

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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S.C. Supreme Court

MICHAEL ANTHONY ALLEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000739

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF AIKEN)

State of South Carolina,)
)
 PLAINTIFF,) TRANSCRIPT OF TRIAL
) 2006-GS-02-1684
 -VS-) 2006-GS-02-1685
) 2008-GS-02-1613
 Michael Anthony Allen,)
)
 DEFENDANT.)

BEFORE THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE
SEPTEMBER 21 AND 22, 2009
AIKEN, SOUTH CAROLINA

A P P E A R A N C E S:

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REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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1 Monday, September 21, 2009

2 (The defendant, together with
3 counsel, was personally present in the courtroom.)

4 THE COURT: You are Michael Anthony Allen?

5 MR. ALLEN: Yes, sir.

6 THE COURT: Good afternoon, sir.

7 MR. ALLEN: Good afternoon.

8 THE COURT: I've had some preliminary
9 discussions with your lawyer, a status conference
10 about your case, and he had indicated to me prior to
11 lunch break that you were desirous of terminating
12 your relationship with him. Is that correct?

13 MR. ALLEN: Yes, sir.

14 THE COURT: You want to fire him now?
15 We're going to select a jury in about probably 30
16 minutes. So you're ready to represent yourself?

17 MR. ALLEN: No, sir.

18 THE COURT: Well, that's what's going to
19 happen. Either you're going to represent yourself.

20 Mr. Lyons, in our conversation as I
21 understand, you are prepared to go forward. You
22 have submitted to me a proposed voir dire on behalf
23 of your client, is that correct?

24 MR. LYONS: Yes, sir, Your Honor.

25 THE COURT: And you are prepared to go

1 forward with this matter?

2 MR. LYONS: Yes, sir.

3 THE COURT: Very well.

4 Your lawyer is prepared to go forward, but

5 you want to terminate him?

6 MR. ALLEN: Well, I'll go with him.

7 THE COURT: That's probably a wise idea.

8 I don't think it's a good idea to represent

9 yourself, first of all. I assume you don't have any

10 legal experience, do you?

11 MR. ALLEN: No, sir.

12 THE COURT: No, that's not a wise idea.

13 All right, we're ready to go forward then. Your

14 motion is withdrawn, then, is that correct, sir --

15 sir?

16 MR. ALLEN: Yes, sir.

17 THE COURT: Okay, thank you.

18 Any other preliminary matters that we need

19 to address, Mr. Lyons, on your client's behalf that

20 you can think of?

21 MR. LYONS: No, Your Honor.

22 THE COURT: Very well.

23 Does that state have any, Mr. Weeks?

24 MR. WEEKS: No, Your Honor.

25 THE COURT: Okay.

1 MR. WEEKS: Not prior to the jury
2 selection.

3 THE COURT: Not prior to the jury
4 selection, that's fine. All right, thank you very
5 much. We'll be at ease in this case, then, whenever
6 the jury comes in. Thank you.

7 Do you want him to remain in the courtroom
8 for the jury selection?

9 MR. LYONS: Judge, if he may be, he
10 certainly can.

11 THE COURT: That would be good, if that's
12 not a problem with you all for him to be here during
13 the selection. He ought to be able to see the
14 prospective jurors as well. Thank you.

15 Gentlemen, let me see you all just for a
16 second, just for planning purposes.

17 (Whereupon, the jury panel
18 was qualified and then excused for a break.)

19 THE COURT: We are now going to start
20 selecting the jury in the first dispute. What I'm
21 going to share with you is the caption. And I'm
22 going to tell you that whether you're in a civil
23 dispute or a criminal dispute, there are certain
24 things that apply.

25 Number one, the party against whom a claim

1 is made is called the defendant, and that's the
2 significance of that term. It means nothing else.
3 It's just a way of designating the person.

4 A plaintiff in a civil case is the person
5 making the claim. This is a claim involving a
6 criminal dispute, and the party that will always be
7 and only be, the State. That's the party that makes
8 the claim.

9 The claim has been made by the State of
10 South Carolina against Michael Anthony Allen. Mr.
11 Allen is seated at the table to my right.

12 Good afternoon, Mr. Allen. If you would
13 please stand and face the jury panel for me, please,
14 sir.

15 The gentlemen now standing is Michael
16 Anthony Allen.

17 Thank you, Mr. Allen, you may take your
18 seat.

19 Are there any members of the jury panel
20 related by blood or marriage, have any business
21 dealings with, socially or casually acquainted with
22 Mr. Allen, have any connection? If so, please
23 stand. Thank you. There appear to be none.

24 Mr. Allen is represented in this matter by
25 Mr. Lyons.

1 If you would identify yourself and your
2 law firm, please, sir, Mr. Lyons.

3 MR. LYONS: My name is Charles Lyons. I
4 have an office in Augusta where I practice law. I'm
5 a sole practitioner.

6 THE COURT: Thank you, sir.

7 Are there are members of the jury panel
8 related by blood or marriage, have any business
9 dealings with, socially or casually acquainted with,
10 ever been represented by Mr. Lyons or his law firm?
11 If so, please stand. Thank you. There appear to be
12 none.

13 The State is represented in this matter by
14 Mr. Weeks.

15 If you would identify yourself and anyone
16 that will be assisting you, please, sir.

17 MR. WEEKS: Thank you, Your Honor. I'm
18 Bill Weeks, and I work for Strom Thurmond, who is
19 seated at the jury box. So Steve Kodman will be
20 assisting me in this trial as one of the attorneys.

21 THE COURT: And Steve --

22 MR. WEEKS: Kodman, Your Honor.

23 THE COURT: Kodman?

24 MR. WEEKS: K-O-D-M-A-N.

25 THE COURT: K-O-D-M-A-N, Kodman. Thank

1 you, sir.

2 Are there any members of the jury panel
3 related by blood or marriage, have any business
4 dealings with, socially or casually acquainted with,
5 ever been represented by Mr. Weeks or Mr. Kodman?

6 If so, please stand. Thank you. There appear to be
7 none.

8 Are there any members of the jury panel
9 related by blood or marriage, have any business
10 dealings with, socially or casually acquainted with,
11 or ever been represented by your Solicitor, Mr.
12 Thurmond? If so, please stand. Thank you. There
13 appear to be none.

14 Are there any members of the jury panel
15 related by blood or marriage, have any business
16 dealings with, socially or casually acquainted with
17 anyone employed with the Solicitor's Offices?

18 And you have offices in Bamberg, Barnwell,
19 and Aiken, Solicitor?

20 MR. THURMOND: I do.

21 THE COURT: If so, please stand. Thank
22 you. There appear to be none. I'm going to
23 identify a number of persons, ladies and gentlemen.
24 And if you are related by blood or marriage, have
25 any business dealings with, socially or casually

1 acquainted with any of these individuals, you need
2 to stand and share the information, please, with the
3 Court.

4 Donna Holley, Emily Bush, Earl Bush, Lisa
5 Wood; and the following persons who are employed
6 with the Aiken Department of Public Safety, Anthony
7 Keith Glover, Jason Fogel; and the following persons
8 who are employed with the Aiken County Sheriff's
9 Office, Mike Goodwin, Clay Adams, Brad Wertz; and
10 the following persons who are employed with the
11 Hillsboro County Sheriff's Office, Jason M. Himmel
12 and Ricky -- is it Siebert --

13 MR. SIEBERT: Yes, sir.

14 THE COURT: -- Siebert? If so please
15 stand.

16 Yes, ma'am?

17 JUROR: Juror 157. I'm familiar with
18 Emily and Earl Bush.

19 THE COURT: And what is that familiarity,
20 please?

21 JUROR: If it's the same people I'm
22 thinking of, they are -- and Earl Bush was also in
23 the Guard, was on the same with my husband.

24 THE COURT: Okay. The fact that you've
25 had that association, assuming those are the same

1 persons, with that affect or influence you in this
2 dispute?

3 JUROR: Possibly.

4 THE COURT: Thank you, and thank you for
5 your hesitation. I appreciate that. Your number,
6 again?

7 JUROR: One fifty-seven.

8 THE COURT: Number 157 will be excused.
9 And, ladies and gentlemen, if you will listen, this
10 will be the announcement I will give to those of you
11 that aren't serving.

12 Ma'am, I'm going to excuse you. You need
13 to call the juror number, please, after six. And
14 that instruction will apply until you are instructed
15 otherwise. Every afternoon, call after six.

16 And the message will be one of three. One
17 would be to report. And if you hear that, then you
18 know we need to select another case. Another may be
19 to call back at a given time in the morning or the
20 next day.

21 If that's the case, what that tells you is
22 there's a chance we're going to need you. But
23 rather than have you come and then to say, "No, we
24 don't need you, thank you very much," we try to
25 minimize the number of times you have to come.

1 If that's the message, more than likely it
2 will be a message to call in the morning, and most
3 probably you'll be asked to return somewhere around
4 two or two-thirty. So you can make your plans
5 accordingly.

6 The third message would be to call back
7 the next day after six. If that's the message, you
8 know that that day will be your day. We're not
9 going to pick up the phone and say, "Oops, we're
10 sorry, you need to come in."

11 You'll have a free day and won't have to
12 come in. So just follow that instruction. Thank
13 you very much. You are free to leave.

14 Are there any others? There appear to be
15 none. This dispute, ladies and gentlemen, is
16 basically framed by these three documents that I'm
17 holding in my hand. They're call indictments, and
18 that's just a legal term, a form of saying they
19 contain the formal charges against Mr. Allen.

20 I'm going to share certain information
21 with you, what's alleged in these documents, and
22 they are just that. They're merely allegations.
23 They're not evidence. They won't accompany the jury
24 in the jury room.

25 But it's alleged in these documents, in

1 one, that Mr. Allen did in Aiken County on or about
2 February 23, 2006, feloniously take and carry away
3 personal goods of Emily Bush having a value of more
4 than \$1,000 but less than \$5,000, namely, a 2003
5 Hyundai, with the intent to deprive the owner
6 permanently of such property.

7 The next one says that Mr. Allen did in
8 Aiken County on or about February 23, 2006, while
9 armed with a deadly weapon or while alleging, either
10 by actions or words, that he was armed while using a
11 representation of a deadly weapon or an object which
12 a person present reasonably believed to be a deadly
13 weapon, to wit, a handgun, did feloniously take from
14 the presence and person of Lisa Wood by means of
15 force or intimidation monies of the BP Station at
16 3540 Richland Avenue in Aiken, namely, about \$101,
17 in violation of the law which proscribes conduct
18 which, if guilty, would be armed robbery.

19 And then, thirdly, it says on February 23,
20 2006, he did unlawfully take or attempt to take a
21 motor vehicle from Emily Bush by force, or violence,
22 or intimidation in that he used physical force to
23 grab and remove Ms. Bush from a vehicle, in
24 violation of the statute which sets forth conduct
25 which would constitute carjacking.

1 I share that with you to find out, first
2 of all, if any member of the jury panel has heard
3 anything, read anything, you have any prior
4 knowledge of this dispute. If so, please stand.
5 Thank you. There appear to be none.

6 Is there anything about the nature of the
7 dispute that you because of something that's
8 happened in your life, some personal philosophy you
9 have, some strong feelings you may have, anything
10 that you can think of that would affect or influence
11 your ability to fairly and impartially apply your
12 common sense, your sense of logic and reason and
13 analyzing the evidence, which consists of the
14 testimony of witnesses and exhibits that might be
15 introduced through their testimony, deciding what
16 you believe to be the true facts, and then, once
17 deciding those facts, taking the law as I give it to
18 you and applying that law fairly and impartially to
19 those?

20 If you feel there's something that's
21 happened in your life, or some feeling that you
22 have, some philosophy you have, that would affect
23 your ability to do that, please stand.

24 Sir, if you'll come forward, please. The
25 attorneys may approach as well.

1 Number 86 will be excused. Please call
2 the number after six tonight and follow that
3 instruction. Thank you, sir.

4 Are there any others? Thank you. There
5 seem to be none.

6 CLERK OF COURT: One more, sir.

7 THE COURT: Oh, I'm sorry. Yes, sir, come
8 on forward, please.

9 Thank you, Clerk.

10 Number 162 will be excused. Have a great
11 day. Call the number after six.

12 MR. PERKINS: Yes, sir.

13 THE COURT: Thank you. Are there any
14 others? Thank you. Is any member of the jury panel
15 a member of the immediate family that now or
16 formerly was connected with law enforcement in any
17 capacity? If so, please stand.

18 Yes, ma'am?

19 JUROR: My brother-in-law is a former
20 Highway Patrolman.

21 THE COURT: Okay. For this state?

22 JUROR: Yes, sir.

23 THE COURT: And he's no longer a
24 patrolman?

25 JUROR: He's retired.

1 THE COURT: He's retired. Would that
2 affect or influence you, ma'am?

3 JUROR: No, sir.

4 THE COURT: Your name and number?

5 JUROR: I'm number 150.

6 THE COURT: One-fifty?

7 JUROR: Yes, sir.

8 THE COURT: Thank you.

9 Yes, ma'am?

10 JUROR: Juror 127. I have two cousins
11 that work for the Sheriff's Department.

12 THE COURT: Okay.

13 JUROR: One is a deputy, and one is a drug
14 enforcement agent.

15 THE COURT: Would that affect or influence
16 you?

17 JUROR: No, sir.

18 THE COURT: And I did not give the name of
19 that person when I listed several agents?

20 JUROR: No, sir.

21 THE COURT: Can you base your decision on
22 the evidence and the law and be fair to both sides?

23 JUROR: Yes, sir.

24 THE COURT: And 150 is your number?

25 JUROR: One twenty-seven.

1 THE COURT: One twenty-seven, I'm sorry.
2 Thank you, ma'am.
3 Yes, sir?
4 JUROR: I'm juror number 28. My uncle is
5 deceased, but he was a policeman for a couple of
6 years.
7 THE COURT: Would that affect you in any
8 way, sir?
9 JUROR: No.
10 THE COURT: Thank you, sir. You may be
11 seated.
12 Yes, sir?
13 JUROR: Juror number 133. My son is an
14 Aiken County Sheriff.
15 THE COURT: He's with Aiken County
16 Sheriff?
17 JUROR: Yes, sir.
18 THE COURT: I didn't identify him when I
19 called out the names?
20 JUROR: No, sir.
21 THE COURT: Would that affect or influence
22 you at all in this dispute, sir?
23 JUROR: No, sir.
24 THE COURT: And would you base your
25 decision on the evidence and the law in this case,

1 and could you be fair to both sides?

2 JUROR: Yes, sir.

3 THE COURT: Your number, please?

4 JUROR: One thirty-three.

5 THE COURT: Thank you, sir.

6 Yes, sir?

7 MR. ATKINS: Juror number seven, Alexander

8 Atkins. My mother is a secretary in Augusta,

9 Georgia.

10 THE COURT: Would that affect you in any
11 way?

12 MR. ATKINS: No, sir.

13 THE COURT: Thank you, sir.

14 Yes, ma'am?

15 MS. HERRON: I'm juror number 56. I have
16 a brother who's an investigator with Richmond
17 County.

18 THE COURT: Would that affect you in any
19 way?

20 MS. HERRON: No, sir.

21 THE COURT: Would you base your decision
22 on the evidence and the law of the case, and could
23 you be fair to both sides?

24 MS. HERRON: Yes, sir.

25 THE COURT: Thank you, ma'am.

1 MR. LYONS: Judge, can we get her number
2 again?

3 THE COURT: Your number again, please?

4 MS. HERRON: Fifty-six.

5 THE COURT: Fifty-six -- thank you. Are
6 there any others? Thank you. There appear to be
7 none.

8 Is there any member of the jury panel or a
9 member of their immediate family that you in any
10 capacity have been involved -- either you were
11 accused, somebody in your family was accused, or you
12 testified for somebody or were involved in just a
13 support group for somebody accused of committing a
14 violent crime; or, the other side of that, you were
15 the victim of a violent crime, or you were witness
16 to some violent crime, or involved in a support
17 group of someone who was the victim of a violent
18 crime?

19 If you've had any involvement with a
20 violent crime in any capacity, please stand. Thank
21 you. There appear to be none.

22 Ladies and gentlemen, there are a number
23 of principles of law that apply to this dispute,
24 some of the base principles that apply, and they
25 apply to disputes of a criminal nature in this state

1 and, as far as I know, every state in this country.

2 And that is this, that persons who are
3 accused in any criminal case are never required to
4 prove or disprove anything. They certainly aren't
5 required to prove their innocence.

6 Under our law, they're presumed innocent.
7 And that's an active presumption that I would
8 instruct you, meaning that you have to actively
9 presume that the person accused is innocent. And
10 that can only be changed with the State has
11 presented enough evidence to persuade you beyond a
12 reasonable doubt that they are guilty of the
13 offense.

14 And that means they presented evidence
15 that persuaded you of the evidence, that each
16 element of that crime has been presented to you and
17 you've been convinced as to that element of the
18 offense. That's the law.

19 Is there anything about that law that
20 would give you any concern about your ability as a
21 judge -- with me -- of accepting that law and
22 applying that law fairly and impartially to the
23 facts? If so, please stand. Thank you. There are
24 none.

25 I will also tell you -- some of you may

23

1 have been jurors or may even have been involved in a
2 civil dispute -- that basically the process is very
3 similar in the format. There are several
4 differences, one that I've just mentioned, because
5 in a civil dispute, occasionally a defendant may
6 have the burden to prove something, but not in a
7 criminal dispute -- not ever.

8 The other deals with the level of proof
9 required. And I will define for you what is
10 reasonable doubt. It's the highest level. In a
11 civil suit, it's a probability standard -- more
12 probable than not, more likely so.

13 Well, in a criminal dispute, the burden of
14 proof is much higher -- beyond a reasonable doubt.
15 Is there anything about that principle that would
16 give you any concern -- something that's happened in
17 your life or your philosophy -- that would affect
18 your ability to apply that law fairly and
19 impartially with all the other laws? If so, please
20 stand if you think it would. Thank you. There are
21 none.

22 Are there any members of the jury panel
23 that work now or formerly worked in a convenience
24 store? If so, please stand. Thank you. There are
25 none.

1 Are there any members of the jury panel
2 that own their business, and it's a retail business?
3 If so, please stand.

4 Yes?

5 JUROR: I do.

6 THE COURT: Okay. Would you apply your
7 experience and knowledge fairly and impartially in
8 analyzing the evidence in this case?

9 JUROR: Yes, sir.

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

13 JUROR: Yes, sir.

14 THE COURT: Your number, please?

15 JUROR: Fifteen.

16 THE COURT: Thank you, ma'am.

17 Yes.

18 JUROR: I'm juror 31. I work in a home-
19 based business now.

20 THE COURT: Right.

21 JUROR: At home, said at home.

22 THE COURT: It would not affect you? You
23 would be fair and impartial in applying your life's
24 experiences and the experience gleaned through that
25 business and be fair and impartial in analyzing the

1 evidence?

2 JUROR: Yes, sir.

3 THE COURT: And you'd base your decision
4 on the evidence and the law that would be fair to
5 both sides?

6 JUROR: Yes, sir.

7 THE COURT: And your number, again?

8 JUROR: Thirty-one.

9 THE COURT: Thank you, ma'am.

10 MS. JOHNSON: I'm juror 62, and I work in
11 retail.

12 THE COURT: Would that affect or influence
13 you?

14 MS. JOHNSON: No.

15 THE COURT: And would you apply your
16 life's experiences fairly and impartially in
17 analyzing the evidence?

18 MS. JOHNSON: Yes, sir.

19 THE COURT: Your decision would be fair to
20 both sides?

21 MS. JOHNSON: Yes, sir.

22 THE COURT: Thank you.

23 Yes, sir?

24 JUROR: I'm number 11. I work in retail.

25 THE COURT: Would that affect you in any

1 way, sir?

2 JUROR: No, sir.

3 THE COURT: And would you also apply your
4 experiences fairly and impartially, and you would
5 base your decision on the evidence and the law that
6 would be fair to both sides?

7 JUROR: Yes, sir.

8 THE COURT: Thank you, sir. Are there
9 others? Thank you. There appear to be none.

10 Any specific questions from the State?

11 MR. WEEKS: No, Your Honor.

12 THE COURT: Any specific questions, Mr.
13 Lyons?

14 MR. LYONS: May I approach, Your Honor?

15 THE COURT: Sure. No additional specific
16 questions, then, is that correct, Mr. Lyons?

17 MR. LYONS: No other questions.

18 THE COURT: Thank you.

19 Ladies and gentlemen, based on what you've
20 heard thus far about this dispute, is there anything
21 now that you've heard that would give you any
22 concern about your ability to raise your hand before
23 we start this trial and begin this process and
24 promise both sides that you would at the appropriate
25 time apply your common sense, your sense of logic

1 fairly and impartially in analyzing the evidence and
2 decide what you believe to be the true facts, and
3 once making that decision, you further promise to
4 take the law as I give it to you and apply that law
5 fairly and impartially to those facts?

6 If you feel you could not make that
7 commitment for any reason, please stand. Thank you.
8 What's going to happen now is you're going to --
9 your name --

10 Do you have them come and stand here?

11 CLERK OF COURT: Yes, sir.

12 THE COURT: Where I'm standing, when your
13 name is called, you'll come forward. And each side
14 can excuse certain persons. The State has five.
15 The defendant has ten.

16 And what they will do is, first, the Clerk
17 will ask the State, "What says the State?" something
18 similar, and they will say, "Seat the juror," "Swear
19 the juror," whatever, or they may say, "Excuse the
20 juror."

21 And if they say, "Seat the juror," then
22 Mr. Lyons will have a similar opportunity and can
23 make the same response. And we'll continue that
24 process until we seat our 12 jurors, and then I will
25 select an alternate juror as well.

1 And just bear with us. Please understand
2 something. If you're excused, that doesn't mean
3 anything. Just take your seat, then we'll go to the
4 next person. When your name is called, though,
5 you'll bring with you any personal belongings that
6 you brought, because if you're seated, then you'll
7 go directly to the jury box. Thank you very much.

8 I'll turn it over to you.

9 CLERK OF COURT: Thank you, Judge.

10 As I call your name, please bring your
11 belongings, come to the front, and face the back of
12 the room.

13 Juror number 23, Pamela Courtney. What
14 says the State?

15 MR. WEEKS: Please present Ms. Courtney.

16 CLERK OF COURT: What says the defense?

17 MR. LYONS: The juror may be excused.

18 CLERK OF COURT: You may return to your
19 seat.

20 Juror number 161, Hershel Oliphant. What
21 says the State?

22 MR. WEEKS: Please excuse Mr. Oliphant
23 from this case.

24 CLERK OF COURT: You may return to your
25 seat.

29

1 Juror number 166, Michael Zielinski. What
2 says the State?

3 MR. WEEKS: Please present Mr. Zielinski.

4 CLERK OF COURT: What says the defense?

5 MR. LYONS: Swear the juror.

6 CLERK OF COURT: Please have a seat in the
7 jury box to the left.

8 Juror number 164, Janie Watson. What says
9 the State?

10 MR. WEEKS: Please present Ms. Watson.

11 CLERK OF COURT: What says the defense?

12 MR. LYONS: Swear the juror.

13 CLERK OF COURT: Please have a seat in the
14 jury box to the left.

15 Juror number 163, Monica Robinson. What
16 says the State?

17 MR. WEEKS: Please excuse Ms. Robinson
18 from this trial.

19 CLERK OF COURT: You may return to your
20 seat.

21 Juror number 43, Cassandra Golden. What
22 says the State?

23 MR. WEEKS: Please present Ms. Golden.

24 CLERK OF COURT: What says the defense?

25 MR. LYONS: Please excuse the juror.

1 CLERK OF COURT: You may return to your
2 seat.

3 Juror number 66, Patricia Jones. What
4 says the State?

5 MR. WEEKS: Please present Ms. Jones.

6 CLERK OF COURT: What says the defense?

7 MR. LYONS: Swear the juror.

8 CLERK OF COURT: You may have a seat in
9 the jury box to the left.

10 Juror number 75, James Lott. What says
11 the State?

12 MR. WEEKS: Please present Mr. Lott.

13 CLERK OF COURT: What says the defense?

14 MR. LYONS: Swear the juror.

15 CLERK OF COURT: You may have a seat in
16 the jury box to the left.

17 Juror number 136, Patti Walker. What says
18 the State?

19 MR. WEEKS: Please present Ms. Walker.

20 CLERK OF COURT: What says the defense?

21 MR. LYONS: Swear the juror.

22 CLERK OF COURT: You may have a seat in
23 the jury box to the left.

24 Juror number 140, Rebecca Ward. What says
25 the State?

1 MR. WEEKS: Please present Ms. Ward.

2 CLERK OF COURT: What says the defense?

3 MR. LYONS: What number was that, please?

4 CLERK OF COURT: One-forty.

5 MR. LYONS: This juror may be excused.

6 CLERK OF COURT: You may return to your

7 seat.

8 The State has exhausted two strikes, the

9 defense, three.

10 Juror number 70, Bobby Kitchens. What

11 says the State?

12 MR. WEEKS: Please present Mr. Kitchens.

13 CLERK OF COURT: What says the defense?

14 MR. LYONS: This juror may be excused.

15 CLERK OF COURT: Please return to your

16 seat.

17 Juror number 141, Jerry Washington. What

18 says the State?

19 MR. WEEKS: Please present Mr. Washington.

20 CLERK OF COURT: What says the defense?

21 MR. LYONS: This juror may be excused.

22 CLERK OF COURT: Please return to your

23 seat.

24 The State has exhausted two strikes, the

25 defense, five.

1 Juror number 159, Kiera Hicks. What says
2 the State?

3 MR. WEEKS: Please excuse Ms. Hicks from
4 this trial.

5 CLERK OF COURT: You may return to your
6 seat.

7 Juror number 150, Terri Young. What says
8 the State?

9 MR. WEEKS: Please present Ms. Young.

10 CLERK OF COURT: What says the defense?

11 MR. LYONS: This juror may be excused.

12 CLERK OF COURT: You may return to your
13 seat.

14 Juror number 158, Paulette Flowers. What
15 says the State?

16 MR. WEEKS: Please present Ms. Flowers.

17 CLERK OF COURT: What says the defense?

18 MR. LYONS: Swear the juror.

19 CLERK OF COURT: You can have a seat in
20 the jury box to the left.

21 Juror number 126, Amelia Stout. What says
22 the State?

23 MR. WEEKS: Please present Ms. Stout.

24 CLERK OF COURT: What says the defense?

25 MR. LYONS: Swear the juror.

1 CLERK OF COURT: You may have a seat in
2 the jury box to the left.

3 Juror number 28, Robert Emerick. What
4 says the State?

5 MR. WEEKS: Please present Mr. Emerick.

6 CLERK OF COURT: What says the defense?

7 MR. LYONS: Swear the juror.

8 CLERK OF COURT: You may have a seat in
9 the jury box to the left.

10 Juror number 155, Jennifer Collins. What
11 says the State?

12 MR. WEEKS: Please present Ms. Collins.

13 CLERK OF COURT: What says the defense?

14 MR. LYONS: Swear the juror.

15 CLERK OF COURT: You may have a seat in
16 the jury box to the left.

17 Juror number seven, Alexander Atkins.
18 What says the State?

19 MR. WEEKS: Please present Mr. Atkins.

20 CLERK OF COURT: What says the defense?

21 MR. LYONS: This juror may be excused.

22 CLERK OF COURT: You may return to your
23 seat.

24 Juror number ten, Cecil Bischoff. What
25 says the State?

1 MR. WEEKS: Please present Ms. Bischoff.

2 CLERK OF COURT: What says the defense?

3 MR. LYONS: This juror may be excused.

4 CLERK OF COURT: You may return to your
5 seat.

6 The State has exhausted three strikes, the
7 defense, eight.

8 Juror number 127, Paula Stribling. What
9 says the State?

10 MR. WEEKS: Please present Ms. Stribling.

11 CLERK OF COURT: What says the defense?

12 MR. LYONS: Swear the juror.

13 CLERK OF COURT: You may have a seat in
14 the jury box to the left.

15 Juror number 134, Brian Vining. What says
16 the State?

17 MR. WEEKS: Please present Mr. Vining.

18 CLERK OF COURT: What says the defense?

19 MR. LYONS: Swear the juror.

20 CLERK OF COURT: You may have a seat in
21 the jury box to the left.

22 Juror number 92, Rebecca Moore. What says
23 the State?

24 MR. WEEKS: Please present Ms. Moore.

25 CLERK OF COURT: What says the defense?

1 MR. LYONS: This juror may be excused.
2 CLERK OF COURT: You may return to your
3 seat.
4 Juror number 56, Carol Herron. What says
5 the State?
6 MR. WEEKS: Please present Ms. Herron.
7 CLERK OF COURT: What says the defense?
8 MR. LYONS: This juror may be excused.
9 CLERK OF COURT: You may return to your
10 seat.
11 Juror number 80, Latoya Martin. What says
12 the State?
13 MR. WEEKS: Please present Ms. Martin.
14 CLERK OF COURT: What says the defense?
15 MR. LYONS: Swear the juror.
16 CLERK OF COURT: You may have a seat in
17 the jury box to the left.
18 Alternates?
19 THE COURT: All right, let's select an
20 alternate -- one alternate. Strikes will be one and
21 two.
22 CLERK OF COURT: Juror number 165, Macy
23 Williams. What says the State?
24 MR. WEEKS: Please excuse Ms. Williams
25 from this matter.

1 CLERK OF COURT: You may return to your
2 seat.

3 Juror number 62, Deborah Johnson. What
4 says the State?

5 MR. WEEKS: Please present Ms. Johnson.

6 CLERK OF COURT: What says the defense?

7 MR. LYONS: This juror may be excused.

8 CLERK OF COURT: You may return to your
9 seat.

10 Juror number 48, Evelyn Hammett. What
11 says the State?

12 MR. WEEKS: Please present Ms. Hammett.

13 CLERK OF COURT: What says the defense?

14 MR. LYONS: This juror may be excused.

15 CLERK OF COURT: You may return to your
16 seat.

17 Juror number 20, Jennie Coffee. What says
18 the State?

19 MR. WEEKS: Please present Ms. Coffee.

20 CLERK OF COURT: What says the defense?

21 MR. LYONS: Swear the juror.

22 CLERK OF COURT: You may have a seat in
23 the jury box to the left.

24 THE COURT: Thank you very much. Are
25 there any motions from the State regarding

1 selection?

2 MR. WEEKS: No, Your Honor.

3 THE COURT: Any motions from the defendant
4 regarding selection?

5 MR. LYONS: No, Your Honor.

6 THE COURT: Thank you very much.

7 Ladies and gentlemen, those of you that
8 were not selected, thank you very much for your
9 patience and your participation. You are free now
10 to leave. Please call the number, as you heard me
11 already state, after six tonight and just follow
12 that instruction until you are instructed otherwise
13 this week and just follow that message.

14 And I may have a chance to see you all
15 again later this week. But thank you again for
16 assisting us. You are free to leave.

17 (Whereupon, the balance of the jury
18 panel was excused.)

19 THE COURT: Ladies and gentlemen, those of
20 you that were selected, thank you very much for your
21 patience as well. And I look forward to working
22 with you. It's now 4:15, and there are some matters
23 of law that we need to resolve before we can start.

24 And rather than have you sit in the jury
25 room -- I'm not sure how long they're going to take;

1 we probably wouldn't be able to get very much more
2 accomplished today -- I'm going to go ahead and
3 excuse you for the day.

4 Please know that you've heard no evidence,
5 so don't talk about this case. Don't speculate
6 about the case. Don't conduct any independent
7 investigations about this case. You're going to
8 hear me say that over and over, but it really does
9 bear repeating.

10 In fact, the Chief Justice just recently,
11 because of some things that have happened -- and
12 we've been having them happen periodically. As you
13 all know, we live in an information world, and
14 information is available.

15 And we have jurors that are going and
16 doing independent research on the Internet. That's
17 a great thing to do if you want to do it, but not
18 now. You are going to make the commitment to decide
19 this case based on what happens in this courtroom.

20 So you're promising to decide based on the
21 law that I give to you, not what you can
22 independently review and ascertain. After, if you
23 want to do that, that's fine. But until then,
24 please refrain from doing that.

25 Also, not talking with anyone outside the

1 courtroom or permitting anyone to talk with you
2 about this case, that's important also. I'm not
3 even suggesting it would necessarily influence you.

4 But you can imagine if someone saw you
5 talking with someone that ended up happening to have
6 some connection to this case, and the result wasn't
7 what they were looking for, the natural inclination
8 would be, well, somebody did something improper. It
9 avoids that.

10 Also, you, again, are going to make the
11 commitment to decide what happens in this courtroom.
12 So it's imperative that you honor that commitment,
13 and that means you can't talk with anyone. That
14 includes anyone at home. You're not at liberty to
15 discuss that with them either.

16 So have a good evening, with all of that.
17 Talk about something else when you get home tonight,
18 if someone's there. And please don't call the
19 number. That message will not apply to you. I
20 would ask you to report to your jury room.

21 I'm going to let you have a little leeway
22 tomorrow. We're going to have some matters that we
23 need to take up. I'm not sure how long it's going
24 to take. But just to make sure that we have enough
25 so that you don't have to sit around and wait, if

1 you will be in your jury room by 10:00 in the
2 morning, please. Have a good evening, and I'll see
3 you at ten. Thank you.

4 You're free to leave. They will show you.
5 You will come directly to your jury room. You will
6 not come back in the courtroom but go directly to
7 the jury room. Thank you very much.

8 (Whereupon, the petit jury was
9 excused for the day.)

10 THE COURT: All right, let's take about a
11 ten-minute break, maybe five to ten minutes, and
12 then we'll start up. We'll start with our hearings.
13 I don't know what we're going to have, but I wanted
14 to leave in the morning also available. If you have
15 some pleas you want to do before we start at ten,
16 I'll be happy to do that, too, so far as scheduling
17 is concerned. Is 9:00 too bad for you?

18 COURT REPORTER: No, sir, that's fine.

19 THE COURT: So we'll be here at nine if
20 you want to do that as well. Of course, this case
21 takes priority. We'll see where we are. We have
22 two hearings. Before we break, as I understand,
23 we've had several conferences.

24 And, Mr. Lyons, we had a pre-trial
25 conference concerning the charges. As I understand,

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1 after conferring with your client, you and your
2 client have elected not to ask for severance of
3 these charges, is that correct?

4 MR. LYONS: That's correct, Your Honor.

5 THE COURT: Okay. And we're going to do,
6 as I understand, a Jackson v. Denno hearing and the
7 ID hearing, is that correct?

8 MR. WEEKS: Yes, sir.

9 THE COURT: Are there any other matters
10 that we need to address, Mr. Lyons, at this point
11 that you can think of?

12 MR. LYONS: I think at this point in time,
13 I'm with you.

14 THE COURT: That will be fine, but
15 certainly you're not bound by that, sir. I'll be
16 delighted to hear from you if something does come
17 up.

18 MR. LYONS: Yes, sir.

19 THE COURT: Thank you so much. We'll be
20 at ease.

21 MR. WEEKS: Judge, for the purposes, these
22 hearings will take us through the remainder of the
23 day. So if anybody is here for pleas or whatever,
24 we'll try to reschedule them for in the morning or
25 further times in the week.

1 THE COURT: I'll be happy to do that to
2 accommodate schedules for you all as well. Just let
3 me know. My focus is certainly primarily on this
4 case, but I don't mind coming back.

5 We'll give the jury an extra 30 minutes,
6 and I'll do an hour. That's okay. And we'll come
7 back, and we'll do pleas, if need be, for 30 minutes
8 or so. And I'll try to work with that, no problem.

9 MR. WEEKS: Okay.

10 THE COURT: Thank you. We'll be at ease
11 for about ten minutes.

12 (Court in recess.)

