

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

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S.C. Supreme Court

ADARIUS Q. DENNIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001637

APPENDIX

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1 STATE OF SOUTH) IN THE COURT OF GENERAL
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COUNTY OF OCONEE) INDICTMENT NO:
2008-GS-37-1590

STATE OF SOUTH)
CAROLINA)
PLAINTIFF,)
-VS-)
ADARIUS QUANTE)
DENNIS,)
DEFENDANT.)

JUNE 22-24, 2009
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

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

CHRISTINA ADAMS, ESQ.
10TH CIRCUIT SOLICITOR, AND
DAVID WAGNER, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

SUZANNE EARLE, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
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Voir Dire

(3A)

Case No.: 2008-GS-37-1590

Judge: Alexander S. Macaulay

Date: June 22, 23, & 24, 2009

Court/County: Oconee GS

Plaintiff/State: of South Carolina

Attorney: ~~David A. Wagner~~ Esq.

Defendant: Adarius Quante Dennis

Attorney: Suzanne Earle Esq.

Court Reporter:

Robin Sue Hild

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
117	Ms. Tribble		F	✓			
24	Cynthia Costello		F	✓			
51	Heath Hall		M	✓			
83	Theresa Mayberry	W	F			✓	
118	Kerri Summey	W	F				✓
4	Ronda Alexander	W	F			✓	
99	Adam Potts	W	M			✓	
126	Maxine Vissage	W	F			✓	
22	Mackey Cobb	W	M			✓	
1	Bob Adams	W	M				✓
29	Amy Crenshaw	W	F				✓
18	William Caines	W	M				
26	John Cox	W	M			✓	
54	Larry Hancox	W	M				✓
89	Thomas Moon	B	M			✓	
72	Steven King	W	M			✓	

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 ***** START OF REQUESTED TRANSCRIPT *****

2 JURY VOIR DIRE:

3 THE COURT: SOLICITOR, YOU MAY CALL YOUR FIRST CASE.

4 MR. WAGNER: YOUR HONOR, THE STATE CALLS

5 2008-GS-37-1590 CHARGING ADARIUS QUANTE DENNIS WITH ARMED
6 ROBBERY.

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL,
8 AS I MENTIONED EARLIER, THIS IS A TERM OF GENERAL
9 SESSIONS COURT, SOMETIMES CALLED CRIMINAL COURT. ITS
10 PURPOSE IS TO RESOLVE QUESTIONS OF ALLEGED CRIMINAL
11 CONDUCT ARISING BETWEEN THE STATE OF SOUTH CAROLINA AND
12 THE DEFENDANT IN A FASHION WHICH WILL ENSURE THAT JUSTICE
13 UNDER THE LAW IS ACCOMPLISHED.

14 THE TRIAL BEGINS WITH THE SELECTION OF A JURY. BOTH
15 THE STATE AND DEFENDANT ARE ENTITLED TO JURORS WHO
16 APPROACH THE CASE WITH AN OPEN MIND. THE TRIAL JURY MUST
17 BE AS FREE AS HUMANLY POSSIBLE FROM BIAS, PREJUDICE OR
18 SYMPATHY FOR EITHER SIDE AND FREE FROM ANY PRECONCEIVED
19 IDEAS ON THE FACTS OF THE CASE OR THE LAW OF THE CASE.
20 THE QUESTIONS WHICH WILL BE ASKED OF YOU, THE PETIT JURY
21 PANEL, ARE QUESTIONS WHICH WILL BE ASKED AND DESIGNED TO
22 ASSURE EACH SIDE HAS A FAIR AND IMPARTIAL JURY.

23 I MIGHT NOTE FURTHER, IF ANYBODY TALKS WITH YOU OR
24 ATTEMPTS TO TALK WITH YOU ABOUT ANY CASE THAT MIGHT BE
25 SCHEDULED FOR THIS TERM OF COURT, IT WILL BE YOUR SOLEMN

1 DUTY TO IMMEDIATELY REPORT THE MATTER TO THE COURT. NO
2 ONE IS TO INTERFERE WITH YOUR DUTY AS JURORS FOR THE
3 COURT OF GENERAL SESSIONS FOR OCONEE COUNTY NOW THAT YOU
4 HAVE BEEN SELECTED.

5 WE WILL NOW BEGIN THE SELECTION OF THE TRIAL JURY.
6 UNDER INDICTMENT NUMBER 2008-GS-37-1590, THE STATE OF
7 SOUTH CAROLINA VERSUS ADARIUS QUANTE DENNIS WITH THE
8 CHARGE OF ARMED ROBBERY.

9 THE STATE WILL BE REPRESENTED BY MR. WAGNER.

10 MR. WAGNER, IF YOU WOULD PLEASE STAND AND INTRODUCE
11 YOURSELF AND ANYONE ASSISTING YOU.

12 MR. WAGNER: I'M DAVID WAGNER. I'M WITH THE
13 SOLICITOR'S OFFICE. I WORK FOR CHRISSY ADAMS, OUR
14 SOLICITOR. THIS IS GREG REED, HE'S WITH THE OCONEE
15 COUNTY SHERIFF'S OFFICE. HE'S THE SPECIAL INVESTIGATOR
16 ON THIS CASE WHO WILL BE ASSISTING ME TODAY.

17 THE COURT: MR. REED, IF YOU WOULD PLEASE STAND AND
18 LOOK UPON THE JURY. (COMPLIES.)

19 THANK YOU VERY MUCH.

20 THE DEFENDANT, ADARIUS QUANTE DENNIS, WILL BE
21 REPRESENTED BY MS. EARLE. MS. EARLE, IF YOU WOULD PLEASE
22 STAND INTRODUCE YOURSELF AND YOUR CLIENT.

23 MS. EARLE: THANK YOU, YOUR HONOR.

24 LADIES AND GENTLEMEN OF THE JURY, I'M SUZANNE EARLE.
25 I PRACTICE LAW IN WALHALLA, AND I AM HERE TODAY

1 REPRESENTING MR. DENNIS WHO IS SEATED HERE WITH ME.

2 **THE COURT:** MR. DENNIS, IF YOU WOULD PLEASE STAND
3 AND ALSO LOOK UPON THE JURY. (COMPLIES.) VERY GOOD.
4 THANK YOU.

5 NOW, THE REASON I ASK INDIVIDUALS TO STAND WHEN
6 THEIR NAMES ARE CALLED AND LOOK UPON THE JURY IS BECAUSE
7 IT'S MY EXPERIENCE THAT THESE DAYS WE MIGHT NOT KNOW A
8 PERSON BY A NAME, BUT WE MIGHT RECOGNIZE THEM BY REASON
9 OF SOME CONTACT WE HAVE HAD IN THE PAST, AND SO THEREFORE
10 IF ANY OF THE PARTIES WHOSE NAMES ARE CALLED, IF THEY ARE
11 IN THE COURTROOM AT THE TIME, IF THEY WOULD STAND AND
12 LOOK UPON THE JURY, I WOULD APPRECIATE IT.

13 NOW, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
14 RELATED BY BLOOD OR MARRIAGE, NOW OR FORMERLY, CLOSE
15 PERSONAL FRIEND OR BUSINESS ASSOCIATE OF THE DEFENDANT,
16 ADARIUS QUANTE DENNIS? IF SO, PLEASE STAND. (NO
17 RESPONSE.)

18 ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR
19 MARRIAGE, NOW OR FORMERLY, OR CLOSE PERSONAL FRIEND OR
20 BUSINESS ASSOCIATE OF THE DEFENDANT, ADARIUS QUANTE
21 DENNIS, IF YOU WOULD PLEASE STAND AT THIS TIME. (NO
22 RESPONSE.)

23 WAS ANY MEMBER OF THE JURY PANEL A MEMBER OF THE
24 GRAND JURY FOR OCONEE COUNTY THAT FOUND AND RETURNED THE
25 INDICTMENT IN THIS CASE? IF SO, PLEASE STAND. (NO

1 RESPONSE.)

2 NOW I'M GOING TO BE CALLING OUT CERTAIN NAMES OF
3 POTENTIAL WITNESSES, THEY DO NOT HAVE TO BE CALLED BUT
4 THEY MAY BE CALLED DURING THE TRIAL OF THIS CASE. NOW,
5 AS I SAY, THEY ARE WITNESSES THAT DO NOT HAVE TO BE
6 CALLED, THEY MAY BE CALLED DURING THE TRIAL OF THIS CASE.
7 AS I SAY, IF THEY ARE IN THE COURTROOM AT THE TIME, IF
8 THEY WOULD PLEASE STAND.

9 LIEUTENANT GREG REED, OCONEE COUNTY SHERIFF'S
10 OFFICE. (STANDS.)

11 RENALDO DEON ROBINSON. MR. RENALDO DEON ROBINSON.
12 DIVERIO DELANEY MANLEY.

13 MS. REGINA MCCLAIN. MS. REGINA MCCLAIN.

14 NOW, IS ANY MEMBER OF THE JURY PANEL RELATED BY
15 BLOOD OR MARRIAGE, NOW OR FORMERLY, CLOSE PERSONAL FRIEND
16 OR BUSINESS ASSOCIATE OF ANY OF THE POTENTIAL WITNESSES
17 IN THIS CASE: LIEUTENANT GREG REED OF THE OCONEE COUNTY
18 SHERIFF'S OFFICE, MR. RENALDO DEON ROBINSON, MR. DIVERIO
19 DELANEY MANLEY, MS. REGINA MCCLAIN? IF SO, PLEASE STAND.
20 (NO RESPONSE.)

21 IS ANY MEMBER OF THE JURY PANEL OR MEMBERS OF THEIR
22 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR MARRIAGE OR A
23 CLOSE PERSONAL FRIEND WITH ANYONE WHO IS EMPLOYED BY THE
24 OFFICE OF THE SOLICITOR FOR THE TENTH JUDICIAL CIRCUIT,
25 THAT'S ANDERSON OR OCONEE? PLEASE STAND. (NO RESPONSE.)

1 IS ANY MEMBER OF THE JURY PANEL OR MEMBERS OF THEIR
2 IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR MARRIAGE OR A
3 CLOSE PERSONAL FRIEND WITH ANYONE WHO IS EMPLOYED BY THE
4 OFFICE OF THE SOLICITOR FOR THE TENTH JUDICIAL CIRCUIT?
5 IF SO, PLEASE STAND. (NO RESPONSE.)

6 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED
7 BY BLOOD OR MARRIAGE OR A CLOSE PERSONAL FRIEND WHO HAS
8 DONE BUSINESS WITH MR. RENALDO DEON ROBINSON? IF SO,
9 PLEASE STAND (NO RESPONSE.)

10 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A
11 MEMBER OR WHO DONATES MONEY TO ANY ORGANIZATION THAT AS
12 ITS MAIN MISSION IS THE PREVENTION OF CRIME OR ADVOCACY
13 OF VICTIM'S RIGHTS, SUCH AS M.A.D.D., MOTHERS AGAINST
14 DRUNK DRIVING; OR S.A.D.D., STUDENTS AGAINST DRUNK
15 DRIVING, OR ANY OTHER AGENCY OR ORGANIZATION WHOSE
16 MISSION IS THE PREVENTION OF CRIME OR ADVOCACY OF
17 VICTIM'S RIGHTS? ANY MEMBER OF THE JURY PANEL WHO IS A
18 MEMBER OR WHO DONATES MONEY TO ANY ORGANIZATION THAT HAS
19 AS ITS MAIN MISSION THE PREVENTION OF CRIME OR ADVOCACY
20 OF VICTIM'S RIGHTS, IF YOU WOULD PLEASE STAND AT THIS
21 TIME.

22 YES, MA'AM.

23 **PROSPECTIVE JUROR:** I WORK FOR AN AGENCY. MY NAME
24 IS LYNN TRIBBLE, AND I WORK WITH AN AGENCY AND THEY'RE
25 INTO THE PREVENTION OF DRUG AND ALCOHOL ABUSE.

1 **THE COURT:** YES, MA'AM. ALL RIGHT. AND WHAT AGENCY
2 IS THAT?

3 **PROSPECTIVE JUROR:** ANDERSON/OCONEE BEHAVIORAL
4 HEALTH SERVICES.

5 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY WAY
6 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
7 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

8 **POTENTIAL JUROR:** NO. I DON'T THINK SO. IT JUST --

9 **THE COURT:** WELL, NOW, THE REASON I ASK THAT
10 QUESTION IS TWO-FOLD: FIRST, OF COURSE, IS THAT THE
11 PARTIES INVOLVED IN ANY SORT OF A TRIAL ARE ENTITLED TO A
12 FAIR AND IMPARTIAL JURY. BUT THE SECOND PART OF IT, OR
13 REASON FOR THE QUESTION IS NONE OF YOU ASKED TO BE HERE
14 THIS WEEK, AND I DON'T WANT IN ANY WAY TO PUT ANY
15 PRESSURE OR COMPROMISE ANY OF YOUR PRINCIPLES IF YOU
16 SHOULD BE SELECTED ON A JURY. SO IF YOU ARE NOT
17 COMFORTABLE WITH SITTING ON A JURY, PLEASE TELL ME AND
18 YOU WILL BE EXCUSED.

19 SO I'LL ASK YOU AGAIN: BY REASON OF YOUR EMPLOYMENT
20 WITH BEHAVIORAL HEALTH SERVICES, WOULD THAT IN ANY WAY
21 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
22 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

23 **PROSPECTIVE JUROR:** I DON'T BELIEVE SO. NO.

24 **THE COURT:** NO? ALL RIGHT. VERY GOOD. THANK YOU,
25 MA'AM. AND I DO APPRECIATE YOUR CANDOR.

1 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS BEEN
2 OR HAS A FAMILY MEMBER OR CLOSE PERSONAL FRIEND WHO HAS
3 BEEN A VICTIM OF A ROBBERY OR ARMED ROBBERY? IF SO,
4 PLEASE STAND.

5 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS BEEN
6 OR HAS A FAMILY MEMBER OR CLOSE PERSONAL FRIEND WHO HAS
7 BEEN A VICTIM OF A ROBBERY OR ARMED ROBBERY? IF SO,
8 PLEASE STAND.

9 I'LL TELL YOU WHAT. I'M GOING TO ASK THE
10 INDIVIDUALS TO COME FORWARD SO THAT I MIGHT SPEAK WITH
11 THEM PRIVATELY.

12 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
13 CONFERRED WITH THE COURT.)

14 **THE COURT:** MS. TRIBBLE.

15 **PROSPECTIVE JUROR:** MY FATHER IS RETIRED AND HE
16 WORKS AT A CONVENIENCE STORE. HE'S BEEN ROBBED TWICE.

17 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE WITH
18 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
19 FAIR AND IMPARTIAL TRIAL IN THIS CASE?

20 **PROSPECTIVE JUROR:** YEAH, IT MIGHT.

21 **THE COURT:** I'LL EXCUSE YOU. BUT I WANT TO THANK
22 YOU. BUT STAY WITH US, THOUGH, IF YOU WOULD, PLEASE.

23 **THE CLERK:** NUMBER 117.

24 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
25 CONFERRED WITH THE COURT.)

1 **PROSPECTIVE JUROR:** CYNTHIA COSTELLO. MY FATHER WAS
2 A PHARMACIST AND OWNED A PHARMACY IN DAYTON, OHIO, AND HE
3 AND MY MOTHER WERE BOTH VICTIMS OF ARMED ROBBERIES THREE
4 TIMES.

5 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE WITH
6 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
7 FAIR AND IMPARTIAL TRIAL IN THIS CASE?

8 **PROSPECTIVE JUROR:** NO, I DON'T BELIEVE SO.

9 **THE COURT:** IF YOU HAVE ANY SORT OF RESERVATIONS AT
10 ALL, TELL ME. (NO RESPONSE.) I'M GOING TO EXCUSE YOU ON
11 THIS CASE. BUT THANK YOU FOR COMING FORWARD AND YOU WILL
12 BE EXCUSED ON THIS CASE. YOU WILL BE EXCUSED ON THIS
13 CASE, BUT STAY WITH US.

14 **PROSPECTIVE JUROR:** STAY HERE?

15 **THE COURT:** YES, MA'AM.

16 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
17 CONFERRED WITH THE COURT.)

18 **THE CLERK:** SHE WAS NUMBER 24.

19 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
20 CONFERRED WITH THE COURT.)

21 **THE COURT:** YES, SIR.

22 **PROSPECTIVE JUROR:** HEATH HALL.

23 **THE COURT:** YES, SIR.

24 **PROSPECTIVE JUROR:** MY HOUSE WAS BROKEN INTO TWICE
25 LAST YEAR.

1 **THE COURT:** ALL RIGHT. WOULD THAT INTERFERE WITH
2 YOUR ABILITY, IN ANY WAY INTERFERE WITH YOUR ABILITY TO
3 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND
4 IMPARTIAL TRIAL IN THIS CASE?

5 **PROSPECTIVE JUROR:** GUILTY UNTIL PROVED INNOCENT.

6 **THE COURT:** I'M GOING TO EXCUSE YOU. YOU'LL STAY
7 WITH US, BUT YOU WON'T BE CALLED IN THIS CASE.

8 **THE CLERK:** NUMBER 51.

9 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
10 CONFERRED WITH THE COURT.)

11 **THE COURT:** MS. DUNHAM.

12 **PROSPECTIVE JUROR:** OUR HOUSE WAS BROKEN INTO THREE
13 TIMES BY THE SAME GUY, SO...

14 **THE COURT:** ALL RIGHT. I'M GOING TO EXCUSE YOU ON
15 THE TRIAL OF THIS CASE. THANK YOU, MA'AM.

16 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
17 CONFERRED WITH THE COURT.)

18 **THE COURT:** YES, MA'AM.

19 **THE CLERK:** NUMBER 37.

20 **THE COURT:** THIS IS MS. ...

21 **PROSPECTIVE JUROR:** I WAS RECENTLY, MY FAMILY WAS
22 ROBBED BUT MY AUNT'S HOUSE BROKEN INTO AND MY UNCLE --

23 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE WITH
24 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
25 FAIR AND IMPARTIAL TRIAL IN THIS CASE?

1 **PROSPECTIVE JUROR:** NO.

2 **THE CLERK:** SHE WAS NUMBER 98. SHE'S STAYING WITH
3 US.

4 (A JUROR APPROACHED THE BENCH AND CONFERRED
5 WITH THE COURT.)

6 **THE COURT:** YES, SIR.

7 (A PROSPECTIVE JUROR APPROACHED THE BENCH AND
8 CONFERRED WITH THE COURT.)

9 **PROSPECTIVE JUROR:** MY COUSIN GOT KILLED ON HIGHWAY
10 11, ROBBED AND KILLED, KITTIE SMITH.

11 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY WAY
12 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
13 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

14 **PROSPECTIVE JUROR:** NO.

15 **THE COURT:** AND YOUR NAME, PLEASE, SIR, FOR THE
16 RECORD?

17 **PROSPECTIVE JUROR:** KYLE WILLIAMS.

18 **THE CLERK:** AND HE WAS NUMBER 79.

19 **THE COURT:** ALL RIGHT. ANYONE ELSE (NO RESPONSE.)

20 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS EVER
21 SERVED AS A JUROR ON A CASE INVOLVING A CHARGE OF ARMED
22 ROBBERY -- OF ROBBERY OR ARMED ROBBERY? ANY MEMBER OF
23 THE JURY PANEL WHO SERVED ON A JURY AS A JUROR ON A CASE
24 INVOLVING A CHARGE OF ROBBERY OR ARMED ROBBERY? IF SO,
25 PLEASE STAND. (NO RESPONSE.)

1 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED
2 AN OPINION ABOUT THIS CASE? IF SO, PLEASE STAND. (NO
3 RESPONSE.)

4 IS ANY MEMBER OF THE JURY PANEL AWARE OF ANY
5 INTEREST, BIAS OR PREJUDICE TOWARDS EITHER THE DEFENDANT
6 OR THE STATE OF SOUTH CAROLINA? IF SO, PLEASE STAND. (NO
7 RESPONSE.)

8 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY REASON
9 WHY HE OR SHE COULD NOT GIVE BOTH THE STATE OF SOUTH
10 CAROLINA AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?
11 IF SO, PLEASE STAND (NO RESPONSE.)

12 ANY ADDITIONAL QUESTIONS FROM THE STATE?

13 **MR. WAGNER:** NO, YOUR HONOR.

14 **THE COURT:** FROM THE DEFENSE?

15 **MS. EARLE:** NONE, YOUR HONOR.

16 **THE COURT:** VERY GOOD. NOW, LADIES AND GENTLEMEN OF
17 THE JURY PANEL, THE WAY A JURY IS SELECTED IN GENERAL
18 SESSIONS COURT IS THAT THE CLERK PREPARES A LIST OF NAMES
19 AND IT'S DONE FROM THE COMPUTER IN A RANDOM SELECTION.
20 AND WHEN YOUR NAME IS CALLED, IF YOU WOULD COME FORWARD
21 TO THE FRONT OF THE COURTROOM WHERE THE BAILIFF IS
22 STANDING AND TURN AND FACE TOWARDS THE BACK OF THE
23 COURTROOM. AND WHEN YOU COME FORWARD, IF YOU WOULD BRING
24 ANYTHING THAT YOU MIGHT HAVE WITH YOU AT THAT TIME.

25 **MADAM CLERK,** HAVE YOU GOT A STRIKE SHEET?

1 **THE CLERK:** YES, SIR, I'M WORKING ON IT.

2 **THE COURT:** ALL RIGHT. AS I SAY, WHEN YOU COME
3 FORWARD, IF YOU WILL LOOK TOWARDS THE BACK OF THE
4 COURTROOM. AT THAT TIME THE STATE WILL GO FIRST AND THEY
5 WILL EITHER SAY "PRESENT THE JUROR" OR "EXCUSE THE
6 JUROR". IF THE JUROR IS PRESENTED, THEN THE DEFENSE WILL
7 EITHER SAY "SWEAR THE JUROR" OR "EXCUSE THE JUROR".

8 IN THIS CASE EACH SIDE HAS TEN STRIKES. IS THAT
9 CORRECT, MR. WAGNER?

10 **MR. WAGNER:** FIVE AND TEN, JUDGE.

11 **THE COURT:** I'M SORRY. NOT EACH SIDE. FIVE AND
12 TEN. EXCUSE ME. BUT THE STATE FIVE, THE DEFENSE TEN.

13 **MS. EARLE:** YES, YOUR HONOR.

14 **THE COURT:** VERY GOOD. THANK YOU.

15 IS THE STATE READY?

16 **MR. WAGNER:** YES, YOUR HONOR.

17 **THE COURT:** IS THE DEFENSE READY?

18 **MS. EARLE:** YES, YOUR HONOR.

19 **THE CLERK:** LADIES AND GENTLEMEN, AS I CALL YOUR
20 NAME, IF YOU WOULD PLEASE COME FORWARD, STAND AT THE
21 PODIUM AND FACE THE AUDIENCE.

22 NUMBER 83, THERESA MAYBERRY (WHITE FEMALE).

23 WHAT SAYETH THE STATE?

24 **MR. WAGNER:** PRESENT THE JUROR.

25 **THE CLERK:** WHAT SAYETH THE DEFENSE?

1 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.

2 **THE CLERK:** MA'AM, YOU HAVE BEEN EXCUSED FROM THIS
3 CASE. YOU MAY BE SEATED.

4 NUMBER 118, KERRI SUMMEY (WHITE FEMALE).

5 WHAT SAYETH THE STATE?

6 **MR. WAGNER:** PRESENT THE JUROR.

7 **THE CLERK:** WHAT SAYETH THE DEFENSE?

8 **MS. EARLE:** PLEASE SEAT THE JUROR.

9 **THE CLERK:** MA'AM, IF YOU WOULD PLEASE TAKE A SEAT
10 IN THE JURY-BOX.

11 NUMBER 4, RONDA ALEXANDER (WHITE FEMALE).

12 WHAT SAYETH THE STATE?

13 **MR. WAGNER:** PRESENT THE JUROR.

14 **THE CLERK:** WHAT SAYETH THE DEFENSE?

15 **MS. EARLE:** PLEASE EXCUSE THE JUROR.

16 **THE CLERK:** NUMBER 99, ADAM POTTS (WHITE MALE).

17 WHAT SAYETH THE STATE?

18 **MR. WAGNER:** PRESENT THE JUROR.

19 **THE CLERK:** WHAT SAYETH THE DEFENSE?

20 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.

21 **THE CLERK:** SIR, YOU HAVE BEEN EXCUSED FROM THIS
22 CASE, YOU MAY BE SEATED.

23 NUMBER 126, MAXINE VISSAGE (WHITE FEMALE).

24 WHAT SAYETH THE STATE?

25 **MR. WAGNER:** PRESENT THE JUROR.

1 **THE CLERK:** WHAT SAY THE DEFENSE?
2 **MS. EARLE:** PLEASE EXCUSE THE JUROR.
3 **THE CLERK:** MA'AM YOU HAVE BEEN EXCUSED FROM THIS
4 CASE. YOU MAY BE SEATED.
5 NUMBER 22, MACKEY COBB (WHITE MALE).
6 WHAT SAYETH THE STATE?
7 **MR. WAGNER:** PRESENT THE JUROR.
8 **THE CLERK:** WHAT SAY THE DEFENSE?
9 **MS. EARLE:** PLEASE EXCUSE THE JUROR.
10 **THE CLERK:** SIR, YOU HAVE BEEN EXCUSED FROM THIS
11 CASE. YOU MAY BE SEATED.
12 NUMBER ONE, BOB ADAMS (WHITE MALE).
13 WHAT SAYETH THE STATE?
14 **MR. WAGNER:** PRESENT THE JUROR.
15 **THE CLERK:** WHAT SAY DEFENSE?
16 **MS. EARLE:** PLEASE SEAT THE JUROR.
17 **THE CLERK:** SIR, PLEASE TAKE A SEAT IN THE JURY-BOX.
18 NUMBER 29, AMY CRENSHAW (WHITE FEMALE).
19 WHAT SAYETH THE STATE?
20 **MR. WAGNER:** PRESENT THE JUROR.
21 **THE CLERK:** WHAT SAYETH THE DEFENSE?
22 **MS. EARLE:** SEAT THE JUROR.
23 **THE CLERK:** MA'AM, YOU MAY BE SEATED IN THE
24 JURY-BOX.
25 NUMBER 18, WILLIAM CAINES (WHITE MALE).

1 WHAT SAYETH THE STATE?

2 MR. WAGNER: PRESENT THE JUROR.

3 THE CLERK: WHAT SAYETH THE DEFENSE?

4 MS. EARLE: PLEASE SEAT THE JUROR.

5 THE CLERK: SIR, IF YOU WOULD PLEASE TAKE A SEAT IN
6 THE JURY-BOX.

7 NUMBER 26, JOHN COX (WHITE MALE).

8 WHAT SAYETH THE STATE?

9 MR. WAGNER: PRESENT THE JUROR.

10 THE CLERK: WHAT SAYETH THE DEFENSE?

11 MS. EARLE: PLEASE EXCUSE THIS JUROR.

12 THE CLERK: SIR, YOU HAVE BEEN EXCUSED FROM THIS
13 CASE. YOU MAY BE SEATED.

14 NUMBER 54, LARRY HANCOX (WHITE MALE).

15 WHAT SAYETH THE STATE?

16 MR. WAGNER: PRESENT THE JUROR.

17 THE CLERK: WHAT SAYETH THE DEFENSE?

18 MS. EARLE: PLEASE SEAT THE JUROR.

19 THE CLERK: SIR, YOU MAY TAKE A SEAT IN THE
20 JURY-BOX.

21 NUMBER 89, THOMAS MOON (BLACK MALE).

22 WHAT SAYETH THE STATE?

23 MR. WAGNER: PRESENT THE JUROR.

24 THE CLERK: WHAT SAYETH THE DEFENSE?

25 MS. EARLE: PLEASE SEAT THE JUROR.

1 **THE CLERK:** SIR, PLEASE TAKE A SEAT IN THE JURY-BOX.
2 NUMBER 72, STEVEN KING (WHITE MALE).
3 WHAT SAYETH THE STATE?
4 **MR. WAGNER:** PRESENT THE JUROR.
5 **THE CLERK:** WHAT SAYETH THE DEFENSE?
6 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.
7 **THE CLERK:** SIR, YOU HAVE BEEN EXCUSED FROM THIS
8 TRIAL, PLEASE RETURN TO YOUR SEAT.
9 NUMBER 94, CHERYL O'KELLEY (WHITE FEMALE).
10 WHAT SAYETH THE STATE?
11 **MR. WAGNER:** PRESENT THE JUROR.
12 **THE CLERK:** WHAT SAYETH THE DEFENSE?
13 **MS. EARLE:** PLEASE SEAT THE JUROR.
14 **THE CLERK:** MA'AM, PLEASE HAVE A SEAT IN THE
15 JURY-BOX.
16 JUROR NUMBER 91, RITA MURPHY (WHITE FEMALE).
17 WHAT SAYETH THE STATE?
18 **MR. WAGNER:** PRESENT THE JUROR.
19 **THE CLERK:** WHAT SAYETH THE DEFENSE?
20 **MS. EARLE:** PLEASE SEAT THE JUROR.
21 **THE CLERK:** MA'AM IF YOU WOULD PLEASE TAKE A SEAT IN
22 THE JURY-BOX.
23 NUMBER 88, ANDREW MITCHELL (WHITE MALE).
24 WHAT SAYETH THE STATE?
25 **MR. WAGNER:** PRESENT THE JUROR.

1 **THE CLERK:** WHAT SAYETH DEFENSE?

2 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.

3 **THE CLERK:** SIR, YOU HAVE BEEN EXCUSED FROM THIS
4 CASE. YOU MAY BE SEATED.

5 NUMBER 114, WANDA SMITH (WHITE FEMALE).

6 WHAT SAYETH THE STATE?

7 **MR. WAGNER:** PRESENT THE JUROR.

8 **THE CLERK:** WHAT SAY THE DEFENSE?

9 **MS. EARLE:** PLEASE SEAT THE JUROR.

10 **THE CLERK:** NUMBER 75, JAMES LAND (WHITE MALE).

11 WHAT SAYETH THE STATE?

12 **MR. WAGNER:** PRESENT THE JUROR.

13 **THE CLERK:** WHAT SAY THE DEFENSE?

14 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.

15 **THE CLERK:** SIR, YOU HAVE BEEN EXCUSED FROM THIS
16 CASE. YOU MAY BE SEATED.

17 NUMBER 3, BUREDA AKERS (WHITE FEMALE).

18 WHAT SAYETH THE STATE?

19 **MR. WAGNER:** PRESENT THE JUROR.

20 **THE CLERK:** WHAT SAY THE DEFENSE?

21 **MS. EARLE:** PLEASE EXCUSE THIS JUROR.

22 **THE CLERK:** MA'AM YOU HAVE BEEN EXCUSED FROM THIS
23 CASE. YOU MAY BE SEATED.

24 NUMBER 80, LESLIE GOFORTH (WHITE FEMALE).

25 WHAT SAYETH THE STATE?

1 **MR. WAGNER:** PRESENT THE JUROR.

2 **THE CLERK:** WHAT SAY THE DEFENSE FOR CAUSE?

3 **MS. EARLE:** PLEASE SEAT THE JUROR.

4 **THE CLERK:** MA'AM, IF YOU WOULD PLEASE TAKE A SEAT
5 IN THE JURY-BOX.

6 NUMBER 55, LISA HARBIN (WHITE FEMALE).

7 WHAT SAYETH THE STATE?

8 **MR. WAGNER:** PRESENT THE JUROR.

9 **THE CLERK:** WHAT SAY THE DEFENSE FOR CAUSE?

10 **MS. EARLE:** PLEASE SEAT THE JUROR.

11 **THE CLERK:** NUMBER 33, TIMOTHY DICKARD (WHITE MALE).
12 WHAT SAYETH THE STATE?

13 **MR. WAGNER:** PRESENT THE JUROR.

14 **THE CLERK:** WHAT SAY THE DEFENSE FOR CAUSE?

15 **MS. EARLE:** PLEASE SEAT THE JUROR.

16 **THE CLERK:** SIR, IF YOU WOULD PLEASE TAKE A SEAT IN
17 THE JURY-BOX.

18 **THE COURT:** TWO ALTERNATES, TWO AND ONE ON THE
19 ALTERNATES.

20 **THE CLERK:** FOR THE FIRST ALTERNATE, NUMBER 103,
21 ASHLEIGH QUEEN (WHITE FEMALE).

22 WHAT SAYETH THE STATE?

23 **MR. WAGNER:** PRESENT THE JUROR.

24 **THE CLERK:** WHAT SAY THE DEFENSE?

25 **MS. EARLE:** PLEASE SEAT THE JUROR.

1 **THE CLERK:** MA'AM, IF YOU WOULD TAKE A SEAT IN THE
2 JURY-BOX.

3 THIS IS FOR ALTERNATE NUMBER TWO.

4 NUMBER 106, SHERIAN ROBINSON (WHITE FEMALE).

5 WHAT SAYETH THE STATE?

6 **MR. WAGNER:** PRESENT THE JUROR.

7 **THE CLERK:** WHAT SAYETH THE DEFENSE?

8 **MS. EARLE:** PLEASE EXCUSE THE JUROR.

9 **THE CLERK:** MA'AM, YOU HAVE BEEN EXCUSED FROM THIS
10 CASE. YOU MAY RETURN TO YOUR SEAT.

11 JUROR NUMBER 71, JOHN KING (WHITE MALE).

12 WHAT SAYETH THE STATE?

13 **MR. WAGNER:** PRESENT THE JUROR.

14 **THE CLERK:** WHAT SAYETH THE DEFENSE?

15 **MS. EARLE:** PLEASE EXCUSE THE JUROR.

16 **THE CLERK:** NUMBER 46, SARAH GEORGITIS (WHITE
17 FEMALE).

18 WHAT SAYETH THE STATE?

19 **MR. WAGNER:** PRESENT THE JUROR.

20 **THE CLERK:** WHAT SAYETH THE DEFENSE FOR CAUSE?

21 **MS. EARLE:** PLEASE SEAT THE JUROR.

22 **THE CLERK:** PLEASE HAVE A SEAT IN THE JURY-BOX.
23 JUDGE?

24 **THE COURT:** IS THERE ANY REASON THIS JURY CANNOT BE
25 SWORN FOR THE TRIAL OF THIS CASE FROM THE STATE?

1 MR. WAGNER: NO.

2 THE COURT: FROM THE DEFENSE?

3 MS. EARLE: NO, SIR.

4 THE COURT: DR. CAINES, I'M GOING TO ASK YOU TO
5 SERVE AS THE FOREPERSON OF THE JURY. WHEN WE COME BACK
6 TO THE COURTROOM PLEASE TAKE THE FIRST SEAT ON THE FRONT
7 ROW. AND MS. QUEEN AND MS. GEORGITIS, IF YOU WOULD
8 PLEASE SIT IN THE SEATS YOU ARE SITTING IN NOW, THE FIRST
9 AND SECOND ALTERNATE. THOSE ARE THE ONLY THREE RESERVED
10 SEATS IN THE JURY-BOX OTHER THAN THE ONES WE DON'T USE.
11 YOU CAN SIT ANYWHERE ELSE, ALL THE REST CAN SIT ANYWHERE
12 THEY LIKE TO IN THE JURY-BOX. I DO NEED TO KNOW WHERE
13 THOSE THREE INDIVIDUALS ARE IN THE JURY-BOX WHEN YOU ARE
14 SEATED THERE.

15 I'M GOING TO ASK YOU TO RETIRE WITH THE BAILIFF. I
16 NEED TO TAKE UP MATTERS WITH THE BALANCE OF THE JURY. IT
17 WILL ONLY TAKE A FEW MINUTES. HE WILL SHOW YOU THE JURY
18 ROOM THAT YOU WILL BE USING DURING THE TRIAL OF THE CASE,
19 AND THEN WHEN WE COME BACK I'LL HAVE SOME BRIEF COMMENTS
20 BEING MADE.

21 BUT THROUGHOUT THE TRIAL OF THE CASE MY INSTRUCTIONS
22 WILL BE DO NOT UNDERTAKE THE DISCUSSION OF THIS CASE
23 AMONG YOURSELVES IN ANY WAY. YOU HAVEN'T HEARD ANYTHING
24 ABOUT THE CASE, BUT MORE IMPORTANTLY, DURING THE TRIAL OF
25 A CASE YOU NEVER KNOW WHAT'S GOING TO BE THE MOST

1 IMPORTANT PART OF THE CASE TO YOU. IT COULD BE THE
2 OPENINGS STATEMENTS BY THE ATTORNEYS, THE FIRST WITNESS,
3 THE LAST WITNESS, SOME BIT OF EVIDENCE, THE FINAL
4 ARGUMENT BY THE ATTORNEYS OR THE CHARGE ON THE LAW. IN
5 ORDER THAT YOU DO YOUR DUTY AS JURORS, YOU NEED TO KEEP
6 AN OPEN MIND THROUGHOUT THE TRIAL OF THE CASE, AND SO
7 THEREFORE I'M GOING TO INSTRUCT YOU, AS I SAY, NOT TO
8 DISCUSS THE CASE EVEN AMONG YOURSELVES OR PERMIT ANYBODY
9 TO DISCUSS IT WITH YOU UNTIL THE CASE IS GIVEN TO YOU FOR
10 YOUR DECISION.

11 AND WITH THAT I'M GOING TO ASK YOU TO GO WITH
12 MR. BIBB AND HE WILL SHOW YOU THE JURY ROOM.

13 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
14 FROM THE COURTROOM.)

15 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
16 12:10 P.M.)

17 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN OF THE
18 JURY PANEL THAT WERE NOT SELECTED FOR THE TRIAL OF THIS
19 CASE, I'M GOING TO EXCUSE YOU FOR THE BALANCE OF THE DAY
20 BUT THEN ASK YOU TO CALL BACK TOMORROW NIGHT. NOT
21 TONIGHT, BUT TOMORROW NIGHT AFTER 6:00. YOU WERE GIVEN A
22 TELEPHONE NUMBER WHEN YOU CAME IN. IT SHOULD BE
23 718-1058. DOES EVERYBODY HAVE THAT TELEPHONE NUMBER? IT
24 SHOULD BE ON THE JURY INFORMATION, THE LETTER THAT YOU
25 WERE GIVEN WHEN YOU CAME IN TODAY. DOES EVERYBODY HAVE

1 THAT TELEPHONE NUMBER? ANYBODY THAT DOESN'T, IF YOU
2 WOULD RAISE YOUR HAND.

3 ALL RIGHT. AS I SAY, THAT'S A TELEPHONE NUMBER
4 WHERE IT'S AN ANSWERING MACHINE, AND AFTER 6:00 TOMORROW
5 NIGHT, THAT'S TUESDAY NIGHT, THE 23RD OF JUNE, THE CLERK
6 OF COURT WILL HAVE A MESSAGE ON THAT ANSWERING MACHINE.
7 IT WILL EITHER TELL YOU TO CALL BACK THE NEXT NIGHT OR TO
8 COME IN THE NEXT MORNING, OR IT MIGHT BE SOME OTHER
9 MESSAGE, BUT IT WILL BE WHAT YOU WILL NEED TO DO THE NEXT
10 DAY.

11 THE CLERK OF COURT HAS DONE THIS SO IT WON'T BE
12 NECESSARY FOR YOU TO BE HERE EVERY DAY ALL THE TIME. BUT
13 IT IS, IF THE MESSAGE IS TO COME IN AT A CERTAIN TIME THE
14 NEXT DAY OR WHEN IT REQUESTS THAT YOU REPORT, THEN IT
15 WILL BE ABSOLUTELY ESSENTIAL THAT YOU DO REPORT AT THAT
16 TIME. BUT UNTIL IT IS NECESSARY FOR YOU TO BE HERE, YOU
17 WILL NOT HAVE TO BE IN COURT.

18 ALL RIGHT. NOW, DOES EVERYBODY UNDERSTAND? CALL
19 THE NUMBER AFTER 6:00. THAT'S TUESDAY, ON JUNE THE 23RD,
20 TOMORROW NIGHT, AND DO WHATEVER THE MESSAGE SAYS. NOW,
21 OF COURSE, IF YOU DON'T CALL -- THE MESSAGE WILL BE ON
22 ALL NIGHT SO IF YOU DON'T GET THROUGH THE FIRST TIME KEEP
23 CALLING UNTIL YOU DO. I REGRET IF YOU DON'T GET THE
24 MESSAGE FROM THE ANSWERING MACHINE, YOU WILL HAVE TO GET
25 THE MESSAGE FROM ME, THAT WOULD BE AT 8:30 ON WEDNESDAY

1 MORNING. SO PLEASE DO CALL THE ANSWERING MACHINE TUESDAY
2 NIGHT AFTER 6:00. ANY QUESTIONS? EVERYBODY HAS THE
3 NUMBER AND WE UNDERSTAND WHAT WE NEED TO DO? VERY GOOD.
4 I LOOK FORWARD TO WORKING WITH YOU THIS WEEK AND I THANK
5 YOU FOR YOUR PATIENCE WITH THE COURT THIS MORNING.

6 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
7 FROM THE COURTROOM.

8 (THE JURY PANEL WAS EXCUSED FOR THE DAY AT
9 APPROXIMATELY 12:13 P.M.)

10 **THE COURT:** ALL RIGHT. I'LL BRING THE JURY OUT.
11 I'M NOT GOING TO SWEAR THEM AT THIS TIME BUT EXCUSE THEM
12 UNTIL -- 10:00 IN THE MORNING?

13 **MR. WAGNER:** YES, SIR.

14 **THE COURT:** MS. EARLE?

15 **MS. EARLE:** THAT'S FINE, YOUR HONOR.

16 **THE COURT:** ALL RIGHT. VERY GOOD. ASK THE JURY TO
17 JOIN US, PLEASE.

18 (THE JURY ENTERED THE COURTROOM AT
19 APPROXIMATELY 12:15 P.M.)

20 **THE COURT:** LET THE RECORD REFLECT THE JURY AND
21 ALTERNATE ARE IN THE JURY-BOX.

22 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
23 BEFORE WE START THE TRIAL OF THE CASE, THERE ARE CERTAIN
24 MATTERS I NEED TO TAKE UP WITH THE ATTORNEYS. AND RATHER
25 THAN HAVE YOU WAIT DURING THAT PROCESS, THERE ARE OTHER

1 MATTERS I NEED TO TAKE UP AS WELL, I'M GOING TO EXCUSE
2 YOU FOR THE BALANCE OF THE DAY AND ASK THAT YOU BE BACK
3 AT 10:00 IN THE MORNING, AND THAT WILL BE IN THE JURY
4 ROOM THAT YOU JUST LEFT, THE BAILIFF WILL SHOW YOU HOW TO
5 GET BACK. BUT AT THAT TIME WE'LL START THE TRIAL OF THE
6 CASE.

7 AND, AS I'VE SAID EARLIER, YOU ARE NOT TO DISCUSS
8 THIS CASE WITH ANYONE OR PERMIT ANYONE TO DISCUSS IT WITH
9 YOU.

10 AND I USUALLY TELL JURORS THIS IS THE MOST DIFFICULT
11 PART OF THE TRIAL FOR YOU DURING THE TRIAL AND THAT IS
12 YOU'LL BE GOING HOME NOW OR THIS EVENING, AND OF COURSE
13 SOMEBODY WILL ASK YOU, WHAT ARE YOU DOING?

14 YOU'LL SAY, I'VE BEEN DRAWN ON A JURY.

15 THEN THEY'LL ASK YOU, WHAT'S IT ABOUT?

16 YOU'RE GOING TO SAY, I CAN'T DISCUSS IT WITH YOU.

17 THEY'LL SAY, WHY NOT?

18 YOU'LL SAY BECAUSE THE JUDGE TOLD ME SO, THAT YOU
19 COULDN'T DISCUSS IT WITH THEM.

20 THEY'LL PROBABLY SAY SOMETHING ABOUT, WELL, THAT'S
21 RIDICULOUS.

22 BUT THE THING IS I THINK YOU UNDERSTAND THIS IS AN
23 IMPORTANT CASE TO EVERYBODY THAT'S INVOLVED AND IT NEEDS
24 TO BE RESOLVED IN THE PROPER FASHION. AND NO ONE WHO IS
25 NOT SITTING IN THAT JURY-BOX WITH YOU OR BE IN THAT JURY

1 ROOM WITH YOU WHEN YOU REACH YOUR, WHEN THE CASE IS
2 FINALLY GIVEN TO YOU FOR YOUR DECISION, CAN HELP YOU.
3 THEY HAVEN'T HEARD THE FIRST BIT OF TESTIMONY, SEEN THE
4 FIRST EXHIBIT AND OTHER EVIDENCE, OR THE ARGUMENT OR THE
5 LAW OR ANYTHING ELSE. THEY CAN ONLY INTERFERE WITH THE
6 PROPER RESOLUTION. SO, THEREFORE, IF THEY INSIST ON
7 TALKING TO YOU, TELL THEM THAT I WILL BE HERE AT 8:30 IN
8 THE MORNING AND I'LL BE GLAD TO EXPLAIN IT TO THEM.

9 BUT PLEASE, DO SEE THAT YOUR DUTY IS NOT INTERFERED
10 WITH. AND IF IT IS, AS I SAY, I'LL TAKE THE APPROPRIATE
11 ACTION.

12 WITH THAT I'LL EXCUSE YOU FOR THE BALANCE OF THE DAY
13 AND I LOOK FORWARD TO WORKING WITH YOU ON THIS CASE, AND
14 I'LL SEE YOU AT 10:00 IN THE MORNING.

15 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
16 FROM THE COURTROOM.

17 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
18 12:17 P.M.)

19 **THE COURT:** ALL RIGHT. MR. DENNIS, IF YOU WOULD
20 PLEASE STAND? RAISE YOUR RIGHT HAND.

21 (WHEREUPON, THE DEFENDANT WAS SWORN.)

22 **THE COURT:** THANK YOU, SIR. AND YOU ARE ADARIUS
23 QUANTE DENNIS?

24 **THE DEFENDANT:** YES, SIR.

25 **THE COURT:** A JURY HAS BEEN SELECTED. AS I

1 UNDERSTAND IT, YOU ARE ON BOND; IS THAT CORRECT?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: IS IT A SURETY BOND OR P.R.?

4 THE DEFENDANT: I THINK IT'S SURETY.

5 THE COURT: SURETY BOND? WHO IS ON THE SURETY?

6 THE DEFENDANT: (NO RESPONSE.)

7 MS. EARLE: I'M NOT SURE THAT I HAVE THAT
8 INFORMATION HERE, YOUR HONOR.

9 THE COURT: THAT'S ALL RIGHT. WELL, ANYWAY, THE
10 THING IS I'M GOING TO CONTINUE YOU ON THAT BOND. BUT ALL
11 OF THE REQUIREMENTS OF THE BOND REMAIN IN EFFECT. DO YOU
12 UNDERSTAND THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: MORE IMPORTANTLY, AS I'VE SAID, THE JURY
15 HAS BEEN SELECTED IN THE TRIAL OF YOUR CASE, SO THIS CASE
16 WILL START AT 10:00 IN THE MORNING. AND IF YOU ARE NOT
17 HERE, YOU WILL WAIVE YOUR RIGHT TO BE PRESENT DURING THE
18 TRIAL AND YOU WILL BE TRIED IN YOUR ABSENCE. DO YOU
19 UNDERSTAND THAT?

20 THE DEFENDANT: YES, SIR, BUT I WILL BE.

21 THE COURT: WELL, JUST I NEED TO BE SURE THAT IT'S
22 ON THE RECORD THAT YOU UNDERSTAND THAT.

23 THE DEFENDANT: (NODDED HEAD.)

24 THE COURT: AND IF YOU ARE FOUND GUILTY, YOU WILL BE
25 SENTENCED IN YOUR ABSENCE, DO YOU UNDERSTAND THAT?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** SO YOU ARE TO BE HERE AT 10:00 IN THE
3 MORNING, THAT'S HERE IN THE FOURTH FLOOR COURTROOM IN THE
4 OCONEE COUNTY COURTHOUSE ON MAIN STREET, WALHALLA, SOUTH
5 CAROLINA, AT 10:00 ON JUNE THE 23RD, 2009. DO YOU
6 UNDERSTAND?

7 **THE DEFENDANT:** YES, SIR.

8 **THE COURT:** ANY QUESTION IN YOUR MIND?

9 **THE DEFENDANT:** NO.

10 **THE COURT:** ALL RIGHT. IN OTHER WORDS, THE MAIN
11 THING I WANT YOU TO UNDERSTAND IS THAT THIS CASE WILL GO
12 FORWARD EVEN IF YOU ARE NOT PRESENT. YES, SIR.

13 **THE DEFENDANT:** WHAT IF I STILL WANT SUZANNE AS MY
14 LAWYER BUT I REALLY WANT A PAID ATTORNEY, TOO? IS THERE
15 ANY WAY THAT CAN BE WORKED OUT, TOO?

16 **THE COURT:** UNLESS THE LAWYER IS READY TO GO FORWARD
17 IN THE MORNING.

18 **THE DEFENDANT:** IN THE MORNING?

19 **THE COURT:** THAT'S THE ONLY WAY.

20 **THE DEFENDANT:** ALL RIGHT.

21 **THE COURT:** ALL RIGHT. ALL RIGHT. VERY GOOD. I'LL
22 SEE YOU IN THE MORNING. YOU DO UNDERSTAND YOU COULD BE
23 TRIED IN YOUR ABSENCE?

24 **THE DEFENDANT:** YES, SIR.

25 **THE COURT:** ALL RIGHT. VERY GOOD. ANY QUESTIONS?

1 **THE DEFENDANT:** (SHOOK HEAD.)

2 **THE COURT:** GOOD LUCK TO YOU. AND I'LL SEE YOU IN
3 THE MORNING AT 10:00. YOU CAN BE EXCUSED IF YOU WOULD
4 LIKE.

5 (WHEREUPON, THE TRIAL IN THE CASE OF THE
6 STATE OF SOUTH CAROLINA VERSUS ADARIUS QUANTE
7 DENNIS WAS ADJOURNED FOR THE DAY, WITH THE
8 JURY SCHEDULED TO RETURN ON JUNE 23, 2009, AT
9 APPROXIMATELY 10:00 A.M.)

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1 ***** TRIAL - VOLUME 2 -- 6/23/2009 *****

2 (WHEREUPON, THE CASE OF THE STATE OF SOUTH
3 CAROLINA VERSUS ADARIUS QUANTE DENNIS RESUMED
4 ON TUESDAY, JUNE 23, 2009, AT APPROXIMATELY
5 10:27 A.M.)

6 (STATE'S EXHIBITS 1 THROUGH 10, PHOTOGRAPHS,
7 WERE MARKED FOR IDENTIFICATION.)

8 (STATE'S EXHIBIT 11, PHOTO LINE-UP, WAS
9 MARKED FOR IDENTIFICATION.)

10 THE COURT: IS THE DEFENDANT HERE?

11 MS. EARLE: NO, SIR.

12 THE COURT: ALL RIGHT. WE'RE ON THE CASE OF THE
13 STATE OF SOUTH CAROLINA VERSUS ADARIUS QUANTE DENNIS,
14 2008-GS-37-1590, CHARGED IN THE INDICTMENT WITH ARMED
15 ROBBERY. MR. WAGNER REPRESENTS THE STATE, MS. EARLE
16 REPRESENTS THE DEFENDANT.

17 IS THE DEFENDANT PRESENT?

18 MS. EARLE: NO, SIR, YOUR HONOR.

19 THE COURT: ALL RIGHT. LIEUTENANT TOMPKINS, IF YOU
20 WOULD PLEASE HAVE THE NAME "ADARIUS QUANTE DENNIS" CALLED
21 FROM THE COURTHOUSE AND CHECK THE COURTHOUSE DOORS AND
22 THEN CHECK THE PUBLIC AREA AND SEE IF HE'S HERE.

23 (WHEREUPON, DEPUTY TOMPKINS LEFT THE
24 COURTROOM AND RETURNED.)

25 THE SHERIFF'S DEPUTY: YOUR HONOR, I CALLED HIM IN

1 THE LOBBY AND I ALSO HAD HIS NAME CALLED ON THE FRONT
2 STEPS OF THE COURTHOUSE AND THERE WAS NO RESPONSE.

3 THE COURT: VERY GOOD. JUST A MOMENT, PLEASE. IF
4 YOU WOULD RAISE YOUR RIGHT HAND.

5 (WHEREUPON, THE CHIEF COURT SECURITY OFFICER
6 WAS SWORN BY THE COURT.)

7 THE COURT: PLEASE GIVE US YOUR NAME FOR THE RECORD.

8 THE WITNESS: LIEUTENANT RICK TOMPKINS.

9 THE COURT: AND WHAT IS YOUR POSITION HERE IN THE
10 OCONEE COUNTY COURTHOUSE?

11 THE WITNESS: IT'S COURT SECURITY.

12 THE COURT: YOU ARE THE CHIEF SECURITY OFFICER.

13 THE WITNESS: YES, SIR.

14 THE COURT: SECURITY OFFICER.

15 THE WITNESS: YES, SIR.

16 THE COURT: AND YOU WERE GIVEN THE NAME OF ADARIUS
17 QUANTE DENNIS TO CALL.

18 THE WITNESS: YES, SIR.

19 THE COURT: AND DID YOU DO SO?

20 THE WITNESS: I DID.

21 THE COURT: AND DID YOU GET A RESPONSE.

22 THE WITNESS: NO RESPONSE.

23 THE COURT: VERY GOOD. THANK YOU VERY MUCH.

24 EXCUSE ME. ANY QUESTIONS FOR THE LIEUTENANT FROM
25 THE DEFENDANT?

1 MS. EARLE: NO, YOUR HONOR.

2 THE COURT: FROM THE STATE?

3 MR. WAGNER: NO, SIR.

4 THE COURT: MADAM CLERK, ISSUE A BENCH WARRANT.

5 THE CLERK: YES, SIR.

6 THE COURT: ANYTHING FROM THE STATE?

7 MR. WAGNER: NO, YOUR HONOR.

8 THE COURT: IS THE STATE READY TO GO FORWARD?

9 MR. WAGNER: YES, SIR.

10 THE COURT: ANYTHING FROM THE DEFENDANT?

11 MS. EARLE: YOUR HONOR, I HAVE PRE-TRIAL MOTIONS I
12 WOULD LIKE TO MAKE.

13 THE COURT: WELL, LET'S DO ONE THING FIRST.
14 OBVIOUSLY THE MOTIONS WOULD BE A CRITICAL PERIOD OR TIME
15 FOR THE DEFENDANT. HOWEVER, RULE 16 OF THE SOUTH
16 CAROLINA RULES OF CRIMINAL PROCEDURE PROVIDE, EXCEPT IN
17 CASES WHEREIN CAPITAL PUNISHMENT IS A PERMISSIBLE
18 SENTENCE, A PERSON INDICTED FOR MISDEMEANORS AND/OR
19 FELONIES MAY VOLUNTARILY WAIVE HIS RIGHT TO BE PRESENT
20 AND MAY BE TRIED IN HIS ABSENCE UPON A FINDING BY THE
21 COURT THAT SUCH PERSON HAS RECEIVED NOTICE OF HIS RIGHT
22 TO BE PRESENT AND THAT A WARNING WAS GIVEN THAT THE TRIAL
23 WOULD PROCEED IN HIS ABSENCE UPON A FAILURE TO ATTEND
24 COURT.

25 ON YESTERDAY, JUNE THE 22ND, 2009, THE JURY WAS

1 IMPANELED WHEN THE DEFENDANT WAS HERE. ALTHOUGH THE JURY
2 WAS NOT SWORN AT THAT TIME, IN ORDER TO WAIT UNTIL THE
3 TRIAL ACTUALLY BEGAN OR COMMENCED, SO THAT DOUBLE
4 JEOPARDY WOULD NOT ATTACH UNTIL THE TRIAL WAS READY TO
5 PROCEED, THE COURT CONTINUED THE DEFENDANT ON HIS BOND,
6 THE COURT PUT HIM UNDER OATH AS TO WHETHER HE KNEW THAT
7 HE HAD THE RIGHT TO BE AT TRIAL AND THAT THE TRIAL WOULD
8 COMMENCE AT 10:00 THIS MORNING AT THE OCONEE COUNTY
9 COURTHOUSE IN WALHALLA, SOUTH CAROLINA, ON MAIN STREET,
10 AND THAT IF HE WAS NOT PRESENT, THAT HE WOULD, THE TRIAL
11 WOULD PROCEED IN HIS ABSENCE AND HE WOULD BE TRIED IN HIS
12 ABSENCE, AND IF FOUND GUILTY, HE WOULD BE SENTENCED IN
13 HIS ABSENCE.

14 THE COURT INQUIRED AS TO WHETHER OR NOT HE
15 UNDERSTOOD THE ADVICE AND INSTRUCTIONS AND HE SAID THAT
16 HE DID. HE DID NOT INDICATE IN ANY WAY ANY QUESTION
17 ABOUT WHAT WAS EXPECTED OF HIM AND HIS RIGHT TO WAIVE HIS
18 PRESENCE AT TRIAL.

19 IS THERE ANYTHING FURTHER FROM THE STATE?

20 **MR. WAGNER:** NO, YOUR HONOR.

21 **THE COURT:** ANYTHING FROM THE DEFENDANT?

22 **MS. EARLE:** NO, YOUR HONOR.

