY SIMPLY ACTED ADMINISTRATIVELY WITHIN
3 THE OFFICE AS SOME OF THIS EVIDENCE CROSSED THEIR DESKS.
4 AND SINCE THE EVIDENCE IS ALREADY IN THE RECORD NOTHING
5 ELSE WOULD'VE BEEN SERVED BY HAVING THEM TESTIFY THAT
6 THEY SAW THE EVIDENCE AND THEY BROUGHT IT IN HERE. FOR
7 THAT REASON, THOSE WITNESSES WILL NOT BE CALLED.

8 THE LAST WITNESS THE STATE INTENDS TO
9 CALL IS - HE'S A PATROL DEPUTY. HE'S ON THE ROAD, WILL NOT
10 BE AVAIL UNTIL IN THE MORNING SO WE'RE GONE HAVE TO STOP
11 AT THIS POINT FOR TODAY. AND SEND YOU HOME ABOUT TEN
12 MINUTES AHEAD OF THE 5:00 TRAFFIC. IF YOU RUSH YOU MIGHT
13 BE ABLE TO GET A LITTLE EDGE ON IT.

14 I NEED YOU BACK AT 9:30 TOMORROW
15 MORNING , OF COURSE, AND YOU REPORT DIRECTLY TO THE
16 JURY ROOM, JUST LIKE YOU DID AFTER LUNCH.

17 AND I REMIND YOU AGAIN THAT YOU CANNOT
18 DISCUSS THIS CASE WITH ANYBODY AND DON'T TALK ABOUT IT
19 AMONG YOURSELVES WHEN YOU GET BACK AT 9:30 TOMORROW.
20 AND DON'T TRY TO FIND OUT ANYTHING ON YOUR OWN ABOUT
21 THIS CASE OVERNIGHT.

22 HAVE A GOOD EVENING, LADIES AND
23 GENTLEMEN, AND I'LL SEE YOU ALL TOMORROW MORNING AT
24 9:30.

25 THANK YOU.

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: MR. KNIGHT, IS THERE ANYTHING
4 FURTHER THEN FROM THE STATE BEFORE WE BREAK FOR THE
5 END OF THE DAY?

6 MR. KNIGHT: NO, SIR. I THINK —

7 THE COURT: THANK YOU. THANK YOU, SIR.

8 MR. HOOD?

9 MR. HOOD: NOTHING, YOUR HONOR.

10 THE COURT: OKAY.

11 ALL RIGHT, FOLKS, WE'LL BE IN RECESS IN THIS
12 MATTER THEN UNTIL 9:30 TOMORROW MORNING .

13 I'VE GOT A BRIEF GUILTY PLEA THAT WE'LL DO
14 FIRST THING AT 9:30. MIGHT TRY TO GET HERE COUPLE MINUTES
15 EARLY TO START ON IT A LITTLE AHEAD OF TIME, IF WE CAN.

16 BUT WE WILL NOT RESUME THIS TRIAL UNTIL
17 9:30 TOMORROW MORNING .

18 THANK YOU.

19 — END OF PROCEEDINGS TAKEN ON OCTOBER 25, 2004 —
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21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE OF SOUTH)
CAROLINA)

-vs-)

JAMES BOWERS)

TRANSCRIPT OF RECORD

OCTOBER 26, 2004
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE;
AND A JURY

APPEARANCES:

STEVEN H. KNIGHT, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

GENE G. HOOD, PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

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1 (THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: ANYTHING FROM THE STATE
4 BEFORE WE BRING IN THE JURY?

5 MR. KNIGHT: NOTHING FROM THE STATE.

6 THE COURT: MR. HOOD?

7 MR. HOOD: NOTHING FROM THE DEFENSE.

8 THE COURT: LET US HAVE THE JURY.

9 (THE JURY RETURNED TO OPEN COURT.)

10 BAILIFF: YOUR HONOR, ALL JURORS ARE
11 PRESENT.

12 THE COURT: MADAME FORELADY, MEMBERS
13 OF THE JURY, GOOD MORNING. THANK YOU FOR YOUR PROMPT
14 RETIRE THIS MORNING.

15 WE'RE NOW READY TO PICK UP WITH WHERE
16 WE LEFT OFF YESTERDAY. YOU MAY RECALL THE STATE WAS
17 OFFERING EVIDENCE AND TESTIMONY IN SUPPORT OF THE
18 CHARGES. WE PICK UP AGAIN AT THAT STAGE THIS MORNING.

19 MR. KNIGHT: THE STATE CALLS BRYAN
20 CHAPMAN.

21 THE COURT: MR. CHAPMAN, COME FORWARD,
22 PLEASE, SIR, AND BE SWORN.

23 BRYAN CHAPMAN,
24 FIRST BEING DULY SWORN TESTIFIED AS FOLLOWS:

25 CLERK OF COURT: PLEASE BE SEATED. STATE

1 YOUR NAME AND SPELL IT FOR THE COURT,
2 PLEASE.

3 A. MY NAME IS PATROLMAN FIRST CLASS BRYAN CHAPMAN,
4 BEAUFORT COUNTY SHERIFF'S OFFICE.

5 DIRECT EXAMINATION BY MR. KNIGHT:

6 A. SAY IT AGAIN?

7 Q. YEAH.

8 A. MY NAME IS PATROLMAN FIRST CLASS BRYAN CHAPMAN OF
9 THE BEAUFORT COUNTY SHERIFF'S OFFICE.

10 Q. MR. CHAPMAN, HOW LONG ARE YOU EMPLOYED WITH THE
11 SHERIFF'S DEPARTMENT, SIR?

12 A. ONE YEAR AND ELEVEN MONTHS, SIR.

13 Q. WERE YOU ON DUTY ON NOVEMBER 1 OF 2003?

14 A. YES, SIR, I WAS.

15 Q. DID YOU RESPOND TO A CALL ON NEIL (PHON.) ROAD? ABOUT
16 SOME FOUND PROPERTY?

17 A. YES, SIR, I DID.

18 Q. DID YOU RECOVER THAT PROPERTY?

19 A. I DID, SIR.

20 Q. AND DID YOU IDENTIFY WHO THE OWNER OF THAT PROPERTY
21 WAS?

22 A. YES, SIR, I DID, BY NORTH CAROLINA DRIVER'S LICENSE THAT
23 WAS INSIDE THE PURSE.

24 Q. IT WAS A PURSE?

25 A. YES, SIR.

1 Q. YOU RECALL WHAT ITEMS, IN ADDITION TO THE NORTH
2 CAROLINA DRIVER'S LICENSE WAS IN THE PURSE?

3 A. I BELIEVE THERE WAS A NOKIA CELL PHONE, A BOTTLE OF
4 LOTION. AND I BELIEVE THERE MAY BE SOME OTHER SMALL
5 ITEMS INSIDE OF THE PURSE.

6 Q. WHAT DO YOU DO WITH THE PURSE AND ITS CONTENTS?

7 A. AFTER IDENTIFYING WHO IT BELONGED TO I WENT OVER TO
8 THE ADDRESS LISTED ON THE DRIVER'S LICENSE. IT HAD
9 ACTUALLY A SOUTH CAROLINA ADDRESS ON IT. IT WAS IN PORT
10 ROYAL.

11 I WENT THERE AND I GAVE IT TO THE, THE LADY
12 WHO WAS THERE. SHE SAID THAT WAS HER PURSE. SHE THEN
13 ADVISED ME THAT SHE WAS THE VICTIM OF AN ARMED ROBBERY,
14 I BELIEVE SEVERAL NIGHTS.

15 Q. OKAY.

16 MR. KNIGHT: WITH PERMISSION OF THE
17 COURT, CAN HE STAND DOWN, SIR?

18 THE COURT: YES.

19 Q. PATROLMAN CHAPMAN, DID I ASK YOU TO DRAW THAT
20 DIAGRAM THERE?

21 A. YES, SIR.

22 Q. AND IT'S NOT TO SCALE, IS IT?

23 A. CORRECT.

24 Q. WHAT DOES THAT DIAGRAM THAT YOU DREW DEPICT?

25 A. THIS DEPICTS THE GENERAL AREA OF WHERE THE PURSE

1 WAS FOUND. THIS BEING BROAD RIVER SEAFOOD, THEN
2 COCONUTS, THEN HIGHWAY —

3 MR. HOOD: YOUR HONOR.

4 THE COURT: YES, SIR.

5 MR. HOOD: I'M, I'M GONNA OBJECT TO THIS.

6 THE COURT: RIGHT.

7 MR. HOOD: AND THE REASON I'M GONNA
8 OBJECT IS IT SOUNDS TO ME LIKE THIS OFFICER DID NOT FIND
9 THE PURSE.

10 THE COURT: RIGHT.

11 MR. HOOD: IS THAT CORRECT?

12 THE COURT: HE DID.

13 MR. HOOD: MY UNDERSTANDING WAS THAT
14 THERE WAS SOME FOUND PROPERTY RECOVERED. AND AT
15 THE — YOU HAVE TO LAY SOME BACKGROUND, I THINK, MR., MR.
16 KNIGHT, TO, TO FILL THAT GAP. DID HE FIND IT AT THE SITE, DID
17 SOMEBODY GIVE IT TO HIM AT SOME OTHER SITE, THAT'S THE
18 QUESTION MR. —

19 MR. KNIGHT: OKAY. FINE.

20 Q. DID YOU FIND IT AT THE SITE?

21 A. THE GENTLEMAN WHO CALLED FOUND IT AT THE SITE.

22 Q. OKAY.

23 MR. KNIGHT: RIGHT.

24 Q. AND WHERE DID YOU GO?

25 A. I WENT TO NUMBER 2 NEIL ROAD. HE SHOWED ME THEN

1 WHERE THE PURSE WAS FOUND.

2 THE COURT: OKAY.

3 DID YOU GET IT FROM THE GENTLEMAN OR DID
4 YOU GET IT FROM A SITE WHERE IT WAS FOUND ON THE
5 GROUND?

6 A. I GOT IT FROM THE GENTLEMAN, YOUR HONOR.

7 THE COURT: AND DID HE SHOW YOU THE SITE
8 WHERE IT WAS FOUND ON THE GROUND?

9 A. YES, SIR, HE DID.

10 THE COURT: HE POINTED IT OUT TO YOU?

11 A. YES, SIR.

12 THE COURT: ALL RIGHT, SIR.

13 I'LL LET HIM SHOW WHERE THE GENTLEMAN
14 POINTED IT OUT TO HIM FOR THE – AND HOW FAR IT WAS FROM
15 WHERE THE GENTLEMAN WAS.

16 LET'S TRY TO TIE THOSE THINGS AND SEE
17 WHERE, WHERE – IT IS A DEGREE OF HEARSAY. THE QUESTION
18 IS WHETHER IT'S THE TRUTH OF THE MATTER ASSERTED OR
19 JUST TO – WHICH WOULD NOT MAKE IT HEARSAY – WHICH
20 WOULD MAKE IT HEARSAY, I'M SORRY, OR WHETHER IT'S JUST TO
21 SHOW WHAT OFFICER CHAPMAN RELIED IS, IS THE QUESTION
22 HERE.

23 I WANT MR. KNIGHT TO FILL IN THOSE GAPS
24 FOR ME, IF HE CAN, BY ASKING THOSE —

25 MR. KNIGHT: OKAY.

1 THE COURT: ALL RIGHT.

2 Q. MR. CHAPMAN.

3 A. YES, SIR?

4 Q. YOU WENT TO THIS LOCATION?

5 A. YES, SIR, NUMBER 2 NEIL ROAD.

6 Q. NUMBER 2 NEIL ROAD.

7 DID YOU RECOVER THE POCKETBOOK AT
8 NUMBER 2 NEIL ROAD?

9 A. YES, SIR, FROM A GENTLEMAN WHO CALLED.

10 THE COURT: ALL RIGHT. THANK YOU.

11 Q. WHERE IS BROAD RIVER SEAFOOD IN RELATION ON YOUR
12 DIAGRAM TO NUMBER 2 NEIL ROAD?

13 THE COURT: RIGHT.

14 A. I WOULD SAY ALMOST A STRAIGHT SHOT ACROSS FROM
15 BROAD RIVER SEAFOOD. I WILL SAY A GUESS, PROBABLY 500
16 YARDS, APPROXIMATELY.

17 Q. NOW, NEIL - NUMBER 2 NEIL ROAD IS IN THE COUNTY?

18 A. YES, SIR.

19 Q. BROAD RIVER SEAFOOD IS IN THE CITY?

20 A. YES, SIR.

21 THE COURT: ALL RIGHT, SIR.

22 MR. KNIGHT: THANK YOU, SIR.

23 THE COURT: MR. HOOD, CROSS-EXAMINE.

24 CROSS-EXAMINATION BY MR. HOOD:

25 Q. OFFICER CHAPMAN.

1 A. YES, SIR.

2 Q. DID, DID YOU TRY TO OBTAIN ANY FINGERPRINTS OR
3 ANYTHING OF THAT NATURE OFF —

4 A. NO, SIR, I DIDN'T. THE PURSE WAS ALREADY HANDLED BY
5 THE GENTLEMAN WHO CALLED. AND THEN I PICKED UP THE
6 PURSE, NOT KNOWING IT WAS THE VICTIM OF A CRIME.
7 EVIDENCE OF A CRIME. I JUST ASSUMED IT WAS A FOUND
8 PROPERTY. DIDN'T KNOW IT WAS THE, THE LADY'S PURSE THAT
9 WAS ROBBED UNTIL I ACTUALLY TOOK IT TO HER, SHE IDENTIFIED
10 IT AS HER PURSE.

11 THE PURSE WAS CONTAMINATED WITH MY
12 FINGERPRINTS AS WELL AS THE GENTLEMAN WHO FOUND IT.

13 Q. AND AS WELL AS THE PERSON WHO TOOK THE PURSE?

14 A. NO, SIR.

15 MR. HOOD: I HAVE NO FURTHER QUESTIONS.

16 THE COURT: THANK YOU.

17 MR. KNIGHT.

18 MR. KNIGHT: MAY HE STAND DOWN?

19 THE COURT: THANK YOU, SIR. YOU CAN
20 STAND DOWN.

21 IF YOU'LL MOVE THAT DIAGRAM OUT OF THE
22 WAY, IF YOU DON'T MIND, OFFICER CHAPMAN.

23 THANK YOU, SIR.

24 MR. KNIGHT: WITH PERMISSION OF THE
25 COURT, MAY HE BE EXCUSED TO GO BE TO WORK?

1 MR. HOOD: I HAVE NO OBJECTION .

2 THE COURT: WITHOUT OBJECTION. YOU CAN
3 GO BACK TO WORK.

4 THANK YOU, SIR.

5 MR. KNIGHT: THANK YOU, BRYAN.

6 STATE RESTS, YOUR HONOR.

7 THE COURT: THANK YOU.

8 LADIES AND GENTLEMEN, THE STATE HAS
9 RESTED IT'S CASE-IN-CHIEF. THAT MEANS THAT YOU HAVE NOW
10 HEARD ALL OF THE EVIDENCE AND TESTIMONY YOU WILL HEAR
11 FROM THE STATE IN THE PRESENTATION OF ITS CASE IN, IN THIS
12 INSTANCE.

13 I'VE GOT TO SEND YOU TO YOUR JURY ROOM
14 FOR A FEW MOMENTS. ALWAYS AT THIS JUNCTURE OF EVERY
15 CASE OF THIS SORT I HAVE TO TAKE UP MATTERS OF LAW
16 OUTSIDE OF YOUR PRESENCE. AND SO I MUST NECESSARILY
17 SEND YOU OUT OF THE COURTROOM WHILE I DO THAT.

18 I REMIND YOU AGAIN, PLEASE DON'T TALK
19 ABOUT THIS CASE AMONG YOURSELVES WHILE YOU'RE IN THE
20 JURY ROOM.

21 WE'LL GET YOU OUT SHORTLY TO CONTINUE
22 THE MORNING'S WORK.

23 THANK YOU.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 THE COURT: IS THE DOOR CLOSED?

2 THANK YOU.

3 MR. HOOD.

4 MR. HOOD: YOUR HONOR, WE'D MAKE A
5 MOTION FOR A DIRECTED VERDICT AT THIS TIME.

6 THE COURT: ALL RIGHT. THANK YOU, SIR.

7 RULE 19 OF THE RULES OF CRIMINAL
8 PROCEDURE GOVERN THE, THE MOTION THAT'S JUST BEEN MADE
9 AND THE CASES CITED UNDER THAT GIVE TO THE COURT
10 GUIDANCE IN RULING UPON THE MOTION.

11 FIRST OF ALL, THE EVIDENCE HAS TO BE
12 VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE WHICH IS
13 THE NONMOVING PARTY. AND, SECONDLY, IF THERE IS ANY
14 DIRECT OR SOME CASES SAY SUBSTANTIAL CIRCUMSTANTIAL
15 EVIDENCE WHICH REALLY TENDS TO PROVE THE GUILT OF THE
16 ACCUSED OR FROM WHICH THE GUILT OF THE ACCUSED MIGHT
17 BE DEDUCED OR CONCLUDED, THEN THE MOTION MUST BE
18 DENIED.

19 IN THIS PARTICULAR CASE THE TESTIMONY OF
20 MS. ROBESON HERSELF, ALONG WITH THE CIRCUMSTANTIAL
21 EVIDENCE OFFERED BY THE – THE EVIDENCE THAT WAS
22 RECOVERED IN THE PROXIMITY OF THE SCENE AND OF THE
23 DEFENDANT, THOSE THINGS TOGETHER TAKEN IN THE LIGHT
24 MOST FAVORABLE TO THE STATE ARE SUFFICIENT TO SURVIVE
25 THE MOTION AND THE MOTION IS RESPECTFULLY DENIED.

1 THANK YOU.

2 MR. HOOD: THANK YOU, YOUR HONOR.

3 THE COURT: YES.

4 MR. HOOD: YOUR HONOR, AT THIS TIME I'D
5 LIKE TO RENEW ALL OF MY PREVIOUS OBJECTIONS THAT I MADE.

6 THE COURT: RIGHT.

7 MR. HOOD: DURING THE COURSE OF THIS
8 TRIAL. PARTICULARLY AS TO THE CHAIN OF CUSTODY AND THE
9 SUPPRESSION OF THE TESTIMONY OF MS. ROBESON.

10 THE COURT: ALL RIGHT, SIR.

11 AND UNLESS THERE'S SOME ADDITIONAL —

12 MR. HOOD: NO, THERE'S —

13 THE COURT: — POINTS THAT SHOULD BE
14 BROUGHT TO BEAR.

15 MR. HOOD: JUST RENEWING THEM.

16 THE COURT: YES, SIR. I NOTE THAT.

17 MR. HOOD: JUST TO MAKE SURE I'VE COVERED
18 MY BASES.

19 THE COURT: I UNDERSTAND PERFECTLY AND I,
20 I SIMPLY RENEW MY EARLIER RULINGS IN THAT REGARD. AND IF
21 THERE ARE ANY ADDITIONAL GROUNDS OR ANY ADDITIONAL
22 MOTIONS I'LL BE GLAD TO HEAR THOSE. FAILING THAT, I'LL
23 SIMPLY RENEW MY EARLIER MOTION — EARLIER RULINGS ON
24 THOSE MOTIONS.

25 MR. HOOD: THANK YOU.

1 YOUR HONOR, AT THIS TIME WE'D LIKE
2 TO - FOR THE COURT TO EXAMINE MY CLIENT AS TO HIS RIGHT
3 TO TESTIFY.

4 THE COURT: YES, SIR.

5 ALL RIGHT.

6 THANK YOU.

7 MR. BOWERS, WOULD YOU PLEASE STAND
8 RIGHT WHERE YOU ARE AND LET ME PUT YOU UNDER OATH. I'VE
9 GOT TO ASK YOU A FEW QUESTIONS. RAISE YOUR RIGHT HAND,
10 PLEASE, SIR.

11 **JAMES BOWERS,**
12 FIRST BEING DULY SWORN, ANSWERED THE QUESTIONS OF THE
13 COURT AS FOLLOWS:

14 THE COURT: YOU CAN HAVE A SEAT.

15 MR. BOWERS, YOU MAY BE CALLED UPON TO
16 TESTIFY IN THIS CASE; YOU MAY NOT BE. THAT'S A DISCUSSION
17 THAT YOU AND MR. HOOD WILL MAKE AFTER YOU'VE HAD A
18 CHANCE TO DISCUSS THIS FURTHER, IF YOU NEED TO.

19 BEFORE YOU GET TO THAT POINT, HOWEVER, I
20 NEED TO ADVISE YOU THAT YOU HAVE CERTAIN RIGHT UNDER
21 OUR STATE AND NATIONAL CONSTITUTION. THE FIFTY
22 AMENDMENT OF THE UNITED STATES CONSTITUTION SAYS THAT
23 NO PERSON IN ANY CRIMINAL CASE CAN BE FORCED TO TESTIFY
24 AGAINST THEMSELF. AND OUR STATE CONSTITUTION HAS A
25 SIMILAR COUNTERPART.

1 THAT MEANS THAT YOU CANNOT MADE TO
2 TESTIFY IN THIS CASE. YOU CANNOT BE COMPELLED TO TESTIFY
3 AND TAKE THE STAND. YOU CAN'T BE FORCED TO TESTIFY
4 AGAINST YOURSELF. YOU HAVE A RIGHT TO REMAIN SILENT.
5 AND THAT'S A RIGHT THAT THE CONSTITUTION JUST GIVES TO
6 YOU. NOBODY ELSE CAN USE -- EXERCISE THAT RIGHT, NOBODY
7 ELSE CAN GIVE IT UP.

8 AND SO I NEED TO LET YOU KNOW THAT IF YOU
9 CHOOSE NOT TO TESTIFY, AS YOU HAVE A RIGHT TO DO, THE
10 JURY WILL BE INSTRUCTED THAT THEY CANNOT CONSIDER THAT
11 IN THEIR DELIBERATIONS AND IN THE QUESTION OF YOUR GUILT
12 OR THEIR (SIC) INNOCENCE, THEY WILL BE TOLD THAT THEY
13 CANNOT TAKE THAT INTO ACCOUNT. THEY WILL BE TOLD THAT
14 THEY CANNOT EVEN DISCUSS THAT IN DETERMINING WHETHER
15 YOU'RE GUILTY OR INNOCENT OF THESE CHARGES.

16 ON THE OTHER HAND, IF YOU GIVE UP YOUR
17 RIGHT TO REMAIN SILENT AND IF YOU CHOOSE TO TAKE THE
18 STAND, THEN YOU WILL ASSUME THE ROLE OF EVERY OTHER
19 WITNESS WHO HAS TESTIFIED IN THIS CASE. THAT MEANS THAT
20 YOU WILL BE QUESTIONED NOT ONLY BY MR. HOOD, YOU'LL BE
21 ALSO QUESTIONED BY MR. KNIGHT. AND YOU CAN BE
22 IMPEACHED AND CROSS-EXAMINED ON ANY RELEVANT ISSUES IN
23 THIS PARTICULAR CASE.

24 DO YOU UNDERSTAND WHAT YOUR RIGHT IS TO
25 TESTIFY OR NOT TO TESTIFY?

1 DEFENDANT JAMES BOWERS: YES, SIR.

2 THE COURT: DO YOU HAVE ANY QUESTIONS
3 THAT YOU WANT TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR
4 NOT TO TESTIFY?

5 DEFENDANT JAMES BOWERS: NO, SIR.

6 THE COURT: ALL RIGHT, SIR.

7 I'LL ALLOW YOU ANY FURTHER INQUIRY, IF YOU
8 NEED TO, WITH MR. HOOD BEFORE YOU MAKE A DECISION IN
9 THAT REGARD.

10 ALL RIGHT.

11 MR. HOOD, DO YOU NEED A FEW MOMENTS
12 BEFORE YOU BEGIN?

13 MR. HOOD: YOUR HONOR, JUST A COUPLE OF
14 SECONDS.

15 THE COURT: OKAY.

16 (MR. HOOD CONFERS WITH THE DEFENDANT
17 JAMES BOWERS OFF THE RECORD AND OUT OF THE HEARING OF
18 ALL PRESENT IN THE COURTROOM.)

19 MR. HOOD: YOUR HONOR, WE'VE CONCLUDED
20 OUR CONVERSATION.

21 THE COURT: ALL RIGHT, SIR.

22 IS THE DEFENSE READY TO PROCEED NOW OR
23 YOU WISH TO TAKE A FEW MINUTES?

24 MR. HOOD: WE'RE READY TO PROCEED, YOUR
25 HONOR.

1 AT THIS TIME MY CLIENT HAS INFORMED ME HE
2 DOES NOT WISH TO TESTIFY, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 THANK YOU, SIR.

5 MR. HOOD: AND WE HAVE NO FURTHER
6 EVIDENCE TO PRESENT AT THIS TIME.

7 THE COURT: ALL RIGHT, SIR.

8 WHEN, WHEN THE JURY IS BROUGHT BACK IN,
9 THEN I'LL YOU TO REST IN THE PRESENCE OF THE JURY AND
10 WE'RE IMMEDIATELY GO TO, TO FINAL ARGUMENTS IN THAT
11 REGARD.

12 ON THE ISSUE OF, OF CHARGES, GENTLEMEN.
13 THE STANDARD CHARGE THAT I GIVE ON - IN THE MATTER OF
14 CHARGES, THE REASONABLE DOUBT DEFINITION I USE IF FROM
15 VICTOR VERSUS NEBRASKA OR STATE VERSUS DARVEY (PHON.).
16 IT IS THE FIRMLY CONVINCED DEFINITION. I SAY THAT BECAUSE
17 SOMETIMES LAWYERS WILL SAY THE JUDGE IS GONNA TELL YOU
18 HESITATE TO ACT AND, AND WHICH IS ONE ACCEPTABLE
19 DEFINITION. I SIMPLY DON'T USE IT AND I DIDN'T WANT YOU ALL
20 TO BE MISLED INTO INDICATING THAT I WAS GONE SAY ONE
21 THING WHEN I'M REALLY GONE SAY SOMETHING ELSE. I WANTED
22 TO GIVE YOU FAIR WARNING IN THAT REGARD.

23 I WILL CHARGE AS TO THE FACT THAT THE
24 DEFENDANT DID NOT TESTIFY IN THIS CASE. OF COURSE, THE
25 CREDIBILITY OF WITNESSES AND THINGS OF THAT NATURE.

1 I'LL CHARGE THE ELEMENTS OF ARMED
2 ROBBERY.

3 I WILL CHARGE IDENTIFICATION. PART OF THE
4 TELFAIR (PHON.) CHARGE.

5 MR. KNIGHT, ARE THERE ANY EXCEPTIONS TO
6 THOSE CHARGES OR REQUEST FOR ADDITIONAL CHARGE FROM
7 THE STATE?

8 MR. KNIGHT: WELL, I GOT A QUESTION. I HAVE
9 NO EXCEPTIONS TO THOSE.

10 THE COURT: RIGHT.

11 MR. KNIGHT: THERE WAS AN ALLUSION IN A
12 QUESTION THAT MR. HOOD ASKED A COUPLE OF THE LAW
13 ENFORCEMENT PEOPLE THAT HIT THE STAND.

14 THE COURT: RIGHT.

15 MR. KNIGHT: AND I'M NOT SURE WHAT THEIR
16 ANSWER WAS BECAUSE SOME OF THEM TALKED LOW.

17 THE COURT: RIGHT.

18 MR. KNIGHT: IT WAS ABOUT WHETHER OR NOT
19 THE DEFENDANT AT THE TIME OF HIS ARREST WAS UNDER THE
20 INFLUENCE OF INTOXICANTS.

21 THE COURT: RIGHT.

22 MR. KNIGHT: NOW, IF HE'S GONE ARGUE THAT
23 TO THE JURY I'VE GOT A CHARGE HERE —

24 THE COURT: RIGHT.

25 MR. KNIGHT: — THAT I WANT CHARGED.

1 THE COURT: WELL, IF HE ARGUES THAT I WILL
2 CHARGE VOLUNTARY INTOXICATION IS NOT DEFENSE. IS THAT
3 WHAT YOU'RE TALKING ABOUT?

4 MR. KNIGHT: THAT'S THE CHARGE I'VE GOT.

5 THE COURT: YEAH.

6 MR. KNIGHT: THAT WAS MY CONCERN.

7 THE COURT: IF, IF THAT – IF THAT SHOULD BE
8 ARGUED I'LL, I'LL THROUGH THAT INTO THE MIX. BUT I DIDN'T
9 THINK THAT WAS THE IMPORT OF WHAT HE WAS – WHAT THE
10 QUESTIONS WERE LEADING TO BUT THEY MAY HAVE – MAY HAVE
11 BEEN.

12 THE COURT: ALL RIGHT.

13 MR. HOOD, I'LL BE GLAD NOW TO HEAR ANY
14 EXCEPTIONS TO THOSE CHARGES I'VE JUST ASSERTED OR ANY
15 REQUEST FOR ADDITIONAL CHARGE FROM THE DEFENSE.

16 MR. HOOD: WE HAVE NO FURTHER REQUESTS
17 AND WE'RE SATISFIED.

18 THE COURT: ALL RIGHT. THANK YOU.

19 THE FORMS OF THE VERDICT WILL BE GUILTY
20 OR NOT GUILTY. OBVIOUSLY THERE'S NO ROOM FOR A LESSER
21 INCLUDED IN THIS, AS I – AS I UNDERSTAND IT.

22 AND, MAKING, YOU WILL PRESENT THE FIRST
23 OF THE ARGUMENTS AND MR. HOOD WILL HAVE THE RIGHT TO
24 CLOSE, NO EVIDENCE HAVING BEEN PRESENTED BY THE
25 DEFENSE.

