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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

CEDRIC C. PATTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001029

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

CEDRIC CASSARE PATTON,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2009-GS-23-6614

JULY 13, 2010

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE

APPEARANCES:

PERRY DELOACH, ESQUIRE
ATTORNEY FOR THE STATE

DAN FARNSWORTH, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Frederick Cassare Patton -vs- State of South Carolina (2009-GS-23-6614)
Exhibit List

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STATE'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S/EXHIBITS

	(NONE)		

COURT'S/EXHIBITS

	(NONE)		

VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
68	Owens, Vonda K					x	
64	Moultrie, Shurbby H						x
106	Manos, Paul C					x	
53	Kilby, Jonathan L				x		
30	Dubose, Elizabeth B						x
4	Back, Vickie E						x
104	Kerr, Catherine M						x
62	Minka, Nina I						x
49	Irvin, James H Jr					x	
72	Perkins, Carolina R						x
25	Dickerson, Suzanne M					x	
71	Peavey, James R					x	
97	Whiddon, Carol A						x
13	Brown, David Dean					x	
102	Arms, Kavitha G						x
82	Schrag, Amanda B				x		
31	Dumit, George M III						x
27	Dodson, Martha M						x
60	Lorick, Alexandra B						x
86	Stephens, Shaun R				x		
108	Evans, Jasmine N						x
28	Donner, Mark P						x

1 THE COURT: And also Santana Carrington.

2 Now, I would inquire at this time if any member of t
3 he jury panel is related by blood or marriage or connected
4 by employment to the Defendant or to any potential witness
5 in the case?

6 (No response.)

7 THE COURT: Are you aware of any bias or any
8 prejudice with respect to the State, to the Defendant or to
9 the subject matter of the case, that being an alleged armed
10 robbery and the possession of a weapon during the
11 commission of a violent crime. Or do you know any reason
12 why you could not give this Defendant and the State a fair
13 and impartial trial based on the law and evidence to be
14 presented. If so, would you please stand and give me your
15 name?

16 (No response.)

17 THE COURT: Do I have any member of the panel
18 that has any connection, family, business, social or
19 otherwise with Bob Ariail, the Solicitor, or any member of
20 his staff or with law enforcement, whether that be federal,
21 state, county or municipal. If so, would you please stand
22 and give me your name?

23 (No response.)

24 THE COURT: Dan Farnsworth represents the
25 Defendant in this case. Do I have any clients now or

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Jury Voir Dire

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1 formerly of Mr. Farnsworth? If so, please stand and give
2 me your name.

3 (No response.)

4 THE COURT: Do I have any member of the panel
5 that has been the victim of a violent crime? If so, would
6 you please stand and give me your name?

7 Your name, please, ma'am?

8 THE JUROR: Bonita Whitmire.

9 THE COURT: Would that factor in any way
10 interfere with your ability to be a fair and impartial
11 juror on this case?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, ma'am. All right.

14 Strikes are five for the State, ten for the Defense.

15 Ladies and gentlemen, when your name is called, I'll ask
16 please if you'll come forward to this podium up front, turn
17 around and face counsel and await further instructions.
18 Thank you.

19 THE CLERK: Juror number 68, Vonda Owens.

20 What says the State?

21 MR. DELOACH: Please present Ms. Owens.

22 THE CLERK: The Defendant?

23 MR. FARNSWORTH: Please excuse the juror from
24 this case.

25 THE CLERK: Thank you. You may be seated.

1 You're excused from this case.

2 Juror number 64, Shurbby Moultrie.

3 What says the State?

4 MR. DELOACH: Please present Ms. Moultrie.

5 MR. FARNSWORTH: Please seat the juror.

6 THE CLERK: Thank you. You may be seated in the
7 jury box, Ms. Moultrie.

8 Juror number 106, Paul Manos. What says the State?

9 MR. DELOACH: Please present Mr. Manos.

10 THE CLERK: Thank you.

11 MR. FARNSWORTH: Please excuse this juror.

12 THE CLERK: Thank you. You may be seated.

13 You're excused from service in this case.

14 Juror number 53, Jonathan Kilby.

15 What says the State?

16 MR. DELOACH: Please excuse Mr. Kilby from the
17 trial of this case.

18 THE CLERK: Thank you. You may be seated.

19 You're excused from service in this case.

20 Juror number 30, Elizabeth Dubose.

21 What says the State?

22 MR. DELOACH: Please present Ms. Dubose.

23 THE CLERK: Thank you.

24 MR. FARNSWORTH: Please seat the juror.

25 THE CLERK: Thank you. You may be seated in the

1 jury box.

2 Juror number 4, Vickie Back.

3 What says the State?

4 MR. DELOACH: Please present Ms. Back.

5 THE CLERK: Thank you.

6 MR. FARNSWORTH: Please seat the juror.

7 THE CLERK: Thank you. You may be seated in the
8 jury box, right here.

9 Juror number 104, Catherine Kerr. What says the
10 State?

11 MR. DELOACH: Please present Ms. Kerr.

12 MR. FARNSWORTH: Please seat the juror.

13 THE CLERK: Thank you. You may be seated in the
14 jury box.

15 Juror number 62, Nina Minka.

16 What says the State?

17 MR. DELOACH: Please present Ms. Minka.

18 MR. FARNSWORTH: Please seat the juror.

19 THE CLERK: Thank you. You may be seated in the
20 jury box.

21 Juror number 49, James Irvin.

22 What says the State?

23 MR. DELOACH: Please present Ms. Irvin.

24 THE CLERK: Thank you.

25 MR. FARNSWORTH: Please excuse this juror.

1 THE CLERK: Thank you. You may be seated.

2 You're excused from the service in this case.

3 Juror number 72, Caroline Perkins.

4 What says the State?

5 MR. DELOACH: Please present Ms. Perkins.

6 MR. FARNSWORTH: Please swear the juror.

7 THE CLERK: Thank you. You may be seated in the
8 jury box.

9 Juror number 25, Suzanne Dickerson.

10 What says the State?

11 MR. DELOACH: Please present Ms. Dickerson.

12 MR. FARNSWORTH: Please excuse the juror from
13 this case.

14 THE CLERK: Thank you. You may be seated.

15 You're excused from this case.

16 Juror number 71, James Peavey.

17 What says the State?

18 MR. DELOACH: Please present Mr. Peavey.

19 THE CLERK: Thank you.

20 MR. FARNSWORTH: Please excuse the juror.

21 THE CLERK: Thank you. You may be seated.

22 You're excused from service in this case.

23 Juror number 97, Carol Whiddon.

24 What says the State?

25 MR. DELOACH: Please present Ms. Whiddon.

Frederick Cassare Patton -vs- State of South Carolina (2009-GS-23-6614)
Jury Voir Dire

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1 MR. FARNSWORTH: Please seat the juror.

2 THE CLERK: Thank you. You may be seated in the
3 jury box.

4 Juror number 13, David Brown.

5 What says the State?

6 MR. DELOACH: Please present Mr. Brown.

7 MR. FARNSWORTH: Please excuse this juror.

8 THE CLERK: Thank you. You may be seated.

9 You're excused from this case.

10 Juror number 102, Kavitha Arms.

11 What says the State?

12 MR. DELOACH: Please present Ms. Arms.

13 MR. FARNSWORTH: Please seat the juror.

14 THE CLERK: Thank you. You may be seated in the
15 jury box.

16 Juror number 82, Amanda Schrag.

17 What says the State?

18 MR. DELOACH: Please excuse Ms. Schrag from the
19 trial of this case.

20 THE CLERK: Thank you. You may be seated.

21 You're excused.

22 Juror number 31, George Dumit.

23 What says the State?

24 MR. DELOACH: Please present Mr. Dumit.

25 MR. FARNSWORTH: Please seat the juror.

1 THE CLERK: Thank you. You may be seated in the
2 jury box.

3 Juror number 27, Martha Dodson.

4 What says the State?

5 MR. DELOACH: Please present Ms. Dodson.

6 MR. FARNSWORTH: Please seat the juror.

7 THE CLERK: Thank you. You may be seated in the
8 jury box.

9 Juror number 60, Alexandra Lorick.

10 What says the State?

11 MR. DELOACH: Please present Ms. Lorick.

12 THE CLERK: Thank you.

13 MR. FARNSWORTH: Please seat the juror.

14 THE CLERK: Thank you. You may be seated in the
15 jury box.

16 Juror number 86, Shaun Stephens.

17 What says the State?

18 MR. DELOACH: Please excuse Mr. Stephens from the
19 trial of this case.

20 THE CLERK: Thank you. You may be seated.

21 Juror number 108, Jasmine Evans.

22 MR. DELOACH: What was the name?

23 THE CLERK: Jasmine Evans, 108.

24 MR. DELOACH: Please present Ms. Evans.

25 MR. FARNSWORTH: Please seat the juror.

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13

1 THE CLERK: Thank you. You may be seated in the
2 jury box.

3 THE COURT: Ms. Back, come take this first seat
4 and serve as foreperson on this case for me, please, ma'am.
5 Okay. Come down and take her place.

6 THE JUROR: Take her place?

7 THE COURT: Uh-huh (affirmative).

8 THE JUROR: Okay.

9 THE COURT: And give me one alternate. One for
10 the State and two for the Defense.

11 THE CLERK: Juror number 28, Mark Donner.

12 What says the State?

13 MR. DELOACH: Please present Mr. Donner.

14 MR. FARNSWORTH: Please seat the juror.

15 THE CLERK: Thank you. You may be seated in the
16 jury box.

17 THE COURT: All right. Swear the jury, please.

18 THE CLERK: Would you please stand and raise your
19 right hand? The response to the oath is I will.

20 You shall well and truly try case 2009-GS-23-6614,
21 State versus Cedric Patton, indicted for armed robbery and
22 possession of a weapon during the commission of a violent
23 crime and a true verdict render according to the law and
24 the evidence, so help you God.

25 (WHEREUPON, the jury was duly sworn.)

1 THE COURT: Ladies and gentlemen, I'll give you a
2 short recess before we start this case. And while in
3 recess do not talk about this case. Take the jury in,
4 please.

5 (WHEREUPON, the jury exited the open court at
6 approximately 11:50 a.m.)

7 THE COURT: For the rest of the day, what I need
8 for you to do is after six p.m. tonight call the number
9 that was given to you this morning. So call in after six
10 p.m. today. Thank you.

11 (WHEREUPON, the jury panel exited the open court at
12 approximately 11:51 a.m.)

13 THE COURT: Ready for the jury?

14 MR. DELOACH: Yes, sir, Your Honor.

15 THE COURT: All right. Bring the jury, please.

16 THE BAILIFF: Yes, sir.

17 (WHEREUPON, the jury entered the open court at
18 approximately 12:05 p.m.)

19 THE COURT: Ladies and gentlemen, before we begin
20 I need to read to you an order issued by our Supreme Court
21 Chief Justice Jean Toal concerning jury duty, and it reads
22 as follows. The use of personal communication devices has
23 continued to increase dramatically. Accordingly, I've
24 found it necessary to supplement my order of August 25,
25 2000 related to the use of pagers, cell phones, and other

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1 personal communication devices in courtrooms, to include
2 the following direction to the Court. The Court shall
3 instruct jurors selected to serve on a jury that until
4 their jury service is concluded they shall not, one,
5 discuss the case with others, including other jurors,
6 except as otherwise authorized by the court; read or listen
7 to any news reports about the case; use a computer,
8 cellular phone or other electronic device with
9 communication capabilities while in attendance at trial or
10 during deliberation. These devices may be used during
11 lunch breaks but may not be used to obtain or disclose
12 prohibited information and the subsection below. And it
13 reads: use a computer, cellular phone or other electronic
14 device with communication capabilities or any other method
15 to obtain or disclose information about the case when
16 they're not in Court. Information about the case includes
17 but is not limited to the following: information about a
18 party, witness, attorney or court officer, news accounts of
19 the case, information collected through juror research on
20 any topics raised or testimony offered by any witness, and
21 information collected through juror research of any other
22 topic the juror might think would be helpful in deciding
23 the case. A notice of the contents of this order shall be
24 given to jurors. All right.

25 A brief opening statement, Solicitor.

1 MR. DELOACH: Thank you, Your Honor. May it
2 please the Court.

3 **OPENING STATEMENT**

4 **BY MR. DELOACH:**

5 Good morning, ladies and gentlemen. I just want to
6 briefly introduce myself. My name is Perry DeLoach and I'm
7 a prosecutor for Greenville County, South Carolina. I work
8 for the State. I want to thank y'all first and foremost
9 for being here today. I believe it was Winston Churchill
10 who said that outside of service in the military, there is
11 no more important function that you can perform for your
12 country than jury service. And I say that before every
13 single one of my trials and I truly believe it. It's not
14 just this trial that we're able to go forward on because of
15 your presence. It's a whole bunch of other activities.
16 Your presence is essential in the judicial process and I
17 know that y'all will each take it seriously. I know there
18 are places you'd rather be. You don't want to be here
19 today. You probably have jobs, maybe even plans. But your
20 presence today is of the utmost importance to this County
21 and to this State and I thank you.

22 I'm going to make a brief synopsis of the facts. I'm
23 not going to stand up long. I'll have a chance at the end
24 of court or the end of the trial to talk to y'all again.
25 On May the 16th of 2009, three individuals -- four

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Opening Statement by Mr. Farnsworth

17

1 individuals and then later three -- and I'll explain that
2 -- went to the Club Caliente. They were going there
3 initially to have a good time. When they got there, things
4 changed and an armed robbery occurred. A gun was put to a
5 person's head, money was demanded, other items were taken.
6 A baseball bat was used to another victim, and the items
7 were taken from that person as well.

8 You're going to hear several witnesses come to that
9 stand who will tell you this story in detail and I want you
10 to pay attention to each of them carefully. They're going
11 to tell you how at first there were four people, then there
12 were three people and then there were two people. Just
13 listen to each witness. Pay attention to their movements,
14 judge whether or not you believe them. And at the end of
15 this trial, I'm going to ask y'all to come back with a
16 verdict of guilty for armed robbery, possession of a weapon
17 during a violent crime against that man right there. Thank
18 you.

19 MR. FARNSWORTH: May it please the Court, Your
20 Honor.

21 THE COURT: Mr. Farnsworth.

22 OPENING STATEMENT

23 BY MR. FARNSWORTH:

24 Madam foreman, ladies and gentleman. I'm Dan
25 Farnsworth. I've already been introduced to you as has my

1 client, Cedric Patton. I, too, want to tell you that we
2 appreciate your service in this case and on this jury this
3 week because as the Court said if you ladies and gentlemen
4 weren't here, somebody else would have to be in your place,
5 so we appreciate it. I know you've been taken away from
6 your jobs, your family, but it is a great service that
7 you're providing to this County and this State.

8 Ladies and gentlemen, my client has pled not guilty to
9 these charges. In addition, he denies that he was at the
10 scene of this crime. He was arrested, I think, on June the
11 6th based on the confession of a person who -- one of the
12 people that was involved in this incident gave a confession
13 and as a result of that confession, he was -- my client was
14 arrested. I ask you to, as the case goes along to listen
15 to this person that gave the confession. I fully expect
16 that person to testify for the State. The confession
17 itself and the person that gave the statement, I believe
18 her name is Ms. Rochester, there are several issues
19 involving both. And I would ask you to really listen to
20 her testimony as she testifies.

21 Now, also, I think this case is going to have a few
22 issues regarding identification, so I would ask you to
23 listen closely as identification testimony comes in. All
24 of the testimony is as important as the other, but these
25 two particular things that I think you're going to be

1 concerned with today.

2 Now, these are -- these two charges are no question
3 very, very serious charges and they require your utmost
4 attention, which I know we're going to get from you. Now,
5 after you listen to the testimony, that's not the point
6 where you make up your mind if the person's guilty or not
7 guilty. You've still got to listen to what the Judge says
8 the law is. He'll do what's called the charge of the law
9 to you. And he will do that at the end of the case. And
10 you will take that law and apply it to the facts that you
11 determine the facts to be. You're the finders of the
12 facts. Judge Pyle's the finder of the law. So you'll
13 listen to that before you can even make any kind of
14 decision as to a verdict in this case.

15 I want you to remember, too, and Judge Pyle will
16 charge you this in more detail at the end of the case, that
17 an accused person in a crime is always presumed to be
18 innocent. An accused person enjoys the benefit of the
19 burden of proof. That is the State has a burden of proving
20 each and every Defendant or accused person guilty beyond a
21 reasonable doubt. And an accused person has no obligation
22 at all to prove his innocence or to prove anything to you.
23 Now, Judge Pyle will charge you on these at the end of the
24 case, but those are just briefly things that I wanted to
25 just bring up to you now so you'll know a little bit more

1 about what to expect during the case. So I ask you to be
2 fair and impartial. I know you will. And just bring back
3 a verdict that speaks the truth. And if you do that, you
4 will have done your job. Thank you.

5 THE COURT: All right. Solicitor.

6 MR. DELOACH: Your Honor, the State calls Jose
7 Alfredo Cortez-Roa to the stand. Your Honor, this witness
8 will be speaking through an interpreter.

9 THE COURT: All right. Very well, swear her.

10 THE CLERK: Do you solemnly swear or affirm that
11 you will accurately interpret the language requested in
12 this courtroom of the defendant without additions thereto
13 or detractions therefrom or any other amendments of your
14 own interpretation, so help you God?

15 THE INTERPRETER: I do.

16 THE CLERK: Thank you.

17 Sir, would you please your left hand on the bible and
18 raise your right hand to be sworn in. Do you swear to tell
19 the truth, the whole truth and nothing but the truth, so
20 help you God?

21 DEFENDANT: Yes, ma'am.

22 TERESA SAMPSON,

23 BEING FIRST DULY SWORN

24 INTERPRETED THE FOLLOWING TESTIMONY:

1 JOSE ALFREDO CORTEZ-ROA,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. DELOACH:

5 Q. Good morning, Mr. Cortez-Roa. How are you doing?

6 A. Good morning. How are you?

7 Q. Could you say your name, your full name for the
8 record, please?

9 A. [REDACTED]

[REDACTED]

11 Q. Do you recall the events of May the 16th of 2009?

12 A. (The interpreter) Yes, of course.

13 Q. And where do you work?

14 A. (The Interpreter) Merritt Brothers.

15 Q. What do you do there?

16 A. (The interpreter) Landscaping.

17 Q. Okay. And how long have you worked there?

18 A. (The interpreter) Twelve years.

19 THE COURT: It sounds to me like he's doing
20 pretty good.

21 MR. DELOACH: Yes, sir. He understands partial
22 English.

23 Q. Wait for her to ask you the question.

24 A. Okay.

25 Q. And then let her answer. How long have you been

- 1 working at Moore Brothers?
- 2 A. (The interpreter) Twelve years.
- 3 Q. Now, back to May 16th, 2009. Where were you on May
- 4 the 16th of 2009?
- 5 A. (The interpreter) I was dancing at Caliente.
- 6 Q. Okay. And what is Caliente?
- 7 A. (The interpreter) It's sort of like a dance place.
- 8 Q. Okay. And what time did you get there?
- 9 A. (The interpreter) Oh, nine-thirty.
- 10 Q. At some point did you exit the Club Caliente?
- 11 A. (The interpreter) Yes, about eleven-thirty at night
- 12 when I wanted to have a cigarette. I went to smoke a
- 13 cigarette.
- 14 Q. Okay. Were you drinking that night?
- 15 A. (The interpreter) No.
- 16 Q. Okay. Why weren't you drinking?
- 17 A. (The interpreter) Because I made a promise before
- 18 God, to God not to drink for eight months.
- 19 Q. Okay. So you were not intoxicated at all that
- 20 evening?
- 21 A. (The interpreter) No.
- 22 Q. Was anyone with you?
- 23 A. (The interpreter) Yes. A lady.
- 24 Q. And do you know her?
- 25 A. (The interpreter) No.

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Jose Alfredo Cortez-Roa - Direct Examination by Mr. DeLoach

23

1 Q. Where did you meet this lady?

2 A. (The interpreter) Inside the dance place.

3 Q. And did she go outside the club with you?

4 A. (The interpreter) Yes.

5 Q. And what were y'all doing outside the club?

6 A. (The interpreter) Just smoking a cigarette because
7 inside the club was really hot and we couldn't even really
8 talk inside. It was really loud, too.

9 Q. Okay. Where were you smoking? Were you smoking on
10 the sidewalk or ---

11 A. (The interpreter) I was inside my car. Sitting
12 inside my car.

13 Q. All right. Which seat were you seated in?

14 A. (The interpreter) Me, I was sitting at the driver's
15 seat, and her, she was sitting next to me to my right.

16 Q. Okay. At any point while y'all were sitting in the
17 vehicle, did you see any strange people or anybody that you
18 took notice of walk by?

19 A. (The interpreter) Yeah. I realized there were four
20 persons coming. First they got up to me, they just walked
21 by.

22 Q. Okay. And that was how many people?

23 A. (The interpreter) Four.

24 THE COURT: Katrina, would you come pull that
25 microphone closer to her, please? That's as far as it

1 goes? Thank you.

2 THE CLERK: If you want to stand right there, you
3 can.

4 THE INTERPRETER: Well, I just don't want to be
5 in the middle of the witness and ---

6 THE COURT: Okay. Let's try and speak a little
7 louder if you can, please?

8 THE INTERPRETER: Okay. Sure.

9 Q. When these four people walked by, what made you notice
10 them?

11 A. (The interpreter) I noticed them because they looked
12 suspicious to me, but I didn't have time to roll up my
13 window.

14 Q. Okay. Were they looking at you?

15 A. (The interpreter) Yes.

16 Q. Okay. Did these people ever return to where the car
17 was?

18 A. (The interpreter) Yes. The men came back with a
19 pistol, came back to my side with a pistol. And the woman
20 came back with a baseball bat on the left side where the
21 girl was.

22 Q. Okay. Well, let's back up a little bit. Before they
23 walked directly to you, did they come and pass by your car
24 before then?

25 A. (The interpreter) Yes.

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Jose Alfredo Cortez-Roa - Direct Examination by Mr. DeLoach

25

- 1 Q. And how many of them was with them this time?
- 2 A. (The interpreter) Just two came back.
- 3 Q. Okay. What -- describe what these people looked
- 4 like?
- 5 A. (The interpreter) The man was a little bit stocky.
- 6 Not too tall. Thick lips. The woman was wearing her hair
- 7 up really close to the scalp.
- 8 Q. Okay.
- 9 A. (The interpreter) And a little -- like build, little
- 10 built.
- 11 Q. A little built.
- 12 A. (The interpreter) A little chubby.
- 13 Q. Okay. Was there anyone else that was walking with
- 14 them initially?
- 15 A. (The interpreter) Well, there were two more.
- 16 Q. Okay. Describe the other two people?
- 17 A. (The interpreter) One was tall, sort of like he was a
- 18 mix of black and white. Tall.
- 19 Q. Okay.
- 20 A. (The interpreter) And the other one, I didn't even
- 21 have a chance to see it really well because I was, you
- 22 know, scared.
- 23 Q. Okay. This tall person, what color was that person's
- 24 skin?
- 25 A. (The interpreter) A mix, like between, I mean, black

- 1 and white.
- 2 Q. And what type of -- what was her hairstyle? Or that
- 3 person's hairstyle?
- 4 A. (The interpreter) Curly. Curly.
- 5 Q. Was it curly?
- 6 A. (The interpreter) No, like kinky.
- 7 Q. Like what we refer to them as corn rows?
- 8 A. (The interpreter) Yes, like corn rows.
- 9 Q. Okay. Now, the second time that these people passed
- 10 by, was it all four of them or was it just three of them?
- 11 A. (The interpreter) No. It was two.
- 12 Q. Okay. Tell us about the -- tell us about when they
- 13 approached the window to your car?
- 14 A. (The interpreter) How many?
- 15 Q. Yeah. How many approached the car?
- 16 A. (The interpreter) Two.
- 17 Q. Okay. And tell us about the person that was standing
- 18 on your side of the vehicle?
- 19 A. (The interpreter) Yeah, he put the gun inside the car
- 20 and then he pointed at -- into my head with the gun.
- 21 Q. Okay.
- 22 A. (The interpreter) He hit me with the gun twice.
- 23 Q. Okay. And did you get a good look at the gun?
- 24 A. (The interpreter) Yeah. It was shiny and silver.
- 25 Q. And did he ask you for anything?