13 THE COURT: Solicitor, you may proceed if
14 you wish.

15 MR. WEEKS: Judge, the State would call
16 Investigator Jason Himmel from the Aiken County
17 Sheriff's Office.

18 THE COURT: Very well.

19 CLERK OF COURT: Clerk, come forward and
20 be sworn.

21 (The witness was sworn.)

22 CLERK OF COURT: Please have a seat in the
23 witness box, state your full name for the Court, and
24 spell your last.

25 MR. HIMMEL: My name is Detective Jason

1 Mark Himmel, with the Hillsboro County Sheriff's
2 Office in Tampa, Florida.

3 CLERK OF COURT: Spell your last name.

4 MR. HIMMEL: H-I-M-M-E-L.

5 THE COURT: All right, just one second,
6 Mr. Kodman.

7 MR. LYONS: Judge, I just would like to
8 ask if this is the only witness who's going to
9 testify on this issue.

10 MR. KODMAN: Yes, Your Honor.

11 THE COURT: Yes. Thank you, sir. You may
12 proceed.

13 MR. KODMAN: Thank you, Your Honor.

14 JASON MARK HIMMEL, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KODMAN:

18 Q Detective Himmel, were you employed with
19 the Hillsboro County Sheriff's Department back in
20 February of 2006?

21 A Yes, sir.

22 Q And specifically on February 26, 2006, did
23 you have an occasion to interview the defendant in
24 this case, Michael Anthony Allen?

25 A Yes, sir, I did.

1 Q Where did you conduct this interview at?

2 A The Orient Road jail.

3 Q And he was in custody at the time?

4 A Yes, sir.

5 Q What was he in custody for?

6 A I believe it was a warrant for petty
7 theft.

8 Q And prior to interviewing the defendant in
9 this case, did you read him his Miranda rights?

10 A Yes, sir, I got an HSCO consent to be
11 interviewed form, which he signed.

12 Q Detective, I'm going to hand you what's
13 been marked for identification purposes as State's
14 Exhibit One and ask if you can identify that
15 document.

16 A Yes, sir.

17 Q What is that document.

18 A That's a waiver affidavit form, which is
19 known as the HCSO consent to be interviewed form.

20 Q And is that a true and accurate copy of
21 the actual form that you used with this defendant in
22 this case?

23 A Yes, sir.

24 Q And if you could, explain to the Court how
25 you used that form in conducting this interview.

Jason Mark Himmel - In-Camera

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1 A In this particular case, if somebody was
2 detained in jail, I would read this off to them, or
3 I would have them read it themselves.

4 Being that it was in '06 that I did this,
5 I can't recall if I actually read it to him or not.
6 I believe I did at that point.

7 Q If you could, read out loud what the
8 rights are that you read to him.

9 A It says, "I," with a blank, "do hereby
10 consent to be interviewed by the below-listed
11 Hillsboro County Sheriff's Office law enforcement
12 official concerning the above-listed incident
13 offense, and I further understand I have the right
14 to remain silent and can invoke this right at any
15 time during questioning.

16 "If I do make a statement, it can and will
17 be used against me in a court of law. I have the
18 right to the presence of an attorney during
19 questioning. If I cannot afford an attorney, one
20 will be appointed to me without charge before any
21 questioning, if that is my desire.

22 "If I wish to make a statement, I may
23 invoke my right to an attorney or remain silent at
24 any time during the questioning. I understand these
25 rights, and no one has threatened, coerced, or

1 promised me anything in order to induce me to make a
2 statement. I presently wish to make a statement
3 and/or answer questions without an attorney being
4 present."

5 Q And did he in fact answer some questions
6 for you?

7 A Yes, sir.

8 Q Did he sign that form?

9 A Yes, sir, at the bottom.

10 Q And that's not the original form, is it?

11 A No, sir.

12 Q But you have reviewed that form?

13 A Correct.

14 Q Is that a true and accurate copy of the
15 one you used for this defendant?

16 A Yes, it is, sir.

17 Q Was anyone else present when you conducted
18 this interview?

19 A No, sir.

20 Q Did the defendant appear to be under the
21 influence of any alcohol or drugs?

22 A No, sir.

23 Q Did the defendant appear to suffer from
24 any mental or physical problems that would impair
25 his ability to understand your questions?

Jason Mark Himmel - In-Camera

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1 A No, sir.

2 Q Were any threats or promises made in
3 exchange for his statement?

4 A No, sir.

5 Q Did the defendant seem to understand his
6 rights as you read them to him?

7 A Yes, sir.

8 Q Did the defendant's answers appear
9 rational and responsive?

10 A Yes.

11 Q Did he ever change his mind and say he
12 wished to stop talking?

13 A No, sir.

14 Q To the best of your knowledge, was the
15 statement freely and voluntarily given?

16 A Yes.

17 Q Was his statement reduced to writing?

18 A I attempted to have him write a statement,
19 which he refused.

20 Q And what did the defendant tell you?

21 A That he had driven a Hyundai up to the
22 mall, that he had gotten that automobile from a
23 second person that he couldn't identify to me, only
24 as a black male named John Riley who lived somewhere
25 in the area of 34th and Hillsboro, which is one of

1 our known drug areas. Other than that, we couldn't
2 get any information to pursue any other person with
3 the car.

4 Q Did he give you any statements with regard
5 to the key?

6 A He said the key did belong to the car.

7 Q And when I'm referring to the key, can you
8 explain the significance of the key to the Court?

9 A When he was initially arrested by Deputy
10 Siebert, Deputy Siebert found a Hyundai car key and
11 key fob in his pocket. The next day, Mr. Siebert --
12 or Deputy Siebert -- was working at the same general
13 location where Mr. Allen had been arrested.

14 They discovered a Hyundai two-car blue --
15 I forget the model. I think it was an Elantra
16 vehicle, and it had a South Carolina tag on it that
17 came back stolen.

18 At the point that Deputy Siebert found out
19 that this car was stolen, he contacted the Auto
20 Theft Unit, my corporal, Corporal Stu Gray, who
21 contacted me and let me know what was going on. And
22 the key ended up being the same key that fit that
23 car that was stolen.

24 Q Now, did you reduce the substance of what
25 the defendant told you to writing in a report?

Jason Mark Himmel - In-Camera

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1 A Yes, sir.

2 Q Do you have a copy of that?

3 A It's very brief -- yes, sir.

4 Q If you could, referring to your report,
5 just read word-for-word what your report says as to
6 what the defendant told you after you read him
7 Miranda warnings.

8 A First Miranda, Michael stated, when asked,
9 that his wife did not own a Hyundai car. When
10 asked, he also stated the key found in his pocket
11 went to the car that Deputy R. Siebert found in the
12 parking lot where he had been arrested on petty
13 theft charges.

14 He stated that he had gotten the car from
15 a black male he only knew as John Riley. He
16 described John Riley as 5'6", around 170 pounds.

17 He stated that he had gotten the car from
18 John a couple of days previous at a convenience
19 store located at 34th Street and Hillsboro Avenue
20 within Hillsboro County. He called the store
21 "Mohammed's."

22 He stated that he did not know John Riley
23 very well at all, nor did he know how writer could
24 get in contact with him. He said John was about 38
25 years of age.

1 When asked, he stated that John was from
2 Aiken, South Carolina, area but couldn't answer
3 writer as to how that came up in the conversation
4 before John lent him the car to drive. He also
5 stated when asked that his Florida driver's license
6 was suspended.

7 He asked writer if he had to write his
8 statements down, which writer told him he didn't
9 have to if he didn't choose. He told writer that he
10 didn't want to. He did state that John Riley
11 probably left to go back to South Carolina, and
12 that's where writer would find him.

13 Q And the word "writer" is referring to you?

14 A Yes, sir.

15 Q And when it says in your report that "he
16 didn't want to," you're referring to writing a
17 statement?

18 A Writing a statement. What I asked him to
19 do is write a statement out to what he had just told
20 me.

21 Q Please answer any questions Mr. Lyons has
22 for you.

23 THE COURT: Cross-examine, Mr. Lyons?

24 MR. LYONS: Yes, Your Honor.

25 CROSS-EXAMINATION

Jason Mark Himmel - In-Camera

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1 BY MR. LYONS:

2 Q Detective, do you know where the original
3 is?

4 A The original is with the original report,
5 which is in our Records Department.

6 Q Do you maintain those records?

7 A The records -- no, sir, that's handled by
8 our Records Department.

9 Q Do you have anything to do with
10 maintaining records at all?

11 A Only if I keep them for myself and
12 download them on the computer. But the originals,
13 what we write, go directly to Records.

14 Q How long have you been in law enforcement
15 -- working in law enforcement?

16 A June 1st is ten years. I started June 1,
17 1999.

18 Q Have you always worked for the Hillsboro -
19 -

20 A Yes, sir.

21 Q -- County Sheriff's Department?

22 A Yes, sir, always for Hillsboro.

23 Q And does this job have a road deputy?

24 A Yes, sir.

25 Q And how long were you a road deputy?

1 A Approximately eight months, and then they
2 made me a detective in the Property Section.

3 Q So in 2006, how long had you operated as a
4 detective?

5 A Well, I went back to the road after being
6 a property detective. Then I went to a street
7 crimes narcotics unit. And around '04, I went to
8 auto theft. About a year, year and a half after I
9 started there, I became a detective again, in the
10 Auto Theft unit.

11 Q And as a deputy, I would imagine that you
12 have some training for it?

13 A On-the-job training, yes, sir.

14 Q Did you go to any schools?

15 A Well, I've been to a large majority of
16 classes, yes, sir.

17 Q And I would imagine that one of the
18 schools that you would have -- or classes or courses
19 that you would have taken would have been some type
20 of training that is used in conducting interviews of
21 suspects?

22 A Yes, sir, I took a one-week class in
23 interviews and interrogations.

24 Q And in that class, I would imagine it
25 stressed the importance of maintaining what a

Jason Mark Himmel - In-Camera

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1 potential suspect may tell you by means of
2 mechanical devices?

3 A As in what, sir?

4 Q Tape recorders, things of that nature.

5 A Sure.

6 Q And have you ever conducted an interview
7 with a suspect that you recorded this interview?

8 A Yes, sir.

9 Q Have you done it a number of times?

10 A Recently, yes.

11 Q What about back in '06?

12 A Oh six -- yes, we had digital recorders.

13 Q Is there any particular reason you didn't
14 use those recorders with this particular individual
15 defendant?

16 A Yes, sir. I was called -- I believe the
17 day that I was called on this particular one, I was
18 off duty. I got a call-out, and we weren't taking
19 him back. He was already in jail. So I went in
20 jail without a recorder, because I did not have one
21 with me. I went straight from my house to the jail.

22 Q Okay. And the jail was not located in the
23 same building where your office is?

24 A No, sir.

25 Q And there was no way you could get a

1 recording?

2 A Oh, I'm sure there was. But I was told to
3 respond somewhere, and I went there first.

4 Q Okay. Now, what time of day or night are
5 we talking about this interview took place?

6 A Two o'clock in the afternoon.

7 Q And at this point in time, how long had
8 the defendant been locked up?

9 A I think since the previous day.

10 Q And where did you conduct this interview?

11 A At the Orient Road jail, 1201 Orient Road,
12 Tampa, Florida 33619.

13 Q Would this have been conducted in a
14 holding cell?

15 A Well, there was a main pod. They brought
16 him out of the general population and put him in a
17 room with me that is apart from the pod.

18 Q Okay. So who was in this pod besides the
19 defendant and you?

20 A The defendant and I were the only ones
21 that were in the pod until we had a deputy respond
22 to bring a sheet for me to pull something out of his
23 inventory.

24 Q Did you make any notes or records as to
25 when this particular interview began?

Jason Mark Himmel - In-Camera

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1 A When it began?

2 Q Yes.

3 A I believe it's right in my notes here --
4 1400 hours.

5 Q And this interview, it was initiated based
6 on some superior officer asking you to do it?

7 A Yes, go to jail and interview him, because
8 we had belief that he had been part of a stolen car.

9 Q I'm sorry?

10 A Yes, sir.

11 Q I didn't hear the last part.

12 A Yes, I was told to respond there due to
13 the fact that Deputy Siebert had contacted my
14 corporal and advised that he had a suspect for the
15 stolen car he was currently recovering.

16 Q And how long did this interview take
17 place?

18 A I don't remember it being very long. I
19 mean, this was three and a half years ago.
20 Obviously, from the size and contents of my writing,
21 it was very brief.

22 Q Now, was the key to the Hyundai, was that
23 also located at the jail?

24 A Yes, sir, in his property.

25 Q And did you actually retrieve that key?

1 A Yes, sir. The jail brought his property
2 to me after he signed a sheet, and I took that
3 property with me.

4 Q What kind of sheet did he sign?

5 A It's right behind the consent to be
6 interviewed form in my report.

7 Q In reference to the key?

8 A Yes, sir.

9 Q And he just signed something, a release
10 for the key to you?

11 A He signed a piece of paper like this.

12 Q Okay. Does that say--

13 A Right. Had he not signed this, I would
14 have had to get a search warrant for the key.

15 Q Okay. And it's your testimony at no point
16 in time did he ask for an attorney?

17 A No, sir.

18 Q It's your testimony that you're certain he
19 understood his rights to remain silent?

20 A Yes, sir.

21 Q Did y'all talk about anything else besides
22 the potentially stolen vehicle?

23 A Not that I recall.

24 Q Did you talk about any other cases or
25 anything else at that time?

Jason Mark Himmel - In-Camera

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1 A Not that I'm aware of, sir, and it's a
2 long time ago.

3 Q Did you talk about if he talked, that that
4 might help him in some kind of way?

5 A Not that I remember. I was specifically
6 there to ask him about the key found in his pocket.

7 Q And no information regarding anything
8 else?

9 A Not that I recall, no.

10 Q Did you have any indication that Mr. Allen
11 would have been under the influence of type of
12 drugs?

13 A Not at that time, no.

14 Q Did he look coherent to you?

15 A He seemed to speak fine, as far as I can
16 remember.

17 MR. LYONS: One second, Your Honor.

18 THE COURT: Certainly.

19 MR. LYONS: I don't have anything else,
20 Your Honor.

21 THE COURT: Redirect, Mr. Kodman?

22 MR. KODMAN: No, Your Honor.

23 THE COURT: Thank you, sir. You may come
24 down.

25 Any additional witnesses?

1 MR. HIMMEL: Would you like for me to
2 leave this here, Your Honor?

3 THE COURT: Thank you, sir.

4 MR. KODMAN: Nothing further on the issue,
5 Your Honor.

6 THE COURT: All right.

7 Does the defendant wish to present any
8 witnesses --

9 MR. LYONS: No, Your Honor.

10 THE COURT: -- before the Court rules on
11 this? Thank you, sir. I'll be happy to hear from
12 you, Mr. Lyons, if you want --

13 MR. LYONS: Judge, we would submit it to
14 the Court.

15 THE COURT: Thank you, sir. I think based
16 on the testimony that I've heard that by the
17 preponderance of the evidence clearly he's
18 established that the statement was given and taken
19 consistent with Miranda warnings.

20 And I find from the testimony that it was
21 clearly freely and voluntarily given. And for those
22 reasons, I would allow the jury to hear it. I will,
23 of course, instruct the jury that they have to make
24 that determination beyond a reasonable doubt.

25 MR. LYONS: That's fine.

1 THE COURT: The statement will be able to
2 be presented in the trial. Okay, we have an
3 identification issue.

4 MR. WEEKS: We do, Your Honor, and I'd
5 love to hear the defense's motion on that point.

6 THE COURT: Yes, I would, too.

7 Mr. Lyons?

8 MR. LYONS: Judge, my understanding is
9 that the identification of this defendant resulted
10 as a result of his photo being placed in a six-
11 person photo lineup.

12 THE COURT: Okay.

13 MR. LYONS: My understanding is and I
14 assume that there's going to be testimony that
15 outside of the presentation of the photographic
16 lineup evidence, there's no other means of
17 identifying or connecting this defendant to this
18 crime.

19 Judge, we would move to have those
20 particular identifications suppressed. Judge, in
21 fact, we believe the way that the way that the
22 photographic lineup were conducted and was arrayed
23 was unduly suggestive and may have suggested this
24 particular defendant was the person who committed
25 these alleged crimes.

1 THE COURT: Your basis is that the
2 photographs themselves are unduly suggestive,
3 correct?

4 MR. LYONS: Judge, just based on
5 information that I have, yes, sir, the way the
6 actual photographic lineup was arrayed and taking it
7 to the alleged victim -- presenting it to the
8 alleged victim, I'm sorry.

9 THE COURT: And what's the State's
10 response? Do you want to proceed with presenting
11 testimony?

12 MR. WEEKS: It's just easier for me to put
13 it up rather than --

14 THE COURT: That will be fine.

15 MR. WEEKS: -- argue about what he's
16 talking about.

17 THE COURT: That will be fine.

18 MR. WEEKS: The State would call Emily
19 Bush.

20 (The witness was sworn.)

21 CLERK OF COURT: Please have a seat in the
22 witness box, state your full name for the Court, and
23 spell your last.

24 MS. BUSH: My name is Emily Bush. My last
25 name is spelled B-U-S-H.

Emily Bush - In-Camera Direct

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1 EMILY BUSH, having first been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WEEKS:

5 Q Ms. Bush, how old are you?

6 A Twenty-one years old.

7 Q And you live here in the Aiken area?

8 A Yes.

9 Q Back on , 2006, was that day
10 significant to you?

11 A It's my birthday.

12 Q And on your birthday that day or that
13 night, what did you do?

14 A I went to a party.

15 Q And after the clock struck midnight, at
16 some point did you have the occasion to go to the
17 Circle K gas station on the east side of Aiken?

18 A Yes, I did.

19 Q Did anything happen to you?

20 MR. LYONS: Your Honor, can you have her come
21 up closer so I can hear her?

22 THE COURT: Sure. Can you speak into
23 that?

24 MS. BUSH: Can you hear me?

25 MR. LYONS: Judge, I could just stand right

1 here.

2 THE COURT: That will be fine.

3 MS. BUSH: I'll try to speak into it.

4 THE COURT: I'm having trouble, too.

5 Q Did you have occasion to go to that gas
6 station in the early morning hours?

7 A Yes, I did.

8 Q And what was your purpose of going there?

9 A To buy a pack of cigarettes and put gas in
10 my car.

11 Q All right. Emily, what was your condition
12 that night? Was anything wrong with you? Had you
13 had anything to drink?

14 A No.

15 Q Okay. Tell me what you did when you got
16 to the gas station.

17 A I went inside, bought a pack of
18 cigarettes, and paid for \$5 in gas.

19 Q Okay. And what did you do then?

20 A I walked out of the gas station, got into
21 my car, and was -- started putting my receipts away
22 in my purse.

23 Q And did something happen at that time?

24 A I looked up, and I saw a black male in a
25 camouflage jacket and a hat walk in front of me.

Emily Bush - In-Camera Direct

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1 Q When you say walk in front of you --

2 A Seemingly, a few yards away from my car,
3 looking like he was walking into the store.

4 Q Okay. Was your car parked at the gas
5 pumps right there?

6 A Yes.

7 Q All right. Did you observe that man
8 again?

9 A Yes, I did.

10 Q When did you observe him again?

11 A When he came up to my car door, opened it,
12 and told me to get out of the car.

13 Q How close were you to him at that point?

14 A At that point, he was only maybe a foot
15 away from me.

16 Q Was it the same man you had observed walk
17 toward the building?

18 A Yes.

19 Q Did you have an opportunity to observe
20 him?

21 A I did.

22 Q Facially?

23 A Yes.

24 Q All right. Can you describe him?

25 A Well, as I said before, he was a black

Emily Bush - In-Camera Direct

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1 male. I'm not going to say exactly how tall he was,
2 because I'm not good with things like that. But he
3 was older, and he was wearing a camouflage jacket
4 and a dark hat. I wasn't sure at the time whether
5 it was dark blue or black, but it was one of the
6 two.

7 Q Okay. And during the time after -- he did
8 you get out of the car?

9 A Well, I didn't. He grabbed me and pulled
10 me out of the car.

11 Q All right. And during that time, did you
12 have the opportunity to observe him?

13 A I did.

14 Q You didn't get knocked out or anything,
15 did you?

16 A No.

17 Q What do you do at that point?

18 A When he grabbed me?

19 Q Uh-huh.

20 A I didn't do anything. I didn't know what
21 to do.

22 Q What did he do?

23 A Well, he got in my car after he took me
24 out of it, and he drove away.

25 Q During all of this time, were you

Emily Bush - In-Camera Direct

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1 observing him?

2 A Yes.

3 Q What were the lighting conditions during
4 that period of time?

5 A Fairly well. I mean, it was at night, but
6 there are lights under the canopies of the gas
7 station, and there are lights also around the
8 perimeter of the building.

9 Q And did you immediately call law
10 enforcement?

11 A Yes, I did.

12 Q At some point in time did law enforcement
13 contact you about viewing a photographic lineup?

14 A Yes, they did.

15 Q And what did you do in that regard? Where
16 did you go?

17 A I went to the Sheriff's Department, I do
18 believe it was.

19 Q And who did you meet with?

20 A I met with Investigator Wertz.

21 Q All right. And did Mr. Wertz tell you
22 anything about the procedure he was going to be
23 following?

24 A He did.

25 Q What did he say?

1 A He told me that he was going to show me a
2 picture lineup.

3 Q And how did he present those to you?

4 A Well, he showed it to me.

5 Q All right. I'll hand you what's marked
6 State's Exhibit Number Two for ID for this hearing
7 and ask you if you recognize that document.

8 A Yes, I do.

9 Q And is it a true and accurate depiction of
10 what it purports to be?

11 A Yes, it is.

12 Q Is that the document that he showed you
13 that day?

14 A Yes, it is.

15 Q And what is that -- can you describe that
16 document for me?

17 A It's a piece of paper with six people's
18 pictures on it --

19 Q Okay.

20 A -- numbered.

21 Q And how did he present that to you?

22 A He handed it to me.

23 Q All right. Were you in a room by yourself
24 with him?

25 A Yes.

Emily Bush - In-Camera Direct

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1 Q Okay. And how long did it -- or were you
2 able to make an identification in that lineup or
3 from that lineup?

4 A I was.

5 Q All right. Which one did you pick out?

6 A Number three.

7 Q Okay.

8 THE COURT: Which one?

9 MR. WEEKS: Number three.

10 THE COURT: Thank you.

11 MS. BUSH: I'm sorry.

12 Q And did he tell you anything else about it
13 prior to your picking out number three?

14 A No.

15 Q And who was number three?

16 A The man that carjacked me.

17 Q Okay. Is he in the courtroom today?

18 A Yes.

19 Q Where?

20 A Right there.

21 Q You're talking about the defendant?

22 A Yes.

23 Q Okay. Now, did Detective Wertz tell you
24 anything about where he got this picture or how he
25 got any of this prior to presenting this lineup to

Emily Bush - In-Camera Direct

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1 you?

2 A No.

3 Q Emily, during this whole process of
4 looking at the lineup, were there any other
5 distractions going on, or were y'all there by
6 yourselves?

7 A We were there by ourselves.

8 Q And did you have any difficulty picking
9 out number three as the person --

10 A No.

11 Q -- that you say took your car that night?
12 That would be a "no"?

13 A No.

14 MR. WEEKS: No further questions of this
15 witness, Your Honor.

16 THE COURT: Very well. You may cross-
17 examine, Mr. Lyons.

18 MR. LYONS: Yes, sir..

19 CROSS-EXAMINATION

20 BY MR. LYONS:

21 Q Now, on this particular evening, there was
22 a very brief moment when you had a chance to really
23 look at whoever the person was that carjacked you,
24 is that correct?

25 A Yes.

Emily Bush In-Camera Cross

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1 Q And in actuality, what actually occurred
2 that night, it really was a very short period of
3 time that everything actually occurred, is that
4 correct?

5 A Yes.

6 Q And I'm certain that on this particular
7 night when this incident occurred that you were very
8 concerned for your safety?

9 A Yes.

10 Q And you were concerned for your safety
11 than trying to launch an attack or what?

12 A Actually, not completely, no. I mean, I
13 wasn't completely in my senses because I was scared.
14 But I knew that after this happened, I was going to
15 have to identify someone.

16 Q Well --

17 A So I made sure that I paid attention to
18 certain things.

19 Q Okay. And the night that this happened,
20 did you speak at length with police officers?

21 A Yes, I did.

22 Q An hour -- it lasted how long?

23 A I don't know how long it was.

24 Q Did you actually go to police headquarters
25 somewhere?

1 A No.

2 Q And you're giving a general description of
3 the person that you believe committed the offense?

4 A Yes.

5 Q And at some point in time did you actually
6 go down to the Sheriff's Department to look at any
7 photographs -- not the photographs you looked at
8 today, but just to look at potential attackers?

9 A The only time I ever went to the Sheriff's
10 Department, period, was when I went to go look at
11 that photo lineup. That's the only ever, period,
12 been there in my life actually, I do believe.

13 Q Were you ever asked to look at any
14 surveillance video?

15 A No. We were originally going to, but we
16 never did -- like I never did.

17 Q I'm sorry?

18 A We waited for the gas station manager to
19 get there so we could review tapes, because the
20 cashier thought that she had seen the same man in
21 the store earlier. But we waited so long that by
22 the time she got there, they just took me home.

23 Q So you were never asked to look at any
24 surveillance video?

25 A No.

Emily Bush In-Camera Cross

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1 Q Now, this exhibit with the photographs
2 that you looked at and you talked about a few
3 minutes ago, it wasn't the next day you looked at
4 those photographs, was it?

5 A I really don't remember when it was, to
6 tell you the truth.

7 Q Okay.

8 A I think it was a couple of days later.
9 I'm not sure. I really don't know.

10 Q You're not sure?

11 A I really don't remember. It's been too
12 long.

13 MR. LYONS: I don't have any other
14 questions.

15 THE COURT: Redirect, Mr. Weeks?

16 MR. WEEKS: Nothing further, Your Honor.

17 THE COURT: You may come down. Thank you,
18 Ms. Bush.

19 MR. WEEKS: The State would call
20 Investigator Brad Wertz.

21 (The witness was sworn.)

22 CLERK OF COURT: Please have a seat in the
23 witness box, state your full name for the Court, and
24 spell your last.

25 MR. WERTZ: My name is Investigator Brad

Emily Bush In-Camera Cross

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1 Wertz with Aiken County Sheriff's Office, last name
2 W-E-R-T-Z.

3 BRAD WERTZ, having first been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEEKS:

7 Q Brad, how long have you been an
8 investigator with the Sheriff's Department?

9 A Since 2005.

10 Q Okay. In 2006 -- February 23, 2006 --
11 were you an investigator there?

12 A Yes, I was.

13 Q Were you called to respond to this
14 carjacking in Aiken?

15 A No, I wasn't sent to respond. I was
16 assigned the case the next day.

17 Q Okay. And as part of the investigation
18 that you conducted, did you have the opportunity to
19 come in contact with Mr. Himmel from the Hillsboro
20 County Police Department in Florida?

21 A I did, on February 27th.

22 Q Okay. And in that capacity, did you see a
23 photograph from Mr. Himmel?

24 A I believe he sent me a booking sheet from
25 Michael Allen with a photograph of him.

Brad Wertz - In-Camera Direct

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1 Q At some point did you have Michael Allen
2 as a suspect in the carjacking?

3 A I did.

4 Q And in that vein, did you put together a
5 photographic lineup to show to Ms. Bush?

6 A I sent Michael Allen's information to
7 SLED, who used his driver's license photo and placed
8 him in a photo lineup of six people.

9 Q And they send that photograph lineup to
10 you?

11 A They send it back to me.

12 Q Okay. At some point did you present that
13 lineup to Ms. Bush?

14 A On the afternoon of February 27th.

15 Q Can you tell me how you did that, Brad?

16 A I did. I had Ms. Bush meet me at the
17 Sheriff's Office. I advised her that a suspect or a
18 possible suspect had been identified and that I
19 placed -- I had had him placed in a photo lineup of
20 six people.

21 I presented the lineup to her and asked
22 her if she recognized any of the suspects as the
23 suspect that took her car.

24 Q What was her response?

25 A She immediately suspect number three.

1 Q And where was -- where did this take place
2 at, Brad?

3 A At the Aiken County Sheriff's Office or at
4

5 Q And the photographic lineup that you
6 showed her that day, did you preserve that?

7 A I did, in the case file.

8 Q I'll hand you what's marked State's
9 Exhibit Number Two and ask you if you could identify
10 that photographic lineup.

11 A That's the lineup.

12 Q Is it a true and accurate depiction of
13 what you showed her that day?

14 A It is.

15 Q Is that the original?

16 A That's the original.

17 MR. WEEKS: Your Honor, for purposes of this
18 hearing, we'd move to introduce State's Number Two.

19 THE COURT: Any objection for purposes of
20 this hearing?

21 MR. LYONS: Not for the purpose of this
22 hearing, Judge.

23 THE COURT: Very well. It's admitted,
24 State's Two.

25 (State's Exhibit Number Two, Photo

Brad Wertz - In-Camera Direct

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1 Lineup Color [H], was entered in evidence.)

2 Q Brad, SLED, when you send it to the South
3 Carolina Law Enforcement Division, do they use some
4 sort of computer program to try to come up with
5 similar characteristics?

6 A I don't know their exact process. I
7 believe they have a program that they plug it into.
8 But when they send the photo lineup back to us, the
9 first thing we do is review it to make sure that the
10 pictures are an accurate depiction of what we want
11 in it.

12 Q And not suggestive of any particular one
13 person?

14 A Correct.

15 Q Did you display the photographs just in
16 this same manner?

17 A That's the exact manner that they were
18 displayed.

19 Q And approximately -- you said this was on
20 the afternoon of the 27th of February?

21 A Twenty-seventh.

22 Q The day before, the 26th or the early
23 morning of the 27th, is when you were in contact
24 with maybe Investigator Glover with the city, or did
25 that occur after her identification?

Brad Wertz - In-Camera Direct

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1 A I believe it was before, but I'm not
2 positive. I'd have to look at the case file.

3 Q It's not really important. I'll just
4 check with him about it. But at some point the car
5 that had been taken from Ms. Bush was located in the
6 Hillsboro County --

7 A Yes.

8 Q -- jurisdiction in Florida?

9 A Earlier that day, on the 27th, Detective
10 Himmel contacted me and advised me that the car had
11 been recovered, and Michael Allen was found with the
12 key in his possession.

13 Q And the description that Ms. Bush had
14 given the police was a general description of Mr.
15 Allen?

16 A It was.

17 MR. WEEKS: No further questions, Judge.

18 THE COURT: Cross-examine, Mr. Lyons?

19 MR. LYONS: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LYONS:

22 Q Investigator, did you have any other part
23 in the investigation prior to the photographic
24 lineup?

25 A I had spoken with Ms. Bush over the phone,

Brad Wertz - In-Camera Cross

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1 but nothing active had been done at that point.

2 Q Did you receive any type of identification
3 information from her?

4 A Just the general description that she
5 provided Deputy Goodwin.

6 Q What was that?

7 A Black male, medium build, camouflage
8 jacket, dark-colored hat.

9 Q Did you get any information from her in
10 reference to facial hair or anything like that?

11 A I do not recall any description of facial
12 hair.

13 Q Skin tone or color?

14 A Just a black male.

15 Q Any particular weight?

16 A Medium build.

17 Q A hundred and fifty, a hundred and sixty,
18 anything like that?

19 A That's what I would interpret medium build
20 would be, between 150 and 200 pounds.

21 Q Height?

22 A I'm sorry?

23 Q Any height?

24 A Again, interpretation of medium build,
25 5'8", 5'10".

1 Q In other words, you didn't get any?

2 A No.

3 MR. LYONS: Your Honor, may I approach?

4 THE COURT: Certainly.

5 Q So about five days or so later after the
6 offenses took place is when Ms. Bush was shown the
7 photographic lineup?

8 A That's correct. I believe four days. It
9 occurred on the 23rd. I showed her the photo lineup
10 on the 27th.

11 MR. LYONS: I don't have anything else,
12 Your Honor.

13 THE COURT: Redirect, Mr. Weeks?

14 MR. WEEKS: Your Honor, nothing on that
15 particular identification.

16 THE COURT: Thank you. You may step down,
17 sir.

18 MR. WEEKS: Your Honor, we're kind of tag-
19 teaming the two different things.

20 THE COURT: That's fine. Have you got the
21 lineup? Could I see that? Thank you.

22 MR. KODMAN: Your Honor, the State calls
23 Lisa Wood.

24 (The witness was sworn.)

25 CLERK OF COURT: Please have a seat in the

Brad Wertz - In-Camera Cross

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1 witness box, state your full name for the Court, and
2 spell your last.

3 MS. WOOD: My name is Lisa Wood -- W-O-O-
4 D.

5 LISA WOOD, having first been duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KODMAN:

9 Q And, Ms. Wood, where are you currently
10 employed at?

11 A BP -- still the same company.

12 Q And were you employed at BP back on
13 February 23, 2006?

14 A Yes.

15 Q At what location?

16 A Thirty-five forty Richland Avenue.

17 Q And is that within the city limits?

18 A Yes.

19 Q And back on February 23, 2006, what shift
20 were you working?

21 A I was working third shift, which was from
22 eleven at night to seven in the morning.

23 Q What was your job duty back then?

24 A Cashier, stocking, waiting on customers.

25 Q Were you the only one in the store that

1 evening?

2 A I was.

3 Q The only employee there?

4 A Yes.

5 Q Did anything unusual happen to you that
6 evening?

7 A Yes. At exactly 5:02 in the morning, I
8 was standing on the right side of my counter
9 emptying totes. A black gentleman walked in with a
10 camouflage hood on.

11 I said, "Good morning, how are you?" He
12 said, "Do you have a restroom?" I said, "Yes. Go
13 down the candy aisle. It'll be the second door on
14 the right."

15 He goes down the candy aisle, goes to the
16 bathroom, stays in there for a minute. I continued
17 putting the groceries up. I hear a hand dryer come
18 on, and I heard a door open.

19 I was fixing to go behind the counter. I
20 said, well, I'm going to wait for him to get his
21 stuff, you know. So I continued taking the creamers
22 and setting them on the counter, standing on the
23 opposite side.

24 He comes back up the same aisle, the candy
25 aisle. We have some hat displays sitting directly

Lisa Wood In-Camera Direct

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1 in front of the candy aisle, which is in front of
2 the lottery box. He walks up to that display and
3 picks up a hat by the bib and goes to the counter.

4 At that time, I was pretending to start to
5 go around the counter. And at that time -- I'd been
6 a cashier for 12 years, never had been robbed -- as
7 I was walking toward the counter, I looked him in
8 his face and knew he was fixing to rob me.

9 I walked up to the counter. I scanned the
10 hat by picking up the tag and scanned it. And he
11 said, "Give me \$50." I said, "I don't think I've
12 got that much."

13 He said, "Give me \$50." I said, "I really
14 don't think I've got that much." He said, "Don't
15 make me hurt you." He leans in toward the counter,
16 opened his coat up, and shows me the hand part of
17 the handgun -- didn't see the barrel.

18 I said, "Ain't no need in all that." I
19 hit error correct, take the hat off, and print a
20 receipt which is company policy -- why I do that, I
21 don't know -- and then open the drawer.

22 I had all ones and fives, mostly ones,
23 handed him -- I laid the money on the counter. He
24 asked me to pick the money up and hand it to him.
25 He wasn't going to touch the counter.

1 I picked the money up and put it in his
2 hand. He turns around to the right, walks out the
3 door. At that time, I hit the panic button, which
4 calls the police, took my cell phone, walked out the
5 door behind him, see him exiting my parking lot
6 through the carwash, getting into a dark-colored
7 small car, which I thought was a Nissan.