1 GENTLEMEN, YOU ALL READY TO GO TO THE
2 JURY OR DO YOU NEED A FEW MOMENTS? MR. KNIGHT?

3 MR. KNIGHT: I'D LIKE A FEW MOMENTS.

4 THE COURT: OKAY. ALL RIGHT.

5 MR. KNIGHT: I DIDN'T ANTICIPATE HIM BEING
6 THAT QUICK.

7 THE COURT: WELL, THAT'S FINE.

8 LET'S TAKE ABOUT TEN MINUTES AND START
9 BACK ON THE HOUR, IF THAT'S OKAY.

10 MR. KNIGHT: YEAH, THAT'S GOOD. THANK
11 YOU, SIR.

12 THE COURT: ALL RIGHT.

13 (COURT RECESSED FOR APPROXIMATELY TEN
14 MINUTES.)

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE
16 PRESENCE OF THE JURY.)

17 THE COURT: THE JURY WILL BE BROUGHT IN.
18 MR. HOOD, I'LL ALLOW YOU TO REST IN THE PRESENCE OF THE
19 JURY AND WE'LL GO STRAIGHT TO FINAL ARGUMENTS.

20 MR. HOOD: THANK YOU.

21 THE COURT: THANK YOU.

22 BRING US THE JURY, PLEASE.

23 BAILIFF: YES, YOUR HONOR.

24 BAILIFF: JURY ENTERING.

25 (THE JURY RETURNED TO OPEN COURT.)

1 BAILIFF: YOUR HONOR, ALL JURORS ARE
2 PRESENT.

3 THE COURT: THANK YOU.

4 I NOTE THAT WE HAVE ONE OR TWO
5 PRESBYTERIANS ON THE JURY. I - GOT RESERVED SEATS. YOU
6 SIT IN YOUR - DON'T WANT ANYBODY ELSE SITTING IN YOUR
7 SEAT.

8 I'M A PRESBYTERIAN MYSELF. I KNOW HOW
9 THAT WORKS. YOU COME TO OUR CHURCH, YOU SIT IN
10 SOMEBODY ELSE'S PEW, THEY'LL ASK YOU TO MOVE.

11 BUT THANKFULLY ALL OF YOU FOUND A SEAT
12 AND, LADIES AND GENTLEMEN, THE STATE HAS RESTED ITS
13 CASE, AS YOU KNOW. AND THE DEFENDANT AT THIS JUNCTURE
14 HAS THE OPPORTUNITY TO OFFER EVIDENCE AND TESTIMONY
15 BUT IS UNDER NO OBLIGATION TO DO SO, FOR REASONS THAT
16 I'VE ALREADY TOLD YOU.

17 MR. HOOD.

18 MR. HOOD: YOUR HONOR, AT THIS TIME THE
19 DEFENSE WOULD REST.

20 THE COURT: THANK YOU.

21 LADIES AND GENTLEMEN, THE DEFENSE HAS
22 NOW RESTED HIS CASE AND THAT MEANS THAT YOU HAVE NOW
23 HEARD ALL OF THE EVIDENCE AND TESTIMONY THAT YOU WILL
24 HEAR IN THE TRIAL OF THIS CASE. YOU HAVE YET TO HEAR THE
25 FINAL ARGUMENTS AND WE'LL PROCEED TO THOSE RIGHT AWAY.

1 THE STATE WILL PRESENT THE FIRST OF THE
2 FINAL ARGUMENTS IN THIS CASE AND AFTER MR. KNIGHT HAS
3 CONCLUDED HIS FINAL ARGUMENT, THEN MR. HOOD WILL HAVE
4 THE RIGHT TO PRESENT THE LISTEN OF THE ARGUMENTS ON
5 BEHALF OF THE DEFENDANT.

6 AND WHEN THAT HAS BEEN DONE, I WILL
7 INSTRUCT YOU ON THE LAW. AND THEN YOU'LL BE FREE, AT
8 LAST, TO GO ACROSS THE HALL AND START TALKING ABOUT THIS
9 CASE AMONG YOURSELVES.

10 IT HAS NOT BEEN A LENGTHY TRIAL. THE
11 LAWYERS HAVE MADE GOOD USE OF YOUR TIME AND I COMMEND
12 THEM FOR THAT. BUT THE IMPORTANCE OF A TRIAL IS NEVER
13 DETERMINED BY THE LENGTH OF TIME THAT IT TAKES TO TRY IT.

14 THE IMPORTANCE OF A TRIAL IS DETERMINED
15 BY THE ISSUES THAT ARE INVOLVED IN THAT TRIAL. AND I'M
16 CERTAIN THAT YOU ALL UNDERSTAND THE IMPORTANCE OF THE
17 ISSUES IN THIS CASE TO BOTH SIDES. AND YOU'VE GIVEN IT THE
18 ATTENTION THAT IT DESERVES AND I SIMPLY ASK THAT YOU NOW
19 CONTINUE TO GIVE IT THAT ATTENTION AS THE LAWYERS
20 PRESENT THEIR FINAL ARGUMENTS TO YOU.

21 THANK YOU.

22 MR. KNIGHT.

23 MR. KNIGHT: THANK YOU, YOUR HONOR.

24 MAY IT PLEASE THE COURT.

25 THE COURT: YES, SIR.

1 MR. KNIGHT: MADAME FORELADY, LADIES AND
2 GENTLEMEN OF THE JURY, IN THE BEGINNING I TOLD YOU THIS
3 WAS AN ARMED ROBBERY THAT OCCURRED IN THE COUNTY OF
4 BEAUFORT.

5 I OUTLINED ELEMENTS OF AN ARMED ROBBERY
6 TO YOU. THE TAKING OF PERSONAL PROPERTY FROM ANOTHER
7 WITH THE INTENT TO DEPRIVE THE OWNER OF POSSESSION.
8 DUE TO FORCE, INTIMIDATION OR COERCION. WHILE ARMED
9 WITH A DEADLY WEAPON. THAT'S THE ELEMENTS. AND IT
10 OCCURRED HERE IN BEAUFORT COUNTY.

11 CLARE ROBESON ON OCTOBER 31 HAD TAKEN
12 HER DAUGHTER TRICK-OR-TREATING, I THINK. I KNOW SHE WENT
13 AND HAD DINNER AT THE OUTBACK. I THINK SHE SAID SHE HAD
14 ONE GLASS OF WINE. THEN SHE WENT, WELL, WITH HER FRIEND,
15 A FEMALE FRIEND OF HERS AND THEY WENT TO COCONUTS. IT'S
16 RIGHT UP THE ROAD HERE, IF ANY OF YOU'RE FAMILIAR WITH
17 THIS SIDE OF BEAUFORT.

18 AND I THINK SHE TESTIFIED THAT SHE HAD ONE
19 BEER WHICH THERE.

20 AND SHE DROVE IN A SEPARATE CAR BECAUSE
21 SHE SAID SHE WASN'T FEELING WILL AND SHE DECIDED TO
22 LEAVE. GO HOME.

23 NOW, AS WHERE WENT INTO THE PARKING LOT
24 ADJACENT TO THE BOUNDARY STREET SEAFOOD, WHICH IS ON
25 THE RIGHT NEXT TO COCONUTS, A PERSON APPROACHED HER.

1 WITH A KNIFE. AND STUCK IT AT HER. AND SAYS, GIVE ME YOUR
2 WALLET. SHE SAID, I DON'T HAVE A WALLET.

3 GIVE ME YOUR PURSE. WHICH SHE DID.

4 IF YOU CALL THE POLICE I'M GONE KILL YOU.
5 WITH THAT KNIFE STICKING THERE.

6 NOW, THE SIGNIFICANCE OF THIS
7 PHOTOGRAPH IF TO SHOW YOU HOW WILL LIT THE PLACE OF THE
8 ROBBERY WAS. VERY WELL LIT. BEEN THAT WAY THREE OR
9 FOUR YEARS.

10 THE OTHER SIGNIFICANCE OF THE WELL LIT
11 AREA IS THAT SHE GAVE A VERY GOOD DESCRIPTION OF THE
12 DEFENDANT. BLACK MALE, FIVE FOOT FIVE, SCRAGGLY-LOOKING
13 BEARD. KNIFE APPROXIMATELY THREE INCHES LONG. LIGHT-
14 COLOR PANTS. AND A JACKET WITH THIS COLORING IN IT.
15 FITTING THAT DESCRIPTION TO THE T. RIGHT DOWN AS TO WHO
16 PUT THIS KNIFE AT HER.

17 AND I THINK I BROUGHT HER DOWN AND SHE
18 STOOD LIKE THAT, YOU KNOW, WITH A KNIFE AT HER. UNDER
19 THE LIGHTS.

20 WELL, SHE CALLED LAW ENFORCEMENT.

21 BY THE WAY, SHE WAS WEARING HERE
22 GLASSES.

23 SHE CALLED LAW ENFORCEMENT AND SAID, I
24 JUST GOT ROBBED - SHE USED THE TERM MUG, I THINK SHE SAID
25 - AND SHE GAVE A DESCRIPTION. FIVE FOOT FIVE, BLACK MALE,

1 SCRAWLY BEARD AND HAIR, LIGHT-COLOR PANTS, PLAID SHIRT
2 OR JACKET. THAT'S WHAT WE'VE GOT.

3 THEN WHAT DID SHE TELL LAW
4 ENFORCEMENT? HE TOOK MY POCKETBOOK. HERE ARE THE
5 ITEMS THAT WERE IN MY POCKETBOOK. APPROXIMATELY A
6 HUNDRED AND TWENTY DOLLARS IN CASH.

7 WHY WAS SHE SO SURE ABOUT THE NEW
8 BILLS? BECAUSE SHE - I THINK SHE TESTIFIED SHE'D BEEN TO
9 ATM OR THE BANK EARLIER THAT DAY.

10 HER CELL TELEPHONE. VARIOUS CREDIT
11 CARS, DEBIT CARDS. WHAT ELSE? HER WEDDING RINGS.
12 THAT'S WHAT SHE TOLD LAW ENFORCEMENT AT THE AREA WHEN
13 THEM CAME OUT TO THE SPOT WHERE SHE WAS ROBBED.

14 WHAT DID LAW ENFORCEMENT, OR THE POLICE
15 IN THIS CASE, THE BEAUFORT CITY POLICE RECOVER FROM THE
16 DEFENDANT? KNIFE.

17 I ASKED HER, DOES IT LOOK LIKE THE KNIFE?
18 SHE SAYS, NO, THAT IS THE KNIFE.

19 HER WEDDING RINGS. THOSE YOUR WEDDING
20 RINGS? YES. HOW DO YOU KNOW? BECAUSE OF SOME
21 SOLDERING RIGHT HERE.

22 I THINK SHE SHOWED Y'ALL THAT.

23 I THINK IT WAS OFFICER, OFFICER DANIEL
24 THOMPSON CAUGHT THE DEFENDANT RUNNING FROM THE
25 POLICE. HE CHASED HIM, TURNED ON THE BLUE LIGHT. HE WAS

1 CHASING HIM. THE TURNED THE BLUE LIGHT ON, GOT OUT THE
2 CAR, CHASED HIM. HE SAW HIM PUT SOMETHING DOWN. THEN
3 HE HAD HIS GUN ON HIM, MADE HIM COME BACK.

4 AND OFFICER THOMPSON WHEN WHERE?
5 WHERE HE TURNED AROUND. AND WHAT DID HE FIND? WELL,
6 ACCORDING TO THIS PHOTOGRAPH THAT'S STATE'S EXHIBIT
7 NUMBER 7, IT CAME TO A HUNDRED AND TWENTY DOLLARS. IT'S
8 AMAZING, A HUNDRED AND TWENTY DOLLARS.

9 THERE WERE NO FINGERPRINTS ON THE
10 HUNDRED AND TWENTY DOLLARS. THEY DIDN'T TAKE ANY
11 FINGERPRINTS. DON'T KNOW IF THEY COULD HAVE OFF OF
12 MONEY, DIFFERENT PEOPLE HOLDING IT.

13 THEY RETURNED THE HUNDRED AND TWENTY
14 DOLLARS TO HER, TO THE VICTIM, MISS ROBESON.

15 A LITTLE LATER THAT EVENING, ABOUT AN
16 HOUR, LAW ENFORCEMENT CALLED MISS ROBESON AND SAID,
17 COME TO THE ENMARK STATION; WE WANT YOU TO LOOK AT
18 SOMEBODY.

19 SHE'S IN A CAR. HER CAR, I THINK SHE SAID, A
20 WRANGLER. POLICE TAKE HIM OUT OF THE POLICE CAR.

21 THE ENMARK STATION IS WELL LIT, AS YOU ALL
22 KNOW, IF YOU EVER DRIVE THROUGH THERE AT NIGHT.

23 AND THEN THEY TOOK A SPOTLIGHT, POINTED
24 IT AT THE DEFENDANT. IMMEDIATELY SHE SAID, THAT'S THE GUY
25 THAT ROBBED ME.

1 AND WHO WAS THAT GUY? THIS FELLOW
2 RIGHT HERE. JAMES HAROLD BOWERS.

3 THERE WAS NO HESITATION. THERE WAS NO
4 PAUSING, TAKING ABOUT IT.

5 AND REMEMBER, THIS IS ONLY
6 APPROXIMATELY AN HOUR FROM THE TIME HE'S STICKING THAT
7 KNIFE AT HER TILL THE TIME SHE PICKED HIM OUT.

8 APPROXIMATELY AN HOUR, GIVE OR TAKE A MINUTE OR TWO.

9 AND THOSE ARE THE CLOTHES WHEN THEY
10 HOOKED HIM UP, WHEN THEY ARRESTED HIM.

11 NOW, THIS DIAGRAM JUST SHOWS YOU WHERE
12 THE BROAD RIVER SEAFOOD WAS. BRYAN CHAPMAN'S
13 TESTIMONY. HE WORKS FOR THE SHERIFF'S DEPARTMENT.

14 THAT PART OF NEIL ROAD WHERE HE GOT THE
15 POCKETBOOK AND RETURNED IT TO HER IS NOT IN THE CITY.
16 AND IT'S DIRECTLY ACROSS THE STREET, SO TO SPEAK, FROM
17 THE BROAD RIVER SEAFOOD, SOME 500 YARDS, I THINK HE SAID.

18 LET'S GO BACK TO SOME OF THE OFFICERS
19 TESTIMONY.

20 OFFICER KENNINGER. HE WAS JUST ON
21 NORMAL PATROL. COMING DOWN OUT HERE ON 21 AT LA
22 HACIENDA. HE SAW A PERSON THAT FIT THE DESCRIPTION OF
23 THE DEFENDANT. DIDN'T HAVE ON HIS BLUE LIGHTS, NOW. HE
24 JUST SAID, I SAW HIM. AND I TURNED MY VEHICLE AROUND.

25 AND WHAT DID HE SAY THE DEFENDANT DID?

1 THE DEFENDANT RAN.

2 EVERYBODY RUNS FROM THE POLICE, EVEN
3 THOUGH THEY'RE JUST TURNING THEIR CAR AROUND, DON'T
4 THEY?

5 NO BLUE LIGHTS. JUST TURNING THEIR CAR
6 AROUND.

7 WHY YOU RUN FROM THE POLICE? THAT'S A
8 GOOD QUESTION YOU GOT.

9 AND OFFICER KING TESTIFIED, AND MISS
10 CARTER, WHO WAS RIDING IN THE VEHICLE WITH HIM - SHE WAS
11 AN OFFICER AT THE TIME - THEY SAW THE SUSPECT HIDING
12 BEHIND A TREE IN SOME BUSHES IN THE LA HACIENDA. THAT'S
13 OVER THERE.

14 THEY DON'T HAVE THE BLUE LIGHTS ON.

15 WHY YOU HIDING? WHY YOU HIDING FROM THE
16 POLICE?

17 THEN HE RAN ACROSS THE FIELD IN FRONT OF
18 THEM, I THINK THEY TESTIFIED. INTO THE ENMARK GAS STATION.

19 THEN DANIEL THOMPSON TESTIFIED, WELL,
20 YOU KNOW, I SAW HIM RUNNING; I THOUGHT I'D BLOCKING HIM
21 GOING ANY FARTHER.

22 I THINK HE USED THE WORD EXITED HIS
23 VEHICLE. TO ME, THAT MEANS GETTING OUT.

24 TOLD THE DEFENDANT TO STOP, THIS IS THE
25 POLICE.

1 NOW, BEFORE DOING THAT, HE'S FINALLY PUT
2 THE BLUE LIGHT ON. FINALLY CAUGHT HIM. AFTER A CHASE.
3 THAT'S WHEN HE WENT BACK AND FOUND THE MONEY. THE
4 HUNDRED AND TWENTY DOLLARS.

5 AGAIN, NO FINGERPRINTS ON THE HUNDRED
6 AND TWENTY DOLLARS.

7 THAT'S THE CASE.

8 THE VICTIM IN THIS CASE UNEQUIVOCALLY
9 IDENTIFIED THE DEFENDANT, JAMES HAROLD BOWERS, AS THE
10 MAN THAT PUT A KNIFE AT HER. PUT IT JUST A FEW FEET. TOOK
11 HER POCKETBOOK.

12 AND THOSE ITEMS, THE ITEMS, THE KNIFE AND
13 THE RINGS SHE IDENTIFIED UNIQUELY, WERE RECOVERED ON
14 THE DEFENDANT. ON HIS PERSON. UNDER HIS DOMINION AND
15 CONTROL.

16 HE HAD CONTROL OF THE KNIFE IN HIS
17 POCKET. HE HAD CONTROL OF THE RINGS IN HIS POCKET.

18 THIS ALL OCCURRED IN THE CITY OF
19 BEAUFORT, IN BEAUFORT COUNTY.

20 ARMED ROBBERY. WITH A KNIFE. ID'D WITHIN
21 AN HOUR, SAME CLOTHES. MAN THAT'S RUNNING FROM THE
22 POLICE.

23 WONDER WHY HE'S RUNNING? EVEN BEFORE
24 BLUE LIGHTS TURNED ON? WONDER WHY HE'S RUNNING AND
25 HIDING BEHIND BUSHES. THERE'S NO BLUE LIGHTS ON AT THAT

1 TIME.

2 LADIES AND GENTLEMEN, I SUBMIT TO YOU THE
3 STATE OF SOUTH CAROLINA HAS PROVED BEYOND A
4 REASONABLE DOUBT THIS PERSONAL OVER HERE, JAMES
5 HAROLD, HAROLD BOWERS COMMITTED THE OFFENSE OF ARMED
6 ROBBERY IN THE CITY OF BEAUFORT IN THE COUNTY OF
7 BEAUFORT ON NOVEMBER 1. AND THE VICTIM WAS CLARE
8 ROBESON .

9 THANK YOU.

10 THE COURT: THANK YOU, MR. KNIGHT.

11 MR. HOOD.

12 MR. HOOD: MAY IT PLEASE THE COURT, YOUR
13 HONOR.

14 THE COURT: YES, SIR.

15 MR. HOOD: TWO O'CLOCK IN THE MORNING
16 AND A BLACK MALE WHO'S INTOXICATED IS WALKING DOWN THE
17 SIDEWALK. AND A PATROL CAR TURNS AROUND ON HIM. HE'S
18 GONE RUN. YOU KNOW, HE AIN'T DOING ANYTHING WRONG BUT
19 HE KNOWS THAT THAT GUY IS GONNA BE HASSLING HIM ONE
20 WAY OR THE OTHER. HE'S —

21 MR. KNIGHT: YOUR HONOR, I'M GONE OBJECT
22 TO THAT, NOW. THAT'S OUTSIDE THE SCOPE.

23 THE COURT: ALL RIGHT.

24 THE — THAT ISSUE WAS RAISED, OF COURSE,
25 IN, IN YOUR ARGUMENT. I'LL ALLOW HIM TO RESPOND TO IT

1 QUICKLY.

2 MR. KNIGHT: THAT'S TESTIFYING THAT - WHAT
3 THE DEFENDANT THOUGHT.

4 THE COURT: WELL, HE'S TESTIFYING AS TO
5 WHAT YOU MENTIONED IN YOUR ARGUMENT, AS I UNDERSTAND.
6 THE OFFICER CAME DOWN AND HE - AND HE RAN SO HE'S
7 TRYING TO OFFER THAT. HE CAN - HE CAN ARGUE THE
8 INFERENCES MADE.

9 MR. HOOD: I DON'T KNOW.

10 I AGREE WITH YOU. I MEAN HE'S, HE'S
11 CROUCHED DOWN BY THIS LITTLE THING HERE HIDING BY
12 HIMSELF. AND WHY WAS HE HIDING?

13 I DON'T KNOW WHY MR. KNIGHT DECIDED - YOU
14 KNOW, I GOT SORT OF THROWN OFF WHEN I HEARD THAT
15 PARTICULAR COMMENT AND I JUST HAD TO MAKE A COMMENT
16 ABOUT IT.

17 BUT I WANT YOU TO TAKE ABOUT THAT
18 COMMENT BECAUSE IT TIES INTO THE OVERALL COMMENTS THAT
19 I'M GONNA BE TELLING YOU ABOUT AND WE'RE GONNA BE
20 TALKING ABOUT HERE. AND THAT IS SIMPLY ONE OF FAIRNESS.
21 OKAY?

22 FAIRNESS. OUR WHOLE SYSTEM OF JUSTICE IS
23 BASED ON THE ISSUE OF FAIRNESS. EVERYBODY IS SUPPOSED
24 TO BE TREATED EQUALLY. AND FAIRLY. IN THIS COURTROOM.
25 EVERYBODY IS SUPPOSED TO BE TREATED EQUALLY AND FAIRLY

1 BY LAW ENFORCEMENT. EVERYBODY HAS A RIGHT TO BE
2 TREATED THE SAME WAY.

3 NOW, LET'S LOOK AT JAMES BOWERS. WAS
4 JAMES BOWERS TREATED FAIRLY? DID WE DO THE SAME TYPE
5 OF INVESTIGATION THAT WE WOULD DO IN ANY OTHER CASE?
6 WELL, IT'S PAINFULLY OBVIOUS THAT WE DID NOT.

7 WE HAD A GRAND SUSPICION, JUST LIKE THE
8 OFFICERS WHO WERE THERE THAT NIGHT, THAT JAMES BOWERS
9 WAS INVOLVE IN SOME KIND OF CRIME. THEY EVER ARRESTED
10 HIM AND SAID, YOU'RE UNDER ARREST FOR ARMED ROBBERY.
11 THIS IS BEFORE THE VICTIM EVER GETS THERE, SUPPOSEDLY.
12 AND IDENTIFIES THE GUY.

13 THEY'VE ALREADY TAKEN HIS STUFF OUT OF
14 HIS POCKETS, LAID IT UP ON TOP OF THE AUTOMOBILE, OUT IN
15 THESE BIG, BROAD LIGHTS. YOU KNOW, THE KNIFE, THE RINGS
16 AND THE MONEY AND ALL THIS OTHER KIND OF STUFF. AND SHE
17 COMES UP.

18 WELL, SHE COULD SEE THAT AS WELL AS
19 ANYBODY ELSE, YOU KNOW. WELL, HOW IS THAT FAIR?

20 BUT TO MAKE MATTERS WORSE, WHAT DO
21 THEY DO WITH THOSE ITEMS? WHAT DO THEY DO WITH THE
22 THINGS THAT WOULD HELP MR. BOWERS? THEY GIVE THEM
23 AWAY. THEY BREAK THAT CHAIN OF CUSTODY.

24 MR. KNIGHT SAYS THE MONEY HAD NO
25 FINGERPRINTS ON IT. WELL, ABSOLUTELY. BECAUSE NOBODY

1 EVER EVEN EXAMINED IT. NOBODY EVER TOOK THE DOGGONE
2 TIME TO REALIZE THAT IT WAS IN FACT EVIDENCE PERHAPS.

3 NOBODY EVER SAID THEY SAY HIM DROP
4 ANYTHING IN THE BUSHES AT ALL. NOT ONE OFFICER SAID THAT.
5 BUT YET THEY BLAME IT ON HIM. THEY ATTACH IT TO HIM.

6 NOW, HOW DO WE UNATTACH THAT? THAT'S
7 WHERE THE FAIRNESS COMES IN AT. BY HAVING IT EXAMINED.
8 FINGERPRINTS ON EVERYTHING YOU TOUCH. IT'S A SIMPLE
9 MATTER, A SIMPLE PROCESS.

10 THE OFFICER WHO FINDS -- WHO IS GIVEN THE
11 POCKETBOOK SAYS, I TOUCHED SO MY FINGERPRINTS WERE ON
12 IT. AND THE MAN WHO FOUND IT TOUCHED IT SO HIS
13 FINGERPRINTS WERE ON IT. AND THE PERSON WHO TOOK IT,
14 THEIR FINGERPRINTS WERE ON IT. BUT DID ANYBODY DO
15 ANYTHING TO HELP US, JAMES BOWERS SHOW THAT IT WAS NOT
16 HIS FINGERPRINTS? ON ANY OF THOSE ITEMS? NO, THEY DIDN'T.

17 WHAT DID DO WITH ALL THAT STUFF? THEY
18 GAVE IT TO THE VICTIM. OVER A YEAR AGO. SO NOW THE VICTIM
19 HAS ALL OF THIS STUFF TO DO WITH AS SHE PULLS.

20 SAME THINGS WITH THE RINGS. NOW, YOU
21 KNOW, THE RINGS ARE GIVEN TO HER.

22 SHE HAS SEVERAL PROBLEMS TO DEAL WITH.
23 NUMBER 1, SHE OUT AT A CLUB AT 1:30 IN THE MORNING, SHE'S
24 COMING OUT. YOU KNOW. SHE DOESN'T HAVE HER RINGS ON.
25 YOU KNOW, YOU KNOW, A LITTLE BIT OF -- IT, IT WAS A PARTY,

1 YOU KNOW. I CAN EXPLAIN EVERYTHING TO MY HUSBAND. WHY
2 WAS – WELL, I WENT WITH MY GIRLFRIEND. WHY DID ... THE
3 RINGS. HOW DO YOU EXPLAIN WHY THE RINGS WERE OFF? AND
4 IN MY POCKETBOOK? I SUBMIT TO YOU THAT ANY RINGS WILL DO
5 AT THE POINT IN TIME.

6 YOU LOOK AT THAT PICTURE. HOW DO WE
7 KNOW? WE DIDN'T KNOW – WE DON'T KNOW A THING ABOUT
8 THOSE RINGS. WE KNOW THERE WAS NOTHING IN THERE,
9 DESCRIPTION, SERIAL NUMBER OR ANYTHING LIKE THAT THAT
10 WOULD POSITIVELY IDENTIFY THOSE RINGS AS BEING THE RINGS
11 OF THIS PARTICULAR PERSON.

12 WE KNOW THEY WERE SIMILAR, PERHAPS,
13 BECAUSE SHE SAID, THEY ARE SIMILAR; THEY'RE MINE.

14 THEY GIVE THEM TO HER.

15 NOW, WHAT OPPORTUNITY DO WE HAVE? AT
16 THE POINT IN TIME? TO BE ABLE TO SAY THAT'S NOT HER
17 PROPERTY? THAT IS NOT HER PROPERTY BECAUSE IT BELONGS
18 TO SOMEONE ELSE? WE CAN'T SAY THAT BECAUSE THEY'RE
19 GONE. THE CUSTODY OF THAT EVIDENCE HAD BEEN
20 DESTROYED. THEY'VE GIVEN IT TO THIS PERSON.

21 AND THIS PERSON HAS HAD IT FOR OVER A
22 YEAR. WHAT HAS HAPPENED TO THAT PROPERTY DURING THAT
23 PERIOD OF TIME? CHANGE OF CONDITION. EVERYTHING
24 CHANGES. EVERY TIME I BANG ON THIS I MADE ANOTHER
25 DAGGONE MARK ON MY RING. PERHAPS. YOU KNOW?

1 BUT CAN I IDENTIFY THIS? I CAN'T IDENTIFY
2 THIS BECAUSE I DON'T HAVE ANYTHING ON THE INSIDE OF IT OR
3 ANYTHING THAT WOULD INDICATE PERSONALLY IT'S MINE.

4 WHAT DO WE HAVE? WE HAVE AN UNFAIR
5 RESULT. BECAUSE THEY'VE TAKEN EVERYTHING THAT COULD'VE
6 HELPED THE DEFENSE AND GIVEN IT AWAY AND SAID, WELL,
7 TOUGH, WE'VE GOT YOU. YOU KNOW? YOU RAN. YOU RAN.

8 WELL, IT'S 2:00 IN THE MORNING, YOU'RE
9 INTOXICATED AND YOU'RE WALKING DOWN THE STREET AND
10 PATROL CAR TURNS ON YOU AND SAYS - YOU KNOW? CERTAIN
11 PEOPLE DO CERTAIN THINGS. THEY REACT DIFFERENT WAYS.
12 YOU KNOW?

13 SO FORGET ALL THAT. LET'S GO BACK TO
14 WHERE WE'RE AT.

15 NOTE THERE ARE TWO TYPES OF VERDICTS.
16 THERE'S GUILTY AND NOT GUILTY. OKAY?

17 I SUBMIT TO YOU THAT THERE ARE ACTUALLY
18 THREE. AND SHOULD BE THREE TYPES OF VERDICTS IN A CASE.
19 ONE VERDICT IS INNOCENT. ABSOLUTELY, POSITIVELY
20 INNOCENT. NO EVIDENCE, NO SUSPICION, NO NOTHING.
21 INNOCENT. NOT GUILTY.

22 SUSPICION. WE SUSPECT THAT HE MAY HAVE
23 COMMITTED A CRIME. BUT THE FATE - STATE HAS FAILED TO
24 PROVE BEYOND A REASONABLE DOUBT THAT THE PERSON
25 COMMITTED THE CRIME. THERE IS A LACK OF EVIDENCE, A

1 FAILURE OF EVIDENCE, A DESTRUCTION OF EVIDENCE. AND
2 WE'VE NOW TURNED THE PLAYING FIELD TO AN UNBALANCED
3 PLAYING FIELD. WE'RE NOT ON EQUAL AND FAIR FOOTING.
4 WE'RE BEING TAKEN ADVANTAGE OF. JAMES BOWERS IS BEING
5 TAKEN ADVANTAGE OF.