23 **THE COURT:** THE COURT DOES FIND PURSUANT TO RULE 16
24 THAT THE DEFENDANT, ADARIUS QUANTE DENNIS, RECEIVED
25 NOTICE OF HIS RIGHT TO BE PRESENT AND THAT A WARNING WAS

1 GIVEN THAT THE TRIAL WOULD PROCEED IN HIS ABSENCE UPON A
2 FAILURE TO ATTEND COURT. THE COURT FINDS THAT THE
3 DEFENDANT MAY BE TRIED IN HIS ABSENCE.

4 NOW, ANYTHING FURTHER FROM THE STATE BEFORE WE
5 BEGIN?

6 MR. WAGNER: NO, SIR.

7 THE COURT: FROM THE DEFENDANT?

8 MS. EARLE: NO, YOUR HONOR.

9 THE COURT: I UNDERSTOOD YOU HAD PRE-TRIAL MOTIONS?

10 MS. EARLE: I DO, ONCE THE JURY HAS BEEN SWORN.

11 THE COURT: ALL RIGHT. VERY GOOD. LET'S ASK THE
12 JURY TO JOIN US, PLEASE.

13 (THE JURY ENTERED THE COURTROOM AT
14 APPROXIMATELY 10:42 A.M.)

15 THE COURT: LET THE RECORD REFLECT THAT THE JURY AND
16 ALTERNATES ARE IN THE JURY-BOX.

17 MADAM CLERK, IF YOU WOULD PLEASE SWEAR THE JURY.

18 THE CLERK: LADIES AND GENTLEMEN, IF YOU WOULD
19 PLEASE STAND. RAISE YOUR RIGHT HAND.

20 (WHEREUPON, THE JURY WAS SWORN.)

21 THE CLERK: PLEASE BE SEATED.

22 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN,
23 BEFORE WE BEGIN THERE ARE CERTAIN MATTERS I NEED TO TAKE
24 UP, AND IT NEEDS TO BE DONE WITH THE ATTORNEYS. THERE'S
25 A MATTER OF LAW THAT I HAVE TO DEAL WITH. SO THEREFORE

1 I'M GOING TO ASK YOU TO RETIRE TO THE JURY ROOM FOR A
2 LITTLE BIT LONGER. I APOLOGIZE ABOUT THE DELAY, BUT AS
3 SOON AS I COMPLETE THIS I'LL COMMENCE THE TRIAL. AGAIN,
4 I DO WANT TO THANK YOU FOR YOUR PATIENCE. BUT IF YOU
5 WOULD PLEASE RETURN TO THE JURY ROOM AND DO NOT UNDERTAKE
6 DISCUSSION AMONG YOURSELVES IN ANY WAY.

7 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
8 10:45 A.M.)

9 THE COURT: ANYTHING FROM THE STATE?

10 MR. WAGNER: NO, YOUR HONOR.

11 THE COURT: FROM THE DEFENDANT?

12 MOTIONS ON BEHALF OF THE DEFENDANT:

13 MS. EARLE: YES, YOUR HONOR. MY FIRST MOTION WOULD
14 BE TO EXCLUDE THE PHOTOGRAPHS THAT I UNDERSTAND THE STATE
15 PLANS TO INTRODUCE OF THE VICTIM IN THIS CASE. MY CLIENT
16 IS CHARGED WITH ARMED ROBBERY, AND THE PHOTOGRAPHS ALL
17 DEPICT INJURIES THAT WERE SUSTAINED BY THE VICTIM, AND
18 PHOTOGRAPHS OF HIS DAUGHTER WHO WAS IN THE VEHICLE WITH
19 HIM AT THE TIME. A CODEFENDANT WAS CHARGED WITH ASSAULT
20 AND BATTERY OF A HIGH AND AGGRAVATED NATURE, BUT
21 MR. DENNIS WAS NEVER CHARGED WITH THAT. AND THE ONLY
22 PURPOSE THAT THESE PICTURES CAN BE USED FOR WOULD BE TO
23 INFLAME THE JURY AND I WOULD ASK THAT THEY BE SUPPRESSED.

24 THE COURT: DO YOU HAVE THE PHOTOGRAPHS?

25 MR. WAGNER: YES, YOUR HONOR, THEY'VE ALL BEEN

1 PREMARKED FOR IDENTIFICATION.

2 **THE COURT:** LET ME SEE THEM.

3 **MR. WAGNER:** (HANDING).

4 **THE COURT:** ALL RIGHT. MR. WAGNER, DO YOU PLAN TO
5 USE WHAT HAS BEEN MARKED FOR IDENTIFICATION STATE'S
6 EXHIBITS 1, 2, 3, 4, 5, 6, 7, 8, 9 OR 10 OR ANY PART OF
7 THEM?

8 **MR. WAGNER:** YES, SIR.

9 **THE COURT:** ALL OF THEM?

10 **MR. WAGNER:** YES, SIR.

11 **THE COURT:** ALL RIGHT. WHAT'S THE PURPOSE?

12 **MR. WAGNER:** YOUR HONOR, THOSE PICTURES WERE
13 PHOTOGRAPHS TAKEN BY THE VICTIM'S FAMILY RIGHT
14 IMMEDIATELY THERE, AFTER THIS ROBBERY. THIS ROBBERY WAS
15 A VERY BRUTAL CRIME INVOLVING A PISTOL. THE PISTOL WAS
16 NOT USED TO SHOOT ANYBODY IN THIS CASE HERE. ACTUALLY
17 ONE OF THE CODEFENDANTS CLUBBED THE VICTIM WITH THE
18 PISTOL, PISTOL-WHIPPED HIM, SPLITTING HIS HEAD OPEN.
19 THOSE PICTURES WILL CORROBORATE THE VICTIM'S TESTIMONY AS
20 FAR AS WHAT EXACTLY HAPPENED AND WHERE HE WAS IN THE CAR
21 BY MEANS OF PHYSICAL EVIDENCE.

22 THE VICTIM IS GONNA TESTIFY WHEN THESE GUYS ATTACKED
23 HIM, HE WAS TRYING TO SELL SOME SHOES TO THE DEFENDANT
24 WHO IS NOT HERE TODAY. THEY PISTOL-WHIP HIM. HE FELL
25 BACK INTO HIS VEHICLE. HIS DAUGHTER, THREE- OR

1 FOUR-YEAR-OLD DAUGHTER WAS SITTING THERE IN A CAR SEAT ON
2 THE PASSENGER'S SIDE OF THE MIDDLE PART OF THAT S.U.V.
3 THAT HE WAS DRIVING.

4 HE FELL BACK INTO THE CAR ALMOST ON TOP OF HER. AS
5 THEY WERE ATTACKING HIM HIS HEAD WAS BLEEDING. HE
6 ACTUALLY BLED ON HIS DAUGHTER. SHE'S NOT INJURED, BUT HE
7 ACTUALLY BLED ON HIS DAUGHTER, DOWN HER LEGS, ON HER
8 DRESS, ON THE SIDE OF THE CAR. ONE OF THOSE PICTURES
9 SHOWS WHERE HIS HEAD WAS BACKED UP AGAINST THE WINDOW.
10 THE PHYSICAL EVIDENCE OF THE BLOOD AND THE PICTURES
11 ACTUALLY CORROBORATES EXACTLY WHAT HE SAID HAPPENED WHEN
12 HE WAS ATTACKED, AND I THINK THEY ARE NECESSARY FOR OUR
13 CASE-IN-CHIEF TO BE ABLE TO SHOW THE JURY THAT WHAT HE
14 WAS SAYING WAS EXACTLY THE TRUTH. BECAUSE IT'S GONNA
15 COME DOWN TO ESSENTIALLY HIS WORD IS THE MAIN PART OF THE
16 CASE. WITH NO DEFENDANT HERE TODAY AND NOBODY ELSE
17 PRESENT AT THE SCENE OTHER THAN POSSIBLY A CODEFENDANT, I
18 THINK IT IS CRITICAL TO THE STATE'S CASE TO SHOW WHETHER
19 OR NOT WHAT HE IS SAYING IS ACCURATE AND TRUE.

20 **THE COURT:** ALL RIGHT. MS. EARLE?

21 **MS. EARLE:** YOUR HONOR, THE CODEFENDANT WAS CHARGED
22 WITH ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
23 ARMED ROBBERY DOES NOT HAVE AS AN ELEMENT THAT ANYONE WAS
24 INJURED, AND THESE PHOTOGRAPHS, ESPECIALLY THE
25 PHOTOGRAPHS OF THE DAUGHTER, WHO'S NOT EVEN ALLEGED TO BE

1 A VICTIM IN THIS CASE IN ANY WAY, SHAPE OR FORM, THESE
2 PHOTOGRAPHS ARE FOR NOTHING MORE THAN TO INFLAME THE
3 PASSIONS OF THE JURY AGAINST THE DEFENDANT. THEY ARE
4 HIGHLY PREJUDICIAL AND THEY ARE COMPLETELY IRRELEVANT TO
5 WHETHER OR NOT AN ARMED ROBBERY TOOK PLACE.

6 ARMED ROBBERY IS A LARCENY WHILE ARMED WITH A DEADLY
7 WEAPON. IT HAS NOTHING TO DO WITH WHETHER OR NOT ANYONE
8 WAS INJURED. AND THE JURY CAN BELIEVE THE TESTIMONY OF
9 THE VICTIM AS TO WHETHER OR NOT HE WAS ROBBED WITHOUT
10 EVER SEEING A PHOTOGRAPH OF WHAT HE LOOKED LIKE
11 AFTERWARDS.

12 **THE COURT:** ALL RIGHT. MR. WAGNER, WHAT DO YOU SAY?

13 **MR. WAGNER:** I AGREE THEY ARE PREJUDICIAL. BUT
14 EVERYTHING THAT WE INTEND TO PUT INTO EVIDENCE IS
15 PREJUDICIAL TOWARDS THE DEFENDANT. WE HAVE THE BURDEN OF
16 PROOF IN THIS CASE. IT HELPS US PROVE THE CASE WHILE
17 BEING ABLE TO SHOW THROUGH PHYSICAL EVIDENCE, THROUGH THE
18 PHOTOGRAPHS, THAT HE, IN FACT, IS TELLING THE TRUTH AS TO
19 WHAT HAPPENED.

20 WE WERE NOT ABLE -- THE SHERIFF'S OFFICE WAS NOT
21 ABLE TO GET INVOLVED IN THIS CASE UNTIL A DAY AFTER IT
22 ACTUALLY HAPPENED, SO THESE PICTURES WERE TAKEN BY HIS
23 FAMILY MEMBERS IMMEDIATELY AFTER THE CRIME, AND THEY DO
24 BACK UP AND CORROBORATE HIS STATEMENT. THERE IS BLOOD IN
25 HIS PICTURES, BUT IT'S HIS BLOOD. HE CAN TESTIFY IT'S

1 HIS BLOOD. THE CHILD WAS NOT INJURED. BUT SHE WAS
2 SITTING IN THE CAR SEAT EXACTLY WHERE -- IT HAPPENED
3 EXACTLY AS HOW HE'S GONNA TESTIFY TO THAT HIS HEAD WAS ON
4 HER AND HOW THAT HAPPENED IS CORROBORATED BY THESE
5 PHOTOS.

6 **THE COURT:** MS. EARLE, ANYTHING ELSE?

7 **MS. EARLE:** YOUR HONOR, I WOULD JUST REITERATE THAT
8 THE CHARGE AGAINST MR. DENNIS IS ARMED ROBBERY. THERE IS
9 NOTHING THAT THE STATE HAS TO PROVE CONCERNING INJURIES
10 TO ANYONE IN ORDER TO PROVE THEIR CASE AGAINST THE
11 DEFENDANT FOR ARMED ROBBERY; THEREFORE, THESE PHOTOGRAPHS
12 ARE IRRELEVANT TO THE CASE.

13 **THE COURT:** ALL RIGHT. THE CRIME OF ARMED ROBBERY
14 INCLUDES ALL OF THE ELEMENTS OF ROBBERY. THE CRIME OF
15 ROBBERY INCLUDES EACH OF THE FOUR ELEMENTS THAT
16 CONSTITUTES THE CRIME OF LARCENY. IN ADDITION TO THOSE
17 FOUR ELEMENTS, TWO OTHER ELEMENTS ARE NECESSARY TO
18 CONSTITUTE THE CRIME OF ROBBERY. THOSE ELEMENTS ARE THAT
19 THE PROPERTY MUST BE TAKEN FROM THE PERSON OF ANOTHER OR
20 IN HIS PRESENCE AND THAT THE TAKING AND CARRYING AWAY OF
21 THE PROPERTY MUST HAVE BEEN ACCOMPLISHED BY PLACING THE
22 PERSON IN FEAR BY VIOLENCE OR THREATS OF VIOLENCE SO AS
23 TO MAKE THAT PERSON SURRENDER THE PROPERTY WITHOUT HIS
24 CONSENT AND AGAINST HIS WILL.

25 I THINK SOME OF THE PHOTOGRAPHS ARE RELEVANT TO THE

1 CHARGE OF ARMED ROBBERY, WHICH INCLUDES ELEMENTS OF
2 ROBBERY. HOWEVER, NOW 1 AND 2, ARE THEY OF THE SAME
3 IMAGE, I MEAN OF THE SAME PERSPECTIVE OR ARE THERE TWO
4 DIFFERENT AREAS.

5 MR. WAGNER: THERE'S TWO DIFFERENT ANGLES, JUDGE.
6 THIS ONE IS THE RIGHT SIDE OF HIS HEAD BEHIND HIS EAR
7 HERE. I'M SORRY FOR APPROACHING.

8 THE COURT: THAT'S ALL RIGHT.

9 MR. WAGNER: THE OTHER ONE --

10 THE COURT: MS. EARLE?

11 MR. WAGNER: -- IT'S MORE OF A CLOSE-UP OF WHERE
12 HE'S GONNA TESTIFY THAT THESE GUYS HIT HIM FIRST.

13 THE OTHER ONE ACTUALLY SHOWS TWO OTHER POINTS WHERE
14 THERE WERE STAPLES PUT IN HIS HEAD, OTHER WOUNDS HE
15 RECEIVED.

16 THE COURT: ALL RIGHT. HOW ABOUT 3.

17 MR. WAGNER: THREE IS ANOTHER MARK ON HIS NECK WHICH
18 IS A DIFFERENT ANGLE, A DIFFERENT WOUND.

19 THE COURT: THE TESTIMONY BEING THAT IT ALL OCCURRED
20 AT THE SAME TIME?

21 MR. WAGNER: YES, SIR.

22 THE COURT: HOW ABOUT 4?

23 MR. WAGNER: FOUR I BELIEVE WOULD BE JUST A
24 DIFFERENT ANGLE IN A DIFFERENT ANGLE OF THE OTHER TWO
25 WOUNDS THAT ARE ACTUALLY I BELIEVE IN 2, BUT IT JUST

1 GIVES A LITTLE BIT BETTER OVERVIEW OR BETTER ANGLE OF IT.

2 THE COURT: PICK ONE, EITHER 2 OR 4.

3 MR. WAGNER: I THINK 4 IS A LITTLE BETTER.

4 THE COURT: NOW WE'RE DOWN TO 5 WHICH IS THE
5 INTERIOR OF THE CAR.

6 MR. WAGNER: YOUR HONOR, 5 WOULD SHOW THE BLOOD ON
7 THE PASSENGER'S SIDE OF THE CAR WHERE, AND THE SHOES THAT
8 HE WAS ATTEMPTING TO SELL WITH BLOOD ON THEM, BRAND-NEW
9 SHOES.

10 THE COURT: WHO WAS THE INDIVIDUAL IN THE
11 PHOTOGRAPH?

12 MR. WAGNER: THAT'S ONE OF THE VICTIM'S RELATIVES.
13 SHE JUST HAPPENED TO BE IN THE PHOTOGRAPH I BELIEVE WHEN
14 THEY WERE TAKING IT. SHE IS NOT A WITNESS.

15 THE COURT: NUMBER 6?

16 MR. WAGNER: NUMBER 6 IS JUST A PICTURE OF HIM WHEN
17 THEY WERE TRYING TO CLEAN HIM UP AFTER THE BUTTING, THEY
18 WERE TRYING TO WIPE HIS FACE UP.

19 THE COURT: WHEN WAS THAT TAKEN?

20 MR. WAGNER: THAT WAS TAKEN IMMEDIATELY THEREAFTER,
21 AFTER THE ROBBERY. BUT HE DROVE FROM THE ROBBERY
22 ESSENTIALLY STRAIGHT HOME. THEY WERE HAVING A COOKOUT
23 NEARBY. HE DROVE STRAIGHT OVER A FEW MILES AWAY AND GOT
24 HELP THERE AND WAS TRYING TO CALL 9-1-1 WHILE HE WAS
25 GOING, I BELIEVE, BUT THAT'S IMMEDIATELY AFTER HE GOT

1 THERE.

2 THE COURT: SEVEN?

3 MR. WAGNER: YOUR HONOR, 7 IS A PICTURE OF HIS
4 DAUGHTER WHO WAS SEATED IN THE PASSENGER'S SEAT OF THE
5 VEHICLE. HE FELL -- HIS TESTIMONY WILL BE THAT HE FELL
6 WHEN THESE GUYS ATTACKED HIM, HE FELL BACK INTO THE SEAT,
7 WAS TRYING TO GET AWAY AND WAS TRYING TO GET CONTROL OF
8 THE PISTOL THAT THEY WERE USING WHILE THEY WERE BEATING
9 HIM. HE FELL BACK ON HER LEGS WITH HIS HEAD BLEEDING.

10 THE COURT: IS THAT WHAT SHE WAS WEARING THAT DAY?

11 MR. WAGNER: YES, SIR. THAT WAS IMMEDIATELY TAKEN
12 IMMEDIATELY AFTER THE CRIME.

13 THE COURT: NUMBER 8.

14 MR. WAGNER: NUMBER 8 SHOWS HER WHEN THEY TOOK HER
15 PANTS OFF, IT SHOWS HIS BLOOD ON HER FEET WHERE HER FEET
16 WOULD HAVE BEEN SITTING IN THE CAR SEAT, WHERE SHE WAS
17 PINNED IN THE CAR SEAT --

18 THE COURT: THAT'S NOT HOW SHE WAS DRESSED, THEN?

19 MR. WAGNER: NO, SIR, IT IS NOT.

20 THE COURT: NUMBER 9?

21 MR. WAGNER: NUMBER 9 IS A CLOSE-UP OF THE SHOES
22 THAT HE WAS TRYING TO SELL, SOME OF THEM THAT WERE STILL
23 THERE, AND HIS BLOOD ON THE SIDE OF THE DOOR.

24 THE COURT: NUMBER 10?

25 MR. WAGNER: NUMBER 10 IS THE SIDE OF THE

1 PASSENGER'S SIDE NEAR WHERE HIS DAUGHTER WAS SITTING. I
2 THINK WHAT'S IMPORTANT TO THAT IS THE BACK PART OF HIS
3 HEAD, YOU CAN SEE WHERE HIS HEAD MASHED UP AGAINST THE
4 WINDOW WITH BLOOD, IT LOOKS TO BE THE BACK OF A HEAD
5 PRINT AND BLOOD ON THERE SHOWING HOW FAR BACK UP IN THE
6 CAR ON TOP OF HER THAT THESE GUYS WERE PUSHING HIM WHEN
7 THEY WERE TRYING TO ROB HIM.

8 **THE COURT:** NUMBER 9? THOSE ARE THE SHOES.

9 **MR. WAGNER:** YES, SIR.

10 **THE COURT:** IS THAT THE SAME SHOES OR A CLOSER ANGLE
11 THAN 5.

12 **MR. WAGNER:** A SIMILAR ANGLE, YES, SIR, PROBABLY
13 JUST MORE OF A CLOSE-UP SHOT OF THAT.

14 **MS. EARLE:** AND, YOUR HONOR?

15 **THE COURT:** YES, MA'AM.

16 **MS. EARLE:** IN HEARING WHAT THE STATE HAS NOW STATED
17 TO THE COURT ABOUT THE ORIGIN OF THESE PHOTOGRAPHS, WHEN
18 THIS INFORMATION WAS PROVIDED TO ME PURSUANT TO MY
19 DISCOVERY REQUEST, I WAS NOT TOLD THAT THESE PHOTOGRAPHS
20 WERE MADE BY ANYONE OTHER THAN OFFICERS, AND SO I'M NOT
21 EVEN AWARE OF WHO ACTUALLY TOOK THESE PHOTOGRAPHS, AND
22 HAVE NOT HAD AN OPPORTUNITY TO OBTAIN ANY FURTHER
23 INFORMATION ABOUT WHO TOOK THEM, WHERE THEY WERE TAKEN,
24 WHAT TYPE OF CAMERA WAS USED, WHO HAD CONTROL OF THE
25 CAMERA.

1 THE SOLICITOR HAS STATED THAT THE DEPUTIES WEREN'T
2 EVEN INVOLVED FOR SEVERAL DAYS. BUT THE INFORMATION THAT
3 WAS PROVIDED TO ME WAS THAT THEY RESPONDED IMMEDIATELY
4 AFTER THIS HAPPENED. AND SO I, I FEEL LIKE I'M AT A LOSS
5 AS TO HOW TO ASK QUESTIONS REGARDING ANY PROPER
6 FOUNDATION OF THE PHOTOGRAPHS WITHOUT HAVING BEEN
7 PROVIDED THAT INFORMATION.

8 THE COURT: WELL, OF COURSE, IN ORDER FOR THE
9 PHOTOGRAPHS TO BE ADMITTED, THE FOUNDATION FOR THEIR
10 RELIABILITY IS GOING TO HAVE TO BE ESTABLISHED.

11 ARE YOU PREPARED TO DO THAT, MR. WAGNER?

12 MR. WAGNER: YES, YOUR HONOR. THE VICTIM WILL
13 TESTIFY THAT THOSE, THESE PICTURES, WHILE HE DIDN'T TAKE
14 THEM --

15 THE COURT: WELL, WHO DID TAKE THEM?

16 MR. WAGNER: A RELATIVE OF HIS, A FAMILY MEMBER.
17 BUT HE CAN TESTIFY THAT THEY FAIRLY AND ACCURATELY DEPICT
18 THE CAR, HIS DAUGHTER, YOU KNOW, EVERYTHING ABOUT HIM AS
19 HE LOOKED THAT DAY.

20 THERE WERE POLICE CALLED THAT DAY. HE WENT HOME AND
21 REPORTED IT. THERE WAS A DISCREPANCY I THINK
22 INITIALLY --

23 THE COURT: AGAIN I'M CONCERNED RIGHT NOW WITH THE
24 ADMISSIBILITY OF THE EVIDENCE. I'M NOT CONCERNED ABOUT
25 THE OTHER THINGS THAT MIGHT HAVE HAPPENED. JUST IF YOU

1 ARE GOING TO RELY ON THE PHOTOGRAPHS, THERE'S A CERTAIN
2 FOUNDATION YOU HAVE TO LAY, AND I TRUST THAT YOU INTEND
3 TO DO THAT.

4 MR. WAGNER: YES, SIR. YOUR HONOR, I THINK THE
5 FOUNDATION ESSENTIALLY I HAVE TO LAY IS THAT THEY HAVE TO
6 FAIRLY AND ACCURATELY DEPICT THE SCENE AS THEY LOOKED
7 THAT DAY.

8 THE COURT: WELL, OF COURSE, IF YOU ARE GONNA USE
9 THE OBJECT OF THAT, I'M NOT SURE YOU CAN DO THAT. YOU'RE
10 USING THE BACK OF THE VICTIM'S HEAD. I'M NOT SURE YOU
11 HAVE SEEN THE BACK OF THE VICTIM'S HEAD.

12 MR. WAGNER: I UNDERSTAND, JUDGE.

13 THE COURT: ALL RIGHT. JUST THINK ABOUT IT.

14 AS FAR AS THE ADMISSIBILITY, I DO FIND THAT WITH A
15 PROPER FOUNDATION FOR RELIABILITY AND ACCURACY,
16 PHOTOGRAPHS 3, 4, 6, 7, 8 [SIC], 9, AND 10 WOULD BE
17 ADMISSIBLE.

18 HOWEVER, PHOTOGRAPHS 2, 5, AND 8, THE PREJUDICIAL
19 VALUE WOULD OUTWEIGH ANY PROBATIVE VALUE. VERY WELL.

20 SUBJECT TO THE OBJECTIONS OF THE DEFENDANT.

21 ALL RIGHT. NEXT?

22 MS. EARLE: YOUR HONOR, MY NEXT MOTION IS IN REGARDS
23 TO THE PHOTO LINE-UP THAT I BELIEVE THE STATE INTENDS TO
24 INTRODUCE AGAINST MY CLIENT. IN THIS PARTICULAR CASE THE
25 MUG-, THE PHOTOGRAPHIC LINE-UP THAT HAS BEEN USED HAS A

1 MUGSHOT OF MY CLIENT WHICH IS, SHOULD NOT BE ADMISSIBLE
2 BECAUSE IT IMPLIES THAT HE HAS A PRIOR CRIMINAL HISTORY
3 AND IT'S QUITE OBVIOUSLY A MUGSHOT, AND THAT IN THIS
4 PARTICULAR CASE THE PHOTO LINE-UP IS UNDULY SUGGESTIVE
5 WITH A SUBSTANTIAL LIKELIHOOD FOR MISIDENTIFICATION. THE
6 PHOTOGRAPHS THAT WERE USED IN THE LINE-UP, THE BLACK AND
7 WHITE PHOTOGRAPHS OF IT, MY CLIENT STICKS OUT LIKE A SORE
8 THUMB. HE IS THE FIRST PERSON YOU LOOK AT WHEN YOU LOOK
9 AT THE PHOTOGRAPHIC LINE-UP.

10 AND I THINK THAT WHEN YOU LOOK AT THAT AND YOU LOOK
11 AT THE TOTALITY OF THE CIRCUMSTANCES, THAT YOU'RE GONNA
12 SEE THAT IT IS DONE IN SUCH A WAY AS TO DRAW ATTENTION TO
13 IT AND TO MAKE IT MORE LIKELY THAT HE IS THE ONE THAT'S
14 GOING TO BE PICKED OUT OF THAT PARTICULAR LINE-UP. AND
15 IF I MAY, YOUR HONOR, I BELIEVE THE STATE HAS MARKED
16 IT -- YOUR HONOR, THIS IS STATE'S EXHIBIT 11.

17 MY CLIENT IS VERY FAIR-SKINNED AND HE IS THE ONLY
18 PERSON IN THAT LINE-UP WHO IS FAIR-SKINNED. IT'S JUST A
19 COMPLETELY UNFAIR DEPICTION FOR A WITNESS TO LOOK AT TO
20 SEE IF THEY CAN TRULY IDENTIFY THE PERSON WHEN THAT'S THE
21 FIRST THING YOUR EYE IS DRAWN TO. AND I WOULD REQUEST
22 THAT THE STATE NOT BE ALLOWED TO USE THE PHOTO LINE-UP IN
23 EVIDENCE TODAY.

24 THE COURT: MR. WAGNER?

25 MR. WAGNER: YOUR HONOR, WE TOOK -- ACTUALLY, ONE OF

1 THE WITNESSES ON ---

2 THE COURT: I'VE GOT STATE'S EXHIBIT 11 FOR
3 IDENTIFICATION.

4 MR. WAGNER: YES, SIR. AND THERE'S ALSO STATE'S
5 NUMBER 12. DIFFERENT WITNESS. YOUR HONOR, I TOOK THE
6 LIBERTY OF MAKING -- ORIGINALLY THEY ARE ESSENTIALLY
7 MUGSHOT PICTURES, THAT'S ALL WE COULD DO, THAT'S ALL WE
8 COULD GET. BUT THEY ARE A SET OF SIX PICTURES OF SIMILAR
9 AGED BLACK MEN. IN THE COLOR PICTURE AT LEAST ONE OF
10 THE, IT'S NOT THE ONE, I'VE ACTUALLY GOT THE ORIGINAL
11 HERE, I HAD TO -- IT WAS JUST LISTED AS A LINE-UP. I
12 THOUGHT THAT PROBABLY WAS NOT GONNA GO BEFORE A JURY SO
13 WE DID A BLACK AND WHITE. THAT'S JUST A COPY WITHOUT THE
14 LINE-UP. BUT THEY'RE ALL PICTURES OF SIX MEN, ALL THE
15 SAME RACE, ALL BASICALLY THE SAME AGE, ALL BASICALLY THE
16 SAME COLOR AND SAME SKIN TONE.

17 I DON'T THINK IDENTIFICATION IS NECESSARILY THAT
18 MUCH OF AN ISSUE IN THIS CASE, THE REASON I SAY THAT IS
19 THE VICTIM KNEW THE DEFENDANT, THIS OTHER WITNESS KNEW
20 THE DEFENDANT. THEY'D KNOWN HIM, HAD DEALT WITH HIM, HAD
21 KNOWN HIM FOR MANY MONTHS, SO IT'S NOT LIKE THEY DIDN'T
22 KNOW THIS GUY AND HE WAS A RANDOM STRANGER. THEY KNEW
23 HIM.

24 THE ONLY REASON THE PHOTO LINE-UPS THAT WERE DONE
25 WAS ESSENTIALLY MAINLY FOR THE POLICE TO MAKE SURE THEY

1 HAD THE RIGHT GUY. BECAUSE THEY WERE GOING AFTER HIM
2 UNDER THE STREET NAME OF HAWK. THEY WANTED TO MAKE SURE
3 THAT HAWK WAS INDEED ADARIUS DENNIS, SO THEY WENT AHEAD
4 AND MADE A LINE-UP TO MAKE SURE BEFORE THEY WENT AND
5 ARRESTED HIM. THAT, THAT'S WHAT THEY DID. BUT THEY
6 ALREADY -- BUT THE VICTIMS KNEW WHEN IT HAPPENED WHO HE
7 WAS. THEY KNEW HIM. SO I THINK IDENTIFICATION, IDENTITY
8 IS NOT GONNA BE AN ISSUE AND IT'S NOT TOTALLY BASED ON A
9 LINE-UP. THEY KNEW HIM. IF HE WAS HERE IN COURT TODAY,
10 I DON'T THINK WE WOULD NECESSARILY HAVE TO PUT THE
11 LINE-UP EVIDENCE IN BECAUSE THEY KNOW HIM AND THEY COULD
12 IDENTIFY HIM IN COURT. BUT HE'S NOT HERE FOR THEM TO
13 IDENTIFY TODAY, SO I FELT LIKE I NEED TO IDENTIFY, TO
14 PROVE HIS IDENTITY, I'LL HAVE TO PUT THE LINE-UPS IN TO
15 PROVE HIS IDENTITY. AND I THINK THEY'RE ALL FAIR.
16 THEY'RE SIX PEOPLE. YOU CANNOT TELL THEY'RE MUGSHOTS.
17 IT'S SIX PEOPLE, ALL OF THEM BLACK MALES, ALL OF THEM
18 SIMILARLY SITUATED, BASICALLY, YOU KNOW, SIMILAR
19 HAIRSTYLES, SAME AGE. BY THE FACT THE DEFENDANT IS IN
20 THERE WITH SIX PEOPLE. I'LL SUBMIT LINE-UPS IN A MANNER
21 ARE SUGGESTIVE, BUT I DON'T THINK IT'S OVERLY SUGGESTIVE,
22 PARTICULARLY IN THE LIGHT THESE WITNESSES KNEW HIM ANYWAY
23 AND HAD KNOWN HIM FOR MANY MONTHS. HE WAS NOT A STRANGER
24 TO THEM.

25 THE COURT: MS. EARLE?

1 **MS. EARLE:** YOUR HONOR, THE PHOTOGRAPHS THAT ARE
2 INCLUDED IN THIS LINE-UP I THINK ARE QUITE OBVIOUSLY
3 MUGSHOTS. THEY'RE ALL DRESSED IN THE SAME JUMPSUIT. IT
4 INDICATES THAT EVERY ONE OF THEM HAS BEEN ACCUSED OF A
5 CRIME SOMETIME IN THE PAST. HOW ELSE WOULD THE POLICE
6 HAVE ACCESS TO ALL THESE INDIVIDUALS? AND AGAIN, THE
7 FACT THAT THEY USED SIX BLACK MALES, IT WOULD BE ALMOST
8 AKIN TO SAYING THAT IF YOU PUT ME IN A LINE-UP WITH SIX
9 WHITE FEMALES, THE FACT THAT ALL OF THEM HAD DARK HAIR
10 BUT ME IS NOT SUGGESTIVE. THERE ARE VARYING DEGREES OF
11 SKIN TONE IN THESE PHOTOGRAPHS, AND MY CLIENT IS THE ONLY
12 ONE IN THE PHOTOGRAPH WITH LIGHT SKIN. IT WAS A HIGHLY
13 SUGGESTIVE LINE-UP.

14 **THE COURT:** AGAIN, YOU HAVE TWO IDENTIFICATIONS FROM
15 THE PHOTOGRAPHIC LINE-UP?

16 **MR. WAGNER:** YES, SIR, ONE FROM THE VICTIM AND ONE
17 FROM ANOTHER WITNESS WHO WAS THERE. IN FACT, IF YOU'D
18 LIKE, I COULD ACTUALLY HAND UP THE ORIGINAL. IT MIGHT
19 HELP YOU LOOK TO SEE THE COLOR OF THE PEOPLE IS NOT OFF.
20 HE'S NOT THE ONLY LIGHT-SKINNED GUY IN THE GROUP. IT'S
21 JUST THE REASON I DID BLACK AND WHITE WAS SO I COULD GET
22 THE LINE-UP WORDING UP THERE FROM THE TOP OF THE HEADING
23 SO IT WOULD NOT SAY "LINE-UP".

24 **THE COURT:** LET ME SEE THAT.

25 **MR. WAGNER:** (HANDING.)

1 **THE COURT:** HAS IT BEEN MARKED FOR IDENTIFICATION?

2 **MR. WAGNER:** NO, SIR (HANDING).

3 **THE COURT:** WAS THE CIRCLE, WHICH IS THE
4 IDENTIFICATION OF THE DEFENDANT, DONE BY THE WITNESS?

5 **MR. WAGNER:** YES, SIR. AND THEN DOWN AT THE BOTTOM,
6 YOUR HONOR, IT SAYS TWO SECONDS ON COMPACT SCREEN. WHAT
7 THE SHERIFF'S OFFICE DID ON THAT PARTICULAR LINE-UP, THEY
8 HAVE A COMPUTER THAT BRINGS UP SIX PICTURES AT A TIME OF
9 PEOPLE, AND THE DEFENDANT OR THE WITNESS, THE VICTIM
10 ACTUALLY HAD LOOKED AT SEVERAL SCREENS FULL OF SIX
11 PEOPLE. THEN THIS SCREEN CAME UP WITH THE DEFENDANT ON
12 THERE AND HE SAID WITHIN TWO SECONDS, AS IT SAYS ON THE
13 THING, HE SAID, "THAT'S HIM, THAT'S HAWK."

14 THEY WERE LOOKING AT THESE PICTURES -- THEY KNEW WHO
15 THE GUY WAS BUT THEY KNEW HIM AS HAWK. THE SHERIFF'S
16 OFFICE WAS TASKED, WAS TRYING TO FIGURE OUT WHO HAWK WAS
17 IN REAL LIFE. REALISTICALLY, HE WAS THE DEFENDANT,
18 ADARIUS QUANTE DENNIS, BUT ALL THE WITNESSES KNEW HIM AS
19 HAWK. THEY KNEW HIM, BUT THEY KNEW HIM AS HAWK, THAT WAS
20 HIS STREET NAME. THE LINE-UP WAS TO MAKE SURE WHO HAWK
21 WAS. HE SAID YEAH, THAT'S HAWK. THEY IDENTIFIED HIM ON
22 BOTH OF THEM.

23 I'VE GOT THE ORIGINAL ON THE FIRST ONE THERE IN
24 COLOR, TOO, IF YOU WOULD LIKE TO LOOK AT IT. BUT IT, IT
25 SHOWS THE DEFENDANT IN AN ORANGE JUMPSUIT IN THE PICTURE,

1 BUT IN OTHER THINGS IN FRONT OF A JURY I THINK THAT WOULD
2 BE POTENTIALLY INFLAMMATORY WHICH IS WHY WE DID IT IN
3 BLACK AND WHITE WITHOUT THE "LINE-UP" WORDING AT THE TOP.

4 BUT I THINK IF AT THE TIME DEFENDANT WAS HERE TODAY,
5 YOUR HONOR, PEOPLE COULD POINT HIM OUT AND SAY, "YEAH,
6 THAT'S HAWK," BECAUSE THEY KNOW HIM. SO I DON'T THINK
7 THE ACTUAL IDENTITY IS AS MUCH OF AN ISSUE HERE BECAUSE
8 IT WASN'T LIKE SAYING THEY DIDN'T KNOW WHO THE GUY WAS.
9 THEY KNEW IT WAS HAWK WHO ROBBED HIM. THEY DIDN'T KNOW
10 HIS REAL NAME.

11 THE COURT: WHAT WAS THE -- HAWK WHAT?

12 MR. WAGNER: HIS STREET NAME WAS HAWK. THE
13 DEFENDANT ---

14 THE COURT: THAT WAS THE ONLY NAME THEY KNEW HIM BY?

15 MR. WAGNER: YES, SIR. WHEN HE TALKED TO THE
16 SHERIFF'S OFFICE AND THE POLICE AND SAID "HAWK ROBBED ME"
17 AND ONE OF THE GUYS ROBBED ME WAS HAWK, THEY WENT THROUGH
18 THEIR PICTURES TO FIGURE OUT EXACTLY WHO HAWK WAS. AND
19 THAT'S WHEN THEY HAD BOTH OF THEM WITHIN TWO SECONDS AND
20 THE WITNESS SAID, "YEAH, THAT'S HAWK."

21 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
22 STATE?

23 MR. WAGNER: NO, SIR.

24 THE COURT: FROM THE DEFENDANT?

25 MS. EARLE: NO, YOUR HONOR.

1 **THE COURT:** AGAIN, DEPENDING ON THE PROPER
2 FOUNDATION BEING LAID AS TO THE USE OF A PHOTOGRAPHIC
3 LINE-UP TO DETERMINE THE ALLEGED PERPETRATOR OF THE
4 OFFENSE AS BEING A PARTICULAR INDIVIDUAL WHOSE NAME WAS
5 NOT KNOWN TO THE VICTIM OR VICTIMS, BUT TO DETERMINE THE
6 TOTALITY OF THE EVENT AS FAR AS THE PRIOR KNOWLEDGE OF
7 THE INDIVIDUAL, THE LENGTH OF TIME THAT THE VICTIMS HAD
8 TO OBSERVE THE PERPETRATOR, AND THE CIRCUMSTANCES AND THE
9 LIKE, THE PHOTOGRAPHS I DO NOT FIND TO BE SO SUGGESTIVE
10 AS TO BE EXCLUDED.

11 BUT AT THE SAME TIME, AS I SAY, IT WILL BE FOR THE
12 STATE TO ESTABLISH THE RELIABILITY OF THE PROCESS AS FAR
13 AS IDENTIFICATION.

14 NOW, THE COLORED PHOTOGRAPHS I FIND WOULD PERHAPS BE
15 MORE PREJUDICIAL BECAUSE OF THE UNIFORMITY OF THE DRESS
16 THAT WOULD INDICATE THEY ARE UNDER CIRCUMSTANCES WHICH
17 WOULD SUGGEST A PRIOR RECORD. I SAY THAT IN REGARD TO
18 STATE'S EXHIBIT 12, WHICH IS THE BLACK AND WHITE OF THAT,
19 YOU DON'T SEE THE ORANGE UNIFORMS. HOWEVER, AND JUST TO
20 EMPHASIZE THAT AS BEING, SUPPORTING THE USE OF STATE'S
21 EXHIBIT 11, THERE THE DRESS IS INDIVIDUAL. SO OBVIOUSLY
22 IT'S NOT AS SUGGESTIVE, IT'S NOT RELEVANT.

23 SO THEREFORE, AGAIN WITH THE PROPER FOUNDATION FOR
24 THE USE OF THE IDENTIFICATION BY PHOTOGRAPH, THAT STATE'S
25 EXHIBIT 11 AND 12 WOULD BE ADMITTED.

1 (STATE'S EX. # 11, PHOTOGRAPHIC LINE-UP, WAS
2 RECEIVED IN EVIDENCE.)

3 (STATE'S EX. # 12, PHOTOGRAPHIC LINE-UP, WAS
4 RECEIVED IN EVIDENCE.)

5 **THE COURT:** THE COLORED LINE-UP PHOTOGRAPHS I'M
6 GOING TO DESIGNATE OR MARK AS COURT'S EXHIBIT 1 TO BE
7 INCLUDED IN THE RECORD SUBJECT TO THE OBJECTIONS, WHICH I
8 OVERRULE, OF THE DEFENDANT.

9 (COURT'S EX. # 1, PHOTO LINE-UP IN COLOR, WAS
10 MARKED FOR IDENTIFICATION AND RECEIVED IN
11 COURT'S EVIDENCE.)

12 **THE COURT:** ANYTHING ELSE?

13 **MR. WAGNER:** NO, YOUR HONOR.

14 **THE COURT:** VERY WELL. ANYTHING ELSE FROM THE
15 DEFENDANT?

16 **MS. EARLE:** YOUR HONOR, THE ONLY OTHER THING I WOULD
17 HAVE IS I WOULD ASK THE STATE'S WITNESSES OTHER THAN
18 OFFICER REED BE REMOVED FROM THE COURTROOM WHEN THE TRIAL
19 BEGINS.

20 **THE COURT:** WELL, THE VICTIM IS ENTITLED TO BE
21 PRESENT.

22 **MS. EARLE:** AND ANY OTHER STATE WITNESSES, THOUGH, I
23 WOULD ASK THEY NOT BE ALLOWED TO REMAIN IN THE COURTROOM.

24 **THE COURT:** ALL RIGHT. MR. WAGNER, ANY PROBLEM?

25 (DISCUSSION OFF THE RECORD.)

1 **THE COURT:** THE THING, THE WAY I USUALLY DO THIS, IF
2 YOU WANT THE LADY TO LEAVE, THAT WILL BE FINE, BUT I
3 USUALLY LET THE WITNESSES STAY IN DURING OPENING
4 ARGUMENTS SO IF ANYBODY WANTS TO REFER TO SOMEBODY THEY
5 CAN. BUT AS SOON AS THE FIRST WITNESS IS CALLED, THEN
6 ANYONE WHO IS NOT PERMITTED TO BE IN THE COURTROOM DURING
7 THE TESTIMONY, THAT WOULD INCLUDE THE CHIEF INVESTIGATING
8 OFFICER AND THE VICTIM, THEY ARE PERMITTED TO BE PRESENT.

9 IF YOU WANT TO. BRING THE YOUNG LADY BACK. WHEN
10 SHE GETS BACK, DO TELL HER, THOUGH, THAT SHE HAS TO LEAVE
11 AND ANY OTHER WITNESSES THE STATE HAS AND ANY WITNESSES
12 THE DEFENDANT HAS WOULD HAVE TO LEAVE AS SOON AS OUR
13 FIRST WITNESS IS CALLED.

14 ALL RIGHT. ANYTHING ELSE?

15 **MR. WAGNER:** NO, YOUR HONOR.

16 **THE COURT:** ANYTHING ELSE?

17 **MS. EARLE:** NO, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. VERY GOOD. LET'S TAKE A
19 MINUTE OR TWO AND THEN WE'LL START.

20 (A RECESS WAS TAKEN.)

21 **THE COURT:** STATE READY TO PROCEED?

22 **MR. WAGNER:** YES, SIR.

23 **THE COURT:** DEFENSE READY TO PROCEED?

24 **MS. EARLE:** YES, YOUR HONOR.

25 **THE COURT:** VERY WELL. ASK THE JURY TO JOIN US,

1 PLEASE.

2 (THE JURY ENTERED THE COURTROOM AT
3 APPROXIMATELY 11:33 A.M.)

4 PRELIMINARY INSTRUCTIONS BY COURT TO JURY:

5 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
6 JURY, I'M SURE THAT EACH OF YOU NOW FULLY APPRECIATES
7 THAT THIS COURT, THE COURT OF GENERAL SESSIONS FOR OCONEE
8 COUNTY, EXISTS FOR PURPOSES OF RESOLVING QUESTIONS OF
9 ALLEGED CRIMINAL CONDUCT ARISING BETWEEN THE STATE OF
10 SOUTH CAROLINA AND THE DEFENDANT.

11 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN THAT A
12 CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN COURT
13 ACCORDING TO CERTAIN RULES OF PROCEDURE. THE STATE HAS
14 NOT ONLY AN EQUAL RIGHT BUT THE DUTY TO PRESENT A CHARGE
15 OF CRIMINAL CONDUCT IN OPEN COURT ACCORDING TO THE SAME
16 RULES OF PROCEDURE. EACH OF THE PARTIES, THEREFORE, BOTH
17 THE STATE AND THE DEFENDANT, HAVE AN EQUAL RIGHT TO THE
18 OPPORTUNITY OF THIS JUDICIAL PROCEEDING AND TO HAVE YOU
19 AS THE JURY SELECTED AND NOW SWORN FOR THE TRIAL OF THIS
20 CASE.

21 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS A
22 JURY LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW TAKEN
23 TO WELL AND TRULY TRY AND DETERMINE THE FACTS OF THIS
24 CASE. THAT OATH IN A VERY ESSENTIAL WAY SAYS THAT YOU
25 ARE THE SOLE JUDGES OF THE FACTS IN THE CASE. OBVIOUSLY,

1 ANY CASE TRIED IN COURT WILL INVOLVE A QUESTION ABOUT
2 WHAT HAPPENED OR HOW SOMETHING CAME TO HAPPEN. OR WHOM,
3 IF ANYONE, DID ANYTHING IN A PARTICULAR OCCURRENCE OR
4 CIRCUMSTANCE.

5 NOW, A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO
6 REMAIN SILENT AND TO ALSO WAIVE HIS RIGHT TO BE PRESENT
7 AT TRIAL. THE ASSERTION OF THESE RIGHTS MUST NOT BE
8 CONSIDERED BY YOU IN ANY MANNER. I REPEAT: UNDER THE
9 OATH YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE
10 FACT THAT THE DEFENDANT DOESN'T TESTIFY, PRESENT EVIDENCE
11 OR EVEN ATTEND THE TRIAL. I INSTRUCT YOU AND EMPHASIZE
12 THE FACT THAT THE DEFENDANT DOES NOT TESTIFY, PUT UP
13 EVIDENCE, OR EVEN APPEAR ARE NOT FACTORS TO BE CONSIDERED
14 BY YOU IN ANY WAY IN YOUR CONSIDERATION ON THE QUESTION
15 OF WHETHER THE STATE HAS PROVEN THE DEFENDANT IS GUILTY
16 OR NOT GUILTY OF THE CHARGE IN THIS INDICTMENT. IT MUST
17 NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER.

18 FROM THIS POINT FORWARD THEN NO ONE CONCERNED WITH
19 THIS TRIAL HAS A RIGHT TO DECIDE ANY QUESTION OF FACT IN
20 THIS TRIAL OR THE TRUTH OF IT EXCEPT YOU, THE JURY. THE
21 FACTS THEN ARE FOR YOUR RESOLUTION AND YOUR DECISION AND
22 YOURS ALONE. AND AFTER YOU HEAR ALL THE EVIDENCE IN THE
23 CASE, THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT
24 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
25 DECIDING THE WEIGHT AND BELIEVABILITY OF EACH PART OF THE

1 EVIDENCE AND BY APPLYING THE LAW OF THE CASE THERETO.
2 THE TRIAL JUDGE IS THE JUDGE OF THE LAW IN THIS CASE. IT
3 ALSO IS MY RESPONSIBILITY AMONG OTHER DUTIES TO PRESIDE
4 OVER THE TRIAL, TO RULE ON THE ADMISSIBILITY OF EVIDENCE
5 OFFERED DURING THE PROGRESS OF THE TRIAL, AND TO STATE TO
6 YOU, THE JURY, THE LAW APPLICABLE TO THE CASE.

7 THE CONSTITUTION OF SOUTH CAROLINA MANDATES I AS THE
8 TRIAL JUDGE CANNOT DIRECTLY OR INDIRECTLY COMMENT ABOUT
9 THE FACTS IN THIS CASE. THE PROCESS OF A VERDICT, THEN,
10 IS SIMPLY THAT YOU, THE JURY, FIRST DETERMINE WHAT IS THE
11 TRUTH OF THE FACTS AND THEN APPLY TO THAT TRUE STATE OF
12 FACTS THAT PRINCIPLE OF LAW APPLICABLE, AND BY THAT
13 PROCESS DETERMINE AND REPORT TO THIS COURT YOUR FINAL
14 VERDICT IN THE CASE, SPEAKING THE TRUTH OF THE CASE AS
15 YOU DETERMINE IT.

16 THE COURT WILL MORE FULLY AND COMPLETELY STATE TO
17 YOU THE PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN
18 THIS CASE BEFORE IT IS SUBMITTED TO YOU FOR YOUR
19 DECISION. HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW
20 APPLICABLE TO THE FRAMEWORK OF EVERY CASE IN GENERAL
21 SESSIONS COURT. FIRST, THE DEFENDANT HAS ENTERED A PLEA
22 OF NOT GUILTY TO THE CHARGES CONTAINED IN THE INDICTMENT.
23 THE INDICTMENT IN A CASE IS NOT EVIDENCE; IT IS SIMPLY
24 THE WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE OR
25 CHARGES AGAINST THE DEFENDANT AND IT SERVES AS THE FORMAL

1 DOCUMENT BY WHICH THIS CASE IS PROCESSED INTO COURT. THE
2 PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF
3 PROOF IN THIS CASE. NOW, WHAT IS MEANT BY THE TERM
4 BURDEN OF PROOF? THE DEFENDANT IS PRESUMED IN LAW
5 INNOCENT OF ALL CHARGES CONTAINED IN THE INDICTMENT. THE
6 BURDEN OF PROOF REQUIRES THE STATE TO PROVE GUILT BEYOND
7 A REASONABLE DOUBT, AND THEREFORE CONSISTENT WITH THAT
8 BURDEN, THE DEFENDANT OR THE ACCUSED PARTY SHALL BE
9 PRESUMED INNOCENT, AND THAT PRESUMPTION OF INNOCENCE IS
10 SUFFICIENT TO COMPEL A VERDICT OF NOT GUILTY OR A VERDICT
11 OF ACQUITTAL UNLESS THE JURY CONCLUDES THAT THE STATE HAS
12 SATISFIED ITS OBLIGATION TO PROVE THE DEFENDANT GUILTY
13 BEYOND A REASONABLE DOUBT.

14 WHAT IS MEANT BY THE TERM REASONABLE DOUBT? A
15 REASONABLE DOUBT IS THAT KIND OF DOUBT THAT WOULD CAUSE A
16 REASONABLE PERSON TO HESITATE TO ACT.

17 THIS CASE WILL BE OPENED BY THE SOLICITOR, AFTER
18 WHICH THE SAME OPPORTUNITY WILL BE AFFORDED BY THE
19 DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL OF THE
20 EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE
21 STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO YOU
22 THEIR RESPECTIVE POSITIONS, AFTER WHICH THE COURT WILL
23 FULLY STATE THE LAW APPLICABLE TO THE CASE.

24 OBVIOUSLY ALL PARTS OF A CASE ARE IMPORTANT. WE DO
25 NOT KNOW WHICH WITNESS IN THE CASE IMPRESSES YOU, WHETHER

1 IT BE THE FIRST WITNESS OR THE LAST WITNESS. IN REACHING
2 YOUR FINAL CONCLUSION YOU WILL NEED THE GUIDANCE AND THE
3 JUDGMENT OF THE OTHER JURORS. YOU WILL NEED THE GUIDANCE
4 OF THE PRINCIPLES OF LAW THAT WILL BE STATED TO YOU BY
5 THE COURT. FOR ALL OF THESE REASONS, THEN, IF WE HAVE
6 ANY RECESS PERIODS, WHEN YOU RETIRE TO YOUR JURY ROOM OR
7 DURING AN OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT
8 YOU MUST NOT UNDERTAKE TO DISCUSS THIS CASE AMONG
9 YOURSELVES IN ANY WAY UNTIL THE CASE IS FINALLY GIVEN TO
10 YOU FOR YOUR DELIBERATIONS, NOR ARE YOU TO DISCUSS THIS
11 CASE WITH ANYONE OR PERMIT ANYONE TO DISCUSS THE CASE
12 WITH YOU. IF THEY TRY TO DO SO, AS I SAID YESTERDAY, YOU
13 MUST REPORT THEM AND I'LL TAKE THE APPROPRIATE ACTION.

14 NOW, THE VERDICT IN THIS CASE MUST BE A UNANIMOUS
15 VERDICT WITH ALL 12 JURORS.

16 THERE ARE A FEW OTHER THINGS I NEED TO MENTION
17 BEFORE WE BEGIN. AS I SAID EARLIER, ALTHOUGH I AM THE
18 ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU ARE THE
19 ONLY ONES WHO CAN DETERMINE THE FACTS. I DO NOT HAVE THE
20 RIGHT TO INDICATE HOW I MAY FEEL ABOUT THE EVIDENCE
21 PRESENTED, AND THROUGHOUT THIS TRIAL MY INTENTION WILL BE
22 TO ACT IMPARTIALLY TOWARDS EACH PARTY.

23 SECOND, FROM TIME TO TIME AN ATTORNEY MAY OBJECT TO
24 EVIDENCE THE OTHER SIDE IS SEEKING TO PRESENT. AS IN
25 SPORTS OR BUSINESS OR ANY OTHER STRUCTURED ACTIVITY,

1 THERE ARE CERTAIN RULES THAT BOTH SIDES MUST OBEY IN
2 PRESENTING EVIDENCE. THESE RULES HAVE A DEFINITE
3 PURPOSE. THEY ENSURE THAT THE INFORMATION YOU RECEIVE IS
4 THE MOST TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE. AN
5 OBJECTION IS A PROCEDURE WE USE FOR AN ATTORNEY TO CALL A
6 POSSIBLE VIOLATION OF THE RULES TO THE COURT'S ATTENTION
7 AND FOR THIS REASON YOU SHOULD NOT HOLD AN ATTORNEY'S
8 OBJECTION AGAINST HIS CLIENT, NOR SHOULD YOU CONCLUDE
9 FROM MY RULING ON THE OBJECTION THAT I FAVOR ONE SIDE OR
10 THE OTHER.

11 FINALLY I WOULD ASK THAT YOU PAY THE CLOSEST
12 POSSIBLE ATTENTION TO THE EVIDENCE PRESENTED TO YOU. I
13 WILL ASK THAT YOU DO NOT TAKE NOTES, FOR IF THE
14 NOTE-TAKER MAKES AN ERROR, THOSE NOTES CAN BE MORE
15 DETRIMENTAL THAN HELPFUL DURING THE DELIBERATIONS. THE
16 TIME-TESTED SYSTEM IS FOR YOU TO LISTEN CAREFULLY AND I'M
17 SURE YOU EACH CAN DO THAT.

18 I SUGGEST JURORS NOT TAKE NOTES BECAUSE IT'S MY
19 EXPERIENCE THAT IF WE TAKE NOTES, WE HAVE A TENDENCY TO
20 CONCENTRATE ON THE NOTE THAT WE ARE TAKING AND WE ARE NOT
21 PAYING ATTENTION TO WHAT'S HAPPENING AT THE TIME. WE DO
22 THAT TO BE SURE WE ACCURATELY PUT DOWN WHAT WE THINK WE
23 HEAR, BUT MOREOVER SOMETIMES JUST A SPELLING AND
24 SEMANTICS AND THINGS OF THAT NATURE, SO THEREFORE YOU ARE
25 DISTRACTED. AND YOU MUST MAKE YOUR DECISION BASED SOLELY

1 AND ONLY ON THE TESTIMONY FROM THIS WITNESS STAND AND
2 EXHIBITS AND OTHER EVIDENCE INTRODUCED IN COURT, SO YOU
3 NEED TO CONCENTRATE ON WHAT'S HAPPENING. AND IF YOU DO
4 HAVE SOME QUESTION ABOUT WHAT OCCURRED, RATHER THAN
5 HAVING A NOTE THAT MIGHT BE IN ERROR TO RELY ON, IT'S
6 BETTER TO USE THE COLLECTIVE RECOLLECTION OF THE OTHER
7 JURORS AT THE TIME TO MAKE THAT DETERMINATION.

8 THE REASON I SAY NOT TO RELY ON A WRITTEN NOTE IS
9 BECAUSE IF YOU MAKE AN ERROR IN THE NOTE, IT CAN CHANGE
10 ENTIRELY THE MEANING OF THE NOTE. AND I USE ONE WORD,
11 "NOT". YOU CAN EITHER HEAR OR THINK YOU HEAR THE WORD
12 "NOT" IN A SENTENCE, OR YOU DON'T HEAR THE WORD "NOT", IT
13 CHANGES IT ENTIRELY. SO IT'S BETTER TO USE YOUR
14 RECOLLECTIONS AND, AS I SAY, PAYING ATTENTION TO WHAT IS
15 OCCURRING AT THE TIME THE TESTIMONY IS GIVEN AND THE
16 EXHIBITS ARE INTRODUCED.