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- 1 A. (The interpreter) Yeah. He asked me to just give him
2 anything, my wallet, money and my phone.
- 3 Q. Okay. And where was the female? Or where was the
4 other person?
- 5 A. (The interpreter) On the right side.
- 6 Q. Okay. And was this a male or a female?
- 7 A. (The interpreter) Woman, female.
- 8 Q. And was she black or white?
- 9 A. (The interpreter) Black.
- 10 Q. And what was her build?
- 11 A. (The interpreter) A little bit chubby?
- 12 Q. Was she tall?
- 13 A. Not too tall.
- 14 Q. Okay.
- 15 A. (The interpreter) Also, her hair really close to the
16 scalp like a man's.
- 17 Q. Okay. And where was the woman that had the mixed
18 skin?
- 19 A. (The interpreter) Well, I saw when they crossed and
20 after that, I didn't see her again.
- 21 Q. Okay. Tell us what the black female on the right side
22 of the car was doing?
- 23 A. (The interpreter) He hit her with a bat on the
24 forehead?
- 25 Q. Was it he or she?

1 A. (The interpreter) No, woman.

2 Q. Okay. And did she say anything?

3 A. (The interpreter) Yes. She also demanded money,
4 demanded money but the girl said that she didn't have any.

5 Q. Okay. Did you see her give her anything? Did you
6 see the woman that was sitting with you give her anything?

7 A. (The interpreter) No.

8 Q. What all did you end up giving the person that was at
9 the driver's side of the car?

10 A. (The interpreter) All my documents, including my
11 passport, my driver's license, my money. Documents from
12 the Consular in Mexico, there in Atlanta, the Mexican
13 Consular in Atlanta.

14 Q. Okay. And how much cash did you give him?

15 A. (The interpreter) I'm not quite sure about, but it
16 must have been between two thousand five hundred or two
17 thousand and six hundred dollars because I had just cashed
18 a check for my income tax return.

19 Q. Okay. Were you injured this day?

20 A. (The interpreter) No, just very little when they hit,
21 when he hit me.

22 Q. When they what?

23 A. (The interpreter) Yeah, because he hit me with a
24 gun.

25 Q. Okay. How about the female that was sitting in the

- 1 car with you?
- 2 A. (The interpreter) Yeah. She had a bruise on her
3 forehead.
- 4 Q. She did?
- 5 A. (The interpreter) Yes. No blood.
- 6 Q. Okay. And does he know her name?
- 7 A. (The interpreter) No.
- 8 Q. Have you seen her again since this incident happened?
- 9 A. (The interpreter) No.
- 10 Q. After these people took the money and the cards and
11 your papers, what happened next?
- 12 A. (The interpreter) Well, I got out of the car and I
13 ran to call security.
- 14 Q. Okay. And what did the lady that was in the car with
15 you do?
- 16 A. (The interpreter) Well, when the police arrived since
17 she spoke English a lot better than I, she was the one that
18 talked to them, the police. But after that she left, and I
19 have never seen her since.
- 20 Q. And did you get medical attention?
- 21 A. (The interpreter) No.
- 22 Q. Okay. Did the female get any medical attention?
- 23 A. (The interpreter) They asked her, but she didn't want
24 it.
- 25 Q. Okay. After the event happened, did you go home?

1 A. (The interpreter) No, I stayed. I was afraid that
2 they were going to caught me or something.

3 Q. Okay. Since this event happened, have you seen these
4 people again?

5 A. (The interpreter) No.

6 Q. And when this event happened, did you get a very good
7 look at the person who had the gun to your head?

8 A. (The interpreter) Not very, very well because when he
9 was pointing a gun at me, I couldn't throw my head around
10 to look at him.

11 Q. Okay. Do you see that person in the courtroom today?

12 A. (The interpreter) Well, yes, but not a hundred
13 percent sure.

14 Q. Okay. Who is the person you believe it is?

15 A. (The interpreter) I don't know if I should do it or
16 ---

17 Q. Are you nervous?

18 A. (The interpreter) Yes, because I have never been in a
19 situation like this.

20 Q. Okay. And I understand you're nervous and I
21 understand you're scared, ---

22 A. (The interpreter) Yes.

23 Q. --- but I need for you to point out that person for
24 us.

25 A. (The interpreter) The one that's sitting there, he

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1 looks like him, but I'm not completely sure.

2 Q. Okay. Where is he sitting?

3 A. (The interpreter) Right next to that gentleman that's
4 wearing a suit.

5 Q. Okay.

6 MR. DELOACH: Let the record reflect he did
7 indicate the Defendant, Mr. Cedric Patton.

8 Q. After this incident occurred, did the officer come and
9 see you and show you a series of pictures?

10 A. (The interpreter) Yes. They came to see me at my
11 place of work once.

12 Q. Were you able to identify anybody in that picture as
13 the person who robbed you?

14 A. (The interpreter) No.

15 Q. One second. Do you know if this woman next to you had
16 anything taken from her?

17 A. (The interpreter) Well, I don't think so because she
18 kept on saying, I don't have any money. I don't have any
19 money. And that's when they were hitting her because she
20 was saying, I don't have any money. And if they did, I
21 think they probably just took two dollars at the most.

22 Q. Okay. And did you testify earlier that a cell phone
23 was taken? I believe you did.

24 A. (The interpreter) Yes. Well, the cell phone was
25 there and it was mine and they did take it.

1 MR. DELOACH: No more questions, Your Honor.

2 THE COURT: All right. Mr. Farnsworth.

3 MR. DELOACH: Your Honor, if I may. Could you
4 ask the jury if they had any trouble hearing any of the
5 testimony of the interpreter?

6 THE COURT: Ladies and gentlemen, did you have
7 any difficult hearing the testimony through the
8 interpreter? All right. They say, no.

9 MR. DELOACH: All right.

10 CROSS-EXAMINATION

11 BY MR. FARNSWORTH:

12 Q. All right. Mr. Cortez, is that correct?

13 A. (The interpreter) Yes, sir.

14 Q. All right. You were, as you testified, you and a
15 female were seated in a car outside of Caliente's Club on
16 May 16th about two-thirty or three o'clock in the morning.
17 Is that correct?

18 A. (The interpreter) Yes.

19 Q. All right. And I couldn't quite understand your
20 description of the person that you said assaulted you with
21 the gun or the person that assaulted the lady with a, I
22 think you said a bat. Do you remember talking with Officer
23 -- is it Cassell? Cassell. Do you remember talking to
24 Officer Cassell after this incident happened?

25 A. (The interpreter) Yes.

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1 Q. Okay. And didn't you and the young lady there with
2 you give a description to this officer?

3 A. (The interpreter) Yes.

4 Q. Okay.

5 A. (The interpreter) When we filed our police report.

6 Q. And I believe in that information you gave to the
7 officer, you said that the person with the wooden baseball
8 bat was a black male, heavy set, about six feet tall?

9 A. (The interpreter) No. It was a woman, the one with
10 the bat.

11 Q. At that point, though, didn't you tell the officer
12 that it was a black male rather than a female?

13 A. (The interpreter) Well, I don't particular, like
14 exactly remember, but I do remember I tell him it was a
15 woman. I don't know if the lady that was helping
16 interpreting didn't interpret right what I said.

17 Q. All right. So his answer is what?

18 A. (The interpreter) Woman.

19 Q. Okay. All right. When he described the black male
20 that assaulted him with a revolver, isn't it true that he
21 told the officer that this person had a thin build and was
22 short?

23 A. (The interpreter) No, I didn't say that.

24 Q. No?

25 A. (The interpreter) No, I didn't say that. Did you say

1 something about a belt?.

2 Q. A belt?

3 THE INTERPRETER: Uh-huh (affirmative)

4 Q. No. I didn't ask anything about a belt.

5 A. (The interpreter) Okay.

6 Q. Okay. So he denies that he told the officer that what
7 he just answered, that the person who assaulted him with a
8 pistol was thin build, and short and eyes slanted?

9 A. (The interpreter) I told them it was kind of chubby
10 and it was -- had thick lips and he had a big head.

11 Q. All right. Now, isn't it true that you told the
12 officer, the first officer there, Officer Cassell, that
13 eight hundred dollars was taken out of your wallet? Eight
14 hundred dollars in cash?

15 A. (The interpreter) Okay. I got a paper from the
16 secretary of the company that I work for and they had asked
17 me how much money I had spent to do all my paper works at
18 the Consulate. So they send me a paper to put the amount
19 of money that was -- to put down the amount of money that
20 was stolen from me, the total amount.

21 Q. Didn't you just testify a few minutes ago that twenty-
22 five to twenty-six hundred dollars was taken out of your
23 wallet?

24 A. (The interpreter) Yes. I said that twenty-five
25 hundred to twenty-six hundred dollars. I said that.

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1 Q. I can't understand you, ma'am. What?

2 A. (The interpreter) Yes. I said that. I said twenty-
3 five hundred, twenty-five hundred to twenty-six hundred
4 were taken from him.

5 Q. Okay. And a telephone?

6 A. (The interpreter) Yes.

7 Q. And a wallet?

8 A. (The interpreter) Yes.

9 Q. And you still deny that you told the officers that
10 eight hundred dollars cash was taken out of your wallet?

11 A. (The interpreter) No, I'm not denying that. Maybe I
12 did say that because, you know, I was scared. I was kind
13 of like in like a shock.

14 Q. All right. Now, after the incident occurred, did he
15 see where the people left and went to?

16 A. (The interpreter) I told them that they had run
17 towards the back.

18 Q. Did he see them get in a car or were they walking?

19 A. (The interpreter) No, they were walking.

20 Q. Okay. And does he know where they walked to?

21 A. (The interpreter) No.

22 Q. Okay. Just saw them walking and then didn't see them
23 anymore?

24 A. (The interpreter) Well, they were more like running
25 and then I just didn't see them again.

1 Q. Okay. And it was dark outside?

2 A. (The interpreter) Yes, it was dark.

3 Q. Okay. All right. Now, do you remember telling the
4 officer that a third person was standing at the back of the
5 car while this incident was taking place?

6 A. (The interpreter) The one -- the thin and tall one?

7 Q. Yes?

8 A. (The interpreter) But he was moving around because he
9 was kind of like watching out.

10 Q. Okay. Was that a female or male?

11 A. (The interpreter) He was tall -- or don't know if it
12 was a woman or a man, but he had the hair really close to
13 his scalp and thin and really tall.

14 Q. Really tall?

15 A. (The interpreter) Like corn rows.

16 Q. He had mentioned a fourth person, I believe. Did he
17 ever see that fourth person that he mentioned earlier
18 anymore after he initially saw him?

19 A. (The interpreter) No. Not anymore.

20 Q. All right. Was he ever shown a photo lineup by either
21 of these two officers here, the officer back there in the
22 back and this officer seated here?

23 A. (The interpreter) No.

24 Q. Wasn't shown by these officers?

25 A. (The interpreter) No.

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1 Q. All right. And you've testified that you're not a
2 hundred percent sure that this was the individual and you
3 also testified with respect to that, that it looks like
4 him, but I'm not completely sure. Is that correct?

5 A. (The interpreter) Yes, I said that.

6 Q. Okay. And it was two-thirty or three o'clock in the
7 morning and it was dark outside and when he put the -- this
8 person put the gun to your head, it was difficult for you
9 to see his face. Is that correct?

10 A. (The interpreter) I cannot say one hundred percent
11 that this person sitting here was the same person that
12 pointed a gun at me. I cannot say that with a hundred
13 percent certainty because it was dark and I didn't get a
14 really good look at him.

15 Q. Couldn't get a good look at him because he was -- he
16 said his head was turned in the opposite direction. Isn't
17 that true?

18 A. (The interpreter) Yes. Because he was pointing at me
19 with a gun.

20 Q. Okay.

21 MR. FARNSWORTH: I believe that's all I have,
22 Your Honor.

23 THE COURT: Any redirect?

24 MR. DELOACH: Just a couple, Your Honor.

25 THE COURT: Thank you. You can step down.

1 MR. DELOACH: No, just a couple.

2 THE COURT: Oh, I'm sorry.

3 REDIRECT EXAMINATION

4 BY MR. DELOACH:

5 Q. This person that was standing at the back of the
6 vehicle, okay, the one you said was looking out.

7 A. (The interpreter) The tall one. That had like corn
8 rows. That was a mix. Tall, and a mix.

9 Q. Okay. So she was a lighter skin?

10 A. (The interpreter) Yes. More like white and black.

11 Q. And you said it was dark out that night, correct?

12 A. (The interpreter) Well, not completely dark because
13 there are lights in the parking lot. But you couldn't see
14 like very, very well but still ...

15 Q. Now, after this incident occurred you said you saw
16 them running away and didn't see where they went. Is that
17 correct?

18 A. (The interpreter) Yes.

19 Q. Were you scared at that time?

20 A. (The interpreter) Yes.

21 Q. Did you get out of your car for a while after this
22 incident occurred?

23 A. (The interpreter) We both got out of the car at the
24 same time. And I ran. And I ran for help.

25 Q. Did you get out immediately after the incident

1 occurred?

2 A. (The interpreter) Not immediately because I was
3 scared. I had fear. And I can't tell you precisely how
4 much time went by before I went out of the car -- I got out
5 of the car.

6 Q. Okay. Now, these pictures that you were shown, the
7 lineup by the officer, how long ago was that?

8 A. (The interpreter) I'm not quit sure.

9 Q. Okay. So could it have been this officer or that
10 officer in the back?

11 A. (The interpreter) I sort of remember it now. I'm
12 remembering now like the gentleman that is sitting at the
13 desk. Right there.

14 Q. Right here?

15 A. (The interpreter) Yeah. He came by with another
16 person that was serving as an interpreter.

17 Q. Okay. Was that this man right here?

18 A. (The interpreter) I can't remember whether it was,
19 but I think so, yes.

20 Q. Okay.

21 A. (The interpreter) If you allow me for a moment, I do
22 have his business card that they gave to me at that time.

23 Q. That won't be necessary. Okay. Thank you.

24 MR. DELOACH: No more questions.

25 THE COURT: All right. He can step down, ma'am.

1 MR. DELOACH: Your Honor, may this witness be
2 excused?

3 THE COURT: Any objection to him ---

4 MR. FARNSWORTH: None.

5 THE COURT: Thank you. He can be excused.

6 MR. DELOACH: One second, Your Honor.

7 Your Honor, at this time the State calls Jason Cassell
8 to the stand.

9 THE CLERK: Come forward. Place your left hand
10 on the bible and raise your right hand.

11 Do you solemnly swear or affirm the testimony you're
12 about to give is the truth, whole truth and nothing but the
13 truth, so help you God?

14 OFFICER CASSELL: I do, ma'am.

15 THE CLERK: Thank you. You may be seated. Would
16 you please state your full name for the record.

17 OFFICER CASSELL: Jason Michael Cassell.

18 JASON CASSELL,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. DELOACH:

22 Q. Good morning, Deputy Cassell. Is it deputy?

23 THE COURT: Hold on for just a moment. Do we
24 need the interpreter any further?

25 MR. DELOACH: I do not.

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- 1 Q. Good morning, Deputy Cassell. How are you doing?
- 2 A. Good morning. I'm fine, thank you.
- 3 Q. Deputy Cassell, where do you work?
- 4 A. For the Greenville County Sheriff's Office.
- 5 Q. Okay. And what is your rank there?
- 6 A. Deputy II.
- 7 Q. Okay. How long have you been there?
- 8 A. I'm going on my third year. I've been there about two
- 9 and a half years.
- 10 Q. Okay. And have you always been a deputy there?
- 11 A. Yes, sir.
- 12 Q. Okay. Where did you receive your training?
- 13 A. The South Carolina Criminal Justice Academy in
- 14 Columbia, South Carolina.
- 15 Q. Okay. And do y'all take any type of continuing
- 16 education courses or anything in your job?
- 17 A. We do. We can do advanced training classes. There's
- 18 a lot of opportunities for us to pick and choose, you know,
- 19 what advancement classes we want to take and then we're re-
- 20 certified every year on certain laws, certain legal updates
- 21 every year.
- 22 Q. Okay. Do you recall working on May the 16th of 2009?
- 23 A. I do.
- 24 Q. Do you recall running a call at the Club Caliente that
- 25 evening?

1 A. Yes, sir.

2 Q. And that evening, did you come into contact with the
3 person that was just on the stand, Mr. Jose Alfredo Cortez-
4 Roa?

5 A. Yes, I did.

6 Q. Okay. And why did you respond to the Club Caliente?

7 A. We got a call of an armed robbery that just occurred,
8 so we responded out there. We got the call around two
9 fifty-something and I think we responded -- we went on
10 scene about three, three-oh-one or three-oh-two.

11 Q. Okay. And where is the Club Caliente located?

12 A. It's located on Cedar Lane Road. I believe it's
13 1511.

14 Q. Okay. And what city is that in?

15 A. Greenville.

16 Q. And do you know what county that is?

17 A. Greenville County.

18 Q. Okay. When you got there, who did you speak with?

19 A. When I arrived I -- both of the victims, the male and
20 the female, were standing out with a security officer who
21 was actually the one that called us.

22 Q. Okay. And is that security officer in the courtroom
23 right now?

24 A. He is, sir.

25 Q. Okay. Where is he seated?

- 1 A. The very back left corner there with the black t-
2 shirt.
- 3 Q. Okay. Did you get names from these two victims?
- 4 A. I did.
- 5 Q. Okay. What were they?
- 6 A. I believe Mr. Roa-Cortez ---
- 7 Q. If I showed you something, would it remind you?
- 8 A. Sure.
- 9 Q. What would that be? If I showed you your incident
10 report that night, would ---
- 11 A. That would help me pronounce their names correctly,
12 yes, sir.
- 13 Q. (Hands incident report to witness.)
- 14 A. Thank you.
- 15 Q. Now, Deputy Cassell did you take that report?
- 16 A. I did, sir.
- 17 Q. Okay. And what were the victims' names that evening?
- 18 A. Victim number one, which I refer to them in the report
19 as victim number one, was Jose Alfredo Cortez-Roa.
- 20 Q. Okay. And how about victim number two?
- 21 A. Emma Rosario.
- 22 Q. Okay. And was that a male or a female, the second
23 one?
- 24 A. It was a female.
- 25 Q. Okay. And was the person that you, that you --

1 Alfredo Cortez-Roa, was he in the courtroom earlier today
2 testifying?

3 A. Yes. He was the one previously, before me.

4 Q. Okay. One second. Now, when you met with these two
5 individuals, did they speak English?

6 A. Mr. Cortez-Roa spoke choppy English. The female, Ms.
7 Rosario, was kind of interpreting as I was speaking with
8 him. He was able to answer some questions, but some of the
9 more difficult questions she would like relay back and
10 forth and interpret for me.

11 Q. Okay. So y'all didn't have a certified interpreter
12 out there?

13 A. No, not on scene at that time.

14 Q. Okay. And did you take a -- did you get a description
15 from these victims?

16 A. Yes.

17 Q. Okay. And what was the description they gave you?

18 A. Mr. Cortez-Roa could only describe the one that was
19 with the pistol on his side, the driver's side. He
20 described him as a black male in his mid to late twenties.
21 Heavy set -- or excuse me. I apologize. Black male, mid-
22 to late twenties with thin build and he said kind of short
23 and armed with a silver revolver. He couldn't get any
24 clothing description.

25 Q. Okay. How about the other suspect?

1 A. Ms. Rosario describe the one that had the wooden
2 baseball bat that was on her side that approached her from
3 the passenger side, she described him as a black male, mid
4 to late twenties, heavy set, around six foot.

5 Q. Okay. Did they say anybody else was there?

6 A. Both of them told me that there was a white male at
7 the back of the car, standing as a lookout.

8 Q. And that was a white male?

9 A. Yes, sir.

10 Q. Okay. Now, when you took these descriptions from
11 these two people, they were speaking in broken English. Is
12 that correct?

13 A. Ms. Rosario was not. She was speaking in clear
14 English.

15 Q. Okay. She spoke clear English?

16 A. Fluently.

17 Q. Okay. And is it possible that some of the description
18 was lost in translation, so to speak, between you and Mr.
19 Roa?

20 A. It was a possibility.

21 Q. Okay. Did Ms. Rosario speak any other language that
22 you know of?

23 A. Not to me she did not. Well, she was speaking Spanish
24 to Mr. Cortez-Roa.

25 Q. Okay. Did she appear to be of Latino descent?

- 1 A. Yes, sir.
- 2 Q. Okay. Now, did either one of these victims have any
3 types of contusions or injuries that you noticed?
- 4 A. Yes, sir. Mr. Cortez-Roa had a bruise to his left
5 eye, I believe, around maybe his temple area and right
6 below his left eye.
- 7 Q. All right. The left eye?
- 8 A. Yes. Bruise and slight swelling.
- 9 Q. And how about the female?
- 10 A. The female, Ms. Rosario, had -- let me find it in
11 here. I believe she had a knot and swelling to her
12 forehead, which she stated was caused by a baseball bat,
13 being struck.
- 14 Q. Now, did y'all come across any other witnesses that
15 were there?
- 16 A. No, we did not.
- 17 Q. And did y'all apprehend any potential suspects that
18 evening?
- 19 A. Yes. When we arrived on scene, the security officer
20 had two detained that he stated Ms. Rosario had pointed
21 out as one of them possibly being the suspect that
22 approached her on her side of the vehicle with the baseball
23 bat. So security went ahead and detained them until we got
24 there until we could talk to them and talk to the victims
25 first.

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1 Q. Okay then.

2 A. Okay.

3 Q. Did you arrest anyone that evening?

4 A. No, we did not.

5 Q. Now, the male victim, the male victim that you saw,
6 was he intoxicated when you saw him?

7 A. I believe he had some alcohol on his breath. He was
8 not intoxicated, but I believe ---

9 Q. Are you sure he had alcohol on his breath or are you
10 just guessing?

11 A. No, I'd smelled it because I documented that in my
12 report.

13 Q. Okay. But was he intoxicated?

14 A. He was not intoxicated.

15 Q. Now, these two suspects that y'all apprehended that
16 evening, did y'all search their vehicles?

17 A. We did.

18 Q. Did y'all find anything of significance?

19 A. No, we did not.

20 Q. Okay. Were either one of those people -- or either
21 one of those people that you interviewed that night and
22 put into custody and searched their car in the courtroom
23 today?

24 A. No.

25 Q. And did you see Mr. Cortez-Roa again that evening?

1 A. I did, sir.

2 Q. Okay. And where did you see him?

3 A. We got a call back about a -- I believe it was an
4 assault and battery. I was a backup officer on it. I
5 responded with Deputy Salizar.