6 YOU ARE BEING TAKEN ADVANTAGE OF
7 BECAUSE YOU'RE THE ONES THAT THEY PUT IN THIS POSITION.
8 BY NOT DOING WHAT THEY WERE SUPPOSED TO DO. GIVE US A
9 FAIR OPPORTUNITY TO EXAMINE THE EVIDENCE TO BE ABLE TO
10 SAY THAT THAT EVIDENCE DOES NOT SUPPORT THE CASE OF
11 THE STATE.

12 IT'S GONE. AND WE HAVE NO CONTROL OVER
13 IT AND WHAT DOES THE STATE TRY TO DO? DO THEY TAKE
14 PICTURES OUT THERE THAT PARTICULAR NIGHT? AT THE
15 SCENE? AT THE SCENE OF THE CRIME? NO. WE WAIT UNTIL A
16 YEAR. TO GO OUT AND TAKE PICTURES AND SAY, WELL, IT'S
17 SIMILAR.

18 WHAT DO WE KNOW? I MEAN CONDITIONS
19 CHANGE IN A YEAR. I MEAN MY GOODNESS, TREES GROW.
20 SHADOWS CHANGE. IT COULD'VE BEEN RAINING THAT NIGHT. IT
21 COULD'VE BEEN A FULL MOON. IT COULD'VE BEEN A HALF MOON,
22 NO MOON. YOU KNOW, ALL KINDS OF THINGS HAPPEN OVER
23 CHANGING TIME.

24 AND IT'S THE SAME PROBLEM WITH THE
25 EVIDENCE IN THIS CASE. WE HAD NO CONTROL OVER IT; IT'S

1 GONE. IT'S GONE.

2 WE DON'T EVEN KNOW WHERE THE
3 POCKETBOOK WAS FOUND AT. WE HAVE AN OFFICER WHO CAME
4 IN HERE AND SAID THAT SOMEBODY TOLD HIM THAT
5 SOMEBODY - HE WAS - YOU KNOW, FOUND THIS THING
6 SOMEWHAT ON A RAILROAD TRACK.

7 AGAIN, WHERE IS THE FAIRNESS IN THAT?
8 WHERE IS GIVING US AN OPPORTUNITY TO BE ABLE TO
9 CONTRADICT WHAT THEY'RE SAYING? WE CAN'T DO THAT.
10 BECAUSE WHAT DO THEY DO WITH AN ITEM OF EVIDENCE?
11 THEY TAKE IT AND ONCE AGAIN GIVE IT TO THIS PERSON. AND
12 IT'S DESTROYED FROM THAT POINT ON. WE HAVE NO CUSTODY,
13 CONTROL OVER IT. IT'S GONE FOREVER. AS FAR AS BEING ABLE
14 TO HELP MR. BOWERS. AND HIS DEFENSE.

15 SO THE PLAYING FIELD HAS JUST DROPPED
16 WAY OVER HERE LIKE THAT AND YOU GUYS ARE SITTING HERE
17 AND YOU'RE SAYING, YEAH, WE SUSPECT THAT HE COMMITTED
18 THIS CRIME. AND THAT'S EXACTLY WHAT YOU HAVE, A MERE
19 SUSPICION. YOU SUSPECT THAT HE COMMITTED THIS CRIME
20 BECAUSE THIS WOMAN HAS COME IN AND SAID, THOSE WERE MY
21 ITEMS. BUT WE HAVE NO WAY TO DISPROVE THAT BECAUSE THE
22 ITEMS ARE GONE. THEY'RE GIVEN TO THE PERSON WHO HAD A
23 MOTIVE TO WANT THOSE ITEMS. A MOTIVE BECAUSE SHE WAS
24 SOMEWHERE SHE PERHAPS SHOULD NOT HAVE BEEN. AND SHE
25 WAS GONNA HAVE DIFFICULTY EXPLAINING TO HER HUSBAND

1 ABOUT WHY IN THE WORLD HER RINGS ARE INSIDE OF HER
2 PURSE AS OPPOSED TO ON HER FINGER WHEN SHE'S GOING
3 INTO A BAR.

4 WELL, THERE'RE ALL KIND OF PROBLEMS THAT
5 PEOPLE HAVE. BUT WHAT THEY HAVE DONE IS SIMPLY PLACE
6 ALL THE BURDEN ON US. TO BE ABLE TO CONVINCE YOU THAT
7 JAMES BOWERS DIDN'T DO THIS. WELL, WE'RE STILL STUCK
8 WITH THE SAME PROBLEM WE HAD WHEN WE BEGAN. THERE IS
9 A SUSPICION THAT JAMES BOWERS COMMITTED THIS CRIME.
10 BUT THAT'S ALL IT IS, IS A SUSPICION. BECAUSE WITHOUT THE
11 ASSISTANCE OF THE STATE AND DESTROYING THE EVIDENCE IN
12 THE CASE WE'RE UNABLE TO EXONERATE, TO GO - TO COME UP
13 TO THAT THRESHOLD OF INNOCENT. DIDN'T DO IT, ABSOLUTELY,
14 POSITIVELY DID NOT DO IT. WE CAN'T ESTABLISH THAT.

15 WE'RE STUCK WITH THE MERE SUSPICION .
16 WE'RE SUSPECTED OF A CRIME. AND THEY SUSPECTED HIM OF
17 THE CRIME. THEY ARRESTED HIM FOR THE CRIME, THE WHOLE
18 NINE YARDS.

19 I LOVE MR. KNIGHT'S OPENING STATEMENT. I
20 LOVE THE FACT THAT, YOU KNOW, THEY LEFT OUT ONE PART OF
21 THAT DESCRIPTION. EVEN THE VICTIM DID WHEN SHE TOOK THE
22 STAND. SHE FORGOT. BECAUSE WHEN YOU LOOK OVER THERE
23 AND SEE THAT MAN OVER THERE, YOU TELL ME HE HAS SALT
24 AND PEPPER BEARD AND HAIR.

25 LEFT IT OUT OF THAT DESCRIPTION, DIDN'T

1 THEY? ALL OF THEM. BECAUSE IT DIDN'T MATCH. IT DIDN'T
2 MATCH JAMES BOWERS. BECAUSE JAMES BOWERS DOESN'T
3 HAVE THAT SALT AND PEPPER HAIR AND BEARD. AS SHE
4 DESCRIBED SO VIVIDLY WITH THE GUY STANDING CLOSER THAN I
5 AM TO YOU. IN THIS WELL LIT AREA. WHERE SHE SAID
6 POSITIVELY THAT'S THE KNIFE. POSITIVE. POSITIVE.

7 HAVE MANY KNIVES ARE MADE? THAT IS
8 POSITIVELY THE KNIFE. THESE ARE POSITIVELY THE PANTS.
9 POSITIVELY THE JACKET.

10 IF I COULD SAY THAT I WOULD HAVE TO BE
11 ABLE TO SAY THERE'S SOMETHING UNIQUE ABOUT THAT ITEM.
12 SOMETHING EXTREMELY UNIQUE ABOUT IT. I COULDN'T SAY
13 THAT.

14 AGAIN, THE FAIRNESS OF THE SITUATION. THE
15 FAIRNESS TO JAMES BOWERS.

16 LINEUP. WHAT DO WE HAVE FOR A LINEUP?
17 SHE - HOW FAR WAS SHE AWAY FROM HIM? SHE SAYS FROM
18 HERE TO THE MIDDLE OF THE COURTROOM. THE MIDDLE OF THE
19 COURTROOM WHEN WHAT DO THEY DO? THEY GET HER OUT OF
20 A CAR AND THEY MAY OR MAY NOT HAVE TOLD HER ABOUT THE
21 RINGS BUT THEY'RE SUPPOSEDLY LAYING ON THE CAR ALONG
22 WITH THE MONEY, YOU KNOW, AND THE KNIFE AND ALL THOSE
23 KINDS OF THINGS THAT YOU CAN VERY EASILY SEE SO WHEN DID
24 THEY TELL HER ABOUT ALL THAT?

25 AND BY THE WAY, DID YOU EVER HEAR ONE

1 OFFICER TESTIFY, I GAVE HER THE RINGS? I GAVE HER THE
2 MONEY? NOBODY EVEN ADMITTED THAT. OH, NO, NOT ME.
3 WHAT I DID WAS, I PUT IT ON TOP OF THE CAR. ALL I DID WAS
4 TAKE IT OUT OF HIS POCKET. I HANDED IT TO JOE; JOE HANDED
5 IT BACK TO HIM AND HE PUT IN ON THE CAR.

6 WHO GAVE IT TO THE VICTIM? HOW DID SHE
7 GET IT? WHEN DID SHE GET IT? WHEN DID SHE KNOW ABOUT
8 THIS STUFF? YOU KNOW, HOW DID SHE IDENTIFY IT? HOW DID
9 SHE TELL THEM THAT THEY IDENTIFIED IT? THAT SHE IDENTIFIED
10 IT AS HER PROPERTY? NOT ONE BITE OF TESTIMONY.

11 AGAIN, ARE WE TALKING ABOUT FAIRNESS?
12 AGAIN, WHAT WE HAVE IS A SUSPICION. IT'S SIMILAR SO
13 THEREFORE THAT'S GOOD ENOUGH. THAT'S CLOSE ENOUGH.
14 BECAUSE HE'S BLACK. HE'S ABOUT FIVE SOMETHING BUT,
15 DOGGONE, HIS HAIR AND BEARD DOESN'T MATCH BUT LET'S
16 FORGET ABOUT THAT BECAUSE WE'RE JUST NOT MENTION THAT
17 WHEN WE GET INTO COURT.

18 BUT, FORTUNATELY, UNFORTUNATELY, I GUESS
19 FOR THE VICTIM AND EVERYBODY ELSE THAT SHE PUT IT IN HER
20 STATEMENT. AND SHE PUTS IT IN THE BOLO REPORT. BUT
21 NOBODY EVER TESTIFIES TO THAT IN BOLO REPORTS, YOU
22 KNOW, BECAUSE IT'S INCONSISTENT. IT'S INCONSISTENT WITH
23 THE GUILT OF JAMES BOWERS.

24 SO THAT'S WHAT YOU'VE GOT. THAT'S WHERE
25 WE'RE AT. NOW THE STATE WANTS YOU, BASED ON SUSPICION,

1 TO CONVICT THIS MAN OF THAT CRIME. WELL, I TELL YOU, IT
2 JUST AIN'T FAIR. IT'S NOT FAIR. AND WE SHOULDN'T BE HERE.
3 NOT THAT THERE ISN'T SUSPICION OF A CRIME BEING
4 COMMITTED OR A CRIME HAVING BEEN COMMITTED BUT THAT'S
5 ALL WE HAVE, IS SUSPICION. WE HAVE NEVER REACHED THAT
6 POINT OF BEYOND A REASONABLE DOUBT. BECAUSE THEY
7 DESTROY THE EVIDENCE. THEY NEVER GAVE US A CHANCE TO
8 BE ABLE TO CONVINCE YOU OTHERWISE.

9 AND FOR THAT FAILURE, YEAH, HE'S NOT
10 GUILTY. HE MAY BE GUILTY OF SOMETHING. MAYBE. BUT WHAT
11 IT IS, WE CAN'T BE SURE. BECAUSE THE EVIDENCE HAS BEEN
12 DESTROYED.

13 PUT A SPOTLIGHT ON A PERSON GETTING OUT
14 OF THE BACK OF AN AUTOMOBILE, HANDCUFFED, WHOSE BLACK
15 WEARING SIMILAR CLOTHING AND WHAT YOU'VE GOT, THAT'S
16 HIM. WELL, HOW COULD YOU NOT BE RIGHT? I MEAN THERE'S
17 ONLY ONE. THERE'S A SPOTLIGHT AND A DISTANCE OF A ROOM.
18 AND I JUST LOOKED IN HIS EYES AND I COULD SEE THAT WAS THE
19 GUY. FROM THAT DISTANCE. THAT'S HOW UNFAIR THIS WHOLE
20 THING HAS BEEN.

21 AND I'M NOT GONE TELL YOU, I'M GONE INSULT
22 YOU BY SAYING THAT THERE ISN'T A SUSPICION OF A CRIME
23 HERE HAVING BEEN COMMITTED. BUT THAT'S ALL WE HAVE.
24 THEY HAVE NEVER EVER WENT BEYOND SUSPICION.

25 THANK YOU.

1 THE COURT: THANK YOU, MR. HOOD.

2 NOW, MADAME FORELADY AND MEMBERS OF
3 THE JURY, GIVE ME YOUR ATTENTION FOR JUST A FEW MORE
4 MOMENTS NOW BECAUSE IT IS MY RESPONSIBILITY TO INSTRUCT
5 YOU AS TO WHAT THE LAW IS. AND YOU HAVE BEEN PATIENT
6 AND YOU HAVE LISTENED ATTENTIVELY TO THE ARGUMENTS
7 THAT HAVE BEEN PRESENTED BY MR. KNIGHT AND MR. HOOD
8 AND TO THE TESTIMONY THAT'S BEEN OFFERED IN THIS CASE.
9 AND IT NOW BECOMES MY RESPONSIBILITY, UNDER OUR
10 CONSTITUTION, TO INSTRUCT YOU AS TO WHAT THE LAW IS. AND
11 IT IS YOUR DUTY AS JURORS TO ACCEPT AND TO APPLY THE LAW
12 PRECISELY AS I NOW STATE IT TO YOU.

13 AS JURORS IT IS YOUR EXCLUSIVE DUTY TO
14 DECIDE ALL ISSUES OF FACT IN THE CASE. AND FOR THAT
15 PURPOSE YOU HAVE TO DETERMINE THE TRUTH AND THE VALUE
16 AND THE WEIGHT AND THE FORCE AND THE EFFECT OF THE
17 EVIDENCE THAT YOU HAVE HEARD DURING THE COURSE OF THIS
18 TRIAL.

19 BOTH THE STATE AND THE DEFENDANT HAVE
20 THE RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY
21 CONSIDER AND EVALUATE THE EVIDENCE AND THAT YOU WILL
22 APPLY THE LAW OF THE CASE TO THAT EVIDENCE SO THAT BOTH
23 THE STATE AND THE DEFENDANT WILL RECEIVE A FAIR AND
24 IMPARTIAL TRIAL AT YOUR HANDS.

25 THROUGHOUT THE COURSE OF THIS CHARGE,

1 LADIES AND GENTLEMEN, WHEN I USE THE WORD DEFENDANT I'M
2 REFERRING TO MR. JAMES BOWERS.

3 MR. BOWERS HAS BEEN INDICTED BY THE
4 GRAND JURY OF BEAUFORT COUNTY AND CHARGED WITH ARMED
5 ROBBERY. THE INDICTMENT READS THAT ON NOVEMBER 1, 2003,
6 AT APPROXIMATELY 1:25 A.M. WHILE IN THE LOT OF BROAD RIVER
7 SEAFOOD AT 2601 BOUNDARY STREET IN BEAUFORT THE
8 DEFENDANT JAMES BOWERS DID COMMIT THE VIOLENT CRIME OF
9 ARMED ROBBERY IN THAT WHILE ARMED WITH A KNIFE THE
10 DEFENDANT DID PRESENT AND POINT SAID KNIFE AT CLARE
11 ROBESON AND DEMANDED SHE GIVE HIM HER PURSE AND
12 CONTENTS OF THE SAME VALUED AT APPROXIMATELY \$560.00.
13 AND THAT THE DEFENDANT FLED WITH SAID PROPERTY THEREBY
14 DEPRIVING THE RIGHTFUL OWNER OF IT AND THIS OCCURRED IN
15 BEAUFORT COUNTY.

16 I REMIND YOU, LADIES AND GENTLEMEN, THAT
17 THE INDICTMENT IS NOT EVIDENCE NOR IS IT PROOF OF THE
18 CHARGES. IT IS SIMPLY A CHARGING PAPER THAT TELLS US
19 WHAT THIS CASE IS ALL ABOUT AND WHAT THESE CHARGES ARE.

20 AND AS YOU KNOW, TO THE CHARGES
21 CONTAINED IN THE INDICTMENT MR. BOWERS HAS ENTERED A
22 PLEA OF NOT GUILTY AND HAS REQUESTED THE JURY TRIAL
23 THAT IS NOW ALMOST COMPLETE. AT YOUR HANDS.

24 NOW, LADIES AND GENTLEMEN, THE EFFECT OF
25 A PLEA OF NOT GUILTY TO A CHARGE IN A CRIMINAL CASE IS TO

1 PLACE THE BURDEN OF PROOF ON THE STATE TO PROVE BY
2 EVIDENCE THE GUILT OF THE ACCUSED BEYOND A REASONABLE
3 DOUBT BEFORE YOU AS A JURY CAN CONVICT HIM AND FIND HIM
4 GUILTY.

5 THE DEFENDANT IS PRESUMED IN LAW TO BE
6 INNOCENT OF THE CHARGES CONTAINED IN THE INDICTMENT. IT
7 IS A FUNDAMENTAL RULE OF OUR LAW THAT A PERSON,
8 REGARDLESS OF THE SERIOUSNESS OF THE CHARGES AGAINST
9 HIM, WILL ALWAYS BE PRESUMED INNOCENT OF THOSE
10 CHARGES UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY
11 EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A
12 REASONABLE DOUBT.

13 THE PRESUMPTION OF INNOCENCE IS NOT A
14 MERE LEGAL THEORY. IT IS NOT AN EMPTY LEGAL PHRASE. THE
15 PRESUMPTION OF INNOCENCE HAS BEEN LIKENED TO A ROBE OF
16 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A
17 DEFENDANT. AND IT ASSIGNS TO THAT DEFENDANT THE CLASS
18 KNOWN AS THE INNOCENT. AND THAT PRESUMPTIVE ROBE OF
19 RIGHTEOUSNESS CONTINUES TO REST ABOUT THE SHOULDERS
20 OF A DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM HIS PERSON
21 BY EVIDENCE, EVIDENCE THAT SATISFIES YOU OF HIS GUILT
22 BEYOND A REASONABLE DOUBT.

23 THE PRESUMPTION OF INNOCENCE
24 ACCOMPANIES A DEFENDANT THROUGHOUT EVERY COURSE OF
25 THESE PROCEEDINGS AND IT CONTINUES TO EXIST TO THE

1 BENEFIT OF THE DEFENDANT UNLESS AND UNTIL YOU REACH
2 THE CONCLUSION THAT THE STATE HAS PROVEN HIS GUILT
3 BEYOND A REASONABLE DOUBT.

4 SO THAT IS THE BURDEN, THEN, THAT IS THE
5 STATE'S, TO PROVE GUILT BEYOND A REASONABLE DOUBT.

6 NOW, SOME OF YOU TOLD ME THAT YOU HAD
7 SERVED AS JURORS IN OTHER CASES BEFORE. YOU MAY HAVE
8 SERVED AS JURORS IN CIVIL CASES. AND IN CIVIL CASES YOU
9 WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A
10 FACT IS MOST LIKELY TRUE THAN NOT TRUE IN ORDER FOR THE
11 SIDE THAT HAS THE BURDEN OF PROOF TO PREVAIL. BUT IN
12 CRIMINAL CASES THE STATE'S PROOF HAS TO BE MORE
13 POWERFUL THAN THAT.

14 HERE IT HAS TO BE PROOF BEYOND A
15 REASONABLE DOUBT. SO WHAT THEN DO WE MEAN BY THE
16 PHRASE PROOF BEYOND A REASONABLE DOUBT? PROOF
17 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
18 FIRMLY CONVINCED OF A DEFENDANT'S GUILT.

19 NOW, THERE ARE VERY FEW THINGS IN THIS
20 WORLD THAT YOU AND I KNOW WITH ABSOLUTE CERTAINTY. AND
21 IN CRIMINAL CASES THE LAW DOES NOT DEMAND OR REQUIRE
22 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.. AND SO IF,
23 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
24 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
25 CHARGE CHARGED, YOU MUST FIND HIM GUILTY.

1 IF, ON THE OTHER HAND, YOU THINK THERE'S A
2 REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM
3 THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

4 NOW, A REASONABLE DOUBT CAN ARISE FROM
5 EVIDENCE IN THE CASE. OR IT MIGHT ARISE FROM THE LACK OF
6 EVIDENCE IN THE CASE. BUT YOU, LADIES AND GENTLEMEN,
7 HAVE TO DECIDE WHETHER OR NOT REASONABLE DOUBT EXISTS
8 AS TO THE GUILT OF THIS DEFENDANT.

9 I TELL YOU THAT THE DEFENDANT IS ENTITLED
10 TO EVERY REASONABLE DOUBT WHICH ARISES IN A CASE. AND
11 SO IF ON ANY ISSUE OF FACT WHICH IS NECESSARY TO A
12 CONVICTION AND A VERDICT OF GUILTY YOU HAVE A
13 REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
14 RESOLVED, IT IS YOUR DUTY TO RESOLVE THAT REASONABLE
15 DOUBT IN FAVOR OF THE DEFENDANT.

16 A DEFENDANT, LADIES AND GENTLEMEN, IS
17 NEVER REQUIRED TO PROVE HIS INNOCENT. BUT THE STATE IS
18 REQUIRED IN LAW TO PROVE EVERY ESSENTIAL ELEMENT OF
19 THE OFFENSE CHARGED AGAINST HIM BY EVIDENCE THAT
20 SATISFIES YOU OF HIS GUILT BEYOND A REASONABLE DOUBT
21 BEFORE YOU CAN CONVICT HIM AND FIND HIM GUILTY.

22 IN THAT REGARD I INSTRUCT YOU NOW AND
23 EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT IN
24 THIS CASE DID NOT HIMSELF TESTIFY IS NOT A FACTOR TO BE
25 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN

1 YOUR CONSIDERATION ON THE QUESTION OF HIS GUILT OR
2 INNOCENCE. IT MUST NOT BE CONSIDERED BY YOU IN ANY
3 MANNER WHATSOEVER. IT MISTAKE NOT MILITATE AGAINST HIM
4 IN ANY RESPECT WHATSOEVER BECAUSE THE DEFENDANT HAS A
5 CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND IF HE CHOOSES
6 TO ASSERT THAT RIGHT THAT FACT CANNOT AND MUST NOT BE
7 CONSIDERED BY YOU IN YOUR DELIBERATIONS. AND SO UNDER
8 YOUR OATH YOU ARE TO REACH NO INFERENCE AND DRAW NO
9 CONCLUSION WHATSOEVER FROM THE FACT THAT THIS
10 DEFENDANT DID NOT HIMSELF TESTIFY.

11 THAT FACT SHOULD NOT EVEN BE DISCUSSED
12 BY YOU IN THE JURY ROOM BECAUSE THE BURDEN OF PROOF, AS
13 I'VE SAID, IS UPON THE STATE. THE DEFENDANT HAD NO
14 OBLIGATION TO PROVE HIS INNOCENCE AND THE FACT THAT THE
15 DEFENDANT DID NOT CHOOSE TO TESTIFY IN THIS CASE IS NOT A
16 FACTOR TO BE CONSIDERED BY YOU IN DETERMINING HIS GUILT
17 OR HIS INNOCENCE.

18 SO THEN, IF UPON THE WHOLE CASE YOU HAVE
19 A REASONABLE DOUBT AS TO THE GUILT OR THE INNOCENCE OF
20 THE DEFENDANT HE IS ENTITLED TO THAT REASONABLE DOUBT
21 AND WOULD BE ENTITLED TO AN ACQUITTAL AND THE VERDICT
22 OF NOT GUILTY.

23 BUT ON THE OTHER HAND, IF UPON THE WHOLE
24 CASE YOU FIND THAT THE STATE HAVE PROVEN BY EVIDENCE
25 THAT SATISFIES YOU THE JURY OF HIS GUILT BEYOND A

1 REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCES IT IS YOUR
2 EQUALLY YOUR DUTY TO CONVICT HIM AND TO FIND HIM GUILTY.

3 NOW, LADIES AND GENTLEMEN, DURING THE
4 TRIAL EACH OF US, YOU AND I, HAVE OUR SEPARATE DENIES TO
5 PERFORM. AS A THE JUDGE IT'S MY RESPONSIBILITY TO RULE
6 UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE THAT
7 HAS BEEN OFFERED DURING THE COURSE OF THIS
8 CHARGE - TRIAL. AND YOU'RE TO CONSIDER ONLY THE
9 COMPETENT EVIDENCE THAT HAS BEEN PRESENTED TO YOU,
10 THAT IS, THE TESTIMONY OFFERED FROM THIS WITNESS STAND
11 AND THE ITEMS AND DOCUMENTS THAT HAVE BEEN OFFERED
12 INTO THE RECORD OF THIS CASE DURING THE TRIAL.

13 AND I HAVE THE ADDITIONAL DUTY TO CHARGE
14 YOU AS TO WHAT THE LAW IS. AS A PRESIDING JUDGE, I AM
15 MADE THE SOLE JUDGE OF THE LAW OF THE CASE AND IT IS
16 YOUR DUTY TO ACCEPT AND TO APPLY THE LAW AS I CHARGE IT
17 TO YOU NOW TO BE THE CORRECT LAW.

18 YOU MAY HAVE BROUGHT WITH YOU INTO
19 YOUR SERVICE THIS WEEK AS JURORS SOME - I JUST SEE I'VE
20 NOT BEEN ON THE AIR. I HOPE YOU'VE BEEN ABLE TO HEAR ME. I
21 JUST PUNCHED MY MICROPHONE ON. THANK GOODNESS FOR
22 GOOD ACOUSTICS IN THIS COURTROOM.

23 YOU MIGHT'VE BROUGHT WITH YOU INTO YOUR
24 TRIAL EXPERIENCE THIS WEEK AS JURORS SOME
25 PRECONCEIVED IDEAS ABOUT WHAT YOU THINK THE LAW IS. OR

1 YOU MIGHT HAVE SOME PREFERENCES ABOUT WHAT YOU
2 WOULD LIKE FOR THE LAW TO BE. WELL, LADIES AND
3 GENTLEMEN, IF YOUR PRECONCEIVED IDEAS AND YOUR
4 PREFERENCES ABOUT THE LAW DISAGREE WITH WHAT I'M NOW
5 TELLING YOU THE LAW ACTUALLY IS YOU'RE OBLIGATED UNDER
6 YOUR OATH TO FORGET WHAT YOU THINK ABOUT THE LAW OR
7 WHAT YOU WOULD LIKE FOR THE LAW TO BE BECAUSE UNDER
8 THAT OATH YOU'RE BOUND TO ACCEPT THE LAW PRECISELY AS I
9 NOW STATE IT TO YOU.

10 NOW, IN EVERY CASE TRIED IN THIS COURT
11 BEFORE A JURY, YOU AS THE JURY ARE THE SOLE AND
12 EXCLUSIVE JUDGE OF THE FACTS. I'M THE JUDGE OF THE LAW;
13 YOU'RE THE JUDGES OF THE FACTS.

14 OUT CONSTITUTION HAS DECLARED THAT A
15 THE JUDGE CAN'T COMMENT UPON THE FACTS. I CAN'T INTIMATE
16 TO YOU OR HINT TO YOU ANY OPINION THAT I MIGHT HAVE ABOUT
17 THE FACTS OF THIS CASE OR WHAT YOUR VERDICT SHOULD BE
18 IN THIS CASE. AND SINCE YOU'RE THE SOLE JUDGES OF THE
19 FACTS OF THE CASE YOU'RE NOT TO GATHER FROM ANYTHING
20 THAT I HAVE SAID DURING THE COURSE OF THIS TRIAL THAT I
21 HAVE AN OPINION ABOUT THE FACTS. THAT IS SOLELY A MATTER
22 FOR YOU TO DETERMINE. AND SO AS YOU DETERMINE THE
23 FACTS OF THE CASE YOU HAVE TO DECIDE AS, I HAVE TOLD YOU,
24 THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF
25 EVIDENCE WHICH YOU HAVE HEARD.

1 NOW, AS YOU DETERMINE WHAT THE FACTS OF
2 THE CASE ARE YOU MUST NECESSARILY PASS UPON THE
3 CREDIBILITY - AND THAT'S JUST ANOTHER WORD THAT MEANS
4 BELIEVABILITY - OF THE WITNESSES WHO HAVE TESTIFIED. AND
5 YOU HAVE TO DECIDE THE FORCE AND THE VALUE AND THE
6 WEIGHT THAT YOU WILL GIVE TO THEIR TESTIMONY.

7 EXCUSE ME.

8 NOW, AS YOU MAKE THIS DECISION ABOUT THE
9 CREDIBILITY TO THE BELIEVABILITY OF THE WITNESSES
10 THERE'RE A LOT OF THINGS THAT YOU CAN TAKE INTO ACCOUNT.
11 YOU CAN TAKE INTO ACCOUNT THE DEMEANOR OF THE WITNESS,
12 THAT IS, THE APPEARANCE OF THE WITNESS, HOW THE WITNESS
13 ACTED ON THE WITNESS STAND. YOU HAVE THE RIGHT TO ASK
14 YOURSELF WAS A WITNESS FORTHRIGHT OR HESITANT. WAS A
15 WITNESS' TESTIMONY CONSISTENT OR INCONSISTENT? WHAT
16 WAS THE ABILITY OF THAT WITNESS TO KNOW THE THINGS THAT
17 HE OR SHE WAS TELLING YOU ABOUT. DID THE WITNESS HAVE
18 AN INTEREST TO BE SERVED BY THE TESTIMONY THAT HE OR SHE
19 WAS GIVING? WAS THE TESTIMONY OF A WITNESS MADE
20 STRONGER BY OTHER EVIDENCE OR WAS IT MAKE WEAKER BY
21 OTHER EVIDENCE?