17 NOW, HAVING SAID THAT, I DO TAKE NOTES. IT'S NOT
18 ONE OF THOSE THINGS DO AS I SAY, NOT AS I DO. WE HAVE
19 ENTIRELY DIFFERENT FUNCTIONS IN THIS COURTROOM. YOU AND
20 YOU ALONE ARE THE ONLY ONES THAT CAN FIND THE TRUTH IN
21 THIS CASE. I AM NOT CONCERNED ABOUT THE WEIGHT OR THE
22 CREDIBILITY OF ANYTHING AS FAR AS THE EVIDENCE IS
23 CONCERNED. I AM ONLY CONCERNED WHETHER CERTAIN THINGS
24 OCCUR DURING THE COURSE OF THE TRIAL THAT ARE REQUIRED
25 UNDER LAW. WHAT I'M JOTTING DOWN IS JUST WHAT HAPPENED,

1 NOT THE SIGNIFICANCE OF IT, THAT IS FOR YOU TO DETERMINE.

2 WITH THAT I'LL RECOGNIZE THE SOLICITOR FOR HIS
3 OPENING STATEMENT.

4 MR. WAGNER: THANK YOU, JUDGE.

5 OPENING STATEMENT ON BEHALF OF THE STATE:

6 MR. WAGNER: JUNE 22ND, ALMOST, A YEAR AGO JUST
7 YESTERDAY, THE VICTIM, RENALDO ROBINSON, BUYS SHOES ON
8 THE INTERNET, HE SELLS THEM AROUND TOWN, THAT'S HOW HE
9 MAKES MONEY DOING IT THAT WAY.

10 HE TALKED WITH THE DEFENDANT PRIOR TO THIS. THE
11 DEFENDANT WANTED TO BUY A PAIR OF SHOES JUST LIKE RENALDO
12 HAD SOLD THE DEFENDANT'S BROTHER. HE DROVE DOWN TO THE
13 CLINKSCALE PART OF ANDERSON CITY -- I MEAN, EXCUSE ME --
14 OCONEE, SENECA CITY, OCONEE COUNTY, BUT IT'S RIGHT ON THE
15 CITY LIMITS, COUNTY LIMITS. THERE WAS A DISCREPANCY WHEN
16 THIS HAPPENED AS TO WHETHER IT WAS A CITY CASE OR A
17 COUNTY CASE. IT TOOK ABOUT A DAY FOR LIEUTENANT REED
18 FROM THE SHERIFF'S OFFICE TO GET ASSIGNED TO THE CASE,
19 BUT INITIALLY THE CITY CAME OUT THERE BECAUSE IT WAS
20 THOUGHT TO BE IN THE CITY LIMITS. BUT IT WAS VERY CLOSE,
21 RIGHT NEAR BIG LOTS AND THAT SHOPPING CENTER THERE.

22 BUT THE VICTIM WENT DOWN WITH A WHOLE BUNCH OF SHOES
23 IN HIS CAR TO SELL A PAIR OF SHOES TO WHAT HE THOUGHT WAS
24 THE DEFENDANT. THE DEFENDANT CAME OUT. HE'S GONNA TELL
25 YOU WHAT HAPPENED. YOU'LL HEAR FROM HIM IN A MINUTE.

1 BUT HE CAME OUT THERE AND THREE OF THEM BASICALLY
2 PISTOL-WHIPPED THE VICTIM SEVERELY AND AT GUNPOINT ROBBED
3 HIM, STOLE ALL HIS SHOES, MULTIPLE DOZENS OF PAIRS OF
4 SHOES OUT OF HIS CAR.

5 HE WAS ABLE TO GET AWAY, WENT HOME. SOME PICTURES
6 WERE TAKEN, THE POLICE WERE CALLED. LIEUTENANT REED GOT
7 INVOLVED.

8 TWO OR THREE DAYS LATER THEY ARRESTED EVERYBODY
9 INVOLVED, THE DEFENDANT BEING ONE OF THE DEFENDANTS WHO
10 WAS INVOLVED.

11 YOU'RE GONNA HEAR WHAT THE DEFENDANT DID. HE WAS
12 NOT ACTUALLY THE TRIGGER MAN. HE WAS INVOLVED IN THE
13 ROBBERY. HE CAME DOWN THERE. HE HELPED SET IT UP. HE
14 HELPED HAUL THE SHOES AWAY WHILE THE OTHER GUYS WERE
15 BEATING THE VICTIM WITH A PISTOL. IT WAS A VERY BRUTAL,
16 VERY SENSELESS CRIME THAT THE STATE HAS THE BURDEN OF
17 PROVING. ARMED ROBBERY, WHICH IS ESSENTIALLY WHAT THE
18 JUDGE WILL TELL YOU LATER, ESSENTIALLY WHAT WE ARE TRYING
19 TO PROVE AND WE ARE GOING TO PROVE TO YOU TODAY IS THAT
20 THE DEFENDANT, ALONG WITH OTHERS AT GUNPOINT, WITH A
21 DEADLY WEAPON, STOLE PROPERTY FROM THE VICTIM AGAINST HIS
22 WILL, WITH THE INTENT TO DEPRIVE HIM OF THOSE SHOES.

23 SO IT'S NOT YOUR TYPICAL ARMED ROBBERY AT A BANK OR
24 SOMETHING YOU MIGHT THINK, OR A CONVENIENCE STORE, BUT
25 IT'S ESSENTIALLY THE EXACT SAME THING, EXCEPT JUST

1 OUTSIDE A STORE.

2 YOU'RE GONNA HEAR FROM THE VICTIM, YOU'LL HEAR FROM
3 SOME OTHER WITNESSES. I ANTICIPATE THE CASE WILL
4 PROBABLY TAKE A VERY SHORT TIME; WE'LL PROBABLY BE DONE
5 TODAY. SO I ASK YOU, IF YOU COULD, JUST BEAR WITH US,
6 GIVE IT YOUR ATTENTION AND LISTEN TO WHAT THE WITNESSES
7 SAY AND PAY ATTENTION TO WHAT THEY SAY AND WE'LL TRY TO
8 SPEED IT UP BEST WE CAN.

9 MY NAME IS DAVID WAGNER, I'M THE PROSECUTOR ON THE
10 CASE. LIEUTENANT REED WHO IS SITTING HERE WITH ME, WAS
11 THE CASE INVESTIGATOR. THANK YOU.

12 **THE COURT:** MS. EARLE?

13 **MS. EARLE:** MAY IT PLEASE THE COURT, YOUR HONOR.
14 OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

15 **MS. EARLE:** LADIES AND GENTLEMEN OF THE JURY, I'M
16 SUZANNE EARLE, AN ATTORNEY HERE IN WALHALLA, AND I
17 REPRESENT THE DEFENDANT IN THIS CASE, MR. ADARIUS DENNIS.

18 HE IS CHARGED WITH THE CRIME OF ARMED ROBBERY. NOW,
19 WHAT YOU HEARD FROM THE JUDGE AND THE STATE SO FAR PRETTY
20 MUCH COVERS WHAT I USUALLY TRY TO TELL PEOPLE IN AN
21 OPENING STATEMENT. IF YOU HAVE EVER SERVED ON A JURY
22 BEFORE, YOU PROBABLY HEARD FROM THE DEFENSE ATTORNEY THAT
23 THE DEFENDANT COMES INTO COURT CLOAKED IN INNOCENCE,
24 WEARING HIS INNOCENCE LIKE A CLOAK, AND THE ONLY WAY THAT
25 YOU CAN FIND HIM GUILTY IS IF THAT CLOAK OF INNOCENCE IS

1 REMOVED FROM HIM. THE BURDEN OF PROOF IS ON THE STATE TO
2 PROVE TO YOU ON EACH ELEMENT OF THE CRIME THAT THE
3 DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT.

4 NOW, WHEN I HEAR "CLOAK OF INNOCENCE," THAT SOUNDS
5 TO ME MORE HARRY POTTER THAN ANYTHING ELSE, AND IT REALLY
6 DOESN'T HELP ME UNDERSTAND WHAT THE STATE HAS TO DO.
7 WHEN I THINK OF IT, I THINK OF IT MORE AS A JIGSAW
8 PUZZLE. AND IN ORDER FOR YOU TO FIND THE DEFENDANT
9 GUILTY, THE STATE HAS TO GIVE YOU ALL THE PIECES OF THE
10 JIGSAW PUZZLE, AND EACH PIECE IS AN ELEMENT OF THE CRIME.
11 AND WHEN THEY HAVE PROVED TO YOU BEYOND A REASONABLE
12 DOUBT EACH ELEMENT, THEY CAN HAND YOU THAT PIECE OF THE
13 PUZZLE, AND WHEN YOU ARE FINISHED IF YOU HAVE A COMPLETE
14 PUZZLE PUT TOGETHER WHERE YOU CAN SEE THE WHOLE PICTURE,
15 THEN YOU CAN FIND THE DEFENDANT GUILTY.

16 BUT IF ANY ONE OF THOSE PIECES IS MISSING, IF
17 THERE'S ANY ELEMENT THAT WAS NOT PROVEN TO YOU BEYOND A
18 REASONABLE DOUBT, THEN THERE'S GONNA BE A HOLE, NO MATTER
19 HOW SMALL, IN THAT PICTURE; AND IF THERE'S A HOLE IN THAT
20 PICTURE ANYWHERE, THEN THE DEFENDANT IS ENTITLED AND YOU
21 ARE REQUIRED TO FIND HIM NOT GUILTY.

22 NOW, ARMED ROBBERY IS A LARCENY FROM A PERSON WITH A
23 WEAPON, A DEADLY WEAPON, AND THE STATE HAS TO PROVE TO
24 YOU EACH ELEMENT OF THAT CRIME. AND THE JUDGE WILL TELL
25 YOU AT THE END OF THE CASE WHAT EACH ONE OF THOSE

1 ELEMENTS IS, AND I WOULD ASK YOU TO JUST REMEMBER WHILE
2 YOU ARE LISTENING TO THE TESTIMONY THAT WHAT THE
3 SOLICITOR SAYS TO YOU IS NOT EVIDENCE. WHAT I SAY TO YOU
4 IS NOT EVIDENCE. WHAT IS EVIDENCE AND WHAT YOU USE TO
5 DECIDE IF THE STATE HAS MET ITS BURDEN OF PROOF IS WHAT
6 YOU HEAR FROM THIS WITNESS STAND AND ANY EVIDENCE, ANY
7 PHYSICAL EVIDENCE THAT IS INTRODUCED FROM THAT WITNESS
8 STAND.

9 AND ONCE YOU HAVE HEARD ALL OF THAT, GO BACK AND
10 THINK TO WHAT THE STATE DID TELL YOU THAT THEY WERE GONNA
11 OFFER AND PROVE TO YOU AND SEE IF THEY'VE MET THAT
12 BURDEN. I BELIEVE THAT WHEN YOU HEAR ALL OF THE
13 TESTIMONY, IT'S NOT GONNA BE EXACTLY THE WAY THE STATE
14 HAS LAID IT OUT TO YOU. THERE ARE GONNA BE OTHER THINGS
15 YOU HEAR THAT WILL CAST SOME DOUBT ON WHETHER OR NOT THE
16 DEFENDANT IS GUILTY.

17 SO I ASK FOR YOU TO PLEASE LISTEN CAREFULLY AND
18 REMEMBER THAT THE STATE HAS THE BURDEN OF PROOF, THAT THE
19 DEFENDANT DOES COME TO COURT INNOCENT OF ANY CRIME AT
20 THIS TIME. HE IS CHARGED BUT HE HAS NOT BEEN FOUND
21 GUILTY UNTIL YOU HAVE HEARD ALL THE EVIDENCE, LISTENED TO
22 THE LAW FROM THE JUDGE AND THEN TALKED AMONG YOURSELVES
23 AND DETERMINE IF, IN FACT, THE STATE HAS MET ITS BURDEN
24 OF PROOF.

25 THANK YOU SO MUCH FOR BEING HERE TODAY. I KNOW IT'S

1 AN INCONVENIENCE OUT OF WORK OR AWAY FROM HOME FOR A
2 COUPLE OF DAYS. BUT IT'S VERY IMPORTANT TO THE DEFENDANT
3 THAT YOU ARE HERE TO LISTEN TO THE CASE AND TO GIVE HIM
4 THE OPPORTUNITY TO DEFEND HIMSELF AGAINST THIS CHARGE.
5 THANK YOU.

6 THE COURT: MR. WAGNER, YOU MAY CALL YOUR FIRST
7 WITNESS.

8 MR. WAGNER: I CALL RENALDO ROBINSON.
9 WHEREUPON,

10 RENALDO DEON ROBINSON,
11 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
12 DIRECT EXAMINATION BY MR. WAGNER:

13 Q. MR. ROBINSON, CAN YOU GIVE US YOUR FULL NAME AND
14 SPELL YOUR LAST NAME FOR THE RECORD, PLEASE?

15 A. MY FULL NAME IS RENALDO DEON ROBINSON. LAST NAME
16 IS ROBINSON, R-O-B-I-N-S-O-N.

17 Q. ARE YOU MARRIED, MR. ROBINSON?

18 A. YES, SIR, I AM.

19 Q. DO YOU HAVE CHILDREN?

20 A. YES, SIR, I DO.

21 Q. HOW MANY KIDS DO YOU HAVE?

22 A. I HAVE A TOTAL OF EIGHT CHILDREN.

23 Q. DO YOU LIVE HERE IN SENECA?

24 A. YES, SIR, I DO.

25 Q. HOW LONG HAVE YOU LIVED HERE?

1 A. ALL MY LIFE.

2 Q. OKAY. BACK ON JUNE 22ND OF THIS PAST YEAR, WERE
3 YOU INVOLVED IN SELLING TENNIS SHOES AROUND SENECA AND
4 AROUND OCONEE COUNTY?

5 A. YES, SIR, I WAS.

6 Q. TELL US EXACTLY WHAT YOU DO AND HOW YOU DO IT.

7 A. OKAY. WELL, FIRST OF ALL, MY MAIN JOB IS I WORK
8 FOR TACO BELL. I'M DISTRICT MANAGER. ON THE SIDE, THE
9 WEEKENDS I USUALLY GO TO FLEA MARKETS THAT SELL SHOES. I
10 ORDER SHOES ON LINE, I ORDER THEM BULK. THE MORE SHOES
11 THAT YOU BUY, THE CHEAPER THEY COME IN A BULK, IN A BULK
12 SAVINGS. THEY COME IN A CASE. A CASE IS GENERALLY 16
13 SHOES PER BOX. AND I DRIVE A WHITE EXPEDITION, AND IN
14 THE BACK OF MY EXPEDITION I PULL OUT THE THIRD SEAT AND
15 CARRY THE SHOES AROUND IN THERE, AND THAT'S BASICALLY HOW
16 I SELL THEM.

17 Q. WHAT KIND OF SHOES ARE THEY?

18 A. THEY'RE BASICALLY NIKE'S, NIKE'S AIR FORCE MIXED
19 WITH JOINERS.

20 Q. AT THE SAME TIME YOU WERE WORKING FOR TACO BELL
21 WERE YOU SELLING SHOES ON YOUR OFF HOURS?

22 A. YES, SIR.

23 Q. IN FACT, ABOUT A YEAR AGO?

24 A. YES, SIR, I WAS.

25 Q. ON JUNE 22ND, WAS THAT SUNDAY EVENING?

1 A. YES, SIR, IT WAS.

2 Q. AND WHAT WERE YOU DOING THAT EVENING?

3 A. WELL, ACTUALLY THAT DAY ME AND MY WIFE WENT TO HER
4 DAD'S CHURCH, AND THAT EVENING WE HAD A COOKOUT AT MY
5 UNCLE'S HOUSE. AND WHILE WE WERE THERE I GOT A CALL FROM
6 A GUY WHO WANTED SOME SHOES AND THE GUY'S NAME WAS HAWK.

7 Q. DO YOU KNOW HAWK?

8 A. I DO KNOW HIM. I SOLD SEVERAL PAIRS TO HIM AND
9 HIS FRIENDS. AND AT THE SAME COMMUNITY AT WHICH THE
10 INCIDENT HAPPENED, IT HAPPENED IN THE CLINKSCALE
11 COMMUNITY, AND I ALWAYS MET HIM AT THE SAME SPOT EVERY
12 TIME HE WANTED A PAIR OF SHOES. HE PROBABLY BOUGHT
13 BEFORE THIS OCCURRENCE PROBABLY FOUR TO SIX PAIRS OF
14 SHOES.

15 Q. OKAY. I MEAN I GUESS IT'S SAFE TO SAY YOU HAD
16 DEALT WITH HIM ON NUMEROUS OCCASIONS?

17 A. YES, SIR.

18 Q. SOLD HIM NUMEROUS PAIRS OF SHOES?

19 A. YES, SIR.

20 Q. HAD YOU ALSO SOLD SHOES TO ANYBODY ELSE IN HIS
21 FAMILY?

22 A. YES, SIR. I SOLD SHOES TO A GUY THAT -- HE CALLED
23 HIM HIS BROTHER. HE'S REALLY NOT HIS BROTHER, BUT
24 THEY'RE JUST REALLY CLOSE FRIENDS, A GUY BY THE NAME OF
25 CHAVIS CAMPBELL. THAT IS PRETTY MUCH THE GUY THAT HE

1 HANGS WITH. AND I SOLD, HAD SOLD HIM SHOES PRIOR TO
2 THIS, SOLD HIM SEVERAL PAIRS OF SHOES PRIOR TO THIS.

3 Q. OKAY. SO WHEN YOU TALKED TO HAWK --

4 A. UH-HUH.

5 Q. -- ON THE 22ND, WHERE WERE YOU, WHAT WERE YOU
6 DOING AND THEN WHAT DID YOU DO NEXT AFTER YOU TALKED TO
7 HIM AND HE ASKED TO BUY A PAIR OF SHOES?

8 A. I WAS SITTING ON THE PORCH AT MY UNCLE'S HOUSE,
9 AND HE CALLED, AND HE JUST BASICALLY STATED, ASKED ME WAS
10 I AROUND --

11 MS. EARLE: OBJECTION, YOUR HONOR.

12 THE COURT: YOU'RE TALKING ABOUT HEARSAY?.

13 MS. EARLE: YES, YOUR HONOR.

14 THE COURT: I THINK IT'S A STATEMENT BY THE
15 DEFENDANT. OVERRULED.

16 IS THAT CORRECT?

17 THE WITNESS: YES, SIR.

18 THE COURT: ALL RIGHT.

19 THE WITNESS: BASICALLY STATED THAT I WAS AROUND
20 SENECA, AND HE ASKED DID I HAVE ANY SHOES AND HE SAID
21 THAT HE SAW HIS BROTHER WITH A PAIR OF BLACK AND RED
22 SHOES ON HIM. AND HE ASKED ME DID I HAVE ANYMORE. AND I
23 TOLD HIM I MAY HAVE SOME MORE SIMILAR. AND HE SAID HE
24 WANTED TO BUY A PAIR AND HE ASKED ME TO COME TO
25 CLINKSCALE, THE SAME PLACE THAT HE'S ALWAYS AT. AND I

1 TOLD HIM YES, I COULD, I'D BE DOWN THERE IN A FEW
2 MINUTES.

3 Q. YOU KNEW WHERE HAWK WOULD BE?

4 A. YES, SIR.

5 Q. WHERE IS CLINKSCALE, WHEN YOU SAY CLINKSCALE,
6 WHERE IS THAT IN RELATION TO DOWNTOWN SENECA?

7 A. DOWNTOWN SENECA, THERE ARE JUST SEVERAL WAYS YOU
8 CAN GET THERE. YOU CAN GO THROUGH THE BRUCE HILL
9 COMMUNITY AND, YOU KNOW, WIND UP AT CLINKSCALE. IT'S
10 OVER BY -- IF YOU'RE NOT FAMILIAR WITH IT, IT'S BY HEAD
11 START WHERE HEAD START IS LOCATED IN SENECA.

12 IF YOU WAS COMING FROM WALHALLA OR WESTMINSTER, IT
13 WOULD BE COMING ON THE HIGHWAY GETTING OFF OF 123, TAKING
14 THAT RIGHT, RIGHT THERE BY MIRACLE CIRCLE WHERE BIG LOTS
15 AND ADVANCE AUTO IS.

16 Q. OKAY. SO IF YOU WENT PAST -- WENT THROUGH MIRACLE
17 CIRCLE GOING FROM HERE, YOU'RE GOING TO SENECA, CUT
18 THROUGH MIRACLE CIRCLE, PASS BIG LOTS, AND THEN WHERE DID
19 YOU GO?

20 A. YOU PASS BIG LOTS, AND THEN YOU TAKE YOUR FIRST
21 RIGHT. YOU CAN TAKE SEVERAL ENTRANCES TO IT, CLINKSCALE.
22 YOU TAKE YOUR FIRST RIGHT OVER, IMMEDIATELY OVER THE
23 RAILROAD TRACK AND THEN YOU PASS ANOTHER RAILROAD TRACK
24 AND THAT WILL BE CLINKSCALE COMMUNITY. THEN YOU GO ON
25 DOWN, I THINK IT'S YOU GO PAST THE MUFFLER SHOP, YOU PASS

1 THERE, AND RIGHT BETWEEN THE FLOWER SHOP AND THE
2 INSURANCE PLACE, YOU WOULD TAKE ANOTHER RIGHT RIGHT THERE
3 AND PASS THE RAILROAD TRACKS AND THEN YOU WILL SEE THAT
4 WOULD BE THE CLINKSCALE COMMUNITY, ALSO.

5 Q. DID YOU KNOW HAWK'S REAL NAME?

6 A. NO, SIR, I DID NOT.

7 Q. YOU JUST KNEW HIM AS HAWK?

8 A. YES, SIR.

9 Q. DID YOU GO DOWN TO THE CLINKSCALE COMMUNITY THAT
10 EVENING?

11 A. YES, SIR.

12 Q. OKAY. AND WAS ANYBODY WITH YOU?

13 A. YES. YES, SIR. I HAD MY FOUR-YEAR-OLD DAUGHTER
14 WITH ME, HER NAME IS PRECIOUS ROBINSON.

15 Q. OKAY. WHERE WAS SHE SITTING IN THE CAR?

16 A. SHE WAS SITTING IN THE BACK PASSENGER'S SIDE.

17 Q. OKAY. DID YOU GO TO WHERE YOU THOUGHT HAWK WOULD
18 BE?

19 A. YES, SIR, I DID.

20 Q. AND WHAT DID YOU FIND WHEN YOU GOT THERE?

21 A. WELL, WHEN I GOT THERE, I FOUND THAT -- YOU KNOW,
22 WHEN I USUALLY SELL SHOES TO HIM OR TO HIS BROTHER, THAT
23 SOMEBODY IS USUALLY OUTSIDE, I FIND THERE'S USUALLY
24 ALWAYS A VEHICLE THERE. ON THIS PARTICULAR DAY THERE WAS
25 NOT A VEHICLE, YOU KNOW, NOWHERE OUTSIDE, SO I HAD TO

1 CALL HIM, AND HE SAID, "OKAY, I'LL SEE YOU. I'M COMING
2 RIGHT OUT."

3 Q. OKAY. WHAT KIND OF RESIDENCE WAS THERE?

4 A. THE RESIDENCE, IT'S A TRAILER, IT'S A SINGLE-WIDE
5 TRAILER THAT WAS THERE AND RIGHT IN FRONT OF IT WAS A
6 BURNED DOWN TRAILER IN FRONT OF THAT. BUT IT WAS A
7 VEHICLE IN THE BACK OF, BACK OF THE SINGLE-WIDE TRAILER,
8 BUT I DIDN'T SEE THAT INITIALLY COMING UP. I SEEN IT AS
9 I WAS LEAVING.

10 Q. SO YOU INITIALLY THOUGHT THERE WAS NOBODY HOME?

11 A. YES, SIR. THE DOOR WAS OPEN BUT INITIALLY, LIKE I
12 SAID, MANY TIMES THEY'RE USUALLY ALWAYS OUTSIDE OR
13 USUALLY SEVERAL VEHICLES IN THE YARD. THIS TIME IN
14 PARTICULAR, BECAUSE I DIDN'T KNOW IF HE STAYED THERE OR
15 NOT, BUT I KNOW THAT THAT'S ALWAYS WHERE HE'S AT, AND SO
16 I CALLED BECAUSE I FOUND IT IRONIC THAT THERE WAS NOT A
17 VEHICLE IN THE YARD SO I HAD TO CALL TO MAKE SURE THAT
18 SOMEBODY WAS THERE.

19 Q. OKAY. BUT YOU SAY YOU SAW A VEHICLE LATER ON
20 BEHIND IT?

21 A. BEHIND THE SINGLE-WIDE TRAILER.

22 Q. DO YOU KNOW WHO'S VEHICLE WAS THAT?

23 A. YES, SIR, IT WAS CHAVIS GAMBLE.

24 Q. OKAY. AND YOU SAID THIS CHAVIS -- WHO YOU ALREADY
25 SAID HAWK REFERS TO AS HIS BROTHER?

1 A. YES, SIR.

2 Q. DOES CHAVIS LIVE AT THAT ADDRESS?

3 A. NO, SIR, HE DOESN'T.

4 Q. DO YOU KNOW WHO DOES LIVE THERE, OR DID YOU EVER
5 KNOW?

6 A. YES, SIR. THERE WAS A GIRL BY THE NAME OF MONICA.
7 I DON'T KNOW HER LAST NAME. I JUST KNOW HER FROM RYAN'S.
8 SHE WORKED FOR MY MOTHER. MY MOTHER WORKED PART-TIME AT
9 RYAN'S AND THAT'S WHERE I KNOW HER FROM.

10 Q. OKAY. SO YOU AND YOUR DAUGHTER PULL DOWN --
11 DESCRIBE HOW IT IS GETTING DOWN TO WHERE THAT TRAILER IS.

12 A. WELL, PULLING INTO THIS RESIDENCE, IT'S A DIRT
13 ROAD AND A BIG SET OF TREES IN FRONT OF, RIGHT BESIDE THE
14 TRAILER, IN BETWEEN THAT AND ANOTHER HOUSE, AND THERE'S A
15 YARD SPACE IN BETWEEN THAT, AND WE PULLED DOWN NOT CLOSE
16 TO THE DOOR BUT IN BETWEEN THE ROAD, NOT REALLY THE ROAD,
17 BUT THE HOUSE THAT'S BURNT DOWN IN FRONT OF IT. WE
18 PULLED IN BETWEEN THE HOUSE AND THE DOOR. IT WAS KIND OF
19 HALFWAY BETWEEN THE PARKING LOT.

20 Q. IS THERE A YARD THERE?

21 A. YES, SIR, IT'S A PRETTY -- FAIRLY -- IT'S A FAIRLY
22 BIG YARD.

23 Q. OKAY. AND IN TERMS OF AS BIG AS THIS WHOLE
24 COURTROOM, HOW BIG IS THAT YARD TO THERE (INDICATING)?

25 A. PROBABLY JUST HALF THIS SIZE.

1 Q. OKAY. DID YOU JUST PULL IN AND PARK UPON THE
2 GRASS?

3 A. YES, SIR.

4 Q. ALL RIGHT. WHEN YOU PULLED IN, YOU SAID YOU
5 CALLED HAWK?

6 A. UH-HUH.

7 Q. HE CAME OUT THE DOOR?

8 A. UH-HUH.

9 Q. OKAY. THEN WHAT HAPPENED?

10 A. I PULLED IN, I CALLED HAWK, HE CAME OUT THE DOOR.
11 AND PRIMARILY, LIKE I SAID AGAIN, I HAVE THE SHOES IN THE
12 BACK OF MY EXPEDITION. AND BECAUSE I HAVE A HISTORY WITH
13 HAWK AND I KNEW HIM AND I KNEW WHAT SIZE HE WORE, I JUST
14 TOOK OUT THE SIZE THAT I KNEW HE WORE AND PUT THEM IN THE
15 BACK SEAT VERSUS HAVING ME IN THE BACK AND GOING AND
16 PULLING OUT BOXES. SO I JUST PULLED OUT EVERYTHING THAT
17 I HAD IN HIS SIZE, AND I PUT ABOUT SIX TO EIGHT PAIRS OF
18 SHOES IN THE BACK OF MY DRIVER'S SIDE BACK SEAT.

19 AND HAWK CAME OUT AND I HAD THE DRIVER'S SIDE DOOR
20 OPEN, BACK PASSENGER'S SIDE DOOR, HAD THE PASSENGER'S,
21 BACK PASSENGER'S SIDE DOOR OPEN RIGHT BEHIND ME SHOWING
22 HIM THE SHOES. HE WAS, NO, I DON'T LIKE THOSE, AND NO,
23 THOSE ARE NOT THE KIND THAT HE HAD.

24 AS I WAS SHOWING HIM THE SHOES, I SEEN TWO MALES,
25 DREC AND LANEY MANLEY, THEY CAME FROM AROUND THE BACK

1 SIDE OF THE HOUSE AND THEY START WALKING. I HAD SEEN
2 THESE TWO GUYS OVER THERE BEFORE WHEN I SOLD SHOES TO
3 CHAVIS OR HAWK. I SAW THEM OVER THERE BEFORE SO I DIDN'T
4 THINK ANYTHING OF IT. BUT THE GUYS WERE COMING OUT, I
5 WAS TALKING TO HAWK, HE WAS SAYING, NO, THAT WAS NOT THE
6 KIND. LIKE SAY, I'M INSIDE THE CAR, NOT REALLY INSIDE
7 THE CAR BUT I'M STANDING OUTSIDE THE CAR IN THE BACK
8 DRIVER'S SIDE. AND THE DOOR IS OPEN, I'M SHOWING HIM THE
9 SHOES. I'M KIND OF SHIELDED BY THE DOOR, BUT I COULD SEE
10 EVERYTHING FROM THE LEFT SIDE OF MY EYE. I SEE THESE
11 GUYS COMING. AND WHEN I LOOKED AND I TURNED AROUND
12 SHOWING HAWK THE SHOES, I SEEN HAWK JUMP BACK. AND AS HE
13 JUMPED BACK, AND WHEN I WENT BACK TO GO GET THE SHOES I
14 JUST NOTICED SOMEBODY CAME AND HIT ME OVER THE HEAD.
15 THAT PERSON THAT HIT ME OVER THE HEAD WAS DIVERIO MANLEY.
16 HE HIT ME OVER THE HEAD MAYBE TWO OR THREE TIMES.

17 Q. WHAT DID HE HIT YOU WITH?

18 A. HE HIT ME WITH A .38 SPECIAL. IT WAS SOME KIND OF
19 A REVOLVER GUN.

20 Q. A HANDGUN?

21 A. YES, SIR. IT WAS A REVOLVER HANDGUN. HE HIT ME
22 OVER THE HEAD MAYBE TWO OR THREE TIMES. YOU KNOW,
23 IMMEDIATELY, LIKE I SAID, BEFORE THIS HAPPENED THE GUY
24 STEPPED BACK AND, LIKE I SAID, THE GUY CAME. HE FELL ON
25 ME IN THE BACK SEAT, AND ME I JUST HEARD SHOES JUST, YOU

1 KNOW, JUST GOING, I HEARD THE BACK HATCH OPEN UP.

2 I JUST KIND OF FEEL BECAUSE MY BACK IS TURNED IN
3 THE CAR I JUST KIND OF COULD FEEL THE SHOES WERE JUST
4 FLYING. YOU GOT TO TAKE IN CONSIDERATION, JUST LIKE I
5 SAID, I HAD FIVE TO SIX BOXES OF SHOES BACK THERE AND THE
6 SHOES CONTAIN 16 PAIRS IN EACH BOX.

7 Q. LET ME BACK YOU UP. HOW BIG WERE THE BOXES OF
8 SHOES THAT WERE IN THE BACK OF YOUR CAR?

9 A. IT WAS ABOUT AS HIGH AS THE STAND RIGHT HERE, AND
10 THEY WEIGH APPROXIMATELY ANYWHERE BETWEEN 40 TO 50
11 POUNDS.

12 Q. SHOW US WITH YOUR HANDS, IF YOU COULD.

13 A. ITS HEIGHT, IT WAS PROBABLY THIS HIGH, AND WIDTH
14 PROBABLY THIS WIDE. (DEMONSTRATING.)

15 Q. ALL RIGHT. AND HOW MANY PAIRS OF SHOES IN EACH
16 ONE?

17 A. 16 SHOES IN EACH BOX.

18 Q. 16 PAIRS?

19 A. YES, SIR.

20 Q. ARE THEY PUT IN THERE JUST IN GROUPS AND JUST LIKE
21 16 TIMES TWO SHOES?

22 A. THEY'RE EIGHT ON THE BOTTOM, EIGHT ON THE TOP.

23 Q. ARE THEY ALL IN BOXES?

24 A. THEY'RE ALL IN BOXES, YES, SIR.

25 Q. BECAUSE YOU BUY A PAIR OF SHOES IN A BOX?

1 A. YES, SIR.

2 Q. SO YOU GOT FIVE BOXES IN THE BACK OF YOUR CAR FULL
3 OF SHOES?

4 A. YES, SIR.

5 Q. ALL RIGHT. YOU'RE STANDING THERE. WHEN THE
6 MANLEY BROTHERS CAME AROUND, DIVERIO STARTED -- YOU SAY
7 HAWK STEPPED BACK?

8 A. YES, SIR.

9 Q. DIVERIO HAD CLUBBED YOU WITH THE PISTOL?

10 A. YES, SIR.

11 Q. WHAT DID YOU DO? DID YOU FALL BACK IN THE CAR?

12 A. I FELL, I FELL OVER IN THE CAR, AND AS I FELL
13 OVER, DIVERIO, HE HAD THE GUN, IMMEDIATELY CAME IN THE
14 CAR WITH ME. HE WOULD LIKE LAND ON KIND OF LIKE THE
15 FLOORBOARD LIKE KIND OF ON TOP OF ME. AND, AS I HAD MY
16 BACK LIKE TO THE WALL, LIKE I SAID, I COULD JUST KIND OF
17 HEAR THE HATCH JUST KIND OF OPEN UP. AND JUST
18 IMMEDIATELY, YOU KNOW, I DIDN'T SEE HIS BROTHER
19 IMMEDIATELY IN SIGHT, BUT AS WE FELL OVER IN THE CAR, HE
20 PULLED OUT THE GUN, HE HELD THE GUN TO MY FACE AND SAID,
21 "WE'RE GONNA KILL YOU. YOU'RE GONNA DIE TODAY, NIGGER."

22 LIKE I SAID, I HAD, MY DAUGHTER WAS SITTING RIGHT
23 THERE BESIDE ME, SO REALLY AT THE TIME I DIDN'T CARE IF
24 THEY KILLED ME, BUT I WAS JUST MAKING SURE THAT THEY
25 DIDN'T KILL HER. SO FIRST INSTINCT, I GRAB THE NOSE OF

1 THE GUN. AS I GRABBED THE NOSE OF THE GUN, IMMEDIATELY
2 THE OTHER BROTHER CAME AND HE CAME FROM THE FRONT PART OF
3 THE CAR. AS HE CAME FROM THE OTHER FRONT PART OF THE
4 CAR, ME AND HIM WERE JUST KIND OF STRUGGLING OVER THE
5 GUN. THE GUN IS KIND OF UNDER MY RIGHT THIGH AND I'M
6 JUST TRYING TO HOLD IT. HE GOT PRETTY MUCH THE BUTT OF
7 THE GUN, I GOT KIND OF THE NOSE OF THE GUN, JUST HOLDING
8 IT. AND HIS BROTHER SAID BASICALLY, YOU KNOW THAT YOU'RE
9 GONNA DIE.

10 AND BOTH OF THEM, I'M STRUGGLING WITH KIND OF BOTH
11 OF THEM BECAUSE ME AND HIM, WE HAD A DEADLOCK OVER THE
12 GUN. HE BITE ME RIGHT HERE ON MY ARM. HE WAS BITING ME
13 ON MY ARM, THE OTHER ONE WAS PUNCHING ME IN MY FACE.

14 YOU KNOW, AT THIS TIME I'M JUST NOT LETTING GO
15 BECAUSE, LIKE I SAID AGAIN, I DIDN'T WANT MY DAUGHTER TO
16 GET KILLED. WELL, AS WE STRUGGLED, HE CALLED AND HE
17 SAID, "HAWK, HAWK, BRING THE OTHER GUN. HE GOT THE GUN
18 FROM US." AND BOTH OF THEM CALLED. BOTH OF THEM CALLED
19 OUT FOR HAWK TO BRING THE OTHER GUN. WELL, HAWK NEVER
20 CAME. AND WE ---

21 Q. WHERE WAS HAWK?

22 A. AT THIS TIME I HAVE NO IDEA. EITHER HE HAD MADE
23 AWAY WITH THE SHOES OR EITHER AFTER HE JUMPED BACK I
24 NEVER PHYSICALLY SEEN HIM.

25 Q. WHEN YOU FELL BACK IN, YOU SAID YOU SAW THE HATCH

1 GO UP?

2 A. YES, SIR.

3 Q. OKAY. AND THEN WHAT DID YOU SEE, LOOKING BACK OUT
4 THE HATCH, WHAT DID YOU SEE HAPPEN THERE?

5 A. I MEAN, YOU COULD JUST HEAR THE BOXES, YOU KNOW,
6 JUST GOING. AND I MEAN, YOU KNOW, LIKE I SAID AGAIN, THE
7 SIZE OF THE BOXES, THE BOXES ANYWHERE FROM 40 TO 50
8 POUNDS. NO ONE MAN CAN CARRY TWO BOXES AT ONE TIME.

9 Q. DID YOU SEE WHO WAS PULLING THE BOXES OUT OF THE
10 CAR?

11 A. NO, SIR, I DID NOT.

12 Q. DID YOU SEE HOW MANY PEOPLE WERE PULLING THE BOXES
13 OUT OF THE CAR?

14 A. NO, SIR, I DID NOT.

15 Q. IMMEDIATELY PRIOR TO THIS HOW MANY PEOPLE HAD BEEN
16 AROUND YOUR CAR?

17 A. THREE TOTAL.

18 Q. COUNTING YOU?

19 A. COUNTING ME, FOUR.

20 Q. WHO WERE THE THREE PEOPLE THAT WERE AROUND THE
21 CAR?

22 A. THE THREE PEOPLE WERE HAWK, WHICH IS ADARIUS,
23 DIVERIO AND DREC MANLEY.

24 Q. OKAY. AND DIVERIO IS ON TOP OF YOU IN THE BACK,
25 THE MIDDLE SEAT?

1 A. UH-HUH.

2 Q. ALL RIGHT. YOU DON'T KNOW WHERE HAWK AND THE
3 OTHER BROTHER WERE?

4 A. NOT INITIALLY.

5 Q. OKAY. YOU ARE SAYING THE HATCH IS GOING UP?

6 A. UH-HUH.

7 Q. AND YOUR BOXES ARE GOING OUT?

8 A. UH-HUH.

9 Q. THESE ARE BIG BOXES THAT WEIGH 40, 50 POUNDS?

10 A. YES, SIR.

11 Q. AND THERE ARE FIVE OF THOSE?

12 A. YES, SIR.

13 Q. THEN WHAT NEXT DID YOU SEE?

14 A. LIKE I SAID WHAT NEXT I SAW, YOU KNOW, FROM
15 STRUGGLING IS, LIKE I SAID, I JUST HEARD THE BOXES GOING
16 AS I WAS BEING CLUBBED WITH, WITH THE GUN. WE'RE IN THE
17 BACK SEAT BASICALLY FIGHTING OVER THE GUN. THE YOUNGER
18 BROTHER IS IN THE FRONT SEAT. LIKE I SAID AGAIN, HE'S
19 PUNCHING ME IN MY FACE TRYING TO GET ME TO LET GO.
20 THEY'RE BOTH CALLING HAWK FOR HELP, SAYING "BRING THE
21 OTHER GUN. HE GOT THE GUN FROM US."

22 WE WRESTLED IN BACK SEAT WITH MY DAUGHTER IN THE
23 RIGHT PASSENGER'S SIDE. WE WERE KIND OF SQUEEZING HER
24 AGAINST THE DOOR. AS WE WERE SQUEEZING HER AGAINST THE
25 DOOR, SHE'S JUST CRYING HYSTERICALLY. AND I MADE A

1 STATEMENT TO THEM, I SAID, YOU ALL ARE GONNA DO THIS IN
2 FRONT OF MY DAUGHTER?

3 THE YOUNGER BROTHER KIND OF WITH HIS KNEE ON THE
4 ARMREST, HE KIND OF LEANING BACK AND SAID, YEAH, SHE'LL
5 BE ALL RIGHT. AND SO, YOU KNOW, AT THIS POINT I'M JUST
6 THINKING THAT, YOU KNOW, I'M HAVING MOST CONTROL OF THE
7 GUN, AND IF I SHOOT THE GUN, THERE'S A PERCENTAGE THAT
8 IT'S EITHER GONNA HIT ME, MY DAUGHTER OR HIM. AND THE
9 ODDS WERE AGAINST ME. SO AT THIS POINT, WITH HER CRYING
10 HYSTERICALLY BECAUSE WE WERE PRESSING HER UP, WE WERE
11 BASICALLY SQUISHING HER IN THE BACK SEAT, MY HEAD WAS
12 LAID AGAINST THE DOOR AND THE WINDOW OR THE BACK SEAT
13 AND, YOU KNOW, JUST BLEEDING, YOU KNOW, HYSTERICALLY ON
14 THE WINDOW AND BLEEDING ON HER.

15 AND I JUST LET GO. I JUST LET GO AND BASICALLY
16 SAID, YOU KNOW, WHATEVER HAPPENS HAPPENS. ONCE I LET GO,
17 YOU KNOW, THEY BOTH FLED, AND AS THEY LET GO, I DIDN'T
18 EVEN TAKE TIME TO CLOSE THE DOOR OR ANYTHING, I JUST
19 JUMPED IMMEDIATELY IN THE FRONT. AND AS I WAS DRIVING
20 OFF, DIVERIO SHOT THE GUN MAYBE THREE OR FOUR TIMES. AND
21 I DIDN'T TAKE TIME TO CLOSE THE HATCH OR ANYTHING. I
22 JUST LEFT.

23 Q. DID YOU SEE ANY SHOES LAYING THERE IN THE YARD
24 WHEN YOU DROVE OFF?

25 A. NO, SIR, I DID NOT.

1 Q. DO YOU KNOW WHERE THE SHOES WENT?

2 A. NO, SIR, I DO NOT.

3 Q. DID YOU EVER SEE DIVERIO CARRY ANY OF THE SHOES
4 AWAY?

5 A. NO, SIR.

6 Q. WAS ANYBODY ELSE IN THE YARD WHEN YOU DROVE OFF
7 BESIDES DIVERIO, DELANEY, AND HAWK WHO HAD BEEN THERE?

8 A. WHEN I WAS PULLING AWAY IT WAS JUST THE TWO
9 BROTHERS.

10 Q. OKAY. HOW LONG DO YOU THINK FROM THE TIME, IF YOU
11 COULD JUST GUESS, I MEAN, OR BEST YOU CAN ESTIMATE, DO
12 YOU HAVE AN IDEA HOW LONG THE TIME FRAME WAS BETWEEN THE
13 TIME HAWK STEPPED BACK AND THEY ASSAULTED YOU AND THE
14 TIME YOU GOT BACK IN THE FRONT SEAT AND WERE ABLE TO
15 DRIVE AWAY?

16 A. PROBABLY ABOUT SIX TO SEVEN MINUTES.

17 Q. SO YOU STRUGGLED WITH THEM THAT LONG?

18 A. YES, SIR. BECAUSE I HELD ONTO THE GUN AND I JUST
19 HELD IT DOWN. AND LIKE I SAID, THEY TRIED THEIR BEST TO
20 JUST GET THE GUN FROM ME. AND I KNOW I DID THAT FOR AT
21 LEAST TWO MINUTES. AND, YOU KNOW, THROUGH DOING THAT
22 THEY JUST DONE WHATEVER THEY COULD DO, YOU KNOW, JUST
23 CLAW, TO SCRATCH, TO BITE ME OR DO WHATEVER TO TRY TO
24 MAKE ME LET GO OF THE GUN. I WAS THINKING IN MY MIND
25 WHAT I WAS GONNA DO OR WHETHER OR NOT THEY WOULD KILL ME

1 AND MY DAUGHTER.

2 Q. ALL RIGHT. AND THERE WAS NOBODY ELSE IN THE YARD
3 BESIDES HAWK AND THE MANLEY BROTHERS?

4 A. YES, SIR.

5 Q. OKAY. WHEN YOU WERE STRUGGLING WITH THE GUN, DID
6 YOU ACTUALLY -- DID HE STILL -- DID DIVERIO MANLEY ALWAYS
7 HAVE HIS HAND ON THE GUN? DO YOU EVER ACTUALLY GET TOTAL
8 CONTROL OF THE GUN? HE'S GOT HIS HAND ON IT THE WHOLE
9 TIME?

10 A. YEAH. HE HAD HIS HAND ON IT.

11 Q. BUT YOU WERE IN CONTROL OF WHERE IT WAS POINTED?

12 A. YES, SIR.

13 Q. OKAY. AND AT THAT POINT THEY STARTED YELLING FOR
14 HAWK TO BRING THE OTHER GUN?

15 A. YES, SIR.

16 Q. DID HAWK EVER SHOW UP WITH THE OTHER GUN?

17 A. NO, SIR.

18 Q. HOW LONG AFTER THEY STARTED HOLLERING FOR HELP DID
19 YOU GET BACK IN THE FRONT SEAT AND GET OUT OF THERE?

20 A. WHEN THEY STARTED HOLLERING FOR HELP, LIKE I SAID,
21 I JUST HELD ONTO THE GUN AT LEAST TWO TO THREE MORE
22 MINUTES AND I HELD IT UP UNDER MY LEG AS TIGHT AS I COULD
23 HOLD IT.

24 YOU KNOW, FROM HEARING MY DAUGHTER CRYING, I JUST
25 LET GO. AND AFTER I LET GO, LIKE I SAID, I JUMPED BACK

1 IN THE FRONT SEAT AFTER THEY JUMPED OUT, AND FROM THAT
2 POINT I JUST DROVE OFF.

3 Q. DID YOU EVER SEE ANYBODY ELSE AROUND THE TRAILER
4 WHILE THIS WAS GOING ON?

5 A. NO, SIR, NOT AT THE TIME.

6 Q. THE PEOPLE THAT YOU THOUGHT LIVED OR STAYED THERE,
7 DID YOU EVER SEE ANY OF THEM?

8 A. NO, SIR.

9 Q. WHAT DID YOU DO AFTER YOU GOT AWAY? YOU SAY YOU
10 HEARD GUNSHOTS. DID YOUR CAR GET STRUCK WITH BULLETS OR
11 ANYTHING LIKE THAT OR...

12 A. NO, SIR.

13 Q. WHICH WAY DID YOU GO WHEN YOU LEFT?

14 A. I WENT -- I PULLED OUT OF THE PARKING LOT. I WENT
15 LEFT. AND GOING LEFT WILL TAKE YOU BACK TO, IT'S AN
16 UNDERPASS IN THE CLINKSCALE COMMUNITY AND THAT UNDERPASS
17 LINKS CLINKSCALE TO BRUCE HILL, ANOTHER COMMUNITY. BUT
18 AS I GOT TO THE STOP SIGN TO GO UNDER THE UNDERPASS,
19 THERE WAS A GIRL COMING IN A BLUE KIA SPECTRA, AND SHE
20 WAS COMING IN LIKE SHE WAS COMING IN HASTE. AND AS I
21 COMING OUT, AS SOON AS I GOT TO THE STOP SIGN, I CALLED
22 9-1-1. I WAS CALLING 9-1-1 AND I WAS LOOKING, AND AS I
23 LOOKED BACK, BECAUSE FROM THE STOP SIGN YOU CAN SEE BACK
24 BEHIND THE YARD WE WERE IN. I SEEN THE BLACK, BLACK JEEP
25 THAT WAS HID BEHIND THE TRAILER. AND AS I SEEN THE CAR,

1 SHE WAS COMING AND SHE WAS GOING STRAIGHT, WHICH MEANS IF
2 SHE WAS GOING STRAIGHT, SHE WAS GOING IN FRONT OF THE
3 HEAD START SCHOOL.

4 WELL, WHEN I WENT BACK THROUGH, I WENT BACK
5 THROUGH THE BRUCE HILL COMMUNITY AND I WENT BACK THROUGH
6 LIKE WEST, WEST NORTH THIRD STREET, WHICH WOULD BE ON THE
7 SAME ROAD AS THE FAMILY LIFE CENTER AND THE ROSA CLARK
8 CLINIC. WHEN I GOT TO THE ROSA CLARK CLINIC, I NOTICED
9 THE SAME GIRL WHO CAME UP UNDER THE UNDERPASS WHO HAD
10 NOBODY IN THE CAR. SHE IN TURN WAS PASSING GOING THE
11 OPPOSITE DIRECTION, GOING DOWN LIKE INTO SENECA, IT WOULD
12 BE LIKE WHERE THE OLD FIRE DEPARTMENT WAS AT ON THE SAME
13 ROAD OR WHERE PETE'S TEXACO.

14 AND SHE HAD PASSED ME AT THE STOP SIGN GOING THE
15 OPPOSITE DIRECTION. AND THEN SHE TURNED, TOOK A RIGHT AT
16 PETE'S TEXACO TO BE GOING LIKE TOWARDS THE SENECA
17 RESERVATION OR THE SENECA MIDDLE SCHOOL.

18 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
19 EXHIBIT FOR IDENTIFICATION NUMBER 9. DO YOU RECOGNIZE
20 THAT?

21 A. YES, SIR, I DO.

22 Q. WHAT IS THAT?

23 A. THIS IS A PAIR OF SHOES THAT BASICALLY HAS BLOOD
24 ON IT, AND IT SHOWS WHERE MY DAUGHTER FLIP FLOPS OR THE
25 SANDALS THAT SHE WAS WEARING, AND IT JUST SHOWS THIS IS

1 THE BACK RIGHT SIDE OF MY S.U.V. WHERE MY DAUGHTER WAS
2 SEATED, AND IT JUST SHOWS THE BLOOD THAT WAS DRIPPING
3 DOWN ON THE DOOR FROM WHERE MY HEAD WAS PRESSED UP
4 AGAINST IT.

5 Q. AND WERE YOU PRACTICALLY ON TOP OF YOUR DAUGHTER
6 WHEN THIS WAS GOING ON?

7 A. YES, SIR, I WAS.

8 Q. DO YOU SEE ANYTHING ON THE FLOORBOARD THERE THAT
9 SHOWS WHAT YOU WERE DOING THAT DAY?

10 A. IT'S JUST THE SHOES ON THE FLOORBOARD, IT SHOWS
11 THAT I HAD THEM IN THE BACK SEAT, AND YOU CAN SEE THEM
12 KIND OF SCATTERED OUT INTO THE BOTTOM OF THE CAR.

13 Q. DOES THAT, THAT FAIRLY AND ACCURATELY DEPICT THE
14 FLOORBOARD IN THE CAR THERE WHERE YOU WERE WHILE THIS
15 ROBBERY WAS TAKING PLACE?

16 A. YES, SIR, IT DOES.

17 MR. WAGNER: YOUR HONOR, AT THIS TIME I WOULD ASK TO
18 ADMIT STATE'S EXHIBIT NUMBER 9.

19 THE COURT: ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
20 RULING, IT WILL BE ADMITTED.

21 BY MR. WAGNER:

22 Q. WHILE YOU WERE GOING ---

23 THE COURT: AGAIN, ANY OBJECTION TO THE ADMISSION?

24 MS. EARLE: YES, YOUR HONOR. THERE'S BEEN NO
25 FOUNDATION LAID.

1 **THE COURT:** HE'S IDENTIFIED IT AS BEING ACCURATE OF
2 THE SCENE OF THE OFFENSE, SO I AM GOING TO OVERRULE YOUR
3 OBJECTION. THANK YOU.

4 (STATE'S EXHIBIT 9 WAS RECEIVED IN EVIDENCE.)
5 BY MR. WAGNER:

6 Q. WHILE YOU WERE DRIVING AWAY, DID YOU LOOK AT
7 YOURSELF IN THE MIRROR?

8 A. YES, SIR, I DID. BASICALLY I HAD BLOOD JUST
9 STREAMING EVERYWHERE. I MEAN BLOOD WAS JUST SMEARED ALL
10 OVER MY FACE. I WAS DRIVING WITH ONE HAND AND I WAS JUST
11 LEAKING BLOOD WITH THE OTHER HAND. I DIDN'T TAKE TIME TO
12 WIPE THE BLOOD BECAUSE I HAD MY CELL PHONE ON THE OTHER
13 HAND AND I WAS TALKING WITH 9-1-1.

14 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 6 FOR
15 IDENTIFICATION. DO YOU RECOGNIZE THAT?

16 A. YES, SIR, IT DOES. IT JUST SHOWS A FAMILY MEMBER
17 BASICALLY WIPING THE BLOOD FROM THIS SIDE OF MY FACE,
18 WHICH, LIKE I SAID, WHEN I WAS SHIELDED BY THE DOOR FROM
19 THIS SIDE SO ALL THE BLOOD AND STUFF WAS LEAKING FROM
20 THIS SIDE HERE (INDICATING). AND IT IS, IT WAS LEAKING
21 FROM MY RIGHT SIDE, AGAIN, WHEN WE WERE WRESTLING IN THE
22 BACK SEAT, THAT SAME BLOOD WENT ON THE DOOR IN THE BACK
23 SEAT AND SAME BLOOD WENT ON MY DAUGHTER.

24 Q. STATE'S EXHIBIT NUMBER 6, DOES THAT FAIRLY AND
25 ACCURATELY DEPICT YOUR FACE AS IT WOULD TO YOU WHEN YOU

1 WERE LOOKING IN THE MIRROR DRIVING AWAY FROM THE CRIME
2 SCENE?

3 A. YES, SIR, IT DOES.

4 MR. WAGNER: YOUR HONOR, AT THIS TIME WE WOULD ASK
5 TO ADMIT STATE'S EXHIBIT 6.

6 MS. EARLE: YOUR HONOR, I WOULD OBJECT TO THAT.

7 THE COURT: ALL RIGHT. YOUR OBJECTION IS OVERRULED.
8 STATE'S EXHIBIT NUMBER 6 IS ADMITTED.

9 (STATE'S EXHIBIT NUMBER 6, PHOTOGRAPH, WAS
10 RECEIVED IN EVIDENCE.)

11 BY MR. WAGNER:

12 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 10 FOR
13 IDENTIFICATION.

14 A. YES, SIR. THIS AGAIN IS THE RIGHT SIDE,
15 PASSENGER'S SIDE OF MY S.U.V.. IT JUST SHOWS WHERE MY
16 HEAD WAS SMEARED UP AGAINST THE WINDOW. IT JUST SHOWED
17 AGAIN THAT WHERE BLOOD WAS LEAKING, YOU KNOW, FROM THE
18 TOP TO THE BOTTOM OF THE PASSENGER'S SIDE DOOR.

19 Q. AND DOES THAT PICTURE, STATE'S EXHIBIT NUMBER 10,
20 DOES IT FAIRLY AND ACCURATELY DEPICT THE PASSENGER'S SIDE
21 DOOR NEARBY WHERE YOUR DAUGHTER WAS SITTING WHEN YOU WERE
22 CRAMMED UP IN WHILE YOU WERE FIGHTING WITH DIVERIO
23 MANLEY?

24 A. YES, SIR.

25 MR. WAGNER: I WOULD ASK STATE'S EXHIBIT 10 BE

1 ADMITTED.

2 MS. EARLE: OBJECTION.

3 THE COURT: OBJECTION OVERRULED. STATE'S EXHIBIT 10
4 ADMITTED INTO EVIDENCE.

5 (STATE'S EXHIBIT 10 WAS RECEIVED IN
6 EVIDENCE.)

7 BY MR. WAGNER:

8 Q. YOUR DAUGHTER WAS FOUR YEARS OLD?

9 A. YES, SIR.

10 Q. WAS SHE IN A CHILD SEAT?

11 A. YES, SIR.

12 Q. SO SHE WAS STRAPPED IN AND COULDN'T MOVE?

13 A. SHE COULDN'T MOVE AT ALL.

14 Q. WHEN YOU LEFT THE SCENE AND THEY WERE CLEANING YOU
15 UP AND TAKING PICTURES -- LET ME SHOW YOU STATE'S EXHIBIT
16 NUMBER SEVEN.

17 A. YES, SIR. THAT IS MY DAUGHTER, AND IT JUST SHOWS
18 TO WHERE SHE HAS BLOOD ON HER PANTS FROM WHERE MY HEAD
19 WAS LYING IN BLOOD JUST FROM THE BACK OF MY HEAD, LIKE I
20 SAY, I WAS LEANING FROM THIS DIRECTION (DEMONSTRATING) SO
21 THE BLOOD WAS JUST BLEEDING RIGHT ON HER LEGS.

22 Q. DOES THAT PICTURE FAIRLY AND ACCURATELY DEPICT
23 YOUR DAUGHTER AS SHE LOOKED IMMEDIATELY AFTER THE ROBBERY
24 TOOK PLACE AND YOU DROVE OFF?

25 A. YES, SIR, IT DOES.

1 **MR. WAGNER:** YOUR HONOR, AT THIS TIME WE WOULD ASK
2 THAT EXHIBIT BE ADMITTED. I THINK IT WAS STATE'S EXHIBIT
3 10, I BELIEVE. SEVEN, EXCUSE ME.