6 Q. Okay.

7 A. I believe it was either an intoxicated person or an
8 assault and battery call.

9 Q. Okay.

10 A. And we came back out and Mr. Cortez-Roa was involved
11 in that incident.

12 Q. Okay. But was he arrested?

13 A. I can't testify that he was or was not.

14 Q. Okay. Do you recall arresting him?

15 A. I did not arrest him.

16 Q. Okay. So he was let go, to the best of your
17 knowledge?

18 A. I left the scene before that determination was made.

19 Q. Okay.

20 MR. DELOACH: No more questions, Your Honor.

21 THE COURT: All right. Mr. Farnsworth.

22 CROSS-EXAMINATION

23 BY MR. FARNSWORTH:

24 Q. About this incident you just testified to and you were
25 dispatched, you got dispatched and they told you to go to

1 that club. Is that correct?

2 A. Yes, sir. We got an armed robbery just occurred
3 call.

4 Q. No, I mean the second -- this last incident ---

5 A. Oh.

6 Q. --- you just testified to where Mr. Cortez was
7 involved?

8 A. I can't recall what the incident type was when
9 dispatch sent the call. I just knew I responded out there
10 because of the location that ---

11 Q. All right. And you said you remember it being either
12 having to do with intoxication or an assault. Is that
13 basically what you said?

14 A. Yes, sir. To the best of my knowledge.

15 Q. And do you remember whether Mr. Cortez was the victim
16 or the assailant in that incident that occurred there?

17 A. When I arrived on scene on that incident, Mr. Cortez-
18 Roa was seated in the back of Deputy Salizar's patrol car.

19 Q. All right. But do you know the answer to my question?
20 Do you know whether he was a ---

21 A: I do not know if he was charged or involved in that
22 incident.

23 Q. Okay. But based on what you know and what you saw,
24 you don't think he was a victim in that incident?

25 A. I can't testify one way or the other, sir.

1 Q. Okay. All right. When you arrived out there, you
2 said the security had two people that they had put into --
3 or were holding until you got there?

4 A. There was two people. I believe they were handcuffed,
5 being detained by the security officer.

6 Q. Okay. And you looked into that, I think, didn't you?
7 To see what the situation was with these two people?

8 A. Yes. We spoke with both of the victims and spoke with
9 security and spoke with those individuals.

10 Q. Okay. All right. And the victims said at least one
11 of the suspects that you had at that time looked like or
12 was possibly a suspect in the robbery?

13 A. Ms. Rosario, when I spoke to her, told me that none of
14 them were involved in it after looking at them again.

15 Q. Okay. But didn't she change her mind? And I'd ask
16 you to look at your incident report, the top of page -- on
17 one date 5/16/09. The second page of two pages. The top
18 paragraph, if you'll look at that. And didn't she say that
19 she wasn't sure and then she said she thought that he was
20 the one or something to that effect? That he might have
21 been one.

22 A. The security officer told me when we got on scene that
23 she had pointed out one of them.

24 Q. I understand that.

25 A. Right. When I spoke to her again and brought both of

1 them in front of her, she said that she couldn't be certain
2 that any of them were involved.

3 Q. Okay. And I'm asking you ---

4 A. Uh-huh (affirmative).

5 Q. --- in your incident report there, isn't it true that
6 you typed this out and signed it and you said that one of
7 the suspects -- let's see. Victim two, which was victim
8 Rosario, you then asked her if she had identified Mr.
9 Smith, this was one of the subjects being held, as the one
10 who hit her in the head with the bat in an attempt to rob
11 her. Victim two said she was not sure it was him. But
12 immediately after, she thought that Mr. Smith might have
13 been the suspect. Isn't that what you put in your report?

14 A. She stated to me at first that she was not sure
15 because what he was wearing was not what she remembered.
16 She only saw a dark hat and the suspect was heavy-set. And
17 then she told me she was not sure it was him. But
18 immediately afterward, she told me that she thought he
19 might have been, but she wasn't sure. He might have been,
20 yes, sir. I correct myself on that.

21 Q. In addition to telling you that, she'd already told
22 the security personnel that was holding these two people?

23 A. Yes.

24 Q. All right. And didn't Mr. Cortez also tell you that
25 this guy -- that one of these suspects might have been a

1 suspect in the robbery?

2 A. Not that I recall. I don't think he ever pointed at
3 either of the suspects or the gentlemen that were
4 detained.

5 Q. All right. I'll need to see that report. Page one of
6 two in your report.

7 A. Uh-huh (affirmative).

8 Q. In your report didn't you say -- you said the
9 complainant stated that victim one had identified one of
10 the males as a possible suspect?

11 A. The complainant told me that, sir.

12 Q. Okay.

13 A. Yes, not Mr. Cortez-Roa. Yes.

14 Q. Okay. All right. But complainant told you that?

15 A. That's correct.

16 Q. That's the security guard there at the club?

17 A. Yes, sir.

18 Q. All right. All right. Now, you were in here I
19 believe when Mr. Cortez testified. Qnd isn't it true that
20 he told you that night, immediately after this incident
21 occurred that eight hundred dollars cash was taken out of
22 his wallet?

23 A. That is correct. He did.

24 Q. And you were here when he testified today that twenty-
25 five to twenty-six hundred was taken?

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1 A. Yes, sir.

2 Q. And that's not true, is it, based on what he told
3 you?

4 A. He told me eight hundred.

5 Q. Okay. Well, it can't be both, can it?

6 A. No, sir.

7 Q. Okay. All right. Now, when -- do you remember what
8 either victim or both told you about when the people that
9 were involved in this left and where they went? Did they
10 ---

11 A. Both the victims told us the same thing, that they ran
12 directly across Cedar Lane Road into the -- there's a wood
13 line right across the street, and disappeared in the wood
14 line.

15 Q. Okay. So there's a parking lot and then there's a
16 street. That's Cedar Lane Road, and then there's some
17 woods over there?

18 A. That's correct.

19 Q. On the other side of that street.

20 A. That's correct.

21 Q. And they told you that they fled into the woods?

22 A. That's correct.

23 Q. Okay. Officer, I appreciate your ---

24 THE COURT: Anything else, Solicitor?

25 MR. DELOACH: Just briefly, Your Honor.

1

REDIRECT EXAMINATION

2 BY MR. DELOACH:

3 Q. You said again, just to be sure, Mr. Roa did not speak
4 English did he, correct? He spoke broken English. Is that
5 correct?

6 A. Broken English. Choppy, yes.

7 Q. And you did admit that there was possibly some things
8 were lost in translation. Is that true?

9 A. Absolutely.

10 MR. DELOACH: No more questions, Your Honor.

11 THE COURT: Thank you. Step down.

12 All right. Ladies and gentlemen, at this time we will
13 suspend for lunch and we'll pick back up at two-thirty.
14 During the lunch recess, please remember the admonition
15 that I read to you from the Chief Justice. Now, please
16 keep your badges on. I ask that you do that so that
17 everyone involved in this case will know that you are a
18 juror on the case and it would be highly improper for them
19 to discuss or talk about this case anywhere around you. So
20 please keep your badges on during lunch recess and report
21 back to the jury room where you were on recess at two-
22 thirty. Thank you.

23 (WHEREUPON, the jury exited the open court at
24 approximately 1:15 p.m.)

25 (WHEREUPON, court stood at recess for a lunch break.)

1 MR. DELOACH: My next witness must be running a
2 few minutes late.

3 THE COURT: Well, does she have a cell phone?

4 MR. DELOACH: I just sent my investigator to give
5 her a call.

6 THE COURT: Who else have you got to testify?

7 MR. DELOACH: I can call the detective, Your
8 Honor.

9 THE COURT: Let's do that.

10 Okay. Bring in the jury.

11 (WHEREUPON, the jury entered the open court at
12 approximately 2:34 p.m.)

13 THE COURT: All right, Solicitor.

14 MR. DELOACH: Your Honor, may it please the
15 Court. Your Honor, at this time the State calls David
16 Weiner to the stand.

17 THE CLERK: Deputy Weiner, please come forward.
18 Place your left hand on the bible and raise your right to
19 be sworn in.

20 Do you solemnly swear or affirm the testimony you're
21 about to give is the truth, whole truth and nothing but the
22 truth, so help you God?

23 OFFICER WEINER: Yes, ma'am.

24 THE CLERK: Thank you. You may be seated. State
25 your full name for the record.

1 OFFICER WEINER: David Weiner.

2 DAVID WEINER,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. DELOACH:

6 Q. Good afternoon, Detective Weiner. How are you doing?

7 A. All right, sir.

8 Q. Detective Weiner, where do you work?

9 A. The Greenville County Sheriff's Office.

10 Q. And what is your position at the Sheriff's Office?

11 A. I am an investigator currently assigned to the armed
12 robbery unit.

13 Q. Okay. And how many years have you been doing that?

14 A. With armed robbery, about three years now.

15 Q. And what was your position you held prior to that?

16 A. Uniform patrol services, just like that deputy you saw
17 sitting up here earlier.

18 Q. Okay. And how many years did you do that?

19 A. A little more than seven years.

20 Q. Where did you receive your training?

21 A. I received my training down in Charleston at the
22 Police Academy that was held at the Citadel.

23 Q. Okay. Did you receive any other training after that?

24 A. Continuing education, basic detective school, in-
25 service training, numerous classes throughout the years.

1 Q. Okay. Do you recall working on an event that happened
2 at Club Caliente on May 16th of 2009?

3 A. Yes, sir.

4 Q. Okay. And how did you come to get this case?

5 A. Once the report is written by uniform patrol deputies,
6 barring some type of major incident, say, somebody being
7 shot and killed out there, we won't go out. But a normal
8 armed robbery like this will get assigned to an
9 investigator the following morning, business day, Monday
10 through Friday. And so I received this one my next working
11 day in the morning from my supervisor.

12 Q. And what did you do when you received this case?

13 A. The first thing I like to do is make contact with the
14 victims, let them know who I am, what I'm going to try and
15 do for them, see if anything got missed. A lot of times
16 these uniform patrol deputies don't know all the right
17 questions to ask and there are certain ones I need answered
18 that they don't ask. And so I always like to talk to the
19 victims.

20 Q. Okay. And did you, in fact, speak with the victim
21 that took the stand early, Mr. Cortez-Roa?

22 A. I did. But it wasn't until a couple of days after. I
23 had a little bit of difficulty tracking him down. He went
24 to work earlier than I came to work and came home later
25 than I got off. And his cell phone was stolen, so it was

1 difficult for me to get in touch. I ended up finding him
2 at a job site.

3 Q. And when you spoke with him, did you have an
4 interpreter with you?

5 A. I did. My partner at the time, Investigator Jarvis,
6 is fluent in Spanish. I think raised in South America.

7 Q. Okay. Now, how many victims were there in this case?

8 A. Two.

9 Q. Okay. Did you ever meet with the other victim?

10 A. Not a day in my life.

11 Q. Okay. And why is that?

12 A. The address she listed was no good. The phone number
13 was no good. No record of her on paper anywhere in the
14 Sheriff's Office data base. Nothing. I never could find
15 her.

16 Q. Okay. Do you recall her name?

17 A. Emma Rosario.

18 Q. Okay. And where did you receive that name from?

19 A. From the original reporting deputy.

20 Q. Okay. Now, after speaking with Mr. Cortez-Roa, did
21 you develop or come into some information that led you to
22 more information, more evidence?

23 A. As far as an initial suspect?

24 Q. Yes.

25 A. I did. A possible witness had maybe seen a get-away

1 car and thought that they had seen that car at another
2 residence. And that lead me to a gentlemen -- I'll give
3 you his name here -- David Dickerson, who was a white male
4 who lived at this residence.

5 Q. Okay.

6 A. Numerous interviews, spoke with him, never admitted,
7 said he wasn't involved. Then he's the one that I placed
8 in a lineup and brought back to the victim and went through
9 the lineup procedure with him. He didn't pick him out.
10 And beyond that, I actually pointed at just his picture and
11 I said -- you know, once he didn't identify him in the
12 lineup, I said this is the man that I've been talking to.
13 And he says, no, no, that's not one of them.

14 Q. So did Mr. Roa pick anybody out of that lineup?

15 A. He didn't pick anybody out, no.

16 Q. Okay. And was anyone in this courtroom in that
17 lineup?

18 A. No.

19 Q. Was the Defendant in that lineup?

20 A. No. Mr. Dickerson's a white male.

21 Q. So the people in that lineup were all -- fit that
22 description. Is that right?

23 A. Correct, yeah. Same age range, facial
24 characteristics, that kind of thing.

25 Q. Okay. Now, did you ever look at any cell phone

1 records in this case?

2 A. I did.

3 Q. And whose cell phone records were those?

4 A. Mr. Cortez-Roa provided me with his cellular phone
5 number. Based on that, I can send off a court order and
6 receive all the phone calls made. I usually pick about a
7 day before and up to current when the cell phone company
8 will process the court order. And I'll get every incoming
9 and outgoing call made from that phone.

10 Q. And did those phone records lead you to anyone?

11 A. Yes, it did. There was one phone number that was
12 repeatedly called after the robbery occurred and I called
13 the number and that person told me that on the telephone a
14 girl ---

15 Q. Don't say what they said.

16 A. Right. Basically, it led me to another individual who
17 may possess the telephone.

18 Q. Okay. And did you make contact with that person?

19 A. I did.

20 Q. And what was that person's name?

21 A. Her name is Ashley Walker.

22 Q. Okay. Based on your meeting with Ashley Walker, did
23 you go to meet any suspects?

24 A. I did. After I spoke with Ms. Walker and explained to
25 her where the cellular phone -- how it was taken and all

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1 and the circumstances around it, she pointed me towards
2 three suspects that might be involved in this case.

3 Q. Okay. And did you meet with any of those suspects?

4 A. I did. One by the name of Kaitlin Rochester.

5 Q. Okay. Now, did Ms. Rochester give you a statement?

6 A. Ms. Rochester did, yes.

7 Q. Without saying anything that's in the statement, did
8 you offer Ms. Rochester anything for that statement?

9 A. No, sir.

10 Q. Did you offer her any deals?

11 A. No, sir.

12 Q. Promise her that she'd get a certain amount of jail
13 time?

14 A. No, sir.

15 Q. Okay. And she did, in fact, give a full statement.

16 Is that correct?

17 A. Yes, sir.

18 Q. Okay. Based on that statement, did you make any other
19 arrests?

20 A. I did. Based on her statement implicating Mr. Patton
21 and another Co-defendant, Santana Carrington, I obtained
22 warrants for their arrest.

23 Q. Now, when you spoke with Ms. Rochester before giving
24 her the statement, did you offer her *Miranda*?

25 A. I did, yes, sir.

1 Q. Okay. Were there any other officers with you?

2 A. No, sir, not at that time. No.

3 Q. Okay. And how do you -- do you have recall -- do you
4 have *Miranda* memorized?

5 A. I do, yes, sir. I'll be more than happy to say it for
6 you, if you like, just to show you.

7 Q. That's fine. What is *Miranda*?

8 A. *Miranda* is the right that every person in the United
9 States has afforded to them because you have the right to
10 an attorney and that you have the right to remain silent,
11 obviously, and that the State can provide an attorney to
12 you.

13 Q. Okay. Did you -- did she take you up on any of those
14 rights?

15 A. No. She wanted to talk.

16 Q. Did you in any way coerce the statement out of her?

17 A. No, sir.

18 Q. Did you threaten her in any way?

19 A. No, sir.

20 Q. How many questions -- how long did it take for you to
21 get this statement out of her? Did you have to ask her
22 several times or did she volunteer?

23 A. She volunteered it. She never denied the fact that
24 she was involved.

25 Q. Okay.

1 MR. DELOACH: One second. No more questions,
2 Your Honor.

3 THE COURT: Mr. Farnsworth.

4 CROSS-EXAMINATION.

5 BY MR. FARNSWORTH:

6 Q. Good Afternoon. Investigator, you said you didn't
7 promise her anything, didn't threaten her in any way prior
8 to taking her statement, and I'm speaking of Ms. Rochester.

9 A. Correct, yes, sir.

10 Q. Isn't it true that before you even gave her the
11 *Miranda* warnings that you asked her if she wanted to be an
12 accessory or a principal? Didn't you ask her that?

13 A. The way I explain it to everybody I talk to that I'm
14 hoping to get a statement from is that they can either help
15 themselves or hurt themselves. And basically, I can make
16 no promises. She was charged just like everybody else.
17 However, I always tell them that their level of cooperation
18 can assist them when they speak to a Judge, but it has not
19 -- it's everything out of my -- nothing's in my control.

20 Q. Okay. But you don't deny that you told her or asked
21 her does she want to be a principal or an accessory?

22 A. I'm not understanding what you ---

23 Q. In other words, I asked you prior to taking Ms.
24 Rochester's statement ---

25 A. Uh-huh (affirmative).

1 Q. --- I said, isn't it true that you asked her before
2 you *Mirandized* her that you asked her did she want to be an
3 accessory or a principal?

4 A. Like I say, I just explained it to the jury just like
5 I explained it to her. She can either help herself or hurt
6 herself. She's either involved or she's not.

7 Q. Okay. Well, would you answer my question?

8 A. Just like I explained to the jury is how I explained
9 it to her.

10 Q. So you deny that you asked her if she wanted to be a
11 principal or an accessory?

12 A. I don't see how I could ask her that when I charged
13 her as a principal, sir.

14 Q. Okay. Well, let me ask you this.

15 A. Uh-huh (affirmative).

16 Q. Well, have you got your report up there on this case?

17 A. Uh-huh (affirmative). Yeah.

18 Q. Would you look at page four of four, about the second
19 line down, about the middle. Starting with, I briefly
20 spoke with her and asked ... Would you read that, please?

21 A. I briefly spoke with her and asked her if she wanted
22 to be an accessory or principal. She stated she wanted to
23 be an accessory. I think *Mirandized* her verbally and she
24 agreed to talk with me.

25 Q. Okay. So the answer to the question here is, yes, I

1 did ---

2 A. Sure, if it's in writing I ---

3 Q. --- ask her if she wanted to be an accessory or a
4 principal. There's a big difference isn't there, sir?

5 A. Not when I charge her as a principal, no.

6 Q. Okay.

7 A. No promises or threats, sir.

8 Q. All right. I believe this was -- the day you got the
9 statement from her was on May the 29th. Is that correct?

10 A. Yes, sir.

11 Q. Okay. And I believe it was already signed on May
12 29th, '09. Now, let me ask you, did you also give her her
13 *Miranda* Rights on June the 2nd, '09?

14 A. Correct.

15 Q. And did you take a statement from her at that time?

16 A. No. Not that I'm aware of. I think I only took that
17 one statement from her.

18 Q. All right. But you did give her the *Miranda* Rights on
19 6/2?

20 A. Correct, I -- uh-huh (affirmative).

21 Q. But no statement was taken?

22 A. Nothing in writing, no, sir.

23 Q. All right.

24 MR. FARNSWORTH: That's all I have.

25 THE COURT: Anything else?

1 MR. DELOACH: No, sir.

2 THE COURT: Thank you. Step down.

3 MR. DELOACH: Your Honor, at this time the State
4 recalls Jose Alfredo Cortez-Roa to the stand.

5 THE COURT: All right. Come back around, sir.
6 You're still under oath. Come back around and have a seat.

7 TERESA SAMPSON,

8 BEING PREVIOUSLY DULY SWORN INTERPRETED THE FOLLOWING

9 TESTIMONY:

10 JOSE ALFREDO CORTEZ-ROA,

11 HAVING PREVIOUSLY BEEN SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. DELOACH:

14 Q. Good afternoon, Mr. Roa.

15 A. (The interpreter) Good afternoon.

16 Q. Later that evening -- you recall your testimony from
17 earlier today. Is that correct?

18 A. (The interpreter) Yes.

19 Q. Okay. After this incident occurred you testified that
20 you went back into the club. Is that true?

21 A. (The interpreter) Yes, sir.

22 Q. Were you ever placed into handcuffs by an officer?

23 A. (The interpreter) Yes.

24 Q. Okay. Were you ever arrested for that -- after being
25 put in handcuffs, were you ever arrested?

1 A. (The interpreter) They made a mistake. They made a
2 mistake with a person, another person.

3 Q. Okay. So you were placed in handcuffs, but you were
4 never arrested?

5 A. (The interpreter) I have never been in jail. Never,
6 ever.

7 Q. How many years have you lived in this Country?

8 A. (The interpreter) Thirteen or fourteen. I can't
9 remember precisely.

10 Q. Have you ever been arrested for anything since you've
11 been living in the United States?

12 A. (The interpreter) No. Never. But I've had two
13 tickets, though.

14 Q. Okay. For driving?

15 A. (The interpreter) Yes.

16 Q. And have you ever been in any kind of trouble since
17 you've been in the United States?

18 A. (The interpreter) Never.

19 MR. DELOACH: Okay.

20 THE COURT: All right. Mr. Farnsworth, any
21 questions.

22 CROSS-EXAMINATION

23 BY MR. FARNSWORTH:

24 Q. Again, Mr. Cortez, why were you arrested? What charge
25 were you accused of?

1 A. (The interpreter) Some people were fighting in the
2 club and then some of them was -- their necklace was taken
3 from there, from one of the persons. They asked me if I
4 was in the fight and I told the police officer that no, I
5 wasn't, and you can check. But they did find the right
6 person, the person that was in the fight because he was
7 arrested and they took him to jail. And they just -- they
8 told me to come.

9 Q. Okay. All right. And this was at the same club that
10 he had been at earlier when he was robbed?

11 A. (The interpreter) Yes.

12 Q. And how many hours after you were robbed did this take
13 place?

14 A. (The interpreter) Three and a half hours.

15 Q. Three and a half hours later. So that was at -- this
16 happened, the robbery was sometime around three o'clock.
17 So it was about six-thirty in the morning, six, six-thirty?

18 A. (The interpreter) Well, I'm not quite sure of the
19 time. I can't tell you exactly what time, you know, it
20 really happened.

21 Q. Well, he says about three hours. That's accurate, is
22 it not?

23 A. (The interpreter) I'm just -- it's supposition. I'm
24 not quite sure.

25 Q. Well, was it daylight when you were still there when

1 this was happening, when you got put in the police car?

2 A. (The interpreter) It was about, it was about to get
3 light.

4 Q. Okay. And you'd been drinking up until that incident
5 occurred and they put you in the patrol car?

6 A. (The interpreter) No, I didn't drink.

7 Q. You didn't drink any more at all after the robbery?

8 A. (The interpreter) Like I stated earlier, eight
9 months. I made a promise to go without drinking alcohol
10 for eight months so I wasn't drinking that time.

11 Q. All right. I believe he testified he was afraid, he
12 was scared after this robbery, but yet he stayed on out
13 there until daylight, at least three hours?

14 A. (The interpreter) Yes, I was scared, like I told you
15 earlier, because they had taken everything from me, like my
16 wallet, my driver's license was in it and I was still
17 afraid, you know, that they would follow me or something.

18 Q. Well, ask him why he didn't tell the police when they
19 came out there and handcuffed him that he was afraid and he
20 needed to go home? Why didn't he go home?

21 A. (The interpreter) They didn't ask me that.

22 Q. Okay.

23 MR. FARNSWORTH: That's all I have.

24 THE COURT: Thank you. You can step down.

25 MR. DELOACH: Your Honor, again, I'd ask that we

1 excuse him.