22 LADIES AND GENTLEMEN, AS JURORS YOU'VE
23 GOT THE RIGHT TO BELIEVE A SMALL PART OF WHAT A SINGLE
24 WITNESS TELLS YOU AND TO DISBELIEVE THE LARGER PART OF
25 WHAT THAT SAME WITNESS TELLS YOU, OR THE OTHER WAY

1 AROUND. OR YOU CAN BELIEVE ALL OF WHAT A WITNESS TELLS
2 YOU OR NONE OF WHAT A WITNESSES TELLS YOU. BUT YOU
3 DON'T EXERCISE THESE CONSIDERATIONS ARBITRARILY.
4 THERE'S GOT TO BE A GOOD REASON FOR YOU TO DO SO
5 BECAUSE WHAT THE LAW ASKS YOU TO DO, LADIES AND
6 GENTLEMEN, IS TO EXERCISE YOUR MENTAL PROCESS AND AS
7 YOU CONSIDER WHAT - DETERMINE WHAT YOU CONSIDER TO BE
8 TRUE THE LAW SIMPLY REQUIRES THAT YOU USE YOUR GOOD
9 COMMON SENSE, YOUR SENSE OF LOGIC AND REASON AND YOUR
10 EXPERIENCES IN LIFE. AND YOU APPLY THOSE ABILITIES THAT
11 EACH OF YOU HAS TO WHAT YOU HAVE HEARD IN THIS
12 COURTROOM AND WILL THEN BE ABLE TO DETERMINE THE TRUTH
13 OF THIS CASE. AND ONCE YOU'VE DETERMINED THE TRUTH
14 FORM THE CASE YOU WILL APPLY THE LAW AS I NOW STATE IT TO
15 YOU AND, THUS, YOU WILL ARRIVE AT A VERDICT WHICH WILL
16 SPEAK THE TRUTH OF THIS CASE.

17 AS YOU KNOW, LADIES AND GENTLEMEN, THE
18 DEFENDANT IS CHARGED WITH THE OFFENSE OF ARMED
19 ROBBERY. AND SO I NOW WANT TO EXPLAIN TO YOU THE
20 OFFENSE OF ARMED ROBBERY THE ELEMENTS THAT MAKE UP
21 THAT OFFENSE. BECAUSE THIS OFFENSE, LIKE EVERY OFFENSE
22 UNDER THE LAW HAS CERTAIN ELEMENTS THAT MAKE IT UP. AND
23 THE BURDEN OF PROOF IF ON THE STATE TO PROVE EACH OF
24 THOSE ELEMENTS TO YOU BEYOND A REASONABLE DOUBT
25 BEFORE IT IS ENTITLED TO A VERDICT OF GUILTY IN THIS

1 CHARGE.

2 IF IT MEETS THAT BURDEN, IF IT IS ABLE TO
3 CONVINCE YOU BEYOND A REASONABLE DOUBT AS TO EACH OF
4 THESE ELEMENTS, THEN IT HAS MET ITS BURDEN AND IS
5 ENTITLED TO A VERDICT OF GUILTY. IF IT FAILS IN ANY OF THESE
6 ELEMENTS IT HAS NOT MET IT BURDEN AND THE DEFENDANT IS
7 ENTITLED TO A VERDICT OF NOT GUILTY.

8 OUR CODE OF LAWS STATES THAT A PERSON
9 WHO COMMITS ROBBERY WHILE WITH A DIRK - WHICH IS
10 ANOTHER WORD FOR KNIFE - RAZOR OR OTHER DEADLY WEAPON
11 OR WHICH ALLEGING BY ACTION OR WORDS THAT HE WAS
12 ARMED WITH A DEADLY WEAPON OR ANY OBJECT WHICH A
13 PERSON PRESENT DURING THE COMMISSION OF A ROBBERY
14 WOULD REASONABLY BELIEVE TO BE A DEADLY WEAPON IS
15 GUILTY OF ARMED ROBBERY.

16 SO I WANT TO DEFINE FOR YOU NOW THE
17 OFFENSE OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON,
18 WHICH FOR CONVENIENCE SAKE WE CALL ARMED ROBBERY.

19 IN ORDER THAT YOU MIGHT UNDERSTAND
20 WHAT IS MET BY ARMED ROBBERY I'M GOING TO DEFINE FOR YOU
21 FIRST A LESSER CRIME OF LARCENY AND THEN ROBBERY AND
22 THEN ARMED ROBBERY BECAUSE LARCENY IS EMBRACED WITHIN
23 ROBBERY AND ROBBERY IS, IS EMBRACED WITHIN ARMED
24 ROBBERY.

25 SO WHAT THEN IS LARCENY? LARCENY IS

1 WHAT YOU AND I COMMONLY REFER TO AS STEALING. LARCENY
2 IS A WRONGFUL TAKING AND CARRYING AWAY BY ANY MEANS
3 AND BY ANY PERSON OF THE GOODS OR PERSONAL PROPERTY
4 OF SOMEBODY ELSE WITH THE WRONGFUL INTENT TO
5 PERMANENTLY DEPRIVE THE OWNER OF THAT PROPERTY AND TO
6 CONVERT IT TO THE TAKER'S OWN USE.

7 THE ESSENTIAL ELEMENTS OF LARCENY - AS
8 I'VE SAID, COMMONLY CALLED STEALING - ARE, FIRST OF ALL,
9 THERE'S A WRONGFUL TAKING INTO POSSESSION OF SOMEBODY
10 ELSE'S PERSONAL PROPERTY.

11 PERSONAL PROPERTY, LADIES AND
12 GENTLEMEN, IS CASH, PERSONAL ITEMS. I TELL YOU THAT RINGS
13 AND PURSES AND CELL PHONES AND CASH MEET THE DEFINITION
14 OF PERSONAL PROPERTY UNDER THE LAW.

15 AND THE FIRST ELEMENT, THEN, THAT HAS TO
16 BE PROVEN BY THE STATE IS THAT THERE'S A WRONGFUL
17 TAKING INTO POSSESSION BY THE DEFENDANT OF THE
18 PERSONAL PROPERTY OF SOMEBODY ELSE. AND, SECONDLY,
19 THERE HAS TO BE CARRYING AWAY AND THE REMOVAL OF THAT
20 PERSONAL PROPERTY. AND, THIRDLY, THERE HAS TO BE THE
21 WRONGFUL INTENT, THE FELONIOUS INTENT THE LAW CALLS IT,
22 THE WRONGFUL INTENT TO STEAL ON THE PART OF THE TAKER
23 SO AS TO PERMANENTLY DEPRIVE THE OWNER OF THAT
24 PROPERTY AND TO CONVERT IT TO THE TAKER'S OWN USE. SO
25 THOSE ARE THE THREE ELEMENTS OF LARCENY.

1 NOW, WHAT IS ROBBERY? ROBBERY IS THE
2 WRONGFUL TAKING AND CARRYING AWAY OF SOMEBODY ELSE'S
3 PERSONAL PROPERTY FROM THAT PERSON OR IN THAT
4 PERSON'S PRESENCE BY VIOLENCE OR BY PUTTING HIM OR HER
5 IN FEAR OF VIOLENCE. SO ROBBERY INCLUDES ALL OF THOSE
6 ELEMENTS OF LARCENY AND THEN IT ADDS THE ADDITIONAL
7 ELEMENT OF TAKING THAT PROPERTY FROM THE PERSON OR
8 FROM THE PRESENCE OF THAT PERSON EITHER BY FEAR OF
9 VIOLENCE OR BY PUTTING THAT PERSON IN OF VIOLENCE.

10 NOW, BY WAY OF EXAMPLE, LET'S SUPPOSE
11 THAT WHEN YOU GET BACK TO YOUR CAR LATER TODAY -- THIS IS
12 PRETTY SAFE AREA OF TOWN SO I USE THIS ONLY BY WAY OF
13 EXAMPLE.

14 YOU'RE GONE GET BACK TO YOUR CAR AND
15 YOU FIND SOMEBODY SMASHED A WINDOW OUT OF YOUR CAR
16 AND THEY'VE TAKEN YOUR PURSE OR YOUR CD PLAYER OR YOUR
17 CELL PHONE OUT OF YOUR CAR. AND IT'S GONE. AND YOU DON'T
18 KNOW WHO TOOK IT AND YOU DON'T KNOW WHERE IT IS. WELL,
19 YOU'LL BE THE VICTIM OF LARCENY BECAUSE SOMEBODY ELSE
20 HAD TAKEN YOUR PERSONAL PROPERTY AND CARRIED IT AWAY
21 WITH THE INTENT TO DEPRIVE YOU OF ITS USE. LARCENY.

22 / NOW, LET'S SUPPOSE THAT WHEN YOU GET
23 BACK INTO YOUR CAR THIS AFTERNOON AND YOU START TO
24 DRIVE AWAY THAT SOMEBODY COMES UP THERE AND SMASHES
25 THAT WINDOW OUT AND REACHING IN THAT SEAT AND SNATCHES

1 THAT CELL PHONE OR THAT PURSE OUT OF YOUR PRESENCE AND
2 TAKES IT AWAY. THAT WOULD MAKE YOU THE VICTIM OF
3 ROBBERY BECAUSE THAT PERSONAL PROPERTY WHICH HAD
4 BEEN TAKEN BY SOMEONE ELSE AND CARRIED AWAY WITH THE
5 INTENT TO DEPRIVE YOU OF IT WAS TAKEN FROM YOUR
6 PRESENCE OR OFF OF YOUR PERSON EITHER BY VIOLENCE OR
7 BY PUTTING YOU IN FEAR OF VIOLENCE. THAT'S ROBBERY.

8 SO WHAT THEN IS ARMED ROBBERY? ARMED
9 ROBBERY IS ROBBERY AS I'VE JUST DEFINED THAT TO YOU
10 COMMITTED WHILE ARMED WITH A DEADLY WEAPON. THE LAW
11 REQUIRES THAT ONE MUST HAVE USED A DEADLY WEAPON TO
12 ACCOMPLISH THE PURPOSE OF ROBBERY AS I HAVE DEFINED
13 THAT TO YOU. I TELL YOU THAT A KNIFE UNDER THE LAW IS A
14 DEADLY WEAPON.

15 AND SO THE ELEMENTS OF ARMED ROBBERY
16 ARE THAT THE PROPERTY TAKEN MUST BE THE SUBJECT OF
17 LARCENY, THAT IS, PERSONAL PROPERTY AND I REMIND YOU T
18 MONEY AND CURRENCY IS PERSONAL PROPERTY.

19 AND, SECONDLY, THERE HAS TO BE THE
20 WRONGFUL TAKING AND CARRYING AWAY OF THAT PERSONAL
21 PROPERTY, THAT IS, WITH THE INTENT TO STEAL IT.

22 AND, THIRDLY, THERE HAS TO BE THAT
23 WRONGFUL INTENT TO PERMANENTLY DEPRIVE THE OWNER OF
24 THE USE OF THAT PROPERTY AND TO CONVERT IT TO THE
25 TAKER'S OWN USE. AND THE PROPERTY HAS TO BE TAKEN FROM

1 THE PERSON OF ANOTHER OR IT HAS TO BE ACCOMPLISHED
2 EITHER WITH VIOLENCE OR BY PUTTING THAT PERSON IN FEAR
3 OF VIOLENCE. AND IT MUST BE ACCOMPLISHED THE USE OF A
4 DEADLY WEAPON.

5 NOW, LADIES AND GENTLEMEN, IF THE STATE IS
6 ABLE TO MEET ITS BURDEN AS TO ALL OF THOSE ELEMENTS OF
7 ARMED ROBBERY THE STATE IS ENTITLED TO A VERDICT OF
8 GUILTY. IF THE STATE FAILS TO MEET ITS BURDEN AS TO ANY OF
9 THOSE ELEMENTS THE DEFENDANT IS ENTITLED TO A VERDICT
10 OF NOT GUILTY.

11 NOW, ONE OF THE ISSUES IN THIS CASE IS THE
12 IDENTIFICATION OF THE DEFENDANT AS THE PERPETRATOR OF
13 THE CRIME. AND THE PROSECUTION OBVIOUSLY HAS THE
14 BURDEN OF PROVING THE IDENTITY OF THE DEFENDANT BEYOND
15 A REASONABLE DOUBT. AND YOU, THE JURY, MUST DETERMINE
16 WHETHER THE STATE HAS ESTABLISHED THE IDENTITY OF THE
17 DEFENDANT BEYOND A REASONABLE DOUBT. AND IF YOU'RE NOT
18 CONVINCED BEYOND A REASONABLE DOUBT THAT THE - THAT
19 THE DEFENDANT WAS THE PERSON WHO COMMITTED THE CRIME,
20 THEN OBVIOUSLY YOU MUST FIND HIM NOT GUILTY.

21 AND YOU MUST CONSIDER THE CREDIBILITY OF
22 THE IDENTIFICATION WITNESS JUST LIKE YOU DO ANY OTHER
23 WITNESS. YOU SHOULD CONSIDER THE CAPACITY AND THE
24 OPPORTUNITY TO MAKE A RELIABLE OBSERVATION IN THE
25 MATTER COVERED IN THE TESTIMONY.

1 AS I TELL YOU, THE STATE HAS THE BURDEN OF
2 PROVING IDENTITY BEYOND A REASONABLE DOUBT.

3 NOW, LADIES AND GENTLEMEN, YOU'RE NOT
4 PARTISANS OR ADVOCATES FOR EITHER SIDE IN THIS CASE. YOU
5 DON'T SERVE AS JURORS TO PUNISH YOUR ENEMIES NOR TO
6 REWARD YOUR FRIENDS. OBVIOUSLY JUST A PERVERTED
7 SYSTEM OF JUSTICE WOULDN'T EVEN BE A SYSTEM OF JUSTICE.
8 AND IT WOULD BE INTOLERABLE UNDER OUR LAW.

9 YOU'VE BEEN SELECTED BY BOTH THE STATE
10 AND THIS DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT IS
11 YOUR DUTY, THEN, BY YOUR JOINT DELIBERATIONS TO
12 DETERMINE THE TRUTH OF THIS CASE, GIVING TO THE
13 DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON
14 EACH AND EVERY ISSUE. AND THEN TO THE FACTS WHICH YOU
15 DETERMINE TO BE TRUE YOU TAKE AND APPLY THE LAW WHICH
16 I'VE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH
17 SPEAKS THE TRUTH.

18 AND THAT'S WHAT THE WORD VERDICT MEANS.
19 IT COMES FROM A LATIN PHRASE AND IT MEANS A TRUTHFUL
20 SAYING.

21 AND WHEN YOU ACCOMPLISH THOSE
22 RESPONSIBILITIES YOU WILL HAVE SATISFIED THE OATH THAT
23 YOU TOOK YESTERDAY BEFORE YOU BEGAN THE TRIAL OF THE
24 CASE TO WELL AND TRULY TRY THIS CASE AND TO RENDER A
25 TRUE VERDICT ACCORDING TO THE EVIDENCE SO HELP YOU GOD.

1 I'M CONFIDENT THAT YOU WILL DO JUST THAT
2 AND THAT YOU WILL DO NOTHING LESS THAN THAT.

3 NOW, I'M GOING TO REVIEW THE FORMS OF THE
4 VERDICT WITH YOU AT THIS POINT IN TIME. AND MY LAW CLERK
5 IS GOING TO GIVE TO THE FORELADY THE VERDICT FORM
6 BECAUSE IT'S GONNA BE HER RESPONSIBILITY TO FILL IT OUT.

7 THE ORDER IN WHICH I HAVE WRITTEN THE
8 TWO VERDICT FORMS ON THIS SHEET DOESN'T MEAN ANYTHING
9 IN THE WORLD AND YOU'RE NOT TO REACH ANY CONCLUSION OR
10 DRAW ANY INFERENCE WHATSOEVER FROM THE ORDER THAT I
11 HAVE WRITTEN THOSE TWO VERDICT FORMS ON THE SHEET. I
12 SIMPLY WRITE THEM IN THE ORDER THAT I FIND EASIEST TO
13 EXPLAIN.

14 THE TWO POSSIBLE VERDICT FORMS WHICH
15 APPEAR ON THIS SHEET ARE WE THE JURY BY UNANIMOUS
16 CONSENT FIND THE DEFENDANT . . .

17 AND THE FIRST FORM IS GUILTY OF ARMED
18 ROBBERY. THAT'S THE VERDICT FORM THAT YOU WILL ARRIVE AT
19 IF YOU FIND THAT THE STATE HAS MET ITS BURDEN OF PROOF AS
20 I HAVE EXPLAINED TO YOU.

21 AND, MADAME FORELADY, IF THAT IS A VERDICT
22 THAT YOU ALL ARRIVE YOU WILL INDICATE THAT BY PUTTING AND
23 X OR A CHECKMARK IN THE BLANK THAT YOU SEE WE HAVE
24 PROVIDED TO THE LEFT OF THAT FORM.

25 THE SECOND POSSIBLE VERDICT FORM IS WE

1 THE BY UNANIMOUS CONSENT FIND THE DEFENDANT NOT GUILTY.
2 THAT'S THE VERDICT FORM THAT YOU WILL USE IF YOU FIND
3 THAT THE STATE HAS FAILED TO MEET ITS BURDEN OF PROOF AS
4 I HAVE INSTRUCTED YOU. AND IF THAT'S A VERDICT THAT YOU
5 ARRIVE, MADAME FORELADY, LIKEWISE YOU'LL INDICATE THAT BY
6 PUTTING AN X OR A CHECKMARK TO THE LEFT OF THAT VERDICT
7 FORM.

8 NOW, I'VE GIVEN THE FORM TO THE FORELADY,
9 AS I SAID, BECAUSE SHE'S THE ONE WHO'S GOT TO FILL IT OUT
10 BUT CLEARLY IT WILL NOT BE HER VERDICT ALONE. THE VERDICT
11 MUST BE UNANIMOUS. ALL TWELVE OF YOU HAVE TO AGREE AS
12 TO WHAT THE VERDICTS WILL BE.

13 AND, MADAME FORELADY, YOU'RE NOT
14 AUTHORIZED TO WRITE THE VERDICT NOR TO SIGN THAT FORM
15 UNTIL ALL TWELVE OF YOUR NUMBER HAVE AGREED AS TO WHAT
16 THE VERDICT SHALL BE.

17 I'M GOING TO SEND YOU TO YOUR JURY ROOM
18 NOW AND I ASK THAT YOU WAIT JUST A MOMENT BEFORE YOU
19 BEGIN YOUR DELIBERATIONS. I'VE GOT TO TALK WITH THE
20 LAWYERS TO SEE IF I'VE LEFT ANYTHING OUT OR IF I MISSTATED
21 THE LAW IN ANY WAY.

22 AND IF I HAVE DONE THAT I'LL HAVE TO BRING
23 YOU BACK OUT TO CORRECT THAT. BUT IF I DON'T HAVE TO
24 BRING YOU BACK OUT WE WILL SEND IN THE ITEMS OF EVIDENCE.
25 AND ONCE YOU GET THE ITEMS OF EVIDENCE, THAT WILL BE

1 YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS.

2 PLEASE, MADAME FORELADY, DON'T START
3 DISCUSSING THE CASE UNTIL THE ITEMS OF EVIDENCE HAVE
4 BEEN BROUGHT IN.

5 ONCE THE -- ONCE THE EVIDENCE HAS BEEN
6 BROUGHT IN TO YOU, YOU WILL BEGIN YOUR DELIBERATIONS AND
7 YOU WILL DELIBERATE UNTIL YOU'VE REACHED A VERDICT.

8 AT WHICH POINT IN TIME, MADAME FORELADY,
9 YOU WILL WRITE THE VERDICT, FILL OUT THE FORM AND SIGN IT
10 AND KNOCKED ON THE DOOR, ADVISE THE BAILIFF AND WE'LL
11 BRING YOU OUT TO RECEIVE THE VERDICT AT THAT TIME.

12 ALL RIGHT.

13 THANK YOU, LADIES AND GENTLEMEN.

14 PLEASE RETIRE TO YOUR JURY ROOM. DO NOT
15 YET BEGIN YOUR DISCUSSIONS.

16 MISS HUFF, MR. TRUDEAU, IF YOU ALL WILL
17 JUST STAY RIGHT WHERE YOU ARE FOR THE TIME BEING.

18 THANK YOU.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE
20 PRESENCE OF THE JURY.)

21 THE COURT: MR. KNIGHT, ANY EXCEPTIONS OR
22 REQUEST FOR ADDITIONAL CHARGE FROM THE STATE?

23 MR. KNIGHT: I HAVE NO EXCEPTIONS TO THE
24 CHARGE BUT I THOUGHT YOU WERE GONNA CHARGE VOLUNTARY
25 INTOXICATION IS NOT A DEFENSE.

1 THE COURT: RIGHT.

2 MR. KNIGHT: AND I DIDN'T HEAR THAT AND
3 THERE WAS A LOT OF ARGUMENT IN CLOSING ARGUMENT ABOUT
4 BEING INTOXICATED, UNFAIR AND ALL THIS KIND OF JUNK.

5 THE COURT: THE - I, I NOTED THAT IN THE
6 ARGUMENT. I DO NOT SEE IT RAISED AS A DEFENSE IN THE ISSUE
7 AS TO - AS TO THE FACT THAT HE DID NOT KNOW WHAT HE WAS
8 DOING, TO THE EXTENT. BUT AS TO EXPLAIN, I THINK, HIS FLIGHT
9 OR THINGS OF THAT NATURE AND SO SINCE IT WAS NOT RAISED
10 SPECIFICALLY AS A DEFENSE TO THE CASE I CHOSE NOT TO
11 CHARGE IT.

12 I NOTE YOUR REQUEST IN THAT REGARD.

13 MR. HOOD, ANY EXCEPTIONS OR REQUESTS?

14 MR. HOOD: NONE, YOUR HONOR.

15 THE COURT: THANK YOU.

16 ALL RIGHT.

17 FOLKS, IF YOU ALL MAKE SURE THE EVIDENCE
18 IS TOGETHER AND THEN WE CAN SEND THAT IN.

19 (THE JURY BEGAN DELIBERATING AT 10:55 A.M.)

20 (NOTE FROM THE JURY MARKED AS COURT'S
21 EXHIBIT 2)

22 (THE JURY NOTIFIED THE COURT AT 11:35 A.M.
23 THAT A VERDICT HAD BEEN REACHED.)

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 THE COURT: LADIES AND GENTLEMEN, WE'RE
2 ADVISED THAT THE JURY HAS REACHED A VERDICT. ARE BOTH
3 THE STATE AND THE DEFENSE READY TO RECEIVE THE VERDICT?

4 MR. KNIGHT: YES, YOUR HONOR.

5 MR. HOOD: YES, YOUR HONOR.

6 THE COURT: THANK YOU.

7 A RIGHT.

8 BRING US THE JURY, PLEASE.

9 BAILIFF: JURY ENTERING.

10 THE COURT: THANK YOU.

11 (THE JURY RETURNED TO OPEN COURT.)

12 BAILIFF: YOUR HONOR, ALL JURORS ARE
13 PRESENT.

14 THE COURT: THANK YOU.

15 MADAME CLERK.

16 CLERK OF COURT: MADAME FORELADY, HAVE
17 YOU REACHED A VERDICT?

18 FOREPERSON OF THE JURY: YES, WE HAVE.

19 CLERK OF COURT: PLEASE PASS IT TO THE
20 BAILIFF FOR ME.

21 THE COURT: YOU MAY PUBLISH THE VERDICT.

22 CLERK OF COURT: STATE OF SOUTH CAROLINA
23 VERSUS JAMES BOWERS IN INDICTMENT NUMBER 2003-GS-7
24 DASH 2097, WE THE JURY BY UNANIMOUS CONSENT FIND THE
25 DEFENDANT GUILTY OF ARMED ROBBERY. SIGNED BY THE

1 FORELADY CANDACE UMBARGER.

2 MADAME FORELADY, WAS THIS YOUR VERDICT?

3 FOREPERSON OF THE JURY: YES.

4 CLERK OF COURT: IF YOU ALL AGREE PLEASE
5 RAISE YOUR RIGHT HANDS.

6 THE COURT: THANK YOU.

7 MR. HOOD, DOES THE DEFENSE DESIRE
8 POLLING OF THE JURY?

9 MR. HOOD: YOUR HONOR, WE WISH —

10 THE COURT: THANK YOU.

11 MADAME CLERK, IF YOU'LL KINDLY POLL THE
12 JURY.

13 LADIES AND GENTLEMEN, YOUR NAMES ARE
14 GOING TO BE CALLED INDIVIDUALLY NOW. AND AS YOUR NAMES
15 ARE CALLED, IF YOU'LL PLEASE STAND IN PLACE RIGHT WHERE
16 YOU ARE. AND THE CLERK WILL AS YOU WAS THIS YOUR
17 VERDICT AND IS IT STILL YOUR VERDICT AND IF YOU'LL SIMPLY
18 GIVE THE APPROPRIATE ANSWER TO THAT QUESTION,
19 WHATEVER THE ANSWER MIGHT BE.

20 THANK YOU.

21 MADAME CLERK.

22 CLERK OF COURT: TERRY COHEN.

23 WAS THIS YOUR VERDICT?

24 JUROR NUMBER 7, TERRY B. COHEN: YES.

25 CLERK OF COURT: IS IT STILL YOUR VERDICT?

JUROR NUMBER 7, TERRY B. COHEN: YES.

CLERK OF COURT: KYLEEN THOMAS.

WAS THIS YOUR VERDICT?

JUROR NUMBER 194, KYLEEN S. THOMAS: YES,

MA'AM.

CLERK OF COURT: IS IT STILL YOUR VERDICT?

JUROR NUMBER 194, KYLEEN S. THOMAS: YES,

MA'AM.

CLERK OF COURT: LINDA HARKER.

IS THIS YOUR VERDICT?

JUROR NUMBER 180, LINDA S. HARKER: YES.

CLERK OF COURT: IS IT STILL YOUR VERDICT?

JUROR NUMBER 180, LINDA S. HARKER: YES.

CLERK OF COURT: MARJANE KRUSE.

WAS THIS YOUR VERDICT?

JUROR NUMBER 81, MARJANE KRUSE: YES.

CLERK OF COURT: AND IS IT STILL YOUR

VERDICT?

JUROR NUMBER 81, MARJANE KRUSE: YES.

CLERK OF COURT: MYRTLE GARVIN.

IS THIS YOUR VERDICT?

JUROR NUMBER 42, MYRTLE B. GARVIN: YES,

MA'AM.

CLERK OF COURT: IS IT STILL YOUR VERDICT?

JUROR NUMBER 42, MYRTLE B. GARVIN: YES,

1 MA'AM.

2 CLERK OF COURT: RICARDEAN HODGE.

3 WAS THIS YOUR VERDICT?

4 JUROR NUMBER 199, RICARDEAN HODGE:

5 YES.

6 CLERK OF COURT: IS IT STILL YOUR VERDICT?

7 JUROR NUMBER 199, RICARDEAN HODGE:

8 YES.

9 CLERK OF COURT: TRISTA HODGE.

10 WAS THIS YOUR VERDICT?

11 JUROR NUMBER 61, TRISTA D. HODGE: YES.

12 CLERK OF COURT: IS IT STILL YOUR VERDICT?

13 JUROR NUMBER 61, TRISTA D. HODGE: YES.

14 CLERK OF COURT: CANDACE UMBARGER.

15 WAS THIS YOUR VERDICT?

16 JUROR NUMBER 185, CANDACE O. UMBARGER:

17 YES.

18 CLERK OF COURT: IS IT STILL YOUR VERDICT?

19 JUROR NUMBER 185, CANDACE O. UMBARGER:

20 YES.

21 CLERK OF COURT: JOHN STIENE.

22 WAS THIS YOUR VERDICT?

23 JUROR NUMBER 144, JOHN F. STIENE: YES.

24 CLERK OF COURT: IS IT STILL YOUR VERDICT?

25 JUROR NUMBER 144, JOHN F. STIENE: YES,

1 MA'AM.

2 CLERK OF COURT: ALAN SUTTON.

3 WAS THIS YOUR VERDICT?

4 JUROR NUMBER 197, ALAN K. SUTTON: YES.

5 CLERK OF COURT: IS IT STILL YOUR VERDICT?

6 JUROR NUMBER 197, ALAN K. SUTTON: YES.

7 CLERK OF COURT: PATRICIA LITTLE.

8 JUROR NUMBER 186, PATRICIA E. LITTELL:

9 LITTELL.

10 CLERK OF COURT: WAS THIS YOUR VERDICT?

11 JUROR NUMBER 186, PATRICIA E. LITTELL: YES.

12 CLERK OF COURT: IS IT STILL YOUR VERDICT?

13 JUROR NUMBER 186 PATRICIA E. LITTELL: YES.

14 CLERK OF COURT: IS IT STILL YOUR VERDICT?

15 JUROR NUMBER 186, PATRICIA E. LITTELL: YES.

16 CLERK OF COURT: AND RUTH HAUCK.

17 WAS THIS YOUR VERDICT?

18 JUROR NUMBER 58, RUTH J. HAUCK: YES.

19 CLERK OF COURT: IS IT STILL YOUR VERDICT?

20 JUROR NUMBER 58, RUTH J. HAUCK: YES.

21 THE COURT: THANK YOU.

22 IS THERE ANYTHING FURTHER, THEN, BEFORE

23 THE JURY IS DISMISSED, MR. HOOD?

24 MR. HOOD: NOTHING, YOUR HONOR.

25 THE COURT: THANK YOU.

1 LADIES AND GENTLEMEN, I WANT TO THANK
2 YOU NOW FOR YOUR EFFORTS AS JURORS IN THIS TRIAL AND
3 FOR YOUR – THE VALUE OF YOUR SERVICE.