4 **MS. EARLE:** OBJECTION, YOUR HONOR.

5 **THE COURT:** OVERRULED. STATE'S EXHIBIT NUMBER 7 IS
6 ADMITTED.

7 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE.)
8 BY MR. WAGNER:

9 Q. SO WHEN YOU WERE DRIVING AWAY, YOU SAID YOU SAW A
10 BLUE CAR COMING FAIRLY FAST TOWARDS WHERE THIS HAD JUST
11 HAPPENED?

12 A. YES, SIR.

13 Q. AND I BELIEVE YOU SAID YOU HAD DRIVEN AROUND
14 BEHIND THE TRAILER WHERE THIS ALL TOOK PLACE?

15 A. YES, SIR.

16 Q. AND YOU COULD SEE THROUGH TO THAT TRAILER THROUGH
17 THE FIELD, KIND OF IN THE WOODS, KIND OF IN THE BACKYARD?

18 A. YES, SIR.

19 Q. AND THERE WAS A VEHICLE PARKED BEHIND THEM?

20 A. YES, SIR.

21 Q. OKAY. AND DO YOU RECOGNIZE WHOSE VEHICLE THAT
22 WAS?

23 A. YES, SIR.

24 Q. WHOSE VEHICLE WAS THAT?

25 A. THE VEHICLE BELONGED TO CHAVIS CAMPBELL.

1 Q. OKAY. AND WHO WAS CHAVIS CAMPBELL?

2 A. CHAVIS CAMPBELL WAS, LIKE I SAID, INITIALLY A
3 CONVERSATION WAS STARTED BETWEEN ME AND HAWK ASKING FOR A
4 PAIR OF SHOES. THAT'S THE GUY THAT CALLED HIM HIS
5 BROTHER.

6 Q. OKAY. DID YOU SEE THAT VEHICLE PARKED BEFORE IN
7 THAT LOCATION?

8 A. NO, SIR, I'D NEVER SEEN IT PARKED IN THAT
9 LOCATION.

10 Q. DID YOU SEE THIS BLUE CAR AGAIN?

11 A. YES, SIR. I SAW THE BLUE CAR AGAIN. LIKE I SAY,
12 WHEN I SEEN HER COMING UP UNDER THE UNDERPASS, SHE WAS BY
13 HERSELF. WHEN I SAW HER PAST, COMING ACROSS THE ROSA
14 CLARK CLINIC, SHE HAD THREE BLACK MALES WITH HER. IN THE
15 FRONT SEAT WAS CHAVIS CAMPBELL, TWO GUYS IN THE BACK WAS
16 HAWK AND THE THIRD ONE WAS MIKE.

17 Q. DID YOU KNOW WHO MIKE WAS?

18 A. NO, SIR, NOT AT THE TIME. I HAD SEEN HIM BUT I
19 DIDN'T KNOW HIS NAME.

20 Q. PRIOR TO THIS DAY HAD YOU SEEN MIKE OR CHAVIS
21 CAMPBELL ANYWHERE AROUND THERE?

22 A. YES, SIR, I HAD.

23 Q. ON THAT DAY WHEN THIS HAPPENED, DID YOU SEE THEM
24 AT ALL?

25 A. NO, SIR.

1 Q. DID YOU EVEN KNOW IF THEY WERE IN THE AREA?

2 A. NO, SIR, I DID NOT.

3 Q. DID YOU EVER SEE THE MANLEY BROTHERS AGAIN?

4 A. NO, SIR.

5 Q. DO YOU KNOW WHICH WAY THEY RAN?

6 A. APPARENTLY THEY WENT EITHER AROUND THE HOUSE OR IN
7 THE HOUSE, I DON'T KNOW. I WAS SPEEDING UP SO FAST I
8 REALLY DIDN'T LOOK BACK TO SEE WHERE THEY WAS HEADED.
9 WHEN THEY FIRED THE GUN, I COULD SEE THEM IN THE REAR
10 VIEW, YOU KNOW, JUST STANDING THERE WITH THE GUN.

11 Q. OKAY. DO YOU KNOW WHO WAS DRIVING THE BLUE
12 VEHICLE?

13 A. YES. HER NAME IS REGINA MCCLAIN. AND I KNOW HER
14 FROM RYAN'S, ALSO, SHE WORKED AT RYAN'S.

15 Q. IN WHICH DIRECTION WERE THEY HEADED?

16 A. THEY WERE HEADED TOWARDS THE SENECA MIDDLE SCHOOL.
17 AND, LIKE I SAY, I KNOW HER AND KNOW WHERE SHE STAYS
18 BECAUSE CHAVIS WAS HER BOYFRIEND, AND I HAD SOLD HIM A
19 PAIR OF SHOES AT HER HOUSE. SO THEY WAS HEADING IN THE
20 DIRECTION TOWARDS HER HOUSE, WHICH IS THE PINE RIDGE
21 COMMUNITY. AND THAT'S -- YOU HAVE TO GO PAST THE SENECA
22 RECREATION AND ALL THE BASEBALL FIELDS AND THE SENECA
23 MIDDLE SCHOOL TO GET TO PINE RIDGE.

24 Q. THE PEOPLE IN THE CAR THAT SECOND TIME, WHEN YOU
25 SAW REGINA MCCLAIN WITH THESE OTHER THREE GUYS IN THE

1 CAR, WAS ANYBODY IN THAT CAR BESIDES HAWK THAT HAD
2 PARTICIPATED IN THE ROBBERY?

3 A. NO, SIR.

4 Q. HAWK WAS THE ONLY ONE?

5 A. YES, SIR.

6 Q. DID YOU IMMEDIATELY CALL THE POLICE DEPARTMENT,
7 CALL 9-1-1?

8 A. YES, SIR.

9 Q. DID THE CITY POLICE, CITY OF SENECA COME OUT THERE
10 TO TALK TO YOU?

11 A. I REALLY DON'T KNOW. I MEAN, I KNOW THAT WHEN I
12 PULLED UP TO MY AUNT'S HOUSE, I HAD LOST SO MUCH BLOOD I
13 JUST KIND OF PASSED OUT. I REMEMBER THE POLICE COMING
14 TRYING TO TALK, AND I JUST REMEMBER BLANKING OUT AND
15 GOING IN THE AMBULANCE FROM THERE.

16 Q. OKAY. DID THEY TAKE YOU TO THE HOSPITAL?

17 A. YES, SIR.

18 Q. AND WHAT KIND OF INJURIES DID YOU HAVE WHEN YOU
19 GOT THERE?

20 A. JUST BASICALLY HAD LACERATION OF THE SCALP, AND IT
21 REQUIRED STAPLES I HAD BETWEEN TEN AND 20 STAPLES IN MY
22 HEAD.

23 Q. CAN YOU SHOW US WHERE YOUR HEAD WAS LACERATED?

24 A. IT WAS LACERATED ALL IN THE MIDDLE, ALL RIGHT HERE
25 (INDICATING).

1 Q. OKAY. WHY DO YOU THINK YOU WERE HIT SO MUCH ON
2 THAT SIDE OF YOUR HEAD VERSUS THE OTHER ONE?

3 A. BECAUSE I WAS SHIELDED, I WAS HIT -- BECAUSE THEY
4 COULDN'T REACH ME FROM THIS SIDE BECAUSE THEY HAD TO COME
5 AROUND. SO I WAS SHIELDED FROM THIS PERSPECTIVE SO THEY
6 HAD TO HIT ME FROM THE RIGHT-HAND SIDE.

7 Q. DID YOU LATER TALK TO LIEUTENANT GREG REED FROM
8 THE SHERIFF'S OFFICE?

9 A. YES, SIR.

10 Q. AND DID YOU TELL HIM WHO THE PEOPLE WERE THAT
11 ROBBED YOU?

12 A. YES, SIR, I DID.

13 Q. DID YOU KNOW HAWK'S REAL NAME?

14 A. NO, SIR, I DID NOT.

15 Q. DID YOU TELL HIM YOU KNEW HIM AS HAWK?

16 A. YES, SIR, I DID.

17 Q. DID HE SHOW YOU A PHOTOGRAPHIC PICTURE DISPLAY OF
18 PEOPLE TO SEE IF YOU RECOGNIZED ANYBODY?

19 A. YES, SIR, HE DID. BUT PRIOR TO HIM SHOWING ME
20 THAT PHOTO DISPLAY, I DID TELL HIM THAT I KNEW HAWK AND I
21 TOLD HIM THAT THE DISTINGUISHMENT OF HAWK WAS HE GOT
22 SOMETHING WRONG WITH HIS EYE, SO I TOLD HIM IF I SAW HIM
23 I COULD DEFINITELY PICK HIM OUT.

24 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
25 NUMBER 11?

1 **MS. EARLE:** YOUR HONOR, I OBJECT TO THE PHOTO
2 LINE-UP.

3 **THE COURT:** ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
4 RULING, THE OBJECTION IS OVERRULED.
5 BY MR. WAGNER:

6 Q. STATE'S EXHIBIT NUMBER 11, COULD YOU TAKE A LOOK
7 AT THAT?

8 A. YES, SIR. THAT'S HAWK AT THE BOTTOM RIGHT.

9 Q. OKAY. DID YOU SEE THOSE PICTURES OF GUYS THERE,
10 DID YOU SEE THOSE PICTURES IN LIEUTENANT REED'S OFFICE?

11 A. YES, I DID.

12 Q. OKAY. DID LIEUTENANT REED, WHEN HE SHOWED YOU
13 THOSE PICTURES, DID HE IMPLY IN ANY MANNER THAT THE
14 PERSON YOU WERE LOOKING FOR WAS INCLUDED IN THOSE
15 PICTURES?

16 A. NO, SIR, HE DID NOT.

17 Q. DID HE TELL YOU WHO TO SELECT OR TRY TO TELL YOU
18 TO SELECT ANYBODY?

19 A. NO, SIR, HE DID NOT.

20 Q. DID HE TRY TO IMPLY IN ANY MANNER THAT YOU SHOULD
21 PICK ONE PICTURE OVER ANOTHER?

22 A. NO, SIR, HE DID NOT.

23 Q. WHEN HE SHOWED YOU THAT GROUP OF PICTURES, HAD HE
24 PREVIOUSLY SHOWED YOU SOME OTHER PICTURES, TOO?

25 A. YES, SIR, HE DID.

1 Q. WHEN YOU SAW THAT PARTICULAR PICTURE THERE, WHAT
2 DID YOU DO?

3 A. I SAID: THAT'S MY MAN. THAT'S HIM. THAT'S HAWK.

4 Q. YOU WERE A HUNDRED PERCENT POSITIVE THAT'S HAWK?

5 A. YES, SIR.

6 Q. DID YOU INITIAL THAT AND SIGN IT SHOWING THAT YOU
7 IDENTIFIED HIM?

8 A. YES, SIR, I DID.

9 Q. OKAY. DID YOU LATER FIND OUT WHAT HAWK'S NAME
10 WAS?

11 A. YES, SIR.

12 Q. WAS HAWK'S NAME ADARIUS QUANTE DENNIS?

13 A. YES, SIR.

14 Q. BUT YOU NEVER KNEW THAT BEFORE?

15 A. NO, SIR. I JUST KNEW HIM AS HAWK.

16 Q. OKAY. AND DOES THAT PICTURE OF HAWK OR ADARIUS
17 DENNIS IN THAT PICTURE, DOES THAT ACCURATELY REFLECT HOW
18 HE LOOKS?

19 A. YES, SIR.

20 MR. WAGNER: YOUR HONOR, AT THIS TIME WE ASK STATE'S
21 EXHIBIT NUMBER 11 BE ADMITTED.

22 THE COURT: ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
23 RULINGS, STATE'S NUMBER 11 IS ADMITTED.

24 (STATE'S EXHIBIT 11, PHOTO LINE-UP WITH THE
25 DEFENDANT'S PICTURE IN IT, WAS RECEIVED IN

1 EVIDENCE.)

2 MR. WAGNER: THOSE ARE THE ONLY QUESTIONS I HAVE. I
3 ASK IF WE COULD PUBLISH THOSE TO THE JURY.

4 THE COURT: VERY WELL.

5 MR. WAGNER: MR. ROBINSON, THOSE ARE ALL THE
6 QUESTIONS I HAVE. IF YOU WOULD PLEASE ANSWER ANYTHING
7 MS. EARLE MAY HAVE.

8 THE COURT: LET'S WAIT WITH THE PUBLISHING OF THE
9 EXHIBITS AND CONTINUE WITH THE CROSS-EXAMINATION.

10 MS. EARLE: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION BY MS. EARLE:

12 Q. MR. ROBINSON --

13 A. YES, MA'AM.

14 Q. -- DID YOU GIVE A STATEMENT TO MR. REED, MAKE A
15 WRITTEN STATEMENT TO MR. REED ON JUNE 24TH AFTER THIS
16 INCIDENT HAPPENED?

17 A. YES, SIR, I DID. I MEAN YES, MA'AM.

18 Q. ALL RIGHT. AND WHEN YOU GAVE THAT STATEMENT, DO
19 YOU REMEMBER SAYING IN THAT STATEMENT THAT NOT ONLY WERE
20 THE TWO MANLEY BROTHERS THERE, BUT ALSO HAWK AND ANOTHER
21 BROWN-SKINNED MALE?

22 A. I SAID IN THE STATEMENT THAT ANOTHER BROWN-SKINNED
23 MALE HELPED HAWK GET THE SHOES OUT.

24 Q. OKAY. AND HOW DO YOU KNOW THAT HAPPENED?

25 A. BECAUSE IT'S ALWAYS -- THERE WERE ONLY THREE OF US

1 THERE, AND I WAS INITIALLY, HAWK WAS FIGHTING ONE.

2 INITIALLY THE YOUNGER BROTHER WASN'T THERE UNTIL I HAD
3 CONTROL OF THE GUN.

4 Q. ALL RIGHT. BUT IN YOUR STATEMENT YOU SAY THAT YOU
5 (READING): SAW TWO OTHER BLACK MALES BY THE NAME OF DREC
6 AND LANEY MANLEY APPROACH QUICKLY, AND AS I TURNED I WAS
7 SHIELDED BY THE DOOR OF MY CAR. DELANEY MANLEY HIT ME IN
8 THE BACK OF MY HEAD WITH A REVOLVER GUN. AS I LAID DOWN
9 IN THE BACK SEAT FIGHTING WITH HAWK AND ANOTHER
10 BROWN-SKINNED MALE PROCEEDING IN TAKING MY SHOES OUT OF
11 THE BACK OF MY EXPEDITION.

12 A. YES, MA'AM.

13 Q. YOU ALREADY IDENTIFIED DREC AS BEING ONE OF THE
14 BROTHERS. YOU SAW ANOTHER MAN COME UP?

15 A. NO, MA'AM.

16 Q. ALL RIGHT. SO WHY -- BUT YOU PUT THAT IN YOUR
17 STATEMENT, THOUGH, THAT YOU SAW ANOTHER DARK-SKINNED MAN
18 COME UP.

19 A. NO, I DIDN'T SAY ANOTHER MAN CAME UP. I SAID
20 ANOTHER ONE HELPED HAWK GET THE SHOES OUT OF THE CAR AND
21 THAT OTHER PERSON WOULD BE DREC. I WAS --

22 Q. WHY WOULD YOU NAME HIM IN ONE PLACE AND THEN CALL
23 HIM A BROWN-SKINNED MALE IN ANOTHER PLACE IF YOU ALREADY
24 KNEW HIS NAME?

25 A. THAT'S TRUE. I MEAN, THAT'S...

1 Q. ALL RIGHT. AND THEN YOU WENT ON, YOU WENT ON AND
2 SAID THAT YOU GRABBED -- LET'S SEE -- AS DELANEY SAID
3 YOU'RE GONNA DIE TODAY WHILE HIS BROTHER DREC ECHOED "WE
4 ARE SOME GOONS. WE ARE GONNA KILL YOU, NIGGER," AS
5 DELANEY POINTED THE GUN IN MY FACE AND I GRABBED THE NOSE
6 OF THE GUN AND DRIFTED (PHONETIC) AS HE WAS HOLDING THE
7 BUTT OF THE GUN. THE GUN WAS UNDER MY RIGHT THIGH. DREC
8 AND LANEY CONTINUOUSLY CALLED HAWK AND THEY SAID "CHAZ"
9 FOR HELP, SAYING HE TOOK THE GUN, WE NEED THE OTHER GUN.
10 DREC KEPT HITTING YOU IN THE FACE WITH HIS FIST?

11 A. YES, MA'AM.

12 Q. NOW, YOU HAD TESTIFIED EARLIER THAT HE WAS IN THE
13 FRONT SEAT OF THE CAR HITTING YOU.

14 A. YES, MA'AM.

15 Q. WELL, HOW COULD HE BE IN THE FRONT SEAT HITTING
16 YOU AND IN THE BACK TAKING SHOES OUT AT THE SAME TIME?

17 A. BECAUSE INITIALLY HE WASN'T IN THE FRONT SEAT. HE
18 DIDN'T GET IN THE FRONT SEAT OF THE CAR UNTIL I TOOK
19 CONTROL OF THE GUN.

20 Q. ALL RIGHT. AND SO, SO YOU ARE SAYING THAT WHAT
21 YOU TOLD IN YOUR STATEMENT ABOUT THERE BEING ANOTHER
22 BROWN-SKINNED MALE THERE IS NOT TRUE?

23 A. THAT OTHER BROWN-SKINNED MALE WAS DREC.

24 Q. BUT YOU DID NOT IDENTIFY HIM TO THE POLICE
25 OFFICERS AS BEING DREC.

1 AND THEN YOU TOLD THE SOLICITOR EARLIER THAT --
2 LET'S SEE -- THAT THE MANLEY BROTHERS CAME OUT AND THAT
3 HAWK JUMPED BACK AND THAT YOU HEARD THE BACK HATCH OPEN,
4 AND THAT THE OTHER BROTHER CAME FROM THE FRONT OF THE
5 CAR, NOT THE BACK OF THE CAR.

6 A. UH-HUH.

7 Q. SO YOU ARE SAYING THAT WHILE YOU WERE STRUGGLING,
8 THAT HE TOOK ALL THE SHOES OUT OF YOUR VEHICLE, TOOK THEM
9 IN ANOTHER BUILDING AND HID THEM SOMEWHERE AND THEN CAME
10 BACK OUT?

11 A. NO, MA'AM. HE WENT -- THE TIME THAT THE YOUNGER
12 BROTHER WAS GONE, IT WASN'T THAT LONG OF A TIME FRAME.
13 LIKE I SAID, THESE BOXES WEIGHED BETWEEN 40 TO 50 POUNDS.
14 THERE AIN'T NO ONE OR TWO MEN THAT COULD HAVE GOT THEM
15 THAT QUICK THAT HE WAS GONE.

16 I MEAN, HE WAS GONE AND, LIKE I SAID, I TOOK
17 CONTROL OF THE GUN ALMOST IMMEDIATELY AFTER I GOT HIT.
18 AND WE LAID DOWN IN THE BACK SEAT, HE POINTED THE GUN.
19 FROM THE TIME HE POINTED THE GUN AND TALKING TO ME,
20 THAT'S WHEN I GRABBED THE GUN. AND THE OTHER, THE
21 YOUNGER BROTHER DIDN'T COME BACK INTO PLAY UNTIL AFTER I
22 TOOK CONTROL OF THE GUN.

23 Q. ALL RIGHT. THAT WAS ALMOST IMMEDIATELY YOU SAID
24 THAT HAPPENED?

25 A. ALMOST, YES, MA'AM.

1 Q. AND THEN THE YOUNGER BROTHER JUMPED IN THE FRONT
2 SEAT AND STARTED HITTING YOU?

3 A. YES, MA'AM.

4 Q. SO HE DIDN'T HAVE TIME TO TAKE THE SHOES OUT, BUT
5 YOU SAID SOME OTHER BROWN MALE WAS HELPING HAWK TAKE THE
6 SHOES.

7 A. YES, MA'AM.

8 Q. OKAY. NOW -- BUT YOU DON'T KNOW WHO THAT WAS?

9 A. NO, MA'AM, I DO NOT.

10 Q. BUT AT A LATER POINT IN TIME YOU ALSO LOOKED AT A
11 PHOTO LINE-UP AND YOU PICKED OUT DANNY CHAVIS CAMPBELL AS
12 BEING INVOLVED IN THE INCIDENT.

13 A. YES, MA'AM, I SEEN HIM IN THE CAR, HE WAS IN THE
14 VEHICLE. NOT IN MY VEHICLE, BUT HE WAS IN THE VEHICLE
15 THAT WAS FLEEING WITH HAWK IN THE BACK.

16 Q. ALL RIGHT. BUT DID YOU NOT IDENTIFY HIM TO
17 OFFICER REED AS BEING INVOLVED IN THIS INCIDENT?

18 A. YES. YES, MA'AM, I DID.

19 Q. OKAY.

20 A. BUT I NEVER SAW HIM PERSONALLY COME OUT OF THE
21 HOUSE AT ANY GIVEN TIME.

22 Q. ALL RIGHT. AND WHEN YOU SAW THE VEHICLE, DID YOU
23 SEE A CHILD IN THE VEHICLE, IN THE BLUE KIA?

24 A. NO, MA'AM, I DID NOT.

25 Q. ALL RIGHT. SO THE ONLY, THE ONLY PEOPLE THAT YOU

1 SAY THAT YOU SAW WERE DIVERIO DELANEY MANLEY; DRECUS
2 MANLEY, HIS BROTHER?

3 A. YES, MA'AM.

4 Q. AND THE PERSON IDENTIFIED AS HAWK TO YOU?

5 A. YES, MA'AM.

6 Q. BUT YOU SAY IT TOOK MORE THAN THAT TO BE ABLE TO
7 ACCOMPLISH THIS?

8 A. YES, MA'AM.

9 Q. ALL RIGHT. NOW, WHEN YOU WERE DRIVING OFF YOU
10 DIDN'T SEE THE SHOES ANYWHERE IN THE YARD?

11 A. NO, MA'AM.

12 Q. YOU DIDN'T SEE WHERE ANYBODY HAD TAKEN THEM?

13 A. NO, MA'AM.

14 Q. WHEN YOU WERE STRUGGLING WITH THE MANLEY BROTHERS
15 IN THE SEAT, YOU COULDN'T TELL WHO WAS DOING WHAT IN THE
16 BACK OF THE VEHICLE?

17 A. NO, MA'AM.

18 Q. YOU COULD HEAR IT BUT NOT SEE IT?

19 A. YES, MA'AM.

20 Q. ALL RIGHT. SO IN THE SIX TO SEVEN MINUTES THAT
21 THIS HAPPENED THE SHOES DISAPPEARED?

22 A. YES, MA'AM.

23 Q. HAVE YOU EVER SEEN THOSE SHOES AGAIN?

24 A. NO, MA'AM.

25 Q. DID YOU NOT GO BACK THAT NIGHT AND TAKE THEM BACK?

1 A. NO, MA'AM.

2 Q. SO IF MR. MANLEY SAYS THAT YOU CAME BACK AND TOOK
3 THE SHOES BACK THAT NIGHT, HE WOULDN'T BE TELLING THE
4 TRUTH ABOUT THAT?

5 A. NO, MA'AM, HE WOULD NOT.

6 Q. ALL RIGHT. HAVE YOU EVER BEEN ROBBED BEFORE?

7 A. NO, MA'AM.

8 Q. THIS IS THE FIRST TIME THIS HAS EVER HAPPENED TO
9 YOU?

10 A. IT'S THE FIRST -- NO, IT'S NOT THE FIRST ATTEMPT,
11 BUT I'VE NEVER BEEN ROBBED. THIS IS THE FIRST TIME I'VE
12 EVER BEEN ROBBED. BUT I HAVE, BUT WITH DRECUS AND
13 DIVERIO MANLEY, THIS IS NOT MY FIRST RUN-IN WITH THEM.

14 Q. THEY TRIED THIS BEFORE?

15 A. YES, MA'AM.

16 Q. DRECUS AND LANEY?

17 A. YES, MA'AM.

18 Q. NOT HAWK?

19 A. NO.

20 Q. YOU NEVER HAD A PROBLEM WITH HIM BEFORE?

21 A. I NEVER HAD A PROBLEM WITH HIM BEFORE.

22 Q. THAT'S WHY YOU WERE WILLING TO GO SELL HIM MORE
23 SHOES.

24 A. YES, MA'AM.

25 Q. DURING THE TIME THIS WAS GOING ON DID YOU EVER

1 HEAR HAWK SAY ANYTHING TO THE MANLEY BROTHERS?

2 A. NO, MA'AM.

3 Q. DID YOU SEE HIM AGAIN AFTER YOU SAID HE JUMPED
4 BACK?

5 A. NO, MA'AM.

6 Q. SO AS FAR AS YOU KNOW, HE WAS GONE?

7 A. AS FAR AS I KNOW.

8 Q. BECAUSE YOU DIDN'T SEE HIM ANYMORE?

9 A. YES, MA'AM.

10 Q. AND HE'S NEVER CAUSED YOU A PROBLEM BUT THE OTHER
11 TWO HAVE?

12 A. YES, MA'AM.

13 Q. THEY'VE TRIED -- HOW MANY TIMES HAD THEY TRIED
14 THIS BEFORE?

15 A. JUST ONE TIME.

16 Q. JUST ONCE?

17 A. PRIOR TO THIS, YES, MA'AM.

18 Q. WAS IT AT THIS SAME LOCATION OR A DIFFERENT
19 LOCATION?

20 A. IT WAS AT THE SAME COMMUNITY BUT NOT THE SAME
21 LOCATION.

22 Q. OKAY. DO THE MANLEY BROTHERS LIVE IN THIS
23 COMMUNITY?

24 A. YES, MA'AM. THEIR GRANDMOTHER DOES.

25 Q. ALL RIGHT. BUT NOT WHERE --

1 A. NO, MA'AM.

2 Q. -- YOU WENT TO THIS DAY?

3 A. NO, MA'AM.

4 MS. EARLE: THANK YOU. I HAVE NOTHING FURTHER.

5 REDIRECT EXAMINATION BY MR. WAGNER:

6 Q. MR. ROBINSON, GOING BACK TO YOUR STATEMENT, YOU
7 TOLD LIEUTENANT REED, AND THIS STATEMENT WAS A COUPLE
8 DAYS AFTER IT HAPPENED, (READING): THAT WHILE YOU WERE
9 FIGHTING WITH DIVERIO MANLEY, I GUESS RIGHT AFTER HE HIT
10 YOU, YOU WERE IN THE BACK SEAT STRUGGLING WITH A GUN FOR
11 HIM WHEN A HATCH OPENED UP THAT YOU SAW HAWK AND ANOTHER
12 BROWN-SKINNED MALE PROCEEDING AND TAKING THE SHOES OUT OF
13 THE BACK OF MY EXPEDITION?

14 A. UH-HUH.

15 Q. SO AT THAT POINT IN TIME DID YOU SEE HAWK AND THIS
16 OTHER GUY TAKING THE SHOES OUT?

17 A. NO, SIR. BUT FROM THE BACK SEAT I COULD FEEL, YOU
18 KNOW, BECAUSE THE SHOES WERE SO PRESSED UP AGAINST THE
19 SEAT THAT I WAS LAYING ON, I COULD JUST FEEL THEM
20 REMOVING THEM. I WAS JUST FEELING THEM KIND OF FLED
21 BECAUSE THE BOXES WERE SO BIG THEY WERE PACKED IN TIGHT
22 IN THE BACK PART OF THE SEAT.

23 Q. I'M JUST CONFUSED. DID YOU SEE TWO GUYS TAKING
24 THEM OUT? WHEN YOU SAID THAT, I'M CONFUSED AS TO WHAT
25 YOU SAW.

1 A. I DIDN'T SEE TWO GUYS. BUT INITIALLY DREC WAS
2 NOWHERE IN THE PICTURE. FROM THE INITIAL HIT DREC WAS
3 NOWHERE IN THE PICTURE.

4 WHEN HAWK STEPPED BACK AS HE CAME AROUND, WHEN
5 HAWK STEPPED BACK, AND DREC, IT JUST LOOKED LIKE FROM
6 GOING FROM THIS ANGLE JUST TWO PEOPLE GOING AROUND, AND
7 THOSE WERE THE ONLY TWO PEOPLE THAT WERE THERE.

8 Q. OKAY. SO HAWK STEPPED BACK, AND IF YOUR DOOR IS
9 HERE (DEMONSTRATING)?

10 A. UH-HUH.

11 Q. AND HE STEPPED BACK THAT WAY (DEMONSTRATING)?

12 A. UH-HUH.

13 Q. TOWARDS THE BACK OF THE CAR?

14 A. TOWARDS THE BACK OF THE CAR.

15 Q. YOU GET CLUBBED AND YOU FALL BACK INTO THE CAR?

16 A. UH-HUH.

17 Q. WHEN YOU START STRUGGLING IMMEDIATELY THE BACK
18 HATCH OPENS AND THE BOXES START GOING?

19 A. YES, SIR.

20 Q. THE OTHER TWO GUYS WERE THE ONLY TWO PEOPLE BACK
21 THERE?

22 A. YES, SIR.

23 Q. SO WHEN YOU SAY THIS IN YOUR STATEMENT, IN YOUR
24 MIND YOU ARE THINKING THE ONLY TWO PEOPLE THAT WERE BACK
25 THERE, THAT COULD HAVE BEEN BACK THERE, WERE HAWK AND THE

1 OTHER MANLEY BROTHER?

2 A. YES, SIR.

3 Q. OKAY. I UNDERSTAND. AND THE WHOLE TIME THIS WAS
4 GOING ON DID YOU EVER SEE ANYBODY ELSE BESIDES HAWK AND
5 THE OTHER TWO GUYS?

6 A. NO, SIR, I DID NOT.

7 Q. AND EVEN THOUGH HAWK DIDN'T SPEAK TO THE MANLEY
8 BROTHERS, YOU HEARD THEM SAY, "HAWK, HAWK, HAWK, BRING
9 THE OTHER GUN," THEY WERE CALLING FOR HELP BECAUSE THEY
10 THOUGHT YOU WERE GONNA GET THE GUN AWAY FROM THEM?

11 A. YES, SIR.

12 MR. WAGNER: THOSE ARE ALL THE QUESTIONS I HAVE.
13 THANK YOU.

14 THE COURT: RECROSS?

15 RECROSS-EXAMINATION BY MS. EARLE:

16 Q. I JUST WANT TO BE SURE I UNDERSTAND THIS. YOU
17 SAID THAT DURING THE STRUGGLE, WHEN YOU HEARD THE SHOES
18 LEAVING THE CAR, THEY DIDN'T HAVE TIME TO TAKE THOSE
19 SHOES AND PUT THEM ANYWHERE ELSE BEFORE DRECUS MANLEY WAS
20 BACK IN THE FRONT SEAT OF THE CAR HITTING YOU?

21 A. YOU MEAN -- "PUT THEM," WHAT DO YOU MEAN?

22 Q. TO HIDE THEM. PUT THEM SOMEWHERE OTHER THAN JUST
23 IN THE YARD.

24 A. THEY PROBABLY HAD PLENTY OF TIME IF A THIRD PARTY
25 WAS INVOLVED. BUT DREC WAS --

1 Q. BUT NOT, NOT FOR DRECUS. AND YOU SAID ONE PERSON
2 COULDN'T PICK UP AND CARRY ALL THOSE BOXES ---

3 A. NO. ONE PERSON COULDN'T CARRY TWO BOXES AT ONE
4 TIME, BUT ONE PERSON COULD CARRY BOXES.

5 Q. BUT YOU HAD NUMEROUS BOXES; ISN'T THAT RIGHT?

6 A. YEAH. THEY ONLY HAD FIVE BOXES TOTAL.

7 Q. ALL RIGHT. SO SOMEBODY WOULD HAVE HAD TO TAKE A
8 BOX ---

9 A. COME BACK AND GET A BOX ---

10 Q. A BOX AT A TIME ---

11 A. YES, MA'AM.

12 Q. GO PUT IT SOMEWHERE WHERE YOU COULDN'T SEE IT WHEN
13 YOU LEFT ---

14 A. YES, MA'AM.

15 Q. --- AND COME BACK, GET ANOTHER BOX, GO PUT IT
16 SOMEWHERE AND COME BACK AND DO THAT FIVE TIMES?

17 A. YES, MA'AM.

18 Q. AND DURING THIS TIME DRECUS WAS ACTUALLY IN THE
19 FRONT SEAT OF THE VEHICLE?

20 A. YES, MA'AM.

21 MS. EARLE: OKAY. THANK YOU.

22 THE COURT: ANY REDIRECT?

23 MR. WAGNER: NO, SIR.

24 THE COURT: YOU MAY STEP DOWN, SIR.

25 (WITNESS LEAVES STAND.)

1 **MR. WAGNER:** I CALL REGINA MCCLAIN.

2 **THE COURT:** MR. FOREMAN, DO YOU NEED A BREAK OR
3 ANYTHING OR DO YOU WANT TO GO FORWARD?

4 **THE FOREMAN:** I THINK WE'RE FINE RIGHT NOW.

5 **THE COURT:** VERY GOOD. THANK YOU.

6 WHEREUPON,

7 REGINA PATRICE MCCLAIN,

8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. WAGNER:

10 **THE COURT:** ALL RIGHT. IF YOU WOULD PLEASE GIVE US
11 YOUR FULL NAME, SPELLING YOUR LAST NAME.

12 **THE WITNESS:** REGINA PATRICE MCCLAIN, M-C-C-L-A-I-N.

13 **THE COURT:** THANK YOU VERY MUCH.

14 BY MR. WAGNER:

15 Q. MS. MCCLAIN, WHERE DO YOU LIVE?

16 A. 1000 HILLSBOROUGH DRIVE, APARTMENT ONE.

17 Q. AND WHERE ARE YOU FROM ORIGINALLY?

18 A. WALHALLA.

19 Q. AND HOW OLD ARE YOU?

20 A. TWENTY-FIVE.

21 Q. DO YOU KNOW THE DEFENDANT IN THIS CASE, A GUY
22 NAMED HAWK?

23 A. YES.

24 Q. HOW DO YOU KNOW HIM?

25 A. THROUGH ANOTHER FRIEND.

1 Q. OKAY. AND HOW LONG HAVE YOU KNOWN HIM?

2 A. WELL, AT THE TIME THAT THE INCIDENT OCCURRED I'D
3 KNOWN HIM ABOUT A MONTH.

4 Q. BACK ON JUNE 22ND, DID YOU GET A CALL TO GO OVER
5 TO CLINKSCALE COMMUNITY?

6 A. YES.

7 Q. AND WHO WAS THAT FROM, WHAT DID YOU DO?

8 A. CHAVIS CAMPBELL. HE HAD CALLED ASKING ME WHERE I
9 WAS AT, AND AT THE TIME I WAS ON THE WAY TO THE CAR WASH
10 TO WASH MY CAR, ME AND MY SON. AND I WAS LIKE, WHY? AND
11 HE SAID, COME GET ME.

12 MS. EARLE: YOUR HONOR, I OBJECT TO HER TESTIFYING
13 AS TO WHAT ANYONE SAID.

14 THE COURT: ALL RIGHT. YES, MA'AM. I UNDERSTAND.
15 MR. WAGNER, APPARENTLY THIS IS HEARSAY.

16 MR. WAGNER: YES, SIR.

17 THE COURT: ALL RIGHT. I'M GOING TO SUSTAIN THE
18 OBJECTION.

19 MS. EARLE: THANK YOU, YOUR HONOR.

20 THE COURT: BY THE WAY, MR. FOREMAN, LADIES AND
21 GENTLEMEN OF THE JURY, THE REASON WE HAVE RULES ABOUT
22 HEARSAY TESTIMONY AND EVIDENCE, HEARSAY IS, AS THE TERM
23 IMPLIES, IS WHAT YOU HEAR OR THINK YOU HEAR SOMEBODY
24 SAYS. IN OTHER WORDS, IT MIGHT BE, YOU MIGHT MISS WHAT
25 THEY'RE SAYING. SO IT'S NOT WHAT WE CALL RELIABILITY.

1 IT COULD BE VERY INNOCENT, YOU THINK YOU HEARD HIM SAY
2 THAT OR IT MIGHT OR WAS IN A DIFFERENT CONTEXT. SO YOU
3 DO NOT PERMIT HEARSAY IF THAT'S SOMETHING OFFERED FOR THE
4 TRUTH THAT YOU THINK THAT SOMEBODY ELSE SAYS THAT YOU
5 THINK THAT YOU HEAR, BECAUSE IT LACKS THE RELIABILITY OF
6 HAVING THE PERSON WHO ACTUALLY SAID IT TESTIFYING. SO
7 BECAUSE OF THE LACK OF RELIABILITY WE DON'T PERMIT
8 HEARSAY.

9 NOW, IF IT'S SAID BY SOMEBODY WHO WAS INVOLVED OR A
10 PARTY TO THE PROCEEDING, THEN THAT'S DIFFERENT. YOU
11 REMEMBER WE HAVE AN ALLEGED STATEMENT MADE BY THE
12 DEFENDANT IN THIS CASE, AND THAT'S NOT HEARSAY BECAUSE
13 THAT'S A STATEMENT THAT'S MADE BY A PARTY OPPONENT. BUT
14 THIS IN THIS CASE IS NO EXCEPTION FOR THE HEARSAY AND IT
15 WILL BE PROHIBITED.

16 NOW, THESE RULES, OF COURSE, APPLY TO THE STATE AS
17 WELL AS TO THE DEFENDANT.

18 YOU MAY PROCEED.

19 BY MR. WAGNER:

20 Q. OKAY. YOU GOT A CALL FROM CHAVIS CAMPBELL?

21 A. UH-HUH.

22 Q. AS A RESULT OF THAT CALL, WITHOUT SAYING WHAT HE
23 SAID, WHAT DID YOU DO?

24 A. I PICKED HIM UP.

25 Q. OKAY. WHEN YOU SAY YOU PICKED HIM UP, DID YOU

1 PICK ANYBODY ELSE UP WITH HIM?

2 A. YES. IT WAS HIM, ANOTHER GUY NAMED MIKE AND HAWK.

3 Q. AND HAWK?

4 A. UH-HUH.

5 Q. AND WHERE WERE THEY?

6 A. THEY WERE WALKING UP THE ROAD BY HEAD START.

7 Q. HOW FAR WAS THAT FROM WHERE CHAVIS LIVES?

8 A. FROM WHERE CHAVIS LIVES?

9 Q. YEAH. OR HOW, HOW FAR IS THAT FROM WHERE HE STAYS
10 OR HANGS OUT ALL DAY?

11 A. SIX MILES. HE DOESN'T LIVE IN THAT AREA.

12 Q. OKAY. ARE YOU FAMILIAR WITH WHERE THIS ROBBERY
13 TOOK PLACE?

14 A. YES.

15 Q. HOW FAR FROM WHERE THE ROBBERY TOOK PLACE DID YOU
16 PICK HIM UP ON THE ROAD?

17 A. JUST A COUPLE OF FEET, LIKE FROM WHERE THE ROBBERY
18 HAPPENED, YOU CAN LIKE WALK THROUGH THE WOODS AND GET TO
19 THE ROAD THAT HEAD START IS ON.

20 Q. OKAY. WHEN YOU PICKED HIM UP DID YOU NOTICE
21 CHAVIS'S CAR BACK BEHIND THIS TRAILER OR BACK BEHIND THAT
22 TRAILER?

23 A. NO, I COULDN'T SEE THE TRAILER FROM THE ROAD THAT
24 HEAD START IS ON.

25 Q. OKAY. DID YOU EVER SEE CHAVIS'S CAR THAT DAY?

1 A. YES.

2 Q. AND WHEN WAS THAT?

3 A. WHEN I WENT OVER THERE TO PICK IT UP.

4 Q. OKAY. AND WHEN WAS THAT?

5 A. MAYBE 15 MINUTES AFTER I PICKED HIM UP FROM
6 WALKING.

7 Q. DID YOU KNOW WHAT HAPPENED?

8 A. I DIDN'T KNOW WHAT HAPPENED UNTIL I WAS ON MY WAY
9 TO PICK UP HIS CAR.

10 Q. OKAY. AND HOW DID YOU FIND OUT?

11 A. HE HAD CALLED ME ON MY CELL PHONE AND TOLD ME.

12 Q. WHO HAD CALLED YOU?

13 A. CHAVIS.

14 Q. ALL RIGHT. SO YOU'RE HOME ON THE EVENING OF THE
15 22ND?

16 A. WELL, I WAS ON MY WAY TO WASH MY CAR, BUT...

17 Q. ALL RIGHT. DID YOU GET A CALL ON YOUR CELL PHONE?

18 A. YES.

19 Q. BUT YOU WENT OVER AND PICKED UP CHAVIS, HAWK, AND
20 A GUY NAMED MIKE?

21 A. YES.

22 Q. AND YOU TOOK THEM WHERE?

23 A. BACK TO MY APARTMENT.

24 Q. DID BY ANY CHANCE, DID YOU NOTICE, DID YOU GO BY
25 RENALDO ROBINSON?

1 A. YES. AS I WAS GOING UNDER THE UNDERPASS, HE WAS
2 AT THE STOP SIGN.

3 Q. WAS THAT ON THE WAY TO PICK HIM UP OR ON THE
4 WAY ---

5 A. YES, IT WAS ON THE WAY TO PICK HIM UP.

6 Q. OKAY. DID YOU NOTICE HIS CONDITION?

7 A. HUH-UH.

8 Q. AND THEN YOU TOOK THESE THREE GUYS TO AN
9 APARTMENT?

10 A. TO MY APARTMENT, YES.

11 Q. OKAY. THEN YOU WENT BACK AND GOT CHAVIS'S CAR?

12 A. YES.

13 Q. WHERE WAS HIS CAR?

14 A. PARKED BEHIND THE TRAILER.

15 Q. OKAY. AND DO YOU HAVE ANY IDEA WHY YOU WERE ASKED
16 TO GO BACK AND GET HIS CAR?

17 A. HE SAID THAT HE DIDN'T WANT TO DRIVE IT. THAT'S
18 ALL HE SAID.

19 Q. OKAY. DID ANY OF THEM SAY ANYTHING -- DID HAWK
20 SAY ANYTHING TO YOU AT ALL?

21 A. HUH-UH. I'D ASKED WHAT HAD HAPPENED, BUT, LIKE
22 WHY I NEEDED TO GO PICK THEM UP, AND NOBODY SAID WHY.

23 Q. OKAY. DID YOU TELL ALL THIS TO THE SHERIFF'S
24 OFFICE WHEN THEY CAME OUT TO TALK TO YOU ABOUT IT?

25 A. WELL, THEY DIDN'T COME TO ME, I WENT TO THEM.

1 Q. OKAY.

2 MR. WAGNER: THAT'S ALL THE QUESTIONS I HAVE.

3 THE COURT: CROSS-EXAMINE?

4 MS. EARLE: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION BY MS. EARLE:

6 Q. MS. MCCLAIN, WHEN YOU PICKED UP THESE THREE MEN ON
7 THE ROAD, DID THEY HAVE ANY BOXES OF SHOES WITH THEM?

8 A. I DIDN'T SEE ANY.

9 Q. DID THEY HAVE ANYTHING WITH THEM THAT YOU COULD
10 SEE?

11 A. ONE HAD LIKE A BAG THAT YOU WOULD PUT YOUR THINGS
12 IN, BUT THAT WAS IT.

13 Q. SORT OF LIKE A BACKPACK?

14 A. YEAH. BUT IT WASN'T BIG OR ANYTHING.

15 Q. JUST SOMETHING TO CARRY AROUND WITH YOUR STUFF IN
16 IT?

17 A. YES.

18 Q. WERE YOU IN YOUR CAR ALONE?

19 A. WELL, MY SON WAS WITH ME.

20 Q. HOW OLD IS YOUR SON?

21 A. AT THE TIME HE WAS TWO.

22 Q. TWO? WAS HE IN A CAR SEAT?

23 A. YES.

24 Q. WHERE WAS THE CAR SEAT?

25 A. THE PASSENGER BACK.

1 Q. IN THE BACK SEAT?

2 A. UH-HUH.

3 Q. NOW, WHEN YOU PICKED THEM UP, WHERE DID EVERYBODY
4 SIT?

5 A. CHAVIS WAS IN THE DRIVER'S SIDE, HAWK WAS IN THE
6 MIDDLE, AND THEN MIKE WAS BY THE DRIVER'S SIDE DOOR REAR,
7 I THINK.

8 Q. NOW, YOU SAID CHAVIS WAS IN THE DRIVER'S SIDE?

9 A. CHAVIS WAS IN THE PASSENGER SEAT UP FRONT.

10 Q. OH, HE SAT UP FRONT.

11 A. YES.

12 Q. OKAY. SO CHAVIS WAS UP FRONT.

13 A. YES.

14 Q. AND THEN WHO WAS MIKE?

15 A. I REALLY DON'T KNOW HIM. I JUST KNOW THAT HE
16 STAYS IN THE SAME APARTMENT COMPLEX THAT I DO.

17 Q. BUT YOU DON'T KNOW WHO HE IS?

18 A. HUH-UH.

19 Q. AND SO HOW LONG HAD YOU KNOWN HIM?

20 A. ABOUT THE SAME TIME I KNOWN HAWK, ABOUT A MONTH.

21 Q. ALL RIGHT. AND HOW LONG DID YOU KNOW
22 MR. CAMPBELL?

23 A. I KNEW HIM ABOUT TWO MONTHS.

24 Q. SO JUST A LITTLE BIT LONGER THAN THE OTHERS?

25 A. UH-HUH.

1 Q. NOW, DID YOU SEE MR. ROBINSON GET ROBBED?

2 A. NO.

3 Q. SO YOU REALLY DON'T KNOW WHAT HAPPENED, YOU JUST
4 KNOW YOU PICKED UP THREE MEN NEAR THERE AND THEN TOOK
5 THEM BACK TO YOUR APARTMENT?

6 A. UH-HUH.

7 Q. NOW, TO YOUR KNOWLEDGE DID HAWK HAVE A VEHICLE?

8 A. YES.

9 Q. AND WHERE WAS THAT VEHICLE?

10 A. IT WAS BEHIND THE TRAILER ALSO.

11 Q. ALL RIGHT. SO THERE WAS MORE THAN ONE VEHICLE
12 BEHIND THE TRAILER? HOW MANY WERE BACK THERE?

13 A. TWO.

14 Q. ALL RIGHT. AND WHAT ABOUT MIKE? DID HE HAVE A
15 VEHICLE?

16 A. HUH-UH.

17 Q. NO? OKAY. DID HAWK ASK YOU TO PICK UP HIS CAR?

18 A. NO.

19 Q. DO YOU KNOW WHERE HAWK WENT AFTER YOU LEFT HIM AT
20 YOUR APARTMENT?

21 A. HUH-UH.

22 Q. AFTER YOU WENT AND GOT THE CAR, DID YOU GO BACK TO
23 YOUR APARTMENT?

24 A. YES.

25 Q. WERE THEY STILL THERE?

1 A. CHAVIS WAS THERE.

2 Q. WHAT ABOUT MIKE AND HAWK?

3 A. NO, THEY WERE GONE.

4 Q. DID YOU TAKE THEM ANYWHERE?

5 A. NO.

6 Q. DO YOU HAVE ANY IDEA WHAT HAPPENED?

7 A. I ASSUME MIKE MIGHT HAVE WENT TO HIS APARTMENT,
8 BUT I DON'T KNOW WHERE HAWK ---

9 Q. BUT YOU DON'T, YOU DON'T KNOW?

10 A. NO.

11 Q. YOU DIDN'T SEE THEM LEAVE. THEY WERE AT YOUR
12 PLACE THE LAST TIME YOU SAW THEM?

13 A. WHEN I LEFT, YES.

14 Q. NOW, HOW BIG IS YOUR CAR?

15 A. IT'S, IT'S NOT VERY BIG.

16 Q. WHEN YOU'RE DRIVING WITH YOUR SON IN HIS CAR SEAT,
17 CAN HE SEE OUT THE WINDOW?

18 A. YES.

19 MS. EARLE: THANK YOU. THAT'S ALL I HAVE.

20 THE COURT: RE-EXAM?

21 MR. WAGNER: NONE, YOUR HONOR. I ASK THAT THIS
22 WITNESS BE EXCUSED.

23 THE COURT: ANY OBJECTION TO THE WITNESS BEING
24 EXCUSED?

25 MS. EARLE: NONE, YOUR HONOR.

1 **THE COURT:** YOU MAY BE EXCUSED. THANK YOU VERY
2 MUCH, MA'AM.

3 (WHEREUPON, THE WITNESS WAS EXCUSED.)

4 **THE COURT:** DO YOU WANT TO APPROACH?

5 (DISCUSSION AT SIDEBAR.)

6 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
7 JURY, I'M GONNA SUGGEST WE TAKE LUNCH AT THIS TIME. AND
8 IT'S TEN OF ONE, BUT LET'S COME BACK AT 2:00 AND THEN
9 WE'LL CONTINUE WITH THE TRIAL OF THE CASE. AGAIN, YOU
10 HAVEN'T HEARD EVERYTHING, AND AS I SAY, WE STILL HAVE
11 MORE TO DO IN THE CASE, SO THEREFORE PLEASE DO NOT
12 UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY
13 WAY. AND WITH THAT I'LL EXCUSE YOU UNTIL 2:00.

14 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
15 FROM THE COURTROOM.

16 (THE JURY LEFT THE COURTROOM AT 12:50 P.M.)

17 **THE COURT:** IS THERE ANYTHING FROM THE STATE BEFORE
18 WE TAKE A LUNCH RECESS?

19 **MR. WAGNER:** NO, SIR.

20 **THE COURT:** FROM THE DEFENSE?

21 **MS. EARLE:** NONE, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. VERY GOOD. I'LL SEE YOU
23 BACK A LITTLE BIT BEFORE 2:00.

24 (A LUNCHEON RECESS OCCURRED.)

25

1 **AFTERNOON PROCEEDINGS**

2 (MARKED FOR IDENTIFICATION AND RECEIVED IN
3 COURT'S EVIDENCE WAS COURT'S EXHIBIT 2, A
4 NOTE FROM JUROR THOMAS MOON.)

5 **THE COURT:** MAY I SEE THE ATTORNEYS, PLEASE?

6 (DISCUSSION AT SIDEBAR.)

7 **THE COURT:** IS THE STATE READY?

8 **MR. WAGNER:** YES.

9 **THE COURT:** DEFENSE READY?

10 **MS. EARLE:** YES, YOUR HONOR.

11 **MR. WAGNER:** MY NEXT WITNESS IS DOWNSTAIRS.

12 RICK, IS HE HERE? OKAY.

13 **THE COURT:** ALL RIGHT. I'VE HAD A LITTLE BENCH
14 CONFERENCE WITH THE ATTORNEYS. DURING THE LUNCH RECESS
15 ONE OF THE JURORS GAVE A NOTE TO THE CLERK (READING): A
16 LOT OF THE PEOPLE I DIDN'T KNOW THEY WERE WITNESSES. I
17 KNOW JUST ABOUT ALL OF THEM AND SOME OF THE GUYS THAT ARE
18 INVOLVED IN THE ROBBERY. THOMAS MOON, NUMBER 89.

19 I'M GOING TO EXCUSE THE JUROR INASMUCH AS HE'S
20 BROUGHT HERE TO THE COURT'S ATTENTION THAT HE IS NOT
21 ENTIRELY COMFORTABLE SERVING. I MIGHT NOTE THAT IT COULD
22 HAVE BEEN THE ONES THAT HE IS TALKING ABOUT ARE NOT
23 WITNESSES AT THIS TRIAL, BUT THEIR NAMES HAVE COME UP IN
24 DIFFERENT TESTIMONY OR WITNESSES' TESTIMONY. SO IT'S NOT
25 SOMETHING HE TRIED TO KEEP FROM THE COURT. HE WAS

1 COMPLETELY HONEST IN HIS RESPONSES TO WHETHER OR NOT
2 WITNESSES THAT WERE NAMED WOULD AFFECT HIS SERVICE AS A
3 JUROR, BUT I DO FEEL THAT HE WOULD BE PROBABLY BETTER
4 SERVED NOT TO SERVE AS A JUROR HERE.

5 SO UNLESS I HEAR SOMETHING FROM THE STATE OR THE
6 DEFENSE, I'M GOING TO EXERCISE MY OWN DISCRETION AND
7 EXCUSE THE JUROR.

8 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

9 I'LL BRING THE JUROR OUT FIRST.

10 **MR. WAGNER:** NO, SIR.

11 **MS. EARLE:** YOUR HONOR, I WOULD JUST ASK THAT YOU
12 INQUIRE OF MR. MOON, IF HE TOLD ANYONE ELSE ON THE JURY
13 PANEL THAT HE DID HAVE KNOWLEDGE.

14 **THE COURT:** THAT'S A GOOD POINT. YES, MA'AM, I
15 WOULD BE GLAD TO DO THAT.

16 ALL RIGHT. THIS IS MR. MOON, JUROR NUMBER 89.

17 (JUROR MOON ENTERS COURTROOM.)

18 **THE COURT:** HELLO, MR. MOON. I GOT YOUR NOTE
19 (READING): A LOT OF THE PEOPLE I DIDN'T KNOW THEY WERE
20 WITNESSES, I KNOW JUST ABOUT ALL OF THEM AND SOME OF THE
21 GUYS THAT ARE INVOLVED IN THE ROBBERY. THOMAS MOON, 89.
22 IS THAT YOUR MESSAGE?

23 **JUROR MOON:** YES, SIR.

24 **THE COURT:** OBVIOUSLY NOT ALL OF THE NAMES ARE ON
25 THE WITNESS LIST THAT YOU'VE HEARD TESTIMONY ABOUT.

1 **JUROR MOON:** NOT ALL OF THEM. JUST THE ONES THEY
2 PRESENTED SOME OF THE GUYS THAT THEY MENTIONED. THAT'S
3 THE ONES I WAS TALKING ABOUT.

4 **THE COURT:** ALL RIGHT. YOU HEARD ME WHEN I WAS
5 QUALIFYING THE ENTIRE JURY PANEL. WELL, I HAVE TWO
6 REASONS FOR ASKING WHETHER OR NOT A PERSON CAN BE FAIR
7 AND IMPARTIAL, NOT ONLY BECAUSE THE PARTIES ARE ENTITLED
8 TO AN IMPARTIAL JURY. YOU DIDN'T ASK TO BE HERE. YOU
9 DON'T WANT TO BE IN A POSITION TO MAKE A JUDGMENT THAT
10 MIGHT IN SOME SENSE BE UNCOMFORTABLE.

11 WELL, LET ME ASK YOU THIS QUESTION FIRST: HAVE YOU
12 TALKED TO ANYBODY ON THE JURY ABOUT ANY OF YOUR KNOWLEDGE
13 OF OTHER THE PEOPLE WHOSE NAMES HAVE BEEN MENTIONED?

14 **JUROR MOON:** ONLY ONE OF THE GUYS. HE TOLD ME THAT
15 I NEEDED TO MENTION IT TO Y'ALL.

16 **THE COURT:** OH, BUT YOU DID SAY THAT YOU KNEW THEM?

17 **JUROR MOON:** I JUST TOLD HIM I KNEW THE SECOND
18 WITNESS, THE YOUNG GIRL THAT CAME UP, AND A COUPLE OF THE
19 NAMES THAT THEY MENTIONED.

20 **THE COURT:** DID YOU TELL HIM HOW YOU KNEW THEM?

21 **JUROR MOON:** NO.

22 **THE COURT:** DID YOU SAY ANYTHING THAT YOU KNEW THAT,
23 THE ONES THAT WERE INVOLVED IN IT OR ANYTHING?

24 **JUROR MOON:** NO, HUH-UH.

25 **THE COURT:** ANY QUESTIONS FROM THE STATE?

1 **MR. WAGNER:** NO, SIR.

2 **THE COURT:** ANYTHING FROM THE DEFENSE?

3 **MS. EARLE:** JUST TO CLARIFY, PLEASE, YOU DIDN'T TELL
4 THEM HOW YOU KNEW ANY OF THESE PEOPLE?

5 **JUROR MOON:** THE DEFENDANT IN THE JURY ROOM?

6 **MS. EARLE:** WHEN TALKING TO ONE OF THE OTHER PEOPLE
7 ON THE JURY.

8 **JUROR MOON:** I WAS TELLING THE FOREMAN I KNEW SOME
9 OF THE NAMES AND, YOU KNOW, SHOULD I TELL Y'ALL.

10 **THE COURT:** BUT YOU DIDN'T DISCUSS ANYTHING ABOUT
11 IT. OKAY, WONDERFUL.

12 **MS. EARLE:** I HAVE NOTHING ELSE.

13 **THE COURT:** I'LL EXCUSE YOU BECAUSE, AS I SAY, A
14 JUROR NEEDS TO MAKE ITS DECISION BASED ONLY ON WHAT YOU
15 HEAR IN THE COURTROOM AND NOT ANYTHING, ANY KNOWLEDGE
16 THAT THEY BRING TO THE COURTROOM. SO I'M GOING TO THANK
17 YOU FOR YOUR SERVICE. MADAM CLERK, THIS WILL PROBABLY BE
18 THE ONLY TRIAL WE HAVE THIS WEEK SO YOUR SERVICE THIS
19 WEEK WILL BE COMPLETE. THIS WILL COMPLETE THE WHOLE
20 TIME. THIS TIME YOU WILL HAVE THE THREE YEARS.
21 MR. MOON, THANK YOU.