2 MR. FARNSWORTH: Without objection.

3 THE COURT: All right.

4 MR. DELOACH: One second, Your Honor.

5 Your Honor, at this time the State calls Ashley Walker
6 to the stand.

7 THE CLERK: Ms. Walker, if you would come forward
8 and place your left hand on the bible and raise your right
9 hand.

10 Do you solemnly swear or affirm to tell the truth,
11 whole truth and nothing but the truth, so help you God?

12 MS. WALKER: Yes, I do.

13 THE CLERK: Thank you. You may be seated. Would
14 you please state your name for the record.

15 MS. WALKER: My name is Ashley Walker.

16 ASHLEY WALKER,

17 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. DELOACH:

20 Q. Good afternoon, Ms. Walker. Ms. Walker, you're not
21 happy about being here, are you?

22 A. No.

23 Q. You don't want to be here today, do you?

24 A. No.

25 Q. Okay. I'm going to make this as briefly as possible

1 as I can for you, okay? Do you recall meeting with myself
2 and this officer here in the parking lot of your work on
3 Friday of last week?

4 A. Yes, sir.

5 Q. Okay. I'm going to ask you a few questions about
6 that, okay? When you met -- did you ever meet with Santana
7 Carrington, Kaitlin Rochester and this Defendant, Cedric
8 Patton, after what they have been accused of, an armed
9 robbery?

10 A. Well, we were all together. That's how I got the
11 phone. And, I mean, we weren't all together at that one
12 time when I got the phone, but we were all there.

13 Q. Okay. And who was all -- did you, in fact, get a
14 phone from someone?

15 A. Yes, sir.

16 Q. Okay. And who did you get a phone from?

17 A. Well, I don't really remember ---

18 Q. You don't remember who gave it to you?

19 A. --- exactly who gave me the phone. But -- I don't
20 remember.

21 Q. Well, who was in the group that gave you the phone?

22 A. Well, it was those three.

23 Q. Who? Just say their names for me if you don't mind?

24 A. Kaitlin, that was ---

25 Q. Santana?

1 A. Yeah.

2 Q. And this Defendant, Cedric Patton?

3 A. Yes. He -- I don't remember him looking like that,
4 though. I don't ...

5 Q. What was the name of the person that was with you --
6 that was with Kaitlin Rochester and Santana Covington?

7 A. Well, you asked -- yeah, Ceddie is how they referred
8 to him.

9 Q. Okay. Was it this man right here?

10 A. I really -- he really do not look -- I mean, I don't
11 understand ---

12 Q. Okay. What was the name of the person that was with
13 them?

14 A. Ceddie.

15 Q. Okay. Do you know Santana Carrington?

16 A. Yes, sir.

17 Q. And do you know Marquita Carrington?

18 A. Yes, sir.

19 Q. Okay. Are they not good friends of yours?

20 A. Marquita is my best friend since ---

21 Q. Okay. And Marquita Carrington is how related to
22 Santana?

23 A. That's her sister.

24 Q. Okay. And did you not tell me and this officer
25 yesterday that Ced sold you the phone?

1 A. I did say that. I was -- I don't know. I was

2 nervous, scared. I had been talking to different people.

3 I don't know.

4 Q. But you said Ced sold you the phone. Is that correct?

5 A. I said he sold me the phone, to you, yes, you're

6 right.

7 Q. Okay. So Ced sold you the phone?

8 A. Yes.

9 Q. And it was -- the group was Ced, Santana Carrington
10 and Kaitlin Rochester. Is that not correct?

11 A.. Yes, sir.

12 Q. Okay. And that's Ced right there, isn't it?

13 A. Yes, sir.

14 Q. That is Ced?

15 A. Yes, sir.

16 Q. You can identify him, can't you?

17 A. I really -- it's been a long time. I don't want to
18 say that that's him and it's not.

19 Q. And I know you don't want to be -- but that is Cedric
20 Patton, is it not?

21 A. Oh, my gosh.

22 Q. Is that not Ced?

23 A. I really don't remember how he looked exactly and I
24 don't want to -- maybe he ---

25 Q. Are you scared to be here today?

1 A. I am. I am. And I would really rather not be up here
2 at all.

3 Q. You're unhappy about testifying?

4 A. Uh-huh (affirmative).

5 Q. You're scared of that man right there?

6 A. No, it's not that. It's just I don't want to -- I
7 really feel like somebody else's life is in my hand, you
8 know, and I just want to get this over with. I just want
9 to be down from here.

10 MR. DELOACH: I have no more questions, Your
11 Honor.

12 THE COURT: All right. Mr. Farnsworth.

13 CROSS-EXAMINATION

14 BY MR. FARNSWORTH:

15 Q. Okay. Ms. Walker, so what you're saying -- basically,
16 a minute ago, you said that the person that you bought the
17 -- that you got the gun from, there were three of them
18 there?

19 A. No, no gun. I didn't get a gun.

20 Q. I'm sorry. The phone. I'm sorry. I'm corrected.
21 Rather the person that you got the phone from, that you
22 bought the phone from, you're saying that you, you know him
23 as Ced, is that correct?

24 A. As Ced. Yeah, they referred to him as Ced.

25 Q. Okay. And you're saying today, though, that he

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1 doesn't look like the person that you bought that phone
2 from?

3 A. It's been so long. I don't know if he grew his hair
4 out. I don't know.

5 Q. Okay.

6 A. But -- and then it was nighttime. It was so much
7 going on and all I knew is that I could get a phone that
8 night. I mean ...

9 Q. All right. So did the person that you got the phone
10 from, did you get a receipt for it for what you paid for
11 it?

12 A. No, sir. No, sir.

13 Q. Did you have any idea the phone may be stolen?

14 A. No, not at all.

15 Q. You didn't know?

16 A. No.

17 Q. Okay. So you're familiar with what those type phones
18 cost?

19 A. Yes, sir.

20 Q. And it was about what you paid for it?

21 A. Well, it was -- yeah, I gave him around about forty-
22 five dollars and I gave them my phone.

23 Q. And it was at night, you say?

24 A. Sir?

25 Q. It was at night? It was dark?

1 A. It was, it was dark, yeah. It wasn't nighttime like
2 nine o'clock at night, but it was getting dark.

3 Q. Okay. All right. And you're not sure if this person
4 sitting right here is the one that you got that gun from
5 that night, are you?

6 A. The phone?

7 Q. Yeah. The phone. I'm sorry.

8 A. No, sir. And like I said, we were all out there and
9 ...

10 Q. That's all you have to say. You're not sure, are you?

11 A. No, sir.

12 Q. Okay.

13 MR. FARNSWORTH: That's all I have.

14 MR. DELOACH: One question on redirect, Your
15 Honor.

16 THE COURT: You may step down.

17 MR. DELOACH: Just one question on redirect.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY MR. DELOACH:

21 Q. Are you positive that the person's name was Ced?

22 A. Ceddie.

23 Q. Ceddie?

24 A. Yes, sir.

25 MR. DELOACH: No more questions.

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Santana Carrington - Direct Examination by Mr. DeLoach

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1 THE COURT: Step down.

2 MR. DELOACH: Your Honor, may this witness be
3 excused?

4 THE COURT: Any objection to excusing this
5 witness?

6 MR. FARNSWORTH: None.

7 MR. DELOACH: Your Honor, at this time, the State
8 calls Santana Carrington to the stand.

9 THE COURT: All right.

10 THE CLERK: Ms. Carrington, if you would come
11 forward. If you would place your left hand on the bible
12 and raise your right hand.

13 Do you solemnly swear or affirm to tell the truth, the
14 whole truth and nothing but the truth, so help you God?

15 MS. CARRINGTON: I do.

16 THE CLERK: Thank you. You may be seated. Would
17 you please state your full name for the record.

18 MS. CARRINGTON: Santana Michelle Dade
19 Carrington.

20 SANTANA CARRINGTON

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. DELOACH:

24 Q. Good afternoon, Ms. Carrington. Ms. Carrington, I'm
25 going to get right to the point in this case. Did you

1 plead guilty earlier today?

2 A. Yes, sir.

3 Q. Okay. And did you speak with me prior to pleading
4 guilty?

5 A. Yes, sir.

6 Q. Okay. And did I promise you anything?

7 A. No, sir.

8 Q. Okay. What did I ask for the one thing for you to do
9 was?

10 A. Tell the truth.

11 Q. And that's all that I asked for?

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. And did I not let you plead to a lesser charge with a
16 promise that if you pled guilty -- or testified truthfully,
17 you would get a certain sentence?

18 A. Yes, sir.

19 Q. Okay. But the one thing I asked -- just tell me what
20 the one thing that I asked was?

21 A. You asked who had the pistol.

22 Q. Okay. But I asked you to tell -- what -- you said it
23 earlier. Did I ask you to lie in any way?

24 A. Oh, no, sir.

25 Q. Did I ask you to tell anybody what I wanted you to

- 1 tell them?
- 2 A. No, sir.
- 3 Q. I asked you for one thing and what was that?
- 4 A. The truth.
- 5 Q. Okay. Now, Ms. Carrington, do you know the Defendant
- 6 Cedric Patton?
- 7 A. Yes, sir.
- 8 Q. And do you know another woman by the name of Kaitlin
- 9 Rochester?
- 10 A. Kind of, yeah. Sort of.
- 11 Q. Okay. And did Cedric Patton ever make a statement to
- 12 you regarding his involvement in an armed robbery at the
- 13 Club Caliente?
- 14 A. Yes, sir.
- 15 Q. And what did he tell you?
- 16 A. That he had robbed them.
- 17 Q. Say that again?
- 18 A. That he had robbed them.
- 19 Q. He said that he robbed them?
- 20 A. Yes, sir.
- 21 Q. Okay. And is Cedric Patton sitting in the courtroom
- 22 today?
- 23 A. Yes, sir.
- 24 Q. Where is he sitting?
- 25 A. Over there, sir.

1 MR. DELOACH: And let the record reflect she's
2 pointing out the Defendant.

3 Q. Now, Ms. Carrington, you were there that night too,
4 weren't you?

5 A. Yes, sir.

6 Q. You were involved in the robbery too, weren't you?

7 A. Yes, sir.

8 Q. Which side of the car did you approach on?

9 A. The passenger side.

10 Q. Okay. And what did you have in your possession?

11 A. A bat.

12 Q. Okay. And what did you do with that bat?

13 A. Nothing at all, just held it in my hand.

14 Q. You didn't jab it at the person in the car?

15 A. No, sir.

16 Q. Okay. Did you ask anything from her?

17 A. No, sir. No, sir.

18 Q. You didn't ask for anything from that person in the
19 vehicle?

20 A. No, sir, Cedric asked -- did all the asking.

21 Q. Okay. And this was at the Club Caliente?

22 A. Yes, sir.

23 Q. Okay. And the two people that were in the car what --
24 were they white people? Black people?

25 A. One was white, sir. And one was black.

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Santana Carrington - Direct Examination by Mr. DeLoach

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- 1 Q. Okay. The people in the car?
- 2 A. Oh, not -- the people that got robbed?
- 3 Q. Yeah.
- 4 A. No. They wasn't neither.
- 5 Q. What were they?
- 6 A. Mexicans.
- 7 Q. Mexicans? Okay. Now, what did you see Cedric Patton
- 8 do?
- 9 A. Point the gun at them and asked them for their money.
- 10 Q. Okay. He pointed it at which person?
- 11 A. The man.
- 12 Q. In the driver's seat?
- 13 A. Yes, sir.
- 14 Q. Okay. And what was Cedric Patton asking for?
- 15 A. Money.
- 16 Q. Okay. Did he in fact get some money that evening?
- 17 A. Yes, sir.
- 18 Q. Okay. Do you know how much it was?
- 19 A. No, sir.
- 20 Q. Was it a lot or a little?
- 21 A. I didn't actually see.
- 22 Q. You didn't actually see?
- 23 A. No.
- 24 Q. Now later you and Cedric and Kaitlin Rochester sold a
- 25 phone to Ashley Walker, didn't you?
- 26 A. Well, I wasn't involved in that particular situation,

- 1 but I do know of a phone that was taken from the robbery.
- 2 Q. Okay. There was a phone taken at the robbery?
- 3 A. Yes, sir.
- 4 Q. And did that phone get sold to Kaitlin Rochester -- I
- 5 mean, get sold to Ashley Walker?
- 6 A. That's what I was told, but I don't know who sold the
- 7 phone to her.
- 8 Q. Do you know what type of gun it was that Cedric had?
- 9 A. No, sir.
- 10 Q. What color was it?
- 11 A. Silver.
- 12 Q. Okay. And did he put it to the male Mexican's head?
- 13 A. Just pointed at him.
- 14 Q. Okay. And did he ever hit the male Mexican with it?
- 15 A. No, I didn't see that.
- 16 Q. Now, were y'all doing any alcohol or drugs that
- 17 evening?
- 18 A. Well, I can only speak for myself. I wasn't.
- 19 Q. Okay. Were you doing any cocaine, any marijuana?
- 20 A. I don't do none of those drugs, sir.
- 21 Q. How about beer? Do you drink any beer?
- 22 A. Yeah, I drink beer.
- 23 Q. Okay. Were you intoxicated at the time this occurred?
- 24 A. No. Not at that time.
- 25 Q. Okay. So you were sober when this occurred?
- 26 A. Yes.

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Santana Carrington - Cross Examination by Mr. Farnsworth

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1 Q. Did you get more intoxicated later?

2 A. No, sir.

3 Q. Okay. Do you recall -- do you know who a Kendra is?

4 Do you remember going to a Kendra's house?

5 A. No, sir.

6 Q. Do you remember getting picked up by Kaitlin and

7 Cedric that evening?

8 A. That evening.

9 Q. Or the night that this happened. Did you get picked
10 up by Kaitlin and Cedric in a car?

11 A. Yes, sir. Yes, sir.

12 Q. Okay. Does Mr. Patton have any nicknames?

13 A. No.

14 Q. No?

15 A. No.

16 Q. What does everybody call him?

17 A. Ced.

18 MR. DELOACH: No more questions, Your Honor.

19 THE COURT: All right. Mr. Farnsworth.

20 CROSS-EXAMINATION

21 BY MR. FARNSWORTH:

22 Q. Now, Ms. Carrington, you were arrested, I believe,
23 sometime in late May or early June of 2009. Is that
24 correct?

25 A. Yes, sir.

1 Q. And so this is July of '10, so that's been about,
2 what, fourteen months you were arrested?

3 A. Yeah.

4 Q. And you were charged with armed robbery?

5 A. Yes, sir.

6 Q. And did your lawyer tell you what penalty that
7 carried?

8 A. Well, sir, being as I had three lawyers since they ---

9 Q. Well, did any of the three or all of the three ---

10 A. No, sir.

11 Q. --- advise you of what armed robbery carried?

12 A. Oh, yeah. What it carried, yes, sir.

13 Q. Okay. And what's that?

14 A. Twenty-five to thirty years.

15 Q. Uh-huh (affirmative). Did they tell you that it
16 carried a minimum mandatory ten years if you were convicted
17 of armed robbery?

18 A. Yes, sir. Well, if I'm correct it was ten to thirty.

19 Q. And up to thirty years.

20 A. Yes, sir.

21 Q. Okay. And so you have come in here this morning and
22 made an agreement with the Solicitor that if you pled to a
23 lesser charge and you testified for the State, that would
24 get you off of the armed robbery, wouldn't it?

25 A. Yes, sir.

26 Q. Okay. Let me ask you, why did you wait fourteen

1 months before you even talked to the Solicitor or law

2 enforcement? Why did you wait that long?

3 A. I spoke with someone in the beginning, but I was just
4 like aggravated so I didn't really cooperate with them, the
5 investigators or nobody. That was just my attitude.

6 Q. Well, you had told your lawyer all along that you
7 weren't guilty, didn't you?

8 A. Yes, sir.

9 Q. Okay. Well, what changed your mind this morning?

10 A. Ain't nothing changed my mind. I wasn't guilty.

11 Q. You're not guilty?

12 A. No, I never robbed no one, so how can I be guilty of
13 anything?

14 Q. Okay. So you pled guilty to common law robbery this
15 morning in this courtroom, but you're not guilty of doing
16 anything?

17 A. What am I guilty of?

18 Q. Ma'am?

19 A. What am I guilty of?

20 Q. I'm not -- you know, I'm not answering your questions.

21 You're up there to answer questions.

22 A. I'm not guilty of ---

23 Q. So you're saying that you're not guilty, but you went
24 ahead and pled guilty to a lesser charge and agreed to tell
25 this story you just told in this case?

26 A. Yes, sir.

1 Q. And what were you told your sentence would be?

2 A. Fifteen years suspended to five years, sir.

3 Q. Any probation?

4 A. No, sir.

5 Q. All right. Now, wouldn't it have been a lot easier

6 just to tell what you did this morning months ago?

7 A. I thought I just discussed that with my lawyer, sir.

8 Q. Okay. All right. Did you and your lawyer approach

9 the Solicitor this morning about this deal or did they

10 approach you?

11 A. I don't know how it went, sir.

12 Q. You don't know how it went?

13 A. Uh-uh (negative).

14 Q. All right. Now, this isn't your first rodeo, is it,

15 this robbery? That's not your first conviction you've ever

16 had, is it?

17 A. Not since DJJ.

18 Q. Okay. Well, how about in 2006 you were convicted of

19 burglary in the second degree?

20 A. Yes, sir. But it didn't involve anything -- nothing

21 similar to this. It was just a confusing situation. I

22 would rather not get into detail.

23 Q. I haven't asked you for details. I'm just asking you,

24 were you convicted of burglary in the second degree?

25 A. Yes, I was convicted.

26 Q. Okay. Now, you've testified a little bit ago, as best

1 I can understand that you, you were not there or were you
2 there when this telephone was sold to Ashley Walker?

3 A. I wasn't.

4 Q. You were not there?

5 A. No.

6 Q. Okay. So you don't know who sold it?

7 A. No. I don't know nothing about that part.

8 Q. Okay. All right. And you didn't tell Kaitlin
9 Rochester that you sold the phone to Ashley Walker? You
10 didn't tell Kaitlin Rochester that?

11 A. No, sir.

12 Q. All right. Are you sure you never told her that?

13 A. I'm sure.

14 Q. Okay. Because you weren't there, were you?

15 A. No.

16 Q. Okay. Now, you admitted on questions from the
17 Solicitor that you did have some kind of bat in your hand
18 when this occurred?

19 A. Yes, sir.

20 Q. And you were there and you did have a baseball bat?

21 A. Yes, sir.

22 Q. Was it wooden or aluminum?

23 A. Wooden.

24 Q. Wooden. Okay. And you went up to the window where
25 that lady was sitting on the passenger's side of the car,
26 didn't you?

1 A. Yeah. And just stood there.

2 Q. Just stood there?

3 A. Yes.

4 Q. Well, how did she get a knot on her forehead -- a knot
5 and a bruise on her forehead if you didn't hit her with
6 that bat?

7 A. I guess her boyfriend beat her up. Did she ever go to
8 the hospital after that?

9 Q. Her boyfriend beat her up?

10 A. I don't know how it got there. You tell me. I don't.

11 Q. Okay. But this lady told the investigating officers
12 there that you hit her with that bat. So she's lying? She
13 made that up that you hit her with a bat?

14 A. Yeah.

15 Q. And she's got a bruise and a knot on her head?

16 A. Yeah.

17 Q. On her forehead?

18 A. Uh-huh (affirmative).

19 Q. Okay.

20 MR. FARNSWORTH: That's all I have for her, Your
21 Honor.

22 THE COURT: Anything else, Solicitor?

23 MR. DELOACH: Nothing, Your Honor.

24 THE COURT: All right. You can step down.

25 MR. DELOACH: Your Honor, at this time, the State
26 calls Kaitlin Rochester to the stand.

1 THE COURT: All right.

2 THE CLERK: Ms. Rochester, if you would come
3 around. Stand over here. Place your left hand on the
4 bible and raise your right to be sworn in.

5 Do you solemnly swear or affirm to tell the truth, the
6 whole truth and nothing but the truth, so help you God?

7 MS. ROCHESTER: I swear.

8 THE CLERK: Thank you. You may be seated. Would
9 you please state your name for the record?

10 MS. ROCHESTER: Kaitlin Rochester.

11 KAITLIN ROCHESTER,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. DELOACH:

15 Q. Good afternoon, Ms. Rochester. How are you doing?

16 A. Oh, I'm all right.

17 Q. Ms. Rochester, you don't want to be here, do you?

18 A. No.

19 Q. Okay. Now, I'm just going to go ahead and say this up
20 front. You spoke with me before, haven't you?

21 A. Uh-huh (affirmative).

22 Q. Okay. And we entered a deal where you would testify.
23 Is that not true?

24 A. Uh-huh (affirmative).

25 Q. And that you would get a YOA sentence. Is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. What was the one thing that I asked that you do
4 in order to get that deal?

5 A. Tell the truth.

6 Q. Okay. Did I tell you what to say?

7 A. No, sir.

8 Q. Did I in any way insinuate what had happened?

9 A. No, sir.

10 Q. I asked for one thing, right? And what was that?

11 A. The truth.

12 Q. Thank you. Kaitlin do you recall what happened on the
13 16th of May of 2009?

14 A. Approximately.

15 Q. Okay. Were you doing any alcohol that day?

16 A. Uh-huh (affirmative).

17 Q. Were you smoking any weed that day?

18 A. Uh-huh (affirmative).

19 Q. Were you doing any cocaine that day?

20 A. Yeah.

21 Q. Okay. Was this the first you'd ever done cocaine?

22 A. Yes.

23 Q. Okay. Throughout the day did you do more and more as
24 the day went on?

25 A. Yes, sir.

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Kaitlin Rochester - Direct Examination by Mr. DeLoach

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1 Q. Okay. Would you say that you were pretty high that
2 day?

3 A. Uh-huh (affirmative).

4 Q. Okay. Now, early in that day did y'all go to
5 someone's house?

6 A. I don't remember. We was, we was just chilling that
7 day.

8 Q. Okay. But whose house were you chilling at? Now, you
9 spoke with me in the jail the other day, is that not true?

10 A. It was Kendra's.

11 Q. Okay. And when you were with Kendra, was this man
12 there?

13 A. Yes, sir.

14 Q. And what's his name?

15 A. Ced.

16 Q. Okay. And did he -- did at any point y'all meet up
17 with a Santana Carrington?

18 A. Yes.

19 Q. Okay. Now, was Santana at the house with you or did
20 y'all pick her up later?

21 A. No, we picked her up later.

22 Q. Now, Ms. Rochester, did y'all decide to go out, out to
23 a club or anything?

24 A. Yeah. We were going to Caliente.

25 Q. Okay. And what is Caliente?

- 1 A. Like a club kind of.
- 2 Q. Okay. And who all went to Club Caliente?
- 3 A. Me, Ced, Santana and Ced's friend.
- 4 Q. And what was Ced's friend's name?
- 5 A. Chub, Chub.
- 6 Q. Had you ever met him before?
- 7 A. Uh-uh (negative).
- 8 Q. Okay. Now, when you got to Club Caliente, did your
- 9 plans change?
- 10 A. Uh-huh (affirmative).
- 11 Q. Okay. What did y'all decide to do?
- 12 A. We just got out of the car and Ced was like, let's get
- 13 'em.
- 14 Q. And this Ced here. Is that correct?
- 15 A. Uh-huh (affirmative).
- 16 Q. He said, Let's get 'em?
- 17 A. (No verbal response.)
- 18 Q. Okay.
- 19 A. He was ---
- 20 Q. Okay. And after that, what happened?
- 21 A. Well, he ran to the driver's side of the door with a
- 22 gun and he told him to give it up.
- 23 Q. Okay. And where did Santana Carrington go?
- 24 A. Well, she was on the passenger side.
- 25 Q. And what did she have in her possession?