4 I DO NOT COMMENT UPON YOUR VERDICT.
5 INVOLVE COMMEND A JURY NOR DO I CONDEMN A JURY FOR THE
6 VERDICT THAT IT REACHES. I SIMPLY COMMENT UPON THE
7 QUALITY OF YOUR SERVICE, THE ATTENTION THAT YOU'VE GIVEN,
8 THE THOUGHTFULNESS THAT YOU HAVE GIVEN TO YOUR
9 DELIBERATIONS AND TO YOUR SERVICE AS JURORS GENERALLY.
10 AND I APPRECIATE THE THINGS THAT YOU HAVE DONE IN THAT
11 REGARD.

12 LET ME TELL YOU NOW THAT YOU ARE FREE TO
13 DISCUSS THIS CASE WITH ANYBODY IF YOU WANT TO. THE
14 RESTRICTIONS THAT I HAD TOLD YOU EARLIER ABOUT NOT
15 TALKING ABOUT IT OBVIOUSLY NO LONGER APPLY. YOUR ROLE IN
16 THIS TRIAL HAS NOW ENDED AND SO IF SOMEONE SHOULD ASK
17 YOU ABOUT THIS CASE AND IF YOU SHOULD CARE TO DISCUSS IT
18 WITH THEM YOU HAVE EVERY RIGHT TO DO THAT.

19 BUT ON THE OTHER HAND, IF THEY ASK YOU
20 ABOUT IT AND YOU DON'T WANT TO DISCUSS IT YOU DON'T HAVE
21 TO. IT'S ENTIRELY A PERSONAL MATTER THAT IS – THAT IS UP TO
22 YOU.

23 MADAME FORELADY, THE NOTE THAT YOU ALL
24 HAD SENT OUT THAT I HAD RESPONDED TO YOU, IS THAT WITH
25 THE EVIDENCE? YOU'VE GOT IT?

1 THANK YOU, MA'AM.

2 WE JUST NEED TO KEEP THAT WITH THE COURT
3 RECORD SO I WANTED TO BE SURE THAT IT HAD BEEN RETURNED
4 AND THANK YOU FOR DOING THAT.

5 IN REGARD TO YOUR DISCUSSING THIS CASE
6 WITH ANYBODY, LET ME TELL YOU THAT YOU NEED ONLY TO
7 ANSWER TO YOUR CONSCIENCE FOR THE VERDICTS THAT YOU
8 REACH IN THESE CASES AS JURORS. AND YOU DON'T HAVE ANY
9 NEED TO FEAR YOUR CONSCIENCE FOR THE VERDICT THAT
10 YOU'VE REACHED IN THIS PARTICULAR CASE. AND I CAN TELL
11 YOU THAT.

12 AND I WISH I COULD SAY THAT THE REWARD
13 FOR A JOB WELL DONE WOULD BE TO TAKE THE REST OF THE
14 WEEK OFF BUT WE MAY NEED YOU TOMORROW.

15 NOW, SOME OF YOU MIGHT HAVE CONFLICTS
16 LATER IN THE WEEK THAT WE'VE ALREADY DEALT WITH ON
17 OUR - ON OUR - AT THE END - AT THE BEGINNING OF THE TERM
18 YESTERDAY.

19 SOME OF YOU MIGHT HAVE PROBLEMS THAT
20 HAVE COME UP SINCE THAT TIME. IF THEY HAVE, YOU WILL LET
21 US KNOW.

22 OTHERWISE, I AM ASKING TO CALL THAT
23 NUMBER AFTER 6:00 TODAY FOR FURTHER INSTRUCTIONS.
24 WE'RE ANTICIPATING THE START OF ANOTHER TRIAL TOMORROW
25 MORNING AT, AT 9:30. AND THE WAY YOUR LUCK IS RUNNING,

1 SOME OF YOU MIGHT BE A JUROR IN THAT PARTICULAR CASE AS
2 WELL.

3 THANK YOU FOR YOUR SERVICE ON THIS CASE,
4 LADIES AND GENTLEMEN.

5 YOU ALL ARE FREE TO GO NOW AND I'LL SEE
6 YOU PROBABLY TOMORROW BUT CALL THAT NUMBER AFTER SIX
7 TODAY.

8 DOES EVERYBODY UNDERSTAND THOSE
9 INSTRUCTIONS?

10 ANYBODY HAVE ANY QUESTIONS ABOUT THOSE
11 INSTRUCTIONS?

12 THANK YOU.

13 WE STILL HAVE MATTERS OF MOTIONS AND
14 SENTENCING HERE. SOMETIMES JURORS WANT TO STAY FOR
15 THOSE THINGS; SOMETIMES JURORS DON'T. IT'S ENTIRELY UP TO
16 YOU AS TO WHETHER OR NOT YOU WISH TO STAY OR WHETHER
17 YOU WISH TO GO.

18 YOU'RE FREE TO GO NOW IF YOU WISH TO.

19 THANK YOU.

20 ALL RIGHT.

21 MR. HOOD, I'LL BE GLAD NOW TO HEAR
22 ADDITIONAL MOTIONS, IF ANY.

23 MR. HOOD: YOUR HONOR, AT THIS TIME I
24 WOULD RENEW ALL OF MY PREVIOUS MOTIONS THAT I MADE
25 DURING THE COURSE OF THE TRIAL. AND FOR THE SAME

1 REASONS ---

2 THE COURT: ALL RIGHT.

3 MR. HOOD: — OBVIOUSLY STATED DURING THE
4 COURSE OF THE TRIAL.

5 THE COURT: THANK YOU, SIR.

6 I, I NOTE THE RENEWAL OF THOSE MOTIONS
7 AND RESPECTFULLY RENEW MY EARLIER RULINGS IN REGARD TO
8 THOSE MOTIONS. THE RECORD, I THINK, IS, IS COMPLETE
9 ENOUGH IN THAT REGARD THAT I NEED NOT BELABOR IT ANY
10 FURTHER.

11 I'LL BE GLAD TO HEAR ANY ADDITIONAL
12 MOTIONS OR ANY ADDITIONAL GROUNDS, HOWEVER.

13 MR. HOOD: I HAVE NO ADDITIONAL GROUNDS,
14 YOUR HONOR, WITH RESPECT TO THE CASE-IN-CHIEF.

15 THE COURT: ALL RIGHT.

16 MR. HOOD: OBVIOUSLY, TO THE ISSUE OF
17 SENTENCING —

18 THE COURT: YES, SIR.

19 MR. HOOD: — WE WERE SERVED WITH A
20 NOTICE OF A — WITH THE INTENT FOR THE STATE TO SEEK LIFE
21 WITHOUT PAROLE IN THIS CASE, THE TWO-STRIKE LAW.

22 I'VE NOT BEEN PROVIDED DOCUMENTATION OF
23 THE PRIOR CONVICTIONS WHICH THE STATE IS GOING TO RELY
24 UPON BUT I'D LIKE AN ARGUMENT WITH RESPECT TO THE TWO
25 STRIKES LAW ITSELF, YOUR HONOR.

1 THE COURT: ALL RIGHT, SIR.

2 AND I'LL BE GLAD TO, TO HEAR THAT AT THIS
3 POINT IN TIME. I WILL HEAR FROM THE, THE STATE FIRST ON THE
4 ISSUE OF SENTENCING AND THEN I'LL BE GLAD TO HEAR FROM
5 YOU LAST IN THE SENTENCING.

6 OF COURSE THE DEFENDANT HAS A RIGHT TO
7 THE LAST WORD AND SO IF YOU WOULD - IF WE - IF WE'RE
8 READY TO PROCEED TO THE MATTER OF SENTENCING,
9 RESERVING YOUR RIGHT TO MAKE THAT MOTION, OF COURSE,
10 WE CAN DO THAT AT THIS POINT IN TIME.

11 YOU PREPARED TO GO FORWARD, MR. HOOD,
12 IN THAT REGARD?

13 MR. HOOD: I AM, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. KNIGHT, IS THE STATE READY TO
16 PROCEED, THEN, TO THE MATTER OF SENTENCING?

17 MR. KNIGHT: YES, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR. ALL RIGHT.

19 MR. KNIGHT: MARCH 23 OF 2004 THE
20 DEFENDANT JAMES HAROLD BOWERS WAS - AND HIS ATTORNEY
21 AT THE TIME, DOUG BORSICH, WAS SERVED WITH A NOTICE OF
22 INTENTION TO SEEK LIFE IN PRISON, WITHOUT PAROLE. THAT
23 WAS SERVED ON HIM ON 3/23/04, FILED IN THE CLERK'S OFFICE.

24 THE COURT: OKAY.

25 MR. KNIGHT: WHAT I HAVE IS, I HAVE A

1 CERTIFIED COPY OF A CONVICTION IN JASPER COUNTY
2 SEPTEMBER 7, 1976, WHERE HE WAS CONFINED TO HARD LABOR
3 FOR TWENTY-ONE YEARS FOR ASSAULT WITH INTENT TO RAVISH.
4 AND THEN SEVEN YEARS FOR ROBBERY.

5 THAT'S WHY I'M RELYING UPON ALTHOUGH HE
6 HAS AN EXTENSIVE CRIMINAL HISTORY WHICH I WOULD BE GLAD
7 TO GO THROUGH.

8 THE COURT: ALL RIGHT.

9 AND THAT, OF COURSE, WOULD BE
10 APPROPRIATE, GENERALLY, ON THE ISSUE OF SENTENCING.
11 THIS, HOWEVER, IS THE — IS THE ISSUE OF —

12 MR. KNIGHT: LIFE WITHOUT PAROLE.

13 THE COURT: LIFE WITHOUT PAROLE ISSUE
14 HERE.

15 MR. KNIGHT: THAT'S A CERTIFIED COPY THAT I
16 GOT FROM THE CLERK OF COURT'S OFFICE IN JASPER COUNTY.

17 THE COURT: YES, SIR.

18 ALL RIGHT.

19 LET'S THEN DEAL WITH THIS ISSUE FIRST OF
20 ALL, MR. HOOD, WITH THE LIFE WITHOUT PAROLE NOTICE MARCH
21 23, 04, BASED ON A CONVICTION ON SEPTEMBER 7, 1976.
22 TWENTY-ONE YEARS FOR ASSAULT WITH INTENT TO RAVISH.

23 MR. HOOD: YOUR HONOR —

24 THE COURT: AND ROBBERY.

25 MR. HOOD: — WITH RESPECT TO THAT

1 MATTER, I'D LIKE TO STATE FIRST OF ALL FOR THE COURT THAT
2 I'VE RESEARCHED THIS PARTICULAR ISSUE CONCERNING THE
3 TWO STRIKES LAW, THE LAW ITSELF, AND HAVE NOT BEEN
4 SUCCESSFUL IN LOCATING ANY CASES THAT MIGHT BE OF VALUE
5 TO THE DEFENSE WITH RESPECT TO THIS MOTION.

6 YOUR HONOR, I'D LIKE TO SAY THAT WITH
7 RESPECT TO HIS PREVIOUS CASES, THEY WERE ALL BASED ON
8 THE CONSTITUTIONALITY OF THE TWO STRIKES LAW, EITHER A
9 FORM OF CRUEL AND UNUSUAL PUNISHMENT OR A VARIETY OF
10 OTHER THINGS, SEPARATION OF POWERS AND THOSE TYPES OF
11 THINGS.

12 HOWEVER, I THINK THERE IS ONE THAT THAT I
13 DID NOT SEE IN ANY OF THE CASES THAT I REVIEWED AND THAT
14 WAS THE FACT THAT IF THE CASE FOR WHICH THE STATE IS
15 RELYING UPON THE TWO STRIKES LAW, THAT BEING THE
16 PREVIOUS CONVICTION IN JASPER COUNTY, THAT WAS SOME
17 TWENTY-SIX YEARS AGO WHEN THAT EVENT OCCURRED, WHEN
18 THIS CONVICTION OCCURRED.

19 ALSO, IT IS MY BELIEF THIS CONVICTION WAS
20 AS A RESULT OF A GUILTY PLEA AND THAT AS A RESULT OF THAT
21 GUILTY PLEA HE WAS SENTENCED TO THE SEVEN YEARS FOR
22 THE ROBBERY AND I'M NOT SURE WHETHER THAT'S ARMED
23 ROBBERY OR NOT.

24 BUT, YOU KNOW, AGAIN, IT'S - IT JUST SAYS
25 ROBBERY. AND I ASSUME THAT'S COMMON LAW ROBBERY AT

1 THE TIME.

2 THE COURT: THE INDICTMENT WAS FOR
3 ARMED ROBBERY, I NOTE AT THE TOP. THE SENTENCE ITSELF IS
4 NOT ANYMORE SPECIFIC THAN SIMPLY – THAN SIMPLY ROBBERY.

5 AT THE TIME THERE WAS COMMON LAW
6 ROBBERY AND ARMED ROBBERY AND THIS IS NO MORE SPECIFIC
7 THAN THAT. SO —

8 MR. HOOD: THAT – THAT'S CORRECT.

9 AND I THINK THAT THE, THE STATE OBVIOUSLY,
10 THEN, IS RELYING UPON THE ASSAULT WITH INTENT TO RAVISH,
11 WHICH —

12 THE COURT: RIGHT.

13 MR. HOOD: — I, I AM SATISFIED WAS THE SAME
14 OFFENSE, BASICALLY, THAT WE HAVE HERE TODAY AND OUR
15 LAWS CONCERNING CRIMINAL SEXUAL CONDUCT.

16 THE COURT: YES, SIR.

17 MR. HOOD: THE – BUT THE ISSUE THAT I'M
18 CONCERNED ABOUT IS THE FACT THAT, NUMBER 1, THIS THING IS
19 – OCCURRED TWENTY-SIX YEARS AGO, THAT IT WAS AS A RESULT
20 OF A GUILTY PLEA. IN OTHER WORDS, THERE WAS NO TRIAL IN
21 THIS CASE. THE DEFENDANT SIMPLY NEGOTIATED WITH THE
22 STATE AND AS A RESULT OF THOSE NEGOTIATIONS THEY CAME
23 UP WITH THIS PARTICULAR PLEA WHICH RESULTED IN THESE
24 SENTENCES.

25 GUILTY PLEAS ARE, AS YOU WELL KNOW,

1 ARRANGED FOR A VARIETY OF REASONS, GIVEN THE STRENGTHS
2 OR WEAKNESSES OF THE STATE'S CASE AND ALSO VARIOUS
3 OTHER FACTORS CONCERNING, PERHAPS THE AGE OF THE
4 DEFENDANT AND THE ACTUAL PARTICIPATION.

5 WE DON'T KNOW THE BACKGROUND OF THIS
6 PARTICULAR CASE BUT I'VE BEEN DOING A LITTLE RESEARCH
7 WITH RESPECT TO THE CASE AND OBVIOUSLY IT IS MY - TO MY
8 KNOWLEDGE, THERE WERE TWO PEOPLE INVOLVED IN THIS
9 PARTICULAR INCIDENT, NOT ONLY MR. BOWERS BUT ANOTHER
10 CODEFENDANT.

11 WE HERE AGAIN DON'T KNOW THE EXTENT TO
12 WHICH MR. BOWERS WAS PLAYING IN THAT PARTICULAR EVENT.
13 WHETHER HE WAS THE MAIN PERPETRATOR OR WHETHER HE
14 WAS MERELY THE HAND OF ONE IS THE HAND OF ALL SITUATION.

15 SO WHAT I'M GETTING AT IS THE GUILTY PLEA
16 COULD HAVE BEEN CAUSED BY A VARIETY OF THINGS AND BACK
17 AT THAT PARTICULAR DATE AND TIME THE LAWS WERE
18 DIFFERENT WITH RESPECT TO THE AMOUNT OF TIME THAT A
19 PERSON WOULD HAVE TO SPEND IN PRISON BEFORE THEY WERE
20 PAROLE ELIGIBLE. I THINK THAT THERE WERE NO SUCH THINGS
21 FOR THESE TYPES OF OFFENSES THAT WE HAVE HERE THAT
22 WOULD BE NO PAROLE OFFENSES. SO THAT EXIST AT THAT TIME.

23 SO I THINK THAT, YOU KNOW, WHEN, WHEN
24 YOU - WHEN YOU DECIDE WHETHER TO PLEAD GUILTY TO A
25 CRIME ON NOT GUILTY TO CRIMES YOU TAKE ALL OF THESE

1 FACTORS AND YOU – AND YOU ADD THEM TOGETHER TO COME
2 UP WITH A DECISION AND, AND ADVICE TO GIVE TO YOUR CLIENT
3 AS TO WHETHER OR NOT HE SHOULD ACCEPT OR DECLINE THE
4 OFFER TO PLEAD GUILTY.

5 THE COURT: RIGHT.

6 MR. HOOD: I DON'T THINK THAT THE
7 LEGISLATURE NOR ANYONE ELSE EVERY INTENDED THAT A
8 PERSON WHO TWENTY-SIX YEARS AGO ENTERED INTO
9 NEGOTIATIONS WITH THE STATE AND ENDED UP PLEADING
10 GUILTY TO A CRIME EVERY INTENDED FOR GUILTY PLEAS WHICH
11 ARE NEGOTIATED TO BE INCLUDED IN THE TWO STRIKES LAW,
12 THAT DUE TO THE AGE OF THIS OFFENSE, THE TWENTY-SIX
13 YEARS, THE POTENTIAL NEGOTIATING FACTORS THAT WERE
14 USED IN ARRIVING AT THIS PARTICULAR DECISION TO PLEAD
15 GUILTY, THOSE ARE NOW INCONSISTENT WITH THE TWO STRIKES
16 LAW.

17 THE FACT THAT A PERSON IS TRIED AND FOUND
18 GUILTY OF THE CRIMES, OBVIOUSLY HE HAD HIS DAY IN COURT
19 AND EVERYTHING WAS, YOU KNOW, AS, AS THE JURY DECIDED.
20 AND, AND THEREFORE, YOU KNOW, THERE IS NO PROBLEM WITH
21 A TRIAL BUT I THINK THAT A GUILTY PLEA IN ITSELF CREATES THE
22 PROBLEM WITH RESPECT TO THIS BEING CRUEL AND UNUSUAL
23 PUNISHMENT BECAUSE I DON'T THINK IT WAS EVERY INTENDED
24 THAT YOU KNOW, A GUILTY PLEA WOULD BE USED TWENTY-SIX
25 YEARS AGO TO, TO ENHANCE A PUNISHMENT IN TODAY'S

1 SOCIETY.

2 THAT'S BASICALLY MY WHOLE ARGUMENT, DUE
3 TO THE AGE OF IT, THE FACT THAT IT WAS A GUILTY PLEA AND
4 OBVIOUS FACTORS WERE CONSIDERED IN THAT AND THAT AS A
5 RESULT OF THAT PLEA HE NOW FACES LIFE WITHOUT PAROLE.

6 I'M SURE THAT IN THE NEGOTIATIONS TWENTY-
7 SIX YEARS AGO WITH THE STATE AND WITH THE DEFENDANT AND
8 WITH THE ADVICE OF COUNSEL THAT THERE WAS NEVER EVER
9 ANY MENTION OF THE POTENTIAL OF THIS BEING TWO STRIKES
10 AND YOU'RE OUT.

11 YOU KNOW.

12 SO I MEAN WE HAD NO WAY OF KNOWING AND
13 NOR DID THE DEFENDANT NOT THE ATTORNEY KNOW THAT WHAT
14 HE WAS DOING WAS LATER ON WOULD PERHAPS RESULT IN THIS
15 PARTICULAR SITUATION THAT WE'RE FACED WITH TODAY.

16 AS A RESULT OF THAT I BELIEVE THAT WHAT
17 WE HAVE IS A CRUEL AND UNUSUAL CIRCUMSTANCE NOW TODAY
18 AS A RESULT OF A GUILTY PLEA BACK TWENTY-SIX YEARS AGO.

19 THE COURT: ALL RIGHT.

20 THANK YOU, MR. HOOD.

21 THE PROVISIONS OF THE LAW THAT APPLY ARE
22 SECTIONS 17 DASH 25 DASH 45, WHICH WAS A
23 PREDECESSOR - EXCUSE ME, THE ANCESTOR OF SECTION 17
24 DASH 25 DASH 40. IT SETS OUT THE TWO-STRIKE AND THE
25 THREE-STRIKE SCENARIO THAT MR. HOOD WAS JUST REFERRING

1 TO. AND, OBVIOUSLY, IT IS – IT IS – IT HAS SEVERE, SEVERE AND
2 SERIOUS CONSEQUENCES TO THOSE PEOPLE WHO ARE CAUGHT
3 UP WITHIN THE SCENARIO.

4 THE SCENARIO THAT WE ARE CONFRONTED
5 WITH, QUITE FRANKLY, THAT IS EVEN MORE DRAMATIC THAN THE
6 ONE YOU OPPOSE, MR. HOOD, IS A – IS THE, THE OLD BURGLARY
7 CHARGES, BURGLARY FIRST, THAT PEOPLE PLED GUILTY TO
8 YEARS AND YEARS AGO AND GOT YOUTHFUL OFFENDER.
9 SOMETIMES EVEN PROBATION AND THEN FIND THEMSELVES FAR
10 DOWN THE ROAD FACING A SECOND STRIKE THAT TAKES THEM
11 TO JAIL FOR LIFE.

12 OF COURSE, OUR COURTS HAVE DEALT WITH,
13 WITH THAT ISSUE AND THEY HAVE DEALT WITH THE – WITH THE
14 FACT THAT IT IS NOT EX POST FACTO AND THAT IT IS NOT CRUEL
15 AND UNUSUAL.

16 THE TIMING OF THIS ONE, OF COURSE, IS, IS
17 ACTUALLY TWENTY-EIGHT YEARS, 1976 TILL TODAY,
18 TWENTY – TWENTY-EIGHT YEARS LAST MONTH.

19 BUT NONETHELESS, THE FACT THAT IT WAS
20 A – IT MAY HAVE BEEN A GUILTY PLEA AND EVEN A NEGOTIATED
21 GUILTY PLEA DOES NOT – DOES NOT DEPRIVE THE STATUTE OF,
22 OF IT'S APPLICATION BECAUSE THE STATUTE SPECIFICALLY SAYS
23 THAT CONVICTION MEANS ANY CONVICTION, GUILTY PLEA OR
24 PLEA OF NOLO CONTENDERE.

25 AND, AS YOU HAVE INDICATED, THIS

1 PARTICULAR OFFENSE, THAT IS, ASSAULT WITH INTENT TO
2 RAVISH, IS THE SAME AS ASSAULT WITH INTENT TO COMMIT
3 CRIMINAL SEXUAL CONDUCT IN EITHER THE FIRST OR THE
4 SECOND DEGREE WHICH COMES WITHIN THE MOST SERIOUS
5 CRIME CLASSIFICATION. AS DOES ARMED ROBBERY, OF COURSE.

6 AND OUR, OUR COURTS OVER THE YEARS HAVE
7 TREATED THIS, THIS PARTICULAR STATUTE AND VARIOUS
8 NUANCES OF IT, DEPENDING UPON THE FACTS OF THE MATTER.

9 I HAD THE TASK OF TRYING THE VERY FIRST
10 ASSAULT - EXCUSE ME, THE FIRST LIFE WITHOUT PAROLE CASE
11 IN RICHLAND COUNTY SOME SIX OR SEVEN YEARS AGO. AND
12 OTHER ARGUMENTS WERE RAISED NOT HAVE - THAT HAVE NOT
13 BEEN RAISED HERE TODAY.

14 AND, FRANKLY, YOU'VE DONE THE RESEARCH
15 ON ALL THE CASES, I'M CERTAIN, AND, AND MAY NOT HAVE BEEN
16 ABLE TO FIND ONE BECAUSE IT DOESN'T EXIST WITH A TWENTY-
17 EIGHT YEAR-OLD CONVICTION IN THE BACKGROUND AND I TAKE
18 YOUR WORD FOR THAT.

19 BUT I DON'T THINK THAT THE TIMING OF IT IN, IN
20 THAT REGARD DEFEATS THE APPLICATION OF THE STATUTE.
21 AND, CLEARLY, THE GENERAL ASSEMBLY MUST HAVE HAD WITHIN
22 IT'S - WITHIN IT'S INTENTION AT THE TIME THAT ANY OFFENSE,
23 HOW EVER OLD, SIMPLY BECAUSE IT DID NOT CHOOSE TO PLACE
24 A TIME LIMIT ON THIS - ON THIS STATUTE AND IT HAS EVERY
25 RIGHT TO DO THAT. AND IN SOME CASES, OF COURSE, OUR

1 GENERAL ASSEMBLY HAS SPECIFICALLY, IN RELATIVELY MINOR
2 OFFENSES, DRIVING UNDER THE INFLUENCE, DRIVING UNDER
3 SUSPENSION, IT SETS A TIME WITHIN WHICH THE APPLICATION
4 OF, OF ENHANCEMENT FAILS BECAUSE THE, THE OFFENSE DID
5 NOT OCCUR WITHIN TEN YEARS OR WITHIN FIVE YEARS OF AN
6 EARLIER OFFENSE.

7 AND SO IT HAD THE RIGHT TO DO THAT WITH
8 THIS STATUTE AS WELL, HAS IT CHOSEN TO DO SO. BUT IT DID
9 NOT. AND FOR THAT REASON I MUST CONCLUDE THAT IT WAS
10 WITHIN, WITHIN THE INTENTION OF THE GENERAL ASSEMBLY TO
11 DO JUST WHAT IT HAS DONE.

12 AND I CANNOT FIND THAT THE APPLICATION OF
13 THE STATUTE UNDER THESE CIRCUMSTANCES CONSTITUTES
14 CRUEL AND UNUSUAL PUNISHMENT. FOR THAT REASON I MUST
15 RESPECTFULLY DENY YOUR MOTION.

16 MR. HOOD: THANK YOU, YOUR HONOR.

17 THE COURT: THANK YOU.

18 ALL RIGHT.

19 MR. KNIGHT, COME AROUND, PLEASE.

20 MR. BOWERS, IF YOU'LL COME AROUND.

21 MR. HOOD.

22 I NEED THE REST OF THE RECORD.

23 MR. KNIGHT: YOUR HONOR, YOU'VE HEARD
24 THE SEPTEMBER 6 OR 7 OF 1976. I'LL GO TO HIS NEXT
25 CONVICTION.

1 POSSESSION OF MARIJUANA AND POSSESSION
2 OF PARAPHERNALIA, WHICH DON'T CONSIDER TO BE A CRIMINAL
3 OFFENSE.

4 HE WAS CONVICTED ON 4/29 OF 1989.

5 THE COURT: OKAY.

6 MR. KNIGHT: ON 4/7 OF 1991 HE WAS
7 CONVICTED OF POSSESSION OF UNLAWFUL WEAPON. ON, IT
8 LOOKS LIKE 9/27 OF 1991 HE WAS CONVICTED OF RECEIVING
9 STOLEN GOODS. 7/20 OF 1991, ASSAULT AND BATTERY. ON JUNE
10 15 OF 1992 HE WAS CONVICTED OF BURGLARY SECOND DEGREE.

11 THIS SAYS VIOLENT. I CAN'T VERIFY; I'M JUST
12 READING THE RAP SHEET.

13 12/21 OF 1994 HE WAS CONVICTED OF CRIMINAL
14 DOMESTIC VIOLENCE. 9/11 OF 1997 HE WAS CONVICTED OF
15 POSSESSION LESS THAN A GRAM OF CRACK COCAINE. 9/30 OF
16 1997 HE WAS CONVICTED OF BREACH OF PEACE. LOOKS LIKE
17 10 - CAN'T BE.

18 BREAKING INTO AN AUTO AND TANKS. HE GOT
19 TIME SERVED. LOOKS LIKE 5/15/03.

20 10/15 OF 2001 HE WAS CONVICTED FROM
21 FAILURE TO REGISTER AS A SEX OFFENDER. 10/10/2001 HE WAS
22 CONVICTED OF DISORDERLY CONDUCT, PETTY LARCENY.

23 AND ACCORDING TO THIS, THAT'S THE
24 CRIMINAL HISTORY OVER TWENTY-EIGHT YEARS OF THIS
25 DEFENDANT.

1 THE COURT: ALL RIGHT, SIR.

2 ANYTHING FURTHER FROM THE STATE, MR.
3 KNIGHT, ON THE ISSUE OF SENTENCING?

4 MR. KNIGHT: NO, SIR.

5 THE COURT: THANK YOU.

6 MR. HOOD.

7 MR. HOOD: WELL, YOUR HONOR, AS WE BOTH
8 KNOW, OUR HANDS ARE TIED IN THIS CASE. I MEAN THERE'S NO
9 SENTENCE BUT ONE SENTENCE.

10 THE COURT: RIGHT.

11 MR. HOOD: SO I MEAN TO STAND UP HERE AND
12 TELL YOU ANYTHING ABOUT JAMES WOULD BE A TOTAL
13 EXERCISE IN FUTILITY.

14 THE COURT: I UNDERSTAND THAT.

15 MR. HOOD: AND AS A RESULT OF THAT, I JUST
16 THINK IT'S SOMETHING THAT I NEED TO SAY FOR MYSELF.

17 THE COURT: RIGHT.

18 MR. HOOD: JAMES IS A RELATIVELY YOUNG
19 MAN WITH - HE HAS BEEN ABSOLUTELY NO PROBLEM
20 WHATSOEVER TO WORK WITH AND I APPRECIATE ALL OF HIS
21 ASSISTANCE AND HIS HELPING ME PUT TOGETHER THIS CASE.