22 **JUROR MOON:** I WAS JUST MAKING SURE. I DIDN'T HAVE
23 NO PROBLEM SERVING ON THE JURY.

24 **THE COURT:** I THANK YOU FOR IT, AND I ALSO WANT TO
25 THANK YOU FOR YOUR SERVICE ON THE JURY. YOU ARE EXCUSED.

1 THANK YOU VERY MUCH. DID YOU LEAVE ANYTHING IN THE JURY
2 ROOM?

3 JUROR MOON: NO, SIR.

4 THE COURT: VERY GOOD. WOULD COUNSEL APPROACH,
5 PLEASE?

6 (DISCUSSION AT SIDEBAR.)

7 THE COURT: AS I UNDERSTAND IT, WE ARE GOING TO SEAT
8 AN ALTERNATE ON THE JURY FOR THE TRIAL, AND I AM GOING TO
9 JUST MOVE THE FIRST ALTERNATE AND MAKE HER THE NEW JUROR.
10 THAT WOULD BE JUROR NUMBER 103, MS. QUEEN. ANY
11 OBJECTION?

12 MR. WAGNER: NO, YOUR HONOR.

13 THE COURT: ANY OBJECTION?

14 MS. EARLE: NONE, YOUR HONOR.

15 THE COURT: VERY GOOD. ASK THE JURY TO JOIN US,
16 PLEASE.

17 (THE JURY ENTERED THE COURTROOM AT
18 APPROXIMATELY 2:25 P.M.)

19 THE COURT: MS. QUEEN, YOU HAVE MOVED OVER INTO THE
20 JURY-BOX. YOU WILL NOW SERVE AS A JUROR WITH THE TRIAL
21 JURY. YOU STILL HAVE ANOTHER ALTERNATE, AND WE'LL SEE
22 HOW WE PROCEED.

23 ALL RIGHT. WITH THAT, LET THE RECORD REFLECT THE
24 JURY AND ALTERNATE ARE IN THE JURY-BOX.

25 CALL YOUR NEXT WITNESS.

1 **MR. WAGNER:** I CALL DIVERIO MANLEY.

2 WHEREUPON,

3 DIVERIO MANLEY,

4 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MR. WAGNER:

6 **THE COURT:** GIVE US YOUR FULL NAME FOR THE RECORD,
7 SPELLING YOUR LAST NAME.

8 **THE WITNESS:** DIVERIO MANLEY, D-I-V-E-R-I-O.

9 BY MR. WAGNER:

10 Q. MR. MANLEY, COULD YOU SPELL YOUR LAST NAME FOR US,
11 TOO?

12 A. M-A-N-L-E-Y.

13 Q. HOW OLD ARE YOU, MR. MANLEY?

14 A. 18.

15 Q. YOU ARE CURRENTLY IN PRISON?

16 A. YES, SIR.

17 Q. ARE YOU CURRENTLY IN PRISON FOR THIS ROBBERY THAT
18 WE ARE HERE TRYING TODAY?

19 A. YES, SIR.

20 Q. OKAY. AND WHEN DID YOU GO TO PRISON FOR THIS?

21 A. MAY 28TH.

22 Q. HAVE YOU EVER TALKED TO ME PRIOR TO TODAY?

23 A. NO, SIR.

24 Q. BACK ON JUNE 22ND, 2008, WERE YOU INVOLVED IN A
25 ROBBERY AGAINST THE VICTIM HERE?

1 A. YES, SIR.

2 Q. AND WHO WAS WITH YOU AND WHAT HAPPENED?

3 A. IT WAS DREC MANLEY AND HAWK.

4 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
5 STATE'S EXHIBIT NUMBER 12 FOR IDENTIFICATION. DO YOU
6 RECOGNIZE ANYONE IN THOSE PICTURES?

7 A. YES, SIR.

8 Q. WHO DO YOU RECOGNIZE?

9 A. THE ONE AT THE BOTTOM WITH THE CIRCLE AROUND IT.

10 Q. WHO WAS THAT?

11 A. I KNOW HIM BY "HAWK".

12 Q. DID YOU KNOW HIS REAL NAME?

13 A. NO, SIR.

14 Q. AND WHO WAS DREC?

15 A. MY LITTLE BROTHER.

16 Q. BACK ON JUNE 22ND OR THEREABOUTS, THE DAYS PRIOR
17 TO THAT, WERE YOU AND HAWK AND DREC DISCUSSING ROBBING
18 MR. ROBINSON?

19 A. YES, SIR.

20 Q. OKAY. AND WHAT DID YOU ALL DECIDE TO DO?

21 A. WE DECIDED TO CALL HIM UP AND HAVE HIM COME OVER
22 TO THE SPOT AND ROB HIM.

23 Q. OKAY. AND HOW WERE Y'ALL GONNA DO THAT?

24 A. WITH A GUN.

25 Q. DID YOU, IN FACT, HAVE A GUN?

1 A. NO, SIR, I DON'T HAVE IT.

2 Q. I MEAN DID YOU HAVE IT AT THE TIME?

3 A. YES, SIR.

4 Q. WHAT KIND OF GUN WAS IT?

5 A. A .22 REVOLVER.

6 Q. EXPLAIN HOW YOU ALL WENT ABOUT PLANNING THE
7 ROBBERY, HOW DID YOU GET MR. ROBINSON DOWN THERE, AND
8 WHAT HAPPENED.

9 A. WELL, I HAD GOT OUT OF JAIL AND I CAME HOME AND I
10 WAS DISCUSSING THAT I WAS TRYING TO COME UP, MAKE SOME
11 MONEY OR SOMETHING. AND WE CAME UP WITH THE PLAN ROBBING
12 THE SHOE MAN, AND THEN I ASKED HIM, I ASKED HAWK WOULD HE
13 CALL UP RENALDO AND TELL HIM TO COME UP, BRING SOME SHOES
14 AND WE WERE GONNA ROB HIM.

15 Q. OKAY. SO WHO MADE THE CALL?

16 A. HAWK.

17 Q. OKAY. AND WHAT DID HAWK DO NEXT?

18 A. HE CALLED HIM UP, AND THEN RENALDO ARRIVED, HE
19 CAME OUTSIDE AND TALKED TO HIM.

20 Q. AND WHAT WERE Y'ALL DOING WHILE THAT WAS GOING ON?

21 A. I WAS BEHIND THE HOUSE JUST WAITING.

22 Q. ALL RIGHT. WERE YOU BY YOURSELF OR WERE YOU
23 WITH ---

24 A. JUST ME AND MY LITTLE BROTHER.

25 Q. ALL RIGHT. WHILE HAWK HAD HIM OUT THERE, WHAT DID

1 YOU ALL DO?

2 A. CAME UP AROUND THE SIDE OF THE HOUSE AND CAME
3 AROUND THE FRONT OF THE JEEP AND THEN I USED A GUN ON
4 HIM.

5 Q. WHEN YOU SAY USED A GUN ON HIM, WHAT DID YOU DO TO
6 HIM?

7 A. I PISTOL WHIP HIM.

8 Q. DID YOU PISTOL WHIP PRETTY BAD?

9 A. AS FAR AS I KNOW, YES, SIR.

10 Q. AND WHAT DID YOUR BROTHER DO?

11 A. TOOK THE SHOES.

12 Q. OKAY. WHAT DID HAWK DO?

13 A. AS FAR AS I KNOW, HE WAS STANDING THERE, HE STAYED
14 THERE FOR A MINUTE AND THEN I GUESS HE LEFT. I CAN'T
15 REALLY REMEMBER.

16 Q. ARE YOU SURE -- I MEAN, AT SOME POINT IN TIME FOR
17 A WHILE THERE WERE YOU WRESTLING WITH THE VICTIM IN THE
18 BACK OF THE CAR?

19 A. YES, SIR.

20 Q. OKAY. AND WHILE THAT WAS GOING ON DO YOU KNOW
21 WHAT YOUR BROTHER AND WHAT HAWK DID?

22 A. NOT REALLY. BUT WHEN I ASKED MY BROTHER ABOUT IT,
23 HE WAS TELLING ME THAT ---

24 MS. EARLE: OBJECTION.

25 THE WITNESS: HE WAS TELLING ME ---

1 **THE COURT:** OBJECTION SUSTAINED.

2 RESTATE YOUR QUESTION, MR. WAGNER.

3 BY MR. WAGNER:

4 Q. WITHOUT, WITHOUT SAYING WHAT YOUR BROTHER SAID, DO
5 YOU KNOW WHAT HAWK AND YOUR BROTHER DID?

6 A. WELL, FROM MY UNDERSTANDING, THEY HAD TOOK THE
7 SHOES.

8 Q. OKAY. THESE SHOE BOXES, HOW BIG WERE THEY?

9 A. IT WAS A PRETTY BIG SIZE.

10 Q. WERE THEY HEAVY?

11 A. YES, SIR.

12 Q. DID YOU, DID YOU ACTUALLY YOURSELF HELP CARRY
13 THEM, THE SHOES OFF ANYWHERE?

14 A. NO, SIR.

15 Q. SO WHILE YOU WERE WRESTLING IN THE BACK OF THE CAR
16 WITH THE VICTIM [SIC], FIVE BIG OLD HEAVY BOXES OF SHOES
17 HAD TO GET GONE WITHIN A SHORT TIME FRAME?

18 A. YES, SIR.

19 Q. AND IT IS YOUR UNDERSTANDING THAT HAWK AND YOUR
20 BROTHER CARRIED THEM OFF?

21 A. YES, SIR, I GUESS THAT'S WHAT HAPPENED.

22 Q. ARE YOU SORRY FOR WHAT YOU DID?

23 A. YES, SIR.

24 Q. DID YOU TELL OFFICER REED FROM THE SHERIFF'S
25 OFFICE WHAT YOU DID RIGHT AFTER THAT WHEN YOU GOT

1 ARRESTED FOR IT?

2 A. YES, SIR.

3 Q. HAVE YOU PLED GUILTY IN COURT, ARE YOU SENTENCED?

4 A. YES, SIR.

5 Q. ARE YOU SERVING TIME FOR THE ROBBERY?

6 A. YES, SIR, 10/85.

7 Q. OKAY. AND ALL OF Y'ALL PLANNED IT TOGETHER, THE
8 THREE OF YOU?

9 A. YES, SIR.

10 Q. AND ALL THREE OF Y'ALL WERE THERE?

11 A. YES, SIR.

12 Q. WAS ANYBODY ELSE THERE THAT HELPED Y'ALL CARRY THE
13 SHOES OFF?

14 A. NO, SIR.

15 Q. JUST THE THREE OF YOU?

16 A. YES, SIR.

17 MR. WAGNER: THANK YOU. THOSE ARE THE ONLY
18 QUESTIONS I HAVE.

19 THE COURT: CROSS-EXAMINATION.

20 MS. EARLE: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MS. EARLE:

22 Q. MR. MANLEY, HOW LONG HAVE YOU KNOWN HAWK?

23 A. PROBABLY TWO YEARS.

24 Q. TWO YEARS? AND TO YOUR KNOWLEDGE HAVE YOU EVER
25 BEEN WITH HIM WHEN HE BOUGHT SHOES FROM MR. ROBINSON

1 BEFORE?

2 A. NO, SIR -- I MEAN MA'AM.

3 Q. ALL RIGHT. HAVE YOU EVER BOUGHT SHOES FROM
4 MR. ROBINSON?

5 A. NO, SIR -- I MEAN MA'AM.

6 Q. OKAY. NOW, YOU SAID THAT YOUR BROTHER AND YOU HID
7 BEHIND THE HOUSE AND THEN CAME OUT AND ATTACKED HIM?

8 A. YES, MA'AM.

9 Q. WHERE WAS HAWK WHEN YOU DID THIS?

10 A. IN THE HOUSE.

11 Q. HE WAS IN THE HOUSE WHEN Y'ALL CAME OUT?

12 A. NO, MA'AM. HE WAS ALREADY OUTSIDE AND WE WAS
13 OUTSIDE.

14 Q. AT WHAT POINT WAS HE IN THE HOUSE?

15 A. RIGHT AT THE BEGINNING, BEFORE IT ALL HAPPENED.

16 Q. WERE YOU THERE WHEN HE MADE THIS PHONE CALL?

17 A. YES, MA'AM.

18 Q. ALL RIGHT. AND THEN WHAT DID YOU DO?

19 A. I TOLD HIM I WOULD WAIT OUTSIDE BEHIND THE HOUSE.

20 Q. YOU AND YOUR BROTHER WENT OUTSIDE?

21 A. YES, MA'AM.

22 Q. ALL RIGHT. AND DID YOU SEE HAWK WHEN HE CAME OUT
23 OF THE HOUSE?

24 A. NO, MA'AM.

25 Q. DID YOU SEE HIM WHEN HE WALKED OVER TO THE CAR AND

1 STARTED TALKING TO MR. ROBINSON?

2 A. YES, MA'AM.

3 Q. ALL RIGHT. AT THAT POINT -- WHERE WAS HE WHEN YOU
4 FIRST SAW HIM?

5 A. IT WAS AT THE, THE SIDE OF THE JEEP.

6 Q. OKAY. SO YOU DIDN'T SEE HIM UNTIL HE ACTUALLY GOT
7 OUT TO THE VEHICLE?

8 A. YES, MA'AM.

9 Q. ALL RIGHT. AND THEN WHERE WAS HE STANDING WHILE
10 HE TALKED TO MR. ROBINSON?

11 A. TOWARDS THE BACK OF THE JEEP WITH SHOES -- WELL,
12 NO, HE WAS AT THE DOOR, BACK DOOR.

13 Q. COULD YOU SEE THE VEHICLE?

14 A. YES, MA'AM.

15 Q. COULD YOU SEE FROM THE FRONT TO THE BACK OF IT?

16 A. YES, MA'AM.

17 Q. WHAT, WHAT DOORS WERE OPEN?

18 A. THE LEFT SIDE OF THE LAST DOOR ON THE LEFT.

19 Q. SO JUST ONE DOOR WAS OPEN?

20 A. YES, MA'AM.

21 Q. ALL RIGHT. NOW, WAS CHAVIS CAMPBELL AROUND THAT
22 DAY?

23 A. FROM MY KNOWLEDGE HE MIGHT HAVE BEEN FOR A LITTLE
24 BIT.

25 Q. ALL RIGHT. WAS THERE ANYBODY NAMED MIKE THERE?

1 A. YES, MA'AM.

2 Q. AND WHERE WAS HE?

3 A. IN THE HOUSE.

4 Q. OKAY. WERE THERE OTHER PEOPLE IN THE HOUSE?

5 A. THERE WAS A GIRL, I MEAN THE OWNER.

6 Q. WERE THERE OTHER -- ABOUT HOW MANY PEOPLE WERE IN

7 THE HOUSE?

8 A. PROBABLY ABOUT FOUR OR FIVE.

9 Q. FOUR OR FIVE PEOPLE IN THE HOUSE.

10 NOW, WHEN YOU CAME OUT AND YOU STARTED

11 PISTOL-WHIPPING MR. ROBINSON, MR. ROBINSON SAYS YOUR

12 BROTHER JOINED IN AND HELPED YOU HIT HIM, THAT HE WAS IN

13 THE FRONT SEAT WHILE YOU WERE IN THE BACK. DO YOU

14 REMEMBER THAT?

15 A. YES, MA'AM.

16 Q. AND WHEN DID YOUR BROTHER GET IN THE FRONT SEAT?

17 A. WHEN, AFTER HE START PULLING OUT THE SHOES AND

18 STUFF, AND ME AND HIM WAS WRESTLING, THEN I CALLED FOR

19 HIM AND HE CAME IN.

20 Q. ALL RIGHT. DID YOU SEE YOUR BROTHER TAKE SHOES

21 OUT OF THE CAR AND TAKE THEM SOMEWHERE ELSE?

22 A. YES, MA'AM.

23 Q. WHERE DID HE TAKE THEM?

24 A. BEHIND THE HOUSE.

25 Q. OKAY. AND HOW MANY BOXES DID YOU SEE HIM TAKE?

1 A. ABOUT FIVE.

2 Q. OKAY. YOU SAW YOUR BROTHER TAKE?

3 A. I MEAN THAT'S HOW MANY WAS BEHIND THE HOUSE. WHEN
4 WE WAS WRESTLING, I REALLY COULDN'T SEE BEHIND HIM TO THE
5 SIDE, I COULDN'T SEE. BUT THERE WAS FIVE BOXES HE WENT
6 AND TOOK OFF BEHIND THE HOUSE.

7 Q. YOU DIDN'T SEE WHO ACTUALLY TOOK THE BOXES AND PUT
8 THEM BEHIND THE HOUSE BECAUSE YOU WERE WRESTLING WITH
9 MR. ROBINSON. SO YOU DIDN'T SEE WHO DID THAT?

10 A. YES, MA'AM.

11 Q. THERE WERE OTHER PEOPLE THERE AT THE HOUSE?

12 A. YES, MA'AM.

13 Q. ALL RIGHT. AND SO YOU ALSO HAD TOLD THE POLICE IN
14 YOUR EARLIER STATEMENT THAT WHEN YOU CAME OUT AND PULLED
15 THE GUN, THAT HAWK RAN?

16 A. YEAH, HE TOOK OFF.

17 Q. HE TOOK OFF?

18 A. YEAH. I DON'T KNOW EXACTLY WHERE HE WENT BUT I
19 KNOW HE TOOK OFF.

20 Q. ALL RIGHT. AND SO AS FAR AS YOU KNEW, HE WAS
21 GONE?

22 A. YES, MA'AM.

23 Q. ALL RIGHT. AND THEN AFTER MR. ROBINSON LEFT,
24 WHERE DID YOU GO?

25 A. BEHIND THE HOUSE. ME AND MY BROTHER MET UP AND

1 THEN WE LEFT.

2 Q. ALL RIGHT. WAS HAWK AT THE HOUSE WHEN YOU WENT
3 BEHIND THE HOUSE?

4 A. NO, MA'AM.

5 Q. WAS MR. CAMPBELL THERE?

6 A. NO, MA'AM.

7 Q. WAS MIKE STILL THERE?

8 A. NO, MA'AM.

9 Q. SO YOU DIDN'T SEE ANYBODY STILL THERE?

10 A. NOBODY.

11 Q. IT WAS JUST YOU AND YOUR BROTHER, EVERYBODY ELSE
12 WAS GONE?

13 A. WE LEFT. I DON'T KNOW WHERE THEY WENT.

14 Q. ALL RIGHT. AND WHAT HAPPENED TO THE SHOES?

15 A. THEY GOT RID OF THEM SOMEHOW.

16 Q. YOU GOT RID OF THEM?

17 A. NO, MA'AM. SOMEBODY ELSE DID. YES. I DON'T KNOW
18 WHAT HAPPENED TO ALL OF THEM.

19 Q. YOU DON'T KNOW WHAT HAPPENED TO THEM?

20 A. NOT TO ALL OF THEM.

21 Q. DID YOU SELL ANY OF THEM?

22 A. LIKE MAYBE TWO.

23 Q. DID YOU JUST LEAVE THEM SITTING BEHIND THE HOUSE?

24 A. WELL, FOR A MINUTE AND I GUESS SOMEBODY ELSE
25 PACKED THEM UP.

1 Q. I'M SORRY, I DIDN'T UNDERSTAND.

2 A. YES, MA'AM.

3 Q. AND SO YOU AND YOUR BROTHER WERE THE ONLY PEOPLE
4 THERE, BUT Y'ALL LEFT AND Y'ALL JUST LEFT ALL THE SHOES
5 THERE?

6 A. YES, SIR -- YES, MA'AM.

7 Q. AND WERE THE SHOES THERE WHEN YOU CAME BACK?

8 A. NO, MA'AM.

9 Q. ALL RIGHT. DID YOU SEE HAWK AGAIN IN THE NEXT DAY
10 OR TWO AFTER THAT?

11 A. NO, MA'AM.

12 MS. EARLE: OKAY. ALL RIGHT. THANK YOU. I HAVE NO
13 OTHER QUESTIONS.

14 THE COURT: REDIRECT?
15 REDIRECT EXAMINATION BY MR. WAGNER:

16 Q. WHEN YOU WERE WRESTLING WITH YOUR BROTHER IN THE
17 BACK SEAT, YOUR BROTHER AND HAWK WENT TO THE BACK OF THE
18 CAR, RIGHT? I MEAN, ISN'T THAT WHAT YOU SAID: THEY WENT
19 TO THE BACK OF THE CAR AND OPENED IT UP?

20 A. TOOK AWAY -- WHEN ME AND HIM WAS WRESTLING, HAWK
21 TOOK OFF. I KNOW MY BROTHER WAS TAKING SHOES BECAUSE HE
22 EVEN TOLD ME HE WAS TAKING SHOES.

23 Q. BUT YOU WERE WRESTLING, AND THEN A SHORT TIME
24 AFTER THAT YOU CALLED FOR YOUR BROTHER FOR HELP?

25 A. YEAH.

1 Q. OKAY. AND SO WHILE YOU'RE CALLING FOR HELP, HOW
2 SOON DID YOUR BROTHER SHOW UP?

3 A. RIGHT WHEN IT HAPPENED.

4 Q. OKAY. DO YOU REMEMBER IN YOUR EARLIER STATEMENT
5 TO GREG REED DO YOU REMEMBER SAYING YOUR BROTHER CRAWLED
6 THROUGH THE BACK OF THE CAR TO HELP YOU?

7 A. THAT'S WHAT IT WAS. THAT'S HOW HE HELPED ME.

8 Q. OKAY. SO THE FIVE BOXES, BIG HEAVY BOXES OF SHOES
9 HAD TO GO ALL THE WAY AROUND THE BACK OF THE HOUSE.
10 COULD YOUR BROTHER HAVE DONE THAT BY HIMSELF IN THAT
11 SHORT AMOUNT OF TIME?

12 A. NO, I DON'T THINK SO.

13 Q. SO IT WOULD HAVE HAD TO BE HAWK AND HIM BOTH
14 CARRYING THE SHOES?

15 A. NO, SIR.

16 Q. BUT YOU WERE WRESTLING AND DIDN'T HAVE TIME TO
17 LOOK?

18 A. NO, SIR.

19 Q. DO YOU REMEMBER CALLING HAWK AND ASKING HIM TO
20 HELP?

21 A. LIKE ONE OR TWO TIMES, YEAH, I CALLED HIM.

22 Q. SO WANTED HIM -- YOU WERE WRESTLING FOR THE GUN?

23 A. YES, SIR.

24 Q. CONTROL OF THE GUN AND YOU NEEDED HAWK'S HELP?

25 A. YES, SIR.

1 Q. AND HAWK WAS THERE WHEN Y'ALL PLANNED THE ROBBERY,
2 HAWK MADE THE CALL TO SUCKER THE VICTIM OUT THERE TO DO
3 THE ROBBERY AND THEN HAWK HELPED HAUL OFF THE SHOES TO
4 THE BEST OF YOUR KNOWLEDGE?

5 A. YES, SIR.

6 Q. AND YOU CALLED HIM FOR HELP?

7 A. YES, SIR.

8 MR. WAGNER: THANK YOU.

9 THE COURT: RECROSS?

10 MS. EARLE: YES, YOUR HONOR.

11 RECROSS-EXAMINATION BY MS. EARLE:

12 Q. DID YOU CALL FOR ANYBODY ELSE TO HELP YOU?

13 A. NO, MA'AM.

14 Q. ALL RIGHT. BUT YOU DIDN'T ACTUALLY SEE HAWK TAKE
15 ANY SHOES, DID YOU?

16 A. NO, MA'AM, BUT ---

17 Q. YOU DIDN'T SEE HIM TAKE THEM. YOU ARE JUST
18 ASSUMING HE DID?

19 A. YES. YES, MA'AM.

20 Q. OKAY. AND THERE WERE OTHER PEOPLE THERE?

21 A. YES, MA'AM.

22 Q. SO IT WASN'T JUST THE THREE OF YOU. THERE WERE
23 MORE PEOPLE THAT WERE AT THE HOUSE THAT DAY?

24 A. THERE WAS SOME MORE PEOPLE.

25 Q. AND THEY COULD SEE WHAT WAS GOING ON IF THEY

1 LOOKED OUT THE DOOR?

2 A. TO MY KNOWLEDGE, YES, MA'AM, IF THEY WAS LOOKING
3 OUT THEY COULD HAVE SEEN IT.

4 Q. YOU WEREN'T HIDDEN ANYWHERE WHEN THIS WAS
5 HAPPENING?

6 A. YOU MEAN WHEN IT WAS TAKING PLACE OR BEFORE?

7 Q. WHEN IT WAS TAKING PLACE. WHEN YOU CAME OUTSIDE,
8 THE VEHICLE WAS WHERE ANYBODY THAT WALKED BY OR LOOKED
9 OUT OF THE HOUSE COULD SEE IT?

10 A. NO, MA'AM. IT'S, THE JEEP WAS PARKED LIKE ON THIS
11 SIDE, BUT I'M GUESSING IS THAT MAYBE THEY COULD SEE.

12 Q. YOU COULD SEE IT FROM THE HOUSE?

13 A. YES, MA'AM.

14 Q. OKAY. ALL RIGHT. AND NOW YOU SAID THAT YOUR
15 BROTHER CRAWLED THROUGH FROM THE BACK OF THE VEHICLE? HE
16 WASN'T IN THE FRONT SEAT?

17 A. HE ENDED UP IN THE FRONT SEAT.

18 Q. DID HE CRAWL OVER YOU?

19 A. YEAH. HE WAS TRYING TO HELP GET THE GUN.

20 Q. HE DIDN'T COME IN, HE DIDN'T COME IN THE FRONT,
21 THROUGH THE FRONT DOOR?

22 A. I MEAN, THIS IS EXACTLY WHAT HAPPENED, ALL RIGHT?
23 LIKE HE CRAWLED OVER THE BACK SEAT TRYING TO HELP ME, AND
24 THEN HE COULDN'T GET IN THE RIGHT SPOT, SO HE WENT OUT
25 THIS DOOR THAT WAS ALREADY OPEN, AND THEN HE CRAWLED TO

1 THE FRONT TRYING TO HELP ME.

2 Q. SO THERE WERE THREE OF YOU IN THE BACK SEAT AT ONE
3 TIME, AND HE GOT OUT AND GOT IN THE FRONT SEAT?

4 A. YES, MA'AM.

5 Q. AND ALL OF THIS TOOK ABOUT HOW LONG?

6 A. I REALLY, I REALLY CAN'T EVEN EXPLAIN HOW LONG IT
7 TOOK.

8 Q. DID IT TAKE JUST A FEW MINUTES?

9 A. IT TOOK LIKE I'M GONNA SAY 20 TO 30 MINUTES.

10 Q. OKAY. ALL RIGHT. THANK YOU.

11 REDIRECT EXAMINATION BY MR. WAGNER:

12 Q. WAS ANYBODY ELSE OUT IN THE YARD BESIDES YOU, YOUR
13 BROTHER, HAWK, AND THE VICTIM AND HIS DAUGHTER?

14 A. NO, SIR.

15 Q. NOBODY ELSE OUT THERE? EVERYBODY WAS STAYING IN
16 THE HOUSE EXCEPT Y'ALL?

17 A. YES, SIR.

18 Q. THE WHOLE TIME?

19 A. YES, SIR.

20 MR. WAGNER: THANK YOU.

21 THE COURT: ANY RE, RECROSS?

22 MS. EARLE: NOTHING, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 MR. WAGNER: YOUR HONOR, WE ASK THIS WITNESS BE
25 EXCUSED.

1 **THE COURT:** ANY OBJECTION?

2 **MS. EARLE:** NO, SIR.

3 (WHEREUPON, THE WITNESS WAS EXCUSED.)

4 **MR. WAGNER:** THE STATE CALLS GREG REED.

5 WHEREUPON,

6 GREG REED,

7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. WAGNER:

9 **THE COURT:** IF YOU WOULD PLEASE, SIR, GIVE US YOUR
10 FULL NAME FOR THE RECORD SPELLING YOUR LAST NAME.

11 **THE WITNESS:** GREG REED, R-E-E-D.

12 BY MR. WAGNER:

13 Q. LIEUTENANT REED, WHO DO YOU WORK FOR?

14 A. OCONEE COUNTY SHERIFF'S OFFICE.

15 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

16 A. 24 YEARS.

17 Q. WHAT CURRENTLY ARE YOUR JOB DUTIES THERE?

18 A. I AM THE LIEUTENANT, SUPERVISING LIEUTENANT IN
19 CHARGE OF CRIMINAL INVESTIGATION DIVISION. I'M ALSO ON
20 COMMAND STAFF OF SHERIFF'S OFFICE S.W.A.T. TEAM, AND ALSO
21 A DIVER ON THE SHERIFF'S UNDERWATER RECOVERY TEAM FOR
22 EVIDENCE.

23 Q. BACK ON THE WEEK OF JUNE 22ND, DID YOU HAVE A CASE
24 COME ACROSS THROUGH THE SHERIFF'S OFFICE INVOLVING THIS
25 ROBBERY, THE VICTIM BEING RENALDO ROBINSON?

1 A. IT ACTUALLY, ACTUALLY GOT ASSIGNED TO ME PROBABLY
2 A DAY, DAY AND A HALF LATER IS WHEN IT GOT ASSIGNED TO
3 OUR DIVISION. THE ACTUAL INCIDENT HAPPENED ON THE 22ND.

4 Q. OKAY. WHEN YOU GOT IT, BASICALLY HOW DO YOU GO
5 ABOUT INVESTIGATING A CASE, AND IN GENERAL CAN YOU TELL
6 US HOW YOU APPLY THAT TO HOW YOU INVESTIGATED THIS ONE?

7 A. WELL, FIRST OF ALL, YOU LOOK AT THE INCIDENT
8 REPORT, ANYTHING THAT COME IN WITH THE REPORT AS FAR AS
9 WHO NEEDS TO BE TALKED TO, DO YOU NEED TO GO TO THE
10 SCENE, THINGS OF THIS NATURE. SINCE IT WAS TWO DAYS OLD,
11 THERE WAS NO NEED TO COLLECT ANYTHING FROM THE SCENE.
12 ALSO, THE VEHICLE HAD BEEN MOVED BY THE VICTIM BACK TO
13 THE ORIGINAL LOCATION ON HIGHWAY 59.

14 AFTER DETERMINING WHO NEEDS TO BE SPOKE TO, YOU
15 START AT THAT TIME TRYING TO INITIATE CONTACT WITH THESE
16 INDIVIDUALS AND GET THEM INTO THE OFFICE TO BE
17 QUESTIONED.

18 Q. DID YOU TALK TO THE VICTIM UP IN YOUR OFFICE?

19 A. YES, I DID.

20 Q. AND DID YOU TAKE SOME PICTURES OF HIM WHILE HE WAS
21 THERE?

22 A. I HAD ONE OF MY INVESTIGATORS COME IN AND TAKE
23 PHOTOGRAPHS, YES.

24 Q. AND I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
25 NUMBER 1, NUMBER 4 -- EXCUSE ME -- 1, 3 AND 4, I'LL PUT

1 THEM IN THAT ORDER, AND IF YOU COULD JUST EXPLAIN EACH
2 ONE BY THE NUMBER AND...

3 A. ALL RIGHT. THIS IS STATE'S EXHIBIT 1. THIS IS A
4 SIDE VIEW OF MR. ROBINSON'S HEAD AND IT'S ACTUALLY
5 SHOWING A, THE STAPLES ABOVE HIS RIGHT EAR.

6 Q. DOES THAT FAIRLY AND ACCURATELY DEPICT THE VICTIM
7 AS HE LOOKED, WHAT HE LOOKED LIKE WHEN YOU TALKED TO HIM
8 IN YOUR OFFICE A COUPLE DAYS AFTER THE ROBBERY?

9 A. YES, IT DOES.

10 STATE'S EXHIBIT 3 IS AGAIN A PICTURE OF THE
11 VICTIM'S RIGHT SIDE.

12 MS. EARLE: YOUR HONOR, I'M GOING TO OBJECT TO HIM
13 SHOWING THE PHOTOGRAPHS THAT HAVE NOT BEEN ADMITTED INTO
14 EVIDENCE TO THE JURY AT THIS TIME.

15 THE COURT: I THOUGHT WE HAD.

16 MR. WAGNER: THEY'RE STILL IN FOR IDENTIFICATION.
17 I'M FIXING TO MOVE THEM IN.

18 THE COURT: VERY WELL.

19 MR. WAGNER: YOU HAD ALREADY RULED ON THEM.

20 THE COURT: I UNDERSTAND. ALL RIGHT. GIVE
21 TESTIMONY AS FAR AS AUTHENTICATION AND IDENTIFICATION.

22 I SUSTAIN THE OBJECTION.

23 THE WITNESS: STATE'S EXHIBIT 3 IS A PHOTOGRAPH OF
24 THE RIGHT SIDE OF THE VICTIM, MR. ROBINSON'S, NECK, WITH
25 AN ABRASION TO THE SIDE OF HIS NECK.

1 STATE'S EXHIBIT 4 IS A PHOTOGRAPH OF MORE OR LESS OF
2 THE TOP AND BACK SIDE OF MR. ROBINSON'S HEAD SHOWING MORE
3 STAPLES AND LACERATIONS TO THE HEAD.

4 BY MR. WAGNER:

5 Q. DO THOSE ALL FAIRLY AND ACCURATELY DEPICT THE
6 VICTIM AS HE LOOKED WHEN HE SAT IN YOUR OFFICE?

7 A. YES, THEY DO.

8 MR. WAGNER: YOUR HONOR, AT THIS TIME WE ASK STATE'S
9 1, 3 AND 4, I BELIEVE, BE ADMITTED INTO EVIDENCE.

10 THE COURT: ALL RIGHT.

11 MS. EARLE: OBJECTION RENEWED.

12 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.
13 SUBJECT TO THE COURT'S PRIOR RULINGS. STATE'S EXHIBIT 1,
14 3 AND 4 IS ADMITTED.

15 (STATE'S EXHIBITS 1, 3, AND 4, PHOTOGRAPHS OF
16 VICTIM, WERE RECEIVED IN EVIDENCE.)

17 BY MR. WAGNER:

18 Q. DID YOU COME UP DURING THE COURSE OF YOUR
19 INVESTIGATIONS WITH WHAT YOU CALL STREET NAMES?

20 A. YES, I DID. A LOT OF CRIMES THAT ARE COMMITTED
21 NOW, YOU JUST HAVE STREET NAMES AND YOU HAVE TO IDENTIFY
22 THE STREET NAME WITH A CERTAIN INDIVIDUAL.

23 Q. OKAY. AND AS A RESULT OF THAT STREET NAME -- WHAT
24 STREET NAME WERE YOU GIVEN BY THE VICTIM AS BEING
25 INVOLVED IN THIS PARTICULAR ROBBERY?

1 A. WELL, THE VICTIM ACTUALLY GAVE THE STREET NAME AS
2 THE DEFENDANT ON TRIAL TODAY AS HAWK.

3 Q. DID YOU KNOW WHO HAWK WAS JUST OFF THE TOP OF YOUR
4 HEAD?

5 A. NO, I DIDN'T.

6 Q. AS A RESULT OF THAT, HOW DID YOU GO ABOUT
7 DETERMINING WHO HAWK WAS?

8 A. I ACTUALLY FURNISHED HIM WITH PHOTOGRAPHIC
9 DISPLAYS, WHICH HE GOT TO CHOOSE A PAGE AT A TIME, AND
10 ONCE THE PAGE COME UP WITH HAWK'S PHOTOGRAPH ON IT,
11 THAT'S WHEN HE SAID, "THAT'S HIM."

12 Q. DID BOTH THE VICTIM AND REGINA MCCLAIN IDENTIFY
13 WHO HAWK WAS?

14 A. YES, THEY DID.

15 Q. DID THEY PICK THE SAME INDIVIDUAL?

16 A. YES, THEY DID.

17 Q. AND IS THAT WHAT APPEARS ON STATE'S EXHIBIT 11 AND
18 12?

19 A. YES. STATE'S EXHIBIT 11 WAS PICKED BY THE VICTIM,
20 MR. ROBINSON. EXHIBIT 12 WAS PICKED BY REGINA MCCLAIN.

21 Q. ARE THOSE THE ACTUAL PICTURE DISPLAYS YOU USED FOR
22 THEM?

23 A. YES, THEY ARE.

24 Q. BASICALLY THE SAME SHAPE AND FORM OR HAVE THEY
25 BEEN ALTERED OR TAMPERED WITH IN ANY MANNER?

1 A. NO, THEY HAVEN'T.

2 **MR. WAGNER:** YOUR HONOR, AT THIS TIME, I THINK
3 STATE'S, THE FIRST ONE I BELIEVE IS IN, BUT IF NOT, WE
4 WOULD ASK BOTH OF THEM BE ADMITTED INTO EVIDENCE AT THIS
5 TIME.

6 **MS. EARLE:** I'LL OBJECT TO THAT.

7 **THE COURT:** ALL RIGHT. THE OBJECTION IS OVERRULED
8 SUBJECT TO THE COURT'S PRIOR RULINGS. STATE'S EXHIBITS
9 11 AND 12 ARE ADMITTED.

10 (STATE'S EXHIBITS 11 AND 12, PHOTO LINE-UPS,
11 WERE RECEIVED IN EVIDENCE.)

12 Q. DID YOU ALSO LOOK INTO WHETHER CHAVIS CAMPBELL AND
13 ANYBODY NAMED MIKE HAD ANYTHING TO DO WITH THIS CASE?

14 A. YES, SIR. THEIR NAMES COME UP DURING THE
15 INVESTIGATION. ACTUALLY CHAVIS CAMPBELL'S NAME WAS
16 BROUGHT UP. HE WAS SEEN IN A VEHICLE WHICH ACTUALLY
17 BELONGED TO REGINA SHORTLY AFTER THE CRIME.

18 I HAD, I DREW UP A LINE- -- I ACTUALLY DONE A
19 PHOTOGRAPHIC DOCUMENTATION OF HIM. HE WAS PICKED ALSO
20 JUST FOR I.D. PURPOSES. I SIGNED A WARRANT ON
21 MR. CAMPBELL, AND THROUGH THE COURSE OF THE INVESTIGATION
22 WAS ABLE TO DETERMINE THEY ACTUALLY HAD NOTHING TO DO
23 WITH THE ACTUAL ROBBERY OR TAKING OF THE SHOES, AND
24 RE-CALLED THE WARRANT AND IT WAS NEVER ACTUALLY SERVED ON
25 MR. CAMPBELL.

1 Q. OKAY. AND BASED ON YOUR INVESTIGATION, WHO WERE
2 THE THREE PEOPLE THAT YOU CHARGED WITH THE CRIMES AND WHO
3 DO YOU FEEL WAS RESPONSIBLE FOR THIS ROBBERY?

4 A. THE TWO MANLEY BROTHERS AND HAWK OR MR. DENNIS.

5 Q. DID ALL THIS OCCUR IN OCONEE COUNTY?

6 A. YES, IT DID.

7 MR. WAGNER: NOTHING FURTHER.

8 THE COURT: CROSS-EXAM?

9 CROSS-EXAMINATION BY MS. EARLE:

10 Q. ALL RIGHT. DURING YOUR INVESTIGATION YOU SAID
11 THAT THE NAME CHAVIS CAMPBELL AND MIKE BOTH CAME UP. DID
12 YOU EVER IDENTIFY WHO MIKE WAS?

13 A. NO, I WAS UNABLE TO IDENTIFY WHO MIKE WAS. NO ONE
14 KNEW HIM BY LAST NAME.

15 Q. MS. MCCLAIN TOLD YOU THAT SHE PICKED UP HAWK,
16 MIKE, AND MR. CAMPBELL; IS THAT CORRECT?

17 A. THAT IS CORRECT.

18 Q. AND NO ONE AT THAT TIME KNEW WHO HAWK WAS; IS THAT
19 CORRECT?

20 A. THEY KNEW HIM BY "HAWK," THEY DIDN'T KNOW HIM BY
21 "DENNIS."

22 Q. THEY KNEW HIM BY "HAWK." THEY DIDN'T HAVE A FULL
23 NAME FOR HIM; IS THAT CORRECT --

24 A. THAT'S CORRECT.

25 Q. -- THAT YOU COULD USE TO IDENTIFY HIM?

1 A. THAT IS CORRECT.

2 Q. ALL RIGHT. AND YOU SAID THE MANLEY BROTHERS. WHO
3 WERE THE MANLEY BROTHERS, IF YOU COULD TELL US WHO BOTH
4 OF THEM ARE?

5 A. THE ONE THAT JUST TESTIFIED WITH THE S.C.D.C.
6 UNIFORM ON IS DIVERIO DELANEY MANLEY; HIS YOUNGER BROTHER
7 IS LANDRECUS MANLEY.

8 Q. AND IS THAT WHO WE REFERRED TO AS DREC OR DREC?

9 A. THAT'S CORRECT.

10 Q. DURING YOUR INVESTIGATION AT ANY POINT DID ANYONE
11 EVER SAY THEY SAW HAWK WITH A WEAPON?

12 A. NO, THEY HAVE NOT.

13 Q. HAS ANYONE EVER TOLD YOU THAT HAWK WAS INVOLVED IN
14 THE ACTUAL BEATING OF THE VICTIM?

15 A. NO, THEY HAVE NOT.

16 MS. EARLE: I HAVE NOTHING FURTHER. THANK YOU.

17 MR. WAGNER: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

19 (WITNESS LEAVES STAND.)

20 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

21 MR. WAGNER: THE STATE RESTS, JUDGE.

22 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
23 JURY, I NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS
24 BEFORE WE CONTINUE THE CASE, SO I'M GOING TO ASK YOU TO
25 RETIRE TO THE JURY ROOM FOR JUST A FEW MINUTES. IT WON'T

1 TAKE TOO LONG, BUT I DO NEED TO DO THIS WITH THE
2 ATTORNEYS. SO AGAIN, YOU HAVE NOT HEARD ALL THE CASE, SO
3 PLEASE DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG
4 YOURSELVES.

5 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
6 FROM THE COURTROOM.

7 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
8 2:56 P.M.)

9 THE COURT: ANYTHING FURTHER FROM THE STATE?

10 MR. WAGNER: NOTHING, YOUR HONOR.

11 THE COURT: ANYTHING FROM THE DEFENSE?

12 MOTION FOR DIRECTED VERDICT ON BEHALF OF DEFENDANT:

13 MS. EARLE: YOUR HONOR, I HAVE TO MAKE A MOTION FOR
14 DIRECTED VERDICT AT THIS TIME. THE STATE HAS NOT PROVEN
15 BEYOND A REASONABLE DOUBT ON EVERY ELEMENT OF THE CRIME
16 INVOLVED THAT MR. DENNIS COMMITTED THE CRIME OF ARMED
17 ROBBERY.

18 I DO BELIEVE THEY MAY HAVE GOTTEN PAST THE THRESHOLD
19 THEY NEED FOR LARCENY, BUT NOT FOR ARMED ROBBERY, AND I
20 WOULD ASK FOR A DIRECTED VERDICT ON THAT CHARGE.

21 THE COURT: MR. WAGNER?

22 MR. WAGNER: YOUR HONOR, BASED UPON THE WITNESSES
23 WHO HAVE TESTIFIED TODAY, I THINK TAKEN IN THE LIGHT MOST
24 FAVORABLE TO THE STATE, I THINK WE HAVE ESTABLISHED THAT
25 THIS DEFENDANT WAS INDEED HAWK AND THAT HE WAS INVOLVED

1 IN THE PLANNING, ACTUALLY MADE THE PHONE CALL TO LURE THE
2 VICTIM OVER THERE, WHILE PLANNING THE ROBBERY WITH HIS
3 CODEFENDANTS, AND ACTUALLY PARTICIPATED IN THE ROBBERY BY
4 LURING HIM OVER THERE, BY PLANNING IT AND LURING HIM OVER
5 THERE AND HELPING UNLOAD THE SHOES. THERE WAS ALSO
6 TESTIMONY FROM THE VICTIM THAT SAID THEY WERE CALLING HIM
7 FOR HELP WHILE THEY WERE BEATING HIM AND HE WAS BACK
8 UNLOADING THE SHOES ESSENTIALLY WHILE THIS WAS GOING ON.
9 ALL THOSE, WITH THAT BEING SAID, I BELIEVE ALL OF THAT
10 TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE IS AMPLE,
11 I BELIEVE, TO SEND IT TO THE JURY.

12 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
13 DEFENDANT?

14 MS. EARLE: NO, YOUR HONOR.
15 COURT'S RULING ON MOTION TO DISMISS:

16 THE COURT: CONSIDERING THE ALLEGED PARTICIPATION BY
17 THE DEFENDANT IN THE EVENTS GIVING RISE TO THE
18 INDICTMENT, THE COURT FINDS THAT THERE IS COMPETENT
19 EVIDENCE TENDING TO PROVE THE CHARGE IN THE INDICTMENT
20 BEING CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE
21 STATE. RULING ON THIS MOTION I AM ONLY CONCERNED WITH
22 THE EXISTENCE OR NON-EXISTENCE OF EVIDENCE AND NOT ITS
23 WEIGHT. YOUR MOTION IS DENIED. ANYTHING ELSE?

24 MS. EARLE: YOUR HONOR, IF I MAY HAVE A FEW MOMENTS
25 TO LOOK OVER SOME REQUESTED JURY CHARGES, AND THEN IF WE

1 COULD GO OVER THOSE BEFORE THE JURY COMES BACK AGAIN, IT
2 MIGHT SPEED THINGS UP.

3 THE COURT: YES, MA'AM. ALL RIGHT. I MIGHT TELL
4 YOU THAT I -- LET ME TELL YOU WHAT I DO HAVE. THE STATE
5 HASN'T REQUESTED ANYTHING, HAVE THEY?

6 MR. WAGNER: NO, YOUR HONOR, WE HAVE NOT.

7 THE COURT: ALL RIGHT. AT THIS POINT WE HAVE THE
8 PRESUMPTION OF INNOCENCE CHARGE; THE ASSERTION OF THE
9 RIGHT TO REMAIN SILENT AS WELL AS NOT TO BE PRESENT AT
10 TRIAL IS NOT TO BE CONSIDERED AGAINST AN INDIVIDUAL.

11 REASONABLE DOUBT, AND REASONABLE DOUBT THAT I USE IS
12 THE MANNING WHICH YOU HAVE ALREADY HEARD, WHICH IS NOT
13 TO -- IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
14 PERSON TO HESITATE TO ACT. I DO NOT USE THE VICTOR V.
15 NEBRASKA CHARGE UNLESS A REQUEST OF A FURTHER EXPLANATION
16 OF REASONABLE DOUBT IS MADE.

17 DIRECT AND CIRCUMSTANTIAL EVIDENCE.

18 CRIMINAL INTENT.

19 THE INDICTMENT IS NOT TO BE CONSIDERED AS EVIDENCE.

20 ARMED ROBBERY UNDER SECTION 16-11-330, AGAIN A
21 REASONABLE DOUBT BURDEN OF PROOF CHARGE AS TO EACH OF THE
22 ELEMENTS OF ARMED ROBBERY.

23 I DO CHARGE HAND OF ONE IS THE HAND OF ALL.

24 THAT THE LESSER-INCLUDED OFFENSES AS I HAVE THEM
25 WOULD BE ARMED ROBBERY, ROBBERY, AND LARCENY.

1 AND THAT'S ABOUT IT. ANYTHING IN PARTICULAR YOU
2 WOULD -- THAT I HAVE LEFT OUT OR YOU WOULD LIKE TO HEAR?

3 **MS. EARLE:** YOUR HONOR, AS FAR AS YOUR INTENT
4 CHARGE, DOES IT INCLUDE KNOWING AND WILLFUL?

5 **THE COURT:** (READING): CRIMINAL INTENT IS A MENTAL
6 STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO
7 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
8 CIRCUMSTANCES SHOWN TO HAVE EXISTED. AND THAT'S THE
9 FINAL STATEMENT. OTHERWISE YOU GO BACK TO THE CRIMINAL
10 LIABILITY IS NORMALLY BASED UPON THE CONCURRENCE OF TWO
11 FACTORS: AN EVIL-MEANING MIND AND AN EVIL-DOING HAND.
12 SO YOU HAVE THE KNOWLEDGE.

13 **MS. EARLE:** YOUR HONOR, THE ONLY OTHER THING I WILL
14 REQUEST -- I'VE GOT THE CASE HERE -- IN 2008 IN STATE
15 VERSUS MADISON THERE IS A -- IT WAS SOMETHING THAT THE
16 COURT SAID WAS IMPLICIT IN A CHARGE THAT WAS GIVEN, AND,
17 YOUR HONOR, IT SAYS THAT (READING): MERE KNOWLEDGE THAT
18 A CRIME WAS GOING TO OCCUR OR MERE ASSOCIATION WITH ONE
19 WHO COMMITS A CRIME IS INSUFFICIENT TO CONSTITUTE GUILT.

20 THE DEFENDANT MUST HAVE WHILE PRESENT AT THE
21 COMMISSION OF A CRIME AIDED, ABETTED, OR ASSISTED IN THE
22 COMMISSION OF THE CRIME PURSUANT TO A COMMON DESIGN OF
23 PURPOSE BEFORE A CONVICTION CAN BE HAD.

24 AND I WOULD REQUEST THAT THAT BE CHARGED.

25 **THE COURT:** (READING): PRIOR KNOWLEDGE THAT A CRIME

1 IS GOING TO BE COMMITTED WITHOUT MORE IS NOT SUFFICIENT
2 TO MAKE A PERSON GUILTY OF THAT CRIME. MERE KNOWLEDGE
3 THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF
4 THE DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS
5 NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL.

6 MS. EARLE: YES, YOUR HONOR.

7 THE COURT: THAT'S PART OF MY HAND OF ONE IS HAND OF
8 ALL. (READING): AS WELL AS ACTUAL CONSTRUCTIVE PRESENCE
9 AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT, THEREFORE,
10 A FINDING OF A PRIOR ARRANGEMENT, PLAN OR COMMON SCHEME
11 IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL.

12 MS. EARLE: THANK YOU.

13 THE COURT: YES, MA'AM.

14 ALL RIGHT. DOES THE DEFENSE REST?

15 MS. EARLE: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. THE DEFENSE RESTS WITHOUT
17 PUTTING UP ANY TESTIMONY OR EVIDENCE, SO YOU WILL HAVE
18 THE FINAL ARGUMENT. THE STATE WILL OPEN FULLY AND THE
19 DEFENDANT WILL CLOSE.

20 MR. WAGNER: YOUR HONOR, JUST ONE THING AS TO THE
21 CHARGE. THE WAY WE WERE LOOKING AT IT, THE ONLY THING TO
22 ME WOULD BE IT WOULD BE EITHER ARMED ROBBERY OR NOTHING
23 AS FAR AS THAT GOES BECAUSE THERE WASN'T ANY EVIDENCE PUT
24 UP ABOUT STRONG-ARMED ROBBERY, OR COMMON ROBBERY.

25 THE COURT: WELL, IT'S NOT STRONG-ARMED ROBBERY.

1 ARMED ROBBERY REQUIRES THE USE OF A DEADLY WEAPON.

2 MR. WAGNER: YES, SIR. THAT WAS THE ONLY TESTIMONY
3 PUT UP WAS THAT IT WAS ARMED ROBBERY.

4 THE COURT: WHAT DOES THE DEFENDANT SAY? BECAUSE IF
5 I DO THAT, THE CHARGE WOULD BE -- THE DISTINCTION OF
6 ARMED ROBBERY IS THE USE OF A DEADLY WEAPON, AND ROBBERY
7 IS A LESSER-INCLUDED OFFENSE OF ARMED ROBBERY.

8 THE CRIME OF ROBBERY INCLUDES EACH OF THE FOUR
9 ELEMENTS THAT CONSTITUTE THE CRIME OF LARCENY. IN
10 ADDITION TO THOSE FOUR ELEMENTS, TWO OTHER ELEMENTS ARE
11 NECESSARY TO CONSTITUTE THE CRIME OF ROBBERY. THOSE
12 ELEMENTS ARE THAT THE PROPERTY MUST BE TAKEN FROM THE
13 PERSON OF ANOTHER OR IN HIS PRESENCE AND THAT THEY ARE
14 TAKEN, AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN
15 ACCOMPLISHED BY PUTTING THE PERSON IN FEAR OF VIOLENCE OR
16 THREATS OF VIOLENCE SO AS TO MAKE THAT PERSON SURRENDER
17 THE PROPERTY WITHOUT HIS CONSENT AGAINST HIS WILL. I
18 THINK YOU DO HAVE ROBBERY, AND INASMUCH AS ROBBERY, THE
19 FOUR ELEMENTS OF LARCENY, I THINK YOU WOULD HAVE LARCENY,
20 TOO.

21 MS. EARLE: YOUR HONOR, I BELIEVE THAT THE JURY IS
22 ENTITLED TO LOOK AT THE EVIDENCE AND DETERMINE THE FACTS
23 OF THE CASE, AND THAT THEY ARE ENTITLED TO HAVE THE RIGHT
24 TO CHOOSE BETWEEN ARMED ROBBERY, STRONG-ARMED ROBBERY AND
25 LARCENY.

1 **THE COURT:** WELL, I DON'T CHARGE STRONG-ARM ROBBERY.

2 **MS. EARLE:** COMMON LAW ROBBERY.

3 **THE COURT:** I CHARGE COMMON LAW, WHICH IS EVERYTHING
4 EXCEPT A WEAPON.

5 **MS. EARLE:** YES, YOUR HONOR. AND I THINK THAT
6 BECAUSE THE JURY IS THE ULTIMATE ARBITER OF WHAT THE
7 FACTS OF THE CASE ARE, THAT, THAT TO EXCLUDE THE
8 LESSER-INCLUDED OFFENSES IS TO TAKE AWAY FROM THEM THEIR
9 RIGHT TO DETERMINE WHAT THE FACTS OF THE CASE ARE.

10 **THE COURT:** VERY WELL. I INTEND TO AND WILL CHARGE
11 ARMED ROBBERY AS INDICTED, ROBBERY AS A LESSER-INCLUDED
12 OFFENSE OF ARMED ROBBERY, AND LARCENY AS BEING THE,
13 INCLUDED IN ROBBERY.

14 ALL RIGHT. IS THERE ANYTHING ELSE? I DENY YOUR
15 MOTION TO LIMIT IT TO A VERDICT OF GUILTY OR NOT GUILTY
16 OF ARMED ROBBERY.

17 **MR. WAGNER:** YES, SIR.

18 **THE COURT:** AND YOU MIGHT WANT TO LOOK AT THE
19 VERDICT FORM. IN FACT, I'VE GOT A COPY OF IT FOR EACH OF
20 YOU IF YOU WANT TO USE IT DURING YOUR ARGUMENT.

21 (DISCUSSION AT SIDEBAR.)

22 **MS. EARLE:** YOUR HONOR, REGARDING THE VERDICT FORM
23 THE DEFENDANT WOULD PREFER THAT NOT GUILTY BE THE FIRST
24 ONE THAT'S AVAILABLE FOR THEM TO CHOOSE FROM.

25 **THE COURT:** THAT'S THE PROBLEM WHEN YOU HAVE A

1 LESSER-INCLUDED, THOUGH: YOU START AT THE TOP AND COME
2 DOWN, AND THAT IS, MY CHARGE IS PROCESS OF ELIMINATION.
3 THE STATE HAS THE BURDEN OF PROVING FIRST ARMED ROBBERY.
4 IF NOT THAT, THE LESSER-INCLUDED ROBBERY, AND IF NOT
5 THAT, THE LESSER-INCLUDED LARCENY. . AND IF THEY DON'T
6 MEET ANY OF THE ELEMENTS, THEN IT'S NOT GUILTY, AND I
7 WILL SO CHARGE THEM.

8 ALL RIGHT. LET'S TAKE A VERY SHORT BREAK AND THEN
9 WE'LL COME BACK.

10 (A BRIEF RECESS WAS TAKEN.)

11 **THE COURT:** I UNDERSTAND THE JURY IS BACK.
12 IS THERE ANYTHING FROM THE STATE BEFORE WE PROCEED.

13 **MR. WAGNER:** NO, YOUR HONOR.

14 **THE COURT:** FROM THE DEFENSE?

15 **MS. EARLE:** NO, YOUR HONOR.

16 **THE COURT:** VERY GOOD.

17 ASK THE JURY TO JOIN US, PLEASE.

18 (THE JURY ENTERED THE COURTROOM AT

19 APPROXIMATELY 3:27 P.M.)

20 **THE COURT:** ALL RIGHT. I RECOGNIZE MS. EARLE FOR
21 THE DEFENSE.

22 **MS. EARLE:** THE DEFENSE RESTS, YOUR HONOR.

23 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
24 JURY, THAT CONCLUDES THE TESTIMONY AND EVIDENCE IN THIS
25 CASE. WE WILL NOW HAVE THE CONCLUSION OF THE TRIAL WHICH

1 WILL BE THE ARGUMENT BY COUNSEL. THE STATE WILL GO FIRST
2 AND THEN THE DEFENDANT WILL CLOSE. AND THEN THE COURT
3 WILL GIVE YOU THE CHARGE ON THE LAW THAT'S APPLICABLE TO
4 THIS CASE.