8 I said it was either dark blue or black.
9 He turned right out of the buffet parking lot going
10 toward the hospital. I told them he came into the
11 store that night. When I described him to them,
12 when the police got there, they was there within
13 minutes. I'd say three or four minutes, long enough
14 for me to walk back in the store and call my morning
15 manager and tell her I'd been robbed.

16 Q Okay. Lisa, let me back you up just a
17 second. When this encounter took place in the
18 store, what was the lighting like in the store?

19 A It was bright. We've -- there wasn't no
20 lighting out.

21 Q How close to the suspect did you get?

22 A As close as I am to her.

23 Q Was there anything obstructing your view
24 of his face?

25 A No.

Lisa Wood In-Camera Direct

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1 Q Did you get a good look at his face?

2 A Yes. He wasn't wearing no hat as well
3 when he robbed me. He had his hat off, just a coat
4 on, so I could see his head and all his face.
5 Wasn't no bib or nothing from a hat blocking my
6 view.

7 Q Okay. And a couple of days after this
8 incident, did you have an occasion to meet with
9 Detective Glover with the Aiken Department of Public
10 Safety --

11 A I did.

12 Q -- to view a photo lineup?

13 A Uh-huh.

14 THE COURT: Is that "yes"?

15 MS. WOOD: Yes.

16 Q And where did this take place at?

17 A At the Aiken County Sheriff's Office.

18 Q Could it have been the Department of
19 Public Safety?

20 A Could have been. I can't remember.

21 Q But it was Detective Keith Glover that you
22 met with?

23 A Yes, it was Mr. Glover.

24 Q And I'm going to hand you what's been
25 marked for identification purposes as State's

1 Exhibit Three and ask you if you can identify that
2 document.

3 A Yes.

4 Q What is that document?

5 A It's a picture of Mr. Allen.

6 Q Okay. What all is on that piece of paper,
7 in addition to just the picture?

8 A Five other different individuals.

9 Q In addition to Mr. Allen?

10 A Uh-huh.

11 Q Did Mr. Glover give you any instructions
12 prior to viewing the lineup in this case?

13 A No, he didn't.

14 Q What did he tell you?

15 A He just told me that there was a possible
16 suspect in my case and wanted me to see if any of
17 these men looked familiar to me. And I looked at
18 the picture. I knew it by the way he cocks his head
19 when he walks and talks. His keeps his head
20 sideways just like it is now.

21 Q And did you pick somebody out of this
22 lineup?

23 A Him, number three -- Mr. Allen.

24 Q And do you see him in the courtroom here
25 today?

Lisa Wood In-Camera Direct

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1 A Yes, he's sitting over there, with his
2 head cocked like it was in that picture.

3 Q And what's he wearing, for the record?

4 A When he robbed me, he was wearing a pair
5 of blue jeans, dark-colored shoes, camouflage
6 jacket, and on the back of the jacket there was a
7 name. I couldn't make it out when he walked like to
8 the back of the store from me.

9 Q And for the record, the person you're
10 pointing out, what's he wearing in the courtroom
11 today?

12 A White shirt and khaki pants.

13 Q Sitting over there by his attorney?

14 A Uh-huh.

15 THE COURT: Is that a "yes"?

16 MS. WOOD: Yes, it is.

17 Q Please answer any questions the
18 defendant's lawyer may have for you.

19 THE COURT: Cross-examine?

20 MR. LYONS: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. LYONS:

23 Q Ma'am, at some point in time after this
24 incident took place, did you have the opportunity to
25 look at some video?

1 A I didn't look at the video.

2 Q They didn't show it to you?

3 A Huh-uh. They turned it over to the
4 Sheriff's Office, and the Sheriff's Office handled
5 it. When they got pictures of the suspect, I went
6 down there and viewed my pictures and told them what
7 happened, and picked the correct picture out.

8 Q But you never looked at any video from the
9 store?

10 A No.

11 Q Do you know what happened to the video?

12 A Yes, it was turned over to the Sheriff's
13 Office for information for the case. That night, we
14 couldn't get a picture of it at that time, because
15 my manager had to get a copy of it to give them the
16 next day.

17 Q Tell us about the specific identification
18 information that you gave the police.

19 A When they came in that night?

20 Q Yes.

21 A I told them it was a tall black male, dark
22 skin, bald-headed, had facial hair right here. He
23 held his head kind of sideways when he talked. He
24 was in the store approximately three minutes from
25 the time he walked in and went to the bathroom.

Lisa Wood In-Camera Cross

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1 I got to see a good look of him. When he
2 come up the aisle, I seen him. When I went around
3 the corner, like I said, when he picked up the hat,
4 he had a camouflage coat on.

5 It was three-quarters of the ways up, blue
6 jeans, light-colored, dark-colored shoes, no hat.
7 Like I said, there was no hat, so I could see his
8 face good. And I knew he had big ears.

9 Q Was the suspect ever wearing a hat at all?

10 A No. He was approaching -- he was
11 presenting it to buy a hat when he robbed me.

12 Q Now, that information you just testified
13 to, you gave all that specific information to them?

14 A It's in my report.

15 Q Did you write that yourself?

16 A I wrote it myself.

17 Q Do you have any idea how many days later
18 it was that you were shown that photographic lineup?

19 A A week or less. I couldn't exactly
20 remember that date, but it was a week or less.

21 MR. LYONS: I don't have anything else.

22 THE COURT: Redirect, Mr. Kodman?

23 MR. KODMAN: Just briefly.

24 THE COURT: Certainly.

25 REDIRECT EXAMINATION

1 BY MR. KODMAN:

2 Q Ms. Wood, you testified earlier that you
3 had not watched that video of the surveillance of
4 your store. But you have actually watched that
5 video since then, correct?

6 A Yes, I got to see it today.

7 Q Was that the first time you had viewed it,
8 was in preparation for court?

9 A Uh-huh.

10 Q But prior to being shown the photographic
11 lineup, you had never viewed the video?

12 A Huh-uh. They gave it straight to the
13 Sheriff's Department, and I never got to see the
14 video. And also I'd like to also make a statement
15 if I could. His aunt also came to my work --

16 MR. LYONS: Your Honor --

17 THE COURT: No.

18 MS. WOOD: No?

19 THE COURT: You're here to just answer
20 questions, please, ma'am.

21 MS. WOOD: Oh, okay.

22 THE COURT: Thank you.

23 MR. KODMAN: That's all the questions I
24 have, Your Honor.

25 THE COURT: Recross?

Lisa Wood In-Camera Redirect

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1 MR. LYONS: No, Your Honor.

2 THE COURT: You may step down. Thank you.

3 MS. WOOD: Okay.

4 THE COURT: Any additional witnesses?

5 MR. KODMAN: Yes, Your Honor. The State
6 calls Investigator Keith Glover.

7 THE COURT: Okay.

8 (The witness was sworn.)

9 CLERK OF COURT: Please have a seat in the
10 witness box, state your full name for the Court, and
11 spell your last.

12 MR. GLOVER: Anthony Keith Glover, last
13 name G-L-O-V-E-R.

14 ANTHONY KEITH GLOVER, having first
15 been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KODMAN:

18 Q Detective Glover, where are you employed
19 at?

20 A Aiken Department of Public Safety.

21 Q And were you so employed back on February
22 23, 2006?

23 A Yes, sir.

24 Q And were you assigned an investigation on
25 that date?

Anthony Glover In-Camera Direct.

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1 A Yes, sir.

2 Q What kind of case was it?

3 A It was an armed robbery that happened on
4 the 23rd at the BP station on Richland Avenue.

5 Q At some point subsequent to being assigned
6 that case, did you develop a suspect in that case?

7 A Yes, sir.

8 Q How did that come about?

9 A I received a call from Investigator Wertz
10 with the Aiken County Sheriff's Office stating that
11 they arrested someone in their case or they had a
12 suspect in their case. And at that time, I made
13 contact with the Hillsboro County Jail, and I had
14 them to send me some information, a photo of the
15 subject.

16 Q And did you obtain a photo?

17 A Yes, sir.

18 Q And as a result of obtaining that photo,
19 what did you do?

20 A Placed it in a photo lineup.

21 Q I'll hand you what's been marked for
22 identification purposes as State's Exhibit Three and
23 ask you if you can identify that document.

24 A Yes, sir. That's the photo lineup that we
25 prepared.

Anthony Glover In-Camera Direct

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- 1 Q Is that the original?
- 2 A Yes, sir.
- 3 Q And does that show an accurate depiction
- 4 of the photographic lineup that you used in this
- 5 case?
- 6 A Yes, sir.
- 7 Q Did you have an occasion to conduct a
- 8 presentation of that lineup to Ms. Wood in this
- 9 case?
- 10 A Yes, I did.
- 11 Q And when was that done?
- 12 A That was done on the 27th -- February
- 13 27th.
- 14 Q Okay. And where was that done at?
- 15 A At Aiken Public Safety.
- 16 Q Who all was present when you presented the
- 17 lineup to Ms. Wood?
- 18 A Just Ms. Wood and myself.
- 19 Q And prior to presenting the lineup to Ms.
- 20 Wood, did you give her any instructions?
- 21 A Yes, sir. I told her that the person
- 22 involved in the robbery may or may not be in this
- 23 photo lineup.
- 24 Q And did you present the lineup to Ms.
- 25 Wood?

1 A Yes, I did.

2 Q And did she select anybody from that
3 lineup?

4 A Yes, she did.

5 Q Who did she select?

6 A Number three, Mr. Michael Allen.

7 Q And did you document anywhere on that or
8 did she document anywhere on that --

9 A I had her to initial over the one that she
10 picked.

11 Q What about on the back of that document?

12 A I also had her to write on the back that
13 that was the person that was picked -- that she
14 picked out of the armed robbery.

15 MR. KODMAN: Your Honor, at this time we'd move
16 to introduce State's Exhibit Three for purposes of
17 this hearing.

18 THE COURT: Any objection?

19 MR. LYONS: No objection for purposes of this
20 hearing.

21 THE COURT: Very well. Without objection,
22 it is admitted.

23 (State's Exhibit Number Three, Photo
24 Lineup Black-and-White [H], was entered in
25 evidence.)

Anthony Glover In-Camera Direct

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1 Q And did you prepare that lineup?

2 A Eddie George -- myself and Eddie George,
3 the guys that was over our computers at the time.

4 Q And when you were presenting this to her,
5 did you influence or try to suggest to her anybody
6 to select?

7 A No, sir.

8 Q How long did it take her to pick the
9 person out?

10 A A matter of seconds.

11 Q I notice the lineup is in black and white.
12 Why is that?

13 A It was because we started looking at it
14 with the different backgrounds and stuff. We
15 decided just to put it in black and white so it
16 would look more compatible as far as the all the
17 people in the lineup.

18 Q Please answer any questions Mr. Lyons may
19 have for you.

20 THE COURT: You may cross-examine.

21 MR. LYONS: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. LYONS:

24 Q Did you have any other role in this
25 particular investigation besides what you just

1 testified to?

2 A The case was assigned to me on the 24th,
3 except for -- as far as the initial call, no, sir.
4 But basically I ended up being the investigator once
5 it was assigned to me.

6 Q Did you pull any surveillance video from
7 the store?

8 A No, sir, I did not.

9 Q Do you know if any surveillance video was
10 pulled?

11 A Yes, sir.

12 Q Do you know if it's still being
13 maintained?

14 A Yes, sir, I've got it right here.

15 Q Did you ever have the opportunity to view
16 the video?

17 A Yes, sir, I did.

18 Q What's the last time you viewed the video?

19 A I've seen it today, and I looked at it on
20 yesterday.

21 MR. LYONS: I don't have anything else.

22 THE COURT: Redirect, Mr. Kodman?

23 MR. KODMAN: No, Your Honor.

24 THE COURT: Thank you, sir. You may step
25 down.

Anthony Glover In-Camera Cross

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1 Any additional witnesses?

2 MR. WEEKS: No, Your Honor.

3 THE COURT: Any witnesses?

4 MR. LYONS: No, nothing further, Your
5 Honor, thank you.

6 THE COURT: I'll be happy to hear from
7 you.

8 MR. LYONS: Judge, we submit it.

9 THE COURT: Very well. I think clearly,
10 from considering all the evidence and reviewing the
11 exhibits that have been introduced, I don't find
12 this unnecessarily suggestive as to give any
13 indication of a substantial likelihood of
14 misidentification.

15 I find it to be very reliable, very well
16 presented, and very unbiased lineups. Each
17 witnessed who identified the defendant had an
18 opportunity to view him at the time of the crime. I
19 understand the challenge to Ms. Bush's testimony.

20 That's more of a jury issue from the
21 standpoint of that she clearly testified that she
22 knew she was going to have to make an
23 identification, that her awareness, alertness was
24 heightened. There was not any misidentification,
25 and they were very clear in their picking out or

1 selecting persons identified on the lineups, no
2 equivocation.

3 They had time at confrontation, and both
4 witnesses had sufficient time. Certainly, the
5 second witness would have an abundance to view the
6 person. So for those reasons, the Court will allow
7 the identification and finds it reliable. Thank
8 you.

9 Anything else, Solicitor?

10 MR. WEEKS: Not in this case, Your Honor.

11 And for the day, I think we're done, too.

12 THE COURT: Very well. Any matters of law
13 at this time, Mr. Lyons? And certainly you're at
14 liberty to revisit that tomorrow.

15 MR. LYONS: Judge, I do one matter.

16 THE COURT: Yes, sir.

17 MR. LYONS: May we approach?

18 THE COURT: Sure, absolutely. Thank you
19 very much. All right, we'll be at ease in this case
20 until 10:00 in the morning. But we can resume
21 early. I'll be here at nine.

22 - End of Day -

Anthony Glover In-Camera Cross

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1 Tuesday, September 22, 2009

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: All right, let the record
6 reflect Mr. Allen is present. Good morning, sir.
7 We're ready to proceed.

8 The State's ready?

9 MR. WEEKS: The State's ready, Your Honor.

10 THE COURT: Mr. Lyons, is the defense
11 ready?

12 MR. LYONS: Yes, sir, we're ready.

13 THE COURT: All right, bring in our jury,
14 please.

15 MR. WEEKS: Judge, before we bring the
16 jury in, we might have a few matters that we would
17 proffer.

18 THE COURT: All right, hold on a second.
19 Okay, let me hear from you, Mr. Lyons.

20 MR. LYONS: Judge, just a couple of
21 matters I thought about over the night.

22 THE COURT: Sure.

23 MR. LYONS: There was an initial statement
24 that was taken from Mr. Allen down in Florida. I
25 don't think that was addressed in the Jackson-Denno

1 hearing yesterday.

2 And I'm not sure if that particular
3 statement that was taken, which was a post-arrest
4 statement, if that statement -- if the prosecution
5 intends to use that statement. If they do, the
6 admissibility, the voluntariness of that particular
7 statement has not been addressed.

8 THE COURT: Solicitor?

9 MR. WEEKS: Your Honor, that is correct.
10 We neglected to look over that yesterday. The first
11 officer that responded to a petty larceny call took
12 some information from him -- not investigating this
13 case; he didn't even know about this case -- but
14 some information that we would be introducing.

15 And our plan was to bring that up to your
16 attention before the break. But we can do it at any
17 time.

18 THE COURT: He wasn't a suspect? He
19 wasn't in custody?

20 MR. WEEKS: He was in custody, but it was
21 for a shoplifting.

22 THE COURT: All right. Well, we probably
23 need to have that hearing. We'll have it before he
24 testifies to that statement.

25 MR. WEEKS: Okay.

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1 THE COURT: There won't be any statements
2 during opening statement concerning the initial
3 statement, okay?

4 MR. WEEKS: Yes, sir.

5 THE COURT: All right, we'll address it at
6 that time.

7 MR. LYONS: And, Judge, the other issues
8 involves the shoplifting, the basis for the arrest.
9 I'm assuming that Mr. Weeks -- that they plan on
10 introducing testimony concerning why Mr. Allen was
11 in the position he was in.

12 I know there was also an outstanding
13 warrant. I don't know if they intend on getting
14 into that. But I'm kind of guessing that they're
15 going to want to talk about that he was down in
16 Florida shoplifting.

17 And, Judge, we would object to that
18 testimony. Judge, I don't think that is
19 sufficiently similar to this event that he's charged
20 with to bring that in. It's not sufficiently
21 similar.

22 But I don't think there is a sufficient
23 connection between the charges that he's facing here
24 in South Carolina, Judge, and the charge that he's
25 facing in South Carolina [sic].

1 Particularly, we don't know the outcome of
2 the charges down in South Carolina [sic]. I don't
3 think we have any certified copies here that there's
4 been a conviction following those charges.

5 And, Judge, since he's being tried for
6 grand larceny, armed robbery, and carjacking, Judge,
7 I think the prejudicial nature of any testimony
8 relating to the arrest, the basis of the arrest in
9 Florida, would outweigh any benefit to this
10 defendant.

11 Judge, we'd ask that the Court not allow
12 that particular testimony. We would be willing to
13 stipulate, Judge, that Mr. Allen was in custody at
14 some point.

15 THE COURT: Solicitor?

16 MR. WEEKS: Judge, we were aware of the
17 fact that he was in custody on a shoplifting
18 warrant, a shoplifting that had just occurred when
19 the officer talked to him.

20 Our plan was not call it shoplifting. We
21 were just going to say, "Was he in custody?" We
22 weren't going to bring up another crime, out of the
23 abundance of caution, even though I think it is all
24 part of the whole investigation in this matter as to
25 how they found this man.

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1 I think we can avoid saying shoplifting or
2 petty larceny. But we're going to have to say that
3 he was in custody in Florida because --

4 MR. LYONS: And, Judge, I don't have any
5 problem with that.

6 THE COURT: All right. I don't think
7 there's a problem. I think they're not going to
8 refer to it, and that's fine. We'll address it if
9 it comes up.

10 MR. WEEKS: Thank you, Your Honor.

11 THE COURT: Thank you, sir. Anything
12 else?

13 MR. WEEKS: No, Your Honor.

14 THE COURT: Okay, let's bring in our jury,
15 please.

16 MR. LYONS: Judge, do we stand for the
17 jury?

18 THE COURT: I don't require it. Some do,
19 and I don't. I watch jurors stand, and it seems to
20 confuse them as much as it does anything.

21 But I certainly appreciate it. If you all
22 choose to do that, that's fine, and I'll make some
23 comment about why you are. But I don't require it.

24 MR. LYONS: Yes, sir.

25 (The jury returned to the courtroom

1 at 10:12 a.m.)

2 THE COURT: I assume those two chairs are
3 for the alternate picking?

4 CLERK OF COURT: Yes, sir.

5 THE COURT: Good morning, ladies and
6 gentlemen. I hope you had a good evening. We are
7 ready now to resume the matter that we started
8 yesterday.

9 And let me talk to you a moment about the
10 seating. As you come in, you note that there are 14
11 chairs, and there are only 13 of you.

12 Those two chairs on the end of the top
13 row, those are chairs that are designated for
14 alternate jurors. We have an alternate. Ms. Coffee
15 is our alternate juror.

16 And, Ms. Coffee, that term really doesn't
17 mean a lot right now. What that means is this. At
18 the end of this trial, if the first 12 that were
19 selected are able to continue, then you will not
20 participate in the final deliberations.

21 But neither you nor I know the status of
22 those jurors. And so you're very much a part of the
23 jury, notwithstanding you are the alternate. While
24 you are the alternate, you may occupy either of
25 those seats. They belong to you.

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1 I would ask you, ladies and gentlemen, not
2 to occupy those seats and to leave those vacant when
3 you come in the courtroom. There's only one other
4 designated seat, and the lady that was moved from
5 the back row to the front row is occupying that
6 seat.

7 She's eligible as is any of the first 12
8 of you are eligible to serve. I call it presiding
9 jurors. They're also called foreperson, foreman,
10 forelady.

11 Someone has to be responsible for signing
12 the verdict form on behalf of the jury. If there
13 are exhibits that are introduced during the trial,
14 it would be the responsibility of that individual to
15 receive the exhibits from the Court and, when the
16 jury has completed its deliberations, returning
17 those exhibits to the Court.

18 There may be occasions when you have to
19 serve as the clerk, basically, to the jury, because
20 there may be some communication from the jury to the
21 Court, and that would be your responsibility to
22 draft that.

23 The statute allows me to select that
24 person or you to select the presiding juror. And I
25 over the years have come to allow the jury to pick

1 their presiding juror. It doesn't have to be done
2 right away.

3 At some point, I would ask that you select
4 that person. Once that person has been identified
5 by you as your presiding juror, I would simply ask
6 that that individual occupy that seat for the
7 balance of the trial.

8 Until then, you're free -- any of the
9 first 12 of you are free -- to sit in any of the
10 seats except for the alternate seats. I've thought
11 over the years what would be the quality?

12 Each of you are certainly qualified. The
13 only person that's not eligible to serve is Ms.
14 Coffee, and that's only because she's the alternate.
15 But some persons maybe have better facility and
16 skills than others.

17 And after you talk to each other, you may
18 find that person may be a person that's among you.
19 But it doesn't matter. Certainly, you have been
20 eminently qualified, all of you, to be presiding
21 juror.

22 I told the last question I asked of you
23 that you would be required to take an oath, and now
24 that will be administered to you. Thank you very
25 much.

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1 CLERK OF COURT: Ladies and gentlemen of
2 the jury, please stand and raise your right hand.

3 (The jury was sworn.)

4 THE COURT: Thank you.

5 Thank you, ladies and gentlemen. I told
6 you that we have a wonderful system, and we really
7 do. And now by virtue of that oath, you have joined
8 me in becoming judge in this case.

9 And now you and I will resolve this
10 dispute. I look forward to serving with you. It's
11 an honor to serve with each one of you as a judge,
12 and I know and am confident that you will honor the
13 commitment that you just made to the Court, to the
14 parties involved in this dispute, and their
15 attorneys.

16 I told you yesterday that there was no one
17 more qualified than you, and I stand by that
18 statement again. And I will further tell you that
19 you brought with you this morning everything you're
20 going to need.

21 You, and only you, can apply your common
22 sense you've relied on in all your life. And
23 everyone expects that you will do that at the
24 appropriate time when you analyze the evidence in
25 this case.

1 The evidence consists of the testimony of
2 witnesses and exhibits that are introduced through
3 that testimony, and nothing else. You'll hear other
4 things during this trial, but evidence is what you
5 will ultimately analyze and decide for yourself what
6 you believe to be true.

7 How many times in our life do we hear
8 something or we read something that most of the
9 time, it's a subconscious process, not really
10 consciously saying "Well, I don't believe that" or
11 "I do believe that."

12 But there are many occasions when you do.
13 And that's exactly what you'll do at the appropriate
14 time. I've said that twice. Let's talk about that.

15 You brought something else with you when
16 you came in that I would submit to you is equally
17 important, and that is an open mind -- because if
18 you think about it, either you responded to a
19 question, and if you did, you heard me ask and
20 you're probably tired of my asking over and over
21 again, "Will it affect you? Will you base your
22 decision on what is the evidence and the law?"

23 What did you just promise to do -- decide
24 on the evidence and the law. And either you
25 responded, or you didn't. It doesn't matter,

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1 because the same is true. You've said, "No, it
2 won't influence me. Judge, I know nothing about
3 this dispute."

4 And the last question, "Nothing that I've
5 heard would give me any concern about making a
6 commitment to that oath, that I have an open mind.
7 I haven't predetermined anything, haven't decided."

8 It's very important to performing your
9 function. And I would suggest and submit to you
10 it's important in being a judge, because if judges
11 start with a predetermination, then they aren't
12 being fair.

13 So remain and keep that open mind. Remain
14 open, and do not change that until you have an
15 opportunity to deliberate. And deliberate means
16 talk among yourselves and think about, vocalize,
17 your respective decisions.

18 And that will occur after you've heard all
19 the evidence and after you've gone through each
20 phase of this proceeding. Now, I mentioned to you
21 several principles of law.

22 And, of course, one of the phases of this
23 proceeding will be my responsibility as judge of the
24 law to give you the law. And that will be the last
25 phase that we have. In fact, ladies and gentlemen,

1 the last instruction that I give to you is when you
2 may commence your deliberations.

3 So another very important reason, aside
4 from the fact that it's just inherently basically
5 necessary for a judge to keep that open mind,
6 another important part is if you start changing that
7 position before I tell you to, you're not making
8 your decision consistent with the law which you just
9 promised that you would.

10 The last phase I'll tell you a number of
11 things. I'll define for you the various elements of
12 each of the charges -- carjacking, armed robbery,
13 and grand larceny. And you will be informed about a
14 number of legal principles.

15 And let's talk about and reiterate some of
16 the ones that I mentioned yesterday. Number one,
17 this dispute in the format, as I said, whether we
18 have a civil dispute or a criminal dispute,
19 basically there are the same four parts that you're
20 going to hear.

21 But there are two major differences. I
22 mentioned those two. One, the party and the only
23 party that has any burden of proof is the State.
24 They make the charges, they make the claim, they
25 have to prove it.

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1 The defendant in this matter has
2 absolutely nothing to prove or disprove. At no time
3 should you ever look to him to explain anything,
4 justify anything. He certainly does not have to
5 prove his innocence.

6 He has no responsibility that he has to
7 present any testimony if he chooses not to. Why?
8 He doesn't have anything to prove. And you must
9 never expect him to do anything, because the burden
10 rests solely on the State.

11 And that means this. They present the
12 evidence, and because they have the burden of proof,
13 they go first. Obviously, they made the claim.
14 They must proceed.

15 And basically that's what a jury's verdict
16 in a criminal dispute says. A guilty verdict says
17 that in that particular case, the State was able to
18 convince that jury and each juror to the requisite
19 standard of each element of that offense.
20 Therefore, they returned a verdict of guilty.

21 A not guilty verdict means simply this.
22 In analyzing the evidence, the jury was not
23 convinced beyond a reasonable doubt as to each
24 element, because if the State fails on one, then you
25 must return a verdict of not guilty, because the

1 State has to prove every element for the standard.

2 And that's the second major difference
3 between a civil proceeding and a criminal
4 proceeding. As I mentioned to you, generally in a
5 civil proceeding, the basic standard for burden of
6 proof is the preponderance or greater weight of the
7 evidence.

8 And that term simply means that probable
9 is the standard. But in a criminal dispute such as
10 we have here today, it's greater than probable.
11 It's beyond a reasonable doubt.

12 And I'll define that for you. But I will
13 tell you now that a reasonable doubt is a doubt that
14 would make an honest, conscientious juror searching
15 for the truth in the case to hesitate to take some
16 actions or act?

17 That's the standard that you will apply as
18 you analyze the evidence. The other principle, of
19 course, as I mentioned to you yesterday is persons
20 accused of criminal offenses are presumed innocent,
21 and that's an active presumption.

22 That means when you walked in here today,
23 you had to presume the defendant is innocent of each
24 of these charges. And that is maintained throughout
25 this proceeding and may only change when, after your

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1 deliberations, you're convinced beyond a reasonable
2 doubt that the State has met its burden of proof as
3 to each element.

4 Then, and only then, may you set aside
5 that presumption of innocence. There are a number
6 of principles. I won't talk with you about them all
7 now, because we'll talk about them at the end.

8 One of the things that I will tell you, of
9 course, is that you are the sole judges of the
10 facts. As you know, we work separately. My
11 responsibility is to give you the law, preside over
12 these proceedings, to make rulings on matters of law
13 that may from time to time arise.

14 I don't have anything to do with the
15 facts. Nothing that I say should ever be considered
16 by you as an indication of how you resolve the
17 factual issue. That's your job.

18 But basically in doing that, performing
19 that function, you're going to have to assess and
20 evaluate the credibility and believability of each
21 witness. Now, that's not something foreign. You do
22 that every day.

23 And those factors that have assisted you
24 in your life in making those decisions, you're
25 certainly expected as we go through the trial to

1 make those mental notes that will assist you when
2 you begin the process of analyzing this case.

3 And, remember, it's not always sometimes
4 what somebody says. Sometimes it's body language.
5 Sometimes it's many, many things, just the basic
6 inherent credibility or believability of what
7 somebody says.

8 Again, make those mental notes, but do not
9 reach any conclusion until you've had a chance to
10 discuss that among yourselves. Now, there are two
11 other phases of this proceeding. The evidentiary
12 phase is where you are going to hear the witnesses.

13 And the other phases that you will have
14 will be the attorneys will have a chance to speak to
15 you, and they speak to you twice, once before you
16 hear the evidence and once after you've heard the
17 evidence.

18 We call the first phase opening
19 statements. And at that time, they will discuss
20 with you what they expect the evidence will show.
21 They will discuss some of the issues involved in
22 this case. And they may even discuss some of the
23 legal principles.

24 Their remarks will be helpful to you as
25 you go through the trial, painting you a broad

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1 picture or overview of the dispute. Closing
2 arguments, you've heard the evidence, and now it's
3 proper for them to discuss that evidence with you
4 and suggest reasonable inferences that you may draw
5 from that evidence.

6 I would urge you to give the attorneys
7 your undivided attention. Their remarks are very
8 important. They are officers of this Court and, as
9 I stated yesterday, have an extremely important
10 responsibility to present the evidence and the law
11 in a fashion that will assist us in making the
12 decisions that we must make.

13 But while they're extremely important and
14 command your attention, their remarks, just as my
15 remarks, should never be considered evidence in any
16 way. I mentioned to you that the defendant has
17 absolutely nothing to prove, nothing at all.

18 At the conclusion of the State's case, I
19 will give the defendant an opportunity, because he
20 has the right to, if he chooses to. He doesn't have
21 to.

22 There's another very important reason why
23 you shouldn't make any predetermination, because you
24 need to go through all the phases and you need to
25 hear all of the evidence before you make your

1 decision.

2 Ladies and gentlemen, it's an honor and a
3 privilege to serve with you and to work with you. I
4 know this is not something that you would probably
5 have chosen to do.

6 Last week, if somebody had asked you what
7 would be the number one thing, it probably wouldn't
8 be to sit where you're sitting. But you have
9 honored this process, and honored the State, and
10 honored this county by saying "Judge, I'm here, I've
11 been selected, and I'm willing to serve."

12 I thank you for that commitment. And I
13 ask you to give the attention now that you've given
14 to me to the attorneys as they give their opening
15 statements.

16 Solicitor?

17 MR. WEEKS: May it please --

18 MR. LYONS: Your Honor --

19 THE COURT: Yes, sir?

20 MR. LYONS: -- before we get started, may
21 we approach?

22 THE COURT: Sure.

23 Solicitor, you may proceed.

24 MR. KODMAN: May it please the Court, Your
25 Honor?

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1 THE COURT: Yes, sir, Mr. Kodman.

2 OPENING STATEMENT

3 MR. KODMAN: Mr. Lyons, ladies and
4 gentlemen of the jury, good morning.

5 THE JURY: Good morning.

6 MR. KODMAN: I met you briefly yesterday.
7 My name is Steve Kodman. I'm an Assistant Solicitor
8 here in Aiken. I work with Strom Thurmond, Jr.
9 I'll be trying this case today with Senior Deputy
10 Solicitor Bill Weeks.

11 You've heard a little bit about what the
12 charges are in this case. The defendant is charged
13 in this case with armed robbery, carjacking, and
14 grand larceny. And right now, those legal terms may
15 not mean a lot to you.

16 You may be asking yourself, "What is this
17 case about?" I submit to you as we go through this
18 case, you're going to learn that this case is about
19 three things. This case is about courage in the way
20 that Emily Bush and Lisa Wood responded when they
21 were being carjacked and robbed.

22 It's about good police work, as we'll see
23 from not only the local Sheriff's Department and
24 local police department but some good police work
25 done down in Tampa, Florida, by the Hillsboro County

1 Sheriff's Department, along with maybe a little bit
2 of luck.

3 And, third, this case is about violence,
4 because carjacking and armed robbery in every state
5 are violent crimes. Now, February 23, 2006, may not
6 be a significant date to you all. But I can tell
7 you two people that that date means a lot to.

8 February 23, 2006, will be a date that
9 Lisa Wood and Emily Bush will remember forever. On
10 February , 2006, Emily Bush, who you're going to
11 hear from today, turned 18.

12 Late that evening, I guess early in the
13 morning hours of February 23, 2006, she went to the
14 Circle K over on Pine Log Road over on the east side
15 to do like maybe some 18-year-olds want to turn when
16 they turn 18, to go buy a pack of cigarettes.

17 So it's 1:00 in the morning, and she goes
18 to the Circle K and goes in, pays for her
19 cigarettes, and comes out to her car. And while
20 she's sitting in her car, she looks up and notices
21 some yards away a black male wearing camouflage
22 jacket and a dark cat.

23 And initially that doesn't really mean
24 anything to her, until moments later when that same
25 black male wearing a camouflage jacket and a dark

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1 hat comes to her car and attempts to force her out
2 of her vehicle.

3 At first, she resists, and then she is
4 pulled from the vehicle, thrown into the gas pumps.
5 And the perpetrator gets in the vehicle, a 2003
6 Hyundai, dark in color, I believe, and drives away
7 from the scene.

8 Immediately, law enforcement is called and
9 responds. You're going to see some surveillance
10 footage that there is from inside the store where
11 about an hour earlier there was an individual come
12 into the store who's wearing a camouflage jacket and
13 a black hat or a dark hat that matches the
14 description that she gave to law enforcement.

15 And then later that evening, early morning
16 hours on February 23, 2006, Lisa Wood was working at
17 the BP station in the city limits of Aiken down on
18 Richland Avenue. She's a store clerk, and she's the
19 only one working that evening.

20 And who walks into her store but a black
21 male wearing a camouflage jacket. And you're going
22 to hear her testimony how that male walks in, goes
23 to the restroom, comes back to the counter,
24 approaches her with a hat that he's pulled from a
25 rack, and demands money from her from the register.

1 When she initially refuses, he shows her
2 what she believes to be the barrel of a handgun.
3 And obviously when that's done, she gives him money
4 from the register. The male leaves the store, and
5 she goes outside to see where the person was going
6 to, after she pushes the panic button.

7 And she'll testify to you that she saw him
8 go to another parking lot and get in a vehicle, dark
9 in color -- I think she's going to tell you that at
10 the time she thought it to be a Nissan type vehicle
11 -- and drive away.

12 So there in a span of four hours two
13 violent crimes are committed right here in Aiken
14 County, who we submit is the same individual and who
15 we submit you're going to find is going to be the
16 defendant.

17 So a couple of days go by, and law
18 enforcement has no leads in the case. And down in
19 Tampa, Florida, the Hillsboro County Sheriff's
20 Department, an officer down there at the shopping
21 mall comes in contact with the defendant.

22 And when he does come into contact with
23 him, one of the things in the defendant's possession
24 is a key to a Hyundai. That man had the key to a
25 Hyundai in his possession.

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1 The following day, that same officer,
2 while patrolling the parking lot of the shopping
3 mall, sees a 2003 Hyundai. And he thinks enough of
4 it to go and check it out as to where it was parked.

5 And, guess what? It turns out to be
6 stolen, and it turns out to be the same vehicle that
7 was stolen from Emily Bush just a couple of days
8 earlier right here in Aiken County.

9 So, being good police officers, they get
10 the key from the defendant, and they take it to the
11 vehicle that was in the shopping mall, the same
12 shopping mall that Officer Siebert encountered the
13 defendant at.

14 And, guess what? The key in the
15 defendant's possession was a match and worked with
16 the vehicle and was the key to the 2003 Hyundai
17 which was in the parking lot down in Florida.
18 You're also going to hear from the officers down
19 there and their conversations that they had with the
20 defendant.