22 THANK YOU.

23 THE COURT: THANK YOU.

24 MR. BOWERS, YOU'D LIKE TO ADD ANYTHING TO
25 WHAT MR. HOOD HAS TOLD ME ON YOUR BEHALF?

1 DEFENDANT JAMES BOWERS: NO, SIR.

2 THE COURT: YOU SAID NO?

3 DEFENDANT NO, SIR.

4 THE COURT: ALL RIGHT.

5 THE, THE SENTENCE IS MANDATED BY LAW
6 UNDER THESE CIRCUMSTANCES.

7 MR. BOWERS, THE SENTENCE OF THE COURT IS
8 THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF
9 CORRECTIONS FOR THE BALANCE OF YOUR NATURAL LIFE
10 WITHOUT THE POSSIBILITY OF PAROLE PURSUANT TO SECOND 17
11 DASH 25 DASH 45 OF THE CODE OF LAWS.

12 THE COURT: THANK YOU.

13 MR. KNIGHT: THANK YOU, YOUR HONOR.

14 MR. HOOD: THANK YOU.

15 THE COURT: ALL RIGHT.

16 - END OF REQUESTED TRANSCRIPT OF RECORD -
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1 I THE UNDERSIGNED DONNA HARTLEY, OFFICIAL
2 COURT REPORTER FOR THE FOURTEENTH JUDICIAL CIRCUIT OF
3 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT
5 OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
6 INTRODUCED IN THE TRAIL OF THE CAPTIONED CASE, RELATIVE
7 TO APPEAL, IN THE CIRCUIT COURT FOR BEAUFORT COUNTY,
8 SOUTH CAROLINA ON THE TWENTY-FIFTH AND TWENTY-SIXTH
9 DAYS OF OCTOBER, 2004.

10 I DO FURTHER CERTIFY THAT I AM
11 NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY
12 HERETO.

13 APRIL 6, 2005

14 
15 COURT REPORTER
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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE OF SOUTH)
CAROLINA)

-vs-)

JAMES BOWERS)

TRANSCRIPT OF RECORD

OCTOBER 28, 2004
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE;

APPEARANCES:

STEVEN H. KNIGHT, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

GENE G. HOOD, PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

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CERTIFICATE OF THE COURT REPORTER	8

EXHIBITS

NO EXHIBITS INTRODUCED

1 THE COURT: ALL RIGHT.

2 MR. HOOD, I'LL BE GLAD TO HEAR FROM YOU.

3 MR. HOOD: YOUR HONOR, WITH RESPECT TO
4 THE MOTION FOR THE NEW TRIAL, THE ERRORS I'VE ALLEGED IN
5 THAT PARTICULAR MOTION ARE THE SAME THAT I MADE DURING
6 THE COURSE OF THE TRIAL.

7 SINCE THE TRIAL I'VE BEEN UNABLE TO
8 UNCOVER ANY ADDITIONAL SUPPORT FOR MY MOTIONS AND,
9 THEREFORE, SIMPLY RELY UPON THE PREVIOUS MATTERS
10 STATED DURING THE COURSE OF THE TRIAL. MY RESEARCH HAS
11 COME UP NEGATIVE FOR ANYTHING FURTHER.

12 THE COURT: THANK YOU, SIR.

13 DOES THAT APPLY TO ALL THREE OF THE
14 GROUNDS?

15 MR. HOOD: THAT IS CORRECT, YOUR HONOR.

16 THE COURT: RULE 29 PROVIDES POST-TRIAL
17 MOTIONS MUST BE MADE WITHIN TEN DAYS OF THE DATE
18 SENTENCE WAS IMPOSED - OF COURSE, THIS IS WELL WITHIN
19 THAT TIME FRAME - AND THE MOTION CAN BE DETERMINED ON
20 BRIEF WITHOUT ORAL ARGUMENTS NEEDING TO BE MADE.

21 THE GROUNDS WHICH ARE SET OUT IN THE
22 MOTION DATED OCTOBER 27 OF 2004 WERE FULLY ARGUED
23 DURING THE COURSE OF THIS TRIAL, AT THE DIRECTED VERDICT
24 STAGE AND SUBSEQUENT TO THE DIRECTED VERDICT STAGE, I
25 THINK PRIOR TO THE IMPOSITION OF STAND AND THIS COURT

1 HAS PREVIOUSLY RULED ON THOSE MOTIONS. THE MOTION TO
2 SUPPRESS THE EVIDENCE, THE TESTIMONY CONCERNING THE
3 VICTIM'S IDENTIFICATION, THE RINGS, THE MONEY, THOSE
4 THINGS I THINK WERE FULLY ARGUED AND I NEED NOT BELABOR
5 THE POINT ON THE RECORD AT THIS JUNCTURE. IT'S SIMPLY TO
6 REVIEW MY RULINGS ON THOSE PRIOR MOTIONS AND ADOPT
7 THOSE RULINGS OF THE COURT THEREBY CLEAR THE WAY FOR
8 THE APPELLATE PROCESS AT THIS POINT IN TIME.

9 THANK YOU.

10 MR. HOOD: YOUR HONOR, THE MOTION WE'RE
11 CONCERNED WITH IS THE SENTENCE. I'VE THOUGHT ABOUT THIS
12 FOR QUITE SOME TIME. I KNOW WE BOTH DISCUSSED
13 PREVIOUSLY WE THOUGHT MAYBE IT WAS SOMETHING THAT
14 COULD NOT BE DONE BUT I GOT TO THINKING ABOUT IT AND, YOU
15 KNOW, I THINK THIS MOTION NEEDED TO BE MADE.

16 I THINK YOU POSSIBLY COULD REVIEW YOUR
17 MOTION - THE MOTION THAT I'D MADE ON THE TWO STRIKES LAW
18 BEING UNCONSTITUTIONAL.

19 THE COURT: RIGHT.

20 MR. HOOD: SO WHAT I DID WAS I WENT BACK
21 TO SEE IF THERE WAS ANY OTHER RESEARCH THAT I COULD
22 FIND THAT WOULD CHANGE TO ADD OR THE PREVIOUS MOTION
23 THAT I MADE AND THE BASIS FOR IT. I WAS ONCE AGAIN
24 UNSUCCESSFUL IN LOCATING ANY FURTHER INFORMATION IN
25 THAT REGARD BUT JUST AS A MATTER OF PRECAUTION I WENT

1 AHEAD AND FILED THE MOTION.

2 THE COURT: I UNDERSTAND. I APPRECIATE
3 THAT.

4 WE DISCUSSED, AS I RECALL, THE FACT THAT
5 IT WAS TWENTY-EIGHT - I BELIEVE TWENTY-EIGHT YEARS
6 BETWEEN 1976 CONVICTIONS FOR ASSAULT WITH INTENT TO
7 RAVISH AND THE CURRENT CHARGES.

8 AS WE INDICATING DURING THE COURSE OF
9 THE ARGUMENTS ON THAT, THE STATUTE DOES NOT INDICATE
10 ANY TIME LIMITATION, STATUTE OF LIMITATIONS OF PRIOR
11 CONVICTIONS FOR THE APPLICATION OF SECTION 17 DASH 25
12 DASH 45 OF THE CODE OF LAWS.

13 AND OUR GENERAL ASSEMBLY HAS CHOSEN
14 NO SPECIFIC STATUTE TO SET A TIME LIMIT UPON WHICH
15 CONVICTIONS CAN BE KEPT ALIVE FOR ENHANCEMENT
16 PURPOSES. IT HAS SPECIFICALLY CHOSEN NOT TO DO THAT IN
17 THIS PARTICULAR STATUTE.

18 I CAN ONLY CONCLUDE THEY DID NOT INTEND
19 TO SET A TIME LIMITATION ON PRIOR SERIOUS AND MOST
20 SERIOUS CONVICTIONS THAT CAN BE USED FOR ENHANCEMENT.

21 AND AS TO THE CONSTITUTIONALLY OF THE
22 STATUTE, OF COURSE IT HAS BEEN RULED ON PRIOR, DOUBLE
23 JEOPARDY APPLICATION, THINGS OF THAT NATURE. THE
24 STATUTE HAS WITHSTOOD THUS FAR CONSTITUTIONAL
25 SCRUTINY AND FOR THAT REASON THE MOTION FOR

1 RECONSIDERATION IS RESPECTFULLY DENIED.

2 - END OF REQUESTED TRANSCRIPT OF RECORD -
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1 I THE UNDERSIGNED DONNA HARTLEY,
2 OFFICIAL COURT REPORTER FOR THE FOURTEENTH JUDICIAL
3 CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
4 CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
5 COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS
6 HAD AND EVIDENCE INTRODUCED IN THE TRAIL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT
8 FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE TWENTY-
9 EIGHTH DAY OF OCTOBER, 2004.

10 I DO FURTHER CERTIFY THAT I AM
11 NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY
12 HERETO.

13 APRIL 6, 2005

14 
15 COURT REPORTER
16
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WITNESSES

STEVE MURPHY

MITCHELL L. KING JR

DOCKET NO.

2003-GS-07-02097

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RANDOLPH MURDAUGH III., Solicitor

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

G857961

00/00/2000

TERM

THE STATE
VS.

11/01/2003

ACTION OF GRAND JURY

True Bill

BOWERS, JAMES

Carlynn Hutto
Foreperson of Grand Jury

Date: 11/02/2004

VERDICT

~~JUL 22 2004~~

Indictment for

Robbery/Armed Robbery

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2003-GS-07-02097

At a Court of General Sessions, convened on 00/00/2000 the
Grand Jurors of BEAUFORT COUNTY present upon their oath:

Robbery/Armed Robbery
=====

16-11-0330

IN THAT ON NOVEMBER 1, 2003 AT APPROX 1:25AM WHILE IN THE LOT OF BROAD
RIVER SEAFOOD 2601 BOUNDARY ST. BEAUFORT, SC, THE DEFENDANT "JAMES BOWERS"
DID COMMIT THE VIOLENT CRIME OF "ARMED ROBBERY" IN THAT WHILE ARMED WITH
A KNIFE, THE DEFENDANT DID PRESENT AND POINT SAID KNIFE AT "CLARE ROBESON"
AND DEMANDED SHE GIVE HIM HER PURSE AND CONTENTS OF THE SAME VALUED AT
APPROX. \$560.00. THE DEFENDANT FLED WITH SAID PROPERTY THEREBY DEPRIVING
THE RIGHTFUL OWNER OF THE SAME. THIS OCCURED IN THE COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.

Randolph M. Mendenhall

SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Beaufort

James Bowers

AKA:

Race:

Sex:

Age:

DOB:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

2003

INDICTMENT/CASE#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery

In violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0, 1, 3, 9

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

Solicitor

Defendant

[Signature]

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 180 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 750, provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$500	\$	
\$25	\$	25.00
\$100	\$	
\$50	\$	
\$40/ea	\$	
	\$	3.75
	\$	128.75

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
10/26/09

Court Reporter:

Donna Hartley

14 1297

STATE OF SOUTH CAROLINA)

County of BEAUFORT)

IN THE COURT OF COMMON PLEAS

JAMES BOWERS #)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2008-CP-07-02189

CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

2008 MAY 23 PM 12:13

INSTRUCTIONS B 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 MC CORMICK CORR. INST.
2. Name and location of Court which imposed sentence BEAUFORT GENERAL SESSIONS COURT
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-07-02097 ARMED ROBBERY

Certified - A True Copy

Elizabeth M. Smith
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

- (b) _____
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 10/26/04 LIFE WITHOUT POSSIBILITY OF PAROLE
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. THE SOUTH CAROLINA SUPREME COURT
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. N/A
- iii. _____

(c) the date of each such result:

- i. _____
- ii. N/A
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. DISMISSED PURSUANT TO ANDERS
- ii. _____
- iii. _____

9. If you answered Ano@ 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) 1.) DEFECTIVE INDICTMENT 2.) SUGGESTIVE IDENTIFICATION
- (b) 3.) INEFFECTIVE ASSISTANCE OF COUNSEL 4.) TRIAL COURT LACKED
- (c) JURISDICTION TO SENTENCE APPLICANT UNDER 17-25-45
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) 1. SEE AMENDMENT 2.) SEE AMENDMENT 3.) SEE AMENDMENT
- (b) 4.) SEE AMENDMENT THE AMENDMENT IS ATTACHED
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ 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) FIRST "PCR" APPEAL
- (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? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. GENE G. HOOD
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- SENTENCING
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

THAT THIS CONVICTION AND SENTENCE BE REVERSED

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 BEAUFORT)

VERIFICATION

I, JAMES HAROLD BOWERS, 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.

James H. Bowers

SWORN to and subscribed before me this 19
day of may, 2008.

Jennifer Franklin (L.S.)
Notary Public

My Commission Expires: 01-31-2010

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JAMES HAROLD BOWERS, 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.

James H. Bowers
Applicant

SWORN or affirmed to and subscribed before me this

19 day of may, 2008.

Janifer C Frankle
Notary Public

My Commission Expires: 01-31-2010

1.) THE INDICTMENT IS FATTALLY DEFECTIVE

THE INDICTMENT 2003- GS-07-08097 ATTACHED AS EXHIBIT (A) DOES NOT CONTAIN A BODY IN IT WHICH SHOULD CONTAIN THE ESSENTIAL ELEMENTS OF THE OFFENSE CHARGED.

MURDOCK V STATE 308 S.C. 143, 417 S.E.2d 543 (1992)

STATING THAT AN INDICTMENT IS SUFFICIENT IF THE OFFENSE IS STATED WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO INABLE THE TRIAL JUDGE TO KNOW WHAT SENTENCE TO PRONOUNCE AND THE DEFENDANT TO KNOW WHAT HE IS CALLED UPON TO ANSWER TO AND WHETHER HE MAY PLEAD AN ACQUITTAL OR CONVICTION UPON.

2.) THE IDENTIFICATION OF APPLICANT SHOULD HAVE BEEN

SUPPRESSED BECAUSE IT WAS UNDUPLY SUGGESTIVE

THE APPLICANT DIDN'T FIT THE DESCRIPTION OF THE ALLEGED ROBBER THE APPLICANT WAS IN CUSTODY AND HAD BEEN ARRESTED AND SHOULD HAVE BEEN PLACED IN A LIVE LINE-UP TO GIVE VICTIM AN OPPORTUNITY TO IDENTIFY HIM. APPLICANT DOESN'T HAVE SALT AND PEPPER BEARD AND HAIR
SUPPORTING FACTS: R/O SUPPLEMENT OF DANIEL S. THOMPSON APPLICANT HAD A BLUE LIGHTER/WALLET AND PROPERTY SHEET FROM THE JAIL THAT LISTED SOME OF THE CONTENTS IN HIS POCKET AND HIS CLOTHING WHICH REFLECTS THE APPLICANT HAD BEEN RECENTLY RELEASED FROM JAIL.

PROBATIVE FACTS: R/O SUPPLEMENTAL INCIDENT REPORT DANIEL S. THOMPSON INTERVIEW WITH VICTIM: VICTIM ADVISED THIS OFFICER THAT SHE WAS THE VICTIM OF AN ARMED ROBBERY THAT OCCURED IN THE JURISDICTION OF BEAUFORT CITY POLICE DEPARTMENT ON 10/31/03 IN WHICH HER PURSE (THE RECOVERED ONE) WAS TAKEN FROM HER AT KNIFE POINT AND HAD ALREADY BEEN REPORTED. THE

VICTIM STATED THAT: ALL THE ITEMS TAKEN WERE STILL INSIDE THE RECOVERED PURSE. DATED 11/1/03 ALSO SEE PROPERTY SHEET WHICH INDICATED THESE ITEMS WERE FOUND NOT STOLEN

PROBATIVE FACTS: R/O DANIEL S. THOMPSON STATED IN THE SUPPLEMENT REPORT DATED 11/03/03 THAT THE SUSPECT RAN, THEN IN THE FIREARM DISPLAY REPORT DATED 11/01/03 R/O DANIEL S. THOMPSON STATED THAT THE SUSPECT WAS WALKING TOWARDS HIM SEE FIREARM DISPLAY REPORT 11/01/03
SEE SUPPLEMENT REPORT 11/03/03

THE VICTIM CLEARLY STATED THAT ALL THE ITEMS TAKEN WERE INSIDE THE RECOVERED PURSE. SEE SUPPLEMENTAL INCIDENT REPORT DATED 11/01/03.

THE NARRATIVE PG 3 OF R/O DANIEL S. THOMPSON INDICATED THAT:
\$120.00 CASH WAS FOUND ON THE GROUND, AND THE SUSPECT HAD A FOLDING BLADE POCKET KNIFE ALONG WITH SOME JEWELRY IN HIS POCKET WHICH INCLUDED A WHITE GOLD WEDDING BAND AND RING. HE ALSO HAD A BLUE WALLET LIGHTER AND A PROPERTY SHEET FROM THE JAIL WHICH LISTED SOME OF THE CONTENT IN HIS POCKET AND CLOTHING.

PROBATIVE FACT:

INTERVIEW WITH COMPLAINANT "SEE SUPPLEMENTAL INCIDENT REPORT" 11/01/03
INTERVIEW WITH VICTIM "SEE SUPPLEMENTAL INCIDENT REPORT" 11/01/03
VICTIM STATED THAT ALL ITEMS TAKEN WERE STILL INSIDE RECOVERED PURSE
OFFICERS ACTIONS "SEE SUPPLEMENTAL INCIDENT REPORT" 11/01/03

THE APPLICANT SUBMITS THAT THE IDENTIFICATION WAS UNDUPLY SUGGESTIVE

STATE V. SMITH 415 S.E.2d 409, 307 S.C. 376 (1992) CERT. GRANTED
REGARDLESS OF THE IDENTIFICATION USED, IT MAY BE SO IMPERMISSIBLE
SUGGESTIVE AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELIHOOD OF
MISIDENTIFICATION.

STATE V. ANDERSON 422 S.E.2d 161 309 S.C. 360 (1992)

HOLDING THAT THE RELIABILITY OF THE IDENTIFICATION IS THE LINCHPIN
IN DETERMINING ADMISSIBILITY OF IDENTIFICATION TESTIMONY U.S. CONST
AMEND. (5) (4)

3.) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL GENE G. HOOD

TRIAL COUNSEL FAILED TO DO A FACTUAL INVESTIGATION, COURT APPOINTED
COUNSEL FAILED TO QUESTION R/O DANIEL S. THOMPSON CONCERNING FACTUAL
INFORMATION CONTAINED IN THE INCIDENT REPORT TO SHOW THE VICTIM
INDICATED THAT ALL THE ITEMS WERE IN THE RECOVERED PURSE AND THUS
COULD NOT HAVE BEEN IN APPLICANT'S POCKET AS ALLEGED, COUNSEL MADE
NO ATTEMPT TO INVESTIGATE WHAT PERSON FOUND THE RECOVERED PURSE
TRIAL COUNSEL WAS INEFFECTIVE BY REFUSING TO REQUEST A CIRCUMSTANTIAL
EVIDENCE CHARGE, WHEN THE STATE'S CASE RELIED UPON CIRCUMSTANTIAL
EVIDENCE WITH SEVERAL BROKEN CHAINS. COURT APPOINTED COUNSEL
WAS FURTHER INEFFECTIVE BY NOT OBJECTING TO THE TRIAL ERROR OF
FAILING TO INCLUDE THE LESSER INCLUDED OFFENSE OF ROBBERY TO THE
URY FOR ITS CONSIDERATION AND THIS WAS HIGHLY PREJUDICIAL.

BRICKLAND V. WASHINGTON 466 US 668 104 S. CT. 2058 801 L. ED. 2d 674 (1984)

THE TWO PRONG TEST FOR DETERMINING WHETHER OR NOT COUNSEL WAS
INEFFECTIVE (1) SHOWING THAT THE DEFENDANT WAS PREJUDICE THEREBY,
THE PRELIMINARY CONSIDERATION UNDER THE FIRST PRONG WOULD SHOW

WHETHER OR NOT COUNSEL PERFORMANCE WAS REASONABLE UNDER PREVAILING NORMS (2) THE SECOND PRONG MANDATES PROOF THAT COUNSEL'S DEFICIENCIES PREJUDICED APPLICANT TO SUCH A DEGREE THEIR EXISTS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERRORS THE OUTCOME WOULD HAVE BEEN DIFFERENT.

MARZULLO V. MARYLAND 561 F.2d 540 4th CIR (1997)

HOLDING THAT THE PROPER STANDARD FOR AN ATTORNEY PERFORMANCE IS ONLY THAT OF REASONABLE EFFECTIVE ASSISTANCE OF COUNSEL.

4.) THE TRIAL COURT LACKED JURISDICTION TO SENTENCE APPLICANT UNDER STATUTE 17-25-45

THIS STATUTE 17-25-45 BECAME EFFECTIVE JUNE 1, 1986, THE STATE RELIED UPON A SEPTEMBER 7, 1976 CONVICTION, TO SENTENCE THE APPLICANT TO LIFE WITHOUT THE POSSIBILITY OF PAROLE, THE SEPTEMBER 7, 1976 CONVICTION WAS UNCONSTITUTIONAL AND THE CONVICTION OCCURRED 26 YEARS AGO. THIS STATUTE WAS NOT EFFECTIVE WHEN THE UNCONSTITUTIONAL CONVICTION OCCURED TO SENTENCE A DEFENDANT UNDER A STATUTE THE CRIME MUST OCCUR WITHIN THE EFFECTIVE DATE OF THE STATUTE.

TO CONVICT OF ASSAULT WITH INTENT TO RAVISH OR RAPE THE STATE MUST PROVE AN ASSAULT BY A MALE ON A FEMALE WITH INTENT TO COMMIT RAPE AS WE HAVE HERETOFORE DEFINED

STATE V WILSON 162 S.C. 413, 161 S.E. 104

STATE V. TUCKNESS 185 S.C. 2d 607

RAVISH OR RAPE THE WORDS BEING SYNONYMOUS IS DEFINED AS THE CARNAL KNOWLEDGE OF A WOMAN BY FORCE AND AGAINST HER CONSENT.

MOORE V. MACDOUGALL 246 S.C. 633, 142 S.E.2d 46

IN ORDER TO CONSTITUTE THE CRIME OF RAPE THERE MUST BE SOME DEGREE OF PENETRATION OF THE MALE GENITAL ORGAN, BUT ANY PENETRATION HOWEVER LIGHT IS ALL THAT IS NECESSARY.

IT IS NOT NECESSARY FOR THE STATE TO PROVE EMISSION.

STATE V. WORTHY 239 S.C. 449

LEE GORDON V. STATE

TRALANGO V. BAEIRY 495 S.E.2d 234, 329 S.C. 228 (1997)

HOLDING THAT THE WORDS OF THE STATUTE MUST BE GIVEN ITS PLAIN AND ORDINARY MEANING UNLESS SOMETHING DIFFERENT IN THE STATUTE REQUIRES A DIFFERENT INTERPRETATION.

ARMY V. McLEOD 492 S.E.2d 794 328 S.C. 435 (1997)

WORDS OF THE STATUTE MUST BE GIVEN ITS PLAIN ORDINARY MEANING WITHOUT RESORTING TO SUBTLE OR FORCE CONSTRUCTION TO LIMIT OR EXPAND THE STATUTE OPERATION.

CHOLTEC V. ESTATE OF REEVES 490 S.E.2d 603, 327 S.C. 511 (1997)

PRIMARY OR FUNDAMENTAL RULE OF STATUTORY CONSTRUCTION A COURT MUST FOLLOW IS TO ASCERTAIN AND GIVE EFFECT TO LEGISLATIVE INTENTION OR PURPOSE AS EXPRESSED IN THE STATUTE.

{ CONCLUSION }

BASED UPON THE FOREGOING ARGUMENT THE APPLICANT'S CONVICTION
AND SENTENCE SHOULD BE REVERSED AND REMANDED FOR A NEW TRIAL.

RESPECTFULLY SUBMITTED
s. James H. Bowers

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES BOWERS #

Applicant

V.

THE STATE OF SOUTH CAROLINA

Respondents.

IN THE COURT OF COMMON PLEAS

C/A

2008 CP

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, SC.

2008 JUN 20 PM 1:00

2008 JUN 20

23 10:56 PM

AN AMENDMENT TO THE POST-
CONVICTION RELIEF APPLICATION

{ PROCEDURAL HISTORY }

THE APPLICANT JAMES BOWERS # WAS INDICTED BY THE
BEAUFORT COUNTY GRAND JURY UPON INDICTMENT 2003-GS-07-02097
FOR ARMED ROBBERY. THE APPLICANT WAS REPRESENTED BY GENE G. HOOD
OF THE BEAUFORT COUNTY PUBLIC DEFENDER'S OFFICE.

THE APPLICANT PROCEEDED TO TRIAL BEFORE THE HONORABLE THOMAS
W. COOPER JR, AND A JURY. THE APPLICANT WAS CONVICTED OF ARMED
ROBBERY, THEN THE HONORABLE THOMAS W. COOPER JR, JUDGE SENTENCED
THE APPLICANT TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
PAROLE PURSUANT TO STATUTE 17-25-45.

{ PRESENTATION OF THE ISSUES WITH CITATION
OF LAWS IN SUPPORT THEREOF. }

Certified - A True Copy

Elizabeth M. Smith
Elizabeth M. Smith, Clerk of Court

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2008-CP-07-02188
	)	
James H. Bowers, #279049,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 23, 2008, 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 Beaufort County Clerk of Court. The Applicant was indicted at the November 2003 term of the Beaufort County Grand Jury for armed robbery (2003-GS-07-02097). Gene Hood, Esquire, represented the Applicant. On October 25, 2004, the Applicant proceeded to trial, after which he was found guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced him to confinement for life without the possibility of parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Following a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Bowers, Op. No. 2008-UP-214 (S.C. Ct. App. filed April 4, 2008). The Remittitur was issued on April 22, 2008.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, Final Anders Brief of Appellant, the Court of Appeals opinion dismissing the appeal, and the Remittitur dated April 22, 2008.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to do a factual investigation.
 - b. Failed to question Daniel S. Thompson concerning factual information contained in the incident report.
 - c. Failed to object to trial error of failing to charge the lesser-included offense of robbery to the jury.
2. Defective indictment.
3. Show-up procedure was unduly suggestive.
4. Trial court lacked jurisdiction to sentence Applicant under S.C. Code Ann. § 17-25-45.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18; 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges that the body of his indictment did not contain the essential elements of the offense charged. Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the

court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution.

See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, the indictment for armed robbery sufficiently alleges the time and place of the incident and puts the Applicant on notice of the charge against him. Accordingly, the indictment is sufficient and this allegation should be denied and dismissed.

V.

The Applicant alleges that his show-up procedure was unduly suggestive. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. In fact, Applicant did raise this issue on direct appeal, and his appeal was dismissed. Therefore, the Court should summarily dismiss this allegation.

VI.

The Applicant alleges that the trial court lacked jurisdiction to sentence him under S.C. Code Ann. § 17-25-45. The Applicant asserts that the statute became effective June 1, 1986, but the State relied on Applicant's September 7, 1976 conviction in sentencing Applicant to life without parole.

It is not a violation of the *ex post facto* clause for the legislature to enhance punishment for a later offense based on a prior conviction, even though the enhancement provision was not in effect at the time of the prior offense. Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998) (citing State v. Dabney, 301 S.C. 271, 391 S.E.2d 563 (1990)). Accordingly, in the present case,

the trial court had jurisdiction to sentence Applicant under § 17-25-45. The Respondent submits that this allegation should be denied and dismissed.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VIII.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Math J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

January 20, 2008

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JAMES H. BOWERS, 279049

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2008-CP-07-2188

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Kelly A. Dennis, Esquire
Griffith, Sadler & Sharp, PA
Post Office Drawer 570
Beaufort SC 29901**

DATED this 20th day of January, 2009.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2008-CP-07-2188

JAMES H. BOWERS,
APPLICANT,
VS.
STATE OF SOUTH CAROLINA,
RESPONDENT.

TRANSCRIPT OF RECORD

SEPTEMBER 2, 2009
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

KELLY A. DENNIS, ESQUIRE
ATTORNEY FOR THE APPLICANT

MATTHEW J. FRIEDMAN, ESQUIRE, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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GENE GRAHAM HOOD	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: All right, the next case is *James H.*
2 *Bowers vs. the State of South Carolina*, 2008-CP-07-2188.
3 Ms. Dennis on behalf of the plaintiff -- excuse me,
4 applicant. Mr. Friedman on behalf of the state.

5 Anything from the state before we begin?

6 MR. FRIEDMAN: No, Your Honor.

7 THE COURT: Ms. Dennis, anything from the applicant
8 before we begin?

9 MS. DENNIS: No, Your Honor.

10 THE COURT: All right, what are the grounds for the
11 application?

12 MS. DENNIS: Very briefly by way of background, Your
13 Honor, the applicant was tried and convicted of armed
14 robbery and sentenced to life without parole pursuant to
15 the two-strike rule. He appealed but was dismissed
16 pursuant to *Anders*. This PCR followed.

17 Our grounds is, our only grounds is ineffective
18 assistance of counsel based on failing to do a complete
19 factual investigation; failing to object to the trial
20 court's lack of charging the lesser-included offense of
21 common-law robbery; failing to challenge the sentence based
22 on prior conviction of common-law robbery; and failing to
23 proper -- properly communicate a plea offer, all of which
24 resulted in prejudice to the applicant as it would have
25 resulted either in acquittal or a lesser sentence.

J. BOWERS - DIRECT EXAMINATION BY MS. DENNIS

4

1 THE COURT: All right, you may proceed. Call your
2 first witness.

3 MS. DENNIS: I'd like to call Mr. Bowers.

4 JAMES H. BOWERS, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 THE COURT: If you'd have a seat, please, and give us
7 your full name for the record.