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Kaitlin Rochester - Direct Examination by Mr. DeLoach

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- 1 A. A bat.
- 2 Q. Okay. Was it metal or wooden?
- 3 A. Wood.
- 4 Q. Okay. And where were you this whole time?
- 5 A. In the back of the car.
- 6 Q. Now, how tall are you, Ms. Rochester?
- 7 A. Six foot.
- 8 Q. Okay. Did you in fact at some point have a
- 9 scholarship to play basketball at Alabama?
- 10 A. Yes, sir.
- 11 Q. Okay. At this time, did you have -- was your hair
- 12 different than it is now on the 16th of May?
- 13 A. Uh-huh (affirmative).
- 14 Q. What was it?
- 15 A. Braided.
- 16 Q. Okay. Did it look like corn rows, would that be one
- 17 in the same?
- 18 A. Uh-huh (affirmative).
- 19 Q. Okay. Now, did Chub come up to the car at all?
- 20 A. Uh-uh (negative).
- 21 Q. Where was he?
- 22 A. In the car.
- 23 Q. Okay. Now, did you hear Mr. Patton say anything to
- 24 the driver?
- 25 A. I didn't hear him. I just seen him put the gun to his

1 head.

2 Q. Okay. Did you hear him say anything?

3 A. Uh-uh (negative).

4 Q. Okay. Did you see Ms. Carrington do anything with the

5 bat?

6 A. No, she was -- had it in her hand.

7 Q. Okay. Did she say anything?

8 A. I didn't hear her.

9 Q. Okay. Did you hear anyone demand any money or

10 anything like that from these people?

11 A. Ced did.

12 Q. You heard Ced demand money?

13 A. (No verbal response.)

14 Q. Okay. And did he in fact get some money from this

15 person?

16 A. Uh-huh (affirmative).

17 Q. Okay. Was it a lot of money?

18 A. Uh-huh (affirmative).

19 Q. Okay. Did you get any of that money?

20 A. Me and Santana got forty dollars.

21 Q. Okay. And what did y'all use that forty dollars to

22 do?

23 A. I don't remember.

24 Q. You don't remember what you used it for?

25 A. Uh-uh (negative).

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Kaitlin Rochester - Direct Examination by Mr. DeLoach

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1 Q. Okay. Now, this money that he took, was it a lot or a
2 little?

3 A. I thought it was a little, but it was a lot.

4 Q. It was a lot?

5 A. Uh-huh (affirmative).

6 Q. Okay. And this pistol that Mr. -- that Ced had, okay,
7 what did it look like?

8 A. It was a silver revolver.

9 Q. Okay. Did you ever see Mr. Patton strike the male
10 Mexican in the head with the pistol?

11 A. I don't remember. I don't remember.

12 Q. Did you ever see Ms. Carrington poking the bat through
13 the window at the female passenger?

14 A. I just seen -- I didn't see her physically -- I just
15 seen it when ---

16 Q. What's that?

17 A. I just seen her with the bat in her hand. I didn't
18 see her physically do anything with it.

19 Q. Okay. You didn't see her poke it at the female
20 victim?

21 A. Uh-uh (negative).

22 Q. Now you said that you were doing some cocaine that
23 day, some marijuana, and drinking. And you admit that you
24 were fairly high at some points during the day. Is that
25 correct?

1 A. Uh-huh (affirmative).

2 Q. At the time this happened, how high were you?

3 A. It was kind of off and on.

4 Q. Okay. Is there any doubt in your mind, regardless of
5 how many drugs you did that night, that this happened the
6 way you just testified to?

7 A. Can you repeat that question?

8 Q. Are you positive sitting there today that the story
9 you just gave this jury is accurate?

10 A. Yes, sir.

11 Q. Okay. So despite the narcotics that you were on, the
12 marijuana, you know this is what happened?

13 A. Yes, sir.

14 Q. Okay. Now, do you recall -- do you know this man
15 here?

16 A. (No verbal response.)

17 Q. Okay. Do you ever recall giving him a statement?

18 A. Yeah.

19 Q. Okay. Prior to giving him that statement, did he
20 promise you anything?

21 A. He didn't.

22 Q. Did he say that you were going to get anything at all?

23 A. Uh-uh (negative).

24 Q. Had you ever met me, even met me or talked about a
25 deal at all?

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Kaitlin Rochester - Cross Examination by Mr. Farnsworth

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1 A. No, sir.

2 Q. Did he promise you anything at all?

3 A. No, sir.

4 Q. Okay. So the deal we talked about that we had made
5 earlier, you hadn't even met me yet, had you?

6 A. Uh-uh (negative).

7 Q. And that statement that you gave to this man, does it
8 deviate in any way from the testimony you gave here today?

9 A. No, sir.

10 Q. The statement would say the same thing, would it not?

11 A. Yes, sir.

12 MR. DELOACH: No more questions, Your Honor.

13 THE COURT: All right. Mr. Farnsworth.

14 MR. FARNSWORTH: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. FARNSWORTH:

17 Q. Ms. Rochester, I believe this incident you've pled
18 guilty to happened on May the 16th of 2009. Is that
19 correct?

20 A. Yes, sir.

21 Q. And did you go to law enforcement the next morning and
22 tell them you wanted to confess to this thing?

23 A. The next morning?

24 Q. Yes, ma'am. The next morning, May the 17th, did you
25 go and tell them you wanted to confess to this robbery you

1 were just involved in?

2 A. I don't remember what day it was.

3 Q. Well, did you go?

4 A. But I don't think it was the next morning.

5 Q. Did you go a day after the incident occurred to the
6 law enforcement and tell them you wanted to confess?

7 A. No.

8 Q. Did you go the next day?

9 A. No.

10 Q. Did you go the next day?

11 A. No.

12 Q. In fact, you never went to law enforcement to confess
13 to this incident you were involved in, did you?

14 A. When they came to my house, I did.

15 Q. When they came to your house. But you didn't go to
16 them, did you?

17 A. Uh-uh (negative).

18 Q. So that thing must not have been bothering you too
19 much, was it, if you didn't go to them? Was it bothering
20 you?

21 A. Kind of, I mean ---

22 Q. Yeah. But not enough to go tell them that you had
23 done -- that you were involved in an armed robbery the, you
24 know, on the 16th of May?

25 A. Well, I did it.

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- 1 Q. It wasn't bothering you that much?
- 2 A. I did tell them I was.
- 3 Q. You told them after they came out to your house on May
- 4 the 29th ---
- 5 A. Yeah, but I wasn't even there.
- 6 Q. --- about two weeks -- what?
- 7 A. I wasn't even there. I didn't have to go turn myself
- 8 in, but I did.
- 9 Q. You had a conversation with this officer right here.
- 10 This investigator came to your house on May the 29th.
- 11 Isn't that right?
- 12 A. Uh-huh (affirmative).
- 13 Q. And he told you at that time you could either be a
- 14 principal or an accessory, didn't he?
- 15 A. Uh-huh (affirmative).
- 16 Q. All right. And then he took you to the law
- 17 enforcement center?
- 18 A. Yes. But I wasn't at my house when he got there.
- 19 Q. I understand that. But you came back to your house
- 20 and he came back to your house, right?
- 21 A. Uh-huh (affirmative). But I didn't have to.
- 22 Q. You didn't have to go back to your house?
- 23 A. (No verbal response.)
- 24 Q. Okay. But you did ---
- 25 A. Uh-huh (affirmative).

1 Q. --- because your step-father told you the police had
2 been by there looking for you and you needed to talk to
3 them. Isn't that what he told you?

4 A. No, my mama did.

5 Q. Okay. Well, one of them did, didn't they?

6 A. Uh-huh (affirmative).

7 Q. All right. And you had been given a deal where you're
8 going to get a YOA sentence. Is that correct?

9 A. Yes, sir.

10 Q. And do you know what armed robbery carries?

11 A. Yes, sir.

12 Q. What does it carry?

13 A. Fifteen, I think.

14 Q. No, ma'am. That's regular robbery. Armed robbery
15 carries a minimum mandatory of ten years and up to thirty
16 years. And you were aware of that, weren't you?

17 A. I am now.

18 Q. Your lawyer never told you that?

19 A. I mean, I thought it was twenty-five. I mean fifteen.
20 I thought it was fifteen.

21 Q. You pled guilty, I believe, to common law robbery.
22 Isn't that correct?

23 A. I think so.

24 Q. And you're getting a YOA sentence. That's what you've
25 been told you'd get, right?

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1 A. Yes, sir.

2 Q. All right. And the only way you were going to get
3 that, you had to agree to testify in this case today,
4 didn't you?

5 A. Yes, sir.

6 Q. All right. And, Ms. Rochester, I'm going to ask you
7 if the officer had never come to your house that day to
8 talk to you about this case, you probably would have never
9 gone to law enforcement, would you have?

10 A. Maybe.

11 Q. Maybe? Okay. All right. You had a -- I believe you
12 had a shoplifting conviction against you, didn't you?

13 A. Uh-huh (affirmative).

14 Q. Besides the common law robbery that you've got on your
15 record now, too. And that was in 2008, October 2008. Is
16 that correct?

17 A. Uh-huh (affirmative).

18 Q. All right. Do you remember talking with Mr. DeLoach
19 just the last few days about this phone that was stolen?

20 A. Mister who?

21 Q. Mr. Deloach, sitting right here. Perry DeLoach, the
22 Solicitor?

23 A. Oh, yes.

24 Q. Didn't you meet with him?

25 A. Uh-huh (affirmative).

1 Q. And didn't y'all talk about a telephone?

2 A. Uh-huh (affirmative).

3 Q. And didn't you tell him at that time that Santana
4 Carrington told you that she sold that phone to Ashley
5 Walker. Isn't that what you told the Solicitor?

6 A. Yes, but I wasn't there.

7 Q. But you what?

8 A. Yeah. But I wasn't there.

9 Q. Nobody's asked you that. I'm asking you did you tell
10 the Solicitor that Santana Carrington told you that she is
11 the one that sold that phone to Ashley Walker?

12 A. Yeah. That's what I thought had happened.

13 Q. Okay. So you told him that. Now -- so you were -- as
14 a result of drinking alcohol, taking marijuana and cocaine,
15 were you real high at that time, about two-thirty that
16 morning?

17 A. Well, it was off and on.

18 Q. Okay. But do you remember though being high at times
19 though?

20 A. Uh-huh (affirmative).

21 Q. Okay. And I believe you even let somebody else drive
22 your car because of that, didn't you? You didn't want to
23 drive because you -- were you impaired? I mean, it was
24 impairing your function to drive?

25 A. Well, I mean, I could have driven. I just didn't.

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1 Q. I can't hear you, ma'am.

2 A. I could have driven. I just didn't because I get lazy
3 when I'm high.

4 Q. All right. And you were still high when this incident
5 occurred?

6 A. Uh-huh (affirmative).

7 Q. And you said you were standing at the back of the car.
8 And as I understood you, you couldn't hear exactly what,
9 what -- those conversations that were going on.

10 A. Uh-huh (affirmative).

11 Q. You couldn't?

12 A. I mean, I just heard -- I don't know exactly what was
13 said. I don't remember exactly what was said.

14 Q. You don't remember exactly what was said. And you
15 don't really know actually know what was done, do you?

16 A. Yeah. I was standing there watching.

17 Q. Yeah. Well, if you're standing right at the back of
18 the car and you can't hear what's being said, you know,
19 that's -- have you ever had hearing problems?

20 A. Sometimes.

21 Q. Well, that stuff you were taking is what made it where
22 you couldn't understand everything, wasn't it? The drugs
23 and alcohol?

24 A. But I knew what was going -- I could tell what was
25 going on.

1 Q. You could tell what was going on, but you couldn't
2 hear exactly what was being said and you're standing at the
3 back of the car?

4 A. Uh-huh (affirmative).

5 Q. And so these people that are involved in this robbery
6 according to you, you're this far from them. Isn't that
7 about where they'd be, to each front door?

8 A. Maybe to that wall from where you're at.

9 Q. Huh?

10 A. Maybe to the wall from where you're at.

11 Q. The wall where I am. So it must be a pretty long car
12 then, huh? Wasn't it a Honda?

13 A. Yeah.

14 Q. All right. Now ---

15 MR. FARNSWORTH: Just a minute, Your Honor.

16 THE COURT: Yes, sir. Anything else, Solicitor?

17 MR. DELOACH: Just a couple, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. DELOACH:

20 Q. Mr. Farnsworth asked you if you didn't hear what was
21 said. But you did hear what was said. You heard what that
22 man said, didn't you? Because you testified to it earlier.
23 What was he saying?

24 A. He said, give it up.

25 Q. Okay.

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1 MR. DELOACH: No more questions.

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

3 MR. DELOACH: Your Honor, at this time the State
4 would rest.

5 THE COURT: All right. Take the jury out,
6 please.

7 (WHEREUPON, the jury exited the open court at
8 approximately 3:30 p.m.)

9 THE COURT: Mr. Farnsworth.

10 MR. FARNSWORTH: Your Honor, just the usual
11 motion for a directed verdict. Insufficient evidence for
12 the record.

13 THE COURT: All right. Your motion is denied.
14 All right. Will you have some testimony?

15 MR. FARNSWORTH: Yes, Your Honor. If you could
16 give me about, you know, ten minutes or so just to talk to
17 my client and one other possible witness.

18 THE COURT: All right. That's fine.

19 MR. FARNSWORTH: All right.

20 (WHEREUPON, the Court stood at recess for a short
21 break.)

22 THE CLERK: Place your left hand on the bible and
23 raise your right hand.

24 Do you swear or affirm to tell the truth, the whole
25 truth and nothing but the truth, so help you God?

1 MR. PATTON: I do.

2 THE COURT: Mr. Patton, we are at a -- you can be
3 seated, be seated -- at a part in your trial where you need
4 to make a determination as to whether you will or will not
5 take the stand and testify. Do you understand that?

6 MR. PATTON: Yes, sir.

7 THE COURT: Now, I need to tell you that you
8 don't have to testify. You don't have to present any
9 witnesses or any testimony whatsoever. And the reason for
10 that is, that's your constitutional right.

11 MR. PATTON: Yes, sir.

12 THE COURT: The burden is always on the State to
13 prove you guilty beyond a reasonable doubt. Do you
14 understand that?

15 MR. PATTON: Yes, sir.

16 THE COURT: Now, with that understanding you have
17 a perfect right to take the stand and tell the jury your
18 side of the story, okay?

19 MR. PATTON: Yes, sir.

20 THE COURT: You know that?

21 MR. PATTON: Yes, sir.

22 THE COURT: If you make that decision, then you
23 become like any other witness in the case subject to cross-
24 examination by the Solicitor, okay?

25 MR. PATTON: Yes, sir.

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1 THE COURT: I don't know whether or not you have
2 any prior criminal record for which you could be impeached,
3 but if you do, then the Solicitor can impeach you on that.

4 MR. PATTON: Okay.

5 THE COURT: Okay? Now, have you talked with your
6 lawyer and decided whether you will or will not testify?

7 MR. PATTON: Yes, sir.

8 THE COURT: And what is your decision?

9 MR. PATTON: No, sir.

10 THE COURT: You're not going to testify?

11 MR. PATTON: No, sir.

12 THE COURT: Mr. Farnsworth tells me that you will
13 have one or two witnesses. But you yourself have made the
14 decision not to testify. Is that right?

15 MR. PATTON: (No verbal response.)

16 THE COURT: Now, this is a decision that you
17 yourself have made?

18 MR. PATTON: Yes, sir.

19 THE COURT: Mr. Farnsworth has not put any
20 pressure on you to tell you not to take the stand and
21 testify?

22 MR. PATTON: No, sir.

23 THE COURT: So this is your decision?

24 MR. PATTON: Yes, sir.

25 THE COURT: Are you under the influence of any

1 alcohol, drug or any other substance right at this moment?

2 MR. PATTON: No, sir.

3 THE COURT: You're sober?

4 MR. PATTON: Yes, sir.

5 THE COURT: You know what you're doing?

6 MR. PATTON: Yes, sir.

7 THE COURT: And you yourself have made the
8 decision not to testify. Is that correct?

9 MR. PATTON: Yes, sir.

10 THE COURT: Okay. All right. Bring in the jury
11 please?

12 (WHEREUPON, the jury entered the open court at
13 approximately 3:50 p.m.)

14 THE COURT: Mr. Farnsworth.

15 MR. FARNSWORTH: Thank you, Your Honor. At this
16 time we would call A.J. Smith, Jr., Andre Smith.

17 THE COURT: Mr. Smith, if you would come forward.
18 Place your left hand on the bible and raise your right to
19 be sworn in.

20 Do you swear or affirm to tell the truth, the whole
21 truth and nothing but the truth, so help you God?

22 MR. SMITH: Yes, ma'am.

23 THE CLERK: Thank you. You may be seated. Would
24 you please state your name for the record?

25 MR. SMITH: Andre Smith, Jr. A.J.

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1 A. J. SMITH, JR.,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. FARNSWORTH:

5 Q. Okay. Mr. Smith, is A.J. a nickname? Is that what
6 you go by mostly?

7 A. Yes, sir.

8 Q. And you're a junior?

9 A. Yes, sir.

10 Q. Okay. Your father has the same name?

11 A. Yes, sir.

12 Q. All right. Now, I'll ask you how old you are?

13 A. Twenty-one.

14 Q. Okay. And where do you live?

15 A. I live in Berea Forest.

16 Q. Okay. What's the name of the street?

17 A. [REDACTED].

18 Q. Okay. All right. And how long have y'all lived
19 there?

20 A. Like ten years.

21 Q. Okay. And did you go to school here in Greenville?

22 A. Yes, sir.

23 Q. Where did you go?

24 A. Berea High.

25 Q. Okay. And you graduated?

- 1 A. Yes, sir.
- 2 Q. All right. And have you had any college work since
3 then?
- 4 A. Yes, sir.
- 5 Q. Well, tell the jury where you've been and how long
6 you've been?
- 7 A. I've been in Shaw University in Raleigh, North
8 Carolina. It was my first year.
- 9 Q. All right. And are you going to be going back there?
- 10 A. Yes, sir.
- 11 Q. You told me you owed some money, that you had to pay
12 back some money before you could start back?
- 13 A. Yes, sir. Yes, sir.
- 14 Q. Okay. Hopefully, in the fall or what?
- 15 A. Spring.
- 16 Q. Spring. Okay. All right. And where are you employed
17 at?
- 18 A. I work at Bojangles, Laurens Road.
- 19 Q. Okay. How long have you been there?
- 20 A. Just started like four weeks ago.
- 21 Q. All right. Okay. Mr. Smith, I'm going to call your
22 attention back to the night of May 15th, '09 into the
23 morning hours of May 16th, '09.
- 24 A. Yes, sir.
- 25 Q. You understand what dates I'm talking about?

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1 A. Yes, sir.

2 Q. Okay. And I would ask you if -- first of all, let me
3 ask you where is your -- do you know Cedric Patton?

4 A. Yes, sir.

5 Q. And tell the jury how you know him?

6 A. Cedric is my cousin.

7 Q. Okay. And so do y'all, do y'all run around together?

8 A. Yes, sir.

9 Q. You do? All right. And so y'all are about the same
10 age. He's a year or two older?

11 A. Yes, sir.

12 Q. Okay. And I want to ask you if you had an occasion of
13 seeing him on the night of May the 15th, '09 before twelve
14 o'clock midnight?

15 A. Yes, sir.

16 Q. And how did you come about seeing him?

17 A. We had talked about going to get a job, going to look
18 for some jobs the next day, to pick up paint and help paint
19 my grandma house.

20 Q. Okay. When was that? Where was your grandma's house?

21 A. By -- I don't even know the name of the road. By
22 Nickletown.

23 Q. All right. This is something y'all had planned to do
24 prior to this?

25 A. Yes, sir.

1 Q. You'd talked about it earlier?

2 A. Yes, sir.

3 Q. Okay. When did y'all set this up that you were going
4 to do this?

5 A. May 15th.

6 Q. I know, but when? A day or two before you decided to
7 do this?

8 A. It was the day before.

9 Q. Okay. All right. Now, what time did you first see
10 Cedric Patton on the night of the 15th of May?

11 A. Around about twelve o'clock.

12 Q. And how did you happen to see him?

13 A. He had asked me to come pick him up so I won't have to
14 come pick him up the next morning.

15 Q. Okay. And you did pick him up?

16 A. Yes, sir.

17 Q. And what did you two do after you picked him up?

18 A. We went back to my house and watched TV and got on the
19 computer.

20 Q. Okay. And do you know how long all of that went on?

21 A. Until like, probably like, I guess, two o'clock until
22 we went to bed.

23 Q. Okay. So you went to bed about two o'clock?

24 A. Yes, sir.

25 Q. And where did you sleep?

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- 1 A. I slept in my room.
- 2 Q. Okay. Where did you see Mr. Patton sleep?
- 3 A. In the living room.
- 4 Q. Okay. And whereabouts in the living room?
- 5 A. On the floor.
- 6 Q. Okay. Is that unusual for him to sleep on the floor?
- 7 A. No, sir.
- 8 Q. How many bedrooms do y'all there?
- 9 A. We have three.
- 10 Q. Okay. And those are somebody -- belong to I think you
- 11 and you mother and father and ---
- 12 A. Yes, sir.
- 13 Q. Okay. And so you went to -- so y'all went to bed
- 14 about two o'clock. You saw him asleep on the living room
- 15 floor?
- 16 A. Yes, sir.
- 17 Q. And when did you next see him?
- 18 A. The next morning.
- 19 Q. About what time?
- 20 A. About five-thirty.
- 21 Q. Okay. All right. Answer any questions the Solicitor
- 22 might have.

23 CROSS-EXAMINATION

24 BY MR. DELOACH:

- 25 Q. Good afternoon, Mr. Smith. How are you doing?

1 A. I'm all right.

2 Q. Mr. Smith, you said that it was on the 15th of May of
3 last year that you were with Mr. Patton. Is that correct?

4 A. Yes, sir.

5 Q. In the early morning hours of the 16th?

6 A. Yes, sir.

7 Q. Okay. Well, what did you do on the 14th?

8 A. On the 14th?

9 Q. Yeah?

10 A. I really was -- I wasn't doing nothing.

11 Q. Well, what was nothing? You had to be doing
12 something. What were you doing on May 14th?

13 A. Just hanging around my house, really, trying to get
14 stuff ready for college.

15 Q. Okay. Did you have any plans? Did you watch any TV?
16 Was he with you on that day?

17 A. I didn't see him that following day. I talked to him,
18 but ---

19 Q. Okay. Did you leave the house on the 14th?

20 A. Yes, sir.

21 Q. Okay. Where did you go on the 14th?

22 A. I went to my grandmother house.

23 Q. On the 14th of May?

24 A. Yes, sir.

25 Q. This was the day before ---

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- 1 A. Yes, sir.
- 2 Q. Okay. How about on the 13th?
- 3 A. I can't recall that.
- 4 Q. Okay. Do you know what you did on the 13th?
- 5 A. No, not really.
- 6 Q. Okay. How about on the 16th during the day?
- 7 A. Looked for jobs and paint my grandmother houses.
- 8 Q. You painted a house on the 16th?
- 9 A. Yes, sir.
- 10 Q. Okay. What color did you paint it?
- 11 A. I don't remember the color.
- 12 Q. What did you and Cedric watch on TV that night?
- 13 A. It was movies.
- 14 Q. What movie?
- 15 A. I can't recall. It was on HBO.
- 16 Q. Okay. You can't recall what movie it was?
- 17 A. No, sir.
- 18 Q. On the 14th you said that you left the house, you were
- 19 getting ready for college. What kind of things were you
- 20 doing to get ready for college?
- 21 A. Going to talk to my mentor to help me get my paperwork
- 22 right.
- 23 Q. Okay. Did you pack anything?
- 24 A. It's my transcripts and stuff.
- 25 Q. Okay. Did Cedric come to your house or did you go

1 pick him up on the 15th?