21 So now we have a suspect. So what does
22 law enforcement locally here do once they have a
23 suspect in the case? They prepare some photo
24 lineups -- two separate photo lineups because we're
25 dealing with two separate agencies.

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1 The Sheriff's Department is investigating
2 the case with the Circle K. The Aiken Police
3 Department is investigating the case with the BP
4 station. They each prepare a lineup with the
5 defendant's face in each lineup.

6 And they take it to each victim
7 separately, Ms. Wood and Ms. Bush, and they present
8 them with the lineups. And they tell them, "The
9 person who committed this crime to you a couple of
10 days earlier, do you see that person in the lineup?"

11 And both victims, separately and apart
12 from each other, identify the defendant as the
13 person who perpetrated these crimes. Now, as the
14 Judge told you, he's the judge of the law. You are
15 the judge of the facts.

16 He's going to give you a charge at the end
17 of the case. And let me say this upfront. I want
18 to go over with you a little bit about what the
19 elements are. If I say something different from the
20 way the Judge tells it to you, please take it the
21 way he tells it to you, because he is the judge of
22 the law.

23 I'm certainly not going to try to misguide
24 you in any way, but I think it's important you
25 understand a little bit about what the elements are

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1 that we have to prove, because we, the State, we do
2 bear the burden of proof in this case.

3 The defendant in this case is charged with
4 three things. He's charged with grand larceny. In
5 South Carolina, grand larceny is the taking and
6 carrying away of personal property of another valued
7 at over \$1,000 with the intent to permanently
8 deprive and convert that property to your own use.

9 And that would be the 2003 Hyundai which
10 was taken from Emily Bush. Carjacking -- also
11 relates to the case involving Emily Bush -- is the
12 taking and carrying away of a motor vehicle by force
13 and violence or by intimidation and while the person
14 is still in the vehicle.

15 Armed robbery, which applies to the BP
16 station, the robbery of Lisa Wood, is the taking and
17 carrying away of the personal property of another
18 with the intent to deprive that person of possession
19 with force or intimidation, and while doing so, the
20 person needs to be armed or the victim of the
21 robbery reasonably perceives that the person was
22 armed.

23 So it's not necessary under the law that
24 we prove to you that there was an actual weapon.
25 And what's important is whether the defendant

1 conveyed that to the victim and the victim
2 reasonably thought that what the defendant had in
3 his possession was actually a weapon.

4 So those are the three charges that are
5 before you today. And in addition to that, one of
6 the things the Judge is going to charge you on at
7 the end of the case is the different types of
8 evidence, because when you watch TV, you hear a lot
9 about circumstantial evidence and direct evidence.

10 And I'll just tell you that there's both
11 kinds of evidence. Circumstantial evidence carries
12 no greater weight than direct evidence, and vice
13 versa. And let me give you an example of what they
14 might be.

15 If I were to sit here and tell you it's
16 raining outside, there's obviously no windows here
17 in the courtroom. If I told you it's raining
18 outside, and I walk outside, and I came back in
19 here, and I'm soaking wet, that would be
20 circumstantial evidence that it's raining outside.

21 You obviously didn't see it raining, but
22 you could deduce by what I told you and the fact I
23 went outside and came back wet that more probably
24 than not it was raining outside.

25 Direct evidence, one form of direct

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1 evidence, which I believe is really good evidence,
2 is eyewitness testimony. It's someone who gets on
3 the stand and says, "I saw this happen. This
4 happened to me," and in particular, when they get on
5 the stand, they say, "This happened to me, and that
6 man did it." And we have that evidence in this
7 case.

8 Now, when you come into a courtroom, it's
9 kind of a formal environment, and Judge Dennis does
10 a really good job with kind of getting everybody
11 relaxed. But I'm sure it's a foreign kind of place
12 for everybody to be in.

13 But just remember this. When you come in
14 here, you don't leave your common sense or your life
15 experiences outside. You do bring those in here
16 with you. And you're going to use those when you
17 deliberate in this case.

18 At the end of the case, the Judge is going
19 to give you the charge. And it's at that time where
20 you're going to take the facts as you find them to
21 be and apply it to the law as the Judge gives it to
22 you.

23 In this case, at the end of the case when
24 you do that, we're confident that you'll return a
25 verdict that speaks the truth, and you'll return a

1 verdict that says Michael Allen is guilty on all
2 three counts. Thank you.

3 THE COURT: Thank you, Mr. Kodman.

4 Mr. Lyons?

5 MR. LYONS: May it please the Court?

6 THE COURT: Yes, sir.

7 OPENING STATEMENT

8 MR. LYONS: Solicitors, ladies and
9 gentlemen, good morning.

10 THE JURY: Good morning.

11 MR. LYONS: Once again, my name is Charles
12 Lyons, and I had the pleasure this morning of
13 getting up in Evans, Georgia, and making a trip over
14 here to Aiken to be with you and try this case and
15 to let our process -- our judicial process, our
16 process of criminal law and procedure -- actually
17 live, and breathe, and take place this morning.

18 One of the most important aspects of our
19 democracy is that when people are accused of
20 criminal activity that no one just rushes out and
21 grabs them and does something drastic to them, take
22 the law into their own hands, make rash decisions.

23 That is one of the stalwarts of our system
24 of justice. And you being here this morning
25 actually puts that particular aspect of our system

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1 of justice into play. When you look around the
2 courtroom, you see on this side of the courtroom
3 there are numerous police officers and several
4 Solicitors and assistants.

5 That is the power of the State of South
6 Carolina. And you'll see just me and Mr. Allen.
7 And because the State has such immense power, a
8 long, long long time ago it was decided that if
9 you're going to bring someone into court and put
10 them on trial, then you have elected to carry the
11 burden of making sure and proving that that person
12 is guilty of the alleged crimes beyond a reasonable
13 doubt.

14 And I'll tell you that's all that Mr.
15 Allen can ask of you, is that you be fair, that you
16 be impartial, and that you make sure that hold the
17 State to that burden. Now, there's going to be some
18 testimony and some evidence that at some point in
19 time we're going to agree with that's presented by
20 the State.

21 There's going to be some evidence at some
22 point in that we're not going to agree with from the
23 State. But it will be up to you, ladies and
24 gentlemen, to view this evidence and decide what it
25 means to you.

1 Now, the Judge told you about keeping an
2 open mind, because all you're going to hear from
3 initially is from the State. And we ask that you
4 not make any decisions until you've had the
5 opportunity to hear the whole case.

6 Now, as the Judge told you, Mr. Allen
7 doesn't have to do anything. He can sit and see if
8 the State can establish its burden of proof. He
9 doesn't have to do anything. And I ask that you
10 remember that throughout the course of this trial.

11 Now, I used to get up in opening
12 statements, and one of the things that they tell you
13 in law school and one of the things you are told in
14 seminars, when you represent people who are accused
15 of violating criminal laws, is that at the end of
16 your opening statement that you need to tell the
17 jury that "My client is not guilty" and that "You
18 should go back in that jury room after you've heard
19 all of the evidence and find him not guilty."

20 I've thought about that and thought about
21 how that doesn't make any sense. It doesn't really
22 make any sense for me to tell you, if I was in the
23 opposite shoes, to go back and find him guilty, and
24 I'm not going to ask you to go back after you hear
25 this case and find him not guilty, because you,

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1 ladies and gentlemen, are the jury.

2 I'm asking you to listen to the evidence,
3 all the evidence, be fair and impartial. And after
4 you do that, I'm asking you to go back in that jury
5 room and take that evidence, and you make the
6 decision that you think the evidence produced --
7 that you go back in the jury after this case has
8 been heard, and you make your decision based on what
9 the evidence is, because it's your decision, it's
10 not mine. I thank you for your attention. I thank
11 you for Mr. Allen.

12 THE COURT: Thank you, Mr. Lyons.

13 You may call your first witness,
14 Solicitor.

15 MR. WEEKS: Thank you, Your Honor. The
16 State would call Emily Bush.

17 CLERK OF COURT: Come forward right here,
18 please, ma'am.

19 (The witness was sworn.)

20 CLERK OF COURT: Please have a seat in the
21 witness box, state your full name for the Court, and
22 spell your last.

23 MS. BUSH: My name is Emily Bush. My last
24 name is spelled B-U-S-H.

25 EMILY BUSH, having first been duly

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1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WEEKS:

4 Q Emily, do you live here in Aiken?

5 A Yes.

6 Q Do you go to school, or do you work?

7 A I go to school at Aiken Tech.

8 Q And how old are you?

9 A Twenty-one.

10 Q And back on February , 2006, what day
11 was that?

12 A That was my birthday.

13 Q And you would have turned what?

14 A Eighteen.

15 Q All right. And now I'm going to call you
16 back to that day and the early morning hours
17 following it. Can you tell me what you did on
18 February the 23rd in the early morning hours?

19 A I went to a party, and later I went to a
20 gas station down the street from my house.

21 Q Okay. And what gas station was that?

22 A The Circle K on Banks Mill.

23 Q On Banks Mill Road?

24 A And Pine Log.

25 Q And was that in Aiken County?

Emily Bush - Direct

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1 A Yes.

2 Q You probably don't have to lean down every
3 time. Just speak up real loud, okay?

4 A Okay.

5 Q About what time did you get there?

6 A I'd like to say it was about twelve or
7 one, but I'm not sure.

8 Q Okay. And when you got there, what did
9 you do?

10 A I went inside to buy a pack of cigarettes
11 and gas with my remaining five dollars.

12 Q Did you do that?

13 A I did.

14 Q All right. Why were you buying a pack of
15 cigarettes?

16 A Because I just turned 18.

17 Q Did you think that was something good you
18 needed to do?

19 A Probably not. I've quite since then,
20 though.

21 MR. LYONS: I'm sorry, but I just can't hear
22 her.

23 THE COURT: All right. Is that mike on?

24 Q So, Emily, when you bought this pack of
25 cigarettes, what did you do then?

Emily Bush - Direct

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1 A I went back outside, put gas in my car,
2 and got back in my car to put my receipts back in my
3 purse.

4 Q And what, if anything, happened to you
5 there?

6 A Well, I looked up, and I saw a black man
7 in a camouflage jacket and a dark hat walking from
8 the perimeter.

9 Q The perimeter of the Circle K?

10 A Of the Circle K. And he looked like he
11 was walking inside, so I didn't pay attention.

12 Q Okay. What were you doing while this was
13 taking place?

14 A I was organizing my stuff in my car.

15 Q And did anything happen after that?

16 A The same man came up to my door and opened
17 it and told me to get out of the car.

18 Q What did you do?

19 A Well, my first reaction was to try to pull
20 my door back, but I then actually looked around and
21 saw his face. And he grabbed my arm and threw me up
22 against the gas pumps and took my car.

23 Q Did he take everything else that was in
24 the car?

25 A Everything.

Emily Bush - Direct

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1 Q What were you doing after he pulled you
2 out of the car?

3 A Well, I kind of stood there for a couple
4 of minutes, because I really didn't know what to do.

5 Q Where did he go?

6 A He drove off down Pine Log Road.

7 Q Were you able to observe him drive off?

8 A Yes, I was.

9 Q Okay. Emily, while this was going on, did
10 you have an opportunity to observe the person that
11 did this to you?

12 A Yes, I did.

13 Q Was there anything covering his face?

14 A No.

15 Q And did you go in at that point and report
16 it? What did you do?

17 A I ran inside and told the cashier what
18 just happened. She called the police.

19 Q And did Officer Goodwin here respond?

20 A Yes, he did.

21 Q Have you ever seen your car again since?

22 A No, I haven't.

23 Q Tell me a little bit about how the Circle
24 K is lighted at 1:00 in the morning, or it was on
25 that day.

Emily Bush - Direct

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1 A There are lights under the canopy over the
2 gas pumps, and there are also street lamps that
3 border the perimeter of the gas station.

4 Q Did you have any trouble seeing the man
5 that stole your car and pulled you out of it?

6 A No, I didn't.

7 Q Who actually owned the car you were in?

8 A My father actually owned it at the time.

9 Q And I'm going to hand you what's marked
10 State's Exhibit Number Eight for purposes of
11 identification and just ask you if you can identify
12 what's depicted in that photograph.

13 A It's a car just like mine.

14 Q Okay. That's not your car, though?

15 A No.

16 Q But you've looked at this, and it
17 resembles your car?

18 A Yes.

19 Q Same color?

20 A Same color.

21 Q Same body style?

22 A Same body style.

23 MR. WEEKS: Your Honor, we move to
24 introduce State's Number Eight.

25 THE COURT: Any objection.

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1 MR. LYONS: Judge, I haven't seen it.

2 THE COURT: All right, show it to counsel,
3 please.

4 MR. LYONS: I don't have any objection to
5 it.

6 THE COURT: Very well. State's Eight is a
7 picture of a car.

8 (State's Exhibit Number Eight,
9 Photograph, was entered in evidence.)

10 Q And when you described your car to the
11 police, you gave them -- your daddy's car -- did you
12 give them the tag number --

13 A Yes.

14 Q -- and the vehicle identification number?

15 A Yes, I did.

16 Q Told them the color?

17 A Yes.

18 Q Now, after the person left, what did you
19 and the police do at that point?

20 A Well, first, I wrote my statement.
21 Obviously, I told them what happened, and they
22 obviously started looking for the car. And we were
23 originally going to watch a surveillance tape,
24 because the cashier told us that she had seen a man
25 come in earlier --

Emily Bush - Direct

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1 MR. LYONS: Your Honor, I would object.

2 THE COURT: Sustained.

3 MR. WEEKS: Don't say what was told to
4 you.

5 I'm sorry, Your Honor.

6 MR. LYONS: Judge, I'd move to strike.

7 THE COURT: Jury, disregard the witness'
8 last statement concerning what someone told her.

9 Q As a result of whatever y'all did with the
10 police that night, have you ultimately watched the
11 video?

12 A I have since.

13 Q Okay. But that night, you didn't, did
14 you?

15 A No.

16 Q What was the next thing that happened with
17 regard to law enforcement after that night?

18 A I went to the Sheriff's Department to look
19 at a photo lineup.

20 Q And who conducted that with you?

21 A Investigator Wertz.

22 Q That would be one of the bald-headed men
23 sitting back there on that second row. Where did
24 that happen at?

25 A At the Sheriff's Department.

Emily Bush - Direct

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1 Q And what did he do when conducting that?

2 A He presented me a photo lineup, told me
3 that there may or may not be a prospective suspect
4 to my case in the lineup, and for me to identify him
5 if he was there.

6 Q And were you able to do that?

7 A Yes, I was.

8 Q How long did it take you?

9 A A couple of seconds.

10 Q And did he tell you that you had to pick
11 somebody out of this lineup? What did he do?

12 A No, he told me that there may or may not
13 be someone but that if I saw the person that
14 carjacked me that I should identify him.

15 Q Okay. And did you do that?

16 A Yes.

17 Q I'll hand you what's marked State's
18 Exhibit Number Two. And just say "yes" or "no," can
19 you identify that item?

20 A Yes.

21 Q And does it truly and accurately reflect
22 what you were shown that day --

23 A Yes.

24 Q -- and what that item is?

25 A Yes.

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1 Q And did you pick a person out of State's
2 Exhibit Number Two?

3 A Yes, I did.

4 Q Which one?

5 A Number three.

6 Q Okay. And you told Officer Wertz that
7 that day?

8 A Yes, I did.

9 Q Emily, do you remember what day that was?

10 A I don't remember the exact date, but it
11 was approximately a week or so afterwards, a week or
12 less.

13 Q And that took place at the Sheriff's
14 Department?

15 A Yes.

16 Q Now, in talking about the video, have you
17 since seen the surveillance video from the store?

18 A Yes.

19 Q And have you watched it in my office --

20 A Yes.

21 Q -- or actually in the hallway?

22 A Yes.

23 Q And is the person depicted in the
24 surveillance video from the store that night the
25 same person that carjacked you?

Emily Bush - Direct

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1 A Yes, it is.

2 Q Okay. State's Exhibit Number Four is what
3 we watched?

4 A Yes.

5 Q Have you seen any pictures, still
6 photographs, pulled from that video?

7 A Yes, I have.

8 Q And State's Exhibits Number Seven and
9 Eight, do you recognize those?

10 A Yes, I do.

11 Q Okay. Are those true and accurate copies
12 of what you saw on the video?

13 A Yes, they are.

14 Q Who prepared these for you to look at?

15 A Investigator Wertz showed them to me
16 later.

17 Q Okay. Emily, I hate to say what I was
18 doing on my 18th birthday. But on your 18th
19 birthday, were you drinking or cutting up?

20 A I wasn't drinking, no. I don't drink.

21 Q And you weren't in any trouble for being
22 out at 1:00 in the morning, were you?

23 A No. I'm sure I would have been if I
24 hadn't been out as late as I was because of what
25 happened, though.

Emily Bush - Direct

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1 Q So it took a little while after you got
2 robbed to get to the house?

3 A It look a long time.

4 Q Now, Emily, is the person that carjacked
5 you that night in the courtroom here today?

6 A Yes, he is.

7 Q Where is he?

8 A Over there.

9 Q Over there, where?

10 A Sitting in the defense.

11 MR. WEEKS: The record will reflect so, Your
12 Honor.

13 THE COURT: It so reflects.

14 Q Emily, answer any questions Mr. Lyons has
15 for you.

16 THE COURT: Mr. Lyons, you may cross-
17 examine.

18 MR. LYONS: Thank you.

19 CROSS-EXAMINATION

20 BY MR. LYONS:

21 Q Good morning, Ms. Bush.

22 A Hi.

23 Q Can we agree that when this incident
24 happened back in 2006 that it happened really fast?

25 A Yes, we can.

Emily Bush - Cross

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1 Q And can we agree that you testified that
2 you bought five dollars' worth of gas?

3 A Yes.

4 Q And can we agree that it didn't take long
5 to pump that much gas?

6 A Yes.

7 Q And so the unfortunate situation that
8 occurred to you that particular morning happened
9 very fast, correct?

10 A Yes.

11 Q And the last thing that you anticipated
12 occurring that particular morning was somebody
13 taking your car?

14 A Yes.

15 Q So you weren't -- you didn't get up that
16 morning and say, "I'm going to go out and celebrate
17 my birthday," and anticipate that somebody might
18 take your car?

19 A Yes.

20 Q And the person that took your car, you had
21 never seen that person before?

22 A No, I hadn't.

23 Q And after this incident occurred to you,
24 at some point in time you spoke with people from the
25 Aiken County Department of Public Safety?

Emily Bush - Cross

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1 A I don't think I actually spoke with
2 anybody from Public Safety. It was all --

3 Q Sheriff's Department?

4 A Yes, Sheriff's Department.

5 Q I'm sorry. You spoke with someone from
6 the Sheriff's Department that came out?

7 A Yes.

8 Q And you talked to them out at the Circle
9 K?

10 A Yes.

11 Q Did you go into a room, or were you just
12 out in the parking lot?

13 A We were outside.

14 Q And at some point in time, you were asked
15 to write a statement about that?

16 A Yes.

17 Q And you were also asked to give your best
18 description of that particular person, correct?

19 A Yes.

20 Q And in that description, you didn't say
21 anything about facial hair or anything like that,
22 did you?

23 A In my statement, I don't believe that I
24 wrote anything about his face. But I remember
25 saying that I saw pock marks on his face.

\ Emily Bush - Cross

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1 Q Well, do you know of any documents that
2 may reflect that?

3 A I don't know. I haven't read my statement
4 since.

5 Q Now, were you being very observant of the
6 parking lot that particular morning?

7 A I wasn't paying particular attention until
8 I saw somebody walk from the trees.

9 Q The parking lot was empty?

10 A Yes, it was.

11 Q Nobody else was pumping gas?

12 A No.

13 Q And you had walked in and spoken with the
14 clerk in the store?

15 A Yes.

16 Q And after this -- after your car was
17 taken, you went back into the store?

18 A Yes, I did.

19 Q And you talked to the clerk?

20 A Yes, I did.

21 Q And you told the clerk that you were
22 carjacked?

23 A Yes.

24 Q Have you seen the clerk since then?

25 A No, I haven't.

Emily Bush - Cross

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1 Q And you were here yesterday, right?

2 A Yes.

3 Q Did you see anybody here yesterday that
4 may have looked like that clerk?

5 A No.

6 Q Now, do you remember when you looked at
7 the video surveillance?

8 A I just looked at it today.

9 Q What about in 2006?

10 A I never -- I haven't seen it until today.
11 This is the only time I've ever watched it.

12 Q Did you ever tell anybody that you saw
13 some video -- surveillance video -- of this incident
14 in 2006?

15 A No, I didn't. I believe I actually signed
16 a statement saying that I never watched it.

17 Q Now, when you looked at this photo lineup,
18 who was there?

19 A The man that carjacked -- you mean like
20 who was present?

21 Q You were present, and who was present?

22 A It was just me and Investigator Wertz in
23 his office.

24 Q In his office?

25 A Yes.

Emily Bush - Cross

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1 Q Do you know if that presentation was
2 videotaped or anything like that?

3 A I don't believe so.

4 Q Do you know if there was any audio
5 recording taken of that?

6 A I don't believe so.

7 Q Now, after the incident, did you ever go
8 down to the Sheriff's Department and they asked you
9 to look through on the computer of different people
10 that may have been involved in the carjacking?

11 A That was the only time I went there.

12 Q Okay. Just that one time?

13 A Actually, I went there -- when I told you
14 I had to sign a statement --

15 Q Right.

16 A -- saying that I had never seen the video,
17 I forgot about that when I was talking about it
18 before. But, yes, I went there one other time. But
19 that's all I did, was sign that statement.

20 Q Okay. And you think it's four or five
21 days later that you actually went and looked at that
22 photographic lineup?

23 A From the incident, yes.

24 Q Now, when you wrote a statement and in the
25 statement you wrote, did you give a particular time

Emily Bush - Cross

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1 that you thought this incident occurred?

2 A I'm sure I knew what time it was at the
3 time. I just can't remember now.

4 Q Okay. Do you remember testifying
5 previously and giving a time?

6 A I don't think I gave a specific time
7 before either.

8 Q So right now, you don't have any idea what
9 time this took place?

10 A I have a general idea. It was between
11 twelve and one. I just don't remember exactly what
12 time it was.

13 Q Do you remember telling anybody, law
14 enforcement officers, what time you thought it was?

15 A At the time, yes.

16 Q You did tell somebody else what time you
17 thought it was?

18 A Yes.

19 MR. LYONS: One second, Your Honor.

20 THE COURT: Certainly.

21 MR. LYONS: Nothing further, Judge.

22 THE COURT: Redirect?

23 MR. WEEKS: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. WEEKS:

Emily Bush - Redirect

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1 Q Emily, did you know about any other
2 robbery that night?

3 A No.

4 Q And the descriptions and the activities
5 you gave to the police the night you were robbed, is
6 that correct?

7 A Yes.

8 MR. WEEKS: No further questions.

9 THE COURT: All right, thank you. You may
10 come down.

11 At this moment, ladies and gentlemen,
12 we're going to take a recess for just a few moments,
13 about ten minutes. Don't begin your deliberations.
14 Don't discuss the case. You may retire to your jury
15 room.

16 (The jury left the courtroom at 11:05
17 a.m. for a break.)

18 THE COURT: All right, before we recess,
19 before we began opening statements, Mr. Lyons on
20 behalf of Mr. Allen made a motion to sequester the
21 witnesses.

22 Our discussion basically was that the
23 victims certainly were entitled to be present, that
24 the officers are fact witnesses to an issue, I
25 guess. The statement is one issue, I would

Emily Bush - Redirect

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1 understand.

2 We've had testimony previously concerning
3 this area, and there was no sequestration. So the
4 Court did not feel it necessary to sequester the
5 witnesses at that particular point.

6 Do you still wish the witnesses to be
7 sequestered, Mr. Lyons?

8 MR. LYONS: Yes, Your Honor.

9 THE COURT: Very well. I will stand by
10 the ruling, not to disrupt the process before the
11 jury. I don't think there was any prejudice created
12 by Ms. Bush, because she's already testified
13 previously and everyone had heard that testimony, as
14 well as the officers.

15 So I will request now that you may keep
16 whichever one you want to designate as your chief
17 investigator, if you want that person, but other
18 than the victims, any witnesses to be sequestered.
19 Also, any witness on the part of the defense needs
20 to be sequestered.

21 MR. LYONS: I don't have a problem with
22 that.

23 THE COURT: All right.

24 MR. WEEKS: Your Honor, as you're aware,
25 these were two separate robberies, with two separate

Emily Bush - Redirect

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1 investigators from two separate agencies.

2 MR. LYONS: Judge, I don't have any
3 problem.

4 THE COURT: That's fine. We can pick one
5 for each one.

6 MR. WEEKS: Okay.

7 THE COURT: I don't have any problem.

8 MR. WEEKS: Thank you, Your Honor.

9 THE COURT: That's fine, no problem.

10 MR. WEEKS: Thank you.

11 THE COURT: Yes, sir. All right, we'll
12 take about ten minutes and then we'll come back.

13 MR. WEEKS: When we come back, do you want
14 to do the pre-trial?

15 THE COURT: Is that person going to
16 testify now?

17 MR. WEEKS: No, sir.

18 THE COURT: I'd rather do that before the
19 break for lunch, if that's okay with you.

20 MR. WEEKS: Yes, sir.

21 THE COURT: Thank you.

22 (Court in recess.)

23 THE COURT: Let's bring in our jury. Let
24 the record reflect the defendant is present.

25 (The jury returned to the

Emily Bush - Redirect

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1 courtroom at 11:20 a.m.)

2 THE COURT: Thank you, ladies and
3 gentlemen. We are ready to continue.

4 Solicitor, you may call your next witness,
5 please.

6 MR. WEEKS: Thank you, Your Honor. The
7 State would call Donna Holley.

8 CLERK OF COURT: Please come forward and
9 place your left hand on the Bible and raise your
10 right.

11 (The witness was sworn.)

12 CLERK OF COURT: Please have a seat in the
13 witness box, state your full name for the Court, and
14 spell your last.

15 MS. HOLLEY: My name is Donna Holley -- H-
16 O-L-L-E-Y.

17 DONNA HOLLEY, having first been duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WEEKS:

21 Q Donna, back in February, or more
22 specifically, on February 23, 2006, where were you
23 employed?

24 A Circle K.

25 Q And what is the Circle K?

Donna Holley - Direct

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1 A It's a convenience store on the corner of
2 Banks Mill and Pine Log.

3 Q All right. And were you working that day?

4 A Well, I was the manager, and I was not
5 working that day.

6 Q Okay. Were you called up there for some
7 purpose?

8 A I was, uh-huh.

9 Q And what was the purpose you were called
10 up there for?

11 A They said there had been an incident that
12 had went on in our parking lot, and I needed to come
13 up there so that they could review the tapes.

14 Q Okay. Y'all have some type of -- at that
15 time, you had some type of surveillance in the
16 Circle K there?

17 A On the inside, yes, sir.

18 Q And did you have any type of surveillance
19 on the outside of the Circle K?

20 A No, sir.

21 Q On the inside, what kind of camera system
22 did you have set up?

23 A I don't know the name of it. I know that
24 the --

25 Q Would it take pictures or take video of

Donna Holley - Direct

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1 people coming and going --

2 A Yes.

3 Q -- into the store?

4 A Yes.

5 Q And officers that were up there that night
6 and later, did you make a copy of y'all's store
7 video of a particular section of --

8 A We gave them the actual video at the time.

9 Q That night, you gave them the actual
10 video?

11 A Yes, sir.

12 Q And then later on?

13 A Later on, they had told us that it was a
14 certain kind of VCR that they had to have to watch
15 it, because it flashes different sections of the
16 store. So I had to make a DVD of it. So I done
17 that.

18 Q And have you watched that DVD that you
19 made then?

20 A Yes, sir.

21 Q And I'll hand you what's marked State's
22 Exhibit Number Four. Did you put it on a DVD like
23 that?

24 A Yes, sir.

25 Q Is that the DVD you made them --

Donna Holley - Direct

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1 A Yes, sir.

2 Q -- or one like it?

3 A One like it. I don't know that's exactly
4 it.

5 Q Now, State's Numbers Seven and Six appear
6 to be photographs. The location depicted in State's
7 Seven and Six, do you have -- can you identify that
8 location?

9 A Yes, looks like the side door of the
10 store.

11 Q All right. Is that the way it looked on
12 February 23, 2006?

13 A Yes, sir.

14 Q Is this a true and accurate copy of that?

15 A Yes, sir.

16 MR. WEEKS: Your Honor, we move to introduce
17 State's Numbers Six, Seven, and Four.

18 THE COURT: Any objection?

19 MR. LYONS: Judge, we would object, based on
20 the lack of a foundation.

21 THE COURT: All right. Based on the
22 testimony previously given and this witness, I will
23 admit six, seven, and four, subject to the objection
24 of counsel.

25 (State's Exhibit Number Six,

Donna Holley - Direct

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1 Photograph, and State's Exhibit Number Seven,
2 Photograph, were entered in evidence.)

3 Q And obviously you weren't a witness to
4 anything that occurred that night, is that right?

5 A No, sir.

6 Q All right. And you turned that evidence
7 over to the Sheriff's Department?

8 A Yes, sir..

9 Q Answer any questions Mr. Lyons would have
10 for you.

11 CROSS-EXAMINATION

12 BY MR. LYONS:

13 Q Ms. Holley, do you know how many people
14 were working that night?

15 A One.

16 Q And what shift was that?

17 A Third shift.

18 Q And do you remember this event back in
19 2006?

20 A The only thing I can remember is doing the
21 actual printing of the -- giving them the tape and
22 printing it, because it's the first I'd done it. It
23 was a new system. And that's the only reason I can
24 remember that incident at all.

25 Q Do you still work for the Circle K?

Donna Holley - Cross

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1 A No, sir.

2 Q So you had never pulled any video before?

3 A Well, we had video. You had to take it
4 automatically out every day. We had to change the
5 tapes every day. But it was the first time I ever
6 made one on a DVR [sic]. It's the first time we
7 ever had to do that, a DVD. And so it's the only
8 time I ever done one since I worked there.

9 Q Did you actually the video?

10 A Yes, sir. I had the police officer --
11 when he came in, he wanted to go through it. And,
12 of course, I had to do all the running, because you
13 have to push the buttons and get it to working. I
14 done all that.

15 Q Initially, there were some problems with
16 the video surveillance as far as getting it to work
17 right?

18 A Not in our store, no. You could watch it
19 in our store. That wasn't the problem. See, it was
20 set up to watch in our store. It was they didn't
21 have the right equipment to do it at their police
22 station.

23 So I had to make them another kind. But
24 if they wanted to bring it to the store, you could
25 watch it anytime. There was no problem with it

Donna Holley - Cross

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1 there.

2 Q What time were you called?

3 A Gosh, I don't know. I know it was one or
4 two o'clock in the morning. I'm not sure exactly.
5 I know it was right afterwards, because they called,
6 and it took me a little bit from Windsor to get
7 there.

8 Q Now, you were shown State's Exhibits
9 Number Six and Seven?

10 A Yes, sir.

11 Q And those particular exhibits are
12 photographs. Actually, when you pulled those
13 photographs, that's actually a time frame in those
14 photographs, isn't that correct?

15 A The time sitting on it?

16 Q Yes.

17 A No. On the VCR itself, it would say, you
18 know, a certain thing. But I don't know -- I can't
19 remember it actually having a time up there like
20 that. I know it had it on the VCR. And then we had
21 it set up so that you could get it from the register
22 too, that they would both coincide.

23 Q So if you watched the video, it would have
24 a time up there, wouldn't it?

25 A Yes.

Donna Holley - Cross

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1 MR. LYONS: I don't have any other
2 questions, Your Honor.

3 THE COURT: Redirect, Solicitor?

4 MR. WEEKS: Nothing further from her, Your
5 Honor. We would ask that she be excused unless --

6 THE COURT: Any objection?

7 MR. LYONS: No objection.

8 THE COURT: Ms. Holley, you may step down.
9 You're free to leave.

10 MS. HOLLEY: Thank you.

11 THE COURT: Call your next witness.

12 MR. WEEKS: The State would call Earl Bush.

13 CLERK OF COURT: Place your left hand on the
14 Bible and raise your right.

15 (The witness was sworn.)

16 CLERK OF COURT: Please have a seat in the
17 witness box, state your full name for the Court, and
18 spell your last.

19 MR. BUSH: My name is Earl E. Bush, Jr., last
20 name spelled B-U-S-H.

21 EARL E. BUSH, JR., having first been
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WEEKS:

25 Q Mr. Bush, you're the father of Emily Bush,

Earl E. Bush, Jr. - Direct

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1 aren't you?

2 A Yes, I am.

3 Q And on February 23, 2006, were you aware
4 of a situation she had happen to her?

5 A I became aware of it, yes.

6 Q Was she living at home with you at the
7 time?

8 A Yes.

9 Q And was she driving your automobile?

10 A Yes, she was.

11 Q A 2003 Hyundai Tiberon, was that your car?

12 A Yes, it was.

13 Q All right. And do you have an approximate
14 value of that car?

15 A At the time, the car was worth
16 approximately \$8,000.

17 Q And did you ever receive that car back?

18 A No, I didn't.

19 Q You settled with insurance?

20 A I settled with the insurance company, sir.

21 Q Okay. On the night of February , 2006,
22 it was her 18th birthday. In the early morning
23 hours of the 23rd, were you allowing her to use it?

24 A Yes, I was.

25 Q And have you seen State's Exhibit Number

Earl E. Bush, Jr. - Direct

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1 Eight?

2 A I haven't, but I see it here. That's very
3 much like it. That's a what one might call a lesser
4 model of that car.

5 Q Okay. And it's not as sported up as your

6 --

7 A Right.

8 Q -- car was?

9 A Exactly. It's the same color.

10 Q Same body style?

11 A Essentially, yes.

12 Q But clearly that's a picture of a 2003
13 Hyundai?

14 A Right.

15 Q Okay.

16 MR. WEEKS: Your Honor, I move to introduce
17 State's Number Eight, if I haven't already.

18 THE COURT: You have.

19 MR. WEEKS: I thought I had.

20 THE COURT: You have. Without objection,
21 it was admitted.

22 Q No further questions. Answer any
23 questions Mr. Lyons would have.

24 THE COURT: Cross-examine?

25 MR. LYONS: No questions.

Earl E. Bush, Jr. - Direct

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1 THE COURT: Very well. You may come down,
2 Mr. Bush. Thank you, sir.

3 Call your next witness, please.

4 MR. KODMAN: The State calls Lisa Wood, Your
5 Honor.

6 CLERK OF COURT: Place your left hand on the
7 Bible and raise your right.

8 (The witness was sworn.)

9 CLERK OF COURT: Please have a seat in the
10 witness box, state your full name for the Court, and
11 spell your last.

12 MS. WOOD: My name is Lisa Wood -- Wood, W-O-O-
13 D.

14 LISA WOOD, having first been duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KODMAN:

18 Q Ms. Wood, do you live here in Aiken?

19 A Yes.

20 Q Where were you employed back in February
21 of 2006?

22 A The BP on Richland Avenue -- 3540 Richland
23 Avenue.

24 Q Is that in the city limits of Aiken?

25 A City limits.

Lisa Wood - Direct

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- 1 Q In Aiken County, as well?
- 2 A Uh-huh.
- 3 Q You need to say "yes" or "no."
- 4 A Oh, yes.
- 5 Q Were you working on that day?
- 6 A Yes, I was.
- 7 Q What shift were you working?
- 8 A I was working third.
- 9 Q And tell the jury what hours third shift
- 10 is.
- 11 A It's from eleven to seven -- 11 p.m. to 7
- 12 a.m.
- 13 Q So that would have been 11 p.m. starting
- 14 on the 22nd --
- 15 A Uh-huh.
- 16 Q -- into the morning hours of the 23rd?
- 17 A Yes.
- 18 Q Did anything unusual happen while you were
- 19 working that evening?
- 20 A Yes. At exactly 5:02 a.m., I was around
- 21 the counter unloading groceries. A male -- black
- 22 male -- walked in the door wearing a camouflage
- 23 jacket, walked around.
- 24 I said, "Good morning." He asked where
- 25 the restroom was. I told him where it was at. He

Lisa Wood - Direct

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1 went to the restroom. He was in there approximately
2 one or two minutes. I heard him flush the toilet,
3 heard the hand dryer come on, heard him come out of
4 the bathroom.