8 WITNESS: James H. Bowers.

9 THE COURT: What's the H for, Mr. Bowers?

10 WITNESS: Harrell.

11 THE COURT: Thank you, sir.

12 All right, you may proceed.

13 DIRECT EXAMINATION BY MS. DENNIS:

14 Q. Mr. Bowers, you filed this application for a PCR?

15 A. Yes, ma'am.

16 Q. And what were you convicted of?

17 A. Armed robbery and a violent offense with a knife.

18 Q. And what was your sentence?

19 A. Life without parole.

20 Q. And this matter went to trial?

21 A. Yes, ma'am.

22 Q. Who was your trial counsel?

23 A. Mr. Gene Hood.

24 Q. How long had Gene Hood been working on your file prior
25 to trial?

J. BOWERS - DIRECT EXAMINATION BY MS. DENNIS

5

1 A. Three months.

2 Q. And why was that?

3 A. I had another attorney, Mr. Douglas Borsich.

4 Q. And what happened to him?

5 A. And, well, he, he was bringing me a plea deal of
6 fifteen years, and we were discussing it, that he could get
7 it lower to ten.

8 THE COURT: And if you would, please, when you're
9 talking about someone, rather than using he or she, use the
10 name so the record will reflect who said what.

11 WITNESS: All right.

12 BY MS. DENNIS:

13 A. So, me and Mr. Borsich, we was discussing.

14 THE COURT: Thank you.

15 A. Where he said the -- Mr. Borsich said the solicitor
16 offered me fifteen. So, I said, asked Mr. Borsich can we
17 get a lower plea. So, he said he would try. He kept going
18 back and forth, but it never happened.

19 Q. And at some point, was he removed?

20 A. Yes, ma'am.

21 Q. Do you know why?

22 A. No, ma'am.

23 Q. Prior to trial, how many times did you meet with Mr.
24 Hood?

25 A. Three times.

J. BOWERS - DIRECT EXAMINATION BY MS. DENNIS

6

1 Q. And was Mr. Bostsich [sic] replaced by Mr. Hood?

2 A. Yes, ma'am.

3 Q. Did Mr. Hood ever meet with you at all?

4 A. Yes, ma'am.

5 Q. Have many times did he meet with you?

6 A. Three times.

7 Q. Did, did he ever call you at all?

8 A. No, ma'am.

9 Q. Did he ever convey any plea offers to you?

10 A. No, ma'am.

11 Q. So, whatever happened with the plea offer that was
12 made to Mr. Bostich?

13 A. I don't know.

14 Q. Do you know if any plea offers were ever made to Mr.
15 Hood?

16 A. Not to my knowledge.

17 Q. And what had you and Mr. Bostich decided about the
18 plea offer? What was your last conversation about it?

19 A. Well, our last conversation with Mr. Borsich was if he
20 can get it reduced to twelve, I would have accepted the
21 twelve years.

22 Q. So, after Mr. Bostich was removed, you never heard
23 anything about a plea after that?

24 A. No, ma'am.

25 Q. And in this case, it was alleged that you stole a

J. BOWERS - DIRECT EXAMINATION BY MS. DENNIS

7

1 lady's purse at knife point. Is that right?

2 A. Yes, ma'am.

3 Q. And subsequently, that purse was recovered at some
4 point. Is that right?

5 A. Yes, ma'am.

6 Q. How do you know that?

7 A. Because I read it in the report.

8 Q. Okay, and do you think Mr. Hood should have contacted
9 the person that recovered the purse?

10 A. Yes, ma'am.

11 Q. All right. Why do you think that?

12 A. Because it would help made a difference in, in the
13 case. Maybe I could have got an acquittal or something,
14 you know.

15 Q. How so?

16 A. It's because, I mean, there was no fingerprint or
17 nothing of anything that happened, you know. Just figure
18 it would, it would have been a benefit in my favor.

19 Q. Because that would be another potential witness,
20 right?

21 A. Right.

22 Q. And to your knowledge, did Mr. Hood ever contact that
23 person?

24 A. Not to my knowledge.

25 Q. And then this matter went to trial, right?

1 A. Yes, ma'am.

2 Q. And at trial, did Mr. Hood object to the court's
3 failure to charge the lesser-included offense of robbery?

4 A. Not to my -- I don't recall it.

5 Q. Okay, and prior to this conviction that we're
6 discussing today, you were convicted of common-law robbery
7 in 1976. Is that right?

8 A. Yes, ma'am.

9 Q. That was common-law robbery?

10 A. Right.

11 Q. And is it your understanding that this common-law
12 robbery conviction was used to enhance your sentence under
13 the two-strikes law?

14 A. Yes, ma'am.

15 Q. And do you think that if the lesser-included charge
16 had been charged to the jury, you would have, you would
17 have faced a lesser sentence?

18 A. Yes, ma'am.

19 Q. And, and was it, in fact, charged?

20 A. Yes, ma'am.

21 Q. The lesser-included offense, was that charged to the
22 jury?

23 A. No.

24 Q. And at the sentencing stage, did Mr. Hood object to
25 using your prior conviction to enhance the charge?

J. BOWERS - DIRECT EXAMINATION / CROSS-EXAMINATION

9

1 A. I, I, I don't remember.

2 Q. Okay. Well, to be more specific, did he object to
3 using it based on the fact that your prior conviction was a
4 common-law robbery and, therefore, not subject to the two-
5 strikes law?

6 A. No, ma'am.

7 Q. And if he had objected, do you think your sentence
8 would have been less?

9 A. Yes, ma'am.

10 MS. DENNIS: Okay, I think that's all I have for you.
11 Please answer any questions the state may have.

12 THE COURT: Cross-examine.

13 MR. FRIEDMAN: Briefly, Your Honor.

14 CROSS-EXAMINATION BY MR. FRIEDMAN:

15 Q. Mr. Bowers, do you know the name of the officer that
16 found the purse?

17 A. No, sir.

18 Q. Do you know if he testified at the trial?

19 A. I, I don't think so.

20 MR. FRIEDMAN: I have nothing further, Your Honor.

21 THE COURT: Redirect?

22 MS. DENNIS: Nothing, Your Honor.

23 THE COURT: You may step down.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: All right, you may call your next witness.

G. HOOD - DIRECT EXAMINATION BY MR. FRIEDMAN

10

1 MS. DENNIS: Nothing further from the applicant, Your
2 Honor.

3 THE COURT: Anything from the state?

4 MR. FRIEDMAN: Yes, Your Honor. The state would call
5 Gene Hood.

6 GENE GRAHAM HOOD, BEING DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 THE COURT: If you would, please, give us your full
9 name for record, spelling your last.

10 WITNESS: Gene Graham Hood, H-o-o-d.

11 THE COURT: Very good. Thank you, sir.

12 DIRECT EXAMINATION BY MR. FRIEDMAN:

13 Q. Mr. Hood, how long have you been practicing law?

14 A. Thirty-six years.

15 Q. How much of that time has been in criminal law?

16 A. Thirty-six years.

17 Q. Have you had experience in armed-robbery trials?

18 A. Probably a hundred or so.

19 Q. You were appointed in this case. Is that correct?

20 A. I was the public defender for Beaufort County at the
21 time of this particular case. And the attorney who was
22 originally assigned that I assigned to this was an attorney
23 by the name of Doug Borsich.

24 THE COURT: Could you spell that for the court,
25 please?

G. HOOD - DIRECT EXAMINATION BY MR. FRIEDMAN

11

1 WITNESS: B-o -- you know, and I'm, I'm going to guess
2 here.

3 THE COURT: Well, do we have it anywhere in the record
4 or something?

5 MR. FRIEDMAN: Your Honor, I believe it's
6 B-o-r-s-i-c-h.

7 THE COURT: All right, that will do it. We'll see if
8 we can't find it.

9 WITNESS: But it's Douglas, first name.

10 BY MR. FRIEDMAN:

11 A. He was originally assigned to the case by me, and Mr.
12 Borsich left the office and sought other employment.

13 Actually, he went back to school to become a nurse of some
14 type, but I'm not quite sure again what, what the field
15 was. And at that time, I picked up in the case and talked
16 to Mr. Bowers about the substitution of counsel and the
17 reason why and things of this nature, and asked him if he
18 wanted me to proceed. So, I ended up taking the case on.

19 Q. Did he have any problems with that?

20 A. Not that I'm aware of. He never voiced any, any
21 problems with that.

22 Q. Do you recall about how many times you met with him?

23 A. I really don't recall. I, I visited my clients quite
24 often and, and generally at least once to twice a month,
25 the ones that were in jail.

1 Q. Okay. During those meetings, do you recall if you
2 discussed the elements of the charge the state was required
3 to prove?

4 A. Yes. Mr., Mr. Bowers was served with a notice of life
5 without parole under the two-strikes law. And so once he
6 was served with that, we, we did an awful lot of talking
7 about that particular issue. And we also -- I think he
8 asked me about his earlier negotiations that Mr. Borsich
9 had had with the state. And then the state apparently
10 discovered that he had these, this prior conviction, and I
11 don't recall looking at the particular rap sheet. But we,
12 we litigated that particular issue in court before Judge
13 Cooper as to the validity of the convictions, the prior
14 conviction that he had. And I was thinking that it was
15 armed robbery and CSC for some reason.

16 But anyway, but anyway, we litigated that particular
17 issue fully as to whether or not the two-strike law applied
18 to Mr. Bowers. And that motion that I made and, and the
19 litigation that we did was not favorably received by Judge
20 Cooper, and he denied it, and Mr. Bowers was sentenced
21 under the two-strike law, mandatory life without parole.

22 Q. Were there any negotiations with the state about
23 possibly dismissing, taking LWOP off the table?

24 A. They, they refused and, and that was the thing that
25 really kind of concerned me because originally they had

G. HOOD - DIRECT EXAMINATION BY MR. FRIEDMAN

13

1 made some offers because I, you know, noticed that in the
2 file that Mr. Borsich had discussed with Mr. Bowers about a
3 plea. And I think it -- and it did state fifteen years
4 here in the documents that I have, and -- but that was
5 withdrawn. Once they found out about the prior conviction,
6 apparently they -- well, they refused to do anything other
7 than proceed, you know, with the life without parole.

8 Q. Did you and the applicant discuss potential defenses?

9 A. Well, you know, this was not an unusual case, but when
10 you get served with a notice of life without parole, you
11 have one of two choices. You either walk in, plead guilty
12 and get a life without parole sentence. Or, which is what
13 I advise all of my clients to do, and that is simply we'll
14 try the case, you know, and that's exactly what I advised
15 Mr. Bowers. Let's get it on. You know, we got to -- we,
16 we have no choice here but to, but to fight, and that's
17 exactly what we did.

18 We went over it and discussed all of the issues
19 involved in the case. You know, it depended upon an
20 eyewitness identification on the part of the victim in
21 case. She apparently was at a night club called Coconuts
22 in Beaufort on Highway 21 where apparently she was not
23 supposed to be, and she was married. And she parked her
24 car over in the parking lot over at Broad Rive Seafood, it
25 used to be called at that particular time. Parked the car

1 there and then walked across an area to get to Coconuts.
2 And prior to entering Coconuts, she took off her wedding
3 rings and things of that nature and stuck them in her
4 wallet, and had been in there for quite some period of
5 time. And finally departed sometime around 1:30, I think
6 if I recall correctly, and was walking to her car and got
7 to her car when she alleged that Mr. Bowers confronted her
8 with a knife and said give me your money and your purse,
9 whatever.

10 And she said, I think she said initially I don't have
11 any money or something like that, and then he made another
12 comment allegedly. And he ended up taking her purse, and
13 she described the knife as being approximately a blade of
14 about three, three and a half inches long, somewhere in
15 that neighborhood. And once he had the purse, he took off
16 in a direction towards the Air Station and away from the
17 club.

18 She immediately hollers over to some people that were
19 standing outside of this Coconuts club to have them call
20 the police. And she goes over and talks to them, and they
21 end up calling 911, and then the search begins.

22 And about, if I recall correctly, somewhere in the
23 neighborhood of about thirty-five or forty-five minutes
24 later, about thirty-five minutes later, Mr. Bowers was seen
25 somewhere around the La Hacienda Mexican restaurant and

G. HOOD - DIRECT EXAMINATION BY MR. FRIEDMAN

15

1 spotted wearing a plaid coat and dark pants that the victim
2 had described the defendant as wearing. And so they gave
3 pursuit, and Mr. Bowers it turned out to be was this person
4 who ran into the bushes, and the officer saw him put
5 something in the bushes.

6 But once he got him out, he went back to the bushes,
7 and there in the bushes he found \$120 in twenty-dollar
8 bills. That's significant because of the victim's saying
9 and there being a receipt for -- she went to an ATM machine
10 just prior to entering Coconuts, and I guess she was trying
11 to decide whether she was going to be successful in not
12 having to spend her money in Coconuts or, you know. But
13 she ended up not having spent any of her \$120.

14 And she described \$120 as being taken in twenty-dollar
15 bills. She described two rings, her wedding ring, which a
16 diamond ring, as having something to do with a soldering
17 uniqueness about it somewhere at the bottom of it, if I
18 recall correctly.

19 And so when Mr. Bowers was brought out of the bushes
20 and they recovered the \$125 -- \$120, rather, they had him
21 empty his pockets up on the top of the car. On top of the
22 car, he laid out the wedding rings and a knife which had a
23 blade approximately three and a half inches long. And I
24 don't recall any other items. She had also said something
25 about credit cards, but I don't think the credit cards were

1 -- I'm pretty sure they were not in Mr. Bowers's pocket.

2 About ten minutes or so passed. They contacted the
3 victim. Had the victim come down, and this is where we get
4 into the show up issue. She comes down in an automobile.
5 They shine the spotlight, headlights of the vehicle and,
6 and bring Mr. Bowers out of the back of the vehicle
7 handcuffed. She says that's the man, and those are my
8 rings.

9 And the state was very cooperative. They gave her her
10 rings back so she could go home to her husband and have her
11 wedding rings without having to explain what they were
12 doing in her pocketbook in a nightclub. Well, but anyway,
13 so after that point in time, the state gave her the money
14 and gave, you know, everything back to her.

15 We issue -- we litigated the issue of the show up. It
16 was, it was denied. We then fought among the fingerprints,
17 that they failed to fingerprint anything. The money, the
18 pocketbook, there was a variety of things. We just fought
19 them on anything we could, even the spelling of somebody's
20 name, if I recall correctly. But anyway, we were not
21 successful.

22 Q. Did you file any Brady or Rule 5 motions?

23 A. Yes.

24 Q. Did you review ---

25 A. Well, I would take that back now. Mr. Borsich, he did

G. HOOD - DIRECT EXAMINATION BY MR. FRIEDMAN

17

1 that originally.

2 Q. Okay.

3 A. It's a standard procedure in our office to file those
4 in every case, and I sign the master list for every case
5 and send that to the solicitor. And the solicitor in
6 return reciprocates.

7 Q. Okay. Did you have a chance to review the discovery
8 material with the applicant?

9 A. Yeah. We, we, we talked about it, yes. We reviewed
10 it. I don't know whether I gave him a copy or not. Mr.
11 Borsich may have even given him a copy. But a lot of time,
12 we don't give copies of -- we advise the client against
13 accepting a copy at the jail. And the reason being is it's
14 laying there in their cell, and the other inmates have an
15 opportunity to go through it. And other inmates have a
16 motive to want to be able to improve their situation with
17 their case. So, therefore, they come up with some
18 allegation that Mr. So-And-So told me that he did X, Y, and
19 Z and here's how he did it. Well, it's all right there in
20 the report. So, we, we generally caution them about that
21 particular possession of those documents.

22 Q. What kind of investigation did you do other than
23 reviewing the discovery?

24 A. Well, I took a ride out to Coconuts at about 1:30 in
25 the morning in that parking lot area just to get an idea of

1 the lighting out there and things of that nature at that
2 particular time. And I did it on the same night of the
3 week, which was a Saturday night, if I recall correct. I
4 could be wrong on that.

5 But anyway, I went out there on, on the night that I
6 thought was the night of the week that this occurred and --
7 just to get a feel for the, you know, the lighting
8 conditions and terrain and things of that nature. And to
9 see, you know, for myself, get a good idea of the layout
10 and things of that nature.

11 And then I went to -- I knew the La Hacienda area, and
12 I knew the station where they took Mr. Bowers and did the
13 shakedown basically and things of that nature and the show
14 up.

15 Q. Did you think you had enough time to prepare for
16 trial?

17 A. I had enough time, and, and I'll have to tell you. To
18 be perfectly honest with you, I was working with Mr.
19 Borsich on this case prior to Mr. Borsich's leaving. I,
20 when I was running the office, the attorneys would come to
21 me about particular cases and seek advice, and, and
22 basically that's what I was doing. So, I was aware of the
23 case way before I took it over.

24 Q. Did you request a jury charge on a lesser-included
25 offense?

G. HOOD - CROSS-EXAMINATION BY MS. DENNIS

19

1 A. I, I did not go back through the transcript, and I do
2 not know whether I did or not. I, I don't think that there
3 was any possibility of a common-law robbery when the victim
4 vividly described a knife, and the knife was found or the
5 alleged knife was found. And I just didn't think that
6 there was any evidence that there was a mistake of any type
7 for me to ask for a lesser-included offense. I may have,
8 but I doubt it.

9 MR. FRIEDMAN: I have nothing further, Your Honor.

10 THE COURT: Cross-examine, or reexamine. All right,
11 cross-examine.

12 CROSS-EXAMINATION BY MS. DENNIS:

13 Q. Mr. Hood, at the time of the trial in 2004,
14 approximately how many cases did you have?

15 A. Myself?

16 Q. Yourself.

17 A. About four hundred.

18 Q. And did you have the time to interview all potential
19 witnesses in all of those cases?

20 A. Well, if you're going to try them, you better know
21 what they're going to say. Yeah, I, I -- you know, the
22 most important thing is, is working with your client and,
23 and getting the information from your client that's going
24 to assist you in being able to investigate the case even
25 more thoroughly than what the state has investigated it.

1 And what I do is I go through these police reports and
2 things of that nature and look for things and issues in the
3 case for me to go out and further investigate and, and
4 that's how I do it. I may not interview every witness in
5 the case. But I, I look for the ones that are going to be
6 valuable to me and, and my client.

7 Q. Did you talk to the person who recovered the purse?

8 A. That's a good question. I'm pretty sure that person
9 testified at trial. I just, I just don't remember.

10 Q. Are you speaking of the officer, or the person that
11 found it on the train tracks?

12 A. I think it was the person who found it on the train
13 tracks but I, I don't think I talked to that person.

14 See, the issue with respect to the purse was the fact
15 that they did not fingerprint it. They didn't do anything
16 with that. And once again, it was another one of those
17 little issues in the case that, that leans towards Mr.
18 Bowers's favor and that the state has failed to do. And
19 all they had was the recent arrest after the event occurred
20 and the eyewitness identification, the show up, and things
21 of that nature, and they didn't fingerprint the money.
22 They didn't do a lot of things that I thought, you know,
23 were issues in Mr. Bowers's case.

24 Q. Did you raise those issues to the trial court?

25 A. I think. I'm pretty sure I did. I hope I did. I

G. HOOD - CROSS-EXAMINATION BY MS. DENNIS

21

1 know I asked -- I recall the victim in the case, and this
2 was an issue that Mr. Bowers and I talked about a little
3 bit, was she alleged that the person who committed the
4 robbery had salt and pepper hair. Well, and so I asked
5 her. I said, you know, well, how do you describe salt and
6 pepper hair? She said, well, it was salt and pepper. I
7 said, well, you mean like mine? And she says not that bad
8 or something along that line. But I do recall that Mr.
9 Bowers had no salt in his hair.

10 But if, if you go out there at night, and that was the
11 thing that I was talking about was checking outside with
12 the lighting and things of that nature, it could very
13 easily -- you could miss something and see other tints in
14 a, in a person's hair that you, you know.

15 Q. Can you explain to me briefly how the two-strike rule
16 works?

17 A. Well, you have one most serious offense conviction and
18 you are accused and convicted of another most serious
19 offense, mandatory life without parole. That's the two-
20 strike law. Now, quite naturally you have to be convicted
21 before you have a second, and that's where it kicks in with
22 the mandatory life without parole. If you walk in and you
23 plead to that particular thing, then you, you get it, you
24 know. So, it's much better to go through the trial and
25 have the conviction.

1 Then you have the three-strike law, which are
2 basically three serious offenses, convictions on your
3 record. And that third one would -- again, with notice
4 from state, would kick in the three-strike law if you are
5 convicted.

6 Q. Does common-law robbery count towards the two-count
7 strike law?

8 A. Common-law robbery is not armed robbery. Armed
9 robbery is a most serious offense; common-law robbery is
10 not make a most serious offense.

11 MS. DENNIS: May I approach the witness, Your Honor?

12 THE COURT: Certainly.

13 BY MS. DENNIS:

14 Q. Mr. Hood, I'm going to show you a document, and if
15 you'll just explain to me what that document is?

16 A. It's an indictment for armed robbery, grand larceny,
17 and kidnapping, I guess.

18 Q. Okay, and on the back, does it show that the -- that
19 Mr. Bowers pled guilty?

20 A. Correct.

21 Q. And what did he plead guilty to?

22 A. Looks like he was convicted of or pled to common-law
23 robbery, and twenty-one years each as to assault with
24 intent to ravish. But this document was presented at, at
25 that court, if I'm -- because they had to have certified

G. HOOD - CROSS-EXAMINATION BY MS. DENNIS

23

1 copies of the documents. And this is what Judge Cooper had
2 and what the state presented.

3 Q. I guess, Mr. Hood, my question is based on what you've
4 told me about the two-strike law, how does this constitute
5 the first strike if it's common-law robbery?

6 A. Only thing I can tell you is the twenty-one years as
7 to each as to the assault with intent to ravish -- I'd have
8 to go back through the hearing on that particular matter in
9 the transcript to be able to tell you anything about that.
10 And it could have been -- excuse me.

11 (A PAUSE.)

12 A. And this was -- if, if I recall correctly, this was an
13 issue on appeal. That was sent up as one of the issues on
14 appeal, that I appealed in the notice of intent to appeal.
15 I don't know what the outcome of that particular issue was.

16 Q. Mr. Hood, if I showed you a transcript of the
17 sentencing stage of the hearing, would that refresh your
18 memory as to what you argued before the court?

19 A. No. What I'm talking about is the appeal. I, when I
20 did up the appeal, I appealed the decision of the judge on
21 the two-strike law and the mandatory life without parole
22 sentence.

23 Q. Did you bring up to the trial court that common-law
24 robbery might not constitute a first strike in this case?

25 A. I don't recall.

1 MS. DENNIS: I think that's all I have for you. Thank
2 you.

3 THE COURT: Reexam?

4 MR. FRIEDMAN: Nothing further.

5 THE COURT: All right, you may step down.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: I don't find the transcript of the record
8 in -- on the motions. I have a trial transcript of the
9 testimony and *voir dire*, and I don't even think it has
10 argument, or not argument but the charge.

11 MS. DENNIS: The part I saw, Your Honor, is ---

12 THE COURT: Well, if you could, if you would, please.

13 MS. DENNIS: It's page 275 of what I have as the
14 record on appeal. I think that begins with discussion of
15 -- actually, around 272 is when they start the discussion
16 of the two-strike rule.

17 (A PAUSE.)

18 MR. FRIEDMAN: Your Honor, looking at page 280, it
19 looks like the state was relying on the assault with intent
20 to ravish.

21 THE COURT: That's what I was looking at.

22 MR. FRIEDMAN: They seem to say it was the same as
23 today as ---

24 THE COURT: Criminal sexual conduct.

25 MR. FRIEDMAN: --- assault, intent to commit criminal

1 sexual conduct.

2 THE COURT: All right, is there anything else?
3 Argument?

4 MS. DENNIS: Briefly, Your Honor, I do want to point
5 out that ---

6 THE COURT: Or is there any reply testimony first?

7 MS. DENNIS: Oh. no, sir.

8 THE COURT: All right, go ahead, ma'am, please.

9 MS. DENNIS: I would point out that I have the Court
10 of Appeals opinion that the only issue on appeal was the
11 issue of the identification.

12 THE COURT: But again, in this case the one that
13 concerns the court is whether or not the life without
14 parole provisions applied, whether or not the trial counsel
15 was ineffective in not addressing that. But from my view,
16 and I do think that the court was -- I mean, counsel --
17 it's unfortunate the index doesn't have -- well, it
18 references to the argument there at the end, and I thank
19 you for finding it.

20 But looking at it, it does seem that Mr. Hood raised
21 the question, not only of the robbery which the court
22 apparently didn't rely on, but the assault with intent to
23 ravish, which I think he said was 1976. Might be some
24 question about appellate counsel, but that's -- here the
25 ineffective assistance of counsel is trial counsel.

1 All right, is there anything else on the issue of
2 whether or not the matter of the prior -- and it was --
3 well, that -- the question is whether the assault with
4 intent to commit, commit -- assault with intent to ravish
5 is the equivalent of criminal sexual conduct, assault with
6 intent to commit criminal sexual conduct. Apparently, not
7 only did the trial counsel raise it, but also the trial
8 judge addressed it at length.

9 All right, anything else now as far as -- and you say
10 the identification. I don't -- all I have is an *Anders*
11 brief and opinion dismissing the appeal, so I don't really
12 have -- and I think in the *Anders* brief was the
13 identification issue.

14 All right, anything else?

15 MR. FRIEDMAN: No, Your Honor.

16 MS. DENNIS: No, Your Honor.

17 RULING OF THE COURT:

18 THE COURT: All right, as far as the question, and
19 that concerned the court the most, and I -- if anything, it
20 concerned also the trial judge as to the effect of a plea
21 to an action or to a charge under the law in 1976, whether
22 or not that would be applied. But the trial attorney, Mr.
23 Hood, apparently argued with some, with some -- with great
24 vigor the issue. So, I don't think he could be considered
25 to have not been attentive to his duties as trial counsel

1 on that particular regard.

2 Anything else from the applicant?

3 MS. DENNIS: No, Your Honor.

4 THE COURT: All right, I'll need -- state?

5 MR. FRIEDMAN: Nothing from the state, Your Honor.

6 THE COURT: From the testimony and the review of the
7 record as I have it, as to the allegations of ineffective
8 assistance of counsel, I find that the applicant has failed
9 to meet its burden as to whether or not there was a
10 deviation from the standard of reasonable counsel in his
11 area of law, and that that resulted in the particular
12 prejudice that counsel -- or the applicant seeks.
13 Therefore, must deny the application.

14 And, Mr. Friedman, if you would prepare a proposed
15 order?

16 MR. FRIEDMAN: Yes, Your Honor.

17 THE COURT: Dismissing the application with prejudice.

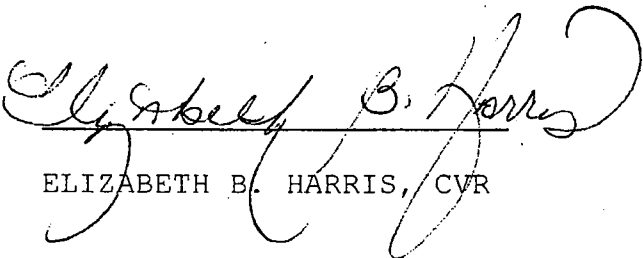
18 All right, thank you very much. Good luck to you,
19 sir.

20 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON
THE 2ND DAY OF SEPTEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

MAY 1ST, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2008-CP-07-2188
	)	
James Bowers, #279049,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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 JAMES BOWERS AU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 23, 2008. The Respondent made its Return on January 20, 2009. An evidentiary hearing into the matter was convened on September 2, 2009 at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Kelly A. Dennis, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Gene Hood, Esquire, also testified at the hearing. This Court had before it the trial transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the direct appeal records, the PCR application, and 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 Beaufort County Clerk of Court. The Applicant was indicted at the November 2003 term of the Beaufort County Grand Jury for armed robbery

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(2003-GS-07-02097). Gene Hood, Esquire, represented the Applicant. On October 25, 2004, the Applicant proceeded to trial, after which he was found guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced him to confinement for life without the possibility of parole (LWOP).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Following a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Bowers, Op. No. 2008-UP-214 (S.C. Ct. App. filed April 4, 2008). The Remittitur was issued on April 22, 2008.

ALLEGATIONS

Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to do a factual investigation.
 - b. Failed to question Daniel S. Thompson concerning factual information contained in the incident report.
 - c. Failed to object to trial error of failing to charge the lesser-included offense of robbery to the jury.
2. Defective indictment.
3. Show-up procedure was unduly suggestive.
Trial court lacked jurisdiction to sentence Applicant under S.C. Code Ann. § 17-25-45.

At the PCR hearing, Applicant asserted only the following grounds for relief:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to do complete investigation.
 - b. Failed to challenge the sentence.
 - c. Failed to communicate plea offer.
 - d. Failed to object to trial error of failing to charge lesser-included offense of robbery.

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

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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).

The Applicant testified that trial counsel only represented him for three months prior to trial. He asserted that Douglas Borsich represented him prior to Mr. Hood. Applicant testified that Mr. Borsich obtained a plea offer of fifteen (15) years and said he could probably get it down to ten (10). He asserted that he does not know what happened to the offer of fifteen (15) years once Mr. Hood took over the case. Applicant testified that he told Mr. Borsich he would have accepted an offer of twelve (12) years or less. Applicant asserted that counsel should have contacted the person that found the purse. He contended that counsel did not object to the trial court's failure to charge a lesser-included offense.

Trial counsel testified that he took over the case after Mr. Borsich left the office. He asserted that Applicant had no problem with the substitution. He testified that the officer who recovered the purse testified at trial. Counsel testified that he did not talk to the person who found the purse and he did not test the purse for fingerprints. He asserted that the lack of fingerprints was in Applicant's favor because the defense could argue that the State failed to get fingerprint analysis. Counsel asserted that he made a pre-trial motion on the identification issue, and the issue was litigated and denied. Counsel testified that as part of his investigation he rode out to the scene of the robbery and the area where Applicant was apprehended at 1:30 a.m.