5 I RECOGNIZE MR. WAGNER FOR HIS CLOSING ARGUMENT.

6 MR. WAGNER: THANK YOU, JUDGE.

7 CLOSING STATEMENT ON BEHALF OF THE STATE:

8 MR. WAGNER: THIS IS THE LAST TIME YOU'LL HEAR FROM
9 ME. WE'RE AT THE END OF THE TRIAL AND I'M GONNA TRY TO
10 BE BRIEF. BASICALLY YOU HAVE ALL HEARD THE TESTIMONY.

11 I THINK IT'S PRETTY CLEAR WHAT HAPPENED TO
12 MR. ROBINSON. HE WORKS A FULL-TIME JOB, HE'S OUT TRYING
13 TO MAKE SOME EXTRA MONEY FOR HIS FAMILY, HE'S SELLING
14 SHOES. THESE GUYS SET HIM UP AND ROBBED HIM. THEY
15 BRUTALLY BEAT HIM WITH A PISTOL. I SUBMIT TO YOU HE'S
16 LUCKY THAT HE'S AT LEAST HERE ALIVE TODAY TO COME TESTIFY
17 TODAY AND NOT PUSHING UP DAISIES AS THEY SAY SOMEWHERE.

18 BUT HERE IS HOW HE LOOKED RIGHT AFTER THE ROBBERY,
19 AFTER HE'D BEEN BEAT. I'M SORRY YOU DIDN'T GET A CHANCE
20 TO SEE THESE EARLIER. BUT HE WAS UP AGAINST A PASSENGER
21 DOOR, RIGHT NEAR WHERE HIS DAUGHTER WAS SEATED, WITH HIS
22 HEAD MASHED UP TRYING TO FIGHT THEM OFF, BLEEDING, WITH
23 THE HEAD MARKS AS YOU CAN SEE THERE.

24 I POINT THESE THINGS OUT TO YOU BECAUSE IT
25 CORROBORATES WHAT HE SAID HAPPENED. NOT ONLY DO WE HAVE

1 THE CODEFENDANT WHO CORROBORATES IT, TOO, BUT WE DO HAVE
2 THE VICTIM HERE WHO IS ABLE TO TELL EXACTLY WHAT HAPPENED
3 TO HIM.

4 SOME OF THE SHOES THAT WERE ON THE FLOOR IN FRONT OF
5 THE DAUGHTER.

6 AND THE DAUGHTER, WHO HAPPENED TO BE FOUR YEARS OLD
7 AND IN THE CHAIR AND HAD HIM BLEED ALL OVER HER FROM THE
8 WOUNDS THAT THESE GUYS GAVE HIM.

9 WHAT HAPPENED TO MR. ROBINSON WAS AN AWFUL THING.
10 AND WHAT YOU ARE GONNA HAVE TO CONSIDER IS, DID THE
11 DEFENDANT PARTICIPATE AND COMMIT A CRIME OF ARMED
12 ROBBERY? AND I BELIEVE THE JUDGE IS ALSO GONNA CHARGE
13 COMMON LAW ROBBERY AND LARCENY. WHICH MEANS YOU WILL
14 HAVE AN OPTION WHEN YOU GO BACK TO THE JURY ROOM OF ARMED
15 ROBBERY, COMMON LAW ROBBERY, WHICH IS ESSENTIALLY ROBBERY
16 WITHOUT A DEADLY WEAPON; LARCENY, WHICH IS JUST SIMPLY
17 STEALING THE SHOES; AND NOT GUILTY.

18 I SUBMIT TO YOU THAT GUILTY ON ALL, ARMED ROBBERY IS
19 THE ONLY SERIOUS AND ONLY LEGITIMATE VERDICT YOU CAN
20 ARRIVE TO BASED ON THE EVIDENCE PRESENTED ON THE WITNESS
21 STAND. I WANTED TO TELL YOU BRIEFLY WHAT ARMED ROBBERY
22 IS. IT IS ESSENTIALLY TAKING SOMETHING FROM SOMEBODY BY
23 FORCE OR INTIMIDATION, WITH THE INTENT TO DEPRIVE THEM OF
24 THEIR PROPERTY, WHILE ARMED WITH A DEADLY WEAPON, AND I
25 SUBMIT TO YOU A PISTOL IS INDEED A DEADLY WEAPON. AND

1 THERE'S NO EVIDENCE OTHER THAN HERE THAT A DEADLY WEAPON
2 WAS USED. AND HOW DO WE KNOW THAT? WELL, THEY BEAT HIM
3 OVER THE HEAD WITH IT, SPLIT HIS HEAD OPEN. WE KNOW THAT
4 HAPPENED. HE SAW THE PISTOL. HE HEARD THE SHOTS WHEN HE
5 DROVE OFF. HE SAW THE GUN. AND THEN THE CODEFENDANT GOT
6 UP HERE AND SAID, YEAH, WE HAD A GUN. ONE GUN SEEN WITH
7 THREE ROBBERS.

8 IT DOESN'T MATTER FROM A STANDPOINT THAT ALL OF THEM
9 WEREN'T ARMED. IF THIS DEFENDANT WHO WE'RE HERE TODAY
10 FOR, HAWK OR ADARIUS DENNIS, IF HE PARTICIPATED IN THE
11 ROBBERY, WHETHER OR NOT HE WAS ARMED OR NOT, HE'S GUILTY.
12 THE JUDGE WILL CHARGE THE HAND OF ONE IS HAND OF ALL,
13 JUST LIKE HE WAS ARMED AND PUT A GUN TO HIS HEAD, TOO.
14 HIS JOB IN THIS ROBBERY, HAWK'S WAS, THE THREE OF THEM,
15 THEY TALKED IT, THEY TALKED ABOUT ROBBING THE SHOE GUY.
16 THEY GOT TOGETHER. HAWK WAS THE ONE THAT MADE THE CALL.
17 HE LURED HIM DOWN THERE BECAUSE HE KNEW HIM, HE HAD
18 BOUGHT SHOES FROM HIM BEFORE. SO HE WAS THE ONE THAT
19 LURED RENALDO DOWN TO THE SCENE TO BUY THE SHOES. AND HE
20 TOLD HIM ESSENTIALLY, I WANT TO BUY A PAIR JUST LIKE YOU
21 SOLD MY BROTHER, CHAVIS CAMPBELL. MEET ME DOWN THERE
22 WHERE HE STAYS.

23 SO HAWK MET HIM, GOT HIM OUTSIDE THE CAR, GOT HIS
24 BACK TURNED. THE OTHER TWO GUYS CAME OUT AND THEY ROBBED
25 HIM.

1 IT DOESN'T MATTER FOR THE PURPOSES OF THE LAW
2 WHETHER OR NOT HE ACTUALLY INFLECTED THE BLOW OR WHETHER
3 HE DID ANOTHER PART OF THE ROBBERY. HE MADE THE CALL, HE
4 PARTICIPATED IN THE PLANNING, HE SET HIM UP. WHEN HE
5 CAME DOWN THERE, HE HELPED CARRY THE SHOES OUT THE BACK.
6 NOW, NOBODY COULD REALLY SAY THEY SAW HAWK RUNNING OFF
7 WITH THE SHOES.

8 BUT WHAT YOU DO KNOW IS THERE ARE FIVE BIG HEAVY
9 BOXES OF SHOES IN THE BACK OF THERE, AND IN THE TIME
10 FRAME WHERE THE VICTIM IS STRUGGLING WITH DIVERIO, WHO
11 TESTIFIED, ALL THESE SHOES WENT OUT AROUND THE BUILDING,
12 FIVE BOXES. AND I SUBMIT TO YOU THAT THE ONLY WAY FOR
13 THAT TO HAPPEN IS THAT BOTH OF THEM WERE CARRYING THE
14 SHOES OFF.

15 JUST FOR ARGUMENT'S SAKE, EVEN IF HAWK DIDN'T CARRY
16 OFF ANY SHOES, HE STILL PLANNED THE ROBBERY, HE STILL
17 MADE THE PHONE CALL, HE STILL STOOD THERE AND SET HIM UP.
18 AND AS THE VICTIM TOLD YOU, THEY WERE CALLING HAWK FOR
19 HELP. THEY WERE SAYING, COME, HAWK, BRING THE OTHER GUN.
20 I SUBMIT TO YOU THAT'S EVIDENCE IN ITSELF THAT HAWK MIGHT
21 HAVE HAD A GUN IN HIS POCKET. THEY WERE SAYING, BRING
22 THE OTHER GUN, HAWK, HAWK, COME HELP.

23 BECAUSE HE ALMOST HAD THE GUN AWAY FROM HIM, AND I'M
24 SURE THEY KNEW IF THEY WERE DISARMED, AND ALSO HE'S ARMED
25 AND THEY'RE NOT, THEN THEY'VE GOT A PROBLEM. SO HE WAS

1 FIGHTING FOR HIS LIFE. THEY ESSENTIALLY, FOR A WHILE
2 THEY WERE PROBABLY KIND OF FIGHTING FOR THEIRS, TOO.
3 THAT'S WHY THEY CALLED HIS LITTLE BROTHER. HIS LITTLE
4 BROTHER DROPPED WHAT HE WAS DOING AT THE END OF THE CAR
5 WITH HAWK, CAME AROUND, TRIED TO HELP THROUGH THE
6 HATCHBACK OF THE S.U.V.

7 AND THEN WHEN HE COULDN'T HELP HIM ENOUGH, I SUBMIT
8 TO YOU PROBABLY BECAUSE THAT LITTLE GIRL WAS SITTING
9 THERE IN THE CAR SEAT AND HE COULDN'T GET OVER HER TO GET
10 AT HIM, SO HE WENT AROUND AND STARTED HITTING HIM FROM
11 THE OTHER SIDE. SO IT'S A BRUTAL BEATING. IT'S A SHAME
12 WHAT THEY DID TO THIS MAN.

13 BUT THEY'RE ALL THREE JUST AS GUILTY AS IF ALL THREE
14 OF THEM STRUCK THE BLOWS, AS IF ALL THREE OF THEM HELD
15 THE GUN, AS IF ALL THREE OF THEM HAD ROBBED HIM, BECAUSE
16 ALL THREE PARTICIPATED IN THE ROBBERY BECAUSE THEY ALL
17 HAD DIFFERENT JOBS. HE TOLD YOU, THE CODEFENDANT DID,
18 THEY ALL THREE PLANNED IT, HAWK MADE THE CALL, SET IT UP,
19 HE WAS THE MAN TO SET IT UP AGAIN, AS I SAY, BECAUSE HE
20 KNEW THE VICTIM AND KNEW THAT HE COULD GET HIM DOWN
21 THERE.

22 THEY WAITED BEHIND THE TRAILER THERE, CAME OUT AND
23 AMBUSHED HIM. AND THEY ALL THREE PARTICIPATED IN IT. WE
24 KNOW THAT HAWK OR SOMEBODY CALLED REGINA MCCLAIN, THE
25 OTHER TWO DELANEY BROTHERS -- MANLEY BROTHERS RAN OFF. I

1 KNOW THAT THEY CALLED AND THEY LEFT THE CAR SITTING THERE
2 THAT WAS PARKED BEHIND THE BUILDING I SUBMIT TO HIDE IT.
3 AND WHEN THEY CAME BACK ALL THE SHOES WERE GONE. REGINA
4 MCCLAIN CAME BACK AND GOT THAT CAR.

5 SO WHAT YOU HAVE HERE IS A LEGITIMATE ARMED ROBBERY,
6 YOU HAVE A ROBBERY, SOMEBODY WARMED A PISTOL, THEY BEAT
7 THE GUY AND THEY STOLE THE SHOES. AND THAT'S AS
8 CLEAR-CUT ARMED ROBBERY AS YOU COULD HAVE.

9 THAT'S THE ONLY EVIDENCE YOU'VE GOT HERE TO CONSIDER
10 TODAY. I SUBMIT TO YOU THERE'S, YOU KNOW, NOT MANY, NOT
11 EVIDENCE OUT THERE THAT SAYS HE DIDN'T DO IT. EVERYBODY
12 SAYS HAWK WAS THERE. THEY ALL IDENTIFIED HIM WITH THESE
13 PICTURES. THEY ALL IDENTIFIED HIM AS HAWK.

14 SO THEY GOT THE RIGHT GUY. THEY KNOW IT WAS HAWK.
15 IT'S BEEN PROVEN THAT IT WAS HAWK. IT'S JUST A MATTER OF
16 WHAT EXACTLY DID HE DO TO PARTICIPATE IN THE ROBBERY?
17 AND WE KNOW THAT FROM A GUY WHO'S GOT NOTHING TO LOSE,
18 NOTHING TO GAIN BY GETTING UP THERE AND LYING ABOUT IT.
19 HE'S BEEN SENT TO PRISON ON THAT STUFF AND HE'S NOT
20 GETTING ANY DEAL. HE JUST WENT TO PRISON. HE ADMITTED
21 WHAT HE DID. HE SAID HE WAS SORRY. HE WOULD HAVE BEEN I
22 SUBMIT TO YOU THE MAIN GUY BECAUSE HE'S THE ONE THAT
23 STRUCK THE BLOWS. BUT THE HAND OF ONE IS THE HAND OF
24 ALL. THEY'RE ALL THREE JUST AS GUILTY BECAUSE OF WHAT
25 THEY DID. THEY ALL THREE PARTICIPATED IN THE ROBBERY,

1 THEY ALL THREE SET IT UP. IT'S ARMED ROBBERY BECAUSE A
2 PISTOL WAS INVOLVED, AND THAT'S ALL IT IS: STRICTLY A
3 CASE OF ARMED ROBBERY.

4 AND I SUBMIT TO YOU THE JUDGE IS GONNA CHARGE YOU ON
5 REASONABLE DOUBT. YOU HAVE TO FIND UNANIMOUSLY BEYOND A
6 REASONABLE DOUBT THAT THE DEFENDANT DID WHAT HE DID. THE
7 HEART OF A CASE LIKE THIS, I SUBMIT TO YOU, YOU HAVE MORE
8 EVIDENCE THAN YOU HAVE HERE TO CONSIDER. YOU HAVE A LOT
9 OF TOOLS HERE TO CONSIDER. I SUBMIT TO YOU IDENTITIES OF
10 HAWK IS NOT A PROBLEM. DETECTIVE REED GOT IN AND CHECKED
11 OUT EVERY SINGLE PERSON, AND THE THREE PEOPLE HE FELT
12 LIKE HE COULD MAKE CHARGES AGAINST, BASED ON THE
13 EVIDENCE, HE CHARGED. THE OTHER TWO, CHAVIS CAMPBELL AND
14 MIKE, WHOEVER MIKE WAS, I SUBMIT TO YOU THEY PROBABLY
15 KNEW ABOUT IT, TOO. BUT WHO KNOWS? THERE WASN'T ENOUGH
16 EVIDENCE THERE FOR DETECTIVE REED TO MAKE THE CHARGES.

17 BUT WE DO KNOW THAT THE CODEFENDANT GOT UP THERE,
18 HE'S SERVING THE TIME FOR IT, AND NOW IT'S HAWK'S TURN
19 FOR HIS TRIAL. AND I BELIEVE AND I SUBMIT TO YOU BASED
20 ON THE EVIDENCE THAT WE HAVE BEEN ABLE TO PRESENT TO YOU
21 TODAY, THAT THE ONLY POSSIBLE REASONABLE AND FAIR VERDICT
22 WOULD BE A VERDICT OF GUILTY ON ARMED ROBBERY. THANK
23 YOU.

24 THE COURT: MS. EARLE?

25 MS. EARLE: THANK YOU, YOUR HONOR, MAY IT PLEASE THE

1 COURT.

2 CLOSING STATEMENT ON BEHALF OF DEFENDANT:

3 MS. EARLE: LADIES AND GENTLEMEN OF THE JURY, I
4 AGREE THAT THIS IS AWFUL, THESE PICTURES ARE TERRIBLE.
5 BUT WHAT THESE PICTURES PROVE TO YOU IS THAT SOMEBODY
6 ELSE BEAT MR. ROBINSON, NOT MR. DENNIS. MR. DENNIS IS
7 NOT CHARGED WITH BEATING MR. ROBINSON. ASSAULTING
8 SOMEONE IS NOT AN ELEMENT OF LARCENY, ROBBERY, OR ARMED
9 ROBBERY.

10 SO THIS IS JUST SOMETHING TO DIVERT YOU AWAY FROM
11 YOUR REAL JOB OF DETERMINING IF AN ARMED ROBBERY, A
12 ROBBERY OR A LARCENY OCCURRED, BECAUSE HE'S NOT CHARGED
13 WITH BEATING ANYONE, AND AGAIN, THAT'S NOT AN ELEMENT.

14 AND AS I TOLD YOU EARLIER IN MY OPENING STATEMENT,
15 IT'S LIKE PUTTING A PUZZLE TOGETHER. AND IN THIS CASE
16 THEY'VE GIVEN YOU A PIECE THAT GOES TO A DIFFERENT PUZZLE
17 BECAUSE THE ASSAULT AND BATTERY CHARGES WERE AGAINST
18 SOMEBODY ELSE, NOT MR. DENNIS.

19 NOW WHAT YOU DO HAVE HERE IS A CASE WHERE YOU'VE GOT
20 SOMEBODY THAT'S IN THE WRONG PLACE AT THE WRONG TIME
21 HANGING OUT WITH THE WRONG PEOPLE. YOU HAVE TO HAVE
22 KNOWLEDGE THAT A CRIME IS GONNA BE COMMITTED IN ORDER TO
23 BE FOUND GUILTY, AND YOU HAVE TO HAVE MORE THAN JUST THE
24 KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT THAT
25 CRIME. BECAUSE JUST KNOWING THAT SOMEBODY PLANS TO

1 COMMIT A CRIME IS NOT ENOUGH FOR YOU TO FIND ANYBODY
2 GUILTY OF THE CRIME ITSELF. HAVING A SUSPICION THAT
3 SOMEBODY WAS INVOLVED IS NOT SUFFICIENT. THE STATE HAS
4 THE BURDEN OF PROVING TO YOU BEYOND A REASONABLE DOUBT ON
5 EACH ELEMENT OF THE CRIME THAT MR. DENNIS IS GUILTY.

6 NOW, YOU HAVE HERE A VICTIM WHO DIDN'T SEE
7 MR. DENNIS TAKE ANYTHING AT ALL. HE TALKED TO HIM. HE
8 SAYS HE SAW HIM OUT AT THE VEHICLE BUT HE DIDN'T ACTUALLY
9 SEE HIM TAKE ANYTHING. HE NEVER SAW MR. DENNIS WITH A
10 WEAPON. MR. DENNIS NEVER MADE ANY THREATS TO HIM.
11 MR. DENNIS DID NOT USE ANY FORCE OR VIOLENCE AGAINST HIM.

12 HE SAYS THAT IN THE PAST WHEN HE HAD DONE BUSINESS
13 WITH HIM, THAT HE HAD ALWAYS BEEN PAID. HE HAD NEVER HAD
14 A PROBLEM. BUT HE HAD HAD A PROBLEM WITH THE TWO MANLEY
15 BROTHERS, ONE OF WHOM WAS HERE TODAY TO TESTIFY. HE'S
16 HAD PROBLEMS WITH THEM IN THE PAST BECAUSE THEY'VE TRIED
17 TO DO THIS BEFORE.

18 NOW, THERE WERE -- HE ALSO TESTIFIED THAT THERE HAD
19 TO BE MORE PEOPLE INVOLVED, THAT THERE WAS NO WAY THAT
20 JUST THOSE THREE PEOPLE COULD HAVE DONE WHAT WAS DONE,
21 THAT THERE HAD TO BE OTHER PEOPLE. BUT YOU DON'T HAVE
22 ANY EVIDENCE AS TO WHO THOSE OTHER PEOPLE WERE BECAUSE
23 THE STATE DIDN'T BRING THAT TO YOU, THEY DIDN'T
24 INVESTIGATE ANY FURTHER IN THIS CASE. THEY DON'T KNOW
25 WHO ELSE WAS INVOLVED.

1 IN ADDITION YOU HAVE HIM TELLING YOU THAT WHEN HE
2 SAW MS. MCCLAIN'S BLUE KIA COME BY WHEN THERE WERE PEOPLE
3 IN IT OTHER THAN MS. MCCLAIN, THAT HE ONLY SAW THREE
4 PEOPLE IN THE CAR WITH HER. SHE SAYS THAT HER SON WAS IN
5 THE CAR SEAT SITTING UP HIGH ENOUGH WHERE HE COULD SEE
6 OUT THE WINDOW, AND YET THE VICTIM SAYS HE DIDN'T SEE HIM
7 IN THE CAR.

8 HE IDENTIFIED IN THE STATEMENT TO THE POLICE THAT
9 DRECUS MANLEY AND DIVERIO MANLEY WERE THE ONES WHO
10 ASSAULTED HIM. HE ALSO SAID THAT HAWK AND ANOTHER
11 DARK-SKINNED PERSON WERE THERE. THEN TODAY HE CAME IN
12 AND SAID, WELL, THAT OTHER DARK-SKINNED PERSON WAS REALLY
13 DRECUS. WELL, I SUBMIT TO YOU THAT HE'S TELLING YOU THAT
14 TODAY BECAUSE THE STATE DROPPED THE CHARGES AGAINST THE
15 OTHER PERSON HE IDENTIFIED, AND THAT GIVES HIM REASON NOT
16 TO, NOT TO ADMIT THAT HE KNEW WHO DRECUS WAS, BUT HE
17 DIDN'T REALLY AT THE TIME KNOW FOR SURE WHO THE OTHER
18 PERSON WAS. BUT THERE WERE OTHER PEOPLE THERE.

19 NOW, MRS. MCCLAIN WHO TESTIFIED WASN'T THERE. ALL
20 SHE CAN TELL YOU IS SHE PICKED UP THREE PEOPLE, THAT NONE
21 OF THEM HAD SHOES WITH THEM, THAT NONE OF THEM SAID ANY
22 -- THAT MR. DENNIS DIDN'T SAY ANYTHING TO HER AT ALL AND
23 THAT SHE TOOK THEM BACK TO HER APARTMENT AND SHE DIDN'T
24 HAVE ANY IDEA OF WHAT HAPPENED. SO I'M NOT REALLY SURE
25 WHY SHE WAS HERE TODAY EXCEPT TO BE ABLE TO TELL YOU THAT

1 SHE KNEW THAT MR. DENNIS, THAT SHE KNEW MR. DENNIS AND
2 HAWK AS HIS STREET NAME.

3 NOW, MR. MANLEY TOLD YOU THAT THERE WERE OTHER
4 PEOPLE IN THE HOUSE, THAT HE DID NOT SEE HAWK TAKE THE
5 SHOES, AND THAT WHEN, THAT WHEN HE AND HIS BROTHER CAME
6 OUT TO THE CAR AND PULLED A GUN, THAT HAWK LEFT. HE
7 DIDN'T SEE HAWK TAKE ANY SHOES. HE KNOWS SOMEBODY DID
8 BUT HE DOESN'T KNOW WHO. BUT HE SAID HAWK TOOK OFF.
9 HAWK RAN.

10 NOW, YES, THERE IS A THEORY OF LAW THAT SAYS THAT
11 THE HAND OF ONE IS THE HAND OF ALL. THE HAND OF ONE AND
12 HAND OF ALL WHEN YOU KNOW WHAT THE OTHER PEOPLE ARE GOING
13 TO DO, AND IF YOU SAY, YES, I'LL HELP YOU DO THIS, AND
14 THEN WHEN YOU GET THERE IT'S NOT WHAT THE OTHER PEOPLE
15 TOLD YOU THEY WERE GONNA DO AND YOU LEAVE AND YOU RUN AND
16 YOU ABANDON IT, THEN YOU CAN FIND THAT PERSON WAS NOT A
17 PARTICIPANT IN THE ROBBERY AND YOU CAN FIND HIM NOT
18 GUILTY ON THAT.

19 NOW ORIGINALLY THE SHERIFF'S OFFICE DID MAKE CHARGES
20 AGAINST ANOTHER PERSON, THEY TOLD YOU THAT. AND THEN
21 THEY SAID, WELL, WHEN WE INVESTIGATED FURTHER, WE DIDN'T
22 HAVE ENOUGH EVIDENCE SO WE HAD TO DROP THOSE CHARGES.
23 WELL, THAT TELLS ME THAT THERE IS MORE TO THIS THAN JUST
24 WHAT YOU HAVE HEARD AS FAR AS THREE PEOPLE BEING
25 INVOLVED. THERE WERE OTHERS INVOLVED. AND HAWK OR

1 MR. DENNIS PROBABLY RAN AND DIDN'T PARTICIPATE ONCE HE
2 REALIZED WHAT WAS HAPPENING, THAT THEY WEREN'T JUST
3 TAKING SHOES. HE WASN'T INVOLVED AT ALL IN THE BRUTALITY
4 THAT THE STATE WANTS YOU TO CONVICT HIM OF.

5 NOW, HE HAD NO WEAPON, HE WAS NOT INVOLVED IN THE
6 BEATING. AND AS I TOLD YOU EARLIER, THAT'S NOT EVEN
7 SOMETHING YOU NEED TO CONSIDER BECAUSE THAT'S NOT AN
8 ELEMENT OF WHAT THE STATE HAS TO PROVE.

9 NOW, MR. DENNIS COMES INTO COURT TODAY INNOCENT. HE
10 DOESN'T HAVE TO PUT UP ANY EVIDENCE. HE DOESN'T HAVE TO
11 PROVE TO YOU THAT HE DIDN'T DO THIS. HE DOESN'T HAVE TO
12 PROVE ANYTHING TO YOU. THERE ARE SO MANY INSTANCES WHERE
13 SOMEONE CAN ACCUSE ANOTHER PERSON OF COMMITTING A CRIME
14 OR ANYTHING AND YOU CAN'T PROVE YOU DIDN'T DO IT. THERE
15 ARE SO MANY TIMES WHEN YOU KNOW YOU DIDN'T BUT YOU CAN'T
16 PROVE IT.

17 AND THAT'S WHY IN OUR SYSTEM OF JUSTICE THE STATE
18 HAS THE BURDEN OF PROOF. THE DEFENDANT GETS TO SIT HERE
19 SILENTLY, HE DOESN'T EVEN HAVE TO COME TO COURT FOR HIS
20 TRIAL, BECAUSE HE'S INNOCENT UNTIL THE STATE PROVES TO
21 YOU BEYOND A REASONABLE DOUBT THAT HE HAS COMMITTED THIS
22 CRIME AND THEY HAVE TO PROVE EACH AND EVERY ELEMENT OF
23 THAT CRIME IN ORDER FOR YOU TO FIND HIM GUILTY.

24 THE ONLY OTHER THING I WANT TO TELL YOU IS THAT ON
25 REASONABLE DOUBT. REASONABLE DOUBT IS WHEN YOU'RE NOT

1 SURE THAT A CRIME WAS COMMITTED. YOU'RE NOT SURE WHICH
2 CRIME WAS COMMITTED. YOU DON'T THINK THE STATE PUT FORTH
3 ENOUGH EVIDENCE ON EACH AND EVERY ONE OF THOSE ELEMENTS
4 AND YOU MIGHT BE MISSING A PIECE OF THAT PUZZLE. AND IT
5 DOESN'T MATTER IF IT'S A PIECE THIS BIG (DEMONSTRATING)
6 OR AN ITTY BITTY LITTLE PINPOINT PIECE. IF THERE IS A
7 PIECE THAT'S MISSING, THAT MAKES YOU WONDER WHICH CRIME
8 DID HE COMMIT, IF HE COMMITTED ONE AT ALL, THEN I WOULD
9 SUBMIT TO YOU THAT THAT'S ENOUGH DOUBT FOR YOU TO FIND
10 THE DEFENDANT NOT GUILTY.

11 THANK YOU FOR BEING HERE TODAY, THANK YOU FOR
12 LISTENING TO ALL THE EVIDENCE. THANK YOU.
13 THE COURT'S CHARGE TO THE JURY:

14 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
15 JURY, AS JURORS IN THIS CASE YOU HAVE CERTAIN FUNCTIONS
16 AND RESPONSIBILITIES TO PERFORM WHICH ARE ENTIRELY
17 SEPARATE AND DISTINCT FROM THOSE OF MINE AS THE TRIAL
18 JUDGE. I AM PROHIBITED BY THE CONSTITUTION OF OUR STATE
19 FROM CHARGING YOU ON THE FACTS OF THIS CASE. I AM ALSO
20 PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE WITH YOU
21 OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF ANY, ARE
22 ABOUT THE FACTS OF THE CASE. IT IS YOUR RESPONSIBILITY
23 AND YOURS ALONE TO PASS UPON ALL ISSUES OF FACTS
24 PRESENTED IN THE CASE.

25 I WOULD THEREFORE CHARGE YOU THAT IF DURING THE

1 COURSE OF THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN
2 GIVEN OR LEFT WITH THE IMPRESSION OR FEELING THAT I DO
3 HAVE A PERSONAL FEELING ABOUT THE FACTS IN THIS CASE, I
4 WOULD SPECIFICALLY INSTRUCT YOU TO DISREGARD THAT FEELING
5 OR IMPRESSION.

6 MOREOVER, YOU ARE THE SOLE JUDGES OF THE TESTIMONY
7 AND NOT THE ARGUMENT OF COUNSEL. IT IS ALSO YOUR DUTY
8 AND YOURS ALONE TO WEIGH THE TESTIMONY AND EVIDENCE IN
9 THE CASE AND TO PASS UPON THE CREDIBILITY OR
10 BELIEVABILITY OF THE WITNESSES.

11 IN THIS CONNECTION YOU HAVE THE RIGHT TO BELIEVE ALL
12 THAT A WITNESS TELLS YOU OR TO DISBELIEVE ALL THAT A
13 WITNESS TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE PART OF
14 WHAT A WITNESS TELLS YOU AND TO DISBELIEVE PART OF WHAT A
15 WITNESS TELLS YOU. YOU HAVE A RIGHT TO TAKE INTO
16 CONSIDERATION BIAS OR PREJUDICE OR INTEREST A WITNESS
17 MIGHT HAVE IN THE CASE.

18 I SAY THIS MERELY TO EMPHASIZE THAT THE WEIGHT YOU
19 SEE FIT TO GIVE TO THE TESTIMONY OR THE CREDIBILITY OF
20 THE WITNESSES, AS WELL AS ALL ISSUES OF FACT, ARE FOR
21 YOUR SOLE CONSIDERATION AND DETERMINATION. AS JUDGES OF
22 THE FACTS YOU ARE THE SOLE JUDGES OF THE CREDIBILITY,
23 THAT IS THE BELIEVABILITY OF THE WITNESSES WHO HAVE
24 TESTIFIED IN THIS CASE. IN PASSING UPON THEIR
25 CREDIBILITY YOU MAY TAKE INTO CONSIDERATION MANY THINGS,

1 SUCH AS THE APPEARANCE AND MANNER OF THE WITNESS ON THE
2 STAND, SOMETIMES REFERRED TO AS THE Demeanor OF THE
3 WITNESS. WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS
4 THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN
5 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO
6 KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE
7 WITNESS HAVE A CAUSE OR A REASON TO BE BIASED OR
8 PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE GAVE?

9 WAS THE TESTIMONY OF THE WITNESSES CORROBORATED OR
10 MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR MADE
11 WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND EVIDENCE?
12 AS JURORS YOU HAVE A RIGHT TO BELIEVE A SMALL PORTION OF
13 A WITNESS'S TESTIMONY AND DISCARD THE LARGER, OR VICE
14 VERSA. YOU HAVE THE RIGHT TO BELIEVE ALL OF A WITNESS'S
15 TESTIMONY OR NONE.

16 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE BUT ONE
17 SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH,
18 REGARDLESS OF FROM WHAT WITNESS THAT TESTIMONY MAY HAVE
19 COME.

20 NOW BY THE SAME CONSTITUTION AND LAW WHICH MAKES YOU
21 THE FINDERS OF THE FACTS IN EVIDENCE AS I DISCUSSED WITH
22 YOU, I AM AS THE JUDGE MADE THE SOLE AND ONLY INSTRUCTOR
23 OF THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I
24 CHARGE AND APPLY IT TO EVIDENCE AS YOU FIND IT AND REACH
25 YOUR VERDICT.

1 IF I SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT
2 IT TO YOU, THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN
3 BE CONSIDERED AND, IF NECESSARY, CORRECTED. BUT FOR THE
4 PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I
5 CHARGE IT TO YOU TO BE THE CORRECT LAW.

6 AND FINALLY I CHARGE YOU IN THIS REGARD. THAT YOU,
7 NOR FOR THAT MATTER I, SHOULD NOT BE CONCERNED WITH WHAT
8 THE LAW OUGHT TO BE BUT RATHER WHAT I CHARGE YOU THE LAW
9 TO BE.

10 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO THIS
11 INDICTMENT, AND THAT PLEA PUTS THE BURDEN UPON THE STATE
12 TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH
13 COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER
14 REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT
15 IS AN IMPORTANT RULE OF LAW THAT A DEFENDANT IN THE
16 CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE
17 CHARGE MAY BE, WILL ALWAYS BE PRESUMED INNOCENT OF THE
18 CRIME FOR WHICH THE INDICTMENT WAS ISSUED, UNLESS THAT
19 GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF GUILT
20 BEYOND A REASONABLE DOUBT.

21 THE PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
22 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE
23 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT
24 OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT
25 BEYOND A REASONABLE DOUBT.

1 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
2 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
3 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN
4 STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF
5 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

6 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY,
7 IT'S NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT
8 WHICH EVERY DEFENDANT IS ENTITLED TO UNLESS YOU, THE
9 JURY, ARE SATISFIED BY THE EVIDENCE OF THE DEFENDANT'S
10 GUILT BEYOND A REASONABLE DOUBT.

11 NOW I INSTRUCT YOU AND EMPHASIZE TO YOU THAT THE
12 FACT THE DEFENDANT DID NOT TESTIFY, PUT UP EVIDENCE OR
13 EVEN APPEAR ARE NOT FACTORS TO BE CONSIDERED BY YOU IN
14 ANY WAY DURING YOUR DELIBERATIONS AND IN YOUR
15 CONSIDERATIONS OF THE QUESTIONS OF WHETHER THE STATE HAS
16 PROVEN THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE
17 CHARGE IN THE INDICTMENT. IT MUST NOT BE CONSIDERED BY
18 YOU IN ANY MANNER WHATSOEVER. THE DEFENDANT HAS A
19 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION
20 OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR
21 DELIBERATIONS. THE DEFENDANT MAY ALSO WAIVE HIS RIGHT TO
22 BE PRESENT.

23 I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO
24 CONCLUSION WHATSOEVER FROM WHETHER OR NOT THE DEFENDANT
25 IN THIS CASE DID TESTIFY, PRESENT EVIDENCE OR ATTEND THE

1 TRIAL, WHEN THE DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN
2 BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I
3 HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS
4 NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF
5 REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE
6 DOUBT.

7 NOW, WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT
8 IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON
9 TO HESITATE TO ACT.

10 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
11 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
12 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS TESTIMONY OF
13 A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT
14 SUCH AS EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY
15 ESTABLISHES THE MAIN FACT TO BE PROVED.

16 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
17 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT
18 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL
19 FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

20 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
21 PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF THAT DOES
22 NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT ASSERTS
23 OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY REASONABLY
24 INFER THE TRUTH OR THE FACT OR AT LEAST REASONABLY INFER
25 AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE.

1 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT
2 THE FINDING OF A FACT, THE CIRCUMSTANCES MUST LEAD TO
3 THAT FACT WITH REASONABLE CERTAINTY. THE FACTS AND
4 CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY
5 EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF FACT
6 CANNOT BE BASED ON SPECULATION, SURMISE OR CONJECTURE.

7 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
8 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
9 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
10 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
11 DIRECT EVIDENCE.

12 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE.
13 AFTER WEIGHING ALL OF THE EVIDENCE IN THE CASE. IF YOU
14 ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
15 REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.
16 I CHARGE YOU THAT SUSPICION, HOWEVER STRONG, IS NOT
17 ENOUGH TO SUSTAIN A CONVICTION. THE EVIDENCE PRESENTED
18 BY THE STATE MUST BE SUBSTANTIAL EVIDENCE THAT TENDS TO
19 PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
20 DOUBT.

21 NOW CRIMINAL INTENT IS A STATE OF MIND THAT OPERATES
22 JOINTLY WITH AN ACT OR OMISSION IN THE COMMISSION OF A
23 CRIME. CRIMINAL INTENT IS A MENTAL STATE OF MIND.
24 CRIMINAL LIABILITY IS NORMALLY BASED ON THE CONCURRENCE
25 OF TWO FACTORS: AN EVIL-MEANING MIND AND AN EVIL-DOING

1 HAND. PROOF OF INTENT NECESSARILY RESTS ON INFERENCE
2 FROM CONDUCT.

3 IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL
4 INTENT IS REQUIRED. CRIMINAL INTENT MUST BE PROVEN BY
5 THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS
6 ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM
7 THE CIRCUMSTANCES SURROUNDING THE SITUATION.

8 THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
9 CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A
10 PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND.
11 SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM
12 THE CIRCUMSTANCES SHOWN TO HAVE EXISTED, AND THIS IS HOW
13 YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
14 REQUIRING INTENT WAS PRESENT.

15 IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT
16 AND POSITIVE EVIDENCE. BUT INTENT MAY BE ESTABLISHED BY
17 INFERENCE IN THE SAME WAY AS ANY OTHER FACT TAKEN INTO
18 CONSIDERATION, THE ACTS OF THE PARTIES AND ALL THE FACTS
19 AND CIRCUMSTANCES OF THE CASE.

20 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
21 WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE
22 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN
23 TO HAVE EXISTED.

24 IN INDICTMENT NUMBER 2008-GS-37-1590 THE DEFENDANT,
25 ADARIUS QUANTE DENNIS, IS CHARGED WITH ARMED ROBBERY

1 UNDER SOUTH CAROLINA CODE SECTION 16-11-330(A). I REMIND
2 YOU THAT THE FACT THAT THE DEFENDANT WAS ARRESTED,
3 CHARGED AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS
4 CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE. THE
5 INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH
6 CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. IT IS
7 THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO
8 COURT.

9 THE STATE HAS THE BURDEN OF PROOF AND MUST ESTABLISH
10 EACH ELEMENT OF THE CHARGED OFFENSE BEYOND A REASONABLE
11 DOUBT. YOU SHOULD ENTER YOUR VERDICT BASED ON WHETHER OR
12 NOT YOU ARE SATISFIED THE STATE HAS ESTABLISHED BEYOND A
13 REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIME CHARGED.

14 NOW, THE DEFENDANT IS CHARGED WITH ARMED ROBBERY.
15 IN ORDER TO PROVE THIS OFFENSE, THE STATE MUST FIRST
16 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK
17 PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER
18 PERSON. PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS
19 WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION OR
20 CONTROL SO THAT THE PERSON COULD, IF NOT OVERCOME WITH
21 VIOLENCE OR PREVENTED BY FEAR, KEEP POSSESSION OF THE
22 PROPERTY.

23 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT
24 THAT THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO
25 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP

1 THE PROPERTY FOR THE DEFENDANT'S OWN USE. THE SLIGHTEST
2 REMOVAL OF PROPERTY OR THE COMPLETE POSSESSION OF THE
3 PROPERTY, EVEN FOR AN INSTANT, BY THE DEFENDANT IS
4 SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF THE
5 PROPERTY. TAKING AND CARRYING AWAY OF THE PROPERTY MUST
6 HAVE BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF
7 THE PROPERTY IN FEAR OF VIOLENCE.

8 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
9 DOUBT THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON
10 DURING THE ROBBERY. A DEADLY WEAPON IS AN ARTICLE,
11 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR
12 GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED
13 AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES
14 OF EACH CASE.

15 NOW, IF THE CRIME IS COMMITTED BY TWO OR MORE PEOPLE
16 WHO ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF
17 ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER
18 TO ACCOMPLISH AN ILLEGAL PURPOSE IS CRIMINALLY
19 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH
20 OCCURS AS A NATURAL CONSEQUENCE OF THE ACTS DONE IN
21 CARRYING OUT THE COMMON PLAN OR PURPOSE.

22 WHEN TWO OR MORE PEOPLE TOGETHER, ACTING TOGETHER,
23 ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT
24 OF ONE IS THE ACT OF ALL, OR, AS IT IS SOMETIMES SAID,
25 THE HAND OF ONE IS THE HAND OF ALL. PRIOR KNOWLEDGE THAT

1 A CRIME IS GOING TO BE COMMITTED WITHOUT MORE IS NOT
2 SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE
3 KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME,
4 EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS
5 COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS
6 A PRINCIPAL. GUILTY AS A PRINCIPAL IS SHOWN BY ACTUAL OR
7 CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR
8 ARRANGEMENT.

9 THEREFORE, A FINDING OF A PRIOR ARRANGEMENT, PLAN OR
10 COMMON SCHEME ARE NECESSARY FOR A FINDING OF GUILT AS A
11 PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE
12 DOUBT BY COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE
13 IS THE HAND OF ALL. THE PRINCIPAL IN A CRIME IS ONE WHO
14 EITHER ACTUALLY COMMITS OR WHO IS PRESENT AIDING,
15 ABETTING OR ASSISTING IN COMMITTING THE CRIME. WHEN A
16 PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE
17 ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. WHEN TWO
18 OR MORE ACTING WITH A COMMON PLAN OR INTENT ARE PRESENT
19 AT THE COMMISSION OF THE CRIME, IT DOES NOT MATTER WHO
20 ACTUALLY COMMITS THE CRIME. THE HAND OF ONE IS THE HAND
21 OF ALL.

22 PRESENT DURING THE COMMISSION OF A CRIME MEANS TO BE
23 SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE
24 COMMISSION OF THE CRIME. HOWEVER, MERE PRESENCE AT THE
25 SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A

1 PRINCIPAL IN THE THEORY OF AIDING AND ABETTING.

2 INTENT IS ALSO A NECESSARY ELEMENT. THERE MUST HAVE
3 BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND
4 THE CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH
5 A PERSON AIDING OR ABETTING BY SOME OTHER OVERT ACT.
6 INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS
7 NOT ACCIDENTALLY OR INVOLUNTARILY.

8 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
9 DEFENDANT AND THE OTHER CIRCUMSTANCES FROM WHICH YOU MAY
10 NATURALLY AND REASONABLY INFER INTENT, THE STATE MUST
11 PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

12 NOW, UNDER SOUTH CAROLINA LAW WE HAVE A PRINCIPLE
13 KNOWN AS LESSER-INCLUDED OFFENSES. IN SOME CRIMES THERE
14 ARE LESSER INCLUDED CRIMES WHICH ARE OF A GREATER
15 OFFENSE. IN THIS CASE THE OFFENSE OF ARMED ROBBERY ALSO
16 INCLUDES A LESSER OFFENSE OF ROBBERY. ADDITIONALLY, THE
17 OFFENSE OF ROBBERY ALSO INCLUDES THE LESSER OFFENSE OF
18 LARCENY.

19 INCLUDED WITHIN THE OFFENSE OF ARMED ROBBERY IS THE
20 LESSER OFFENSE OF ROBBERY -- EXCUSE ME -- INCLUDED WITHIN
21 THE OFFENSE OF ARMED ROBBERY IS THE LESSER OFFENSE OF
22 ROBBERY. IF YOU FIND THE STATE HAS FAILED TO PROVE THAT
23 THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON, YOU MAY
24 THEN CONSIDER WHETHER THE STATE HAS PROVED BEYOND A
25 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED ROBBERY.

1 IN ORDER TO PROVE ROBBERY THE STATE MUST PROVE BEYOND A
2 REASONABLE DOUBT ALL THE ELEMENTS JUST EXPLAINED EXCEPT
3 THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON.

4 IF YOU AS JURORS HAVE A REASONABLE DOUBT AS TO
5 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF AND SHOWN
6 ALL THE ELEMENTS OF THE CRIME OF ARMED ROBBERY, YOU WOULD
7 THEN CONSIDER THE LESSER-INCLUDED OFFENSE OF ROBBERY.
8 THEN SHOULD YOU HAVE REASONABLE DOUBT AS TO WHETHER THE
9 STATE HAS MET ITS BURDEN OF PROOF AND SHOWN ALL THE
10 ELEMENTS OF ROBBERY, YOU WOULD THEN CONSIDER THE
11 LESSER-INCLUDED OFFENSE OF LARCENY.

12 IF YOU HAVE A REASONABLE DOUBT AS TO WHEN THE STATE
13 HAS MET ITS BURDEN OF PROOF AND SHOWN ALL THE ELEMENTS OF
14 LARCENY, YOU WOULD FIND THE DEFENDANT NOT GUILTY.

15 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, YOU
16 HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS SWORN TO
17 IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE, AND
18 WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL
19 HAVE THE RIGHT TO CRITICIZE YOUR VERDICT AND YOU WILL
20 HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU SHOULD
21 NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS,
22 IF ANY, WHICH YOU HEARD ON THE OUTSIDE, BUT YOU ARE TO
23 DECIDE THIS CASE UPON YOUR TESTIMONY THAT YOU HAVE HEARD
24 FROM THE LIPS OF THE SWORN WITNESSES ALONG WITH THE OTHER
25 EVIDENCE THAT MAY HAVE BEEN INTRODUCED.

1 AS I SAID EARLIER, YOU ARE THE JUDGE OF THE FACTS OF
2 THIS CASE AND YOU ARE TO DETERMINE ONLY IF THIS DEFENDANT
3 IS GUILTY OR NOT GUILTY BASED ON THE TESTIMONY AND
4 EVIDENCE PRESENTED IN THE TRIAL AND AFTER APPLYING THE
5 LAW AS I HAVE GIVEN IT TO YOU.

6 IF FROM THE EVIDENCE YOU HAVE A REASONABLE DOUBT AS
7 TO WHETHER OR NOT THE DEFENDANT IS GUILTY, IT IS YOUR
8 DUTY TO ACQUIT HIM AND WRITE THE TWO WORDS "NOT GUILTY".
9 UNDER THE OATH YOU TOOK YOU SWORE TO TRY THE CASE BASED
10 ONLY AND SOLELY ON THE TESTIMONY AND EVIDENCE AND THE LAW
11 PRESENTED AND HEARD IN THIS COURTROOM. IT IS YOUR DUTY
12 TO LAY ASIDE ALL BIAS, PREJUDICE OR SYMPATHY YOU HAVE IN
13 REACHING YOUR VERDICT. YOU HAVE NO FRIENDS TO REWARD OR
14 ENEMIES TO PUNISH IN THIS CASE.

15 I MIGHT NOTE THAT THE WORD "VERDICT" COMES FROM THE
16 LATIN TERM "VEREDICTO" WHICH MEANS TO SPEAK THE TRUTH.
17 ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH SPEAKS THE
18 TRUTH.

19 WHATEVER VERDICT YOU REACH, MR. FOREMAN AND LADIES
20 AND GENTLEMEN OF THE JURY, MUST BE UNANIMOUS, WHICH MEANS
21 ALL 12 MEMBERS OF THE JURY MUST AGREE TO THAT VERDICT.
22 AS I MENTIONED, THIS IS A CASE IN WHICH THERE ARE FOUR
23 POSSIBLE ~~VERDICTS~~. OF COURSE, THE BURDEN OF PROOF IS ON
24 THE STATE TO PROVE THE GUILT OF THE DEFENDANT AS TO ANY
25 OF THOSE OFFENSES BEYOND A REASONABLE DOUBT, AND IF YOU

1 FAIL IN ANY OF THE PROOF AS TO EACH OF THOSE OFFENSES,
2 THEN, OF COURSE, THE VERDICT MUST BE NOT GUILTY.

3 IN ORDER FOR, TO ASSIST YOU IN YOUR DELIBERATIONS
4 I'VE PREPARED A VERDICT FORM. IF YOU WILL NOTE, IT SAYS
5 INDICTMENT NUMBER 2008-GS-37-1590. WE, THE JURY,
6 UNANIMOUSLY FIND THAT THE DEFENDANT, ADARIUS QUANTE
7 DENNIS, IS -- NOW, HE'S CHARGED WITH ARMED ROBBERY SO THE
8 FIRST VERDICT IS GUILTY OF ARMED ROBBERY.

9 OR IF YOU FIND THE PROOF IS NOT BEYOND A REASONABLE
10 DOUBT AS TO THE CHARGE, IT WOULD BE THE LESSER-INCLUDED
11 OFFENSE OF ROBBERY.

12 OR IF YOU FIND THEY HAVE NOT ESTABLISHED ALL OF THE
13 ELEMENTS IN THE CHARGE OF ROBBERY, THEN GUILTY OF
14 LARCENY.

15 AND IF YOU FIND THAT ALL THE ELEMENTS OF ANY OF
16 THOSE OFFENSES HAVE NOT BEEN COMPLETELY CHARGED AND
17 PROVEN BEYOND A REASONABLE DOUBT, THEN THE VERDICT WOULD
18 BE NOT GUILTY. AGAIN, WHATEVER VERDICT YOU REACH IT MUST
19 BE UNANIMOUS.

20 AND MR. FOREMAN, IF YOU WOULD, AFTER CHECKING THE
21 UNANIMOUS VERDICT OF THE JURY, SIGN YOUR NAME AND DATE,
22 AND THEN KNOCK ON THE DOOR AND WE'LL RECEIVE THE VERDICT.
23 NOW, I'M GOING TO ASK YOU TO RETURN THE VERDICT FORM TO
24 ME AND ALSO RETIRE TO THE JURY ROOM ONE MORE TIME, BUT DO
25 NOT BEGIN YOUR DELIBERATIONS UNTIL I SEND IN THE VERDICT

1 FORM TOGETHER WITH ALL THE EXHIBITS. ONCE YOU RECEIVE
2 THAT FROM THE BAILIFF, YOU'LL START YOUR DELIBERATIONS,
3 AND AS I SAY, ONCE YOU REACH A VERDICT KNOCK ON THE DOOR.
4 THE JURY MAY RETIRE TO THE JURY ROOM.

5 MADAM ALTERNATE, I'M GOING TO ASK YOU TO STAY WITH
6 US IF YOU WOULD, PLEASE.

7 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
8 4:05 P.M.)

9 THE COURT: ARE THERE ANY EXCEPTIONS TO THE CHARGE
10 OR ADDITIONAL REQUESTS TO CHARGE FROM THE STATE?

11 MR. WAGNER: NO, YOUR HONOR.

12 THE COURT: FROM THE DEFENDANT?

13 MS. EARLE: NO, YOUR HONOR.

14 THE COURT: VERY GOOD. IF YOU WOULD PLEASE CHECK
15 THE EXHIBITS AND BE SURE THAT EVERYTHING GOES BACK THAT'S
16 SUPPOSED TO AND NOTHING THAT'S NOT.

17 (DISCUSSION OFF THE RECORD.)

18 THE COURT: ALL RIGHT. JUST TELL THEM TO BEGIN
19 THEIR DELIBERATIONS.

20 (JURY DELIBERATIONS STARTED AT APPROXIMATELY
21 4:06 P.M.)

22 (COURT CONFERRED WITH ALTERNATE OFF RECORD,
23 AFTER WHICH THE ALTERNATE WAS EXCUSED.)

24 THE COURT: ALL RIGHT, LADY AND GENTLEMAN, IT'S IN
25 THE JURY'S HANDS. I DO WANT TO THANK YOU FOR A VERY

1 WELL-TRIED CASE. ALL CASES ARE UNIQUE AND CHALLENGES
2 SEEM TO DEVELOP AS WE GO ALONG. BUT I DO WANT TO THANK
3 YOU. YOU HAVE BEEN VERY PROFESSIONAL IN THE WAY YOU HAVE
4 REPRESENTED YOUR PARTIES.

5 ALL RIGHT. WITH THAT WE WILL AWAIT THE JURY'S
6 VERDICT. STAND AT EASE.

7 (THE JURY DELIBERATED FROM APPROXIMATELY 4:10
8 P.M. UNTIL THERE WAS A QUESTION FROM THE JURY
9 AT APPROXIMATELY 5:41 P.M.)

10 **THE COURT:** I HAVE TWO NOTES. THE FIRST ONE IS IN
11 RESPONSE TO A QUESTION I ASKED THE CLERK TO POSE TO THE
12 JURY AS TO WHETHER THEY WANT TO CONTINUE TO DELIBERATE
13 TONIGHT OR COME BACK IN THE MORNING, AND THEY APPARENTLY
14 TOOK A VOTE, AND THEY VOTED TO COME BACK TOMORROW, AND
15 IT'S SIGNED BY THE FOREMAN.

16 AND ALSO I HAVE A SECOND NOTE: YOUR HONOR, THE JURY
17 WANTS TO KNOW IF WE COULD BE REMINDED OF TESTIMONY OF
18 MR. MANLEY.

19 SO, MADAM COURT REPORTER, IF WE COULD MAYBE BEFORE
20 IN THE MORNING GET THAT UP. WOULD THAT BE POSSIBLE?

21 **COURT REPORTER:** IT SHOULD BE.

22 **THE COURT:** WE'LL TELL THEM WE'LL DO OUR BEST.

23 (DISCUSSION OFF THE RECORD.)

24 **THE COURT:** SO UNLESS THERE'S ANOTHER SUGGESTION OR
25 OBJECTION, I'M GOING TO PERMIT THE JURY TO GO HOME AND

1 COME BACK I'M GOING TO SUGGEST AT 10:00 IN THE MORNING
2 AND CONTINUE DELIBERATING THEN, AND WE'LL TRY TO HAVE THE
3 TESTIMONY AVAILABLE.

4 ALL RIGHT. ANYTHING FROM THE STATE?

5 MR. WAGNER: NO, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MS. EARLE: NO, YOUR HONOR.

8 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

9 (THE JURY ENTERED THE COURTROOM AT
10 APPROXIMATELY 5:43 P.M.)

11 THE COURT: MR. FOREMAN, I UNDERSTAND THAT THE JURY
12 HAS DECIDED TO GO HOME TONIGHT AND COME BACK IN THE
13 MORNING AND CONTINUE DELIBERATIONS AT THAT TIME.

14 ALSO, I HAVE THE MESSAGE THAT -- WELL, I HAVE THE
15 FIRST ONE THAT "WE WILL COME BACK TOMORROW."

16 AND THEN I HAVE THE REQUEST, JURY WANTS TO KNOW IF
17 WE COULD BE REMINDED OF THE TESTIMONY OF MR. MANLEY.
18 OVER THE EVENING AND IN THE MORNING WE'LL TRY TO GET THE
19 TESTIMONY UP FOR YOU SO IT WILL BE REPLAYED TO YOU AT
20 THAT TIME.

21 WITH THAT I'M GOING TO EXCUSE YOU FOR THE EVENING.
22 AND DO REMEMBER THAT NO TESTIMONY OR ANYTHING ELSE CAN BE
23 ADDED TO THIS CASE, SO PLEASE DO NOT WATCH THE NEWS, IF
24 IT'S SOMETHING -- I HAVEN'T SEEN ANY PRESS REALLY -- BUT
25 IF YOU SEE SOMETHING COMING UP, JUST TURN AWAY, GO AWAY;

1 THE RADIO THE SAME THING, AND ALSO THE NEWSPAPER. DO NOT
2 READ ANYTHING ABOUT THIS CASE BECAUSE YOU NEED TO DECIDE
3 IT ON WHAT YOU KNOW AT THIS TIME.

4 ALL RIGHT. WITH THAT I'M GOING TO EXCUSE YOU UNTIL
5 LET'S SAY 10:00 IN THE MORNING BECAUSE I WANT TO BE SURE
6 WE HAVE TIME TO SEE IF WE CAN'T GET THE TESTIMONY UP THAT
7 YOU WANT REPLAYED.

8 WITH THAT, I'LL SEE YOU IN THE MORNING AND HAVE A
9 GOOD EVENING.

10 EVERYBODY ELSE REMAIN SEATED WHILE THE JURY RETIRES
11 FROM THE COURTROOM.

12 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
13 APPROXIMATELY 5:45 P.M.)

14 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

15 MR. WAGNER: NO, YOUR HONOR.

16 THE COURT: DEFENSE?

17 MS. EARLE: NO, YOUR HONOR.

18 THE COURT: A LITTLE BEFORE 10 SO IF WE HAVE
19 ANYTHING TO COME UP. I HOPE WE DON'T.

20 (COURT ADJOURNED AT 6:00 P.M., TO RESUME THE
21 TRIAL AT APPROXIMATELY 10:00 A.M. ON JUNE
22 24TH, 2009.)

23

24

25

1 ***** STATE V DENNIS -- DAY 3 -- 6/24/2009 *****

2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
3 STATE OF SOUTH CAROLINA VERSUS ADARIUS QUANTE
4 DENNIS RESUMED ON JUNE 24, 2009 AT
5 APPROXIMATELY 10:10 A.M.)

6 **THE COURT:** ALL RIGHT. WE'RE BACK ON THE CASE OF
7 THE STATE OF SOUTH CAROLINA VERSUS ADARIUS QUANTE DENNIS,
8 2008-GS-37-1590. MR. WAGNER IS ON BEHALF OF THE STATE
9 AND MS. EARLE IS ON BEHALF OF THE DEFENDANT.

10 MS. EARLE, IS THE DEFENDANT PRESENT?

11 **MS. EARLE:** NO, YOUR HONOR.