5 I continued to stand on the opposite side
6 of the counter. I wasn't behind the counter yet.
7 He walks back up the candy aisle, the same way he
8 went to the restroom. We have a hat display sitting
9 directly in front of the aisle as you're approaching
10 the cash register.

11 And he picks up the very first hat on
12 display, not looking through them. He comes up
13 there and lays it on the counter. I scan the hat
14 and tell him the price. And he says, "Give me \$50."

15 I told him I didn't think I had that much
16 in the drawer. He said, "Give me the money." I
17 said, "Well, I don't think I got that much." He
18 said, "Don't make me hurt you."

19 At that time, he leans in toward me, opens
20 up his coat, and shows me the hand part of the gun,
21 not the barrel. I said, "There's no need in that."
22 So I error correct myself, print the receipt, hit no
23 sale, and lay the money on the counter.

24 Q Explain to the jury what that means, error
25 correct.

Lisa Wood - Direct

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1 A Error correct is every time we do a
2 transaction, if they don't buy it, we have to error
3 correct, which means take it off, print the receipt
4 for our paperwork, just a habit. I mean, as nervous
5 as I was, I still printed my receipt. But he was in
6 my store a good amount of time, which gave me a good
7 chance to observe him.

8 And as I was walking up to the cash
9 register, before I actually went up, I forgot to say
10 this. When I was walking up to the cash register, I
11 knew I was fixing to be robbed, because at 5:02 when
12 he picked the hat up, I walked up and I felt
13 something was wrong.

14 And that's when he had said that to me.
15 And I gave him the money. I laid it on the counter.
16 He asked me at that time to pick the money up and
17 hand it to him, because he wasn't going to touch the
18 counter.

19 So I picked the money up and laid it in
20 his hand. He turns around, walks out the store. I
21 hit the panic button. My cell phone's in my pocket.

22 I walk out directly behind him, open the
23 door. He's going through the carwash where the
24 bushes is to the buffet where there was a small-
25 shaped blue car, which I thought was a Nissan,

Lisa Wood - Direct

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1 turned out of the parking lot at the buffet, went
2 right toward the hospital.

3 Q What's the distance that you were looking
4 at when you were observing that vehicle leave?

5 A From where I'm sitting now probably to the
6 back of the courtroom is where the distance from the
7 buffet is.

8 Q So all the way from where you're sitting
9 to the back door back there?

10 A Uh-huh. And I was wearing contacts that
11 night. I did not have my glasses on, but I had
12 contacts in.

13 Q Now, going back to inside the store, what
14 was the lighting like inside the store?

15 A Oh, it's very bright. You could see -- we
16 had no lights out. There was no lightage out in the
17 store. We've also got outside lights around. We
18 have no tinted windows, so it's very bright in
19 there.

20 Q When the suspect came up to you at the
21 counter, was there anything covering his face?

22 A No, he was not wearing no hat or anything
23 and when he robbed me, just the coat. So I could
24 see his head -- his bald head -- big ears, head
25 tilted.

Lisa Wood - Direct

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1 Q All right. Did you give a description to
2 law enforcement?

3 A Yes, I did.

4 Q What was the description you gave?

5 A I told he was a black male, approximately
6 probably around 180 pounds, about five -- close to
7 5'10" maybe, had a camouflage coat on, bald-headed,
8 dark skinned.

9 Q All right. Ms. Wood, is there some video
10 surveillance cameras that are inside the store?

11 A There is.

12 Q In preparation for court, have you had a
13 chance to review some video footage?

14 A I have. Yes, I've seen video of it.

15 Q I'm going to hand you State's Exhibit
16 Four. Have you reviewed some video surveillance
17 footage from that particular evening that involved
18 the robbery that took place with you?

19 A I did.

20 Q And is that video a true and accurate
21 depiction of the events as they occurred on February
22 23, 2006?

23 A Yes, it is. It's exactly what happened.

24 MR. KODMAN: Your Honor, I believe State's
25 Exhibit Four is already in evidence. But a portion

Lisa Wood - Direct

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1 was put in through one witness, and we have both
2 videos on the same exhibit. So we'd move to --

3 THE COURT: Very well.

4 MR. KODMAN: -- introduce Ms. Wood's
5 portion at this time.

6 THE COURT: Any objection other than that
7 previously stated?

8 MR. LYONS: The same objection, Your
9 Honor, as to foundation.

10 THE COURT: Very well. This witness has
11 viewed, as the previous witness, and now the entire
12 -- would those be the only two things on the video?

13 MR. KODMAN: In addition to that, Your
14 Honor, is two pictures. There are some still photos
15 that are already in evidence that are on there as
16 well. They have been introduced separately, and we
17 just did that for purposes of --

18 THE COURT: All right. But those still
19 photos have been introduced, and they're merely
20 duplications of the --

21 MR. KODMAN: Yes, sir.

22 THE COURT: Very well, then. The video
23 now is totally into evidence. And not knowing that
24 at the time, the Court would sustain the objection
25 as to that portion which deals with this witness'

Lisa Wood - Direct

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1 testimony as a foundation not being properly laid.

2 But now, because now both witnesses have
3 viewed the video and have corroborated the content,
4 then the Court, subject to the objection of counsel,
5 will admit the exhibit fully into evidence.

6 MR. KODMAN: Thank you, Your Honor.

7 (State's Exhibit Number Four, DVD,
8 was entered in evidence.)

9 Q And, Ms. Wood, subsequent to this
10 incident, did you have occasion to go to the Aiken
11 Department of Public Safety and meet with
12 Investigator Keith Glover?

13 A Yes, I did.

14 Q And for what purpose did you go down to
15 the Department of Public Safety?

16 A He called me and said he had a lineup of
17 some suspects that may have been in my robbery and
18 wanted me to come see if I could identify someone in
19 there.

20 Q Do you remember when that was you went to
21 the Aiken Department of Public Safety?

22 A It was a couple of days or a week. I
23 don't remember the exact date.

24 Q Do you remember any instructions he gave
25 you prior to showing you the lineup?

Lisa Wood - Direct

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1 A He just gave me the lineup and told me
2 that this is a lineup of some that was arrested, and
3 it may be my suspect, may not. Just look at it to
4 my best of knowledge.

5 And time I looked at my -- time I looked
6 at it, I knew it was him time I seen the picture,
7 because of the way his head is tilted in the picture
8 is the way he held his head when he robbed me.

9 Q Let me ask you if you can identify what's
10 been marked for identification purposes as State's
11 Exhibit Three.

12 A Yes, that's mine, and I initialed it.

13 Q And what did you initial on there?

14 A LW.

15 Q And that's your initials?

16 A Yes.

17 Q And what suspect did you pick out of that
18 lineup?

19 A Number three.

20 Q And how long did it take you to pick that
21 suspect out?

22 A Time I looked at the picture.

23 Q And on the back of State's ID Number
24 Three, is there some writing?

25 A Yes. He had me write on back who it was,

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1 and I put "person that did the armed robbery."

2 Q Ms. Wood, I'm going to hand you what's
3 been marked for identification purposes as State's
4 Exhibit Number Five and ask you if you can identify
5 that.

6 A Yes, that's a picture of the suspect
7 standing at my counter -- at the time of the
8 robbery.

9 Q Is that a true and accurate depiction of -
10 -

11 A Yes, it is.

12 Q -- of the suspect as it was back on
13 February 23, 2006?

14 A Yes.

15 MR. KODMAN: Your Honor, at this time we'd
16 move to introduce State's Exhibit Five in evidence.

17 THE COURT: Any objection?

18 MR. LYONS: Judge, same objection as to
19 foundation.

20 THE COURT: Based on the testimony of the
21 witness identifying the photograph, the Court would
22 admit State's Exhibit Five, subject to the objection
23 of counsel, and overrule the objection.

24 MR. KODMAN: Thank you, Your Honor.

25 (State's Exhibit Number Five,

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1 Photograph, was entered in evidence.)

2 Q Ms. Wood, going back to when the suspect
3 was at the register with you, did he make any
4 statements to you?

5 A As I told you, he asked me for a certain
6 amount of money. He asked for \$50. I didn't think
7 I had that much money. That's when he told me,
8 "Don't make me hurt you." And he leaned in and
9 opened his coat and his pocket and his hand, showed
10 me the hand part of a gun.

11 And I said, "There's no need in that."
12 And that's when I did the error correct, which is
13 taking the item off the register so I could open it,
14 print the receipt, hit no sale. All of the money
15 was ones and fives that I gave him, as well. I laid
16 them on the counter.

17 Q About how much did he get?

18 A Afterwards, we had calculated it. It was
19 exactly \$101 that he got.

20 Q Did you go back and count the money to
21 determine that?

22 A Yes, we closed out the cash register. She
23 closed the store down, and she closed the whole
24 shift out to determine how short I was.

25 Q Lisa, the person that robbed you back on

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1 February 23, 2006, do you see him in the courtroom?

2 A Yes, he's sitting over there in the
3 defendant's seat.

4 MR. KODMAN: Your Honor, let the record
5 reflect that the witness has identified the
6 defendant.

7 THE COURT: It will so reflect.

8 Q Please answer any questions Mr. Lyons has
9 for you.

10 A Okay.

11 THE COURT: You may cross-examine.

12 CROSS-EXAMINATION

13 BY MR. LYONS:

14 Q Ms. Wood, you're not testifying that --
15 you're testifying that Mr. Allen robbed you back in
16 2006, correct?

17 A Yes.

18 Q You're not testifying that you had seen
19 Mr. Allen prior to two thousand -- prior to this
20 incident, correct?

21 A I never seen him before, till the night he
22 robbed me.

23 Q Now, is your testimony that you saw a
24 handgun?

25 A I didn't see the gun. I saw the hand part

Lisa Wood - Cross

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1 of the gun when he opened his coat up and leaned
2 toward me on the counter, which you could see on the
3 video. And I seen the hand part of the gun, which
4 was enough for me. I didn't need to see the rest,
5 because he done told me, "Don't make me hurt you,"
6 and I thought he would hurt me.

7 Q Now, at some point after this incident,
8 you talked to police officers, correct?

9 A Time it happened, I called -- I hit my
10 panic button, which calls the police department
11 directly. And then I called on my cell phone as
12 well.

13 Q Okay. You talked to Detective Glover?

14 A Yes, Detective Glover was up there that
15 night.

16 Q And you told Detective Glover that you saw
17 the impression of a handgun, isn't that correct?

18 A No, I told him that when he opened his
19 jacket, I saw the barrel -- not the barrel but the
20 part you hold in your hand. And then I could see
21 the impression of the rest of the gun in the coat,
22 but I seen that part.

23 Q And that's what you told him?

24 A Yes.

25 Q Did you tell him what color it was?

Lisa Wood - Cross

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1 A No, I didn't tell him no color. I just
2 told him I thought he was going to hurt me, so I
3 gave him the money.

4 Q I'm sorry?

5 A No, I just told him I was scared he was
6 going to hurt, shoot me, so I gave him the money. I
7 wanted him out of there.

8 Q And nobody else was in the store?

9 A No, nobody but me -- and him.

10 Q Now, it was a number of days later before
11 you actually looked at a photo lineup, correct?

12 A That's true.

13 Q And who was at that photo lineup?

14 A Just me and Detective Glover.

15 Q Was it videotaped?

16 A Not to my knowledge.

17 Q And you pulled the surveillance video?

18 A No, my manager did. I don't have access
19 to that. I was a cashier, not a manager.

20 Q Did you ever look at it?

21 A Yes, I have. I looked at it yesterday.

22 Q Did you look at it at all in 2006?

23 A No. The next day, it was gave directly to
24 them and put into evidence. And I was off that day
25 it was pulled, because I requested three days off

Lisa Wood - Cross

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1 because of what happened to me.

2 Q So the first time you saw any surveillance
3 video was almost three or four years later?

4 A Yes.

5 MR. LYONS: I don't have anything else.

6 THE COURT: Redirect, Mr. Kodman?

7 MR. KODMAN: Beg the Court's indulgence,
8 Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. KODMAN:

11 Q Ms. Wood, just for clarification, you
12 mentioned the video. You just watched the video
13 recently, correct?

14 A Yes.

15 Q And you said "you can see it on the
16 video." You weren't talking about seeing the gun on
17 the video?

18 A No, you can't see the --

19 MR. LYONS: Objection, Your Honor, to the
20 leading nature of the question.

21 THE COURT: He was asking a question.
22 I'll overrule the objection at this point.

23 State your question again, and don't
24 answer.

25 MR. KODMAN: Earlier, you testified you

Lisa Wood - Redirect

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1 could see it on the video. I'm trying to clarify --

2 THE COURT: I understand.

3 MR. KODMAN: -- what "it" refers to.

4 Q Explain to the jury what exactly when you
5 say you can see it on the video what you're
6 referring to.

7 A In the video, as I said, when he leans in
8 toward and opens up his coat, in the video what I
9 seen was the hand part of a gun in his hand and then
10 the impression of the barrel against the camouflage
11 coat. When I saw that, I laid the money down.

12 He closed his coat up. I put the money in
13 his hand. He walks out the door. I see the little
14 grooves of the gun he's holding in his hand. That's
15 the part of the gun that I saw.

16 Q So in the video, do you actually see the
17 gun, or does he pull his coat --

18 A No, in the video you can't see the gun
19 because he's covered up with the big camouflage
20 coat. And he just turns, and all you see is this of
21 the coat, but you can't see inside of it. I could
22 because I'm standing in front of him.

23 Q Thank you.

24 A You're welcome.

25 MR. KODMAN: No further questions.

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1 THE COURT: Recross?

2 MR. LYONS: No, Your Honor.

3 THE COURT: Thank you. You may come down,
4 Ms. Wood.

5 Call your next witness, please.

6 MR. WEEKS: Judge, as you well know, I
7 don't know how long a witness is going to take.

8 THE COURT: I understand.

9 MR. WEEKS: My timing at this point would
10 be to handle a witness next that may require us to
11 have some in-camera proceedings.

12 THE COURT: All right, ladies and
13 gentlemen, at this point, then, we'll take a break
14 for lunch and give you a little bit longer today,
15 because there are some matters of law that I need to
16 take up. And I want to be sure that court personnel
17 has a sufficient lunch hour.

18 So you're going to be getting a little
19 more time today than normally. I'd ask you to be
20 back in your jury room, please, by 1:30. Do not
21 begin your deliberations. Don't discuss the case
22 among yourselves.

23 And certainly while you're out, do not
24 permit anyone to talk about this case in your
25 presence or talk to you about serving on the jury.

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1 You are free to leave. Thank you.

2 (Jury out for lunch from 11:49 a.m.
3 to 1:30 p.m.)

4 THE COURT: All right, Solicitor. As I
5 understand, this witness, I assume, will be
6 testifying to a statement alluded to --

7 MR. WEEKS: Yes, sir.

8 THE COURT: -- before we started?

9 MR. WEEKS: Yes, sir.

10 THE COURT: You may proceed.

11 MR. WEEKS: Your Honor, the State would
12 call Officer Ricky Siebert for the purpose of an in-
13 camera hearing.

14 THE COURT: Very well, you may proceed.
15 Thank you, sir.

16 CLERK OF COURT: Please come forward,
17 place your left hand on the Bible and raise your
18 right.

19 (The witness was sworn.)

20 CLERK OF COURT: Please have a seat in the
21 witness box, state your full name for the Court, and
22 spell your last.

23 MR. SIEBERT: Good morning, Your Honor.

24 THE COURT: Good morning. How are you,
25 sir?

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1 MR. SIEBERT: Fine, thank you.

2 THE COURT: Good, thank you.

3 MR. SIEBERT: My name is Ricky Siebert.

4 It's S-I-E-B-E-R-T.

5 DIRECT EXAMINATION

6 BY MR. WEEKS:

7 Q Officer Siebert, where are you employed?

8 A I'm employed with the Hillsboro County
9 Sheriff's Office.

10 Q Back in February of 2006, did you have the
11 same employment as you do now?

12 A Yes, sir, I did.

13 Q And what is that? What were you doing?

14 A I'm a law enforcement deputy assigned to
15 patrol division.

16 Q On or about the 25th, 26th, somewhere in
17 that range, how did you get involved in this case?

18 A It was on February 25th. I had the
19 opportunity to come in contact with and have
20 conversation with the defendant at University Mall
21 within Hillsboro County.

22 MR. WEEKS: Your Honor, for the record,
23 we're on in-camera proceedings here, so I will clear
24 up a couple of things --

25 THE COURT: Very well.

Ricky J. Siebert (In-Camera)

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1 MR. WEEKS: -- while we're outside the
2 presence of the jury.

3 THE COURT: Sure.

4 Q What were you called there for, Officer
5 Siebert?

6 A I was called to that location for a person
7 who had been detained for a crime.

8 Q That crime was shoplifting or petty
9 larceny, as y'all call it?

10 A It was shoplifting, yes, sir.

11 Q Okay. And where was he when you arrived?

12 A He was within the Sears store, in their
13 Loss Prevention Office.

14 Q All right. Was he shackled or handcuffed
15 or anything?

16 A I don't believe so, but he could have
17 been.

18 Q And what did you proceed to do at that
19 point?

20 A I heard the testimony give to me by the
21 loss prevention officer regarding a crime that had
22 been committed. And based on their statement, I did
23 take him into custody, at which time he was
24 handcuffed definitely by me.

25 Q And was there anything else that y'all

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1 determined at the time about his pending situation?

2 Were there any pending warrants out on him?

3 A After I obtained his personal information,
4 his name and date of birth, yes, I did check him for
5 any warrant or warrants, and there was a warrant
6 active for his arrest.

7 Q And to be clear, you were there to arrest
8 him for one that had allegedly occurred that day?

9 A Yes, sir.

10 Q All right. Tell me, if you would, Officer
11 Siebert, exactly what questions you asked him in
12 reference to the car.

13 A During the course of taking him into
14 custody, I did ask him how he arrived at the mall,
15 which is a question I ask everybody that I was
16 arresting there. He indicated that he had ridden
17 the bus to the mall.

18 Q What did you ask him then?

19 A I searched his person, and in his pocket I
20 found a key and a key fob -- I believe it was a
21 remote -- to a Hyundai. I asked him why he would
22 have ridden the bus to the mall if he had a car key
23 in his pocket.

24 Q And what was his response?

25 A He told me that the car key belonged to

Ricky J. Siebert (In-Camera)

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1 his wife's car.

2 Q What did you ask him thereafter
3 referencing this key?

4 A Referencing this case we're here on now?
5 Nothing in particular other than, you know, his
6 personal information, if he had a local address,
7 where he was born, if he had any tattoos.

8 Q And where did he tell you he was from?

9 A He told me that he had been born in Aiken,
10 South Carolina.

11 Q Was that any of that significant at all to
12 this case on that day?

13 A Not at all.

14 Q Were you investigating any kind of stolen
15 car, or were you investigating any kind of armed
16 robbery or carjacking out of Aiken County on that
17 day?

18 A Not at all.

19 Q Did you have any knowledge at all?

20 A No, sir.

21 Q The information you were getting was in
22 reference to personal information on the charge that
23 you were fixing to serve him on?

24 A Yes, sir.

25 Q Okay. Now, after -- you took him to jail,

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1 is that right?

2 A I don't believe I physically took him. I
3 believe he went in a prisoner transport van, or
4 another deputy took him. It was at a time of the
5 evening --

6 Q There were no other statements that you
7 got from him regarding this case?

8 A No, sir.

9 Q And just to be clear, you were the officer
10 who found the car the next day at the mall?

11 A Yes, sir, I was.

12 Q You kind of put two and two together. You
13 arrested somebody the day before --

14 A Yes, sir.

15 Q -- with a Hyundai key, and that's when you
16 contacted investigations?

17 A That's correct.

18 Q Answer any questions Mr. Lyons has for
19 you.

20 THE COURT: You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. LYONS:

23 Q No doubt that you had Mr. Allen arrested?

24 A That's correct.

25 Q At any point in time did you Mirandize

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1 him?

2 A No, I did not.

3 Q And you started questioning about how he
4 got to the mall?

5 A Yes.

6 Q Okay.

7 A I asked him how he got to the mall, which
8 at that time I was assigned to the mall. That was
9 my patrol zone. That was all that I did, was the
10 mall. I have the opportunity to arrest numerous
11 shoplifters.

12 And as a courtesy, I would ask people how
13 they arrived at the mall, because the mall's policy
14 was if they found bicycles at the mall, they would
15 take possession of them and keep them in a room
16 where they compiled bicycles.

17 And if vehicles were left on the property
18 for more than three days, they would have them
19 removed from the property. So I would ask people
20 how they ride to the mall so I could give them that
21 information -- "If you have a bicycle, you need to
22 let me know so it can be returned to you. If you
23 have a vehicle, you need to make sure that it's gone
24 within three days, or it will be impounded." So
25 it's a normal question that I ask.

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1 Q You had seen the vehicle, correct?

2 A That night of the arrest?

3 Q Yes.

4 A No, sir.

5 Q Well, when did you see the vehicle?

6 A It was the following day.

7 Q And that's when you saw the vehicle?

8 A The following day, I noticed that the mall
9 had put a tag underneath the windshield wiper
10 indicating that the vehicle had been left there
11 overnight. And that's when I ran the South Carolina
12 tag through the computer system and got a response
13 that it had been reported stolen.

14 Q Do you remember looking in the car and
15 finding a 12-pack?

16 A Yes, sir, I did.

17 Q And do you remember when you had Mr. Allen
18 under arrest, it smelled of alcohol on his body?

19 A I did detect an alcoholic beverage
20 emanating from Mr. Allen, which, of course, at that
21 time was insignificant.

22 Q Did you question him concerning who the
23 car belonged to?

24 A No, because at the time of his arrest, he
25 had told me he arrived by bus, and I believed that

Ricky J. Siebert (In-Camera)

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1 he had arrived by bus at that time, despite having
2 the key in his pocket.

3 Q So he didn't give any explanation about
4 the key?

5 A No, sir.

6 Q All you know is that arrested him, and he
7 had a key in his pocket?

8 A Yes, sir.

9 Q That's the extent of your knowledge of
10 this car at that point in time?

11 A At that point in time, yes.

12 Q Did you subsequently get involved in
13 anything else in terms of this case?

14 A Yes, the following day when I found the
15 vehicle in the parking lot that had been reported
16 stolen.

17 Q Did you talk to Mr. Allen that day?

18 A No, sir, I did not.

19 MR. LYONS: I don't have anything else,
20 Your Honor.

21 MR. WEEKS: Nothing further from this
22 witness, Your Honor.

23 THE COURT: All right, you may come down.

24 MR. SIEBERT: Thank you, sir.

25 THE COURT: Any additional witnesses?

1 MR. WEEKS: Nothing further as far as the
2 statements made.

3 THE COURT: All right, I'll be happy to
4 hear from you, Mr. Lyons.

5 MR. LYONS: Judge, we would move to
6 suppress any statements relating to what Mr. Allen
7 said after his arrest. He wasn't Mirandized. The
8 statement that the car belonged to his wife was an
9 incriminating statement in this case, Judge, and we
10 believe it was an involuntary statement made without
11 the advice of counsel of his rights.

12 THE COURT: Solicitor?

13 MR. WEEKS: Judge, at the time this man
14 was arrested or detained in Florida, the Florida
15 folks had no knowledge about this at all. It wasn't
16 till the next day that the bell goes off in this
17 other officer's head that, "Hey, somebody mentioned
18 the name Aiken to me yesterday."

19 So his normal questions to him are not
20 statements that Miranda would exclude or would
21 exclude at that point. They were not focusing on
22 him for this investigation at that time.

23 And they were really more booking
24 information than they were logistical interrogation,
25 for lack of a better word. There was no

1 interrogation in this matter about this case.

2 As it turns out, the statements become
3 significant, but he wasn't being questioned under a
4 custodial interrogation type setting about this
5 case. He was just, "How did you get to the mall?"

6 You know, he was fixing to take him to the
7 jail and wanted to know what to do with a car if
8 there was one out there. As it turns out, it
9 becomes significant, but it was not a situation
10 where Miranda would have been required.

11 To me, it's analogous to the officer
12 pulling a fellow over on the side of the road for
13 suspicion of drinking and driving and asks him, you
14 know, "Where you going? Where you from?" That's
15 not -- those are not questions that are Miranda
16 questions.

17 THE COURT: I don't disagree with you for
18 that. But, unfortunately, this isn't the same
19 thing. This person's under arrest. He's clearly
20 under arrest, and that's the distinction,
21 unfortunately.

22 Clearly, it was a question that was asked
23 as a part of his interrogation while he's under
24 arrest for a crime. I agree with you that it has no
25 bearing or connection. But, unfortunately, I

1 believe he was entitled to have the Miranda given
2 before he responded to anything.

3 But I don't know that the weight is that
4 significant. Surely, he can testify about the key,
5 and he can testify the key fit. So I would sustain
6 the objection as to the statement itself, about the
7 ownership of the car.

8 All right, anything else?

9 MR. WEEKS: No.

10 MR. LYONS: Nothing, Your Honor.

11 THE COURT: Okay, thank you. We will be
12 at ease, then. Let's be back about 1:15, okay?
13 Thank you.

14 MR. LYONS: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Court in recess for
17 lunch.)

18 MR. WEEKS: I have been informed that he
19 is prepared to change his plea on the trial we're in
20 the middle of and enter a guilty plea on all three
21 charges.

22 THE COURT: All right. Mr. Lyons, is that
23 correct?

24 MR. LYONS: That's correct, Judge.

25 THE COURT: You want to ask your client to

1 come forward, please?

2 MR. LYONS: Yes, sir.

3 THE COURT: Thank you.

4 CLERK OF COURT: Please raise your right
5 hand.

6 (The witness was sworn.)

7 CLERK OF COURT: He's sworn, Your Honor.

8 THE COURT: Thank you.

9 Good afternoon, Mr. Allen.

10 MR. ALLEN: Good afternoon, sir.

11 THE COURT: Mr. Allen, I've been advised
12 now by the Solicitor and your attorney, and it
13 appears from the sentencing sheet that you have
14 signed the sentencing sheet --

15 MR. ALLEN: Yes, sir.

16 THE COURT: -- reflecting a decision to
17 enter a plea to the charges that are pending against
18 you.

19 MR. ALLEN: Yes, sir.

20 THE COURT: Is that correct, sir?

21 MR. ALLEN: Yes, sir.

22 THE COURT: You have been a part of this
23 process that we started yesterday, and we're not
24 through yet.

25 MR. ALLEN: Yes, sir.

1 THE COURT: You've heard some of the
2 testimony.

3 MR. ALLEN: Yes, sir.

4 THE COURT: But it's your desire to
5 discontinue this trial?

6 MR. ALLEN: Yes -- no, sir.

7 THE COURT: You want to go forward with
8 the trial?

9 MR. ALLEN: No -- no, sir.

10 THE COURT: You do not want to go forward?

11 MR. ALLEN: No, sir.

12 THE COURT: So you want to stop the trial
13 at this point --

14 MR. ALLEN: Yes, sir.

15 THE COURT: -- and you want to change your
16 plea from not guilty to guilty, is that correct?

17 MR. ALLEN: Yes, sir.

18 THE COURT: Have you had a chance to
19 discuss this decision with your lawyer?

20 MR. ALLEN: Yes, sir.

21 THE COURT: And with anyone else you chose
22 to?

23 MR. ALLEN: No, sir.

24 THE COURT: You have not?

25 MR. ALLEN: No, sir.

1 THE COURT: Who else would you like to
2 talk with about it?

3 MR. ALLEN: With my family, if I may.

4 THE COURT: But you've spoken to them,
5 have you not?

6 MR. ALLEN: Yes, but not about a plea.
7 They're surprised at a plea.

8 THE COURT: Okay, you want to talk to them
9 about the plea --

10 MR. ALLEN: Yes, sir.

11 THE COURT: -- before we go any further?

12 MR. ALLEN: Yes, sir.

13 THE COURT: Please do.

14 If you will allow the family to talk with
15 him, please -- thank you -- just the family members.

16 MR. LYONS: It's just those two, Judge.

17 THE COURT: Just the two, okay.

18 MR. LYONS: Those are his parents, Judge.

19 THE COURT: All right. Thank you all, as
20 well. Thank you so much.

21 Thank you, Mr. Allen. You've had a chance
22 to talk with those family members now?

23 MR. ALLEN: Yes, sir.

24 THE COURT: Okay. Is it still your desire
25 to go forward with what we discussed?

1 MR. ALLEN: Yes, sir.

2 THE COURT: Have you talked with your
3 lawyer? I'm sure you have. And the State was in
4 the process of proving the elements of each offense.

5 MR. ALLEN: Yes, sir.

6 THE COURT: You understand that?

7 MR. ALLEN: Yes, sir.

8 THE COURT: And your lawyer has explained
9 those to you?

10 MR. ALLEN: Yes, sir.

11 THE COURT: Did he also explain to you the
12 possible punishment for each offense?

13 MR. ALLEN: Yes, sir, I understand.

14 THE COURT: He has explained to you, then,
15 on Indictment 2006-1684, which is the indictment for
16 armed robbery, that I could sentence you up to 30
17 years in jail with a minimum sentence of ten years?

18 MR. ALLEN: Yes, sir.

19 THE COURT: He's also explained to you
20 that that is a violent offense?

21 MR. ALLEN: Yes, sir.

22 THE COURT: And a most serious offense?

23 MR. ALLEN: Yes, sir.

24 THE COURT: And you understand the
25 significance of those terms?

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1 MR. ALLEN: Yes, I do.

2 THE COURT: It's also a non-parolable
3 offense. Do you understand?

4 MR. ALLEN: Yes, sir.

5 THE COURT: Meaning that whatever sentence
6 is imposed, the minimum sentence that you must serve
7 will be 85 percent of that --

8 MR. ALLEN: Yes, sir.

9 THE COURT: -- you understand?

10 MR. ALLEN: Yes, sir.

11 THE COURT: Understanding, Mr. Allen, the
12 nature of the offense of armed robbery,
13 understanding the possible punishment, what is your
14 plea?

15 MR. ALLEN: Guilty.

16 THE COURT: Indictment 2006-1684 is an
17 indictment that charges you with carjacking. Your
18 lawyer has explained to you the nature of that
19 offense?

20 MR. ALLEN: Yes, sir, he has.

21 THE COURT: And there are two basically
22 categories, one with great bodily harm and one
23 without great bodily harm. Do you understand that?

24 MR. ALLEN: Yes, sir.

25 THE COURT: According to this indictment,

1 it is without great bodily harm, which your lawyer
2 has explained the elements that the State has to
3 prove on that charge?

4 MR. ALLEN: Yes, sir.

5 THE COURT: And the possible sentence for
6 that would be 20 year, you understand?

7 MR. ALLEN: Yes, sir.

8 THE COURT: Understanding the nature of
9 the offense and the possible punishment, how do you
10 plead?

11 MR. ALLEN: Guilty, sir.

12 THE COURT: That also is a most serious
13 offense, you understand that?

14 MR. ALLEN: Yes, I do.

15 THE COURT: And a violent offense, and a
16 non-parolable offense.

17 MR. ALLEN: Yes, sir.

18 THE COURT: Indictment 2008-1613 is an
19 indictment charging you with the offense of larceny
20 or grand larceny. And your lawyer has explained the
21 nature of that offense and the elements required of
22 the State?

23 MR. ALLEN: Yes, sir.

24 THE COURT: And he has explained to you
25 the possible punishment when the value is greater

1 than a thousand but less than five thousand?

2 MR. ALLEN: Yes, sir.

3 THE COURT: And that would be give years,
4 you understand that?

5 MR. ALLEN: Yes, sir.

6 THE COURT: Understanding the nature of
7 that offense and the possible punishment for that
8 offense, what is your plea?

9 MR. ALLEN: Guilty.

10 THE COURT: Are you satisfied with your
11 lawyer, Mr. Allen?

12 MR. ALLEN: Yes, sir.

13 THE COURT: And you paused, and I was a
14 lawyer for 21 years. And I represented persons
15 accused of criminal violations. I did primarily
16 civil work. But on both sides of that ledger, there
17 were many times that my clients didn't always like
18 what I told them.

19 MR. ALLEN: Yes, sir.

20 THE COURT: They didn't always agree with
21 me. But I would explain to them that "That's my
22 responsibility as a lawyer, to tell you what I
23 believe to be reality, and you make the call.

24 "You're not going to always have to agree
25 with me, but you didn't hire me to be a "yes"

1 person. You hired me to tell you what I truly
2 believe."

3 MR. ALLEN: Yes, sir.

4 THE COURT: Is that the basis of some of
5 your hesitancy?

6 MR. ALLEN: Some of it, and I think the
7 communication could have been a little better --

8 THE COURT: All right.

9 MR. ALLEN: -- than what it was.

10 THE COURT: Is the fact that those areas
11 of concern -- the lack of communication -- is that
12 affecting you in making your decision here today?

13 MR. ALLEN: No, sir.

14 THE COURT: You choose to make this
15 decision notwithstanding those concerns that you
16 have?

17 MR. ALLEN: No, sir, I choose.

18 THE COURT: And this is your choice?

19 MR. ALLEN: Yes, sir.

20 THE COURT: You realize and understand, as
21 I've already instructed that jury and you heard me
22 in my preliminary remarks to them, that you don't
23 have to prove anything at all. You have no
24 obligation whatsoever, and you certainly don't have
25 to prove your innocence. You understand that?

1 MR. ALLEN: Yes, I understand.

2 THE COURT: By pleading guilty here today,
3 now the State will not be required to prove your
4 guilt beyond a reasonable doubt because you're
5 admitting that guilt.

6 MR. ALLEN: Yes, sir.

7 THE COURT: You realize that?

8 MR. ALLEN: Yes, sir.

9 THE COURT: Today, sir, are you under the
10 influence of any alcohol or any medication?

11 MR. ALLEN: No, sir.

12 THE COURT: Do you know of anything that's
13 affecting your ability to make a decision of this
14 nature?

15 MR. ALLEN: No, sir.

16 THE COURT: Have you had sufficient time
17 to reflect on this decision?

18 MR. ALLEN: Definitely, yes, sir.

19 THE COURT: And are you now comfortable
20 with that decision?

21 MR. ALLEN: Yes, I am.

22 THE COURT: Mr. Lyons, you have had the
23 opportunity, as your client has already indicated,
24 to discuss the matter fully with him, is that
25 correct, sir?

1 MR. LYONS: That's correct, Judge.

2 THE COURT: He fully understands and
3 appreciates, in your opinion, his constitutional
4 right to have a jury trial?

5 MR. LYONS: Yes, sir.

6 THE COURT: He fully understands and has
7 been a part -- you have paused with, I believe,
8 every witness to ask if he had any additional
9 questions. He understands the right to confront his
10 accusers and the witnesses that are appearing
11 against him?

12 MR. LYONS: Yes, sir.

13 THE COURT: And he has participated in
14 that process thus far, has he not?

15 MR. LYONS: He has, Judge.

16 THE COURT: He understands his right to
17 remain silent, in your opinion?

18 MR. LYONS: He does.

19 THE COURT: Based on your assessment of
20 the evidence as an attorney, do you concur with his
21 decision to enter this plea?