2 A. I went to pick him up.

3 Q. Okay. And where did you pick him up at?

4 A. Chris Wood.

5 Q. Okay. What apartment?

6 A. I don't know the number. I know it's the first court.

7 Q. Okay. What was he wearing?

8 A. I can't recall.

9 Q. Okay. Was he wearing jeans? Was he wearing a shirt?

10 A. I can't recall. I think it was a white shirt. He

11 usually would wear white T's.

12 Q. Okay. What did his hair look like?

13 A. It was like short, like mine.

14 Q. It was shorter back then?

15 A. Okay.

16 Q. All right. When y'all got up at five forty-five the

17 next morning, what did y'all do?

18 A. We was getting ready to go look for some jobs.

19 Q. Okay. Well, what did y'all do? What did you do to

20 get ready?

21 A. Woke up, first. Talked to my father. We sit. And

22 got up and went to go look for our job.

23 Q. At five forty-five in the morning?

24 A. Yes, sir.

25 Q. Okay. Where did you go look for jobs at five forty-

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- 1 five in the morning?
- 2 A. Like at McDonald's and stuff and like temp services,
3 unemployment.
- 4 Q. At five forty-five morning? These temp services were
5 open at five forty-five in the morning?
- 6 A. No. We went to restaurants, like people that was
7 already open, that open for breakfast.
- 8 Q. Okay. So you were at McDonald's at like five forty-
9 five in the morning?
- 10 A. Yeah.
- 11 Q. Okay. What other restaurants?
- 12 A. Just other restaurants, period.
- 13 Q. Well, name a couple?
- 14 A. Just fast food places.
- 15 Q. Well, you recall all of this stuff, so just name a few
16 of the restaurants that y'all went and applied at?
- 17 A. Just like McDonald's and stuff.
- 18 Q. Just the McDonald's? Is that the only place you
19 applied?
- 20 A. No. Like other places, but that's it.
- 21 Q. What temp service did you go apply at?
- 22 A. I don't remember the names of them.
- 23 Q. Okay. Where were they located?
- 24 A. I know some on Laurens Road and Pelham Road.
- 25 Q. They were open around five forty-five in the morning?

1 A. Well, yes, sir.

2 Q. The temp service ---

3 A. Yes, sir.

4 Q. --- is open at five forty-five in the morning? Did
5 you get any of these jobs?

6 A. No, sir.

7 Q. Didn't get any of them?

8 A. No, sir.

9 Q. What time did you and Cedric go to bed that night?

10 A. About two o'clock.

11 Q. About two in the morning?

12 A. (No verbal response.)

13 Q. Okay. And you got up at five forty-five, so you got
14 about three hours of sleep?

15 A. No, you're talking about the following, May 15th
16 night.

17 Q. Correct.

18 A. Yeah.

19 Q. So you said you got up at five forty-five in the
20 morning, right, to go look for jobs, applied for places
21 that are open for breakfast. So you're saying you went to
22 bed at two and got up at five forty-five. Is that right?

23 A. Yeah.

24 Q. And you applied at temp services around five forty-
25 five in the morning too, right?

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- 1 A. Yes, sir.
- 2 Q. Okay. But you didn't get any of these jobs?
- 3 A. No, sir.
- 4 Q. How about Cedric, did he get any?
- 5 A. No, sir.
- 6 Q. He didn't get any of them either?
- 7 A. No, sir.
- 8 Q. About how many places do you think you visited?
- 9 A. A lot. I can't recall. But I know it was a lot.
- 10 Q. The only thing you can recall is the McDonald's and
- 11 temp services that you can't recall the names of them?
- 12 A. Yes, sir.
- 13 Q. Okay. Mr. Smith, Cedric Patton didn't come home that
- 14 night, did he?
- 15 A. Yes, sir, he did?
- 16 Q. He wasn't there that night?
- 17 A. He was home.
- 18 Q. He wasn't over at your house. You weren't with him
- 19 that night. He was somewhere else, wasn't he?
- 20 A. No, sir.
- 21 Q. He was not at your house at midnight that night?
- 22 A. Yes, sir, he was.
- 23 Q. From midnight to two when you went to bed, he was with
- 24 you on the 15th as you just testified to?
- 25 A. The day that everything that was supposed to happen,

- 1 yes, sir, he was.
- 2 Q. And the night after it happened?
- 3 A. He was there.
- 4 Q. The night before it happened, though, he wasn't with
- 5 you, right?
- 6 A. Not on May 15th.
- 7 Q. Okay. The night that it was supposed to happen, he
- 8 wasn't with you, was he? The night all this was supposed
- 9 to happen, he was not with you, was he?
- 10 A. He was with me.
- 11 Q. He was there from midnight to two and then y'all got
- 12 up at five forty-five to go look for these jobs?
- 13 A. Yes, sir.
- 14 Q. That's your testimony to this jury?
- 15 A. Yes, sir.
- 16 Q. Mr. Smith, you said that he was -- Mr. Patton was your
- 17 cousin, right?
- 18 A. Yes, sir.
- 19 Q. A good friend of yours, y'all pal around. Is that
- 20 right?
- 21 A. Yeah. On occasionally, yes, sir.
- 22 Q. It's safe to say you'd testify to help him out,
- 23 wouldn't you?
- 24 A. No, sir.
- 25 Q. You'd come in here and testify untruthfully so you

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1 could get him out of trouble, wouldn't you?

2 A. No, sir.

3 MR. DELOACH: No more questions, Your Honor.

4 THE COURT: Anything else?

5 MR. FARNSWORTH: No questions.

6 THE COURT: Thank you. Step down. All right.

7 Anything else, Mr. Farnsworth?

8 MR. FARNSWORTH: No, Your Honor. The Defense

9 rest.

10 THE COURT: Anything in reply?

11 MR. DELOACH: Nothing in reply, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, the
13 testimony in this case is complete. And what we have
14 remaining is the final arguments by the attorneys and then
15 my charge on the law. And we'll do that tomorrow morning.

16 In the trial of a criminal case a Defendant does not
17 have to take the stand and testify or present evidence.
18 That's because it's a Defendant's Constitutional right not
19 to do that. And that's because the burden is always on the
20 State to prove a Defendant guilty beyond a reasonable
21 doubt. The Defendant in this case has exercised his
22 Constitutional right not to testify in this case. And I'll
23 explain that right more fully to you tomorrow when I charge
24 you the law.

25 So as I say, the testimony is complete. We'll have

1 the arguments and charge in the morning at nine o'clock.

2 Now, when you leave please remember the admonitions I
3 read to you from the Chief Justice's Order. Please keep
4 your badges on and have your those badges on when you come
5 back in the morning so that everyone will know that you are
6 the jurors in this case and they should not discuss it in
7 your presence. So then I'll ask that you be back promptly
8 in there at nine o'clock tomorrow morning in your jury
9 room. Thank you.

10 (WHEREUPON, the jury exited the open court at
11 approximately 4:05 p.m.)

12 THE COURT: All right. I'll see you back at nine
13 o'clock in the morning.

14 MR. DELOACH: Thank you, Your Honor.

15 MR. FARNSWORTH: Thank you, Your Honor.

16 (WHEREUPON, the court stood at recess for the day.)

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18 (WHEREUPON, court convened with all parties present
19 and the following proceedings were had.)

20 THE COURT: Unless the juror is here shortly,
21 then I'm going to go ahead and pull up the alternate and
22 get started.

23 Solicitor, are you going to waive opening?

24 MR. DELOACH: Yes, sir.

25 THE COURT: Now, do I understand your defense is

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1 alibi?

2 MR. FARNSWORTH: Yes, Your Honor.

3 THE COURT: Okay.

4 (WHEREUPON, the jury entered the open court at
5 approximately 9:03 a.m.)

6 THE COURT: All right. Mr. Farnsworth, you may
7 proceed.

8 MR. FARNSWORTH: Thank you, Your Honor. May it
9 please the Court. Mr. DeLoach.

10 CLOSING STATEMENT

11 BY MR. FARNSWORTH:

12 Madam forelady, ladies and gentlemen, we have as you
13 know completed the testimony in the case yesterday
14 afternoon and we're now doing what we call our final
15 summation, our final arguments by the lawyers. What we say
16 to you is not evidence in the case. It's just our -- we're
17 summarizing the facts as we think them to be. Of course,
18 that's your providence as you were told yesterday. And
19 then when we sit down, Judge Pyle will charge you the law
20 that applies to this case as in all criminal cases. Again,
21 we thank you for your service.

22 Now, I think on May of -- I believe it was May the
23 19th of 2009, Mr. Cortez and Ms. Rosario were robbed while
24 they were sitting in a car at the Caliente Club on Cedar
25 Lane Road. And it was about two forty-five, three o'clock,

1 somewhere like that in the morning when it happened.
2 Officer Cassell, the first officer that testified yesterday
3 told you that he was dispatched to the scene and arrived
4 maybe around three o'clock. And while he was there, his
5 job was to get the preliminary investigation going and
6 everything that he could, find out if there were any
7 witnesses, this type of thing. Get statements and
8 descriptions and then it would be turned over to an
9 investigator after that. Of course, that was Investigator
10 Weiner.

11 Now, at the scene, if you'll remember, Officer Cassell
12 testified that he did talk to the two victims. He talked
13 to the security guard, which we didn't hear from yesterday.
14 But he talked to him too. And he also talked to two
15 suspects that were being held there by the security guard
16 because one or both of the victims had said that one of
17 those suspects may have been a possible suspect in the case
18 against them. That was never materialized. We've heard no
19 more about them after that. And then the description I
20 think was give and if you remember, I asked Mr. Cassell
21 what was the description of the person with the silver
22 revolver. And if you remember, he said that it was a black
23 male in his mid-twenties with thin build and short. And
24 this other person had a baseball bat. The investigation
25 revealed that the person with the baseball bat went to the

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1 right passenger side of the car and struck the victim there
2 with the bat, causing a knot and a bruise on her forehead.
3 And that he person with the revolver, silver revolver, went
4 to the driver's side and put the gun against the head or
5 neck of the victim, Mr. Cortez, and took his money, his
6 wallet and his phone.

7 Now, the -- Mr. Cortez also told the officer that
8 approximately eight hundred dollars in cash was taken. All
9 of this information is documented, as you know, and he put
10 it in his report, which we referred to during the time we
11 were examining him on cross-examination.

12 Now, after this, after May 29th, I think as you
13 remember several days go by and we don't hear anything
14 about the case until Officer Weiner somehow through the
15 victim gets the telephone number of the cell phone that was
16 stolen. And if you'll remember, he also ordered the phone
17 records for that number and that led him to Ashley Walker,
18 which subsequently led him to Ms. Rochester, the lady that
19 testified up here yesterday, one of the Defendants in the
20 case. The officer then goes to Ms. Rochester's house,
21 confronts her with this robbery and she ends up confessing
22 to the robbery and implicating Mr. Patton and this Ms.
23 Carrington, Santana Carrington.

24 Now, Ms. Rochester is offered a deal in this case,
25 which if she would plead guilty to a lesser charge, which

1 she's already done, and that charge is strong arm or common
2 law robbery. That's robbery without a weapon, which
3 carries only zero to fifteen years, whereas the one that
4 she was charged with, armed robbery, carries a minimum
5 mandatory ten years and up to thirty years. But she was
6 promised that she would receive a youthful offender
7 sentence pleading guilty to that lesser charge. And as
8 part of the deal, she was to testify, and you saw her
9 yesterday, that Mr. Patton, my client, was the one who had
10 the silver gun and robbed Mr. Cortez. Not a bad deal.

11 Now, after this happens nothing really goes on in the
12 case and here's fourteen months later. It happened in May.
13 This is July of 2010, so we did the trial yesterday and you
14 got to hear from all of these witnesses. And as I said,
15 the description Officer Cassell gave was that the person
16 was a black male, thin build, short, in his mid to late
17 twenties. And that was the consensus of the description
18 that was given as to the person with the silver revolver.

19 Now, I ask you to take a look over there at my client.
20 You saw him stand up yesterday when the Judge asked him to
21 stand up and introduce himself to you ladies and gentlemen.
22 Does he look anywhere near what that description was, thin
23 build and short? I submit he doesn't.

24 You also, after hearing from the Officer Cassell, Mr.
25 Cortez testified and he said that he wasn't sure that Mr.

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1 Patton was the person who put the gun to his neck and
2 robbed him. There's no question about. He was not sure.
3 He said further that it was dark out, it was three o'clock
4 in the morning, he was sitting in the car. The window was
5 either down -- which I still -- we didn't -- that didn't
6 come out. Either the window was down or the door was open
7 to be able to put the gun to his neck. And if you remember
8 the alleged robber is standing right here. He's seated
9 here. And he said when he put the gun to him, that he
10 turned to the right automatically and that prevented him
11 from seeing very well. And I think his very words were,
12 that he was very, very -- I couldn't see very, very well.
13 I think is exactly what he said when asked about was he
14 able to see the face of Mr. Cortez.

15 And I'm not questioning that the man was robbed.
16 There's no question he was robbed. But Mr. Cortez comes in
17 here yesterday and what makes me leery of his testimony is
18 he told the Officer that night that he had eight hundred
19 dollars cash on him and that's what was taken and a phone
20 and a wallet. And he comes in here yesterday under oath
21 and says that it was between twenty-five and twenty-six
22 hundred dollars cash. Now, that's, you know, that's three
23 times what he said he had to start with. And don't you
24 think he would be more accurate the night, a few minutes
25 after it happened than he would be fourteen months later?

1 So I'm just, I'm leery about some of his testimony just for
2 that very reason.

3 Now, Santana Carrington. Santana Carrington also was
4 allowed to plead guilty to a lesser charge. Her deal was
5 that she would plead to common law robbery and she would
6 escape an armed robbery mandatory sentence in return for
7 her testifying that Mr. Patton was the one that robbed Mr.
8 Cortez. And Ms. Carrington pled guilty yesterday. You
9 remember I asked her, didn't you plead guilty this morning?
10 And that was prior to this trial. And she said, yes. And
11 she waited fourteen months before she came forward on this
12 case. Fourteen months she withheld this information she
13 had, not only about herself, but about another person that
14 was involved she says, for fourteen months. And Ms.
15 Carrington with her testimony was -- this is not only some
16 big, but something little, she just lied throughout her
17 testimony. You know, she says that she didn't hit the lady
18 with the bat, yet she pled guilty to it. The lady had a
19 knot -- the officer said the lady had a knot on her head
20 and a bruise on her forehead, but she didn't hit her. She
21 said that she wasn't near -- near or was not there when
22 that telephone was sold to Ms. Walker, Ashley Walker. And
23 other witnesses says she was there.

24 In fact, Ms. Rochester testified that Ms. Carrington
25 told her that she was the one that sold the phone to Ashley

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1 Walker, if you remember that. And then she says, yeah, I
2 pled guilty this morning, but I wasn't guilty. Well, you
3 know, which is it? Which is the -- which testimony do we
4 believe and which do we don't? I mean, she's got a pretty
5 large incentive to say that my client was there and did the
6 robbery. That got her to where she got this deal on a
7 lesser charge. I mean, you know, we're not that naive to
8 -- not to know that.

9 Now, Ms. Rochester, she apparently had a big problem
10 with drugs. She testified she was using cocaine, marijuana
11 and alcohol the night -- the day and night this incident
12 occurred. And, in fact, it had affected her to the extent
13 that she said she had to let somebody else drive the car
14 that night, if you'll remember. I believe she said his
15 name was Chub or Chubby or some name like that. She, like
16 Ms. Carrington, is an admitted criminal. I mean, Ms.
17 Carrington admitted that she had been found guilty of
18 burglary in the second degree, which is a very serious
19 crime. Ms. Rochester admitted that she had been convicted
20 of shoplifting, which is a crime involving moral turpitude
21 or truth telling.

22 I submit to you that the -- to believe everything that
23 Ms. Rochester says is down right scary. I mean, this lady
24 was under the influence of drugs. And yesterday, I don't
25 know if she's always like she was yesterday even when she's

1 not on drugs, but she's not all there. I mean, she's --
2 maybe it has something to do with her drug habit that's
3 caused this. But she didn't act like she was in the same
4 room we were. But I just think it goes to her credibility.
5 She too has a lot of incentive to testify that my client is
6 the one that robbed this man when this man's not even sure
7 he's the one that did it.

8 Ashley Walker, she testified. You could almost hear in
9 her words yesterday and see in her expressions that she
10 wasn't sure of whether she bought this phone from my client.
11 And I think I asked her and I think you'll remember -- of
12 course, you remember it your way. And finally I just said,
13 are you saying the person sitting beside me right here, Mr.
14 Patton, is the one that sold you that phone? And she just
15 wasn't sure. She never would, never would say to me.
16 Initially, I think she did say that. But she was very
17 reluctant to make any kind of identification of the person
18 that she said she got the phone from. Now, she did say
19 other people were there. And that there's no question Ms.
20 Carrington was there, even though she says she wasn't.

21 That's basically the State's witnesses. I mean, I'm
22 not -- the officers just told what they knew, what they
23 found and they didn't give you any opinion or they weren't
24 there when it happened so they don't, they don't know who's
25 telling the truth. But this testimony is just filled with

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1 lies. It's influenced by -- some of it's influenced by
2 alcohol and drugs. Some of it's influenced by the deals
3 that the two of them were given. And some of them are self-
4 serving. I mean, without question.

5 Now, Mr. Patton did not testify in this case. He's not
6 required to testify and the Judge will charge you the law
7 that applies in this situation and he will tell you
8 something to the effect that you cannot hold that against
9 him in any manner whatsoever. You can't even discuss it
10 between you during your deliberations. It is not a factor
11 in this case. He's got a Constitutional right to testify or
12 not testify, which each of us would have if we were charged
13 with a crime.

14 But we did present a witness and he's an alibi witness.
15 And he can't help that he's related. His name, as you know,
16 is A.J. Smith and he's related, he's a cousin to Mr. Patton.
17 And he testified -- and by the way, he's not a convicted
18 criminal. He's been to college. He's doing something with
19 his life. He's not out here robbing. But he's not a
20 convicted criminal, no testimony about him using any drugs
21 the night that he says Mr. Patton spent the night with him.
22 Mr. Smith, as you remember, said that they had planned to, a
23 few days before, to go that next day and look for jobs and
24 see about painting or painting his grandmother's house. He
25 went and picked him up about twelve o'clock that night.

1 They went back to his house on -- I believe it was in Berea
2 somewhere. And they fooled around, maybe watched some TV or
3 something and went to bed about two o'clock. Got up the
4 next morning at five-thirty and started moving on these jobs
5 that they were talking about.

6 And I think Mr. Smith remembers this date because he
7 knows that Mr. Patton was later charged with a robbery on
8 the night that he was over at his house. And that's why he
9 came forward and testified to that. Now, the solicitor
10 asked him what he did or didn't do the day before or the day
11 before that, prior to this night that he remembered. Why
12 couldn't he remember those? Well, I just don't know that we
13 remember small things. We tend to remember important
14 things. For instance, I can't tell you what I wore last
15 Tuesday or what I had for lunch or supper for that matter,
16 and I don't know if you ladies and gentlemen can do that.
17 But you -- I bet you could remember where you were on your
18 birthday, your anniversary, when 9/11 happened, you can
19 remember then where you were probably, what you did. But
20 you certainly couldn't probably remember what you did a day
21 or two before that. And that's human nature. You remember
22 the important things. That doesn't mean that he's lying
23 because he can't remember what he did two days or one day
24 before May the 19th.

25 Now, I'm going to close and ask you -- and I know that

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1 you've been -- I've watched you, ladies and gentlemen.
2 You've been very attentive. You've listened to the
3 testimony. No doubt in my mind that you'll go back in your
4 jury room and render a verdict that you believe to be the
5 truth in this case. And that's all anybody can ask you to
6 do. But I'm just -- and the Judge is going to charge you
7 about reasonable doubt and that the State must prove the
8 guilt of the accused in every criminal case beyond a
9 reasonable doubt. They must prove each and every element of
10 the offense and that the person was there and present when
11 the offense was committed, beyond a reasonable doubt. So if
12 you have any reasonable doubt you're to resolve that in
13 favor of the accused, Mr. Patton.

14 I think that this case is filled, for the reasons I've
15 stated that I've been talking to you about, with reasonable
16 doubt. And the evidence or lack of evidence in this case is
17 not consistent with a guilty verdict. It is only consistent
18 with a verdict of not guilty. And I ask you to listen to
19 the charge, listen to Mr. DeLoach and go back in the jury
20 room and render a verdict that speaks the truth. Thank you.

21 MR. DELOACH: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. DELOACH: Mr. Farnsworth.

24 CLOSING STATEMENT

25 BY MR. DELOACH:

1 Ladies and gentlemen, I want to say one thing before I
2 begin starting the closing that I had planned today. Fear
3 is not the same as observing. And I want y'all to think
4 about that through my entire closing. And we'll talk about
5 it more at the end of my closing. But fear, ladies and
6 gentlemen, fear of that man right there, don't mistake that
7 for uncertainty.

8 Ladies and gentlemen, you've heard all the evidence in
9 this case and you've heard strong evidence, direct evidence,
10 people that were there, eyewitnesses. And, yes, the State
11 does have the burden of proof in this case and in this case
12 we welcome the burden. And the Judge is going to charge you
13 on the law and I'm not going to go into that because that's
14 his job and I want you to listen to him. But what he's
15 going to tell you is that we do have the burden to prove
16 this case beyond any reasonable doubt. And what you need to
17 understand is reasonable doubt is just that. It is not
18 beyond any possible doubt. We weren't there. None of us
19 were there. You don't have to find him guilty beyond any
20 possible doubt. It's a reasonable doubt. And reasonable
21 doubt is when there's something that would make a person in
22 the most important of their affairs to hesitate to act. But
23 if you truly believe, if you do not hesitate to believe that
24 that man is guilty, then you must find him guilty. And I
25 want to just go over that before we get into it any farther.

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1 Co-defendant testimony. Every single defense attorney
2 loves to pound away at co-defendant testimony. But ladies
3 and gentlemen, co-defendants testify every single day in
4 this country. In this case, they were the ones that were
5 there. They have the direct evidence of the crime. And
6 were they offered a deal in this case?, Yeah. I didn't hide
7 that from y'all. That was the first thing I asked them when
8 they got up on the stand. But if you listen -- if you
9 believe the story, if you believe the story of the victim,
10 and you believe the story of the two co-defendants and you
11 believe the story of Ashley Walker, then you'll know why we
12 offered them those deals. Because that man right there is
13 the kingpin. That man right there was the ringleader.
14 That's the bad guy right there. And they came in here and
15 they told you the story and I submit to you that the
16 victims' stories and the two co-defendants' stories matched,
17 minus some minor differences. This happened over a year
18 ago. There's going to be some minor discrepancies. But
19 those three stories rang together.