12 **THE COURT:** WE COMMENCED THE TRIAL IN HIS ABSENCE
13 AND WENT TO THE JURY YESTERDAY AFTERNOON. AND WE RECEDED
14 FOR THE EVENING AT APPROXIMATELY 6:00 AND THEY DID HAVE
15 ONE REQUEST FOR THE REPLAYING OF THE TESTIMONY OF
16 MR. MANLEY; IS THAT RIGHT? ALL RIGHT. AND AS I
17 UNDERSTAND IT, THE COURT REPORTER HAS CUED UP THE
18 TESTIMONY.

19 IS THERE ANYTHING FROM THE STATE BEFORE I BRING THE
20 JURY BACK TO LISTEN TO THE TESTIMONY, THEN TO RECONVENE?

21 **MR. WAGNER:** NO, YOUR HONOR.

22 **THE COURT:** ANYTHING FROM THE DEFENDANT?

23 **MS. EARLE:** THE ONLY THING THAT I WOULD REQUEST IS
24 THAT THEY HEAR THE ENTIRE TESTIMONY INSTEAD OF JUST THE
25 DIRECT.

1 **THE COURT:** THEY'RE GONNA HEAR THE WHOLE THING, I
2 THINK.

3 VERY WELL. ANY OBJECTION TO THAT?

4 **MR. WAGNER:** NO, SIR.

5 **THE COURT:** ALL RIGHT. VERY GOOD. NOW, OF COURSE
6 IF THEY HEAR ENOUGH AND THEY TELL ME THAT'S ALL THEY WANT
7 TO HEAR, THAT WILL BE IT. I UNDERSTAND IT'S NOT THAT
8 LONG. VERY GOOD. ASK THE JURY TO JOIN US, PLEASE.

9 (THAT JURY ENTERED THE COURTROOM AT
10 APPROXIMATELY 10:12 A.M.)

11 **THE COURT:** LET THE RECORD REFLECT THAT THE JURY IS
12 IN THE JURY-BOX.

13 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
14 YESTERDAY YOU REQUESTED THE REPLAYING OF MR. MANLEY'S
15 TESTIMONY; IS THAT CORRECT?

16 **THE FOREMAN:** THAT'S CORRECT.

17 **THE COURT:** WE CUED IT UP. BUT THIS WILL BE A
18 REPLAY OF THE TAPE RECORDING OF HIS TESTIMONY, AND IF YOU
19 CAN HEAR IT OR YOU WANT TO STOP IT, MAYBE MAKE IT MORE
20 AUDIBLE, LET ME KNOW.

21 MADAM COURT REPORTER, IF YOU WOULD PLEASE PLAY THE
22 TESTIMONY.

23 (THAT FIRST PART OF THE TESTIMONY OF DIVERIO
24 MANLEY WAS PLAYED FOR THE JURY BY THE COURT
25 REPORTER.)

1 **THE COURT:** YES, SIR.

2 **A JUROR:** I'M SORRY, BUT RIGHT AT THE BEGINNING OF
3 THE TAPE, RIGHT AFTER THE SOLICITOR HERE ASKED THE
4 DEFENDANT HIS NAME AND HE WAS IN PRISON AND ALL THAT, HE
5 ASKED A QUESTION ABOUT HOW THEY PLANNED TO CARRY OUT THE
6 ROBBERY. JUST THAT ONE LITTLE PART IS A QUESTION OF
7 EXACTLY WHAT WAS SAID. LET'S REWIND THE TAPE AND WHEN
8 YOU HEARD ALL YOU NEED TO HEAR, IF YOU WILL RAISE YOUR
9 HAND.

10 **A JUROR:** YES, SIR.

11 **A JUROR:** (RAISED HAND.)

12 **THE COURT:** WAS THAT IT?

13 **A JUROR:** (NODDED HEAD.)

14 **THE COURT:** VERY WELL. MR. FOREMAN, LADIES AND
15 GENTLEMEN OF THE JURY, IF YOU WOULD RETIRE TO THE JURY
16 ROOM AND RECONVENE YOUR DELIBERATIONS.

17 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
18 FROM THE COURTROOM.

19 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
20 10:33 A.M.)

21 **THE COURT:** ALL RIGHT. ANYTHING FROM THE STATE?

22 **MR. WAGNER:** NO, JUDGE.

23 **THE COURT:** ANYTHING FROM THE DEFENDANT?

24 **MS. EARLE:** NO, YOUR HONOR.

25 **THE COURT:** WE'LL STAND AT EASE UNTIL THE JURY

1 NOTIFIES US.

2 (THE JURY DELIBERATED FURTHER FROM
3 APPROXIMATELY 10:30 A.M. UNTIL APPROXIMATELY
4 10:33 P.M., WHEN THE JURY REACHED A VERDICT.)

5 THE COURT: I UNDERSTAND THE JURY HAS REACHED A
6 VERDICT. ANYTHING FROM THE STATE BEFORE I BRING THE JURY
7 BACK?

8 MR. WAGNER: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENDANT?

10 MS. EARLE: NO, YOUR HONOR.

11 THE COURT: LET THE RECORD SHOW THAT THE DEFENDANT
12 IS NOT PRESENT STILL BUT A BENCH WARRANT HAS BEEN ISSUED.

13 VERY WELL. ASK THE JURY TO JOIN US, PLEASE.

14 (THE JURY ENTERED THE COURTROOM AT
15 APPROXIMATELY 10:46 A.M.)

16 THE JURY'S VERDICT:

17 THE COURT: LET THE RECORD REFLECT THE JURY IS IN
18 THE JURY-BOX.

19 MR. FOREMAN, I UNDERSTAND YOU HAVE REACHED A
20 VERDICT?

21 THE FOREMAN: YES, WE HAVE, YOUR HONOR.

22 THE COURT: PLEASE HAND IT UP TO THE BAILIFF.

23 MADAM CLERK, PUBLISH THE VERDICT.

24 THE CLERK: INDICTMENT NUMBER 2008-GS-37-1590, THE
25 STATE OF SOUTH CAROLINA VERSUS ADARIUS QUANTE DENNIS, WE,

1 THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT,
2 MR. ADARIUS QUANTE DENNIS, IS GUILTY OF ARMED ROBBERY.

3 LADIES AND GENTLEMEN OF THE JURY, IF THIS WAS YOUR
4 VERDICT AND IS STILL YOUR VERDICT, PLEASE SIGNIFY BY
5 RAISING YOUR RIGHT HAND.

6 THE RECORD WILL SHOW THAT ALL 12 JURORS RAISED THEIR
7 HAND.

8 **THE COURT:** THANK YOU VERY MUCH. IS THERE ANYTHING
9 FROM THE STATE BEFORE I DISMISS THE JURY?

10 **MR. WAGNER:** NOTHING, YOUR HONOR.

11 **THE COURT:** FROM THE DEFENDANT?

12 **MS. EARLE:** NO, YOUR HONOR.

13 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
14 JURY, THE COURT IS NEVER INTERESTED IN A VERDICT, ONLY
15 HOW THAT VERDICT IS REACHED. AND I CAN ASSURE YOU,
16 ALTHOUGH I LOOK LIKE I AM DOING EVERYTHING ELSE BUT
17 PAYING ATTENTION, I AM TRYING TO KEEP IN TOUCH TO WHAT IS
18 HAPPENING IN THE COURTROOM WITH WHAT WAS HAPPENING DURING
19 THE PROGRESS OF THE TRIAL. AND I CAN ASSURE YOU THAT IN
20 THIS PARTICULAR CASE YOU PAID VERY CAREFUL AND CLOSE
21 ATTENTION TO ALL THE TESTIMONY AND EVIDENCE.

22 AGAIN, IT WAS NOT A USUAL SORT OF CASE, IN OTHER
23 WORDS, THAT THE DEFENDANT EXERCISED HIS RIGHTS NOT TO BE
24 HERE, BUT WE CONTINUED WITH THE TRIAL AS WE WERE REQUIRED
25 TO DO.

1 ALSO, I WILL SENTENCE THE DEFENDANT IN HIS ABSENCE.
2 IN OTHER WORDS, IT WILL NOT BE PUBLISHED UNTIL HE'S
3 ARRESTED AND A BENCH WARRANT WAS ISSUED TUESDAY MORNING
4 WHEN HE DID NOT APPEAR.

5 BUT I DO WANT TO THANK YOU. I KNOW YOU ALL HAD
6 SOMETHING ELSE YOU WOULD RATHER DO THAN BEING WHERE
7 YOU'VE BEEN THE LAST TWO DAYS -- OR THREE DAYS NOW. BUT
8 I DO WANT TO THANK YOU BECAUSE IF WE DID NOT HAVE CITIZEN
9 PARTICIPATION OUR JUDICIAL SYSTEM, OUR SYSTEM OF JUSTICE
10 WOULD NOT WORK, AND I THANK YOU FOR THAT.

11 I MIGHT NOTE WINSTON CHURCHILL IN THE LAST CENTURY
12 ONCE SAID THAT NO GREATER SERVICE CAN A CITIZEN PERFORM
13 IN PEACETIME THAN THAT AS A JUROR BECAUSE OUR WHOLE LEGAL
14 SYSTEM, OUR SYSTEM OF JUSTICE DEPENDS ON CITIZEN
15 PARTICIPATION. OCONEE COUNTY AND SOUTH CAROLINA, OUR
16 JUDICIAL SYSTEM IS IN YOUR DEBT.

17 NOW, I WISH I COULD DO SOMETHING FOR YOU. THIS IS
18 THE CASE THAT WAS GOING TO BE TRIED THIS WEEK, SO THIS
19 WILL COMPLETE YOUR SERVICE AND YOU WILL BE EXCUSED FOR
20 THE BALANCE OF THE DAY AND BALANCE OF THE WEEK. AS I
21 SAY, I WISH THERE WAS SOMETHING I COULD DO FOR YOU. BUT
22 IF YOU REMEMBER ON MONDAY WHEN I QUALIFIED THE ENTIRE
23 JURY PANEL, I ASKED IF ANY MEMBER OF THE PANEL HAD SERVED
24 IN THE LAST THREE YEARS. AT LEAST YOU WON'T HAVE TO
25 SERVE FOR ANOTHER THREE YEARS. BUT I DO HOPE THAT YOUR

1 SERVICE HAS BEEN OF SOME BENEFIT TO YOU AND I THANK YOU
2 FOR IT.

3 SO WITH THAT, I EXCUSE YOU AND I WANT YOU TO HAVE A
4 VERY WONDERFUL SUMMER AND ENJOY. IT LOOKS LIKE IT WILL
5 BE WARM, THOUGH. VERY GOOD. THANK YOU VERY MUCH AND YOU
6 ARE EXCUSED AND I DO APPRECIATE YOUR SERVICE.

7 THE CLERK: JUDGE?

8 THE COURT: YES, MA'AM.

9 OH, WAIT A MINUTE. DOCTOR, I NEED TO SEE YOU FOR A
10 MOMENT. I NEED YOU TO CONFORM THE VERDICT. ACTUALLY,
11 JUST WRITE "GUILTY" WHERE YOU FOUND GUILTY ON THE
12 INDICTMENT. SIGN YOUR NAME, DATE.

13 ALL RIGHT. DO WE HAVE A SENTENCING SHEET?

14 MR. WAGNER: YES, SIR.

15 THE COURT: MS. EARLE, IF YOU WOULD SIGN THE
16 SENTENCING SHEET.

17 ALL RIGHT. OBVIOUSLY I WILL ENTER A SENTENCE ON THE
18 INDICTMENT. BUT, HOWEVER, I WOULD LIKE TO HEAR FROM THE
19 STATE AS FAR AS ANYTHING THEY MIGHT OFFER. I
20 PARTICULARLY WANT TO KNOW IF THERE IS ANY PRIOR RECORD.

21 MR. WAGNER: YOUR HONOR, THE DEFENDANT HAD A PRIOR
22 RECORD. HE WAS CONVICTED BACK IN 2005 FOR A CARRYING A
23 PISTOL UNDER THE AGE OF 21 AND POSSESSION OF ICE, CRACK
24 OR CRACK COCAINE. HE WAS ALSO CONVICTED -- APPARENTLY HE
25 WAS REVOKED ON PROBATION ON THAT FROM LOOKING AT HIS RAP

1 SHEET. I CAN'T TELL IF HE GOT REVOKED, BUT HE WAS ON
2 PROBATION, AT LEAST FOR THAT.

3 HE'S GOT PUBLIC DISORDERLY CONDUCT IN 2006, CRIMINAL
4 DOMESTIC VIOLENCE IN 2006. DRIVING UNDER SUSPENSION IN
5 2008, AND FAILURE TO STOP FOR A BLUE LIGHT IN 2007. AND
6 THESE ARE NOT CONVICTIONS, BUT HE CURRENTLY HAS OTHER
7 DRUG CHARGES PENDING IN OUR OFFICE.

8 **THE COURT:** MS. EARLE, IS THERE ANYTHING THAT YOU
9 WOULD LIKE TO SAY ON BEHALF OF THE DEFENDANT?

10 **MS. EARLE:** YES, YOUR HONOR. HE WAS NOT REVOKED ON
11 HIS PROBATION. HE SUCCESSFULLY COMPLETED HIS PROBATION
12 IS MY UNDERSTANDING FROM MR. DENNIS.

13 MR. DENNIS DOES WORK, HE'S GOT A FOUR-YEAR-OLD
14 CHILD, YOUR HONOR. AND I KNOW HE DIDN'T SHOW FOR COURT.
15 IN TALKING WITH HIM I ALSO UNDERSTAND HE DIDN'T COME
16 BECAUSE HE WAS SCARED. AND HIS CODEFENDANT WHO IS THE
17 ONE WHO ACTUALLY HAD THE GUN AND WHO WAS THE ONE WHO BEAT
18 THE VICTIM IN THIS CASE RECEIVED A TEN-YEAR SENTENCE ON
19 THIS AND I WOULD JUST ASK YOUR HONOR TO CONSIDER THE
20 MINIMUM SENTENCE ON THE ARMED ROBBERY FOR MY CLIENT.

21 **THE COURT:** ALL RIGHT. AS I UNDERSTAND THE MAXIMUM
22 SENTENCE IS 30 YEARS, MINIMUM TEN, MAXIMUM 30.

23 **MR. WAGNER:** YES, SIR.

24 **THE COURT:** AND IT IS VIOLENT, MOST SERIOUS, NO
25 SUSPENSION, NO PAROLE, NO Y.O.A.

1 ALL RIGHT. ANYTHING ELSE?

2 MR. WAGNER: NO, SIR, YOUR HONOR, OTHER THAN I DON'T
3 THINK IT'S FAIR TO COMPARE ONE TO THE OTHER NECESSARILY
4 IN THIS CASE. I THINK THIS GUY WAS INVOLVED WITH IT JUST
5 AS MUCH AS THE OTHER, AND THE OTHER GUY AT LEAST TO HIS
6 CREDIT COOPERATED WITH THE POLICE AND CAME TO COURT AND
7 TOLD THE TRUTH AND HE TRIED TO HELP OUT. THIS DEFENDANT
8 DID NOT.

9 THE COURT: I UNDERSTAND. THE COURT NEVER CONSIDERS
10 WHETHER OR NOT AN INDIVIDUAL EXERCISED HIS RIGHTS, TO
11 INCLUDE THE RIGHT NOT EVEN, TO WAIVE THE RIGHT TO BE
12 PRESENT AT TRIAL. BUT THE COURT DOES HAVE TO CONSIDER A
13 PRIOR RECORD AND THOSE THINGS THAT REFLECT THE
14 SERIOUSNESS OF THE OFFENSE. ALL RIGHT.

15 MR. WAGNER: YOUR HONOR, I PUT RESTITUTION ON THERE.
16 I FORGOT TO MENTION THAT. THE SHOES WERE NEVER
17 RECOVERED.

18 THE COURT: I HAVE \$3,742?

19 MR. WAGNER: YES, SIR.

20 THE COURT: ALL RIGHT.

21 (THE SENTENCE OF THE COURT WAS PLACED IN A
22 SEALED ENVELOPE AND THE TRIAL IN THE MATTER
23 OF THE STATE OF SOUTH CAROLINA VERSUS ADARIUS
24 DENNIS WAS CONCLUDED AT 11:10 P.M.)

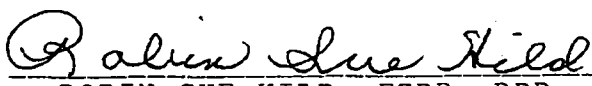
25 ***** END OF REQUESTED TRANSCRIPT *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL,
IN THE COURT OF GENERAL SESSIONS FOR OCONEE COUNTY, SOUTH
CAROLINA, ON THE 22ND, 23RD, AND 24TH DAY OF JUNE 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 9, 2009


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH
CAROLINA

) IN THE COURT OF GENERAL
) SESSIONS

COUNTY OF OCONEE

INDICTMENT NO:
2008-GS-37-1590

STATE OF SOUTH
CAROLINA

PLAINTIFF,

) TRANSCRIPT OF RECORD
) UNSEALING OF SENTENCE

-VS-

ADARIUS QUANTE
DENNIS,

DEFENDANT.

AUGUST 31, 2009
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES WILLIAMS, JUDGE

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

DAVID R. WAGNER, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

SUZANNE EARLE, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

INDEX

WITNESSES

PAGE

NO WITNESSES WERE CALLED.

EXHIBITS

NO EXHIBITS WERE INTRODUCED.

CERTIFICATE OF COURT REPORTER

5

1 ***** START OF REQUESTED TRANSCRIPT *****

2 MR. WAGNER: ADARIUS DENNIS WAS HERE IN JUNE 22ND O
3 234D FOR IS TRIAL ON JUNE 22ND OR 23RD. HE SHOWED UP FO
4 JURY SELECTION AND THEN FAILED TO SHOW BACK UP FOR HIS
5 TRIAL. AT THAT FIRST TRIAL JUDGE MACAULAY SENTENCED HIM
6 IN HIS ABSENCE, AND HE JUST NEEDS TO HAVE HIS SENTENCE
7 OPENED AND SENTENCED.

8 THE COURT: ALL RIGHT. AND YOU ARE MR. DENNIS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: AND YOUR NAME, PLEASE?

11 MS. EARLE: SUZANNE EARLE.

12 THE COURT: YOU REPRESENT MR. DENNIS?

13 MS. EARLE: I DO, YOUR HONOR.

14 THE COURT: ON THE FRONT SIDE IT SAYS.

15 2008-GS-37-1590, STATE VERSUS DENNIS, SEALED SENTENCE,
16 AND ON THE REVERSE WRITTEN OVER THE FLAP IS ALEX
17 MACAULAY, JUNE 24TH, 2009, AND NOTHING HAS BEEN TAMPERED
18 WITH SINCE IT WAS SEALED AND SIGNED BY JUDGE MACAULAY..
19 SO I WILL NOW OPEN THAT ENVELOPE.

20 I HAVE A SENTENCE SHEET OCONEE, STATE OF SOUTH
21 CAROLINA VERSUS MR. ADARIUS QUANTE DENNIS, INDICTMENT
22 NUMBER 2008-GS-37-1590, SENTENCING SHEET FOR THE
23 DEFENDANT WHO WAS CONVICTED OF ARMED ROBBERY.

24 THE SENTENCE IS THE DEFENDANT IS COMMITTED TO THE
25 STATE DEPARTMENT OF CORRECTIONS FOR A DETERMINANT TERM OI

1 23 YEARS, GIVE HIM CREDIT FOR TIME SERVED PURSUANT TO
2 CODE 24-13-40. ORDERED TO PAY RESTITUTION IN THE AMOUNT
3 OF \$3,742 TO MR. ROBINSON, AND SIGNED BY THE HONORABLE
4 JUDGE MACAULAY DATED APRIL THE 24TH, 2009.

5 MS. EARLE: THANK YOU, YOUR HONOR.

6 THE COURT: ALL RIGHT, SIR. THE SENTENCE OF THE
7 COURT SENTENCED BY JUDGE MACAULAY.

8 MR. WAGNER: THANK YOU, JUDGE.

9 THE DEFENDANT: YOUR HONOR?

10 THE COURT: YES, SIR.

11 THE DEFENDANT: MAY I -- CAN YOU SAY THAT AGAIN?

12 THE COURT: 23 YEARS.

13 THE DEFENDANT: CAN I, CAN I TALK WITH MY GIRLFRIEN
14 FIRST, PLEASE?

15 THE COURT: NO. THAT'S UP TO THE LAW ENFORCEMENT.
16 Y'ALL COULD GIVE HIM A MINUTE WITH HER, THAT WOULD BE
17 NICE, BUT THAT'S UP TO YOU ALL.

18 THE SHERIFF'S DEPUTY: WHERE'S SHE AT?

19 (SHERIFF'S DEPUTY MOTIONS TO THE DEFENDANT'S
20 GIRLFRIEND AND THE DEFENDANT AND HIS
21 GIRLFRIEND CONFERRED, AFTER WHICH THE
22 DEFENDANT WAS ESCORTED FROM THE COURTROOM.
23 THE HEARING WAS CONCLUDED AT 12:03 P.M.)

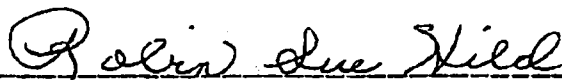
24 ***** END OF REQUESTED TRANSCRIPT *****
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT O
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCE
IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL
IN THE COURT OF GENERAL SESSIONS FOR OCONEE COUNTY, SOUT
CAROLINA, ON THE 31ST DAY OF AUGUST, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSE
NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 10, 2009



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Oconee)ADARIUS QUANTE DENNIS, #336620)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
2012 CP 37-76APPLICATION FOR
POST-CONVICTION RELIEFFILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 27 P 12:50INSTRUCTIONS - 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 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Walhalla Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Diverio Manley and Delaney Manley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2008-GS-37-1590 Armed Robbery

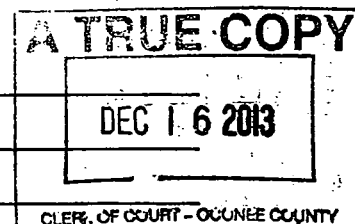
(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 31, 2009 23 years of confinement

(b) _____



Revised 3/2003

ENTERED
[Signature]
CLERK

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty * * * _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Appellate Counsel
- (b) Ineffective Assistance of Trial Counsel
- (c) Lack of Authority to Adjudicate Case

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment
- (b) " "
- (c) " "

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (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 "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) This is the first Application/Petition that has been filed
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Suzanne Earle, Esq.
" " "
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Suzanne Earle, Esq.
" " "
- ii. _____
- iii. Elizabeth A. Franklin-Best
- (b) the proceedings at which each such attorney represented you:
- i. trial
- ii. sentencing
- iii. Direct Appeal
19. State clearly the relief you seek in filing this application:
Vacate Judgment
20. Are you now under sentence from any other court that you have not challenged?
N/A

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

2012-CP-37-76

I, , 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.

Charles Gennin

SWORN to and subscribed before me this 12th
day of January, 2012

Stuart T. Melanichy (L.S.)
Notary Public

My Commission Expires: November 7, 2016

FILED OCOBEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 27 P 12:51

ENTERED
file
2 R

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2012.CP.37.76

I, _____, 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.

Charles Dennis

Applicant

SWORN or affirmed to and subscribed before me this

19th day of January, 2012.

Sam T. Munday
Notary Public

Notary Public

My Commission Expires: November 7, 2016

FILED DONNILE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 JAN 27 P 12:51

ENTERED

- 10) Ineffective Assistance of Appellate Counsel
- 11) Fail to raise an non-frivolous issue over an frivolous issue

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucy, 105 S.Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thriff v. State, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jone v. Barnes, 463 U.S. 745 (1983). When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644 (7th Cir. 1986). Generally, the presumption of effective assistance of appellate counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Where result of appeal would have been different had counsel not been deficient, the appropriate remedy is to grant a new trial. Ezell v. State, 548 S.E.2d 852 (2001).

DISCUSSION

In keeping with the mandate of the decisions quoted above, we are forced to examine the issue at hand. On appeal counsel argued "that the trial judge abused his discretion at sentencing" because Applicant received more time than his co-defendant.

First, this issue was not preserved for appellate review. Secondly, the length of a prison sentence rests in the sound discretion of the trial court, which is guarded by the statutory limitations that has been placed on each crime committed.

Appellate Counsel should have presented the objections made concerning the photographs of the victim after the crime happened. The foundation was laid in pretrial motions concerning these photographs inflaming the passions of the jury.

When these photographs are viewed in light of common sense, it will be seen that they were only presented to appeal to the passion of the jury, in which having them presented to the jury did prejudice the outcome of the trial. Moreover, these prejudicial photographs presented to the jury were improper because they injected an arbitrary factor into the jury's deliberation. The danger is that a juror might be persuaded to rely on irrelevant evidence instead of exercising his/her independent judgment as to the facts. 75 Am. Jur. 2d, Trial, Section 261, p. 338. State v. Smart, 299 S.E.2d 626 (1982). A solicitor's arguments and the evidence they present must be carefully tailored so as not to appeal to the personal bias of the jury, nor be calculated to arouse the jurors' passion or prejudices. Humphries v. State, 570 S.E.2d 140 (2002). Therefore, concerning the admissibility of evidence, the Court must always determine if the probative value of the evidence outweighs its prejudicial effect.

Furthermore, the Solicitor Mr. Wagner has agreed to the fact that these "photographs prejudicial and all the evidence that he intended to present to the jury was prejudicial to the defendant." Thus, if this issue had been presented to the Court of Appeals it would have entitled Applicant to relief as a fair trial. Tr. pg. 40 lines 13-19.

(B)

10) Ineffective Assistance of Counsel

11) Counsel fail to object to the co-defendant testimony being part of the record.

INEFFECTIVE ASSISTANCE OF COUNSEL

Where ineffective assistance of counsel is alleged as a ground for relief in a PCR Action, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

(2)

relied on as having produced a just result." Strickland v. Washington, 104 S.Ct. 2052 (1984); Sanchez v. State, 569 S.E.2d 363 (2000).

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." The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 386 S.E.2d 624 (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, the attorney's performance is measured by its "reasonableness under prevailing professional norms." Cherry, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 4180 S.E.2d 733 (1997).

Thus, after a careful consideration of the issue at hand, this Court will conclude the Applicant received ineffective assistance of counsel and it prejudiced the outcome of the trial.

DISCUSSION

Here, the crime was alleged to have been committed by Applicant and two other individuals. However, one of Applicant's alleged co-defendants had pled to this armed robbery and had been sent to prison, but returned to testify on the Applicant. First, it is well-established law in South Carolina that a convicted and sentenced co-defendant cannot testify at a trial against his co-defendants. State v. Wright, 237 S.E.2d 764 (1977); Taylor v. State, 188 S.E.2d 850 (1972); and

State v. Lewis, 179 S.E.2d 606 (1971), counsel failed to object to this testimony being part of the record or failed to move to suppress this testimony. This, conduct cannot be said to be a professional norm for an attorney. Secondly, this testimony prejudiced the outcome of this trial because there was not any evidence presented to support the crime charged against Applicant. Blakely v. State, 602 S.E.2d 758 (2004). Tr. pg. 128 lines 15-21.

Moreover, the solicitor made it clear that this testimony was used to show that Applicant allegedly helped plan this crime: Tr. pg. 164 lines 13-21.

Therefore, if this testimony was not necessary to scheme to obtain an conviction, then it would not have been used in violation of clear law.

(C)

10) Lack of Authority to adjudicate this case

11) Indictment(s) returned by an grand jury that was not properly convened under the law

LACK OF AUTHORITY TO ADJUDICATE THIS CASE

A defendant has a constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment. State v. Means, 436 S.E.2d 348 (2006). The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, to apprise him of the elements offense to allow him to decide whether to plead guilty or stand trial, to enable the Circuit Court to know what judgment to pronounce if the defendant is convicted, and it is also the charging document of the State. State v. Tumbleston, 454 S.E.2d 849 (2007). Therefore, if in fact this indictment was not returned by an grand jury that was not properly convened under the law of this State there has never been a crime charged by the State, which fail to confer the authority upon the trial

(4)

Court to adjudicate this case.

The South Carolina Constitution provides the Circuit Court with general jurisdiction over all civil and criminal cases that are not in the jurisdiction of the Magistrate Court. See S.C. Const. Article VII. But, this jurisdiction can only be exercised in criminal cases through the process of an presentment to the grand jury or a valid waiver thereof through the means of a legally convened grand jury. State v. McClure, 289 S.E.2d 158 (1982), also S.C. Code Ann. § 17-19-10. The General Assembly has enacted statutes that governs the indictment procedure, which is as follows:

S.C. Code Ann. § 14-9-170, mandates as follows:

... the grand jury as drawn in accordance with law for service upon the Court of General Sessions in each of the counties shall constitute the grand jury for the County Court and shall meet with the County Court at each of its terms...

S.C. Code Ann. § 14-9-210, mandates in relevant part:

... the County Solicitor shall prepare and, through the presiding Judge of the Court of General Sessions, submit to the grand jury, while in attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court, when such cases have not been previously acted on by the grand jury...

It is clear by utilizing the literal construction of § 14-9-210 and reviewing the Court Term Calendar for the County of Oconee for the month of October of 2008, we find that the Court of General Sessions did not convene on October 20, 2008, as indicated on Applicant's indictment in Oconee County. Thus, this indictment was returned by a grand jury that was not legally in session pursuant to § 14-9-210 and it operates as a fraud, which fail to confer authority to the trial Court.

Furthermore, it has been held that "the paper purporting to be an indictment", indorsed as a true bill by a foreman of the grand jury, and delivered by him alone when Court was not in session, was not an indictment. Reniger v. U.S., 172 F. 646 (1909). As stated by the trial judge "the indictment in a case is not evidence; it is simply the written instrument that contains the charge or charges against the defendant and it serves as the formal document by which this case is processed into court." Therefore, this Court has never been presented a charge to be convicted of.

These issues presented have been presented in detail for the State who is represented by the Attorney General Office to be rebutted point for point in its answer/return and if it fail or otherwise refuse to rebut each issue point for point in its return shall constitute an agreement of the issue standing as truth in the public record. Motors Ins. Corp. v. State By and Through Dept. of Highways and Public Transp., 437 S.E.2d 555 (1993). Also if the Court issue an order concerning this case without including a rebuttal concerning each issue presented shall constitute the acceptance as the issue being true and that Applicant is entitled to the relief of the judgment being vacated.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Adarius Quante Dennis,)
 S.C.D.C. No. 336620,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-37-0076

RETURN

In response to the post-conviction relief application filed January 21, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Oconee County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2008 term of the Oconee County Grand Jury for armed robbery (2008-GS-37-1590). Suzanne Earle, Esquire represented the Applicant.

The State took the case to trial, and on June 24, 2009 the Applicant was found guilty in absentia. On August 31, 2009, the Honorable James Williams unsealed the sentence. The Honorable Alexander S. Macauley sentenced the Applicant to twenty three (23) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Adarius Quante Dennis, Op. No. 2011-UP-352 (S.C. Ct. App. filed June 29, 2011). The Remittitur was

sent on July 20, 2011.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Applicant contends that counsel should have objected to the admission of testimony from Applicant's codefendant, who had already pled and been sentenced.
2. Ineffective assistance of appellate counsel.
 - a. Applicant contends appellate counsel erred by arguing the trial judge abused his discretion at sentencing. Applicant contends appellate counsel should have instead argued that the probative value of photographs shown to the jury during the State's closing argument was outweighed by their prejudicial effect.
3. "Lack of authority to adjudicate this case."
 - a. Applicant contends that the Oconee County Grand Jury did not actually convene on October 20, 2008, as is stated on the face of the indictment.

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 criminal 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.

Respondent submits that the allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel.

However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

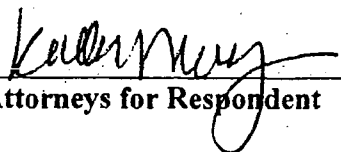
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 22, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
	)	
	)	2012-CP-37-0076
	)	
ADARIUS QUANTE DENNIS, #336620	)	
	)	
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:

Keith G. Denny, Esquire
P.O. Box 490
Walhalla, SC 29691

DATED this 22nd Day of May, 2012.


 Lena Pelishenko, Legal Assistant
 For Respondent

State of South Carolina

County of Oconee

In the Court of Common Pleas

Adarius Dennis,

Applicant,

-vs-

State of South Carolina,

Respondent.

2012-CP-37-0076

February 25, 2013

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Keith G. Denny, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Assistant Attorney General
Attorney for the State

Renee H. Tollison
Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:35 a.m.)

4 MR. WHITMIRE: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. WHITMIRE: Your Honor, the State now calls
7 Adarius Dennis v. State, case number 2012-CP-37-76. Mr.
8 Dennis is incarcerated in the South Carolina Department
9 of Corrections pursuant to Oconee County Clerk of Court
10 commitment orders.

11 Mr. Dennis was indicted in the October 2008 term of
12 the Oconee County Grand Jury for armed robbery. Ms.
13 Earle represented Mr. Dennis. The State took the case to
14 trial on June 24th, 2009, and Mr. Dennis was found guilty
15 by trial in absentia.

16 The Honorable Judge Williams unsealed the sentence.
17 Judge Macaulay presided over the trial. Judge Macaulay
18 sentenced the Applicant to twenty-three years
19 imprisonment. Notice of appeal was filed in the South
20 Carolina Court of Appeals. That was with Franklyn Bass
21 that perfected the appeal. The Court issued its decision
22 filed on June 29th, 2011, affirming his conviction and
23 issuing a remittur.

24 Mr. Dennis filed his application for post-conviction
25 relief on January the 21st of 2012. Respondent filed its

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1 return on May, I believe, 15th of 2012. Mr. Dennis is
2 present and represented by Mr. Denny.

3 At this time, I turn matters over to Mr. Denny.

4 THE COURT: All right.

5 Yes, sir?

6 MR. DENNY: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 MR. DENNY: Your Honor, at this time, I'd like
10 to call Mr. Adarius Dennis to the stand.

11 THE COURT: All right. Mr. Dennis, if you'd
12 come around and be sworn.

13 (WHEREUPON, the witness was duly sworn.)

14 THE COURT: Mr. Dennis, if you would when you
15 get around, get comfortable and then give the court
16 reporter your full name and spell your name, if you don't
17 mind.

18 THE WITNESS: Adarius Dennis, D-E-N-N-I-S.

19 MR. DENNY: Your Honor, may I approach the
20 witness and put the microphone down a little bit?

21 THE COURT: Yeah. Yeah, pull it down. We've
22 got to all hear you.

23 MR. DENNIS: If you would, scoot up a little
24 bit.

25 ADARIUS DENNIS,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. DENNY:

4 Q. Mr. Dennis, were you represented by Ms. Suzanne
5 Earle in 2009?

6 A. Yes, sir.

7 Q. Okay. Now, was she appointed, or did you retain Ms.
8 Earle?

9 A. She was appointed.

10 Q. Okay.. Did you meet with Ms. Earle in preparation
11 for your case?

12 A. Yes, sir. I met with her twice, one time here at
13 the courthouse in the back room. The second time we had
14 picked the jury.

15 Q. Okay. When were you appointed representation by Ms.
16 Earle?

17 A. I had got the arrest warrant on July the 16th. And
18 I think it was in that month.

19 Q. July 16th of what year?

20 A. '08.

21 Q. And when you -- so you filed an application of
22 indigency and you asked for appointed counsel; is that
23 correct?

24 A. Yes, sir.

25 Q. And Ms. Earle was appointed to represent you; is

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6

1 that correct?

2 A. Yes, sir.

3 Q. Okay. And did you receive an introduction letter
4 from Ms. Earle?

5 A. Yes, sir.

6 Q. And did that introduction letter set up a time for
7 you to meet with Ms. Earle?

8 A. At the time, I was in the County on bond. And she
9 came one time.

10 Q. She came and met you down at the Oconee Detention
11 Center?

12 A. Yes, sir.

13 Q. Okay. And about how long did you meet with Ms.
14 Earle?

15 A. Well, I had bonded out. I was on roll call. So
16 roll call took about ten, eleven months, because I went
17 ---

18 Q. I'm sorry, Mr. Dennis. Maybe I was unclear. The
19 first time that Ms. Earle came to the detention center
20 and met with you, how long was your meeting there at the
21 detention center?

22 A. It was real brief.

23 Q. Can you ---

24 A. Right about maybe fifteen minutes, maybe twenty at
25 the max.

1 Q And that was the first time that you met with her?

2 A. Yes, sir.

3 Q. Did she have any information about your case at that
4 point in time?

5 A. No, sir.

6 Q. Okay. So it was just more of an introduction
7 meeting; is that correct?

8 A. Yes, sir.

9 Q. All right. Had she filed for discovery to your
10 knowledge?

11 A. No, sir, not to my knowledge I don't know about.

12 Q. You don't know if she did or didn't. But did she
13 have discovery with her at that point in time on your
14 case, specific to your case?

15 A. No, sir.

16 Q. Okay. Then you indicated you bonded out; is that
17 correct?

18 A. Yes, sir.

19 Q. And when you were out on bond, did you meet with Ms.
20 Earle?

21 A. I met with her twice.

22 Q. Okay. So when you're out on bond, you met with her
23 twice?

24 A. Yes.

25 Q. So from the time you got out of the detention

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1 center, that first meeting, how much time transpired
2 before, approximately, until you had that second meeting
3 with Ms. Earle?

4 A. Now, the first meeting was ten or eleven months when
5 I was on roll call. The first meeting was here at the
6 courthouse in the back room. And the second meeting I
7 had with her when we had went and picked the jury trial.
8 But the whole time I was in roll call, me and her never
9 had a group meeting, never discussed nothing.

10 Q. So is it your testimony that ten or eleven months
11 transpired from that first meeting before you met with
12 Ms. Earle a second time?

13 A. Yes, sir.

14 Q. And that second meeting happened here at the
15 courthouse. And how long was that meeting?

16 A. Probably about twenty minutes. I mean, she was real
17 brief. She really wasn't talking, really wasn't helpful.
18 I mean, I was at a loss. I was really on my own not
19 knowing which way to go, but I didn't want to represent
20 myself.

21 Q. Okay. Did you ask Ms. Earle if she had the
22 discovery in this case?

23 A. I was given my discovery then.

24 Q. At that second meeting?

25 A. Yeah -- no, the first meeting when we met here at

1 the courthouse in the back room. The second time we met
2 was when we was at the courthouse picking the jury for
3 the trial.

4 Q. Okay. Mr. Dennis, maybe I'm confused. And I
5 apologize if I'm confusing things. My understanding is
6 that there were three meetings with Ms. Earle, the first
7 at the detention center, one here at the courthouse, and
8 one prior to the picking of the jury. That's what I'm
9 referring to as three meetings; is that correct?

10 A. Yes, sir.

11 Q. All right. So at the second meeting here at the
12 courthouse, about ten months after you had your first
13 meeting at the detention center, at that second meeting,
14 did Ms. Earle give you the discovery?

15 A. Yes, sir.

16 Q. Okay. Did she sit down, spend time with you and go
17 through all the discovery?

18 A. No, sir.

19 Q. Did you have questions about it?

20 A. I mean, I asked all type of questions. Do I have a
21 fair shot of beating it? What's going on? Who the
22 witnesses? What am I to do? What is your position?
23 What you going to do? She explained nothing. Like I
24 said, I was on my own.

25 Q. Did you ever -- so these were verbal questions that

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1 you asked her. Did you ever write her any letters, any
2 correspondence?

3 A. No, sir.

4 Q. Was anyone with you whenever you were meeting with
5 Ms. Earle?

6 A. Yes, my old lady was with me, but she didn't let her
7 come in the back room with us. She made her wait out
8 front.

9 Q. I apologize. I'm about to sneeze.

10 Just for the record, you referred to someone that
11 was with you. Do you have a full name, please?

12 A. Yes. Shannon Phillips.

13 Q. All right. And so she accompanied you with these
14 meeting and then y'all would leave together?

15 A. Yes, sir.

16 Q. Now, when you met with Ms. Earle the second time,
17 did she ever offer or talk to you about any kind of pleas
18 that were available or about what your prospects were if
19 you went to trial?

20 A. Yes, sir. They had came to me with a ten-year non-
21 violent. But at the time, I didn't know what a ten-year
22 non-violent was. And I asked her, what is it. She was
23 like, ten years. So I was like, no, I'm not taking no
24 ten years when I ain't had nothing to do with it. You
25 understand? So she was like, well, what do you want to

1 do? I was like, well, you're my attorney. What am I to
2 do? I said, I don't want no ten years. But if I would
3 have -- now that I know that ten years non-violent -- you
4 really go do like four and a half and you home. If I
5 would have known that, then I mean, I would have took it.

6 Q. Did you ask Ms. Earle what the difference between --
7 why it's the term non-violent versus violent? Did you
8 ask her any of those questions?

9 A. I mean, I asked the question. I asked the question,
10 but she was no help. She really didn't really want to
11 explain nothing.

12 Q. Okay. Now, for the time -- and again, that was your
13 second meeting. The first was at the detention area and
14 the second ten months later at the courthouse in a back
15 room for about twenty minutes. Now, your third meeting
16 with her, when was that?

17 A. Picking the jury trial.

18 Q. Picking a jury trial? Now, how much time transpired
19 between your second meeting and the third meeting when
20 you were picking a jury?

21 A. Probably a week and a half, maybe two.

22 Q. So for a week and a half to two weeks prior to going
23 to trial to pick a jury, did you receive any phone calls
24 from Ms. Earle?

25 A. None whatsoever.

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- 1 Q. Did you call Ms. Earle?
- 2 A. No, sir, because she told me she was going to get in
3 contact with me.
- 4 Q. So she told you that she would be contacting you?
- 5 A. Yes.
- 6 Q. Okay. And she didn't?
- 7 A. No, sir.
- 8 Q. The morning or the day that she picked a jury, did
9 she talk about a plea again?
- 10 A. No, sir. I never heard of it again.
- 11 Q. So it was just that one time in that second meeting
12 and there was an offer for ten non-violent. There was no
13 -- was a time frame ever explained to you about when you
14 had to make a decision?
- 15 A. No, sir. I was in the blind about everything.
- 16 Q. So did she ever ask you, do you need any more time
17 to think about this or she took your response as, no, I
18 ain't doing it and that was it?
- 19 A. No, sir. It was basically straight to the top and
20 no stopping.
- 21 Q. Now, Mr. Dennis, let me ask you some questions here.
22 And I don't mean this in any way whatsoever to be
23 embarrassing. What's your educational background?
- 24 A. Well, I was kicked out of school, but then I attend
25 alternative school. I went and -- I attend college. I

1 got my diploma online. I attend Benedict College. But
2 after that, I was not in school. But since I been in
3 prison, I have got my GED, and I got it with me today
4 that I wanted to prove to the Judge about.

5 Q. Okay. This is a copy of the GED that you have
6 received?

7 A. Yes, sir, it is. That's the copy, but I got the
8 original copy in my property. And I sent the real one
9 home to my mother.

10 MR. WHITMIRE: Your Honor, may I beg the
11 Court's indulgence for one moment, please?

12 THE COURT: Yes, sir.

13 MR. DENNY: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, sir.

16 Q. Mr. Dennis?

17 A. Yes, sir.

18 Q. Can you please identify for me what this is?

19 A. South Carolina High School Equivalent Diploma that I
20 received on December 2nd, 2010, at Perry Correctional
21 Institution.

22 Q. Now, is that the actual diploma or is that a copy?

23 A. This is the copy.

24 Q. Now, is that an accurate reflection as to the
25 diploma that you received?

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1 A. Yes, sir. The score sheet is behind this on the
2 table.

3 Q. All right.

4 MR. DENNY: Your Honor, at this time, I would
5 like to move as Plaintiff's Exhibit 1 Mr. Dennis' High
6 School Equivalency Diploma.

7 MR. WHITMIRE: No objection, Your Honor.

8 THE COURT: All right. Without objection.

9 (WHEREUPON, Plaintiff's Exhibit Number 1 was marked
10 and admitted into evidence.)

11 A. The reason being because it was on my sentencing
12 sheet to obtain my GED.

13 Q. Yes, sir. Now, coming back to Ms. Earle, you are
14 here today because you have filed a post-conviction
15 relief application; correct?

16 A. Yes, sir.

17 Q. And in that you are -- do you believe that you had a
18 fair representation for your charge?

19 A. No, sir, I don't feel like it was fair.

20 Q. Okay. Now, at that time when Ms. Earle was
21 representing you, did you have all of your questions
22 answered before you went to pick a jury?

23 A. No, sir.

24 Q. Now, when you met with Ms. Earle the third time and
25 you were picking the jury, did you have any questions for

1 her about what the process was at that point?

2 A. I mean, I asked her what was going on, what was our
3 next step. She was like, well, we're going in here.
4 We're going to pick a jury for your trial, and then we'll
5 see what happens.

6 Q. Did you ask her about if the plea was still
7 available?

8 A. No, sir, because I really thought it was off the
9 table because I only heard it once and never heard it
10 again.

11 Q. So you only heard about one offer and you weren't
12 given a time frame at all?

13 A. No, sir.

14 Q. Okay. Now, Mr. Dennis, I'm going to have to ask you
15 tough questions here. Now, you attended the trial and a
16 jury was selected, correct?

17 A. Yes, sir.

18 Q. But now, did you attend the rest of the trial?

19 A. No, sir.

20 Q. Now, why did you not attend the rest of the trial?

21 A. I mean, to be honest, because I panicked. I had a
22 four-year-old daughter. I didn't know which way to go.
23 My lawyer wasn't talking good for me. I didn't know what
24 the outcome was going to be. I mean, really, I can't sit
25 up here and make up a story why I didn't show up for

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1 court. The only thing I can do is just tell the truth.

2 I panicked. I was scared.

3 Q. I understand. And I appreciate that. I did not ask
4 you to make up a story. So you panicked?

5 A. Yes, sir.

6 Q. Now, prior to that point in time, your education,
7 was it limited? I mean, you got your GED while you've
8 been at Perry Correctional Institute, correct?

9 A. Yes, sir.

10 Q. Now, prior to that, prior to your trial, what would
11 you say -- what was the highest level of school you
12 completed?

13 A. Ten.

14 Q. Okay. So you didn't have any formal background or
15 any kind of legal training or any kind of legal
16 knowledge; is that correct?

17 A. (No verbal response)

18 Q. I mean, did you have any kind of formal legal
19 training?

20 A. Legal training of what?

21 Q. Legal. I mean legal, understanding the process of
22 the courts, understanding how trials work, how pleas
23 work, how to represent yourself?

24 A. Oh, no, sir. I've been very ignorant to the law.

25 Q. Okay. And you were reliant upon Ms. Earle to

1 represent you with her knowledge and experience; is that
2 correct?

3 A. Yes, sir.

4 Q. Okay. Now, coming back to the actual trial, once
5 the jury was selected, you did not attend the trial with
6 Ms. Earle?

7 a. No, sir.

8 Q. And it's your testimony you panicked?

9 A. Yes, sir. But I spoke with her on the day of the
10 trial. Well, I spoke with her. She asked me what was
11 going on? I told her I was scared. I don't know what to
12 do. What should I do? She was like, Mr. Dennis, I don't
13 know. I can't tell you what to do. So at that moment, I
14 mean, it was just ---

15 Q. She didn't tell you to get there, to be there?

16 A. No. She asked me was I coming. I told her I don't
17 want -- I don't know what to do. Basically, I'm letting
18 her know I don't want to go through with this trial. But
19 after being incarcerated, I find out that I could have
20 stopped the trial and went back to the original plea that
21 was offered first. But I knew nothing of this. I asked
22 her, what am I to do? What should I do? And she didn't
23 explain nothing. So I was scared.

24 Q. Did you ask Ms. Earle to see if she could continue
25 or postpone the trial?

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1 A. No, sir, I knew nothing about a continuance or
2 postpone the trial.

3 Q. But would you have expected her to go forward
4 without you being present?

5 A. I mean, I didn't know what to expect.

6 Q. Now, in the three times that you met with Ms. Earle,
7 did you ever ask Ms. Earle to call any witnesses? When I
8 say call witnesses, I mean investigate, talk to witnesses
9 and possibly have them attend the trial on your behalf?

10 A. Well, she came to me with it. I didn't come to her
11 with it. Because the second time that we met, when we
12 met here at the courthouse in the back room, she had told
13 me that Devario Manley was going to testify on my behalf.
14 Do I want him to come testify on my behalf? I said, yes,
15 if he come back to tell the truth. And she was like,
16 yeah. So okay, I agree. But then when the trial
17 happened, I was reading my transcript, the State called
18 him as a key witness, and the rest is history.

19 Q. All right. Was there anyone else -- so Ms. Earle
20 asked about calling your co-defendant. Was there anyone
21 else that Ms. Earle suggested calling as a witness that
22 you had agreed to or wanted to be called?

23 A. No, sir.

24 Q. All right. Now, in your P.C.R. application, it is
25 identified that at the day of trial that some pictures

1 were brought forward by the Solicitor's office they
2 wanted to introduce. Are you aware of these pictures?

3 A. No, sir.

4 Q. Okay. And you had -- you just testified that
5 basically the second meeting, Ms. Earle had given you the
6 discovery that she had received?

7 A. Yes, sir.

8 Q. And were those pictures in that discovery?

9 A. Not the pictures that was presented at the trial,
10 no, sir.

11 Q. Okay. Now, did you ever have any subsequent
12 conversation with Ms. Earle about why those pictures were
13 allowed into the trial or allowed to be used against you?

14 A. No, sir. When I finally got to Perry Correctional
15 Institution, I wrote her a letter asking her for a
16 complete file of my motion of discovery. And she sent me
17 a letter back, which I got on the table there. I was
18 given the complete file of my case.

19 Q. And did Ms. Earle file an appeal on your case?

20 A. Yes, sir.

21 Q. And was that appeal taken up by the South Carolina
22 Appellate Defense?

23 A. Yes, sir. I was represented by Elizabeth Best.

24 Q. Okay. And Ms. Best, did she appeal all the issues
25 that Ms. Earle had identified or objected to?

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1 A. No, sir, she didn't appeal not one. She raised the
2 issue that the Judge abused his discretion in giving me
3 more time than my co-defendant, which is not true because
4 I was sentenced within the statutory limits that are
5 guarded by limitations of each crime committed.

6 Q. But was the appealable issue that you wanted brought
7 before the Court of the Appeals?

8 A. Due to the inflammatory nature of the pictures and
9 due to the fact that I was never armed.

10 Q. Now, the pictures, did they surprise Ms. Earle, to
11 your knowledge, when they were brought at the day of
12 trial when they wanted to introduce those?

13 A. Surprised? I wouldn't say surprised.

14 Q. Well, did Ms. Earle know about them?

15 A. I mean, I can't say that she did; I can't say that
16 she didn't.

17 Q. But they weren't in your discovery, correct?

18 A. No, sir.

19 Q. And you expected -- and basically you expected to
20 have anything in your discovery they were going to use at
21 trial, correct?

22 A. Yes, sir.

23 Q. And Ms. Earle, the letter she sent you as well as
24 what she sent down to the South Carolina Appellate
25 Defense, Office of Indigent Defense, Appellate Defense

1 Division, basically she identified that she moved to
2 suppress and exclude these photos because they were
3 sprung upon her at the trial; is that not correct?

4 A. Yes, sir.

5 Q. All right. And do you believe that those pictures
6 unduly prejudiced your trial?

7 A. Oh, very much so.

8 Q. And do you believe it was right for the Court to
9 allow them in at the last moment?

10 A. No, sir, I don't think it was right at all.

11 Q. Okay. And so you wanted your appeal to include
12 basically that the introduction of that evidence that was
13 out -- that had previously been requested through the
14 Brady motion Ms. Earle had filed, and it was not
15 provided, correct?

16 A. Yes, sir.

17 Q. Okay. Now, did you ever hear from Ms. Best? Did
18 she ever contact you?

19 A. Yeah. She sent me a letter which is on the table in
20 that file that I want to give to the Judge. The appeal
21 that she filed on my behalf and the appeal that the State
22 filed on their behalf.

23 Q. Now, Ms. Best, did she ever talk to you? Did she
24 ever come meet with you? Did she ever have any
25 discussions with you?

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1 A. We spoke on the phone. Well, we spoke on the phone
2 quite frequently because that's the only way we could
3 talk because she had sent a letter saying that they can't
4 travel due to the gas, fuel or whatnot. But we spoke on
5 the phone quite a few times. And she explained to me
6 like in the letter that it's up to her to raise any issue
7 that she want to raise that she think that has merits.
8 But she raised an issue that had no merit because it
9 wasn't preserved for appellate court.

10 Q. And did you explain to her that the pictures that
11 you felt -- that the pictures were inflammatory and that
12 -- you know, what -- tell me about the pictures. Were
13 you aware of the pictures?

14 A. No, sir, I wasn't aware of the pictures.

15 Q. But after the fact, did you become aware of the
16 pictures?

17 A. Yeah, I heard about them.

18 Q. And what was it that you heard about these pictures?

19 A. I mean, about the crime scene. I mean, just
20 basically pictures of the crime scene after it happened.

21 Q. Okay.

22 A. And bloody -- I mean, it was just bloody pictures.

23 Q. So I mean, they were colored bloody pictures that
24 Ms. Earle had not been provided prior to the start of the
25 trial that are now going to be introduced to the jury; is

1 that correct?

2 A. I mean, Your Honor, I don't want to tell a lie and
3 say that they was colorful because I don't know. I never
4 seen them. That's something you have to ask Ms. Earle.
5 But to my understanding, I think they was because I think
6 they were very graphic because she did not want them to
7 get shown to the jury due to the bodies of the other
8 pictures.

9 Q. Now, you discussed having Devario Manley called as a
10 possible witness in this case?

11 A. Yes, sir.

12 Q. And he was called as actually a State's witness.
13 Was there anyone else that you wanted called as a witness
14 on your behalf that Ms. Earle did not follow up with,
15 contact, or call out?

16 A. I mean, no, sir, nobody else.

17 Q. But there again, from the time that you first met
18 Ms. Earle to the time you're sitting there picking a
19 jury, how much time would you estimate that you spent
20 actually discussing your case with Ms. Earle?

21 A. Oh, if I had to put it all together, I'd say maybe
22 forty-five minutes or an hour.

23 Q. So you had roughly forty-five minutes to an hour
24 prep time before you're sitting there picking a jury with
25 your appointed counsel?

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1 A. No. I thought you was talking about both meetings
2 we had?

3 Q. Together. Yeah, I wanted to know how much time
4 total that you had before you were sitting in the seat
5 getting ready to pick a jury you had talked with your
6 counsel?

7 A. Well, before we went to trial, right about -- well,
8 it wasn't no time. I showed up to the courthouse. I met
9 with Ms. Earle. She told me we was going in to pick a
10 jury, and we walked right in. So basically maybe five,
11 seven minutes. I mean, she wasn't helpful.

12 Q. Okay. So I mean, is it safe to say that you had
13 less than an hour or less than an hour and a half of face
14 time with Ms. Earle from the time you met her at the
15 detention center until you were sitting at the table
16 picking a jury?

17 A. Yeah, I'd say that. Probably about an hour in all
18 three meetings.

19 Q. Okay. Now, Mr. Dennis ---

20 A. Yes, sir.

21 Q. --- you and I have spoken on the phone and we have
22 discussed your case. Now, you brought some other issues
23 up with regards to the indictment with regards to this
24 case.

25 A. Yes, sir.

1 Q. Now, is it your contention that the indictment is
2 invalid?

3 A. Yes, sir, very much so due to the fact that I wrote
4 the South Carolina Court Administration, a letter to Ms.
5 Michelle Owens, and received a court calendar from her,
6 that's also on the table, saying that it was Common
7 Pleas, P.C.R. non-jury that lasted eight weeks --
8 whatever -- on the week.

9 I also wrote a letter to Ms. Beverly Whitfield of
10 Oconee Clerk of Court. And she sent me a letter back
11 saying that General Sessions was cancelled due to a
12 Common Pleas jury case that lasted eight weeks. So from
13 my understanding, an indictment had to go through a grand
14 jury in order for you to be indicted. But no grand jury
15 met on that day. It was Common Pleas non-jury. And I
16 got the letter also in that stack of papers on the table
17 from Ms. Beverly Whitfield stating that General Sessions
18 was cancelled.

19 So the indictment is the sole instrument that gives
20 jurisdiction over me for me to go to trial. And then
21 when I look back at my motion of discovery, no indictment
22 is in my motion of discovery. So basically I went to
23 trial with no cause. And I feel like my lawyer -- I feel
24 like Ms. Earle was very ineffective because she lacked to
25 investigate the case, investigate the paperwork that

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1 would need to be given.

2 Q. Okay. So whenever you met with Ms. Earle the
3 morning that you're picking the jury trial, was it your
4 impression that you had not been indicted at that point
5 in time?

6 A. I didn't know nothing about it.

7 Q. But now looking back, do you believe you were not
8 indicted?

9 A. Yes, sir. After going down the road and hitting the
10 law library day-in and day-out, I discovered many things.
11 But before then, I knew nothing about it. I also know
12 that the indictment have to be brought up before a jury
13 trial. And it can also be brought up during P.C.R.
14 hearing, which I'm doing now. But I had no knowledge of
15 the indictment at the time. All I had was an arrest
16 warrant.

17 Q. Okay. Now, with regards to the other issues that
18 you want this court to consider, are there any other
19 issues we have not addressed here -- and I'm going to ask
20 you questions about -- that you want this Court to
21 consider in your post-conviction relief application?