22 MR. LYONS: I do, Judge.

23 THE COURT: Mr. Allen, you realize, sir,
24 that if I accept this plea, your trial will stop?

25 MR. ALLEN: Yes, I understand.

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1 THE COURT: Therefore, you will not have
2 the right to confront any additional witnesses, nor
3 will the jury make the decision in this case. You
4 realize that?

5 MR. ALLEN: Yes, sir.

6 THE COURT: You also understand that by
7 answering my questions and admitting your guilt, you
8 have now given up your constitutional right to
9 remain silent?

10 MR. ALLEN: Yes, sir.

11 THE COURT: Is it your decision to waive
12 these rights and go forward with a guilty plea?

13 MR. ALLEN: Yes, sir.

14 THE COURT: Has anyone threatened you in
15 any way or promised you anything at all to get you
16 to plead guilty?

17 MR. ALLEN: No, sir.

18 THE COURT: Have you been treated in the
19 past, Mr. Allen, for any mental conditions or any
20 emotional problems?

21 MR. ALLEN: No, sir.

22 THE COURT: Solicitor, I've heard, I
23 think, the lion's share of the testimony concerning
24 this issue. Any additional matters that you wish
25 for me to consider?

1 MR. WEEKS: No, Your Honor. You've heard
2 the bases for our charges. I will tell you that our
3 recommendation on the forms were concurrent. I
4 don't know whether or not the victims want to speak,
5 but whenever you want to do that in this process.

6 THE COURT: All right. The facts that we
7 have heard thus far, that have been testified to by
8 Ms. Wood --

9 MR. ALLEN: Yes, sir.

10 THE COURT: -- that have been testified to
11 by Ms. Bush, those facts are correct?

12 MR. ALLEN: Yes, sir.

13 THE COURT: That did occur --

14 MR. ALLEN: Yes, sir.

15 THE COURT: -- as they described?

16 MR. ALLEN: Yes, sir.

17 THE COURT: Okay. I'll be happy to hear
18 from them if they wish to address the Court at this
19 point.

20 Ms. Wood?

21 MS. WOOD: Thank you, Your Honor. My name
22 is Lisa Wood. All I want to say is what he done to
23 me, he drawed a gun on me and put me through a lot.
24 And to this day, I'm not able to do my job like I
25 used to. When somebody walks in with camouflage

1 clothes on, I get nervous.

2 And if somebody comes in late at night and
3 asks to use the bathroom, I tell them no. And I was
4 scared to come here today, but I wanted to face him
5 after what I've been through.

6 And I don't want to him to ever get out
7 and get the opportunity to rob somebody else and
8 maybe kill them, because I was scared that he was
9 going to shoot me that night and that I would never
10 see my kids again.

11 THE COURT: I understand.

12 MS. WOOD: I just want you to take care of
13 it when you sentence him that he's not going to have
14 the opportunity to ever hurt somebody else like he
15 did me.

16 THE COURT: Thank you, ma'am.

17 MS. WOOD: Thank you.

18 THE COURT: Anything else, Mr. Weeks?

19 MR. WEEKS: No, sir.

20 THE COURT: Okay.

21 MS. BUSH: My name is Emily Bush.

22 THE COURT: Yes, Ms. Bush.

23 MS. BUSH: The things that he did to me,
24 I'm not going to be able to get over it. And I
25 don't want him to have any opportunity to do

1 anything like that and make anybody go through that
2 ever again in his life.

3 I don't care what anybody has said I'm
4 terrified. I can't just stay at home alone ever,
5 not even during the day. As soon as I hear
6 something drop on the floor or something I freak
7 out.

8 And I have to call somebody, and I have to
9 leave out. I can't be alone. I don't want to have
10 to live my life being terrified somebody's going to
11 do something to me all the time. I want to sleep at
12 night. That's all I have to say.

13 THE COURT: Thank you, ma'am.

14 Anything else, Solicitor?

15 MR. WEEKS: Your Honor, he does have a
16 substantial prior record.

17 THE COURT: I'd like to hear that, please.

18 MR. WEEKS: Beginning in 1988, our records
19 reflect that he had two counts of forgery and
20 breaking into a motor vehicle, and also in '98 a
21 failure to stop for a blue light and use without
22 permission charge.

23 In '94, shoplifting; '94, petty larceny;
24 '94, forgery times eight counts; also in '94, strong
25 arm robbery, two counts; in '95 -- he got seven

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1 years on the strong arm robbery, but in '95 he's got
2 shoplifting times two; fraudulent check times eight
3 in '95.

4 And in 2000, he's got failure to stop for
5 a blue light again; also in 2000, trespassing and
6 petty larceny; 2002, receiving stolen property; also
7 in 2002, possession of cocaine and drug
8 paraphernalia; in '05, theft, three hundred to five
9 thousand, possession of marijuana; and in '05, a
10 distribution of a counterfeit substance.

11 THE COURT: Okay, thank you, sir.

12 Mr. Allen, have you truthfully responded
13 to all of my questions?

14 MR. ALLEN: Yes, sir.

15 THE COURT: You realize and understand
16 that I will be relying on your responses?

17 MR. ALLEN: Yes, sir.

18 THE COURT: It is your desire that I do
19 that, that I rely on your responses as being
20 complete and truthful?

21 MR. ALLEN: Yes, sir.

22 THE COURT: And you fully responded to
23 each of my questions?

24 MR. ALLEN: Yes, sir.

25 THE COURT: Very well. I find that Mr.

1 Allen has had the benefit of competent counsel with
2 whom he has indicated that he's mostly satisfied.
3 He has explained himself that clearly demonstrated
4 and responded to the Court that his concerns or
5 complaints in no way have affected the decision that
6 he's made here today to change his plea from not
7 guilty to guilty, but rather that's a decision that
8 he made based on everything, and that it is his
9 decision. Is that correct, Mr. Allen?

10 MR. ALLEN: Yes, sir.

11 THE COURT: I find that there is a
12 sufficient factual basis to support the plea
13 overwhelmingly in the record in this case.
14 Therefore, I find his plea to be freely,
15 voluntarily, knowingly, and intelligently made and
16 entered, and I will accept the plea.

17 Mr. Lyons, I'd be delighted to hear from
18 you, sir.

19 MR. LYONS: Yes, sir, Your Honor, may it
20 please the Court. Mr. Allen is here now, and two of
21 his aunts are in the courtroom. And at the
22 appropriate time, they would like to -- I assume
23 they would like to address the Court.

24 THE COURT: Okay.

25 MR. LYONS: Judge, it seems like I've been

1 representing Mr. Allen for a long period of time,
2 but in actuality that isn't so. It's been a long,
3 hard road for me and him.

4 We have had some serious disagreements
5 about how this case should be handled. And when I
6 talked to him about him actually pleading guilty, I
7 told him that one of the things that you were going
8 to ask him was his satisfaction with me, and "Don't
9 think that I'm going to be offended if you tell the
10 Judge that you're not completely satisfied with me.
11 I understand that."

12 And, Judge, in these last two days in
13 particular, I have been trying to get Mr. Allen to
14 come to grips with the evidence. I have not been in
15 many cases in 24 years in which I had to go through
16 a jury trial in which I felt pretty much handcuffed
17 by the evidence. And this is one.

18 And, Judge, during my representation of
19 Mike, he has begrudgingly held onto hopes that he
20 could beat this case -- I guess that's the right
21 words to use -- and a steadfast refusal to listen to
22 anything, in my opinion, to be reasonable.

23 And just to look at him, Judge, I could
24 see it on his face. And I spoke with him on
25 yesterday about a plea, and I came to court this

1 morning -- I got here an hour before trial -- with
2 my computer for him to watch the video.

3 We had watched a part of the video before,
4 and I believe we had watched the wrong part of it.
5 But I came in this morning and said, "Mike, I think
6 we didn't see what we should have been seeing.
7 Here's the video evidence. It's very damaging," you
8 know.

9 "I'm begging you to plead. The only thing
10 you have left with the Court now is coming here and
11 show some remorse and some acceptance of
12 responsibility." And he did not want to do that.
13 In fact, some rather harsh words were exchanged back
14 there between me and him this morning.

15 And at that point in time, Judge, as far
16 as I was concerned, we were going to have a trial,
17 and the jury was going to make a decision, which I
18 didn't think they were going to take long to make.
19 I was quite shocked to come back after lunch and
20 find out that Mike wanted to talk to me and even
21 more shocked to find out he was now wanting to plead
22 guilty.

23 And there was just something different
24 about his whole demeanor that has changed the
25 antagonism. It was, Judge -- and if I've ever seen

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1 this before, I can't remember -- but someone who
2 genuinely appears to be remorseful and someone who
3 genuinely appears to be ready to say, "I did this to
4 these people. It wasn't right."

5 And he told me that "These people
6 shouldn't have had to go through what they went
7 through. They shouldn't have been robbed. They
8 shouldn't have been carjacked. And they shouldn't
9 have to have gone through this experience of this
10 trial."

11 And Mr. Weeks and his office, they've gone
12 to a great deal of expense in getting witnesses up
13 here from Florida. And, Judge, I told Mike I wasn't
14 going to try to come out here and minimize what
15 everybody's been going through.

16 I'm appointed, so that's going to be some
17 additional cost if the State, for whatever reason,
18 they decide to pay me some allowance for coming over
19 here for the past few days. But, Judge, I truly
20 believe that he wants to accept responsibility.

21 He understands, Judge, that the sentence
22 that you are going to give him is not going to be a
23 light sentence. But, Judge, I would ask the Court
24 to give him a sentence that at least gives him the
25 opportunity to hold out some hope that if he does

1 the things that he's telling me that he is planning
2 on doing that at some point in time that he can be
3 released from the Department of Corrections and not
4 have any of these type of criminal offenses -- being
5 involved in these type of criminal offenses again.

6 Judge, he wants to address the Court. But
7 I think I should ask his aunt if she would address
8 the Court first and then --

9 THE COURT: Certainly.

10 MR. LYONS: And, Judge, I want to add,
11 too, his father has been here this morning, and he
12 wholeheartedly concurs with him entering a guilty
13 plea. He has talked to him about entering a guilty
14 plea.

15 He left a little earlier, not expecting
16 this to happen. Judge, he's had a stroke in the
17 past, and he tells me that sitting in the courtroom
18 and sitting through this type of thing, that he just
19 can't deal with the pressure. His whole family,
20 Judge, supports him entering this plea.

21 THE COURT: Okay. I'll be happy to hear
22 from any family members at this point.

23 Good afternoon, ma'am.

24 MS. BRADBERRY: Do I stand here or over
25 there?

1 THE COURT: You can stand right there,
2 will be fine.

3 MS. BRADBERRY: Thank you, Your Honor.

4 THE COURT: If you'll give me your full
5 name, please, ma'am.

6 MS. BRADBERRY: Cleo Bradberry.

7 THE COURT: Yes, Ms. Bradberry.

8 MS. BRADBERRY: This is very difficult.
9 Of course, I have known Michael since he was a young
10 man, a child. And my mother used to babysit Michael
11 when his parents worked, and he would stay overnight
12 sometimes.

13 And he would not sleep with anybody but
14 his Aunt Cleo. And it really grieves me to see him
15 come to this point in his life. Michael was a good
16 child. He was a star athlete. He was a good
17 student in school. And then what happened, he got
18 messed up with drugs.

19 THE COURT: Yes, ma'am.

20 MS. BRADBERRY: And it grieves me to see
21 him here at this point in his life, and I know where
22 he came from, and I know what his family background
23 was. And I know that he's a good boy -- a good man.
24 Michael's not violent. I've never known him to
25 strike a woman. I've never known him to hurt

1 anyone.

2 But Michael got caught up with those drugs
3 that affected his thinking, affected his mind, and
4 affected the way he dealt with his life. And as I
5 said before, it really grieves me at this point.

6 But I do believe in my heart that Michael
7 is remorseful. I do believe that Michael will make
8 a change in his life now. And I do believe that he
9 sincerely regrets what he did. And we pray during
10 intermission that Michael will make the right
11 decision with his life.

12 And though I know he committed a crime
13 against the people here with what he had done, I do
14 believe that Michael is sorry for what he did. And
15 I don't think Michael would have hurt anyone. He
16 may have appeared to have had a gun, I don't know.

17 But I do not believe Michael would have
18 hurt anyone. He's not that kind of a person. He's
19 good to his family. He was always willing to help
20 out when we had events, you know, going on.

21 But he just caught up with the wrong
22 people. And I hate to say that it's always when
23 people do something, we always go back and say they
24 got caught up with drugs and everything. But we
25 know that drugs can affect your life. We know that.

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1 And I don't -- I never done drugs. I
2 don't know what it does to you. But I know that
3 drugs destroyed my nephew's life. I know that much.
4 The stuff he did was the stuff he read off, forgery
5 and all that.

6 He never had any violent crimes that he
7 committed. They were wrong what he did. I know
8 that. And I believe he knows that. But I do
9 believe that if we give Michael another chance, I do
10 believe that Michael can redeem himself, because he
11 comes from a good family.

12 He's a good man. He's a loving man. He
13 has a son in Florida, and I do believe that's where
14 he was probably heading to see when he got caught.
15 He loves his young son. He tried to be a role model
16 for him, but he kept getting caught back up in the
17 trap of drugs again.

18 And if Michael -- when he serves his time,
19 I would hope and pray that the Court would put him
20 through some kind of rehabilitation so that we can
21 try to get him off the habit of using drugs, because
22 all drugs do is destroy your life and destroy your
23 family.

24 So, Your Honor, I beg you to have mercy on
25 my nephew. I beg for you to punish him true but be

1 limited in your punishment toward him, because I do
2 pray and I do believe he deserves another chance.
3 Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Bradberry.
5 Yes, ma'am?

6 MS. BIGGS: I want to start off --

7 THE COURT: Your name, please, ma'am.

8 MS. BIGGS: I'm sorry, my name is Helen
9 Biggs. And I'm Michael's aunt. This is my oldest
10 sister's son. I remember when Michael was born, and
11 he was the first grand on my side of the family and
12 his side of the family.

13 And just like his aunt just testified that
14 he went to school. He didn't get into any problems.
15 He was a promising athlete and, you know, a football
16 and basketball player. He went all through high
17 school and didn't get into any trouble.

18 And just after he got out of high school,
19 and just like I say, drugs played a very important
20 part in his life, because he was a good kid. He
21 didn't get in anything until he started hanging
22 around with the wrong crowd.

23 And I don't care what anybody's saying,
24 when you hang around with negative people, only
25 negative consequences are going to happen. And he

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1 is a good kid. He's not an aggressive kid at all.

2 The only aggression I've seen on him is
3 when he was on the football field and the
4 basketball. Just like I say, he was a good kid, and
5 his aunt has said most of what I want to say.

6 And I know what he done was wrong, and he
7 has to pay for, which he do. But I just wish that
8 you would just have a little lenience on him,
9 because the drugs has got him where he's at now.

10 And I'm sorry what he done to Ms. Wood and
11 the other young lady, because it definitely was
12 wrong. But it wasn't him. It's the drugs that he
13 has got hold of. Thank you.

14 THE COURT: Thank you, ma'am.

15 Anything else?

16 MR. LYONS: Judge, before I ask Mr. Allen
17 to speak, I know one of the things that he has
18 stated to me during the whole course of my
19 representation of his is that he did not have a
20 weapon.

21 He informs me that he has never used a
22 weapon involved in any of these other prior criminal
23 offenses of which he's been convicted. And he
24 steadfastly maintains his innocence on that part of
25 it, Judge. I think that's important to know.

1 And the other thing is, Judge, he does
2 tell me that -- and I'm sure he's going to get into
3 it a little more in detail when he speaks -- how
4 getting -- how trying and getting addicted to crack
5 cocaine turned what might have been a promising
6 athletic or academic career into bringing him here
7 today.

8 And I haven't said it, and I know Mr.
9 Allen at least at this point in time feels that it
10 should be said. But, Judge, I would like to offer
11 my sincere apologies to the families of his victims.

12 For some reason, Judge, whenever I'm
13 representing somebody charged with these type of
14 crimes, I somehow or another feel responsible for
15 what happened. And I don't know why, but for some
16 reason I do.

17 And I'd just like to say that I'm sorry
18 this has happened to them. I know it wasn't an easy
19 thing for them to go through, and I know they're
20 probably having some serious problems as a result of
21 what they went through.

22 And, Judge, I hope and pray that at some
23 point in time in their lives that they are able to
24 get beyond this as best they can.

25 THE COURT: Thank you.

1 Mr. Allen?

2 MR. ALLEN: Well, sir, the first thing I
3 would like to do is thank you for allowing me the
4 opportunity, the privilege, to say something. And I
5 think it's needful, it's necessary, that I apologize
6 to these young ladies for my actions.

7 I stand before you fully accepting
8 responsibility for my actions. I was wrong. And if
9 I may, I would like to turn to these ladies and
10 apologize to them for what I did. And if I caused
11 them any harm or whatever that particular night or
12 morning, I'm sorry. I was wrong.

13 The car wasn't mine to take. The money
14 wasn't mine. That belonged to them. But because of
15 what I was going through and what I was dealing with
16 in my life, I took it upon myself to do this.

17 But that don't give me the right to do it.
18 I was wrong. That's the bottom line. I was wrong.
19 And there's no excuse for it. And I would like to
20 face them and apologize to them before I speak with
21 you, if I may.

22 THE COURT: Sure.

23 MR. ALLEN: Ms. Wood, I'd like to
24 apologize to you, ma'am, for what I did. I had no
25 intention of hurting you. You know, I came in under

1 the influence of drugs. But I wanted just some
2 money to go, just in Florida, to go to Tampa, you
3 know.

4 But that still don't give me no right to
5 do to you what I did. And I'm sorry for whatever
6 harm maybe I caused you in your life , which I
7 apologize. And I hope and pray that you can find a
8 place in your heart to forgive me. I was wrong. I
9 was wrong for that, and I'm sorry.

10 Ms. Bush, again, I was wrong for what I
11 did. That's your car that you worked for, that you
12 paid for even the gas, you know. And I apologize
13 for approaching you and taking your car to drive.

14 It wasn't mine to take. And I just hope
15 likewise you will have a place in your heart someday
16 to forgive me for my actions. I accept
17 responsibility for what I did. And if I caused you
18 any harm or any danger that night, I'm truly sorry.

19 And, Mr. Bush, I'm sorry for taking your
20 car, sir. I know you worked hard for that, and I
21 didn't have a right to take what belonged to you.
22 And I apologize, sir, for what harm I caused your
23 daughter and your car, sir. If I damaged your car
24 in any way, I'm sorry, and I apologize, sir.

25 First of all, sir, I'm 42 years old. I

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1 graduated high school back in 1985 here in Aiken, in
2 South Aiken. And upon graduating, my goal, my
3 dream, was to go off to college and further my
4 education and play football.

5 The college that I chose back then was the
6 University of Clemson. And the reason I chose
7 Clemson is because I played at -- the true reason I
8 chose Clemson was because I played at South Aiken
9 with a Michael Perry, who's the younger brother of
10 William Perry.

11 Mike went off to Clemson, and I said,
12 "Well, that's what I'm going to do. I'm going to
13 follow Mike." And another reason why I chose
14 Clemson, back in those days Danny Ford was the coach
15 at Clemson. And I remember every Sunday morning he
16 had a show called the Danny Ford Show, and I used to
17 watch it faithfully every Sunday, if I wasn't in
18 church.

19 And one thing remember, how they used to
20 run down -- they touched their rock, and they run
21 down that hill at Death Valley, and I said that's
22 what I wanted to do. That's where I wanted to play
23 at.

24 But what happened was after I graduated,
25 in 1986 my oldest son, Marcus, he's 23 now, he was

1 born. And I'm left with a decision to make. I'm
2 19, and my decision was, do I go to school and do
3 what I want to do, or do I stay home and get a job
4 and help to take care of my son.

5 And I decided to stay home and get a job
6 and to help raise my son. At the time, my mother
7 was employed at Graniteville Company, and she got me
8 my first job. And I was working third shift.

9 And one morning, me and another guy named
10 Mike, we got off from work, and we were riding
11 together going home. And he said he had something
12 he wanted me to try. I tried it, and I had never
13 seen crack before up until that point, didn't know
14 what it was.

15 He paid \$20 for it, and I was like,
16 "You're going to pay \$20 for that?" But yet I tried
17 it, and at that point, I became admittedly addicted
18 to this drug. From 1986 all the way up until 2006,
19 in February, when I was arrested, took me into
20 custody on these charges, I was in bondage to that
21 drug.

22 And I did things, and I made irrational
23 decisions and quick decisions, to get this drug. I
24 mean, I couldn't shake it. For some reason, I just
25 couldn't shake it, you know. I've never been in any

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1 type of inpatient treatment, although I've asked for
2 it, you know, every time I'm faced with this
3 situation, I end up in prison or in jail.

4 And I firmly believe, sir, in order to
5 solve any problem, you must first deal with the root
6 of a problem. And the root of my problem has been
7 this drug. Normally, outside of this drug, I
8 wouldn't commit the crimes that I've committed in my
9 life.

10 And as far as that night, like I said, I
11 was wrong for approaching her car and taking her
12 car. Regardless of the fact that I was under the
13 influence or not, I was wrong. Well, you know, I'm
14 just asking that you would be lenient in your
15 consideration as to what you're going to sentence me
16 to.

17 I am married. I have -- my wife, she's in
18 Riverview, Florida, just outside of Tampa. I've
19 been living in Tampa, in Hillsboro County, since
20 1999. I got married in December of '99.

21 Our son was born 2000, and
22 he's eight. My wife, she's 54, and I'm 42. And
23 she's a diabetic, down there trying to raise him by
24 herself, because I'm sitting up in here for the past
25 three and a half years for doing something stupid,

1 at 42 years old.

2 And then I have a 23-year-old. His
3 girlfriend just recently gave birth to two
4 grandchildren that I have that I haven't seen,
5 haven't had a chance to hold or anything because
6 I've been incarcerated, and all because of the
7 decisions that I've been made.

8 I've been selfish. See, when I was out
9 there doing what I was doing, I only thought about
10 me and myself and never took the time to look at the
11 whole picture and see who all else was going to be
12 involved in my decision-making, which would affect
13 my family.

14 But I never stopped to look at that. All
15 I was thinking about was the moment, to get the
16 drug, get high, and then I'm right back to square
17 one. After the high is gone, now I've got to do
18 something else to get high again.

19 And it's been like this for 20 years. And
20 like I said, I've never been in any type of
21 inpatient treatment to get some type of help for us,
22 because if the problem ain't dealt with, it's going
23 to always be a problem.

24 But I apologize. Also, I would like to
25 apologize to the State of South Carolina for my

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1 actions now and previously, because I've been in a
2 lot of trouble in this state. And I'd like to
3 apologize also to the officer from Hillsboro County.
4 I've been in trouble in Tampa as well, all because
5 of this drug.

6 And I apologize to the State of Florida
7 for my actions there, my family for bringing this
8 court here for this, you know, because I was wrong.
9 And I'm sure people in here -- the jury, these
10 officers, the Solicitor -- have other things they
11 can do besides being here with this, when I know I'm
12 wrong.

13 And I thank you, sir, for giving me this
14 opportunity. I apologize to you, to my lawyer, the
15 disagreements that we've had. He did what he could,
16 and I appreciate what he's done.

17 And I'd mainly like to apologize to my
18 family. I come from a pretty good family, a well-
19 to-do family here in Aiken. And, you know, I'd just
20 like to apologize to them for my actions in life,
21 and especially my wife, you know.

22 Like I said, I've only seen her twice in
23 the last three and a half years since I've been here
24 in South Carolina incarcerated. And she's really
25 struggling trying to take care of our son, you know.

1 The thing that hurts me the most right now
2 is him, because when I them, the last time I saw,
3 them they was here for Fourth of July weekend from
4 Tampa. And, you know, he asked me would I be home
5 before he turns 15. And I couldn't give him an
6 answer.

7 And I didn't want to lie to him. I just,
8 you know, told him, "Son, I don't know. I don't
9 know what's going to happen." And I made sure that
10 I told him before he left that day that whatever he
11 did in life, don't allow no one -- anyone -- to talk
12 him into or lead him into using any type of drug or
13 alcohol.

14 I made sure I told him that, because
15 that's what got me and keeps me where I'm at,
16 because of the decision that I made when I'm out
17 there using this drug. And as I've stated, in
18 conclusion, sir, I normally wouldn't commit the
19 crimes that I committed if it hadn't of been for
20 that.

21 And like I said, I'm not violent, you
22 know. I remember when I was 12 years old, my
23 brother brought me one of those little rifles, Daisy
24 BB guns. And that's the closest I ever come to a
25 gun, owning a gun.

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1 And like I said, I'm not a violent person,
2 never been convicted of a charge or anything violent
3 till now. And I'm truly sorry, again, for my
4 actions, and I accept responsibility, sir, for my
5 actions today. And I thank you kindly for allowing
6 me to speak, sir.

7 THE COURT: Thank you, sir.

8 Mr. Allen, before I pronounce a sentence,
9 your lawyer made a comment that you still maintain
10 your innocence and did not have a gun or firearm
11 with you. And you have acknowledged that you
12 believe -- and you still do, I assume. I want to
13 ask you specifically. You're still under oath. And
14 Ms. Wood testified she saw one.

15 MR. ALLEN: Yes, sir.

16 THE COURT: But there's no question and
17 she believed you had a firearm, and you told her and
18 you demonstrated and at least to her faked that you
19 had a firearm.

20 MR. ALLEN: I understand.

21 THE COURT: Is that not correct --
22 because, otherwise, why are you pleading guilty?

23 MR. ALLEN: Now, would you repeat that
24 again, sir?

25 THE COURT: Yes. The State has to prove

1 that you were armed --

2 MR. ALLEN: Yes, sir.

3 THE COURT: -- or that the person that you
4 were accosting believed that you were armed based on
5 what you were doing --

6 MR. ALLEN: Yes, sir.

7 THE COURT: -- in other words, that you
8 demonstrated that you had a firearm.

9 MR. ALLEN: Yes, sir.

10 THE COURT: Which one is correct?

11 MR. ALLEN: I can't really remember. But
12 what I do know I wasn't armed.

13 THE COURT: Why are you pleading guilty?

14 MR. ALLEN: Because --

15 THE COURT: The State has to prove that.

16 MR. ALLEN: Well, based on the testimony
17 that she gave -- I mean, I don't see no other way,
18 no other thing but to do. I mean --

19 THE COURT: It's your decision to plead
20 guilty?

21 MR. ALLEN: Could I speak to my lawyer?

22 THE COURT: The statute says this, "A
23 person who commits robbery while armed with a pistol
24 or other deadly weapon or while alleging, either by
25 action or words, that he was armed or while using a

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1 representation of a deadly weapon or any object
2 which a person present during the commission of the
3 robbery reasonably believed to be a deadly weapon."
4 So do you feel that your conduct fit that statute?

5 MR. ALLEN: It's possible, sir. Like I
6 said, I can't remember exactly.

7 THE COURT: Very well. Because you were
8 under the influence that night?

9 MR. ALLEN: Yes, I was.

10 THE COURT: Okay.

11 Anything else, Solicitor, on that issue?

12 MR. WEEKS: No, Your Honor.

13 THE COURT: Mr. Lyons, anything else?

14 MR. LYONS: No, Your Honor. We've
15 exhausted, I think, enough of the Court's time.

16 SENTENCE OF THE COURT

17 THE COURT: Mr. Allen, I modified my
18 sentence based on I believe you mean what you're
19 saying in apologizing to these people. The problem
20 with this crime -- and it's that I knew as a lawyer
21 but has become incredibly vivid and real to me as a
22 Trial Judge -- is that these good folks that came
23 and spoke on your behalf knew you.

24 MR. ALLEN: Yes, sir.

25 THE COURT: They knew you to be the person

1 that I think you've demonstrated here today that you
2 believe that you are.

3 MR. ALLEN: Yes, sir.

4 THE COURT: But on that particular night,
5 those ladies didn't.

6 MR. ALLEN: Yes, sir, I understand.

7 THE COURT: They had every right to
8 believe and be in fear, and that's why that crime is
9 so severe, and that's why the punishment is so
10 severe, because it's a mild statement -- Ms. Wood
11 said she was traumatized; Ms. Bush described being
12 traumatized.

13 There's no way to quantify that. That's
14 impossible. I just pray that they both will find
15 some peace somewhere down the line, and I hope that
16 they are able to achieve that. I'm glad that they
17 have family members and persons that care about
18 them.

19 There are counselors to assist. And I
20 hope that they, if necessary, will choose to seek
21 that. But I hope that their lives will be -- I know
22 it will never be the way it was before. That's
23 impossible. But nothing that I do today will
24 restore that either.

25 If it did, if I knew for a minute that

1. giving you the maximum sentence would take away all
2 their concerns and fears, I'd do it without
3 blinking. But that's not going to happen.

4 I also know that what you've said is --
5 and I don't mean to sound flippant, but you can't
6 imagine how many times I've heard that since that
7 drug has reached this part of the world. In fact,
8 I'll never forget the first person I represented.

9 It was a young man in Hanahan in my home
10 county of Berkeley, and I went to the jail to talk
11 with him. I was appointed, just as Mr. Lyons was.
12 And I asked him some of the preliminary questions.

13 I said, "What do you do?" He looked at
14 me, and you know what he said? "I do crack." I
15 said, "No, I mean what kind of work do you do?" But
16 his answer, that's all he did.

17 And to say it's addictive is a mild
18 statement, and you're right. It is the first time.
19 And that's been scientifically established, and the
20 tragedy is it never goes away. You don't have the
21 same access you had, I hope. I'm not suggesting you
22 can't get it in prison.

23 But your temptation, the urge, it'll
24 always be there. Yes, there's some counseling that
25 can help you. And that's the frustrating thing

1 about it, because for 21 years I was a member of the
2 Alcohol and Drug Abuse Commission for Berkeley
3 County, and I think we helped a lot of people.

4 The tragedy of it is we can't help you
5 unless you come looking for it. And we helped
6 people that couldn't afford to pay, too. But you
7 had to want it.

8 MR. ALLEN: Yes, sir.

9 THE COURT: And the fact that you say -- I
10 agree with you. Putting a drug addict in jail just
11 punishes the drug addict. It doesn't do anything to
12 do the addiction. You have a punished drug addict
13 when you get out.

14 MR. ALLEN: Yes, sir.

15 THE COURT: But you had to make some
16 choices when you chose the wrong side, and you've
17 acknowledged that. The offenses, though, in your
18 record, I'm going to give you a chance to get out
19 one day.

20 The sentence of the Court -- this will be
21 the controlling indictment -- the State is
22 recommending concurrent sentences, correct,
23 Solicitor?

24 MR. WEEKS: That's correct, Your Honor.

25 THE COURT: And quite honestly, Mr. Allen,

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1 that's a major plus for you, because I don't know
2 what would have happened, and I don't know what the
3 jury would have done. But concurrent sentences
4 would not have been necessarily in my thoughts.

5 2006-1685 is in the indictment for an
6 armed robbery. The sentence of the Court is 24
7 years. How long have you been in jail?

8 MR. ALLEN: Three and a half -- since the
9 25th of February of '06.

10 THE COURT: Credit for time served since
11 2/25/06. The sentence of the Court on 2006-1684,
12 that's the carjacking, that's 20 years. It's
13 concurrent, credit for time served since 2/25/06.

14 And the sentence of the Court on 2008-1613
15 is five years. It is concurrent, credit for time
16 served since 2/25/06. Good luck to you, sir.

17 MR. LYONS: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Lyons.

19 Good luck to you all, as well.

STATE OF SOUTH CAROLINA)

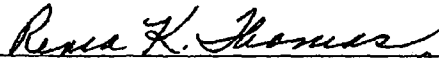
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON SEPTEMBER 21 AND 22, 2009, IN AIKEN, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE EIGHTH DAY OF NOVEMBER, 2009.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/13/2013

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

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

The State, Respondent,

v.

Michael Anthony Allen, Appellant.

Appeal From Aiken County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-315
Submitted June 1, 2011 – Filed June 21, 2011

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, all of
Columbia; and Solicitor J. Strom Thurmond, of
Aiken, for Respondent.

PER CURIAM: Michael Anthony Allen appeals his convictions for armed robbery, carjacking, and grand larceny, arguing his guilty plea did not comply with the mandates set forth in Boykin v. Alabama, 395 U.S. 238 (1969). After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

I - 088614
K - 034082
- 034080

2012-CP-02-00852
2006-GS-02-1685, 1684
2008 1613
Filed 4.5.2012
C.C.P. & G.S. Aiken County
Deputy Clerk
Trial Judge
Trial Atty: ~~Pyron~~ Gossard
Court Reporter: ~~Kema~~ ~~Trinidad~~
Sec. PCR Petitioner
General Sessions
Appointed Atty.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Aiken)

#155673

Michael Anthony Allen)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - /READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention Lieber Corr. Inst. P.O. Box 205, 136
Wilborn Ave. Ridgeville SC 29472
- Name and location of Court which imposed sentence Aiken County Court
of Common Pleas
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Armed Robbery 2006-GS-02-1685
 - Grand Larceny 2008-GS-02-1613
 - Carjacking 2006-GS-02-1684
- The date upon which sentence was imposed and the terms of the sentence:
 - September, 22 2009 24 yrs.
 -
 -

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 17 2012

C.C.P. & G. A., Aiken County, S.C.

Deputy Clerk

5. Check whether a finding of guilty was made
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 21, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) failure to investigate
- (c) Denial of 6th and 14th Amends. U.S. Const.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel did not render reasonable proff. assistance

(b) Applicant reserves the right to amend this application to include all issues available and does

(c) not wave any

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? first filing for PCR

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) first filing for Post conviction relief
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(30901

(a) the name and address of each attorney who represented you

- i. Charles Lyons Esq. 336 Telfair St. Augusta GA
- ii. Christopher J. Hudson 4024 ^{Washington Rd.} Martinez, GA 30907
- iii. Robert M. Pachak P.O. Box 11589 Columbia SC 29211-1589

(b) the proceedings at which each such attorney represented you:

- i. Trail and sentencing
- ii. Bond Reduction
- iii. direct Appeal

18. State clearly the relief you seek in filing this application:

Remand for Re-sentencing

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)

VERIFICATION

I, Michael A. Allen, 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.

Michael A. Allen

Sworn to and subscribed before me

This 30th day of March, 2012

Ludham Bryant L.S.

Notary Public for South Carolina

My Commission Expires May 26, 2020

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael Allen, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Michael Allen
Applicant

Sworn to and subscribed before me

This 30th day of March, 2012

Ludham Bryant L.S.

Notary Public for South Carolina

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Michael Anthony Allen, #155673,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-02-0852

RETURN

Respondent, making its Return to the application for post-conviction relief, filed April 5, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the October 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-01685) and Carjacking (2006-GS-02-01684), and at the October 2008 term of the Aiken County Grand Jury for Grand Larceny, More than \$1,000 but less than \$5,000 (2008-GS-02-01613). Charles H. S. Lyons III, Esquire, represented the Applicant. On September 22, 2009, during the middle of trial on these three charges, the Applicant pled guilty as indicted to all three charges. The Honorable R. Markley Dennis, Jr., sentenced Applicant to confinement for a period of twenty-four years for armed robbery, twenty years for carjacking, and five years for grand larceny, with all sentences to run concurrently.