20 Now, let's go over what you heard in this courtroom.
21 The first thing you heard was I put Jose Cortez-Roa up on
22 the stand. We talked to him through an interpreter. The
23 first thing I want you to remember about his testimony is
24 that we had a certified interpreter in here testifying for
25 him. And some things were lost in translation in this

1 courtroom. Remember he kept saying, he. She kept saying,
2 he. And I said, was it he? And she said, oh, I'm sorry.
3 It was she. And that's an interpreter certified by the
4 Court. The night of this incident they didn't have that.
5 They had another person there and a deputy talking to him.
6 Some things were lost in translation. This I.D. that you
7 hear that the defense attorney keeps brining up, it's
8 certainly reasonable to believe there's a lot of stuff lost
9 in that translation, in the translation that night. Not to
10 mention he had just had a gun put to his head and watched
11 his friend beaten with a baseball bat, given up all his
12 cash. All of these smoke and mirrors brought out by the
13 Defendant's attorney, it was eight hundred dollars and now
14 it's twenty-five hundred dollars. Don't get caught up in
15 that. This man had just been robbed, had a gun to his head,
16 put to his head. And he's supposed to be more accurate on
17 that night than he is here today?

18 When I offered those, that lady and that man -- excuse
19 me, those two ladies their deals, I asked for one thing and
20 one thing only. It's the only thing I ever ask when I'm
21 talking to a co-defendant and that's you give me the truth.
22 If you give me the truth, the whole truth and nothing but
23 the truth, then you'll get what I'm offering you. That's
24 all I ask. It doesn't matter whether it benefits me. It
25 doesn't matter whether it benefits the State. I'm not

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1 asking you to go up there and perjure yourself. You go up
2 there and tell the truth and you get the deal. And that's
3 exactly what they did, ladies and gentlemen. These people
4 are not like you and me. They're not, they're not working
5 people. I'm not saying they are. I'm not trying to paint
6 them into some people they're not, because they're not. But
7 that doesn't mean that what they said on that stand
8 yesterday wasn't true.

9 Now, let's go through the State's case and then we'll
10 come back to a few things. The first person you heard from
11 was Jose Cortez-Roa. He told you that he was at the Club
12 Caliente enjoying the night, partying with a friend of his.
13 Met this female. They went outside in the car, were smoking
14 a cigarette and he saw three people -- he saw two people
15 come up to the side of his car. But he later said he also
16 saw a tall lady standing at the back of the car as a
17 lookout, if y'all remember. The man put a gun to his head,
18 demanded all his money. He said there was a female on the
19 other side of the car with a baseball bat, a wooden baseball
20 bat. And he said that there was a tall person with corn
21 rows, lighter skin, at the back. What did Kaitlin Rochester
22 tell you and what did Santana Carrington tell you? Santana
23 said, I went to the right side of the car with a baseball
24 bat. Santana said, I was at the back of the car. You saw
25 how tall she was. Six feet. Had a full ride to Alabama to

1 play basketball and had braided corn rows at the time this
2 happened. She stood at the back of the car. As they said,
3 both said Cedric was on the left side of the car. Cedric
4 came up, Cedric Patton came up to the driver's side of the
5 car and put a gun to that man's head and said, give it up.
6 Give me all your money. Give me all your cash. That's
7 exactly what Jose remembered. The fact that it was eight
8 hundred dollars or twenty-five hundred dollars, is that
9 significant at all? Who knows what he told them that night?
10 Why does it matter? I don't think I would even say the
11 correct amount if I had just had that happen to me. He also
12 gave you an I.D.

13 Now, we get back to the first thing that I said to
14 y'all, please don't, please don't mistake fear for
15 uncertainty. Remember Mr. Roa's actions on the stand when I
16 asked him to point that man out. What did he say? I don't
17 think I should do it. I don't want to do it. And I stood,
18 I stood at this point right here and I said, Mr. Roa, I know
19 you don't want to but I need you to do it. And he said, I'm
20 not sure, but I think that's him.

21 The next person you heard from in this case was the
22 officer, Jason Cassell. He was there working a beat that
23 night, went by the Club Caliente, spoke to these people,
24 left, sent it on to CID. He spoke with a person, this Emma
25 Rosario lady who was there that night. She gave him the

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1 story. He said that they said or that Mr. Roa said he was
2 tall, thin build, this I.D. that the defense attorney wants
3 you to grasp onto. Ladies and gentlemen, Mr. Roa took the
4 stand. He told you what he meant that night. He told you
5 what he saw that night. Are you going to believe him here
6 on the stand with you watching him or are you going to
7 believe a story from an officer that was working that night,
8 talking through some broken English to a person in the
9 parking lot of the Club Caliente?

10 Then you heard from David Weiner, the detective in this
11 case. He told you he interviewed Kaitlin Rochester. He
12 told you he didn't offer any deal. He didn't give her
13 anything that I'd offered her with a -- suspending it down
14 to a strong arm robbery for her to come in here and tell the
15 truth. None of that was on the table. Nothing. All she
16 had to do, he wanted the truth from her. And she gave a
17 statement. And I asked Kaitlin, does your story today in
18 any way differ from that statement you gave to the officer.
19 She said, nope. That's what I told the officer that night.
20 That's what I'm telling you here today.

21 Then you heard from Ashley Walker. And even if you
22 have a problem believing, after all we've talked about so
23 far, believing Kaitlin and Santana or believing that victim,
24 Ashley Walker, a third party, no part in this at all. Who
25 did she say sold them the cell phone? Santana, Kaitlin and

1 Ced. Ced, right there. How did Kaitlin refer to him? As
2 Ced. How did Santana refer to him, Ced. That's Ced.
3 That's the person who had that cell phone that they bought.
4 When you look at all of these stories, regardless of
5 where they come from, do they match? Do they jive? Do they
6 come together? And they do, ladies and gentlemen. I submit
7 to you they do. These are true stories. Just because the
8 people that took that stand you may not think are the
9 greatest people on earth, doesn't mean they're not telling
10 the truth.

11 Look at all the evidence the State has presented.
12 Three identifications, one from the victim, one from each
13 co-defendant saying that's the man who did it. All of them
14 had first-hand, direct evidence. And the Judge will explain
15 the difference between direct evidence and indirect evidence
16 to you later. But direct evidence of this crime. You have
17 everything you need to come back with a guilty verdict in
18 this case. Everything you need beyond any reasonable doubt,
19 beyond any doubt.

20 Now, the defense did put a witness on the stand, Mr.
21 A.J. Smith. Here's a man who is a cousin of the Defendant,
22 best friend with the Defendant. Why would he have any
23 reason to come in here and lie? Why would he have any
24 reason to come in here and say, no, he was with me that
25 night? Okay. Then what did y'all do that night? Well, we

Frederick Cassare Patton -vs- State of South Carolina (2009-GS-23-6614)
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1 went to bed at around two a.m. and got up at five forty-five
2 to go look for jobs. Well, where did you apply?
3 Restaurants and stuff. Name a couple? McDonald's.
4 Anymore? No. Temp agencies. Do y'all know of any temp
5 agencies that are open at five forty-five in the morning?
6 How about painting the grandmother's house. Well, what
7 color did you paint it? I can't remember. Well, this was
8 less than a year ago. Wouldn't it still be the same color?
9 I mean, his testimony was some of the most -- I mean, it's
10 just not credible at all. He's sitting here trying to
11 protect his cousin, his friend. That's the only reason he
12 came in here and testified.

13 Ladies and gentlemen, I'm about to sit down. I'm not
14 going to belabor the point. You've heard all the evidence
15 in this case and I trust that you're going to go back in the
16 jury room, that you're going to discuss it and you're going
17 to come back with a verdict that speaks the truth, just like
18 Mr. Farnsworth says. But I submit to you that there is more
19 than enough evidence in this case to come back with a guilty
20 verdict for armed robbery and possession of a weapon during
21 a violent crime. Thank you.

22 CHARGE

23 BY THE COURT:

24 Okay. No one in or out of the courtroom during my
25 charge, so if anyone needs to leave, now is the time to do

1 it.

2 Now, ladies and gentlemen, the Defendant in this case
3 is first indicted for armed robbery. In order for you to
4 understand armed robbery, it is necessary for me to first
5 define for you larceny and then robbery.

6 Now, larceny, ladies and gentlemen, is defined as the
7 taking and carrying away by any person of the goods or
8 things personal of another, with the felonious, that is the
9 unlawful intent to permanently deprive that owner of his or
10 her property.

11 Now, robbery is the felonious or unlawful taking of
12 money or goods or things personal of another of any value by
13 using violence or by putting that person in fear. Now
14 robbery includes all the elements necessary to constitute
15 larceny as I have defined that to you. But the aggravating
16 circumstances necessary to constitute robbery as
17 distinguished from larceny, are first of all the taking must
18 not only be without consent, but it also must be
19 accomplished with violence or by putting that person in
20 fear. And secondly, the property must be taken from the
21 person of another. However, if it is taken in his or her
22 presence then it is said to be taken constructively from
23 that person. In other words, for the purpose of robbery, a
24 thing is in the presence of a person if it be within his
25 reach, inspection, observation or control so that he could

Frederick Cassare Patton -vs- State of South Carolina (2009-GS-23-6614)
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1 retain possession of it if not overcome by violence or
2 prevented by fear.

3 Now armed robbery is robbery as I have defined that to
4 you while armed with a deadly weapon. And section 16-11-330
5 of our Code of Laws reads in part as follows: Any person
6 convicted for the crime of robbery while armed with a
7 pistol, dirk, slingshot, metal knuckles, razor or other
8 deadly weapon shall suffer punishment. That, ladies and
9 gentlemen, is armed robbery.

10 The Defendant is next indicted for possession of a
11 weapon during the commission of a violent crime. This,
12 ladies and gentlemen, is a statutory offense. If a person
13 is in possession of a firearm or visibly displays what
14 appears to be a firearm during the commission of a violent
15 crime, and I charge you armed robbery is a violent crime,
16 and is convicted of committing or attempting to commit a
17 violent crime as defined in Section 16-1-60, he must be
18 imprisoned in addition to the punishment provided for the
19 principal crime.

20 So, before this Defendant can be convicted for this
21 offense, he must have been found guilty by you of, in this
22 instance, armed robbery. And the State must have proved
23 beyond a reasonable doubt that this Defendant was in
24 possession of or displayed what appeared to be a firearm.
25 That, ladies and gentlemen, is possession of a firearm

1 during the commission of a violent crime.

2 Now, the Defendant, as a defense to this charge alleges
3 as a defense alibi. In other words, the defense of alibi
4 means that this Defendant claims that he was not there when
5 the crime was committed, but was somewhere else. And,
6 therefore, could not have committed the crime. So what
7 alibi means, elsewhere. But this is not an affirmative
8 defense and the Defendant does not have a burden of proving
9 it. On the contrary, the State has the burden of proving
10 beyond a reasonable doubt that this Defendant was present at
11 the scene of the alleged crime and that he actually
12 committed it because in such a case as this, the presence of
13 the Defendant at the place of the crime at the time of its
14 commission is essential to his guilt. And in such a case,
15 the State must also show the presence of this Defendant
16 beyond a reasonable doubt. And if on all the evidence in
17 the case you have a reasonable doubt that this Defendant was
18 present in person at the place and at the time in question,
19 then you must resolve that doubt in his favor and acquit
20 him.

21 Now, ladies and gentlemen, as jurors in this case you
22 have a function or a responsibility that is entirely
23 separate and distinct from my function as the Trial Judge.
24 The Constitution of our State does not allow me to charge
25 you on the facts of this case or to discuss the facts with

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1 you or in any way or manner let you know what my personal
2 feelings, if any, are about this case. That's because you
3 and you alone are the judges of the facts. Therefore, if
4 during the course of this trial or during the course of my
5 charge you have a feeling that I have a personal feeling
6 about this case one way or another, then you disregard that
7 feeling or that impression. You and you alone are the
8 judges of the facts in this case.

9 Now, it's your duty and your duty alone to weigh the
10 testimony and the evidence presented in this case and to
11 pass on the credibility or the believability of the
12 witnesses you heard testify. In this connection you have a
13 right to believe all that a witness told you or you can
14 disbelieve all a witness told you. You can believe a part
15 of what a witness told you and disbelieve a part of what a
16 witness told you. You can believe one witness against
17 several or you can believe several against one. You also
18 have the right to take into consideration any bias or
19 prejudice or interests you feel a witness in the case might
20 have.

21 Now, ladies and gentlemen, I am the Judge of the law in
22 this case and I am required to charge the law that applies
23 to the facts. It is not a question of what you feel the law
24 might be or what it should be. It is not necessarily what
25 the lawyers may have told you it is, because under your oath

1 you are required to take the law as I give it to you, apply
2 that law to the facts as you determine those facts to be and
3 to write your verdict accordingly.

4 Now, in this case, as in all criminal cases, this
5 Defendant comes into this courtroom presumed to be innocent
6 and this presumption continues and carries through the
7 entire trial until and unless it is removed by evidence that
8 satisfies you of his guilt beyond a reasonable doubt. The
9 burden is on the State in this case to prove this Defendant
10 guilty and to prove each and every element of the offenses
11 with which he is charged beyond a reasonable doubt.

12 Some of you may have, in the past, served as jurors in
13 civil cases and if so, you were most likely told that it was
14 only necessary that a fact be proved to be more likely true
15 than not true. But in criminal cases, the State's proof
16 must be more powerful. As I've told you, it must be beyond
17 a reasonable doubt.

18 Now, proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of this Defendant's guilty.
20 There are very few things in this in this world that we know
21 with absolute certainty. And in criminal cases our law does
22 not require proof that overcomes every possible doubt. If
23 based on your consideration of the testimony and the
24 evidence in this case you are firmly convinced that this
25 Defendant is guilty as charged, then you must find him

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1 guilty. If on the other hand you think there is a real
2 possibility that he's not guilty, then you must resolve that
3 doubt in his favor and find him not guilty.

4 Now, ladies and gentlemen, our law does not compel a
5 Defendant in a criminal case the burden or duty of taking
6 the stand and testifying or presenting any evidence. And no
7 presumption of guilt may be raised and no inference of any
8 kind may be drawn from this Defendant's decision not to
9 testify. Our law never imposes upon a Defendant in a
10 criminal case the burden or duty of calling any witnesses or
11 producing any evidence or testifying. Therefore, the
12 decision by this Defendant not to take the stand and testify
13 in his behalf cannot be taken, held, discussed or considered
14 against him in any manner whatsoever.

15 Ladies and gentlemen, under the oath you took in this
16 case, you swore to try this case based only and solely on
17 the testimony and evidence presented in this courtroom. And
18 I tell you that it is your duty to lay aside all outside
19 opinions, bias, prejudice or sympathy you may have in
20 reaching a verdict. The word verdict is taken from the
21 Latin word veredicto that means to speak the truth. You
22 have no enemies to punish in this case or friends to reward.
23 I charge you to abide by your oath and return the verdicts
24 that speak the truth.

25 Now, you'll have in the jury room with you the

1 indictment in this case. This indictment does not
2 constitute evidence. It simply sets forth the allegations
3 by the State. Now, this indictment is the legal document
4 that brings this case into the courtroom and presents it to
5 you for your examination.

6 Ladies and gentlemen, count one in the indictment is
7 armed robbery. County two is possession of a weapon during
8 the commission of a violent crime. On the back of the
9 indictment, Madam Foreman, you will find a place where it
10 says, verdict, count one, count two. Whatever the verdict
11 of the jury is on count one, write it out, guilty or not
12 guilty. Whatever the unanimous verdict is on count two,
13 write it out. And then sign your name as the foreperson.

14 Now, let me remind you that you cannot find this
15 Defendant guilty of count two unless you first find him
16 guilty of county one, that is armed robbery.

17 Ladies and gentlemen, whatever your verdicts are in
18 this case, they must be unanimous, that is all twelve of you
19 must agree.

20 Now, at this time I'm required to go over my charge
21 with the lawyers. I need you to go back into your jury
22 room, but don't begin deliberating until I send word in for
23 you to do so. Thank you.

24 (WHEREUPON, the jury exited the open court at
25 approximately 9:50 a.m.)

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1 THE COURT: Any exceptions from the Defense?

2 MR. FARNSWORTH: No, Your Honor.

3 THE COURT: Well, we didn't have any exhibits did
4 we?

5 MADAM COURT REPORTER: No, sir.

6 THE COURT: All right. Tell them to deliberate
7 and bring my alternate in to me, please?

8 THE BAILIFF: Yes, sir.

9 THE COURT: All right. Our twelve jurors have
10 made it through this trial, so this will conclude your
11 service on this case and I think maybe for today. But what
12 I need you to do at this time is report back downstairs to
13 the jury assembly room and Mary will let you know what to
14 do. Okay?

15 THE JUROR: Thank you, sir.

16 THE COURT: Thank you very much.

17 THE JUROR: Thank you.

18 (WHEREUPON, the verdict form was delivered to the jury
19 at approximately 9:51 a.m., after which court stood at
20 recess in this case awaiting the verdict of the jury.)

21 THE COURT: All right. Ladies and gentlemen, we
22 have a verdict in this case. And, of course, we don't know
23 what that verdict is, but I need everyone in the courtroom
24 to understand that regardless of the verdict that I will not
25 permit or condone any displays of emotion of any kind, no

1 laughing, no crying or anything of that nature. Should
2 there be any, that will constitute contempt of court and I
3 will punish accordingly. Now, does anyone not understand
4 what I've just said? If so, please stand up. All right.
5 Bring the jury, please.

6 (WHEREUPON, the jury entered the open court at
7 approximately 10:35 a.m.)

8 THE COURT: Madam foreman, if you've reached a
9 verdict, would you hand it to the bailiff, please, ma'am?

10 (WHEREUPON, the verdict form was handed up to the
11 Court.)

12 THE COURT: Okay. Would you please publish the
13 verdict.

14 THE CLERK: Yes, Your Honor. Your Honor, case
15 number 2009-GS-23-6614, Cedric Patton, indictment for armed
16 robbery and possession of a weapon during the commission of
17 a violent crime. Count one, we, the jury, find the
18 Defendant guilty. Count two, guilty. Signed foreperson
19 Vickie E. Back.

20 THE COURT: Ask them if that's correct.

21 THE CLERK: If this is your verdict, please raise
22 your right hand.

23 (WHEREUPON, all jurors' right hands were raised.)

24 THE CLERK: Thank you.

25 THE COURT: Anything further from the jury,

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1 counsel?

2 MR. DELOACH: Nothing from the State, Your Honor.

3 MR. FARNSWORTH: No, Your Honor.

4 THE COURT: Thank you, ladies and gentlemen, for
5 your service on this case. I can let you have the rest of
6 today off. I'm not sure what holds for you tomorrow. So
7 what I need for you to do is call in this afternoon after
8 six. Call in after six. Thank you.

9 (WHEREUPON, the jury exited the open court at
10 approximately 10:37 a.m.)

11 THE COURT: Any motions, Mr. Farnsworth?

12 MR. FARNSWORTH: No, Your Honor.

13 MR. DELOACH: Nothing from the State, Your Honor.

14 THE COURT: Have you got the sentencing sheet
15 ready?

16 MR. DELOACH: Yes, sir.

17 THE COURT: All right. Come around, please.

18 (WHEREUPON, Mr. Deloach, Mr. Farnsworth, and the
19 Defendant approached the bar.)

20 THE COURT: Danny, I need you to sign this and put
21 your bar number.

22 MR. FARNSWORTH: Okay.

23 THE COURT: The Defendant does not have to ...

24 All right. Now, Mr. Patton you have exercised your
25 Constitutional right not to testify during the course of

1 your trial. At this time, you have a right to address the
2 Court concerning sentence. Anything you would like to say
3 now, sir, before I sentence you?

4 MR. PATTON: No, sir.

5 THE COURT: Does he have any prior criminal
6 record?

7 MR. DELOACH: Yes, sir. An '04 conspiracy,
8 assault and battery of a high and aggravated nature. '05 no
9 South Carolina Driver's License times two, simple assault
10 and battery, burglary second degree. '07 a parole
11 revocation, strong armed robbery, parole violation and the
12 NCIC was uncertain as to what he got on that parole
13 revocation, Your Honor. It said a YOA, but I don't believe
14 that he was eligible for it. I'm just not sure.

15 THE COURT: Okay. Mr. Farnsworth.

16 MR. FARNSWORTH: Your Honor, nothing other than,
17 Your Honor, the jury has decided this case. He understands
18 that this case carries a minimum mandatory of ten years on
19 armed robbery and I'll just ask you to take everything into
20 consideration.

21 THE COURT: All right. Mr. Patton, on the
22 indictment for armed robbery the sentence of the Court is
23 you be committed to the Department of Corrections for a
24 period of twenty-five years. And on the indictment for
25 possession of a weapon during a violent crime, five years.

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1 MR. DELOACH: Thank you, Your Honor.

2 THE COURT: All right.

3

4 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Greenville County, South Carolina, on the 13th day
10 of July, 2010.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 22, 2011

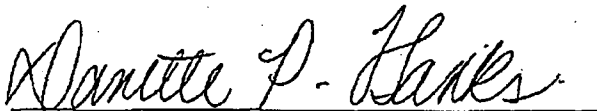
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Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Cedric Cassius Patton ^{SCDC#} 304790)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-23- 1682

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Greenville County Jail, Now currently
being held at McCormick Correctional Center.
2. Name and location of Court which imposed sentence Greenville S.C.
305 East N. Street Greenville S.C. 29601
3. Name(s) of co-defendant(s) (if any) Kaitlin Rochester, Santana Carrington
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) I-474317 Armed Robbery, I-474320 Poss. Weapon

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 13, 2010
- (b) 25 years
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Judgment of Conviction
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Supreme Court
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. they stated by way of letter, stating that trial Attorney
- ii. fail to file direct Appeal, after I request him to
- iii. do so,
- (c) the date of each such result:
- i. January 13 - 2011
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. They stated that there isn't anything on
- ii. record to state Counselor file direct Appeal,
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) due to the fact that judge was bias, 8th Amendment
- (b) Also My Attorney fail to object to a ground, 6th Amendment
- (c) Also Attorney fail to call witness, and alibi witness, 5th Amendment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I wanted to have a continue hearing for lawyer wasn't
- (b) trying to call my witnesses or study the case with me,
- (c) And I'm suppose to be able to cross examined witnesses,

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- to get a update on My direct appeal, they
 - Responded, saying Attorney never file such
 - direct appeal,
 - N/A
- (b) the name and location of the Court in which each was filed:
- Supreme Court of S.C.,
 - N/A
 - N/A

- iv. N/A
- (c) the disposition thereof:
- i. See Attach letter,
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. January 13 2011
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. See Attach letter
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (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) he fail to Appeal.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Daniel Farnsworth Box 10146
Greenville, S.C. 29603
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Greenville County Court house
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

to get a new hearing, or time cut,

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville S.C)

VERIFICATION

I, Cedric C. Patton, 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.

Cedric Patton

Cedric Patton

3/1/11

SWORN to and subscribed before me this 04 day of March, 2011.