Counsel testified that Applicant was sentenced to LWOP based on the two-strike law. He asserted that he challenged the validity of Applicant's prior convictions, but the trial judge found that Applicant's prior conviction for assault with intent to ravish was the equivalent to assault

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with intent to commit criminal sexual conduct - 1st or 2nd degree, which are both most serious offenses. Counsel testified that the solicitor would not drop the LWOP notice in favor of a plea. He told the Applicant that his two options were to either plead to LWOP or go to trial. Counsel testified that he believes the State made the offer for fifteen (15) years to prior counsel before they discovered Applicant's prior convictions and prior strike offense.

Counsel asserted that he did not recall any discussion about requesting a jury charge on the lesser-included offense of common law, but he did not think there was any possibility of getting that charge based on the victim's testimony that there was a knife and the knife actually being recovered from Applicant's pocket.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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.

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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).

This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the possible punishments, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

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 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.

This Court finds that counsel properly challenged Applicant's prior strike conviction. The trial judge found that Applicant's prior conviction for assault with intent to ravish was the

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equivalent of assault with intent to commit CSC. Moreover, this Court finds no merit in Applicant's claim that counsel failed to communicate plea offers. Counsel testified that there was no plea offer after he took over the case. Counsel believed that once the State discovered Applicant's prior strike offense, they noticed Applicant for LWOP and refused to take it off the table.

This Court finds that counsel was not ineffective for failing to request a jury charge on the lesser-included offense of robbery. The victim testified that Applicant had a knife and Applicant was found with a knife in his pocket.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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.

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CONCLUSION

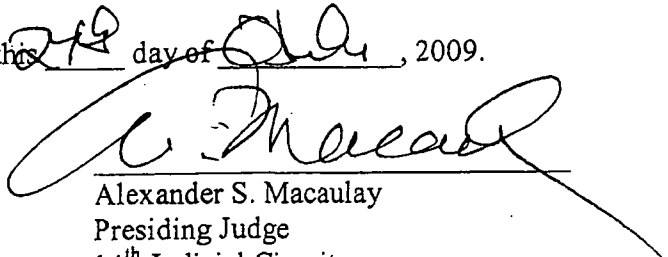
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21st day of July, 2009.


Alexander S. Macaulay
Presiding Judge
14th Judicial Circuit

W. H. H., South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JAMES H. BOWERS, #279049,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO. 2008-CP-07-02188

PLAINTIFF'S MOTION TO
RECONSIDER

2009 DEC -4 PM 12:58
BEAUFORT COUNTY, S.C.
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, James H. Bowers, by and through his undersigned attorneys, will move before the Presiding Judge of Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, on the tenth (10th) day of service hereof, or as soon thereafter as counsel may be heard, for:

An Order to reconsider its Order filed November 2, 2009, mailed to counsel of record on November 24, 2009, and issued by the Honorable Alexander S. Macaulay, denying the Plaintiff's Application for Post-Conviction Relief. The Plaintiff also renews his previous Motion to Reconsider filed October 16, 2009, attached hereto as "Exhibit A," which seeks reconsideration of the Court's Order filed September 9, 2009, mailed to counsel of record on October 6, 2007, and issued by the Honorable Alexander S. Macaulay, denying the Plaintiff's Application for Post-Conviction Relief. These motions are made on the grounds that the Plaintiff proved by the greater weight of the evidence that the Plaintiff received ineffective assistance of trial counsel for the following reasons:

1. Plaintiff's trial counsel failed to do a complete factual

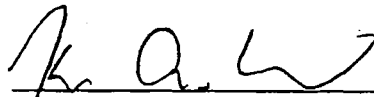
investigation;

2. Plaintiff's trial counsel failed to object to the trial court's failure to charge lesser included offense of common law robbery;
3. Plaintiff's trial counsel failed to challenge the sentence based on prior conviction of common law robbery;
4. Plaintiff's trial counsel failed to properly communicate a plea offer.

These Motions are made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, any memoranda of law submitted, and upon such other law as may applicable.

GRIFFITH, SADLER & SHARP, P.A.

BY:



KELLY A. DENNIS

600 Monson Street

Post Office Drawer 570

Beaufort, South Carolina 29901-0570

(843) 521-4242

Attorneys for the Plaintiff

Beaufort, South Carolina

December 2, 2009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JAMES H. BOWERS, #279049,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO. 2008-CP-07-02188

PLAINTIFF'S MOTION TO
RECONSIDER

2009 OCT 16 PM 4:21
BEAUFORT COUNTY
CLERK OF COURT
J. C. BEAUFORT, S.C.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, James H. Bowers, by and through his undersigned attorneys, will move before the Presiding Judge of Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, on the tenth (10th) day of service hereof, or as soon thereafter as counsel may be heard, for:

An Order to reconsider its ruling on October 6, 2009, denying the Plaintiff's Application for Post-Conviction Relief. This motion is made on the grounds that the Plaintiff proved by the greater weight of the evidence that the Plaintiff received ineffective assistance of counsel for the following reasons:

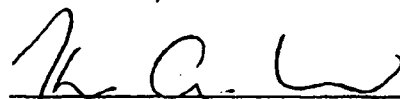
1. Plaintiff's trial counsel failed to do a complete factual investigation;
2. Plaintiff's trial counsel failed to object to the trial court's failure to charge lessor included offense of common law robbery;
3. Plaintiff's trial counsel failed to challenge the sentence based on prior conviction of common law robbery;
4. Plaintiff's trial counsel failed to properly communicate a plea offer.

This Motion is made pursuant to Rule 59(e) of the South

Carolina Rules of Civil Procedure, any memoranda of law submitted,
and upon such other law as may applicable.

GRIFFITH, SADLER & SHARP, P.A.

BY:



KELLY A. DENNIS

600 Monson Street

Post Office Drawer 570

Beaufort, South Carolina 29901-0570

(843) 521-4242

Attorneys for the Plaintiff

Beaufort, South Carolina

October 13, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES H. BOWERS, #279049,
Plaintiff,

vs.

STATE OF SOUTH CAROLINA,
Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 08-CP-07-218

OCT 16 PM 4:21
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

CERTIFICATE OF MAILING

The undersigned, Sally C. Hitchcock, hereby avers that she is the Legal Assistant of GRIFFITH, SADLER & SHARP, P.A., Attorneys for the Defendants, and that on the 14th day of October 2009 a true and accurate copy of the attached **Notice of Motion and Plaintiff's Motion to Reconsider**, was placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to the Parties as follows:

SC Attorney General's Office

Matthew Friedman, Esquire
South Carolina Attorney General's
Office
PO Box 11549
Columbia, SC 29211

By: Sally C. Hitchcock

Sally C. Hitchcock

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2008-CP-07-2188
	)	
James H. Bowers, #279049,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO RECONSIDER
State of South Carolina,	)	JUDGMENT PURSUANT TO 59(e) SCRPC
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRPC, dated December 2, 2009 and received by Respondent on December 4, 2009, in which he asks the Court to reconsider its Order dismissing his application for post-conviction relief (PCR). The Respondent would submit the following:

I.

The Order of Dismissal issued by the Honorable Alexander S. Macaulay, dated October 27, 2009, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003) and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Respondent respectfully requests that the Court allow Respondent to brief any issues raised in Applicant's subsequent memorandum that may warrant response.

II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

12/11, 2009.

STATE OF SOUTH CAROLINA.

COUNTY OF BEAUFORT

James H. Bowers, 279049,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

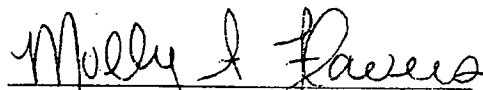
2008-CP-07-2188

AFFIDAVIT OF SERVICE BY MAIL

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 and Motion to Dismiss Motion to Reconsider Judgement Pursuant to 59(e) SCRCP in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kelly A Dennis, Esquire
Griffith Sadler & Sharp, PA
P.O. Drawer 570
Beaufort, SC 29901

DATED this 11th day of December, 2009.



Molly A. Flowers, Legal Assistant
 For Respondent

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2008-CP-07-2188

James Bowers
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

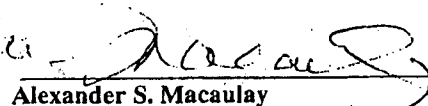
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order.
☐ Statement of Judgment by the Court:

Dated at Walhalla, South Carolina this 21st day of December, 2009.


 Alexander S. Macaulay
 PRESIDING JUDGE

This judgment was entered on the 23rd day of Dec, 2009, and a copy mailed first class this 22nd day of Jan, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Kelly A. Dennis
 Griffith Sadler & Sharp, PA
 P.O. Drawer 570
 Beaufort, SC 29901
 ATTORNEY(S) FOR PLAINTIFF

Matthew Friedman, Asst. Attorney General,
 South Carolina Attorney General's Office - PO
 Box 11549, Columbia, SC 29211

ATTORNEY(S) FOR DEFENDANT


 CLERK OF COURT



State of South Carolina
Tenth Judicial Circuit Court

ALEXANDER S. MACAULAY
JUDGE

OCONEE COUNTY COURTHOUSE

TELEPHONE: (864) 638-4266
FASCIMILE: (864) 638-4267
E-MAIL: amacaulaylc@sccourts.org

MICHAEL D. WRIGHT
LAW CLERK

POST OFFICE DRAWER 428
WALHALLA, SOUTH CAROLINA 29691-0428

December 21, 2009

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29902

RE: James H. Bowers, 279049 v. State of South Carolina
2008-CP-07-2188

Dear Mrs. Roseneau:

Enclosed please find a final Order and accompanying Form 4 in the above referenced matter, denying Plaintiff's Rule 59(e) Motion for Reconsideration.

If you have any questions, or if I may be of any further assistance in this matter, please do not hesitate to contact me.

With kindest regards I remain,

Very truly yours,

Michael D. Wright

Enclosures: Noted

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

James Bowers, SCDC #279409,

CASE NO.: 2008-CP-07-02188

Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(E)**

v.

State of South Carolina,

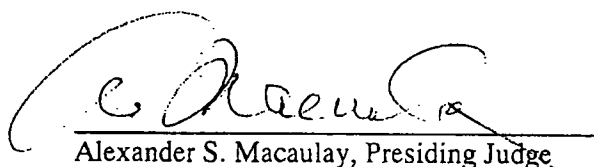
Respondent.

On September 2, 2009, this case was called for a hearing before this Court and Plaintiff's counsel, Kelly A. Dennis, Esquire, presented Plaintiff's application for Post-Conviction Relief based on the grounds that Plaintiff did not receive effective assistance of counsel in the underlying action. Respondent, represented by Matthew J. Friedman, Esquire, of the South Carolina Office of the Attorney General, opposed Plaintiff's application for Post-Conviction Relief. This Court found that the Plaintiff failed to meet his burden that he received ineffective assistance of counsel, denied his application, and dismissed the case with prejudice. This Court's Order was filed on November 2, 2009 and mailed to counsel of record on November 24, 2009. On December 2, 2009, Plaintiff's counsel timely submitted its Motion for Reconsideration, Motion to Alter or Amend Judgment Pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, filed December 4, 2009, setting forth several arguments in support of its Motion to Alter or Amend.

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After careful consideration of the able argument and filings of the Applicant, Respondent, and a review of the record, the Court finds that the Order rendered on September 2, 2009 and filed on November 2, 2009 is supported by the record. Moreover, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRC¹, is DENIED.

AND, IT IS SO ORDERED.



Alexander S. Macaulay, Presiding Judge

Walhalla, South Carolina
December 21, 2009

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRC.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Beaufort County

Alexander S. Macaulay, Circuit Court Judge

JAMES BOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

BRIEF OF PETITIONER

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Did the PCR judge err in refusing to find counsel ineffective for not challenging petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law, when the State failed to prove that the prior conviction contained all of the elements necessary for a most serious assault with intent to commit criminal sexual conduct?

STATEMENT

In November of 2003, the Beaufort County Grand Jury indicted Bowers for armed robbery, indictment #2003-GS-07-2097. On October 25, 2004, Bowers proceeded to jury trial before the Honorable Thomas W. Cooper. Attorney Gene Hood represented Bowers at trial. The jury returned a verdict of guilty and Judge Cooper sentenced Bower to life without parole pursuant to S.C. Code §17-25-45. The State relied on a prior conviction for assault with intent to ravish. A timely notice of intent to appeal was filed and a brief filed pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Bowers, Op. No. 2008-UP-214 (S.C.Ct.App. filed April 4, 2008).

Bowers filed an application for post conviction relief on May 23, 2008. The State filed a return on January 20, 2009. On September 2, 2009, an evidentiary hearing was held before the Honorable Alexander S. Macaulay. Attorney Kelly A. Dennis represented Bowers at the PCR hearing. In a written order filed November 2, 2009, Judge Macaulay denied relief and dismissed the application. Bowers filed a motion to reconsider sentence on December 4, 2009. The State filed a return on December 11, 2009. Judge Macaulay denied the motion to alter or amend on December 21, 2009. A timely notice of intent to appeal was filed on February 5, 2010. The petition for writ of certiorari was filed on November 8, 2010. The State filed a return on March 17, 2011. On June 29, 2012, this Court granted the petition for writ of certiorari and requested further briefing. This brief of petitioner follows.

ARGUMENT

The PCR judge erred in refusing to find counsel ineffective for not challenging petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law, when the State failed to prove that the prior conviction contained all of the elements necessary for a most serious assault with intent to commit criminal sexual conduct.

At sentencing the State relied upon a prior conviction from 1976 for assault with intent to ravish as a prior most serious offense requiring imposition of a sentence of life without parole pursuant to S.C. Code §17-25-45. (App. p. 272, lines 14 – p. 273, lines 1-22). Bowers was convicted of robbery at the same time as the conviction for assault with intent to ravish. The trial judge noted, "The indictment was for armed robbery, I note at the top. The sentence itself is not anymore specific than simply – than simply robbery. At the time there was common law robbery and armed robbery and this is not more specific than that. So - " (App. p. 275, lines 2 – 7). Trial counsel agreed and then the judge stated, "And I think that the, the State obviously then, is relying upon the assault with intent to ravish which - " (App. p. 275, lines 9-11). Trial counsel then stated, "I, I am satisfied was the same offense, basically, that we have here today and our laws concerning criminal sexual conduct." (App. p. 275, lines 13-15).

Trial counsel argued that imposition of a sentence of life without parole based on a guilty plea from 1976 constituted cruel and unusual punishment. (App. p. 275, lines 17 – p. 276, 277, 278, lines 1-18). The judge found that imposition of a sentence of life without parole, based on Bowers' 1976 guilty plea to assault with intent to ravish, did not constitute cruel and unusual punishment. (App. p. 278, lines 21 – p. 279, 280, 281, lines 1-15). The judge stated, "And, as you have indicated, this particular offense, that is, assault with intent to ravish, is the same as assault with intent to commit criminal sexual conduct in either the first or the second degree which comes

within the most serious crime classification, as does armed robbery, of course.” (App. p. 279, line 25 – p. 280, lines 1-5). The State failed to present any evidence that the assault with intent to ravish contained all of the elements of assault with intent to commit criminal sexual conduct first or second degree. Counsel was ineffective for conceding and not objecting on the ground that the State failed to prove that the assault with intent to ravish conviction was a most serious offense.

In the *pro se* PCR application Bowers argued that the trial court lacked jurisdiction to sentence under S.C. Code §17-25-45. During the PCR hearing the following dialogue took place between the State and the PCR judge:

Mr. Friedman: Your Honor, looking at page 280, it looks like the state was relying on the assault with intent to ravish.

The Court: That’s what I was looking at.

Mr. Friedman: They seem to say it was the same as today as - - -

The Court: Criminal sexual conduct.

Mr. Friedman: - - - assault, intent to commit criminal sexual conduct.

The Court: All right, is there anything else? Argument?

(App. p. 340, lines 18 – p. 341, lines 1-3). PCR counsel then noted that the issue raised on direct appeal concerned identification and did not challenge the prior conviction. (App. p. 341, lines 9-

11). The PCR judge then stated:

But again, in this case the one that concerns the court is whether or not the life without parole provisions applied, whether or not the trial counsel was ineffective in not addressing that. But from my view, and I do think the court was - - I mean, counsel – it’s unfortunate the index doesn’t have - - well, it references to the argument there at the end, and I thank you for finding it.

But looking at it, it does seem that Mr. Hood [trial counsel] raised the question, not only of the robbery which the court apparently didn’t

rely on, but the assault with intent to ravish, which I think he said was 1976. Might be some question about appellate counsel, but that's -- here the ineffective assistance of counsel is trial counsel.

(App. p. 341, lines 12-25). Appellate counsel could not have challenged the use of the prior conviction as a most serious offense because that issue was not raised to the trial judge.

The judge later said, "All right, is there anything else on the issue of whether or not the matter of the prior -- and it was -- well, that -- the question is whether the assault with intent to commit, commit -- assault with intent to ravish is the equivalent of criminal sexual conduct, assault with intent to commit criminal sexual conduct. Apparently, not only did the trial counsel raise it, but also the trial judge addressed it at length." (App. p. 342, lines 1-8). The PCR judge erred. Trial counsel failed to argue that assault with intent to ravish was **not** the equivalent of assault with intent to commit criminal sexual conduct. To the contrary, counsel conceded that the two offenses were the same. "I, I am satisfied was the same offense, basically, that we have here today and our laws concerning criminal sexual conduct." (App. p. 275, lines 13-15). As a result, the trial judge sentenced Bowers as if he had a prior most serious conviction. Counsel was ineffective in failing to argue that assault with intent to ravish was **not** the equivalent of assault with intent to commit criminal sexual conduct.

In the order of dismissal the PCR judge wrote, "This Court finds that counsel properly challenged Applicant's prior strike conviction. The trial judge found that Applicant's prior conviction for assault with intent to ravish was the equivalent of assault with intent to commit CSC." (App. pp. 349-350). Trial counsel challenged the prior conviction from 1976 as being too remote and argued that imposition of a sentence of life without parole based on the remote prior conviction constituted cruel and unusual punishment. (App. pp. 275 -- 278). This, however, misses the key point. Trial counsel did **not** challenge the trial judge's finding, and in fact conceded, that

assault with intent to ravish was the equivalent of assault with intent to commit criminal sexual conduct in either the first or second degree. Trial counsel was ineffective in failing to argue that the prior assault with intent to ravish conviction was the equivalent of assault with intent to commit criminal sexual conduct in the third degree which would not qualify as a most serious offense triggering a sentence of life without parole. Bowers was prejudiced by counsel's deficient performance because he was sentenced to life without parole under the two strikes law when the State failed to prove that he had a prior most serious offense.

In State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000), the Court found that common law burglary, not listed in S.C. Code §17-25-45 as a most serious offense, qualified as a most serious offense because it contained all of the elements of first-degree burglary, as defined in S.C. Code Ann. § 16-11-311(a)(3) and listed as a most serious offense. In State v. Lindsey, 355 S.C. 15, 583 S.E.2d 740 (2003), the Court found that a 1976 rape conviction, not listed in S.C. Code §17-25-45 as a most serious offense, did not qualify as a most serious offense because it did not contain all of the elements of criminal sexual conduct first or second degree, listed as most serious offenses.

In Lindsey the Court wrote:

Under S.C. Code Ann. § 16-3-652(1)(1985), first degree CSC requires (1) a sexual battery and (2) **aggravated force** or forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or "any other similar offense or act." State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000). Second degree CSC requires the use of **aggravated coercion** to accomplish sexual battery. S.C. Code Ann. § 16-3-653 (1985). Third degree CSC (which is not listed as a "most serious offense" in § 17-25-45(C)) occurs where the actor engages in sexual battery with the victim and one or more of the following circumstances are proven: a) the actor uses **force** or coercion to accomplish the sexual battery **in the absence of aggravating** circumstances or b) the actor knows or has reason to know that the victim is mentally defective,

mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

355 S.C at 19, 583 S.E.2d at 742.

In Lindsey, as in the present case, there was no evidence in the record concerning the 1976 conviction. As there was no evidence that the prior conviction involved aggravated force or coercion, as required for the most serious offense of criminal sexual conduct first or second degree, the prior conviction could have been the equivalent of criminal sexual conduct third degree, which is not a most serious offense. The 1976 rape conviction in Lindsey could not be considered a most serious offense because the prior conviction could have been the equivalent of the updated criminal sexual conduct third degree, a charge not listed as a most serious offense.

Assault with intent to commit criminal sexual conduct first and second degree are listed as most serious offenses in S.C. Code §17-25-45. Assault with intent to commit criminal conduct third degree is not listed as a most serious offense. Following the reasoning of Lindsey, Bowers' 1976 conviction for assault with intent to ravish could have been the equivalent of assault with intent to commit criminal sexual conduct third degree and therefore not a most serious offense. There was no evidence that Bowers' prior conviction involved aggravated force or coercion.

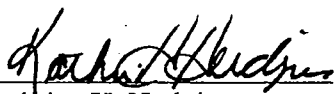
Counsel was ineffective for failing to challenge the prior conviction as not being a most serious offense. Bowers was erroneously sentenced to life without parole because of counsel's deficient performance. The PCR judge erred in refusing to find counsel ineffective for not challenging petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law when the State failed to prove that the prior conviction contained all of the elements necessary for a most

serious assault with intent to commit criminal sexual conduct. The sentence should be reversed and the case remanded for re-sentencing. (App. p. 340, lines 18-20).

CONCLUSION

Based on the above argument, the case should be remanded for a new sentencing hearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 29th day of October, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Beaufort County

Alexander S. Macaulay, Circuit Court Judge

JAMES BOWERS,

PETITIONER,

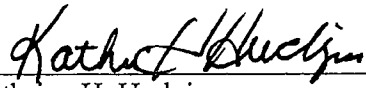
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

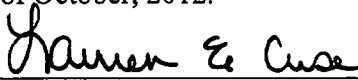
CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Ashleigh R Wilson, Esquire, this 29th day of October, 2012.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of October, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2010-152167

JAMES BOWERS

Petitioner

VS.

STATE OF SOUTH CAROLINA

Respondent

BRIEF OF RESPONDENT

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the lower court properly find that trial counsel sufficiently challenged Petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Petitioner was indicted at the November 2003 term of the Beaufort County Grand Jury for armed robbery (2003-GS-07-2097). Gene Hood, Esquire, represented the Petitioner. The Petitioner proceeded to trial and was found guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced him to confinement for life without the possibility of parole.

A timely notice of appeal was filed on the Petitioner's behalf and an appeal was perfected. Following a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Bowers, Op. No. 2008-UP-214 (S.C. Ct. App. filed April 4, 2008). The Remittitur was issued on April 22, 2008.

On May 23, 2008, the Petitioner filed an application for post-conviction relief. The Respondent made its Return on January 20, 2009. An evidentiary hearing into the matter was convened on September 2, 2009 at the Beaufort County Courthouse. The Petitioner was represented by Kelly A. Dennis, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent. By order dated October 24, 2009, the Honorable Alexander S. Macaulay denied and dismissed with prejudice the Petitioner's application for post-conviction relief.

The Petitioner filed a Motion to Reconsider pursuant to SCRCP 59(e). The Respondent filed a Return and Motion to Dismiss on December 11, 2009. The Petitioner's Motion to Reconsider was denied on December 21, 2009. The Petitioner filed a notice of appeal and a Petition for Writ of Certiorari. This Court granted the Petition and requested briefing on June 29, 2012. The Petitioner filed its brief. The Respondent's brief follows.

ARGUMENT

- I. There is probative evidence to support the lower court's finding that trial counsel sufficiently challenged Petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing a sentence of life without parole pursuant to the two strikes law.

Petitioner asserts that the post-conviction relief court erred by finding trial counsel was not ineffective for not challenging Petitioner's prior conviction for assault with intent to ravish as a most serious offense for purposes of imposing life without parole pursuant to the two strikes law. Respondent submits probative evidence exists to support the post-conviction relief court's finding that trial counsel sufficiently challenged Petitioner's prior conviction. The lower court's ruling should be affirmed.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, (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 v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional

norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test.

On appeal, this Court must affirm the circuit court's denial of post-conviction relief when there is probative evidence to support the findings of the circuit court. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 369 (1997); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The Respondent submits that the issue presented for appellate review was not raised by the Petitioner in his application for post-conviction relief or during the Petitioner's evidentiary hearing. The Petitioner never alleged that trial counsel should have challenged the use of the assault with intent to ravish for purposes of the two strike law. Therefore, this issue was not properly preserved for appellate review.

The Respondent submits that trial counsel properly challenged the prior conviction for assault with intent to ravish. Trial counsel testified that Petitioner was served with a notice of the State's intention to seek life without parole under the two strikes law. (App. 328:4-5). Counsel testified that they fully litigated the issue of the validity of the prior convictions and whether the two-strikes law applied, and the trial court found that the two strikes law did apply in this case. (App. 328:11-21). Counsel testified that the State refused to make any plea offers once they learned of Petitioner's prior convictions so Petitioner's only options were to plead guilty to life without parole or to go to trial. (App. 328:22-329:17).

At the sentencing phase of trial, counsel indicated that he had researched the two strikes law and had not been successful in finding any cases that would support the defense. (App.

273:19-274:5). Counsel stated that he was satisfied that assault with intent to ravish was the same offense as the present-day criminal sexual conduct, but he argued to the court that the conviction was not intended to be used for purposes of the two-strike law because it was a guilty plea and the conviction was over 26 years old. (App. 274:6-276:4). Counsel also argued that the extent of Petitioner's involvement in the prior assault with intent to ravish was unknown and there was another person involved in the commission of that offense. (App. 276:5-277:4). Counsel further argued that in enacting the two strikes law, the legislature did not intend to enhance a punishment from a guilty plea that occurred 26 years prior to the second most serious offense, and counsel believed that a life without parole sentence would amount to cruel and unusual punishment in this case. (App. 277:6-278:18).

The trial court found that S.C. Code Ann. §17-25-45 applies to any serious or most serious conviction, including guilty pleas, and that assault with intent to ravish is the same as assault with intent to commit criminal sexual conduct in the first or second degree- a most serious offense. (App. 279:19-280:5). The trial court found that the legislature would have placed a time limit on prior convictions if they intended to limit the application of the statute. (App. 280:19-281:15).

Trial counsel sufficiently challenged the use of the Petitioner's prior convictions for purposes of the two-strike law. The trial counsel specifically ruled that the two-strikes law applied in the Petitioner's case and that the Petitioner's prior conviction for assault with intent to ravish was equivalent to assault with intent to commit criminal sexual conduct first or second degree. Criminal sexual conduct first and second degree are both classified as most serious offenses for purposes of the two-strike law.

Further, the Petitioner has failed to show that had trial counsel further challenged the classification of the prior conviction for assault with intent to ravish as most serious, the result at trial would have been different. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984). It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding. Id. at 693, 104 S. Ct. at 2067.

Petitioner has not provided any evidence that the Petitioner's assault with intent to ravish conviction is not the equivalent to assault with intent to commit criminal sexual conduct in the first or second degree as the trial court ruled. Counsel cannot be found ineffective for failing to challenge Petitioner's prior convictions when doing so would likely have been futile. The Respondent submits that the Petitioner carries the burden of proving that the facts of the prior assault with intent to ravish conviction would have been equivalent to assault with intent to commit criminal sexual conduct in the third degree. The Petitioner is merely speculating as to the nature of the Petitioner's prior conviction and its classification as assault with intent to commit criminal sexual conduct in the third degree.

"The statutes dealing with rape and assault with intent to ravish were repealed by Act No. 157 of the 1977 Acts and Joint Resolutions of the General Assembly. In the same act, the crime of criminal sexual conduct was established." State v. Stewart, 283 S.C. 104, 109, 320 S.E.2d 447, 450-51 (1984). In State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), this Court held

that the legislature intended the terms "rape" and "criminal sexual conduct" be interchangeable. Likewise, "assault with intent to ravish" and "assault with intent to commit criminal sexual conduct" are interchangeable. Id. at 109, 320 S.E.2d at 451. At the time of the Petitioner's conviction for assault with intent to ravish, varying degrees of criminal sexual conduct had not been established. Therefore, the equivalent of criminal sexual conduct in the third degree had not been established at the time of the Petitioner prior conviction. Also, with the lengthy nature of the Petitioner's 21 year sentence for assault with intent to ravish, it is unlikely that the conviction was the result of a crime equivalent to criminal sexual conduct in the third degree which only carries a sentence of up to 10 years. S.C. Code Ann. §16-03-0654(2).

The Respondent submits that there is probative evidence to support the lower court's finding that the Petitioner failed to carry his burden of proving trial counsel should have further challenged the Petitioner's prior convictions. Trial counsel sufficiently challenged the Petitioner's prior convictions and further challenge would likely have been futile. Further, the Petitioner has failed to show that had counsel further challenged the use of the prior conviction for purposes of the two-strike law, the result at trial would have been different.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the lower court's ruling should be affirmed.

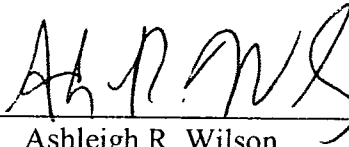
[Signature on the following page.]

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 14, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
In The Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Case No. 2008-CP-07-2188
Appellate Case No. 2010-152167

JAMES BOWERS,

Appellant,

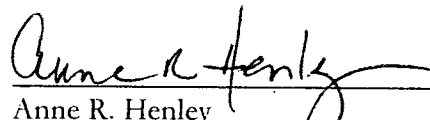
v.

STATE OF SOUTH CAROLINA,

Respondent.

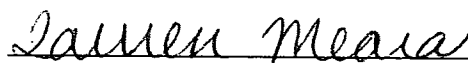
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent has been served upon opposing counsel, Kathrine Hudgins, by mailing two (2) copies in an envelope properly addressed with postage prepaid this 14th day of January, 2013



Anne R. Henley
Legal Assistant for Respondent

SWORN to before me this
14th day of January , 2013.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 9/25/19