Applicant appealed his convictions and an appeal was perfected. Following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Michael Anthony Allen, 2012-UP-315 (filed June 21, 2011). Remittitur was sent July 7, 2011.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, the plea transcript, and the record on appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, including failure to investigate; and
2. Due Process Violations

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a post-conviction relief applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's

unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that 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, 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 further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief,

it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 30, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-0852
	)	
MICHAEL ANTHONY ALLEN, 155673,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**LeLand Malchow, Esquire
Nimmons & Malchow, PC
Post Office Box 460
Augusta, GA 30903**

DATED this 31st day of May, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

MICHAEL ANTHONY ALLEN,
#155673

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2008-CP-19-191

**APPLICANT'S MOTION FOR LEAVE
TO OBTAIN DISCOVERY**

COMES NOW MICHAEL ANTHONY ALLEN, Applicant in the above-styled case, by and through his appointed counsel of record, and files this, his MOTION FOR LEAVE TO OBTAIN DISCOVERY and would show this Honorable Court the following:

1.

The present case is one for post-conviction relief and was filed by the Applicant on April 5, 2012. This is a noncapital offense case. Applicant pled guilty in his underlying criminal case and received sentences to confinement of twenty-four years for armed robbery; twenty years for carjacking; and five years for grand larceny, all of which are to run concurrently.

2.

The Respondent filed its Return in this case on May 31, 2012. In its Return, Respondent has moved this Court for an evidentiary hearing as to Applicant's claims for ineffective assistance of counsel and has moved for summary judgment on Applicant's due process claims.

3.

Pursuant to the South Carolina Code of Laws, Section 17-27-150(A), as amended, Applicant seeks leave of this Court to obtain discovery in this case prior to an evidentiary hearing and prior to this Court issuing a ruling on Applicant's due process claims. Applicant believes there is good cause to grant his motion for leave to obtain discovery. Applicant was represented by three separate counsels of record on different occasions during his underlying criminal case. Applicant believes he was denied communication to this Court through his counsel and that the State's plea agreement offers were not accurately communicated to him, all of which will be set forth more fully in Applicant's Brief to be filed at a later date.

WHEREFORE, Applicant prays that this Court grant his motion for leave to obtain discovery in this case.

Respectfully submitted.



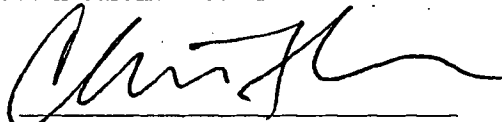
Leland M. Malchow
Chris C. Johnson
460 Greene Street
Augusta, Georgia 30901
(706) 724-8890

Augusta, Georgia
July 6, 2012

CERTIFICATE OF SERVICE

I have this date served a copy of the within and foregoing **Applicant's Motion for Leave to Obtain Discovery** upon opposing counsel by depositing same in the United States mail with proper postage and addressed as follows:

Alan Wilson, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire
Megan E. Harrigan, Esquire
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 11549
Columbia, South Carolina 29211


Chris C. Johnson

Augusta, Georgia
July 6, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
Michael Anthony Allen, #155673,	)	Case No. 2012-CP-02-0852
	)	
Applicant,	)	RETURN TO APPLICANT'S MOTION
	)	FOR LEAVE TO CONDUCT DISCOVERY
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter is before this Court by way of an Application for Post-Conviction Relief filed April 5, 2012. Applicant, through appointed post-conviction relief counsel Leland Malchow, Esquire, has filed a "Motion for Leave to Obtain Discovery" with this Court requesting court approval to initiate the discovery process. Applicant has not set forth any particular items he wishes to obtain. Respondent submits discovery is unnecessary in the particular action and Applicant has failed to set forth sufficient good cause why these allegations cannot be proven without the use of the discovery process.

Based on the above reasons, Respondent respectfully requests that this Court deny Applicant's request for discovery as good cause does not exist to do so. Alternatively, should this Court see fit in its discretion to grant Applicant's request to invoke the discovery process, Respondent respectfully requests this Court enter a formal order outlining and limiting the scope of the investigation to the specific, detailed items which Applicant seeks to obtain.

[signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

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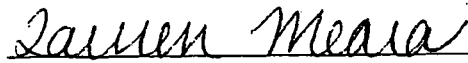
Columbia, South Carolina
July 26, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-0852
	)	
MICHAEL ANTHONY ALLEN, 155673,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion for Leave to Conduct Discovery** in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

LeLand Malchow, Esquire
Chris Johnson, Esquire
Nimmons & Malchow, PC
Post Office Box 460
Augusta, GA 30903

DATED this 27th day of July, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

Court of Common Pleas
2012-CP-02-00852

Michael Anthony Allen
Applicant
vs.

Post-Conviction Relief Transcript of Record

State of South Carolina
Defendant

January 23, 2013
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Christopher C. Johnson, Esq.
Leland M. Malchow, Esq.
Attorneys for the Applicant

Megan E. Harrigan, Esq.
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

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E X H I B I T S

NO.	IDENTIFICATION	ID	EVD

(None Offered)

1 (Whereupon, on January 23, 2013 the following
2 proceedings were held.)

3 THE COURT: This is Michael Anthony Allen versus the
4 State of South Carolina, PCR application case no.
5 12-CP-02-852.

6 MS. HARRIGAN: May it please the Court. Applicant
7 was indicated in the October of 2006 term for the Aiken
8 County Grand Jury for armed robbery and carjacking at the
9 October of 2008 term of the Aiken County Grand Jury for
10 grand larceny for more than a thousand but less than
11 \$5,000. Charles Lyons, III, represented the Applicant in
12 all three charges.

13 On September 22, 2009 during the trial on these
14 charges the applicant plead guilty as indicted to all
15 three charges. The Honorable R. Markley Dennis, Jr.,
16 sentenced applicant to confinement for a period of 24
17 years for armed robbery, 20 years for carjacking, and five
18 years for grand larceny with all sentences to be served
19 concurrently. A notice of appeal was filed and appeal was
20 perfected by the submission of an Anders brief. The Court
21 of Appeals dismissed the appeal. Remittitur was sent
22 July 7, 2011.

23 Applicant filed a timely application for
24 post-conviction relief on April 5, 2012 alleging
25 ineffective assistance of counsel including a failure to

(Michael A. Allen-Direct by Mr. Johnson)

4

1 investigate a due process violation. The state made its
2 return on May 30, 2012. He is represented in this action
3 by Chris Johnson appearing on behalf of appointed counsel
4 Malchow and on July 6 applicant filed a motion to obtain
5 discovery and the state made a response asking that
6 discovery not be granted. This motion is still pending at
7 this time.

8 THE COURT: Are we here for the motion or are we here
9 for ---

10 MS. HARRIGAN: We are here for the evidentiary
11 hearing. It is my understanding that the applicant is not
12 proceeding forward with the discovery motion.

13 MR. JOHNSON: Good morning, Your Honor. Chris
14 Johnson here. Leland Malchow is here beside me. She is
15 correct. We're not pursuing the motion. We're ready to
16 move forward.

17 THE COURT: Call your first witness.

18 MR. JOHNSON: I call Michael Allen.

19 MICHAEL ANTHONY ALLEN, after being duly sworn,
20 testified as follows:

21 THE CLERK: Please have a seat in the witness box and
22 state your full name for the Court.

23 DIRECT EXAMINATION

24 BY MR. JOHNSON:

25 Q Mr. Allen, please state your name for the record.

1 A Michael A. Allen.

2 Q Mr. Allen, who were you represented by at your
3 criminal trial?

4 A Mr. Charles Lyons.

5 Q When did you first meet Mr. Lyons?

6 A On April 14, 2009.

7 Q Do you recall when your criminal trial was held?

8 A September 21, 2009.

9 Q When you first met Mr. Lyons in person did y'all view
10 any video footage?

11 A Yes, we did.

12 Q What was that video footage?

13 A It was pertaining to an alleged armed robbery.

14 Q What store was that video footage from?

15 A B. P. station.

16 Q Describe the contents of the video footage.

17 A Okay. What I saw in the video at that time was a
18 suspect or subject wearing heavy camouflage coat with a
19 dark black cap on. That's what I saw at that time. Then
20 five months later at trial another tape -- another part
21 was presented and I had sat in that detention center for
22 three years and had never seen this part that I saw at the
23 trial and I was wondering where was it the past three
24 years. You know, when I was sitting in the county waiting
25 for trial I had never saw that before. What I saw that

(Michael A. Allen-Direct by Mr. Johnson)

6

1 day with him in April of 2009 and what I saw in September
2 of 2009 was totally different -- two different, you know
3 what I'm saying?

4 Q Yes, sir.

5 A So there was another part. Where was it for three
6 years that I never saw it until trial?

7 Q Prior to April of 2009 had you ever seen the first
8 video footage that you watched with Mr. Lyons? Had you
9 ever seen that before?

10 A The one we saw together at the jail?

11 Q Yes.

12 A I had saw that with a previous attorney -- that part.

13 Q The second video footage that you saw at trial --

14 A Right.

15 Q -- had you ever seen that prior to --

16 A No.

17 Q -- the day of the trial?

18 A I had never saw that before.

19 Q So prior to the day of the trial you had never seen
20 this second video footage?

21 A No.

22 Q Describe the contents of the second video footage.

23 A The second video footage that I saw, it showed a male
24 at the counter with a heavy camouflage coat on with no hat
25 on. The one I saw prior five months earlier the suspect

1 had a hat on.

2 Q When you saw the first video what were your beliefs
3 as far as the first video's effects on your case?

4 A Are you asking did I see an armed robbery in
5 progress?

6 Q What did you believe that that did to your case?
7 What did you believe at the time watching that first
8 video? Did you believe that the state had a strong case
9 against you?

10 A No.

11 Q Why not?

12 A Because it didn't show what they had me charged with.
13 They had me charged with armed robbery and then when that
14 tape concluded that day I asked him, basically, what I was
15 asking him did he see an armed robbery in progress. Was
16 that what we was watching? He said no and I wrote him a
17 letter pertaining to that tape that I have here that I got
18 in response that I'd like to share with the Court if I
19 may.

20 Q And you wrote Mr. Lyons a letter. Is that what you
21 just said?

22 A Yes, sir, pertaining to that tape we just watched.

23 Q What was Mr. Lyons' response to your letter
24 concerning the video?

25 A Well, I have the letter here if I could read the

(Michael A. Allen-Direct by Mr. Johnson)

8

1 letter.

2 MR. JOHNSON: Your Honor, Mr. Allen would like to
3 read the letter that he received from Mr. Lyons into the
4 record. It is about a page and a half, if that's okay.

5 THE COURT: It is okay with me.

6 MS. HARRIGAN: No objection from the state.

7 Q You may proceed.

8 A Okay. This letter is dated April 22, 2009 regarding
9 a letter that I wrote to him concerning the video footage
10 we saw on April 14, 2009. It says, "Dear Mr. Allen, I am
11 in receipt of your letter dated April 18, 2009. As you
12 know on last week we had a long discussion regarding your
13 case. In addition, we reviewed some video surveillance.
14 I am sure you should also recall that I never told you to
15 plead guilty to anything. That is your choice. What I
16 did tell you, though, is that if all the State's witnesses
17 appear for trial and their testimony is consistent with
18 their prior witness statements, along with the fact that
19 you were arrested in Florida for shoplifting at a local
20 mall and the carjacked vehicle was found in the mall's
21 parking lot and the key to the car was in your pocket, it
22 won't take a jury 30 minutes to convict you."

23 He says, "Mr. Allen, I fully understand your position
24 and, obviously, it is not going to change. I don't need
25 to look at the video again because like you my position is

1 not going to change and you can save your stamps and voice
2 trying to convince me otherwise. You see, Mr. Allen, the
3 truth is you robbed that store and carjacked that lady.
4 They both have picked you out of a photo line-up and you
5 made the case against yourself by getting apprehended the
6 way you did in Florida. Now at trial I will do everything
7 I can to get you acquitted. However, my duty as your
8 lawyer is to help you make the right decision regarding
9 trial or taking a plea."

10 He says, "I spoke with Mr. Weeks and there is not
11 going to be a plea to 5 years. He will look at the case
12 regarding a plea to 10 years, but that, too, probably will
13 not be offered." Then he goes on to say, "But both female
14 witnesses along with the officers in Florida are going to
15 appear in court against you. You need a reality check."
16 He says, "You think that the lady you carjacked was just
17 fine after the carjacking. That tells me you are crazy.
18 The father of whom you carjacked told me that she does not
19 want to talk to me and once I am told that I cannot harass
20 a witness just because you think so."

21 He says, "Finally, I believe that I am ready to try
22 your case when the solicitor calls your case for trial.
23 Unless I have a conflict or other matter, we will try your
24 case. I am appointed to represent you on these charges.
25 You need to hire and pay another attorney to gain you what

(Michael A. Allen-Direct by Mr. Johnson)

10

1 other accommodations you feel you need about seeing your
2 family. This lawyer won't."

3 Lastly, he says, "I am appointed to represent you on
4 these charges. I am not your personal lawyer on some type
5 of endless state retainer. Once you go to trial on these
6 charges your family will have many years to go visit you
7 in prison after your jury trial. Every word that has been
8 used in this letter was done so intentionally. In other
9 words, should you feel necessary to use it in another
10 proceeding, you have my approval," and it's signed Charles
11 H. S. Lyons, III.

12 Q Thank you. Did you and Mr. Lyons have any more
13 contact between that letter and your September trial?

14 A No.

15 Q Did Mr. Lyons visit you while you were in jail?

16 A No. From April to September I didn't see him nor
17 hear anything from him. In fact, when I was en route on
18 the 21st of September to come to trial I had no idea why I
19 was even coming to court. He hadn't informed me of
20 anything. So when I get here, you know, I'm supposed to
21 have a change of clothes to come out here and pick a jury.
22 All I had on was an orange jumpsuit and the officer that
23 was here that day, they had to scrounge around and find me
24 something to wear because I wasn't prepared. I hadn't
25 seen him in five months; so how am I supposed to know

1 what's going on?

2 Q In the course of Mr. Lyons' representation of you did
3 y'all discuss any plea offers from the state?

4 A From the tape?

5 Q Yes, sir.

6 A No.

7 Q Y'all never discussed any plea offers?

8 A Well, he sent me a letter about a 15-year.

9 THE COURT: What did the letter say about 15 years?

10 THE APPLICANT: I don't recall. You got it?

11 THE COURT: You don't have a copy of that one?

12 MR. JOHNSON: Yes, sir, we do.

13 Was that -- what month was that in?

14 THE APPLICANT: I don't remember.

15 Q Was that in July?

16 A I'm not sure what month it was.

17 Q The reason I asked about the plea offers, after
18 viewing the first video footage in April were you more or
19 less inclined to accept plea offers from the state after
20 viewing that first video footage in April?

21 A Was I?

22 Q Yes.

23 A I can't remember.

24 Q If you had viewed -- withdraw.

25 THE COURT: What was that question? I'm sorry.

(Michael A. Allen-Direct by Mr. Johnson)

12

1 Q Did you feel as though the second video footage ---

2 THE COURT: Restate the question.

3 MR. JOHNSON: I'm sorry.

4 THE COURT: Just restate it. I didn't hear you.

5 MR. JOHNSON: Yes, sir.

6 The second video footage that you saw at the trial,
7 did you feel that was more condemning against your --

8 THE WITNESS: Yes.

9 Q -- against the charges against you?

10 A Yes.

11 Q If you had seen that video footage earlier would you
12 have been more likely to accept a plea offer from the
13 state?

14 A I may have, yes.

15 Q When did you learn of your trial date in September of
16 2009?

17 A When did I learn it? When I got here that day. The
18 day that I arrived for the jury selection was when I
19 realized I was going to trial. Then I realized it was
20 starting that day. I hadn't been previously advised or
21 previously informed of it.

22 Q What type of preparation did you and Mr. Lyons go
23 through for your trial?

24 A We didn't go through any.

25 Q At the trial did you make any recommendations to

1 Mr. Lyons as to evidence you wished to be put up in your
2 case?

3 A No, I didn't.

4 Q Did you make any recommendations to Mr. Lyons as to
5 the witness from the Circle K?

6 A I did.

7 Q What was that recommendation?

8 A I asked that she be subpoenaed to court.

9 Q Why did you ask him that?

10 A Because it was in the report that she stated that she
11 didn't see an incident regarding a carjacking.

12 Q Was she subpoenaed as a witness?

13 A No, she wasn't.

14 Q Was she called as a witness to your knowledge?

15 A No, she wasn't.

16 Q Did you make any requests about -- did you make any
17 requests of Mr. Lyons to cross-examine one of the victims
18 as to statements she made to the police officers
19 immediately after this?

20 A I did and that wasn't ---

21 Q What was that recommendation?

22 A I wanted him to cross-examine her testimony versus
23 the initial statement that she gave to the lead
24 investigator -- the one that arrived on the scene, a
25 Detective Glover. The testimony in the statement that she

(Michael A. Allen-Direct by Mr. Johnson)

14

1 gave initially wasn't consistent. Now he told me in this
2 letter that if all the state witnesses appeared and their
3 testimony was consistent, then it wouldn't take a jury
4 long to convict me.

5 Well, if you're telling me that the testimony be
6 consistent and you see it's inconsistent and you do
7 nothing about it then, what I'm -- you're saying one thing
8 but you're doing something else.

9 Q Did that cross-examination occur?

10 A No, it didn't occur.

11 Q Did that influence your decision to plead guilty?

12 A Pretty much because I feel like now I'm pressured. I
13 am not getting -- I mean, I am not getting an adequate
14 defense.

15 Q You plead guilty to all three charges against you?

16 A Yes, sir.

17 Q At the trial were you advised that you could have
18 charged the jury on the lesser included offense of strong
19 arm robbery?

20 A No one advised me of that. I wasn't advised by the
21 Court or Mr. Lyons that I could have pleaded to a lesser
22 included offense of strong arm robbery.

23 Q Would that have influenced whether you plead guilty
24 or not?

25 A Yes, sir.

1 Q At the plea when you plead guilty --

2 A Yes, sir.

3 Q -- did anyone advise you that a jury would have to
4 return a unanimous verdict in order to convict you?

5 A No, sir. I was not advised of that by the Court or
6 Mr. Lyons.

7 Q Would that have affected --

8 A It would have.

9 Q -- whether you plead guilty or not?

10 A It would have and if I had been advised that, you
11 know, I had a right to -- a right against compulsory
12 self-incrimination -- if I had been advised of that by the
13 Court or by my attorney previously, I would not have
14 entered a plea of guilty, but I wasn't told about that.

15 Q And, finally, after you plead guilty the Court
16 advised you that you had a right to remain silent?

17 A Did they?

18 Q Did they?

19 A Yes, but they didn't ---

20 Q I'm sorry?

21 A But I wasn't -- Basically, what I am saying is the
22 constitutional rights that they're saying that I waived.
23 wasn't fully advised of them, nor was they explained to
24 me; so how can I make a voluntary plea? That becomes an
25 involuntary plea from what I understand.

(Michael A. Allen-Direct by Mr. Johnson)

16

1 Q Did you understand what your right to remain silent
2 meant?

3 A No.

4 Q Did Mr. Lyons explain that?

5 A No. No one explained that to me.

6 Q Did that have an effect on whether you plead guilty
7 or not --

8 A Yes.

9 Q -- at the trial?

10 A Yes.

11 Q Is there anything else you would like to tell the
12 Court about your PCR application?

13 A Well, yes, I would just like to say that -- like I
14 was saying, had I been advised of my constitutional rights
15 and those rights would have been explained to me it would
16 have had a greater effect on whether or not I plead or not
17 and had I been advised of the lesser included offense it
18 would have had something to do with whether I plead guilty
19 to the charge I was charged with and the fact that, you
20 know, he should have prepared me for trial.

21 I mean, he came to see me in April and I didn't see
22 him in five or six months and then when I saw him the day
23 at the trial, I asked him, I said, What is going on? He
24 just said, Well, today is your day. Are you ready? How
25 am I ready and this is the first time I saw you in five

1 months? How could I be ready? I mean, I just felt all of
2 that had a play in as far as me pleading guilty because
3 how can -- I am at a trial, but I am not getting an
4 adequate defense; so I am really left with no choice, you
5 know, but to plead.

6 Q Thank you, Mr. Allen.

7 THE COURT: Well, why did you plead guilty?

8 THE APPLICANT: Sir?

9 THE COURT: Why did you plead guilty?

10 THE APPLICANT: Well, because I didn't get a defense.

11 THE COURT: You told the judge you plead guilty
12 because you did it. Isn't that right?

13 THE APPLICANT: I may have mentioned that.

14 THE COURT: You may have mentioned that. Thank you.
15 Anything else?

16 MR. JOHNSON: No, sir.

17 THE COURT: Ma'am?

18 MS. HARRIGAN: May it please the Court.

19 CROSS-EXAMINATION

20 BY MS. HARRIGAN:

21 Q Mr. Allen, how many times did you meet with Mr. Lyons
22 prior to your trial?

23 A One.

24 Q One. So your testimony is you only ever met with him
25 once --

(Michael A. Allen-Cross by Ms. Harrigan)

18

- 1 A Once.
- 2 Q -- during the course of your representation?
- 3 A Yes.
- 4 Q And he was appointed to represent you?
- 5 A Yes.
- 6 Q Was he your first attorney?
- 7 A No.
- 8 Q How many more attorneys did you have before him?
- 9 A Two.
- 10 Q Why did they cease representing you?
- 11 A Because they wasn't doing an adequate defense job.
- 12 Q Did you move to have them relieved?
- 13 A Yes.
- 14 Q Okay. So you moved to have your first two attorneys
- 15 relieved? He was your third?
- 16 A Yes.
- 17 Q Okay. Do you recall reviewing your discovery with
- 18 Mr. Lyons?
- 19 A Did we review it together? No.
- 20 Q You never reviewed any discovery?
- 21 A No.
- 22 Q But your prior testimony was that you did watch the
- 23 video?
- 24 A We watched the video. We never reviewed the
- 25 discovery -- the paperwork that I had.

1 Q So you never reviewed any paperwork, but you did
2 watch video?

3 A Yes.

4 Q Do you recall discussing possible defenses with your
5 attorney?

6 A No.

7 Q Did you give Mr. Lyons any potential leads or
8 witnesses to investigate?

9 A Yes. The one witness at the Circle K, yes.

10 Q Did you discuss any plea offers that were made by the
11 state with Mr. Lyons?

12 A I think we discussed one.

13 Q And that was for the 15-year --

14 A Yes.

15 Q -- offer? And was it your decision to turn that
16 offer down and proceed to trial?

17 A Yes.

18 Q During your guilty plea you told Judge Dennis that
19 you were satisfied with Mr. Lyons' representation;
20 correct?

21 A I didn't tell him that.

22 Q You never told him that you were satisfied?

23 A No.

24 Q So you refute if the record said you told Judge
25 Dennis --

(Michael A. Allen-Cross by Ms. Harrigan)

20

1 A Right.

2 Q -- under oath that you were satisfied?

3 A Right. I didn't say that.

4 THE COURT: The record is wrong?

5 THE APPLICANT: Excuse me?

6 THE COURT: Is the record wrong? The transcript is
7 wrong?

8 THE APPLICANT: I didn't say it. There were other
9 things that were printed in the record that I didn't say,
10 also.

11 Q You did tell Judge Dennis you wish you had more time
12 to talk to Mr. Lyons but despite this lack of
13 communication you still wanted to plead guilty; correct?

14 A Repeat that again, please.

15 Q You did tell Judge Dennis that you wished you had
16 more time to speak with Mr. Lyons; correct?

17 A Yes, I did.

18 Q But that despite this lack of communication you still
19 wanted to go forward with your guilty plea; correct?
20 That's on page 193 and 194 of the record. You told Judge
21 Dennis you still wanted to go forward despite ---

22 A Yes, I did.

23 Q And you told Judge Dennis this wasn't affecting your
24 decision to plead guilty at all; correct?

25 A Yes.

1 Q One of your allegations is that Mr. Lyons is now
2 ineffective for failing to investigate your case; correct?

3 What additional investigation did you want him to do?

4 A The videotape.

5 Q Do you have a copy of that videotape with you here
6 today?

7 A No.

8 Q In regards to your allegation about the Circle K
9 witness, do you have that witness here to testify today?

10 A No.

11 Q Your allegation regarding his cross-examination of
12 the victim at the B. P. station, Lisa Wood, he did
13 cross-examine her; correct?

14 A He cross-examined her, but he didn't ask -- he didn't
15 cross-examine -- he didn't object to the inconsistent
16 testimony that she was giving versus the statement.

17 Q But he did cross-examine her on whether a gun was
18 visible?

19 A Yes, he did that.

20 Q Was it your decision to plead guilty?

21 A Yes, it was my decision.

22 Q And you told Judge Dennis numerous times during your
23 plea that it was your decision to plead guilty; correct?

24 A Yes.

25 Q Do you recall Judge Dennis going over your

1 constitutional rights with you?

2 A No.

3 Q So you would refute the record if it says that he
4 went through a plea colloquy advising you of your rights?

5 A He discussed -- he discussed -- he asked Mr. Lyons if
6 I understood my rights, but he didn't speak directly to me
7 and explain those rights to me.

8 Q So you would refute that the record shows that you
9 were asked by the judge on all of your constitutional
10 rights -- your right to remain silent, your right to a
11 jury trial?

12 A Them are the only two, but he didn't go through all
13 of them.

14 Q You agreed with the state's version of the facts in
15 this case, correct, during your guilty plea?

16 A Did I agree with what the witnesses' are saying?

17 Q With the -- with the the evidence presented by the
18 state. During your guilty plea you agreed with the
19 state's version of the facts; correct?

20 A I'm not sure.

21 Q Okay. If the record states that you did agree with
22 the state's version of the facts, you wouldn't refute
23 that, would you?

24 A No.

25 Q You told Judge Dennis that you did not have a weapon

1 during the armed robbery; correct?

2 A Right.

3 Q And Judge Dennis read you the armed robbery statute
4 in South Carolina; correct?

5 A Right.

6 Q And he explained to you that even if you did not have
7 a weapon but you led the victim to believe that you did
8 have a weapon you would still be guilty of armed robbery;
9 correct?

10 A Right.

11 Q And you told Judge Dennis that you were under the
12 influence that night; so you couldn't even remember what
13 happened; correct?

14 A Correct.

15 Q You told Judge Dennis that you were truthfully
16 responding to all of his questions; correct?

17 A Right.

18 Q And that you were under oath at time of your guilty
19 plea; correct?

20 A (Witness nods head.)

21 Q And you admitted that you were guilty to each of
22 these three crimes; correct?

23 A Yes.

24 Q So you are guilty of these three crimes?

25 A Not guilty as charged, no.

1 Q But you plead guilty under oath; correct?

2 A Yes.

3 Q You admitted that you're guilty to each of these
4 three crimes; correct?

5 A No, I didn't.

6 Q Under oath during your guilty plea you did not admit
7 that you were guilty to each of these three crimes?

8 A Yes, yes.

9 Q You did?

10 A Yes.

11 Q But your testimony here today is that you're not
12 guilty?

13 A I am not guilty of the armed robbery, no.

14 Q You're under oath here today; correct?

15 A Yes.

16 Q So were you lying during your guilty plea or are you
17 lying now?

18 A I wasn't lying either time. I wasn't guilty as
19 charged. I plead to -- I did plead to the charge, but I
20 wasn't guilty of the charge. I plead because there was no
21 one defending me to show otherwise. I wasn't guilty of
22 armed robbery because I do ---

23 Q But you plead under oath that you were guilty?

24 A Yes, I did.

25 Q Okay. You apologized for these crimes numerous times

1 during your guilty plea; correct?

2 A Yes, ma'am.

3 Q You apologized to each victim individually; correct?

4 A Yes.

5 Q And you apologized to the State of South Carolina for
6 your actions now and previously because you've caused a
7 lot of trouble in this state; correct?

8 A Yes.

9 Q That's on page 219 of the record. You also
10 apologized to the State of Florida; correct?

11 A Yes.

12 Q And you apologized to your lawyer for the
13 disagreement you'd had with him; correct?

14 A Yes, ma'am.

15 Q And you told the Court that you appreciate what he
16 done for you; correct?

17 A That I don't remember.

18 Q You -- would you refute if the record shows that
19 you ---

20 A If the record showed it, yes, ma'am.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: Redirect?

23 MR. JOHNSON: Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. JOHNSON:

(Michael A. Allen-Redirect by Mr. Johnson)

26

1 Q Did you believe that a guilty plea would elicit
2 sympathy from the Court?

3 A I did.

4 Q Is that why you plead guilty to armed robbery?

5 A Basically, yes.

6 MR. JOHNSON: No further questions.

7 THE COURT: Thank you. You may step down.

8 Next witness. Next witness.

9 MR. JOHNSON: We have no further witnesses.

10 THE COURT: Thank you.

11 MS. HARRIGAN: The state will call Charles Lyons to
12 the stand.

13 THE COURT: Mr. Lyons.

14 CHARLES H. S. LYONS, III, after being duly
15 sworn, testified as follows:

16 THE CLERK: Please take a seat and state your full
17 name.

18 THE WITNESS: Charles H. S. Lyons; III.

19 DIRECT EXAMINATION

20 BY MS. HARRIGAN:

21 Q Good morning, Mr. Lyons.

22 A Good morning.

23 Q I know we've been through this before, but how long
24 have you been practicing law?

25 A Twenty-six years.

1 Q And what percentage is criminal defense?

2 A About half.

3 Q And were you appointed or retained in this case?

4 A Appointed.

5 Q Do you recall the approximate date of appointment?

6 A I don't recall. I can find the order if you want me
7 to.

8 Q That's fine. Do you believe it might have been April
9 of 2009?

10 A Sounds about right.

11 Q And were you Mr. Allen's first attorney?

12 A No.

13 Q Do you recall what number attorney?

14 A I was the third lucky person to represent Mr. Allen.

15 Q Have you had an opportunity to review your file from
16 representation before coming into court today?

17 A Yes.

18 Q Do you recall the number of times you've met with
19 Mr. Allen to discuss his charges?

20 A I can't tell you exactly, but I met with him a number
21 of times and they were not pleasant times when we met.

22 Q Do you care to elaborate why you're characterizing
23 him as unpleasant?

24 A He was hard-headed. He didn't want to listen. It
25 was clear after we got the discovery that it was a case

(Charles H. S. Lyons, III-Direct by Ms. Harrigan)

28

1 that didn't need to be tried. It was a slam-dunk and I
2 think I consistently told Mr. Allen that it was a
3 slam-dunk. Evidently, at some point in time a five-year
4 plea offer had been made to him, I think, with his first
5 lawyer Christopher Hudson.

6 THE COURT: Christopher who?

7 THE WITNESS: Hudson. Evidently, he turned that down
8 which I couldn't understand why, but the relationship that
9 I had with Mr. Allen was contentious.

10 Q Was he incarcerated during your representation of
11 him?

12 A Yes, he was.

13 Q Did you go to the --

14 A I went to the jail, yes.

15 Q -- county jail? Did you communicate with Mr. Allen
16 through any other means?

17 A I don't know if we ever spoke over the phone. We may
18 have, but there were a number of letters that we exchanged
19 back and forth.

20 Q Did you feel you were able to keep him abreast of his
21 defense through the written correspondence?

22 A He would keep you abreast of the defense when you
23 don't have one. I could have gone out to the jail a
24 thousand times. That wasn't going to change. It was
25 pointless and useless to keep going to the jail because he

1 didn't follow my advice at all. All we did was got into
2 arguments. The last time I saw him there was no need to
3 go back to see him. There was absolutely nothing he could
4 do to help. He was in a fantasy world. He wanted me to
5 fabricate a defense; so it was just useless.

6 Q During your meetings and other correspondence with
7 him were you able to go over his indictments and the three
8 charges he was facing?

9 A We talked at length a number of times about the
10 evidence, charges, any possible defense, the defense that
11 he wanted to put forward that the young lady carjacked was
12 some crack user that had given him her car in exchange for
13 crack. That's the defense he wanted to put out at trial.

14 Q Based on your review of the state's discovery was
15 there anything to support this defense that he wanted set
16 forth?

17 A Not only that, it wasn't -- no, it wasn't anything to
18 support it, but I think one of the first things that came
19 out at trial from that young lady who got carjacked on her
20 18th birthday that whatever high school she was going to
21 she was on the swim team; so I told him that it was very
22 unlikely that she was using crack and on the swim team.

23 Q Did you ever advise him of potential sentences he
24 would receive if he was found guilty at trial?

25 A I'm sorry?

(Charles H. S. Lyons, III-Direct by Ms. Harrigan)

30

1 Q Did you advise him of potential sentences if he was
2 convicted at trial for these three offenses?

3 A Oh, yes. He knew he was facing a lot of time and I
4 think, you know, the last plea offer that I was able to
5 convey to him, the 15 years, under the circumstances was
6 more than fair. It was a good plea. It made no sense
7 whatsoever for him not to take that plea.

8 Q Do you feel you spent a sufficient time preparing
9 this case for trial?

10 A Without a doubt. What Mr. Allen was hoping was that
11 those police officers from Florida wouldn't come up here
12 because if they didn't come up here then the state wasn't
13 going to be able to prove their case because they were not
14 going to be able to make the link that needed to be made
15 to connect the car that was recovered in Florida that
16 belonged to that young lady that got carjacked here in
17 Aiken. So, he was under the impression and the hope that
18 they were not going to come. I kept telling him that
19 those people were going to come and, of course, I said if
20 they don't come, they're going to have a hard time proving
21 the case, but I said, but they're coming.

22 Q You were here when Mr. Allen read the letter from you
23 into the record; correct?

24 A Yes.

25 Q And during that letter you explained to him that the

1 state would be able to present all witnesses including the
2 officers from Florida during his trial?

3 A I need to write more letters like that. I wrote -- I
4 mean, the letters that I was getting from him were crazy
5 letters; so I wanted to make sure that I made the point
6 and that's why I made sure that I put in the letter that
7 if he wanted to read it at any point in time at a PCR or
8 anything else I'll be more than happy because he was just
9 writing crazy letters to me.

10 Q Do you recall any offers that were made to you during
11 your representation? I know you talked about a five-year
12 from his previous attorney, but do you recall offers made
13 by you -- by the state to you?

14 A The only offer I recall is the 15-year offer. I may
15 have -- I think I asked about five years and I told him it
16 wasn't going to happen. I think I tried to get a 10-year
17 sentence. It didn't happen. The best that he was going
18 to get was the 15-year offer.

19 Q And it was his decision to turn down this 15-year
20 offer and proceed to trial?

21 A It was.

22 Q Ultimately, whose decision was it for Mr. Allen to
23 plead guilty during his trial?

24 A Quite frankly, I was surprised. I think it was the
25 second day of trial that we had gone to lunch and we came

(Michael A. Allen-Cross by Mr. Johnson)

32

1 back from lunch and I was told that he wanted to talk to
2 me and went back into the holding cell and he wanted to
3 plead guilty. I didn't have anything to do with it. You
4 know, he -- as I told the Court that day, it just looked
5 like he finally realized that, number one, he was going to
6 get convicted and it looked like he had come to a truth
7 with himself. He was a totally different person. He was
8 respectable -- the first time he had ever been. It just
9 seemed like he came to grips with the reality.

10 MS. HARRIGAN: No additional questions, Your Honor.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q Mr. Lyons, you first met Mr. Allen in April of 2009?

15 A I believe so.

16 Q Was that the meeting that y'all watched the video
17 footage from the B. P. station?

18 A I don't know if we watched the video that day or not.
19 I'm not sure.

20 Q Do you remember watching the video footage from the
21 B. P. station?

22 A We did.

23 Q Was it around April of 2009?

24 A I'm not sure when we watched the video. We watched
25 the video. I know that.

1 Q Do you remember the contents of that particular video
2 footage?

3 A I don't remember the exact contents, but I do know
4 that when we subsequently watched another video that
5 showed some different footage than that video, and,
6 evidently, we had been watching the wrong video. I mean,
7 well, not the wrong video. We hadn't seen all the video.
8 There was a video that we -- I think that we watched here
9 at the courthouse maybe the first day, I think, of trial
10 that showed more active participation from a person that
11 was no doubt was Mr. Allen, but, be that as it may, he had
12 his mind made up that he was going to trial. No doubt
13 about that.