J. C. Franklin (L.S.)
Notary Public

My Commission Expires: 2-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Cedric C. Patton, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Cedric C. Patton

Applicant

SWORN or affirmed to and subscribed before me this
04 day of March, 2011.

J C Franklin
Notary Public

My Commission Expires: 12-16-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-1682
COUNTY OF GREENVILLE	)	
	)	
Cedric Cassare Patton,	)	
S.C.D.C. No. 304790,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2010 term of General Sessions for armed robbery (2009-GS-23-6614, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-6614, count 2). Daniel J. Farnsworth, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2010 the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five (25) years for armed robbery and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections. The trial transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to object.
 - b. Failure to call alibi and other witnesses.
2. "Judge was bias."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

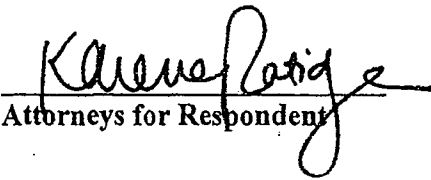
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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KAREN C. RATIGAN
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

July 8, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-1682

CEDRIC CASSARE PATTON, 304790)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

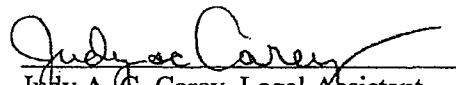
STATE OF SOUTH CAROLINA,)

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:

**Cedric Cassare Patton, 304790
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899**

DATED this 8th day of July, 2011.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CEDRIC C. PATTON,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2011-CP-23-1682

APRIL 18, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

ELIZABETH WYGUL, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Cedric C. Patton -vs- State of South Carolina (2011-CP-23-1682)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
1	Professional Visitation Log of Greenville County Detention Center	9	9

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 April 18, 2013

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right. Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the Court. This is the case of Cedric Patton versus
7 the State of South Carolina. The docket number is 2011-CP-
8 23-1682. Mr. Patton was indicted for armed robbery and
9 possession of a weapon during the commission of a violent
10 crime. His attorney on that charge was Daniel Farnsworth,
11 Sr. The case was brought to trial and Mr. Patton was found
12 guilty on July 13th, 2010. Judge Pyle sentenced him to
13 concurrent terms of twenty-five years for armed robbery and
14 five years for possession of a weapon during the commission
15 of a violent crime. Mr. Patton did not file an appeal.

16 I would note -- obviously Your Honor is aware of this,
17 but just for the appellate record, we don't have Mr.
18 Farnsworth here today. He's had some medical issues over
19 the last year and a half that have rendered him unavailable
20 and unable to testify. And Ms. Wiygul obviously was aware
21 of that. So we're proceeding without Mr. Farnsworth
22 present this morning. However, since Mr. Farnsworth cannot
23 testify, the State is prepared to consent to a belated
24 appeal just because, out of an abundance of caution since
25 Mr. Farnsworth can't testify one way or the other, we would

Cedric C. Patton -vs- State of South Carolina (2011-CP-23-1682)
PCR Hearing

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1 go ahead and consent to a belated appeal. And we are ready
2 to litigate all the other issues today.

3 THE COURT: Ms. Wiygul?

4 MS. WIYGUL: Your Honor, a belated appeal is one
5 of the issues that we will be asking for today. Mr. Patton
6 has instructed me to request that the Court grant a
7 continuance in this matter. He feels like he needs some
8 additional time to review his transcript. I've explained
9 to him that I don't think that's likely, that I am prepared
10 to go forward today with the information he provided me.
11 But I would ask that the Court question him on this matter.

12 THE COURT: Okay. Mr. Patton, how long have you
13 had the transcript?

14 MR. PATTON: About two weeks, sir.

15 THE COURT: Okay. It's about a hundred pages, a
16 hundred and fifty pages?

17 MR. PATTON: Yes, sir.

18 THE COURT: How much more time do you feel like
19 you need to read that information?

20 MR. PATTON: Not very long. About a month, I
21 would say. I can read it, but I haven't been able to go
22 through it and find cases -- research on it.

23 MS. WIYGUL: And Your Honor ---

24 THE COURT: Well, the issues you've raised in
25 your petition, do those -- I mean, how many different --

1 does the transcript reflect Judge bias and failure to call
2 an alibi witness? I mean, how would reading the transcript
3 help you develop that?

4 MR. PATTON: It wouldn't on that, sir. This is
5 just like failure to object and stuff like that, that I
6 haven't researched the law fully.

7 THE COURT: Ms. Wiygul, have you had an
8 opportunity to review the transcript?

9 MS. WIYGUL: I have, Your Honor. In fact, I
10 provided Mr. Patton with my copy of the transcript when I
11 went down to visit with him.

12 THE COURT: Okay. Have you gone over it
13 together?

14 MS. WIYGUL: We have. Not verbatim, but we've
15 gone over it.

16 MS. RATIGAN: Your Honor, the State's position is
17 that it was a very simple armed robbery case. As your
18 pointed out, it was less than a hundred and sixty pages.
19 Mr. Farnsworth impeached the victim. He impeached the
20 witnesses. I think the record speaks for itself. It's a
21 very straight-forward matter. It just ended up being a
22 jury question. We believe there's no real reason to delay
23 it any further.

24 THE COURT: All right. I deny your motion for
25 the continuance. I'll listen to the case and if I see a

1 reason to leave the record open, I certainly can rule on
2 that at the time.

3 MS. WIYGUL: Thank you, Your Honor.

4 THE COURT: But this doesn't -- this is not a
5 voluminous record that to me would require more than a
6 couple of weeks to look at.

7 All right. You may proceed, Ms. Wiygul.

8 MS. WIYGUL: Your Honor, we would call Cedric
9 Patton to the stand.

10 THE COURT: Okay.

11 THE CLERK: Mr. Patton, place your left hand on
12 the bible and raise your right hand.

13 You do solemnly swear that the testimony you're about
14 to give in this case will be the truth, the whole truth and
15 nothing but the truth, so help you God?

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Thank you. You may be seated.
18 Please state your full name for the record.

19 THE WITNESS: Cedric Patton.

20 CEDRIC PATTON,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. WIYGUL:

24 Q. Mr. Patton, who represented you on this case?

25 A. Daniel Farnsworth.

1 Q. And was he appointed or retained?

2 A. He was appointed.

3 Q. Okay. How many -- when was he appointed on your case?

4 A. Let's see ...

5 Q. When did you go to jail on your case?

6 A. In 2009. In 2009. I think it was like ---

7 MS. WIYGUL: Permission to approach, Your Honor.

8 THE COURT: Yes, ma'am.

9 A. I can't remember what month it was.

10 Q. Could you tell me what this paper is?

11 A. It is the paper for Greenville County Detention
12 Center.

13 Q. And is that your professional visitation log?

14 A. Yes, ma'am.

15 Q. If you look at that, does it kind of help you remember
16 dates?

17 A. Yes, ma'am.

18 Q. All right.

19 MS. WIYGUL: Your Honor, at this time we'd like
20 to enter a copy of the Professional Visitation Log from the
21 Greenville County Detention Center into the record.

22 THE COURT: Any objection?

23 MS. RATIGAN: Since Mr. Farnsworth isn't here, we
24 won't object to that.

25 THE COURT: All right. Without objection,

1 Exhibit 1 is admitted.

2 (WHEREUPON, Plaintiff Exhibit Number 1 was marked and
3 admitted into evidence.)

4 Q. Cedric, if you take a look at that visitor log, do you
5 recall the first time that you met with Mr. Farnsworth?

6 A. I think it would have been a bond hearing. It might
7 have been on 7/1.

8 Q. Okay. Had you met him in person face-to-face before
9 that bond hearing?

10 A. No, ma'am. I didn't even meet him. It was a TV bond
11 hearing. I really didn't get to talk to him.

12 Q. Okay. Okay. And then did you make bond or did you
13 stay in jail until your trial?

14 A. I stayed in prison. I mean in jail.

15 Q. Okay. How many times after that bond hearing did Mr.
16 Farnsworth visit you?

17 A. Once, like two weeks before trial.

18 Q. Okay. Do you have that visitor log there in front of
19 you?

20 A. Yes, ma'am.

21 Q. When does it reflect that Mr. Farnsworth visited you?

22 A. 6/30/09.

23 Q. On June 30th of 2009?

24 A. Yes, ma'am.

25 Q. And when was the next time?

1 A. (No verbal response.)

2 Q. Would that have been July 1st of 2010?

3 A. Yes. At trial.

4 Q. Okay. And then July 8th of 2010. Is that what the
5 log reflects?

6 A. Yes, ma'am.

7 Q. And how long did those visits last? How long did the
8 one on June 30th last?

9 A. One June 30th, probably lasts about thirty minutes.

10 Q. Okay. If you look at the time, it lasts about thirty
11 minutes?

12 A. Yes, ma'am.

13 Q. And then on the 1st, how long did you meet with him?

14 A. On the 1st it was probably fifteen minutes.

15 Q. Okay. And what about on the 8th?

16 A. On the 8th probably about fifteen minutes.

17 Q. Okay. And when was your trial held?

18 A. On July the 13th.

19 Q. Okay. When you met with him on the 8th, did you
20 instruct him to do anything in preparation for trial?

21 A. Well, I told him if I lose my case I wanted to appeal
22 it.

23 Q. Okay. You did tell him that if you lost at trial, you
24 wanted an appeal?

25 A. That's right.

1 Q. Okay. Did you tell him any witnesses you wanted him
2 to find?

3 A. Yes, ma'am. Andre Smith, Andre Smith, Jr.

4 Q. Anyone else?

5 A. No, ma'am.

6 Q. Okay. And was he able to find those witnesses for
7 trial?

8 A. He found one of them and he told me the other one
9 wouldn't need to be there because it really wasn't going to
10 make no big deal.

11 Q. Okay. And in retrospect, do you feel like it made a
12 big deal ---

13 A. Yes, ma'am.

14 Q. --- with that other witness not being there?

15 A. Yes, ma'am.

16 Q. Okay. Whenever you got to court the morning of the
17 13th and realized that both witnesses were not there, did
18 you instruct Mr. Farnsworth to ask for a continuance?

19 A. No, ma'am.

20 Q. Okay. Did you feel like he should have requested a
21 continuance?

22 A. Yes, ma'am.

23 Q. Okay. And in retrospect whenever you went through the
24 transcript, did you feel like there was some objections Mr.
25 Farnsworth should have made that he did not make?

1 A. Yes, ma'am.

2 Q. And would it be fair to say that one of those
3 objections was -- that you feel should have been made was
4 to the solicitor's line of questioning regarding the
5 witness's identification of you on page thirty, lines six
6 through twenty-four?

7 A. Yes, ma'am.

8 Q. And do you feel like Mr. Farnsworth should have
9 objected during the solicitor's closing and make an
10 objection that he was vouching for the credibility of
11 witnesses?

12 A. Yes, ma'am.

13 Q. And would that be on pages one thirty-six through one
14 thirty-seven, lines eighteen through twenty-five and one
15 through eight?

16 A. Yes, ma'am.

17 Q. Okay. Do you also feel like Mr. Farnsworth was
18 ineffective in failing to make specific arguments to
19 support his motion for a directed verdict on page one oh
20 five?

21 A. Yes, ma'am.

22 Q. And do you also feel like Mr. Farnsworth should have
23 renewed his directed verdict motion at the close of your
24 case on page one twenty-one of the transcript?

25 A. Yes, ma'am.

Cedric C. Patton -vs- State of South Carolina (2011-CP-23-1682)
PCR Hearing

13

1 Q. Okay. You stated that you did not have a preliminary
2 hearing in this case?

3 A. No, ma'am.

4 Q. Did you have a preliminary hearing?

5 A. No, ma'am.

6 Q. Okay. Did you know that you had the right to a
7 preliminary hearing?

8 A. I knew I had a right to it, but I didn't say nothing
9 about it.

10 Q. Okay. Did Mr. Farnsworth ever talk to you about that?

11 A. No, ma'am. He never mentioned it.

12 Q. Okay. And you stated that you told Mr. Farnsworth to
13 file an appeal. Did he file an appeal?

14 A. No, ma'am.

15 Q. When did you find out he had not filed an appeal?

16 Would that have been when you got a letter from the Court
17 of Appeals in January of 2011?

18 A. Yes, ma'am.

19 Q. And what did that letter tell you?

20 A. It's in my file saying that he didn't remember me
21 mentioning about an appeal, but I could have put in for a
22 PCR.

23 Q. Okay. All right. And that letter was from Mr.
24 Farnsworth?

25 A. Yes, ma'am.

1 Q. Okay. And you do understand that if you win today,
2 the only thing you can win is an entirely new trial;
3 correct?

4 A. Yes, ma'am.

5 Q. And you actually had some other charges that were
6 dismissed as a result of this conviction; didn't you?

7 A. Yes, ma'am.

8 Q. And you understand those charges could come back,
9 also?

10 A. Yes, ma'am.

11 Q. And you still wish to proceed with this action?

12 A. Yes, ma'am.

13 Q. Okay. I have no further questions. Thank you.

14 THE COURT: You may cross-examine.

15 MS. RATIGAN: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MS. RATIGAN:**

18 Q. So, Mr. Patton, you had three meetings with Mr.
19 Farnsworth at the jail?

20 A. Yes, ma'am.

21 Q. Did y'all have any meetings at the courthouse at any
22 time?

23 A. No. Right before trial.

24 Q. So maybe the day of trial you had a meeting at the
25 courthouse maybe?

Cedric C. Patton -vs- State of South Carolina (2011-CP-23-1682)
PCR Hearing

15

1 A. Yes, ma'am.

2 Q. Okay. Did you ever have any phone calls or send any
3 letters to Mr. Farnsworth?

4 A. I talked to the secretary.

5 Q. Okay.

6 A. Numerous of times.

7 Q. You would just call and leave messages with his
8 secretary?

9 A. Yes, ma'am, about my bond and about my preliminary
10 hearing and a visit, as far as any mention of my case.

11 Q. Now, when you had these meetings with Mr. Farnsworth,
12 did y'all talk about the State's evidence against you?
13 Like witness statements, police reports, things like that?

14 A. No, ma'am. We talked about some of it two weeks
15 before trial.

16 Q. And did you tell Mr. Farnsworth that you had an alibi
17 for that night?

18 A. Yes, ma'am.

19 Q. And Mr. Farnsworth, he presented your alibi witness at
20 trial; is that correct?

21 A. One of them.

22 Q. Yes. Mr. A.J. Smith?

23 A. Yes, ma'am.

24 Q. Your testimony today is you think your alibi would
25 have been stronger if you had both Junior and Senior there?

1 A. Yes, ma'am.

2 Q. Okay. So you talked about your alibi and you reviewed
3 some of the State's evidence. What else did you discuss
4 with Mr. Farnsworth in these meetings?

5 A. Seeing what he had prepared for trial. And I had -- I
6 think the day of the trial, I told him to get in contact
7 with another witness and my aunt, that we had painted her
8 house.

9 Q. Would that have been an alibi witness?

10 A. Yes, ma'am.

11 Q. For what purpose did you want your aunt there?

12 A. That would be to ---

13 Q. For character?

14 A. --- to back up my witness.

15 Q. Okay.

16 A. We talked about the motion for discovery two weeks
17 before trial.

18 Q. Okay. So you were mostly talking about trying to get
19 the case ready to go to trial?

20 A. Yes, ma'am.

21 Q. Now, it looks like during that first meeting with Mr.
22 Farnsworth y'all met for about an hour. What did y'all
23 talk about in that first meeting? That one on June 30th?

24 A. (No verbal response).

25 Q. Was it just all this stuff about the discovery

1 materials and getting ready for trial?

2 A. Yes, ma'am. I think that was the one that was two
3 weeks before trial when we went over most of the discovery.

4 Q. Okay. All right. So you knew the case was going to
5 trial. You knew that that's where it was headed?

6 A. Yes, ma'am.

7 Q. Okay. Now, the day of trial were you unhappy with the
8 amount of time that you had spent with Mr. Farnsworth?

9 A. Yes, ma'am.

10 Q. Okay.

11 A. I mean, we could have prepared more if there would
12 have been more visitors. More talk about if he would
13 enlighten me on what I didn't know about trial.

14 Q. Okay. Well, why didn't you tell Judge Pyle that day
15 that you were unhappy with Mr. Farnsworth; you wish you'd
16 spent more time with him; you needed a continuance. Why
17 didn't you bring that up to the Judge that day?

18 A. Him being my lawyer, I kind of put my trust in his
19 hand and he was telling me, oh, we got this. Just sit
20 back. Everything's going to be all right. I think we're
21 winning the case. Every time I tried to speak to him or
22 show him a paper or something I didn't agree with, that's
23 what he would tell me.

24 Q. And would it be fair to say that he asked a lot of
25 questions of the witnesses and got them to admit they lied

1 a couple of times; do you remember?

2 A. Yes, ma'am.

3 Q. You just wish that he had made some more specific
4 objections at different times?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: Any redirect?

9 MS. WIYGUL: Very briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MS. WIYGUL:**

12 Q. Cedric, you stated that you called Mr. Farnsworth's
13 office numerous times?

14 A. Yes, ma'am.

15 Q. Were you ever able to speak with Mr. Farnsworth on the
16 phone?

17 A. No, ma'am.

18 Q. Did you ever do anything except leave messages with
19 the secretary?

20 A. Yes, ma'am, that's all I was able to do was leave
21 messages.

22 Q. Okay. Did Mr. Farnsworth ever respond to any of those
23 calls?

24 A. No, ma'am.

25 Q. Okay.

1 MS. WIYGUL: I have no further questions. You
2 can step down.

3 THE COURT: You may call your next witness.

4 MS. WIYGUL: Your Honor, at this time, applicant
5 rests. We would ask that the Court consider granting this
6 motion for post conviction relief, as well as granting a
7 belated appeal.

8 THE COURT: Any evidence from the State?

9 MS. RATIGAN: No, Your Honor. Due to Mr.
10 Farnsworth's incapacity, we have nothing at this time.
11 Again, we would just state that we consent to a belated
12 appeal. We would ask that all the other issues be denied.

13 THE COURT: Well, obviously, with a trial, I need
14 to review the pages and the issues raised. I'll review
15 that and hopefully have an order ready in the next couple
16 of weeks. Thank you very much.

17 MS. RATIGAN: Thank you, Your Honor.

18 MS. WIYGUL: Thank you, Your Honor.

19

20 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Greenville County, South Carolina, on
10 the 18th day of April, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 July 22, 2013

16

17

18

19



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Cedric Cassare Patton,)
S.C.D.C. No. 304790,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-1682

ORDER OF DISMISSAL
GRANTING WHITE V. STATE
BELATED APPEAL

RECEIVED

MAY 15 2013

SC Court of Appeals

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2011. The Respondent made its return on July 8, 2011. An evidentiary hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Elizabeth P. Wiygul, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the March 2010 term of General Sessions for armed robbery (2009-GS-23-6614, count 1) and possession of a weapon during the commission of a violent

1


crime (2009-GS-23-6614, count 2). Daniel J. Farnsworth, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2010, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five (25) years for armed robbery and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did not file an appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to object.
 - b. Failure to call alibi and other witnesses.
2. "Judge was bias."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

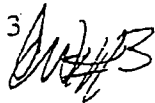
For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

2


must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had three meetings with trial counsel at the jail and one meeting at the courthouse. The Applicant stated that, in these meetings, they discussed getting ready for trial and that they would argue alibi as a defense. The Applicant stated he only reviewed some of the discovery materials. The Applicant stated he did not have a preliminary hearing. The Applicant stated he gave trial counsel the names of two alibi witnesses and that trial counsel said one would be helpful and the other would not. The Applicant admitted the one witness did testify at his trial and offer an alibi. The Applicant stated trial counsel should have objected to vouching comments by the State. The Applicant stated trial counsel should have made a more specific motion for directed verdict and then renewed that motion at the end of the case.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have spent more time reviewing his case prior to trial. The Applicant stated trial counsel only had three meetings with him at the jail and that he never had a chance to review all of the discovery materials in his case. This Court finds the Applicant's testimony is not credible.

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Regardless, this Court notes "[t]he brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, Op. No. 4938 at *4 (S.C. Ct. App. filed Feb. 8, 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). This Court also notes the Applicant has failed to articulate what more trial counsel should have done in order to prepare his case for trial. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving he was prejudiced by the lack of a preliminary hearing. The Applicant, however, failed to articulate why a preliminary hearing would have been crucial in his case. Regardless, this Court notes a defendant does not have a constitutional right to a preliminary hearing. See State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982).

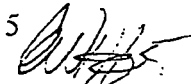
This Court finds the Applicant failed to meet his burden of proving trial counsel should have subpoenaed an additional alibi witness, Andre Smith, Sr. This Court notes Andre Smith, Jr. testified at trial that the Applicant was asleep at his house on the night of the armed robbery. While the Applicant argues his alibi defense would have been stronger with the additional witness providing the same testimony, this Court finds this argument is not persuasive. Regardless, as this alleged witness did not testify at the evidentiary hearing, any discussion regarding what he would have testified about at trial is purely speculative. See Bannister v.



State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to vouching comments. The Applicant alleges the assistant solicitor vouched for State witnesses during closing argument. (Trial transcript, p.136, line 18 – p.137, line 8). This Court finds an objection was not warranted, however, because the solicitor's comments did not constitute vouching. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("A prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.").

This Court finds the Applicant failed to meet his burden of proving trial counsel should have made a more specific motion for directed verdict. The State presented strong evidence of the Applicant's guilt in the form of two eyewitnesses/co-defendants' testimony. A more specifically worded motion for directed verdict would not have led to a different result. See, e.g., State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) (finding if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury). Further, the Applicant cannot demonstrate he was prejudiced by the lack of a motion for directed verdict at the close of the defense case because the trial judge can grant a directed verdict on its own motion. Rule 19(a), SCRCrimP.

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Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Belated appeal

This Court finds the Applicant's allegation that he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.").

At the outset of the hearing, counsel for the Respondent consented to a belated appeal. Counsel noted trial counsel was suffering from a serious medical condition (and thus could not

testify). Counsel stated that, out of an abundance of caution, the Applicant should receive a belated appeal from his trial. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

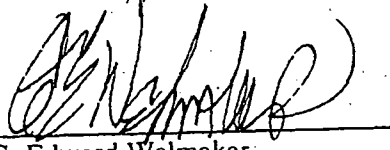
1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the



Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review; and

3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 2013.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

David Weiner

Greenville County Sheriff's Office

6/9/2009

(Signature)

ARREST WARRANT NUMBER

1478348

1478349

ACTION OF GRAND JURY

TRUE BILL

(Signature)

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Count one: Guilty

Count two: Guilty

(Signature)

7-13-10

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

RDW

The State of South Carolina

006614

County of Greenville

COURT OF GENERAL SESSIONS

March TERM 2009

THE STATE

VS.

CEDRIC CASSARE PATTON

Indictment for

0139

0549

ARMED ROBBERY

VIOLATION § 16-11-0330

POSSESSION OF A WEAPON DURING THE

COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 COUNT ONE - ARMED ROBBERY
 COUNT TWO - POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

MAR 16 2010

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE - ARMED ROBBERY

That CEDRIC CASSARE PATTON did in Greenville County, on or about the 16th day of May, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: cell phone and a wallet and its contents from the person or presence of Jose Alfredo Cortez-Roa. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CEDRIC CASSARE PATTON did in Greenville County, on or about the 16th day of May, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 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.


 SOLICITOR