14 He -- for what reason, he had made up his mind in his
15 mind that he was going to trial and that I guess he
16 thought he could win, but he -- he was going to trial.
17 Period. And once I realized that, you know, I didn't try
18 to persuade him otherwise. He had turned down, obviously,
19 at least one good deal -- great deal, you know -- and what
20 I thought was a good deal. So he was going to trial. So
21 there was nothing I could do about it.

22 We didn't see eye-to-eye on much of anything. So,
23 yeah, we watched that video, but that video didn't have
24 anything to do -- he was going to trial one way or the
25 other.

1 Q To your knowledge was the video footage that -- the
2 initial video footage that y'all watched together and the
3 subsequent video footage that was shown at trial, were
4 both of those videos supposed to have shown footage inside
5 the B. P. store where the robbery was said to have
6 occurred?

7 A If I remember correctly, yes.

8 Q So, is it a sense that it was the wrong part of the
9 video that was being watched in April of 2009?

10 A It may have been a different angle or something like
11 that that was being watched, but it was -- it was -- for
12 some reason all the lawyers evidently were missing --
13 didn't get to that part of the video. It just happened I
14 think the night before I went back and I was looking at
15 the video again and that's when I saw that part of the
16 video and that's when I told Michael about we hadn't seen
17 this part of his video, but the video wasn't going to
18 convict him.

19 It was going to help, but what was going to convict
20 him were those witnesses who had picked him out of the
21 line-up and because of how he got apprehended was so
22 stupid and crazy by taking that young lady's car down to
23 Florida. You know, I think the jury was just going to be
24 mad as they could be when they found out when they heard
25 that testimony about him being down there at that shopping

1 mall shoplifting with the keys to that young lady's car in
2 his pocket and when he got apprehended and the officers
3 went out to the parking lot and put that key in the door
4 and it opened that car, I told him the case was over at
5 that point. That was it.

6 I mean, and then, you know, he wanted to make up
7 tales down there about how he got to the mall. He wanted
8 me to fabricate this story about that young lady being on
9 crack and she had his car because it was some kind of
10 crack deal. I mean, that's what I was dealing with --
11 just a guy who at the time was in my opinion was out of
12 his mind.

13 Q Did you believe that the second video footage that
14 y'all watched at the trial -- in your opinion was that
15 video footage better for Mr. Allen's case or worse?

16 A Worse.

17 Q Was it worse than the first video footage that y'all
18 watched in -- earlier in the year?

19 A Right.

20 Q Prior to the trial had Mr. Allen ever seen that
21 second video footage --

22 A No.

23 Q -- that was worse?

24 A No.

25 Q Do you think that if Mr. Allen had seen that second

1 video footage prior to the trial that it may have
2 influenced his decision about whether to accept plea
3 offers from --

4 A No.

5 Q -- the state?

6 A No. I mean, first of all, he knew what he did and
7 everybody else did, too. This wasn't a case that was
8 going -- that had any possibility -- I don't care who
9 tried it -- of him winning. It was a slam-dunk without
10 that. Without anybody seeing that video, it was just a
11 slam-dunk that everybody saw evidently but him. So that
12 wasn't going to make any difference in his mind. He had
13 his mind made up as to what he was going to do and he did
14 it.

15 Q And did you testify that y'all met several times in
16 person between April of '09 and ---

17 A Yeah, I went to see him at least three -- at least
18 three times I remember going to see him at the jail.

19 Q Do you remember meeting him right before the trial?

20 A You mean at the courthouse?

21 Q In the weeks leading up to the trial, do you remember
22 meeting with Mr. Allen?

23 A No. I mean, we may have. I don't remember meeting
24 with him because it wasn't -- I mean, in my mind it wasn't
25 -- if there was a point for me meeting with him, I still

1 don't know what it would have been. I mean, he had
2 another story to tell maybe, but, you know, the evidence
3 told the story itself. The only thing that I could have
4 done, you know, -- I may have met with him. I don't
5 remember, but I knew what was going to happen.

6 Every time I met with him we argued and I wasn't
7 going to do that again with him. I mean, he wanted his
8 trial. He was going to get it and as I told the Court and
9 I told him, I don't like losing, you know. I didn't like
10 him, but I still don't like losing. I wanted to win. If
11 I could have won, I would have been doing everything -- if
12 there was a way to win, I would have supported him
13 100 percent, but there was no way to win and as I told the
14 Court we were handcuffed, you know, and I think he finally
15 saw how handcuffed he was. He didn't have to see that
16 video to see that. When that evidence started coming out
17 from right here, if it wasn't clear to him, everybody in
18 this courtroom it was clear to. We were getting killed.

19 Q Thank you. And Mr. Allen testified earlier that he
20 didn't know about the trial until the day of the trial.
21 Do you recall any kind of communications that you guys had
22 right before the trial or in the week leading up to it?

23 A That may be true, but the bottom line was he had --
24 we had already talked. He was going to trial and that
25 wasn't going to change. If I had walked in two weeks

1 earlier and said you're going to trial in two weeks or
2 that day you're going to trial, it didn't have anything to
3 do with my preparation. I mean, I was prepared to go on
4 what we had and that wasn't going to change and it was
5 absolutely nothing that he could have told me that was
6 going to make any difference. He didn't -- all he knew
7 was what he was making up and he -- well, he knew two
8 things. He knew the truth and what he was making up and
9 the truth wasn't going to help him.

10 Q Did he make any requests at trial concerning how he
11 wanted you to question certain witnesses?

12 A He may have. I don't remember. There was a whole
13 lot of foolishness that he wanted me to do that didn't
14 make any sense, but ---

15 Q You -- I'm sorry.

16 A -- he may very well have. I don't recall, but I'm
17 sure he did.

18 Q Do you remember him specifically making any requests
19 about the gas station attendant Lisa Wood about you
20 cross-examining her about certain statements she may have
21 made to the police right after the robbery?

22 A I just don't remember that. I am not saying it
23 didn't happen. I just don't remember it.

24 Q Do you remember him wanting you to call the clerk
25 from the Circle K as a witness?

1 A The clerk that got robbed?

2 Q The clerk at the Circle K where the carjacking
3 occurred -- not the clerk who was robbed.

4 A I don't remember that and I don't know what the point
5 would have been. A young lady looks at him in the face
6 and watches him take her car which he takes to Florida
7 which he has the key to the car in his pocket and then she
8 is shown -- after the connection is made to the carjacking
9 in Aiken and she picks his picture out of a photo line-up
10 without any doubt, I don't know what talking to some clerk
11 -- I mean, even if he requested even if that happened I
12 don't know what the point would have been. That
13 identification was certain. We couldn't keep it out.

14 Q And do you remember going over any constitutional
15 rights that he may have had when he plead guilty? Do you
16 recall having any discussions about rights, about
17 unanimous jury verdict, anything like that?

18 A Well, we talked -- I talked about you can have a
19 trial which we were having. We can keep going with the
20 trial. He didn't have to plead guilty. Of course, he
21 knew he didn't have to say anything. He knew that
22 because, first of all, he wasn't going to take this stand.
23 That had been made clear. He told me that he wasn't going
24 to testify and I said I don't see how you can because you
25 do have some history. So, he wasn't going to testify. He

1 knew that. So without any doubt, he knew what his rights
2 were, you know.

3 We talked about it and I was talking to Mr. Allen
4 along the lines of talking to somebody who had experience
5 with this system; so, it wasn't like it was someone I had
6 to break it down in minute detail. He understood the
7 system. He had been involved in the system before.

8 So this is a man who knew exactly what he was doing.
9 This is a man who had had two prior lawyers who were
10 fortunate enough to be able to escape their representation
11 of him. Unfortunately, I didn't. I couldn't get out of
12 it. I had to represent him. I understood full well why
13 they got out because I'll tell you Mr. Allen -- in 26
14 years he is one of the worst clients I ever had and I
15 never would want to represent him again. If he had a
16 million dollars to pay me to represent him, I wouldn't
17 take it, you know.

18 So, it just -- he -- the bottom line is what he needs
19 to do -- and I don't usually do this in these hearings --
20 he needs to go back to the correctional institution he is
21 in and look in the mirror and blame the man who he sees in
22 the mirror for him having to do the time he has to do
23 because he had every opportunity in the world to take a
24 very, very gracious plea and he didn't. So now he has to
25 live with it. That's just the bottom line -- just like

1 those ladies that he robbed and he carjacked have to live
2 with what he did to them.

3 MR. JOHNSON: Thank you, Mr. Lyons. I have no
4 further questions.

5 THE COURT: Redirect?

6 MS. HARRIGAN: None, Your Honor.

7 THE COURT: Thank you. You may step down, Mr. Lyons.
8 May he be excused?

9 MS. HARRIGAN: Yes, Your Honor. The state has no
10 additional witnesses to call.

11 THE COURT: Anything in reply, Mr. Johnson?

12 MR. JOHNSON: Nothing further, Your Honor.

13 THE COURT: Any arguments by the applicant?

14 MR. JOHNSON: Yes, sir. Mr. Allen has filed this
15 application. It is his position that there were two video
16 -- there were two sections of a videotape that he was
17 shown. The first video -- the first section of the video
18 footage that he was shown was in April of 2009 and this
19 video footage was very weak for the state's case. There
20 was some doubt ---

21 THE COURT: Well, that's his characterization of it.

22 MR. JOHNSON: Yes, sir. It is Mr. Allen's perception
23 there was no robbery in progress and there was serious
24 question about whether it was him on that video footage.

25 THE COURT: Well, he changed his position at trial.

1 He plead guilty. He told Judge Dennis he did it. He
2 apologized to lady. He apologized to the State of
3 Florida. He apologized to his family. He admitted his
4 guilt.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: How was -- even if the video has
7 something to do with being ineffective assistance of
8 counsel, how does that get you over the prejudiced prong
9 of post-conviction relief?

10 MR. JOHNSON: The video footage that he saw at trial
11 which was the first time he'd ever seen this video footage
12 was much worse for his case. Mr. Allen said --
13 Mr. Allen's position is that had he been shown this video
14 footage -- this second video footage -- prior to the trial
15 date that it would have made him more likely to accept
16 plea offers from the state. As he saw it there was no
17 other evidence from the state other than the victims'
18 statements and having to bring the investigators from
19 Florida.

20 THE COURT: Well, that's pretty overwhelming
21 evidence. You got a victim identifying him. You got a
22 guy in the State of Florida with the victim's car that was
23 stolen, the keys in his pocket. That's pretty -- as
24 Mr. Lyons says, that's pretty slam-dunk. I have been
25 doing this a long time. I just don't see how it would

1 have changed anything. Anything else?

2 MR. JOHNSON: No, sir, Your Honor.

3 THE COURT: Ma'am, anything you want to ---

4 MS. HARRIGAN: The state would just point out that
5 Mr. Lyons testified that this video had absolutely no
6 effect on the trial or Mr. Allen's decision to plead
7 guilty; that Mr. Lyons told him numerous times that there
8 was absolute overwhelming evidence of guilt in this case
9 including victim identification as well as a witness from
10 Florida and the state feels that applicant has failed to
11 meet his burden under Strickland.

12 THE COURT: Thank you. All right. I have,
13 obviously, sat here and listened to the testimony of the
14 applicant and Mr. Lyons. I have reviewed the trial
15 transcript and judging the credibility of the two
16 witnesses who have testified in this case I find that
17 Mr. Lyons' credibility is unquestionable. Mr. Allen's
18 credibility is lacking. I have looked at the questions
19 and answers between Judge Dennis and the defendant and I
20 respectfully deny post-conviction application.

21 Mr. Allen, you have 30 days from the date of receipt
22 of the order to file a notice of intent to appeal. Thank
23 you.

24 (End of Transcript of Record.)

25

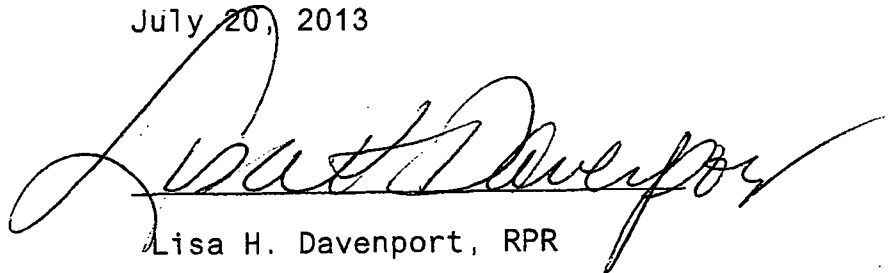
CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina, on the 23rd day of January, 2013.

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

July 20, 2013

A handwritten signature in cursive script, reading "Lisa H. Davenport", written over a horizontal line.

Lisa H. Davenport, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Michael Anthony Allen, #155673,)

Case No. 2012-CP-02-0852

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED 3.13.13
J. J. H. H.
C.C.P. & C.S.
Anita Knoke 820
Deputy Clerk

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed April 5, 2012. The Respondent made its Return on May 30, 2012. An evidentiary hearing into the matter was convened on January 23, 2013, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Christopher C. Johnson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the October 2006 term of the Aiken County Grand Jury for Armed Robbery (2006-GS-02-01685) and Carjacking (2006-GS-02-01684), and at the October 2008 term of the Aiken County Grand Jury for Grand Larceny, More than \$1,000 but less than \$5,000 (2008-GS-02-01613). Charles H. S. Lyons III, Esquire, represented the Applicant. On September 22, 2009, during a jury trial before the Honorable R. Markley Dennis, Jr., the Applicant pled guilty as indicted to all three charges. Judge Dennis sentenced Applicant

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to confinement for a period of twenty-four years for armed robbery, twenty years for carjacking, and five years for grand larceny, with all sentences to run concurrently.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. Following the submission of an Anders¹ brief, the South Carolina Court of Appeals dismissed the appeal. State v. Michael Allen, 2012-UP-315 (filed June 21, 2011). The Remittitur was sent July 7, 2011.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Failure to investigate; and
3. "Denial of 6th and 14th Amends. U.S. Const."

At the evidentiary hearing, Applicant proceeded forward on the following allegations of ineffective assistance of counsel:

1. Failure to advise of the constitutional right to a unanimous jury verdict;
2. Failure to advise of the lesser included offense of strong armed robbery;
3. Failure to advise of video evidence; and
4. Failure to interview victims in anticipation of trial testimony.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Applicant's counsel, Charles H.S. Lyons, III (herein "Counsel"). This Court also had before it a copy of the Applicant's trial and guilty plea transcript, the records of the Aiken County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he only met with Counsel once prior to his trial. He testified that Counsel was court-appointed and was his third attorney.

¹ Anders v. California, 386 U.S. 738 (1967).

Dak
#2

Applicant testified that he reviewed discovery with Counsel or his two previous attorneys. Applicant testified that he watched the video of surveillance footage of the armed robbery with Counsel, but that he did not view surveillance footage of the gas station where the carjacking took place, until the case was called for trial. Applicant testified that if he had seen this footage earlier, he would have pled guilty. Applicant testified that Counsel never reviewed any plea offers made by the State with him. However, Applicant testified that he was aware of a fifteen year plea offer from the State, which he voluntarily turned down because he wanted to proceed to trial.

Applicant read into the record a letter that Counsel sent him on April 22, 2009. The letter stated that Applicant and Counsel had a long discussion regarding the case and reviewed all discovery materials. Counsel advised that the evidence against Applicant was strong, including video surveillance and identifications from two separate witnesses. Counsel also advised that all witnesses, including the Florida police officer who arrested Applicant with the keys belonging to the stolen car, would more than likely appear at trial and testify for the State. Counsel advised that he was prepared to try Applicant's case if Applicant so desired, but that it was against his professional judgment as Applicant was not likely to succeed at trial.

Applicant testified that Counsel did not advise him that he could plead guilty to strong armed robbery. Applicant testified that because he did not have a weapon, he should have been allowed to plead to strong armed robbery. Applicant acknowledged that Judge Dennis reviewed the Armed Robbery statute with him on the record during his guilty plea, including that even if he did not have a weapon but lead the victim to believe he had a weapon, he would still be guilty of armed robbery. Applicant acknowledged that he continued on with guilty plea after Judge Dennis' explanation and that it was his decision to enter a guilty plea.

Dick
11/13

Applicant acknowledged that he told Judge Dennis under oath that he had "truthfully responded to all of his questions," including as to whether or not he is guilty of these three crimes. Applicant acknowledged that he apologized to each victim independently, the State of South Carolina "for [his] actions now and previously, because [he's] caused a lot of trouble in this State," and the State of Florida. Applicant also acknowledged that he apologized to his lawyer for the disagreements they had and told the court that he appreciated all Counsel had done for him. Applicant also told the Court he wished he had more time to speak with Counsel, but that despite this, he still wanted to plead guilty. Applicant also testified that he constitutional rights were not reviewed with him prior to his guilty plea.

Following Applicant's testimony, the State presented testimony from Counsel. Counsel testified that he has been practicing law for approximately twenty-six years and that approximately half of his practice is comprised of criminal defense work. Counsel testified that he was appointed to represent Applicant and that he was Applicant's third attorney for these charges. He testified that he met with Applicant "a number of times" and these meetings were "not pleasant." Counsel elaborated that Applicant was "extremely hard headed" and wanted Counsel to pursue a fabricated defense that the carjacking victim was a "crack head" without any evidence to support such a theory. Counsel testified that Applicant also fabricated multiple other stories that were not plausible, such as that another patron at the Florida shopping center where he was arrested, with the keys in his pocket, had stolen the victim's car.

Counsel testified that he discussed the indictment and elements of the charges with Applicant "at length" as well as possible defenses. Counsel testified that he thoroughly reviewed all discovery materials with Applicant and that this was a "slam dunk case" for the State due to the plethora of evidence against Applicant. Counsel elaborated that he felt "handcuffed by the

DAE
#24

evidence" in this case because it was so incriminating to Applicant. Counsel testified that he consistently told Applicant that the evidence against him was strong and that he likely would not be successful at trial. Counsel testified that he advised Applicant against proceeding to trial, but that the decision was ultimately up to Applicant and that he felt "more than prepared" for trial. Counsel testified that he reviewed all witness statements and performed a full investigation in anticipation of trial. Counsel testified that although he did not believe a trial was in his client's best interest, he "wanted to find a way to win."

Counsel testified that Applicant's allegations that not being able to see the second surveillance video until the eve of trial impacted his decision to decline plea offers is without merit. Counsel elaborated that this video "had nothing to do with his decision to plead guilty" as the video "wasn't going to convict him, it was the eye witness testimony and identification from a phone line up."

Counsel testified that Applicant's two previous attorneys also advised Applicant of the strength of the State's case and that he should pursue a guilty plea. Counsel testified that Applicant was offered several favorable plea deals, including for a sentence of ten years imprisonment or for fifteen years imprisonment, but that Applicant declined all of these offers. Counsel testified that he did not advise Applicant that he could plead guilty to strong armed robbery, but this is because the State never made an offer to allow him to plead to this lesser included offense.

Counsel testified that he fully advised Applicant of all of his constitutional rights prior to Applicant's trial and guilty plea, including that the jury's verdict would have to be unanimous. Counsel testified that Applicant was aware of this before his trial and guilty plea. Counsel

testified that it was ultimately Applicant's decision to waive his constitutional rights and enter a guilty plea.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's credibility is unquestionable and that Applicant's credibility is lacking. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant alleges that Counsel was ineffective for numerous reasons. In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRPC; 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, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The Applicant must overcome this presumption 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to advise Applicant that a jury verdict must be unanimous

After careful review based on the standard discussed above, this Court finds that the Applicant has failed to prove that Counsel was ineffective in regards to this allegation. Counsel's credible testimony reveals that he advised Applicant prior to his trial and guilty plea that a jury verdict must be unanimous to convict him on each charge. This Court finds that Counsel's performance was "reasonable[] under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Additionally, Applicant has failed to show that the result of the proceeding would have been different but for Counsel's alleged deficiency, as Applicant entered guilty pleas in the midst of trial. Therefore, this allegation must be denied and dismissed with prejudice.



Counsel was ineffective for failing to advise Applicant of the lesser included offense of Strong Armed Robbery

Applicant alleges that Counsel was ineffective for failing to advise him that he could plead guilty to the lesser included offense of strong armed robbery. After careful review based on the standard discussed above, this Court finds that the Applicant has failed to prove that Counsel was ineffective in regards to this allegation. Counsel's credible testimony reveals that the State never extended a plea offer to Applicant that would allow him to plead guilty to the lesser included offense of strong armed robbery. Applicant presented no evidence or testimony that the State had ever extended an offer to allow Applicant to plead to Strong Armed Robbery. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to advise Applicant of video evidence

Applicant alleges that Counsel was ineffective for failing to advise him that there were two surveillance videos that would be used against him at trial; Applicant asserts that had he viewed the second video earlier, he would have accepted a plea offer from the State rather than proceeding to trial. After careful review based on the standard discussed above, this Court finds that the Applicant has failed to prove that Counsel was ineffective in regards to this allegation. Counsel's credible testimony reveals that he reviewed all discovery materials with Applicant and that the evidence was overwhelming. Counsel testified that this second video that Applicant viewed shortly before his trial could not have been dispositive in his decision to proceed to trial, as there was eyewitness testimony and identifications that strongly implicated Applicant was the perpetrator. Counsel testified that he consistently informed Applicant numerous times that the



evidence against him would result in all but certain conviction. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of Applicant's guilt. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial). Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to interview victims in anticipation of trial

Applicant alleges that Counsel was ineffective for failing to interview witnesses in anticipation of trial. After careful review based on the standard discussed above, this Court finds that the Applicant has failed to prove that Counsel was ineffective in regards to this allegation. Counsel's credible testimony reveals that he reviewed all witness statements and performed a full investigation in anticipation of trial. Counsel also advised Applicant of the overwhelming evidence against him and that all witnesses would be present to testify against him at trial.

This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of Applicant's guilt. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial). Therefore, this Court finds that this allegation must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

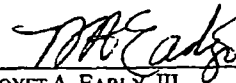
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6 day of March, 2013.


 DOYET A. EARLY, III
 Presiding Judge
 Second Judicial Circuit

, South Carolina

WITNESSES

Anthony K. Glover, A.D.P.S.

FRED

Deputy Clerk

ARREST WARRANT NUMBER

I-088614

ACTION OF GRAND JURY

True Bill

VERDICT

Foreperson of Grand Jury
Date: October 12, 2006

Michael P. Richard

DOCKET NO. 2006-GS-02 -

1685

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

October 16, TERM 2006

THE STATE

VS.

MICHAEL ANTHONY ALLEN

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A (V)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

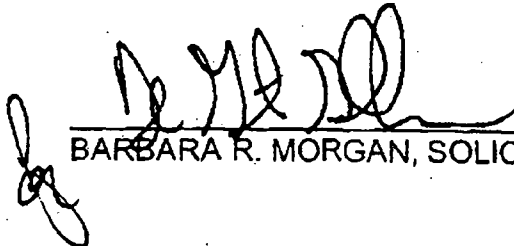
INDICTMENT

At a Court of General Sessions, convened on October 16, 2006, the Grand Jurors of Aiken County present upon their oath:

ARMED ROBBERY

That MICHAEL ANTHONY ALLEN did in Aiken County on or about February 23, 2006, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of B. P. Station, 3540 Richland Avenue, Aiken, South Carolina, such goods or monies being described as follows: approximately One Hundred One and No/100 Dollars (\$101.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Aiken

VS.
Michael Anthony Allen

INDICTMENT/CASE#: 2006GS0201685

AW#: 1088614

Date of Offense: 2/23/2006

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

AKA:
 Race: B Sex: M Age: 42
 DOB: SS: [REDACTED]
 Address:
 City, State, Zip: AIKEN, SC 29801
 DL#: SID# SC00565672

SENTENCE SHEET

10-30

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon
 In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is ☒ As Indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentation to Grand Jury (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation; ☒ Negotiated Sentence; ☒ Recommendation by the State.

ARREST: [Signature] 5489 [Signature] [Signature] [Signature]
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of ~~30~~ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
 of Corrections. 2/25/06
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
 \$14-1-206 (Assessments 107.5%) \$
 \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 \$56-5-2995 (DUI Assessment) \$12 \$
 \$56-1-286 (DUI Breath Test) \$25 \$
 \$47-12 (Public Def/Prob) \$500 \$
 \$14-1-212 (Law Enforce. Funding) \$25 \$ 35.00
 \$14-1-213 (Drug Court Surcharge) \$100 \$
 \$50-21-114 (BUI Breath Test Fee) \$50 \$
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 \$90.7 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

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: Recaptured ATU vehicle
 Unarmed.

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge [Signature]

Judge Code: 2060

Sentence Date: 9/22/09

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (08/2009)

K-034082

STATE OF SOUTH CAROLINA
Aiken County

THE STATE 06-00765B

MICHAEL ANTHONY ALLEN

Address TANPA

Place of Birth [REDACTED]

Sex Male

DOB [REDACTED]

Code/Classified Sec 16-3-1075B1

This warrant is CERTIFIED FOR SERVICE in the County of Aiken

The accused is to be arrested and brought before the court with according to law.

Signature of Agent (L.S.)

RETURN

A copy of this warrant shall be served on MICHAEL ANTHONY ALLEN on 02-23-08

Signature of Clerk/Clerk Law Enforcement Officer

RETURN WARRANT TO:
NEW ELLENTON SUMNER COURT
327 MAIN STREET
NEW ELLENTON SC 29809

2006-65-02-1684

STATE OF SOUTH CAROLINA
Aiken County

AFFIDAVIT

BRAD WERTZ

MICHAEL ANTHONY ALLEN

Personally appeared before me the undersigned, being duly sworn, deposes and says that on 2/23/08 he did within the county and state of South Carolina the following particulars:

DESCRIPTION OF OFFENSE: CARJACKING W/O GREAT BODILY HARM VIOLATION OF SC CODE OF LAWS 16-3-1075B1

On or about 2/23/08 at approximately 0100 HRS. FOR INFORMATION AND BELIEF, ON 2/23/08 AT APPROXIMATELY 0100 HRS. THE DEFENDANT, MICHAEL ANTHONY ALLEN, DID COMMIT THE OFFENSE OF CARJACKING BY FORCEFULLY FULLING THE VICTIM, EMILY BUSH, FROM HER VEHICLE A 2003 HYUNDAI TIBERON WITH SC TAG 679 GUV. THEN PUSHING HER AGAINST A GAS PUMP AND STEALING HER VEHICLE. THIS INCIDENT OCCURRED AT THE CIRCLE K GAS STATION AT 1014 E. PINE LOG RD. AIKEN, IN THE COUNTY OF AIKEN, SOUTH CAROLINA AND BEING A VIOLATION OF THE SC CODE OF LAWS 16-3-1075B1 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA
County of Aiken

420 HAMILTON AVE.
AIKEN
803 642-1761

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY ON ANY CONSTABLE OF THIS COUNTY on 2/23/08

DESCRIPTION OF OFFENSE: CARJACKING W/O GREAT BODILY HARM VIOLATION OF SC CODE OF LAWS 16-3-1075B1

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

327 MAIN STREET
NEW ELLENTON SC 29809

Judge's Telephone 803 652-9609

ORIGINAL

307

WITNESSES

Brad Wertz, A.C.S.O.

FILED

October 12, 2006

John Hodard

October 12, 2006

Deputy Clerk

Paula S. Turner

ARREST WARRANT NUMBER

K-034082

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: October 12, 2006

Paula S. Turner

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-02 -

1684

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

OCTOBER 16, TERM 2006

THE STATE
VS.

MICHAEL ANTHONY ALLEN

Indictment for

CARJACKING

SC Code: 16-3-1075
CDR: 2599
Class: FEL-UNC(V)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

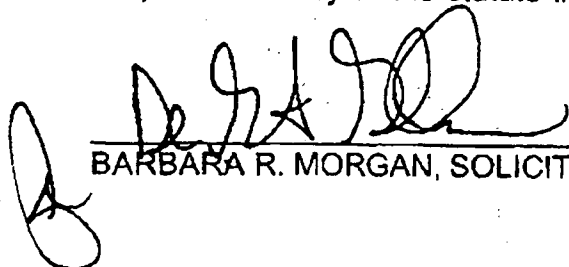
INDICTMENT

At a Court of General Sessions, convened on October 16, 2006, the Grand Jurors of Aiken County present upon their oath:

CARJACKING

That MICHAEL ANTHONY ALLEN did in Aiken County on or about February 23, 2006, unlawfully take or attempt to take a motor vehicle from [REDACTED] by force and violence or by intimidation, to wit: Michael Anthony Allen used physical force to grab and remove Emily Bush from her vehicle. All in violation of Section 16-3-1075 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Aiken

VS.
Michael Anthony Allen

INDICTMENT/CASE#: 2006GS0201684

AW#: K034082

Date of Offense: 2/23/2006

S.C. Code §: 16-03-1075(B)(1)

CDR Code #: 2599

AKA: _____
 Race: B Sex: M Age: 42
 DOB: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: TAMPA, FL 33627
 DL# _____ SID# SC00565672

SENTENCE SHEET 0-204

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: Carjacking / Take or attempt a vehicle from person by force without great bodily harm
 In violation of §: 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
 of Corrections. 2/25/06
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
 Substance Abuse Counseling ☐

*Fine:
 \$14-1-206 (Assessments 107.5%) \$
 \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 \$56-5-2995 (DUI Assessment) \$12 \$
 \$56-1-286 (DUI Breath Test) \$25 \$
 \$47.12 (Public Def/Prob) \$500 \$
 \$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 \$14-1-213 (Drug Court Surcharge) \$100 \$
 \$50-21-114 (BUI Breath Test Fee) \$50 \$
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 \$90.7 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) 3.90
 TOTAL \$ 128.90

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,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk Sharon Stepper

Presiding Judge R. Muller

Court Reporter: Roma Thomas

Judge Code: 2060

Sentence Date: 9/22/09

ARREST WARRANT

K- 034080

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 Aiken County

 THE STATE 06-00665
 against

MICHAEL ANTHONY ALLEN

Address TAMPA FL 33627

Phone 813-336-2700

Sex: Male Race: B DOB: 02/20/82

DL State: SC DL #: 01 Weight: 200

Prosecuting Agency: SHERIFF DEPT AGENCY OF FL 02008

Offense: GRAND LARCENY OVER \$5000

Code/Ordinance Sec: 16-13-30B2

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Date: _____

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant MICHAEL ANTHONY ALLEN

on 07-17-06

 Signature of Constable/Law Enforcement Officer
 [Signature] HSC 5063

 RETURN WARRANT TO:
 NEW ELLENTON SUMMARY COURT
 327 MAIN STREET
 NEW ELLENTON SC 29809

STATE OF SOUTH CAROLINA

AFFIDAVIT

☒ County/ ☐ Municipality of
 Aiken County

Personally appeared before me the affiant BRAD WERTZ

being duly sworn deposes and says that defendant MICHAEL ANTHONY ALLEN

did within this county and state on 2/23/06

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) violate the criminal laws of the
 in the following particulars:
 DESCRIPTION OF OFFENSE: GRAND LARCENY OVER \$5000
 VIOLATION OF SC CODE OF LAWS 16-13-30

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 UPON INFORMATION AND BELIEF, ON 2/23/06 AT APPROXIMATELY 0100 HRS
 THE DEFENDANT, MICHAEL ANTHONY ALLEN, DID WITHOUT CONSENT AND BY
 USING PHYSICAL FORCE TAKE THE VICTIMS, A BLUE IN COLOR 2003
 HYUNDA TIBERON WITH SC TAG 673 GVV AND VIN# KMHN65FX3U011696.
 THE VEHICLE WAS LATER RECOVERED IN HILLSBOROUGH COUNTY, FL. ALONG
 WITH MR. ALLEN. MS. BUSH WAS PRESENTED A PHOTO LINE UP THAT
 INCLUDED MICHAEL ALLEN. MS. BUSH IDENTIFIED MR. ALLEN AS THE
 SUBJECT WHO STOLE HER VEHICLE. THIS INCIDENT TOOK PLACE AT
 1014E. PINE LOG RD. AIKEN, IN AIKEN COUNTY SOUTH CAROLINA AND
 BEING IN VIOLATION OF SC CODE OF LAWS AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 AIKEN COUNTY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 2/23/06 defendant MICHAEL ANTHONY ALLEN
 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth therein.

DESCRIPTION OF OFFENSE: GRAND LARCENY OVER \$5000

VIOLATION OF SC CODE OF LAWS 16-13-30

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

Signature of Issuing Judge

Judge Code: 035

ORIGINAL

Affiant's Address 420 HAMPTON AVE. AIKEN

Affiant's Telephone 803 642-1761

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 2/23/06 defendant MICHAEL ANTHONY ALLEN
 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth therein.

DESCRIPTION OF OFFENSE: GRAND LARCENY OVER \$5000

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 the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address 327 MAIN STREET NEW ELLENTON SC 29809

Judge's Telephone 803 652-3609

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

[Stamps and signatures at bottom of page, including "CCP & GALAG" and "Deputy Clerk"]

DOCKET NO. 2008-GS-02- 1613

WITNESSES

311

B. WERTZ, A.C.S.O.

FILED October 9, 2008

W. J. England, Jr.
U.S. P. & S.

Sharon D. Roanberry
Deputy Clerk

ARREST WARRANT NUMBER

K-034080

ACTION OF GRAND JURY

True Bill

Stacy M. Bell
Foreperson of Grand Jury
Date: October 9, 2008

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

October 13, TERM 2008

THE STATE
vs.

MICHAEL ANTHONY ALLEN

Indictment for

GRAND LARCENY

SC Code: 16-13-30(B)(1)
CDR Code: 478
Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

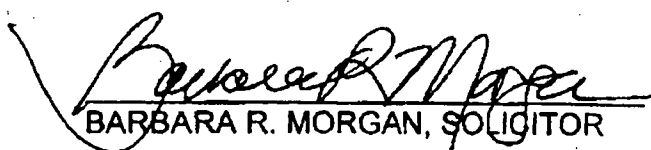
INDICTMENT

At a Court of General Sessions, convened on October 13, 2008, the Grand Jurors of Aiken County present upon their oath:

GRAND LARCENY

That MICHAEL ANTHONY ALLEN did in Aiken County on or about February 23, 2006, feloniously take and carry away the personal goods of [REDACTED] a value of more than One Thousand Dollars but less than Five Thousand Dollars, described as follows: 2003 Hyundai Tiberon, with intent to deprive the owner permanently of such property, all in violation of §16-13-30 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

313

COUNTY OF
STATE

Aiken

VS.
Michael Anthony Allen

INDICTMENT/CASE#: 2008GS0201613

AKA:
 Race: B Sex: M Age: 42
 DOB: SS [REDACTED]
 Address: 7
 City, State, Zip: TAMPA, FL 33627
 DL# SID# SC00565672

AMW#: K034080

Date of Offense: 2/23/2006

S.C. Code §: 16-13-0030(B)(1)

CDR Code #: 0478

SENTENCE SHEET

D-5 yr.

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000

In violation of § 16-13-0030(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0478

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Blair Weeks 5989 *Michael A. Allen* *Cheryl L. [Signature]*
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 §47.12 (Public Def/Prob) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$100 \$
 §50-21-114 (BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 §90.7 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

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,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge *R. M. [Signature]*

Judge Code: 2060

Sentence Date 9/22/09

Clerk of Court/Deputy Clerk

Court Reporter: *Berna Thomas*

SCCA/217 (06/2009)