22 A. Yes. A violation of my Rule 5 motion of discovery.

23 Q. Okay.

24 A. I mean, anything that's going to be shown and
25 presented at trial is supposed to be in the motion to

1 discovery no matter if it's in the hands of the
2 prosecution or the police. Anybody that's in the
3 government that knows about evidence that has evidence is
4 supposed to present it. Okay.

5 Q. Is it your contention that basically the State had
6 the pictures and did not disclose them in a timely
7 manner?

8 A. Yes, sir. Because if you go back in the transcript,
9 you'll see where Mr. Wagner tried to present the pictures
10 and then Ms. Earle was like, oh, look, I don't have no
11 knowledge of these pictures. I was under the impression
12 that an investigator took the pictures. But then Mr.
13 Wagner said that, no, that Mr. Robinson's family took the
14 pictures the day that the crime happened. So the day
15 that it happened from the day I went to the trial, that's
16 a whole year. So I really don't -- I really can't sit
17 here and say that I believe that all of a sudden the
18 pictures just pop up the day of the trial for a whole
19 year when they're preparing for a trial.

20 Q. Now, I want to come back to just one particular set
21 of questions. I want to make sure we're very clear on
22 this. Obviously, you wanted to have someone answer your
23 questions about what was going on; is that correct?

24 A. Yes, sir.

25 Q. Now, it's going to be -- it's very relevant here as

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1 to why you weren't there at your own trial.

2 A. I panicked, scared, feared for my life. I didn't
3 know what to do, didn't have no guidance from Ms. Earle.
4 And I mean, I was in the wilderness.

5 Q. I mean, if Ms. Earle had spent more time talking
6 with you and explaining the process with you, do you
7 think your decision about attending your trial would have
8 been different?

9 A. Very much so.

10 Q. Okay. So not even if the strength of your case had
11 changed, it was just the fact that she was spending time
12 focused on your case that would have changed your opinion
13 on your attendance; is that correct?

14 A. Yes, sir. And due to her doing more investigation
15 about the case, because I feel nobody investigated the
16 case.

17 Q. Okay. What specific investigation did you want Ms.
18 Earle to do that she did not do?

19 A. I mean, her job description, basically.

20 Q. Her job description. Okay. Did you talk with Ms.
21 Earle about witnesses that you wanted to call?

22 A. No, sir.

23 Q. Okay. So there was Devario Manley. What about
24 Andracius Manley?

25 A. At the time, I didn't know where he was at.

1 Q. Okay.

2 A. I didn't know his status at all.

3 Q. Since your trial, have you received any other
4 communications from Ms. Earle?

5 A. Since my trial? Other than the one letter that I
6 wrote her and she responded to, none.

7 Q. So did you get a copy of what she sent to the Court
8 of -- the Appellate Defense Division?

9 A. Oh, yes, sir. I got a copy of that.

10 Q. All right. Now, Adarius -- Mr. Dennis, I've asked
11 several questions and I've gone over things that I
12 believe are relevant in this case. I've asked you about
13 other issues that were brought before this Court. Is
14 there anything else that you want this Court to consider
15 in your post-conviction relief application?

16 A. Yes. Ineffective assistance of appellate counsel.
17 And I feel like Ms. Earle should have asked for a
18 continuance due to my absence. And I figure that she
19 should have put up the argument of withdrawal, should
20 have asked the Judge to charge that to the jury because
21 when you go back in the transcript and where she was --
22 where she was interrogating Mr. Robinson, and she asked
23 him during the time did he hear Hog say anything to the
24 Manley brothers. He answered, no, ma'am. So she was
25 like, so as far as you know, he was gone? He answered,

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1 as far as I know. And then she said because you didn't
2 see him anymore? He was like, yes, ma'am. Okay. And
3 then when Devario Manley got on the stand, she basically
4 asked him the same questions. She was like, all right.
5 And so you had also told the police in your earlier
6 statement that when you came out and pulled the gun that
7 Hawk ran. He answered, yeah. He took off. She said, he
8 took off. He was like, yeah. I don't know exactly where
9 he went, but I know he took off. She was like, all
10 right. So as far as you know, he was gone? He said,
11 yes, ma'am. So therefore, I withdrew from the enterprise
12 of the crime, so therefore, I had nothing to do with it.
13 So I figured she was ineffective for not adding the
14 withdrawal charge to the Judge's charge to the jury
15 because they both, in both of they testimony, they both
16 say once the gun was presented, I ran, I was gone.
17 Q. Now, Mr. Dennis, I want to admit -- basically what
18 you talked about right there is a very well-crafted
19 discussion. Now, did you ever bring any of that up to
20 Ms. Earle in preparation in that hour, hour and a half,
21 that you had before the time you met her until the time
22 you were picking a jury?
23 A. Like I told you, I've been very ignorant before all
24 of this. So at the beginning, at the first stage of it,
25 I didn't know none of this. But after being incarcerated

1 and doing my paperwork and my homework, I discovered all
2 of this. So at the time, no, I had no knowledge of it at
3 the beginning.

4 Q. So this wasn't something that even though you are
5 articulating now, you could not have -- you didn't have
6 any ability to articulate that to Ms. Earle? That was
7 her job as the attorney to basically kind of bring that
8 on your behalf; is that correct?

9 A. Yes, sir.

10 Q. All right. Now, is there any other issue you want
11 this Court to consider, Mr. Dennis?

12 A. I mean, just ineffective of appellate counsel, trial
13 counsel, my *Brady* file and that she should have charged
14 withdrawal, and my indictment. I mean, other than that,
15 there's nothing else.

16 Q. All right.

17 MR. DENNY: Your Honor, at this time, I have no
18 further questions.

19 THE COURT: Okay. Any questions?

20 MR. WHITMIRE: Yes, Your Honor. May it please
21 the Court.

22 CROSS-EXAMINATION

23 BY MR. WHITMIRE:

24 Q. Did Ms. Earle review your discovery in this case
25 with you?

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- 1 A. Did she review what?
- 2 Q. Review your discovery?
- 3 A. With me?
- 4 Q. Uh-huh (affirmative).
- 5 A. No, sir.
- 6 Q. And didn't she tell you that the victim, along with
- 7 both co-defendants placed you at the scene?
- 8 A. No, sir.
- 9 Q. Not once? Never?
- 10 A. No, sir.
- 11 Q. And you said you had trouble meeting Ms. Earle. She
- 12 just wasn't there for you, didn't do anything; is that
- 13 correct?
- 14 A. Yes, sir.
- 15 Q. And weren't you out on bond at the time?
- 16 A. Yes, sir.
- 17 Q. Didn't you have a year between being charged and
- 18 this case going to trial?
- 19 A. Yes, sir.
- 20 Q. And you agree these are pretty serious charges?
- 21 A. Did I what?
- 22 Q. Now, you agree it's some pretty serious charges?
- 23 A. Did I agree to it?
- 24 Q. No. I said, do you agree that these were pretty
- 25 serious charges you were facing?

1 A. Oh, yes, I agree.

2 Q. And you did have your discovery?

3 A. Yes, sir.

4 Q. So you had a chance to see the various statements
5 from the victim, the co-defendants and others around that
6 scene that day; that's correct?

7 A. Yes, sir.

8 Q. So wouldn't you think it's important ---

9 A. Whoa, whoa. I'd like to go back on that. I had a
10 statement from Renaldo Robinson. I had no statement from
11 Devario Manley. I never knew he wrote a statement. His
12 statement was not in my motion of discovery.

13 Q. Did you ever try to contact Ms. Earle, write her a
14 letter, call her, to set up appointments?

15 A. I mean, she told me she was going to get in contact
16 with me.

17 Q. Well, do you recall the defense you first gave her?
18 Your defense to these charges?

19 A. No, sir.

20 Q. Didn't you claim that you were in Greenville at a
21 Walmart at the time with your girlfriend, that you were
22 never even present?

23 A. I don't remember about no Greenville or no Walmart.
24 How I can I say I wasn't present when they wrote
25 statements saying I was there? How can I -- the main,

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1 the victim -- how can I say I wasn't there?

2 Q. But you never told Ms. Earle that? Did you ever
3 tell her you were at the scene, definitively tell her,
4 wrong place, wrong time?

5 A. Did I ever tell her wrong place, wrong time?

6 Q. Yeah, for you, your defense?

7 A. I mean, no ---

8 Q. In preparation?

9 A. No. She said I was in the wrong place at the wrong
10 time. I never would try to give no alibi of where I was
11 at.

12 Q. And you do recall attending your trial for that
13 first day; is that correct?

14 A. Yeah. As far as picking the jury, yeah.

15 Q. And do you recall what Judge Macaulay told you at
16 the end of that day?

17 A. Yes, sir. That I can be charged in my absence.

18 Q. That you'd be tried in your absence if you left?

19 A. Yes, sir.

20 Q. That you were out on bond?

21 A. Yes, sir. But it's still a violation of my Fifth,
22 Sixth, and Fourteenth Amendment. I have a right to
23 defend myself, and my counsel was ineffective when I
24 asked her for a continuance.

25 Q. But you voluntarily waived that right when you left

1 ---

2 A. No, I didn't sign no waiver.

3 Q. --- in the middle of trial?

4 A. I didn't sign no waiver. I didn't volunteer to
5 waive anything.

6 MR. WHITMIRE: Your Honor, referring to page 29
7 of the transcript where the Judge advises the Applicant
8 to attend his trial the next day.

9 THE COURT: Okay.

10 Q. And did Ms. Earle explain to you that under the law
11 in South Carolina, the law of hand of one, hand of all,
12 that the statements from Mr. Manley, from both Manleys,
13 and the victim would make you just as guilty?

14 A. Can you repeat that?

15 Q. Didn't Ms. Earle explain to you that under the law
16 you would be just as guilty as Devario Manley and Drek
17 (phonic) Manley?

18 A. By the statements that he ---

19 Q. Uh-huh (affirmative). At trial?

20 A. By statements that he wrote?

21 Q. Uh-huh (affirmative).

22 A. No, she didn't tell me that because if she knew that
23 he wrote the statement, then she's definitely ineffective
24 because she didn't tell me that he wrote a statement, nor
25 was his statement in my motion of discovery. So I had no

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1 knowledge of Devario Manley or the other Manley brother
2 writing a statement.

3 Q. But didn't you just tell this Court that she told
4 you that Devario Manley was going to testify on your
5 behalf ---

6 A. Yeah. Testify on my behalf, yeah.

7 Q. --- before? So you knew what he was going to
8 testify to; isn't that right?

9 A. No. I know what he was going to testify to. You
10 said a statement. No. She told me that, do I want Mr.
11 Manley come testify on my behalf. I said, yes, as long
12 as he's going to tell the truth about what happened. I
13 didn't say that, yeah, he could come and testify to the
14 statement that he wrote because I never knew of no
15 statement that he'd written.

16 Q. But you never told Ms. Earle about this truth that
17 happened, your defense; is that correct?

18 A. The truth of what?

19 Q. What happened that day at the victim's -- well, when
20 the victim came to the residence when you brought him in.
21 Did you ever tell her what happened so she could
22 effectively represent you in the best capacity possible?

23 A. No, sir. I mean, I just told her I had nothing to
24 do with it.

25 Q. And that was it. You never tried to contact her and

1 give her more information? And you just said that you
2 were going to testify at trial, you were planning on
3 testifying?

4 A. I didn't say I was going to testify at my trial.

5 Q. I believe you said that.

6 A. No, I didn't.

7 UNKNOWN SPEAKER: I believe ---

8 THE COURT: Whoa, whoa, wait a minute. I've
9 been real patient. Don't say anything or you'll be
10 removed.

11 Go ahead.

12 MR. WHITMIRE: Thank you, Your Honor. Beg the
13 Court's indulgence.

14 Q. I have just a few more questions for you. And you
15 just testified that you panicked and you just didn't want
16 to return to trial; is that correct?

17 A. I panicked. No, I ain't going to say I didn't want
18 to return. But on the day of the trial, I panicked. I
19 didn't know what to do. I called Ms. Earle while she was
20 at the courthouse when the trial was going on, and she
21 had stepped out on the cell phone. And she asked me am I
22 going to come. I tell her I don't know what to do. What
23 should I do? And she was like, well, Mr. Dennis, I can't
24 stay out here and talk to you all day. I've got to get
25 back to the trial. Not once did she ask me, oh, do you

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1 want me to stop the trial or anything.

2 Q. And considering Ms. Earle never knew your full side
3 of the story except that you didn't have any involvement
4 with it, wouldn't it have been a major benefit to her
5 ability to represent you if you would have stayed at
6 trial and spoke with her and counseled with her during
7 that trial ---

8 A. I mean ---

9 Q. --- as people testified against you?

10 A. I don't know what would have happened. I mean, I
11 can't predict the future, sir.

12 MR. WHITMIRE: That's all, Your Honor.

13 THE COURT: All right. Anything on redirect?

14 MR. DENNY: Your Honor, just a few questions.

15 REDIRECT EXAMINATION

16 BY MR. DENNY:

17 Q. Mr. Dennis, the State just brought up a couple of
18 issues about, again, your not being there. And about you
19 were advised, I believe on pages of the transcript 29 and
20 30 about if you're not there, the trial will go forward.
21 Did you not -- is it not also true that you also talked
22 about what -- that you really wanted to get a paid
23 attorney?

24 A. Yes, sir. Because I was basically letting the Judge
25 know that I don't feel comfortable. Like I say, I didn't

1 know that I could stop the trial. I didn't know I could
2 ask for a continuance. I didn't know anything. All I
3 thought, once I said I wanted to do it, and that's all --
4 I'm all in. That's all I understood.

5 Q. Okay. Now, there is obviously some questioning
6 there that got a little heated as far as, you know --
7 just to be clear, you'd never identified to Ms. Earle or
8 stated that you wanted to testify at your own trial?

9 A. No, sir.

10 Q. Okay. But you'd been advised by Ms. Earle that she
11 would possibly call the co-defendant on your behalf. And
12 that was Devario Manley; is that correct?

13 A. Yes, sir.

14 Q. And that was news to you, wasn't it? But you were
15 okay as long as he was going to talk on your behalf;
16 right?

17 A. Yes, sir.

18 Q. Okay. I'm kind of, you know, surprised about that
19 your lack of appearance at the trial was going to be an
20 issue here. However, as the State asked, I want to ask
21 just briefly about it. Did you even know what to expect
22 if you'd been there?

23 A. No, sir.

24 Q. And when you talked to Ms. Earle that morning, she
25 called you on the cell -- you called her. She's sitting

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1 on her cell phone. Did she tell you that you need get up
2 there, that it would be beneficial or, you know, it's
3 better for you to be there and not have an empty chair?
4 Did she tell you anything?

5 A. No, sir. She just asked me, what you want me to do.
6 I say, I don't know. You tell me. You my lawyer. I
7 don't know what to do. Help me out. Inform me what to
8 do.

9 Q. All right.

10 MR. DENNY: No further questions, Your Honor.

11 THE COURT: All right. Let me ask you one
12 question, Mr. Dennis. You say you called your lawyer
13 while she was in your trial?

14 THE APPLICANT: Yes, sir.

15 THE COURT: And you talked to her by cell
16 phone?

17 THE APPLICANT: Yes, sir.

18 THE COURT: What day was that? Do you
19 remember?

20 THE APPLICANT: The trial? I think it was on
21 June 22nd. I think that was when the trial happened was
22 June 22nd.

23 THE COURT: That was the second or third day?
24 The second day?

25 THE APPLICANT: No. I mean, it was the first

1 day.

2 THE COURT: So it was Tuesday? Because you
3 came Monday, right? And y'all -- the Judge let you go
4 Monday night, and Tuesday you didn't show back up; is
5 that right?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Okay. All right. I just wanted to
8 make sure I had those dates. Okay. You can step down.

9 MR. WHITMIRE: Your Honor, if I could beg the
10 Court's indulgence just for a few moments.

11 THE COURT: Yeah.

12 MR. DENNY: Your Honor, at this time I call Mr.
13 Renaldo Robinson.

14 (WHEREUPON, the witness was duly sworn.)

15 THE COURT: If you would, state your full name
16 and spell your last name, please, sir.

17 THE WITNESS: My full name is Renaldo Deon
18 Robinson. Last name, R-O-B-I-N-S-O-N.

19 **RENALDO DEON ROBINSON,**

20 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. DENNY:

23 Q. Mr. Robinson, thank you for being here. I know
24 you're here under my subpoena; is that correct?

25 A. Yes, sir.

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1 Q. Now, I spoke with you prior to this hearing, and
2 you're here voluntarily as well; is that right?

3 A. Yes, sir.

4 Q. Now, just to be clear to everyone here in the court,
5 you're the victim in the prior case; is that correct?

6 A. Yes, sir.

7 Q. Now, is there anything that you want the Court to
8 know or your feelings about this case and about Mr.
9 Dennis?

10 A. I mean, just personally, you know, just looking over
11 the three guys that was in the case, I just don't feel
12 like Mr. Dennis got a fair shake. I mean, I understand
13 it was his choice not to show up for the trial, but I
14 just don't think he got a fair shake at all. And I got
15 kids myself, and I know he has a daughter. And I just
16 think the twenty-three years was very, very harsh. And
17 for him to have to be out of his daughter's life that
18 long, I just don't agree with that.

19 Q. Okay. Now ---

20 MR. DENNY: I beg the Court's indulgence one
21 moment, please.

22 THE COURT: Go ahead.

23 MR. DENNY: Mr. Robinson, I appreciate your
24 time. That's all the questions I have for you.

25 THE COURT: All right. Any questions by the

1 State?

2 MR. WHITMIRE: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WHITMIRE:

5 Q. Good morning Mr. Robinson. So you still stand by
6 your testimony that you gave a couple of years ago at
7 trial?

8 A. Yes, sir.

9 Q. In that testimony on page 76, you implicate the
10 Applicant as the defendant who brought you to the scene;
11 is that correct?

12 A. Yes, sir.

13 Q. The Applicant that jumped out of the way as you were
14 ambushed?

15 A. Yes, sir.

16 Q. And then on page 81, you identified the Applicant by
17 way of having -- the other two co-defendants yelled for
18 him to bring the gun; is that correct?

19 A. Yes, sir.

20 Q. To help them essentially harm you?

21 A. Yes, sir.

22 Q. And who do you believe was stealing shoes out the
23 back of your car as you were laying in the back seat with
24 your daughter in the front seat?

25 A. I honestly don't know.

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1 Q. But didn't you tell the Solicitor in court that day
2 that you were under the belief that it was the Applicant,
3 that you only saw three people?

4 A. Yes, sir. I mean, you know, by being in contact
5 with Mr. Dennis at the time and seeing two other people.
6 But you know, looking back on it, it was a host of people
7 in the house. So I can't really say.

8 Q. You were at the scene that day because Mr. Dennis
9 got you to come there?

10 A. Yes, sir.

11 Q. Did you ever doubt Mr. Dennis' involvement as one of
12 the co-defendants that caused you to be robbed?

13 A. No, I didn't. I mean, because I had sold shoes to
14 him several times before.

15 Q. So you're just testifying here today that you just
16 think the sentence was heavy; is that correct?

17 A. Yes, sir.

18 MR. WHITMIRE: No further questions, Your
19 Honor.

20 THE COURT: All right. Anything on redirect?

21 MR. DENNY: Nothing, Your Honor.

22 THE COURT: Okay. Thank you, sir. You can
23 step down.

24 MR. DENNY: Your Honor, at this time the
25 Plaintiff has no further witnesses. We rest.

1 THE COURT: All right.

2 Yes, sir?

3 MR. WHITMIRE: Your Honor, at this time, the
4 State calls Ms. Earle to the stand.

5 (WHEREUPON, the witness was duly sworn.)

6 THE COURT: If you would, just state your full
7 name and spell your last, please.

8 THE WITNESS: My name is Suzanne Earle, E-A-R-
9 L-E.

10 **SUZANNE EARLE, ESQUIRE**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. WHITMIRE:

14 Q. Good morning, Ms. Earle. When were you appointed
15 for this case? Do you recall?

16 A. In July 2008.

17 Q. When was the first time you met with the Applicant?

18 A. I believe it was the same day I was appointed or
19 that I received notice of the appointment.

20 Q. And he had yet to bond out at that point?

21 A. That's correct. He was in jail.

22 Q. But he bonded out pretty quickly?

23 A. I don't remember when he got out of jail.

24 Q. And you filed for discovery; is that correct?

25 A. That's correct.

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1 Q. And you had the opportunity to review the discovery
2 with the Applicant?

3 A. I did.

4 Q. Can you briefly describe the State's case as
5 evidence going into a potential trial or plea?

6 A. I'm ---

7 Q. I'm sorry. Can you briefly just describe the
8 State's case against the Applicant and the evidence you
9 received in discovery?

10 A. The evidence that I had received in discovery -- and
11 I met several times with the chief investigator in the
12 case -- was basically that my client, Mr. Dennis,
13 initiated a call to the victim telling him that he wanted
14 to purchase shoes, having him come to a location where
15 they had done business before. That there were other
16 people there who came out and brought weapons with them
17 when they came out of the house and robbed Mr. Robinson.
18 That my client had run when the guns came out. That
19 someone had called another person to come pick them up,
20 and that person had come and picked up several
21 individuals that had been at that location and then took
22 them somewhere else.

23 And then the victim had driven himself and his
24 daughter back to his home where he had called the
25 officers, and the officers had come and gotten involved.

1 Basically, they had -- there were -- they identified an
2 individual known as Hawk. Then upon being shown
3 photographs, they identified Mr. Dennis as being the
4 person that they knew as Hawk.

5 Q. And did Mr. Dennis give you a defense or potential
6 witnesses once you shared this information with him?

7 A. When I met with Mr. Dennis -- and I met with him
8 several different times -- he had told me on multiple
9 occasions that he was not in Seneca, that he did not know
10 why anyone would accuse him of being involved in this.
11 That his name was not Hawk, that he was known as Dee,
12 that no one called him Hawk. He didn't know who that
13 person was. And that he was in Greenville, that he was
14 helping his girlfriend move and that he was not in Oconee
15 County at the time this happened.

16 Q. And did he ever provide you with the name, location,
17 contact information of this alibi witness, his
18 girlfriend?

19 A. He did give me a name and phone number. And I had
20 asked him to give me the locations of where he was in
21 Greenville. He had told me they had returned a U-haul to
22 a location, but he did not know where that was. He could
23 not tell me where his girlfriend lived. He said he had
24 been at a Walmart. He wasn't sure which Walmart. He
25 thought maybe it was the one on Woodruff Road, but he

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1 wasn't sure because he was not that familiar with
2 Greenville. I asked him if he could provide me with
3 receipts from any location, including the U-haul. He
4 told me he didn't have receipts for anything.

5 Q. But he never told you he was actually at the scene
6 that day?

7 A. He did not. I did talk with him about the fact that
8 there were quite a few people that identified him as
9 being present that day. And he never admitted to me that
10 he was there.

11 Q. And what additional investigation were you able to
12 do of the co-defendants?

13 A. I talked with Devario Manley while he was
14 incarcerated, and Mr. Manley told me that they had -- he
15 and his brother had planned this. That they had gotten
16 Hawk to make the phone call to bring Mr. Robinson to the
17 location, but that at no point had they told Hawk that
18 they had planned on using weapons to rob him. I talked
19 with him for about forty-five minutes to an hour. He
20 told me he would be happy to testify in court, that he
21 had already been sentenced. That he did not want to see
22 his friend and acquaintance get a serious sentence over
23 this when he did not know anything about the robbery.
24 That he wanted to do what he could to help him.

25 He changed his story when he got to court. But

1 based on what he had told me when he was incarcerated, I
2 did have him subpoenaed to appear at trial as a witness.

3 Q. But inevitably he was a State's witness?

4 A. He turned out to be a State's witness, yes. When I
5 talked with him that morning, he told me that prior to
6 speaking with me that the solicitor and investigator had
7 talked with him, had warned him of what would happen if
8 he lied on the stand and that he was not going to lie for
9 anybody. He was not going to risk getting a perjury
10 charge and that he would tell the truth when he
11 testified.

12 Q. One more quick question on this -- the preliminary
13 matters before his trial. How did you handle this
14 considering Mr. Dennis was not even present and denies
15 even being there. Were you able to effectively cross-
16 examine?

17 A. It was difficult to cross-examine anybody in this
18 case because of -- I didn't get a lot of cooperation from
19 my client. I had asked -- sent him several letters
20 explaining to him that he had to elect a defense, that
21 his defense could not be that he was not present and that
22 he was there but didn't participate. That only one of
23 those was true and we could only present one of those as
24 a defense. And I asked him several times to let me know
25 which defense he wished to pursue. And I did not ever

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1 get enough information from him to be able to put up an
2 alibi defense; therefore, I was pursuing on his behalf
3 the defense of he did not participate knowingly in an
4 armed robbery.

5 Q. And you impressed upon him the importance of
6 communicating with you prior to trial?

7 A. I had tried to.

8 Q. And did he tell you if he was planning on -- what
9 information did he provide you regarding planning on not
10 potentially returning to the second day of trial? Were
11 you on notice of that?

12 A. I was not.

13 Q. Regarding the trial itself, you filed some
14 preliminary motions. Do you recall what you filed?

15 A. I made preliminary motions regarding the
16 introduction of evidence that I felt was inflammatory and
17 not relevant to the charge. Other people in this case
18 had been charged with assault and battery of a high and
19 aggravated nature. Mr. Dennis was not charged with that.
20 The majority of the photographs that the State wanted to
21 introduce to me appeared to have relevance for the
22 assault charge, not the armed robbery charge, and I
23 attempted to keep the photographs out.

24 Q. And do you recall Judge Macaulay's eventual ruling
25 on the majority of the photographs?

1 A. He let most of the photographs into evidence. And
2 then I think I also made some motions concerning the
3 identification of my client through the photographic
4 lineup and mug shots.

5 Q. Do you recall why Judge Macaulay let that in?

6 A. The photographic lineup?

7 Q. Uh-huh (affirmative).

8 A. He didn't feel it was prejudicial or inappropriately
9 suggestive.

10 Q. Wasn't it for identification purposes, just to
11 connect Hawk to the Applicant since he wasn't there?

12 A. That was the purpose that the State indicated.

13 Q. Okay. And regarding the alleged Rule 5 violation,
14 when did you receive the photographs from the State of
15 the victim?

16 A. The photographs were included in the discovery
17 materials from the beginning, but there was no
18 identification until trial as to who took those
19 photographs.

20 Q. Did anything about those photographs tip you off
21 that they had been doctored or weren't authentic when you
22 received them?

23 A. No.

24 Q. So you were just concerned about the foundation ---

25 A. Yes.

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1 Q. --- because you had no idea -- could tell that they
2 weren't from the State?

3 A. That was one of my concerns when I realized that
4 they had not been -- those photographs had not been made
5 by the investigators in the case.

6 Q. And you objected to that, correct?

7 A. I did.

8 Q. Regarding the trial itself, what was your trial
9 strategy that you elected when Mr. -- when the Applicant
10 was not present?

11 A. Well, my trial strategy was essentially the same. I
12 just didn't have a defendant there to assist me in
13 presenting it. And that was that he was not involved in
14 an armed robbery. That he may have been involved in a
15 larceny but not involved in an armed robbery.

16 Q. And was that an issue of fact for the jury?

17 A. Yes, it was.

18 Q. And would you consider your cross-examination as
19 effective and the best you could have provided under the
20 circumstances?

21 A. Under the circumstances, I felt that it was.

22 Q. And just a few questions returning back to pre-
23 trial. What plea offers was the State giving or
24 considering?

25 A. In addition to this charge of armed robbery, Mr.

1 Dennis also had been arrested on a trafficking crack
2 cocaine charge. He had a distribution of marijuana
3 second offense and a distribution of marijuana within the
4 proximity of a school second offense. I was appointed to
5 represent him on the trafficking crack charge but did not
6 represent him on the two marijuana charges. The State
7 had made an offer that if he pled to the -- to armed --
8 no. I'm sorry. If he pled to common-law robbery and to
9 the two marijuana charges, they would recommend a
10 sentence of ten years and dismiss the trafficking crack
11 cocaine charge.

12 Q. And what advice did you give the Applicant regarding
13 that offer?

14 A. I had conveyed to him what the offer was. I don't
15 remember specifics of our conversation other than to let
16 him know I did not represent him on the marijuana
17 charges. I was not aware of what the evidence was on
18 those charges or whether or not that was a good offer for
19 those charges. And I tell all my clients that I'm not
20 the one who has to do the time, so I'm not the one that
21 decides whether or not to take a plea, that that decision
22 is solely up to my client. I do not tell my clients how
23 much time they will have to serve on a charge because I
24 don't work for the Department of Corrections and I don't
25 calculate time. I can only tell them what the sentence

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1 that is being recommended is.

2 Q. And what advice did you give the Applicant regarding
3 the hand of one, the culpability?

4 A. I did explain to him that there was a theory of law
5 that said that the hand of one is the hand of all and
6 that a jury could find that he knew about the armed
7 robbery and that he was a participant in it.

8 Q. One last question. You're adamant about Mr. Dennis'
9 role in actively helping you in his own defense with him?

10 A. I sent Mr. Dennis several letters telling him that
11 we needed to talk, explaining to him concerns that I had.
12 Telephone numbers I had been given for him had -- were no
13 longer in service. He missed several appointments that
14 we had scheduled. And when we did meet, he was very
15 uncooperative and not forthcoming with information that
16 would have been helpful in defending him.

17 Q. That's all. Thank you.

18 THE COURT: All right.

19 Yes, sir?

20 MR. DENNY: Your Honor, may it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. DENNY:

25 Q. Ms. Earle, how many times from your recollection did

1 you actually meet with Mr. Dennis?

2 A. Five or six.

3 Q. Okay. You were in the courtroom earlier, correct,
4 when you heard Mr. Dennis talk about the three times he
5 met with you?

6 A. Yes.

7 Q. According to Mr. Dennis, you heard him say that he
8 met you once at the detention center?

9 A. Yes.

10 Q. Once about two weeks before the trial?

11 A. Yes.

12 Q. And once the morning of picking the jury; is that
13 correct?

14 A. Yes.

15 Q. That's three times. Where and when did these other
16 meetings occur?

17 A. I have met with him at the jail.

18 Q. In addition to that first meeting? I apologize for
19 interrupting you.

20 A. Well, the first meeting at the jail.

21 Q. Okay.

22 A. I had talked with him when he was in court one
23 morning briefly. I met with him here for several hours.

24 I met with him at the jail again when he was incarcerated
25 on additional charges. And then I had another

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1 appointment with him a few weeks before the trial. There
2 were other appointments that had been scheduled that he
3 did not appear for.

4 Q. And did you call him whenever he missed an
5 appointment?

6 A. I tried to call him. I was not always able to get
7 in touch with him. That's why I sent letters.

8 Q. Were you able to leave it on a voice mail?

9 A. He did not always have voice mail available.

10 Q. When he did have voice mail, did you leave him voice
11 mails?

12 A. I don't recall.

13 Q. Okay. All right.

14 A. And I did -- I also -- I represented him when he
15 received the trafficking crack charge. He also had
16 driving offenses in magistrate court that I represented
17 him on. And I did talk with him when we were in
18 magistrate court and scheduled appointments with him at
19 that time.

20 Q. Okay. Now, earlier in the questions from the State,
21 Mr. Whitmire, he asked about this initial meeting and
22 about the Defendant alleged that he was helping his
23 girlfriend move. And I think he gave -- he actually gave
24 you the name and phone number of his girlfriend. Did you
25 ever contact that girlfriend?

1 A. I did not contact her.

2 Q. You know that she would have been an alibi. Do you
3 think that would be relevant to try and reach out to her,
4 send her a letter or give a call?

5 A. Had I believed that he did, in fact, have an alibi,
6 yes.

7 Q. Okay. But is that what he was telling you?

8 A. He was -- that is what he was telling me, but he was
9 being very vague about the details of it.

10 Q. Okay. If you'd called the girlfriend, could that
11 have filled in some of those vague details and maybe she
12 had a better memory?

13 A. Possibly.

14 Q. Okay. In those discussions, did he ever admit that
15 he was there? That he was actually there at the crime
16 scene?

17 A. No, he would never admit that to me.

18 Q. All right. Now, when you spoke to Devario, Mr.
19 Manley, Mr. Devario Manley, at the detention center, he
20 seemed helpful, did he not?

21 A. Yes, he did.

22 Q. Did you challenge Mr. Manley about why his story
23 changed?

24 A. I did.

25 Q. And did you point out the fact that Mr. Manley had

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1 been very clear that Mr. Dennis had no knowledge of any
2 guns?

3 A. Are you asking did I do this with Mr. Manley or did
4 I do this during the trial?

5 Q. On cross-examination of Mr. Manley when the State
6 put Mr. Manley up, your testimony here this hearing was
7 that when you spoke with Mr. Manley at the detention
8 center that he agreed to be a defense witness, that he
9 had said to you that Mr. Dennis had no knowledge of any
10 guns whatsoever. That was going to be his testimony. At
11 the trial, when the State called Mr. Manley and his story
12 was a hundred and eighty degrees or completely different
13 from what you just testified to, is that it was different
14 ...

15 A. Uh-huh (affirmative).

16 Q. ... did you ask him why it was that he'd previously
17 said Mr. Dennis had no knowledge of any of the guns?

18 A. I did not.

19 Q. Don't you think that that would have been a critical
20 -- I mean, this is the whole point of the cross-
21 examination as his story has changed. Do you not think
22 that would have been a relevant point to bring out to the
23 jury?

24 A. I had talked with Mr. Manley prior to the trial
25 beginning. And after talking with him, and with my

1 client not being present to assist me and possibly
2 testify on his own behalf, I did not feel comfortable
3 pushing Mr. Manley any harder than I did at trial.

4 Q. And Ms. Earle, I mean this very respectfully. But
5 the key to your case, was it not, was that Mr. Dennis had
6 no knowledge of guns?

7 A. That was the key to my case. On direct examination
8 the gun was briefly mentioned. And Mr. Manley did make a
9 statement that Mr. Dennis knew about the weapon. I did
10 not want to emphasize that to the jury because I did not
11 have Mr. Dennis there to deny it. And I felt that by
12 emphasizing that to the jury would make Mr. Dennis look
13 more guilty.

14 Q. And Ms. Earle, I mean this very respectfully. But
15 your whole case, the State's whole case and your whole
16 case was centered around the presence of a gun, was it
17 not? Because if there was no gun, it was a larceny. If
18 there was a gun, you're talking about armed robbery?

19 A. That's correct.

20 Q. So there was no getting out of focus on this gun,
21 correct?

22 A. That's correct. Mr. Manley had told me prior to
23 trial that he had lied to me at the jail and that he was
24 going to tell the truth when he testified in court.

25 Q. So the State's key witness has now admitted to you

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1 that basically he's a liar, and that would not be
2 something relevant to bring up to the jury, to point out,
3 you know, get him possibly to admit, yeah, I lied before.
4 Now I'm telling the truth. I mean, at least something?

5 A. He had not lied under oath before..

6 Q. Now, just a minute ago you thought -- you said it
7 was difficult to possibly address this issue because Mr.
8 Dennis was not present with you to assist you or
9 possibly, you know, counter that statement. But were you
10 expecting Mr. Dennis to take the stand in this case?

11 A. I didn't know if he would or not.

12 Q. Had he ever indicated to you that he wanted to
13 testify at trial?

14 A. No.

15 Q. Did you ask him?

16 A. He didn't come to enough meetings for me to get to
17 that point with him.

18 Q. Well, on the first day of the trial when you were
19 picking a jury, he was there. Did you at least lay out
20 your play and ask him, you're going to get a chance for
21 you to testify, do you want to testify?

22 A. I don't believe I did. I had talked -- the one
23 conversation that I had had with him was that I could not
24 put him on the stand if I had reason to believe he would
25 not tell the truth.

1 Q. And a few minutes ago, you identified that his story
2 about being in Greenville, you didn't believe that. You
3 didn't give it credibility; is that correct?

4 A. That's correct.

5 Q. And that's the reason why you didn't call his
6 girlfriend, because you just didn't believe it?

7 A. I didn't have any reason to believe that that was
8 true.

9 Q. So up to that point in time up to the trial -- and
10 correct me if I'm wrong -- you had no credible statement
11 from Mr. Dennis, so you wouldn't put him on the stand
12 because up to that point in time, you were under the
13 impression he was not telling you the truth; is that
14 correct?

15 A. At that point in time, he had not come to me with
16 what he wanted his defense to be. When I had -- I had
17 sent him a letter in June right before the trial
18 explaining to him that he was still telling me he had an
19 alibi, but there were witnesses who said he was present,
20 that he had been identified, and that I needed to know
21 which defense he wished to put up because they both could
22 not be true, and explaining to him that I could not put
23 up witnesses that were not going to tell the truth.

24 Q. Ms. Earle, I do apologize. I'm not trying to hammer
25 the one point. Your statement was, he was not there to

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1 assist you because to counteract Mr. Manley's statements
2 -- you know, if he'd been there, he could assist you and
3 he could have told his side. But you, from what I'm
4 hearing -- correct me if I'm wrong -- you would have
5 never put him on the stand because you never had a story
6 from him that you believed. And you were not going to
7 put him on the stand if he was going to say something
8 that you thought was untrue; is that correct?

9 A. No, sir. That's not correct.

10 Q. Okay. Then I'm sorry.

11 A. I do not -- when I try a case, I do not make a
12 decision about whether or not a defendant will testify or
13 if I will recommend that they testify until the State's
14 evidence has ended because up until then, I don't know if
15 I will need a defendant to testify or not.

16 Q. But during your meetings with Mr. Dennis, how long
17 would you estimate that you spent meeting with Mr.
18 Dennis?

19 A. I would say five to six hours.

20 Q. During that time, did you go into detail or practice
21 questioning Mr. Dennis as if he was on the stand and
22 willing to testify that he was in Greenville? Did you go
23 through any kind of mock questioning of him?

24 A. I don't do mock questioning when I'm interviewing
25 clients.

1 Q. So in preparation for trial and evaluating whether
2 he would take the stand or not, you did not go through
3 any of that kind of detailed review with him?

4 A. At the meetings that I had with him, those were
5 meetings to discuss the evidence, to talk with him about
6 the case and to get information from him. The meeting
7 that I had scheduled for us to sit down and discuss the
8 trial, he didn't appear for.

9 Q. Now, he did -- according to Mr. Dennis, he had met
10 with you about two weeks prior to the trial. So was
11 there another meeting that was scheduled between that
12 time with Mr. Dennis that he did not appear for?

13 A. I had two appointments scheduled for him in June
14 that he did not appear for.

15 Q. Now, did you contact Mr. Robinson, the victim in
16 this case?

17 A. I did not.

18 Q. There was another co-defendant, I believe, Mr.
19 Andracius Manley. Did you speak with him?

20 A. He was a minor, and his attorney did not want him
21 speaking with me.

22 Q. Okay. Was there any other witnesses besides the
23 ones I've mentioned, the ones we've talked about -- well,
24 potential witnesses or potential, what we might call it.
25 Did you interview anyone else?

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1 A. Not other than Mr. Manley, no.

2 Q. So you interviewed Mr. Manley one time at the
3 Greenville Law Enforcement Center, and that was the
4 extent of the possible defendant witness list?

5 A. That was the witness that I talked with, yes.

6 Q. Okay. I want to switch gears a little bit now.
7 Now, when the State brought in these pictures at the
8 start of the trial they wanted to introduce, were you
9 aware of these?

10 A. Yes.

11 Q. Had you been aware of these pictures?

12 A. Yes. They were included in the discovery materials.

13 Q. Okay. And were those -- were those -- did any of
14 that take you by surprise as to why they wanted to
15 introduce them in this trial?

16 A. I was not taken by surprise, no.

17 Q. Okay. Did you object to their introduction?

18 A. I did.

19 Q. And why did you object to their introduction?

20 A. Because I felt that they were irrelevant to this
21 case. They were photographs that indicated an assault
22 had occurred, not an armed robbery.

23 Q. Okay. And did you articulate that to the Court, and
24 did you ask for those pictures to be suppressed?

25 A. I did.

1 Q. And did the Court rule on those pictures?

2 A. The Court allowed the introduction of the majority
3 of them into evidence.

4 Q. Okay. When Mr. Dennis was convicted, did you file
5 an appeal in this case?

6 A. I did.

7 Q. And did you note that in your opening or your
8 introduction letter to the appellate defense division?

9 A. I did.

10 Q. And was that an issue that you felt was appealable
11 in this matter?

12 A. I felt that the issue of the photographs and the
13 lineup were both appealable issues.

14 Q. Okay. And to your knowledge, did you have any other
15 contact with the appellate defense division or, I
16 believe, Ms. Elizabeth Best?

17 A. I did not.

18 Q. And from that point forward, were you involved in
19 any way with this case?

20 A. I was not.

21 Q. Okay.

22 MR. DENNY: Your Honor, may I confer with my
23 client?

24 THE COURT: Yes, sir.

25 Q. Ms. Earle, a follow-up question regarding those

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1 pictures. Did you ever provide these pictures to Mr.

2 Dennis prior to the trial?

3 A. I provided Mr. Dennis with a complete copy of my
4 file.

5 Q. And as you're standing here today, that included
6 those pictures that were brought to trial that were taken
7 by not anyone from the State, not any investigator, but
8 by family members of the victim?

9 A. It included black and white copies of the black and
10 white copies I was provided.

11 Q. Okay. And when were you provided those pictures?

12 A. When I was provided the discovery materials.

13 Q. Were you were provided with one set of discovery
14 materials, or did they supplement them prior to trial?

15 A. I believe just the one.

16 Q. In the transcript, you identify -- you're asking who
17 actually took these pictures. You're talking about
18 whether it was an investigator, whether it was whoever.
19 And I think it came out that it was not a State employee.

20 It was someone -- a family member or someone else. Did
21 you ever question about continuing to investigate the
22 photographer a little bit further to understand more
23 about how the pictures came about?

24 A. I objected to the introduction of the photographs,
25 objected to not having been told ahead of time who took

1 the photographs, and the Judge overruled me. I did not
2 feel it was appropriate to make a motion to continue at
3 that time.

4 Q. Now, I just want to kind of close the loop on one
5 other open issue that we've got. And that is your
6 argument -- your theory of the case was a larceny,
7 correct? Your theory of the case was this is a larceny?

8 A. My theory is that if Mr. Dennis was present, it was,
9 at most, a larceny.

10 Q. And even if there was guns involved, there's
11 testimony in here by the State's witnesses, that when
12 they pulled out a gun, they asked Mr. Dennis about
13 getting a gun and he ran; is that not true?

14 A. That's correct.

15 Q. So from their own testimony he was trying to remove
16 himself from the scene as soon as he became aware that
17 there was a gun involved. Isn't that relevant or isn't
18 that what it appears to be?

19 A. That was the argument that I made to the jury.

20 Q. Okay. Now, is there -- I'm going to come back to
21 this one thing about the gun. Don't you think that
22 Devario Manley, who told you he had no idea about the gun
23 -- and that we've talked about everything about this case
24 is whether there's a gun involved or not here. Your
25 argument to the jury talked about when there was a gun,

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Suzanne Earle - Redirect Examination by Mr. Whitmire

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1 he took off. Don't you think it would have been relevant
2 to have Mr. Manley address the fact that he either lied
3 to you before or he's lying now because he was threatened
4 by the State?

5 A. In hindsight, perhaps. But at that point in time, I
6 asked the questions I felt were appropriate.

7 MR. DENNY: No further questions, Your Honor.

8 THE COURT: All right. Anything else from the
9 State?

10 MR. WHITMIRE: One or two quick follow-up
11 questions.

12 REDIRECT EXAMINATION

13 BY MR. WHITMIRE:

14 Q. Regarding the Applicant's involvement ...

15 MR. WHITMIRE: Referring to page 108, Your
16 Honor.

17 Q. ... didn't the victim give testimony that he
18 believed the Applicant was robbing him while the other
19 two co-defendants were beating him?

20 A. He did.

21 Q. So this is a jury issue, and you did the best you
22 could?

23 A. In my opinion it was, yes.

24 Q. And regarding the photographs that the Applicant --
25 not the Applicant -- but the State introduced, do you

1 recall Judge Macaulay's ruling on page 41 and 42 of why
2 they were relevant?

3 A. (No verbal response)

4 Q. The Applicant was charged with armed robbery; is
5 that correct?

6 A. That is correct.

7 Q. And one of the elements of armed robbery is
8 accomplished by placing the person in fear by violence or
9 threat of violence so as to make that person surrender
10 property, on and on?

11 A. That was what the judge ruled, yes.

12 Q. Okay. And the pictures corroborated the victim's
13 testimony?

14 A. They did.

15 Q. They were introduced for that purpose?

16 A. They did.

17 Q. And is a 403 analysis abuse of discretion at the
18 trial level?

19 A. (No verbal response)

20 Q. I'm sorry. Isn't a Rule 403 relevancy prejudice
21 analysis abuse of discretion at the trial level?

22 A. I'm sorry. I'm still not following you.

23 Q. Standard of review on appeal is abuse of discretion?

24 A. Oh, yes, yes.

25 Q. My fault.

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Closing Statement by Mr. Denny

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1 A. I'm sorry.

2 MR. WHITMIRE: No further questions, Your
3 Honor.

4 THE COURT: Okay. Thank you, ma'am. You can
5 step down.

6 THE WITNESS: Thank you.

7 MR. WHITMIRE: The State rests and asks that
8 Ms. Earle be excused.

9 THE COURT: Any objection?

10 MR. DENNY: No objection to Ms. Earle being
11 excused.

12 THE COURT: Okay. You're excused.

13 Okay. The State's rested. Anything else from the
14 Defense?

15 MR. DENNY: Your Honor, just a closing
16 statement if the Court would entertain it.

17 THE COURT: Yeah. Be happy to.

18 CLOSING STATEMENT

19 BY MR. DENNY:

20 Your Honor, may it please the Court. Mr. Dennis, a
21 young man, was still a young man at the time, basically
22 he has appointed counsel. And there's nothing wrong with
23 appointed counsel. I'm appointed counsel. There are
24 many people in Oconee County that take appointed cases.
25 But the question I think this Court is evaluating and I

1 would ask it to evaluate is from almost a year's amount
2 of time we've got a situation where there's a few times
3 which this Defendant had a chance to be interviewed and
4 work with his attorney. When we get to that point in
5 time, we have a man who basically is scared to death,
6 scared to death that basically he hasn't had time to talk
7 with his attorney, hasn't had time to basically prepare
8 for a case, hasn't gone through what to expect at that
9 trial. And there's no question in this court that he was
10 not there during the actual performance of the trial. He
11 was there for the jury selection, and that was it.

12 Now, the testimony you heard before, Your Honor,
13 from Ms. Earle that I would -- you know, in this role --
14 and this role is kind of difficult because we all know
15 each other in our professional careers, and I've had to
16 ask some tough questions. One of the tough questions
17 was, you know, this key point in this whole theory of the
18 case was, was a gun involved. That was the key point.
19 If there was no gun involved, we're talking larceny. If
20 there's a gun involved, we're talking armed robbery.

21 We have a point where the key witness for the State,
22 one of the co-defendants, has already cut a deal. He'd
23 been threatened basically by, you know, the State that
24 morning. If you go in and you tell them that, it's going
25 to be bad for you over here. Everything that Ms. Earle

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1 was trying to bring before that jury really had to do
2 with that gun. And now we've got contradictory
3 statements. We've got a statement that says he had no
4 idea. Matter of fact, the testimony in the transcript
5 shows the gun's there, Mr. Dennis is gone. It was
6 critical, critical to this case to point that out and to
7 continue showing that there was no association with Mr.
8 Dennis and any kind of a weapon.

9 THE COURT: Well, what do you do if he's not
10 there? I mean, how do you ask that question if he's not
11 there? If he's there, I understand how you ask it. You
12 take a break and you ask your client, you know, what --
13 and you review the two statements and you explain what
14 the options are. But if he's not there, what do you do?
15 Do you ask a question that you're not sure what the
16 answer's going to be knowing that this guy's scared and
17 running?

18 MR. DENNY: Well -- and Your Honor, at that
19 moment in time, the co-defendant was on the stand who's
20 saying just a few days before he had no idea there was a
21 gun there. And now -- he contacted Ms. Earle the morning
22 he walked into trial and says, the State came and talked
23 to me this morning. They said if I say that, you know,
24 I'm just going -- I'm going to say something else now.
25 Now, he said what he said on that stand was true.

1 But the relevancy is, I mean, that has nothing -- and I
2 understand the Court's question. It's my perception that
3 I do not believe that had anything to do with whether Mr.
4 Dennis was there or not. It had to do with the whole
5 theory of the case because there was a gun involved. And
6 effective assistance of counsel is putting together every
7 argument. And we have testimony in this case that Ms.
8 Earle never got to the point where she felt that if she
9 were to put Mr. Dennis on the stand that, while it was
10 his right, she said wasn't going to put someone on the
11 stand that she didn't believe their story. Did not, you
12 know, believe that he was telling the truth.

13 I didn't get anywhere in that cross-examination of
14 Ms. Earle that she got to the point where, okay, I felt I
15 could put him on there and he was going to be critical
16 for that. He'd been talking about a story about an
17 alibi. Ms. Earle clearly avoided that. Was not going to
18 sit there and lie, simply take the stand -- was not going
19 to use him to try and counteract that. The testimony in
20 the trial shows that Mr. Dennis was fleeing is a relevant
21 point. Effective assistance of counsel could have
22 brought that out, furthering the defense of withdrawal or
23 leaving this enterprise, leaving the situation when Mr.
24 Dennis found out that there was a gun involved.

25 THE COURT: All right. Say she asked him that

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Closing Statement by Mr. Denny

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1 question. And the question would be, I met with you a
2 month ago and you told me there wasn't a gun involved and
3 he wasn't there. And today you're under oath testifying
4 that he was there and there was a gun, whatever he
5 testifies to. And didn't you tell me this morning that
6 the solicitor's office said if you don't tell the truth,
7 we're going to come after you? That would be the
8 question, right?

9 MR. DENNY: Yes, sir.

10 THE COURT: I mean, we may disagree with it,
11 but doesn't that just -- isn't his answer most likely
12 going to be, I'm here to tell the truth? And I
13 understand if your client's here and you can say, look, I
14 can ask this question. I mean, I was there as a lawyer a
15 lot. I can ask this question and it may hammer you. You
16 need to -- like she said, you're the one going to jail.
17 What do you want me to do? Here's your two options.

18 The problem here is he didn't come back. And I
19 understand why he didn't come back quite frankly. I
20 mean, I get it. I understand what this is about. But --
21 so I mean, we're agreed that's what most likely the
22 answer would be. So she made a strategic decision.

23 MR. DENNY: She made a strategic decision.

24 Yes, sir, I'll concede that point.

25 THE COURT: I mean, I'm not trying to paint you

1 in a corner.

2 MR. DENNY: I know.

3 THE COURT: I mean, look ---

4 MR. DENNY: But Your Honor, my -- going back to
5 the effective assistance of counsel or ineffective
6 assistance of counsel, obviously, that was one critical
7 point. It was not predicated upon Mr. Dennis being
8 there. She already had that information. It was
9 relevant that basically -- you know, if he was going to
10 admit that he told Ms. Earle one story and then changed
11 it because the State was threatening him, that was all
12 information for they jury. The jury's the one that adds
13 whatever weight to that testimony they want to.

14 Now, with regards to the appeal in this case, you
15 know, there are appealable issues. There are appealable
16 issues with regards to whether or not those pictures were
17 prejudicial. Now, the appeal that was filed never
18 included those preserved issues whatsoever, and the
19 appeal was ultimately denied.

20 So in this case, while even if there's effective
21 assistance of counsel at the trial level, I'd ask the
22 Court to rule on ineffective assistance of counsel at the
23 appellate level and grant a belated appeal at least to
24 let the Court of Appeals evaluate whether or not those
25 pictures were an abuse of discretion at the trial level

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Closing Statement by Mr. Whitmire

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1 because in essence they really didn't add anything to
2 what was the charge for Mr. Dennis. That was the trial
3 counsel argument. That way that could have been
4 evaluated. I think that was properly preserved.

5 THE COURT: Okay.

6 MR. DENNY: So therefore, Your Honor, even if
7 there is effective assistance of counsel at the trial
8 level, we'd still ask this Court to grant a belated
9 appeal on the appellate issues.

10 THE COURT: All right.

11 MR. DENNY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Yes, sir?

14 MR. WHITMIRE: A brief response, Your Honor.
15 May it please the Court.

16 CLOSING STATEMENT

17 BY MR. WHITMIRE:

18 Addressing the 403 analysis and potential abuse of
19 these pictures, first I would really like to say that
20 it's the Applicant's burden of proof to present his
21 evidence accordingly. The Applicant is yet to bring any
22 pictures to show Your Honor. He didn't bring any court
23 exhibits from his trial. All we know is that Judge
24 Macaulay determined that they were relevant and that the
25 relevancy outweighed the prejudice. A standard review

1 itself is almost impossible to overcome on this issue in
2 particular. I just think it's speculation on whether
3 appellate counsel was, first, ineffective and if that
4 ineffectiveness even resulted in any potential prejudice
5 considering the issues at play.

6 Second, regarding the ineffectiveness of trial
7 counsel, the first prong of *Strickland*, standard
8 ineffectiveness, is particularly tailored to each
9 particular case and a defendant. And it comes down to a
10 lot. What does your client provide you? What do you
11 have to work with? And in this case Mr. Dennis was very
12 unhelpful if not completely obstinate in his defense,
13 making matters very, very difficult for his attorney.
14 Well, the State would submit that Ms. -- I'm sorry.
15 Retract that, Your Honor.

16 The State would submit that this case was tried as
17 effectively as it could have been under the
18 circumstances. Inevitably, even if we concede to
19 opposing counsel's point regarding trial strategy, the
20 victim places Mr. Dennis at the scene as he's getting
21 beat. He says, I infer, I think, that he's back there in
22 the back of my car robbing me of shoes. He does say that
23 the two co-defendants yell out to the Applicant, bring
24 the gun, help me, help me, we're trying to get the gun.
25 So there's evidence for the jury regarding the extent of

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Closing Statement by Mr. Whimire

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1 his involvement throughout the entire commission of the
2 offense. And we would submit that trial counsel did an
3 excellent job in cross-examining each witness to show
4 that there was no definitive eyewitness or testimony of
5 anyone hearing the Applicant at this point. I feel it
6 was a jury issue, and the jury came back the way they
7 did.

8 That is all, Your Honor.

9 THE COURT: Okay. Well, I'm going to read this
10 whole thing, to be honest with you. I mean, I understand
11 the concern with the sentence. I do. And I want to look
12 through it.

13 I've also got a little bit of concern about the
14 telephone call. It wasn't addressed, but your client
15 says he called in and said, I'm scared to come up there.

16 MR. DENNY: Yes, Your Honor.

17 THE COURT: And that was on the second day of
18 the trial?

19 MR. DENNY: Yes, Your Honor.

20 THE COURT: And he wasn't told to come up
21 there?

22 MR. DENNY: I -- you know, I asked that
23 question. He was not told to be there. I mean, as a
24 defense attorney -- and this is my answer to this -- is
25 I'd rather not have an empty seat. It doesn't matter how

1 bad the trial is. I'd rather not be trying to defend an
2 empty seat. So I don't know what was in that phone call.

3 THE COURT: And the co-defendants in this case
4 got ten years?

5 MR. DENNY: Yes, Your Honor.

6 THE COURT: Were they tried or were they guilty
7 pleas?

8 MR. DENNY: I think they were guilty pleas,
9 Your Honor.

10 THE COURT: And he had what other charges
11 facing him? He had P.W.I.D. in proximity.

12 MR. DENNY: Apparently, there was two second
13 offenses, one for distribution of marijuana and one
14 within proximity as well. My client has -- I'm not aware
15 of those charges at all.

16 THE COURT: Were they dropped?

17 MR. DENNY: I don't know that they were with
18 regards to, you know, the outcome of this. I know the
19 State a lot of times will sometimes dismiss charges when
20 there's a significant sentence. That may be why they're
21 not currently on his record. But there's at least a
22 distribution of crack cocaine, which I believe Ms. Earle
23 said she also represented Mr. Dennis on.

24 THE COURT: And what happened with that, just
25 so I know?

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PCR Hearing February 25, 2013
Closing Statement by Mr. Whitmire

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1 Ms. Earle?

2 MS. EARLE: He had a trafficking crack cocaine
3 charge that the State dismissed.

4 THE COURT: So that's dismissed. And that
5 carried up to what, thirty years?

6 MS. EARLE: I believe so.

7 THE COURT: Okay. All right. Well, I've got a
8 lot of transcripts to read, so I'll take it under
9 advisement and let y'all know something.

10 MR. DENNY: Thank you.

11 THE COURT: Thank you.

12 MR. WHITMIRE: Thank you, Your Honor.

13 THE COURT: One thing I want to tell you, Mr.
14 Dennis. I see an education here in what you've done.
15 You're a smart guy. Just use it, okay? I'm going to
16 look through your whole transcript word-by-word and I'll
17 do whatever the law says I've got to do. Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 (WHEREUPON, the hearing ended at approximately 1:12
21 p.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

2

I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Oconee County, South Carolina,
9 on the 25th day of February 2013.

10

This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12

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

14

October 11, 2013

15

16

Renee H. Tollison

17

Circuit Court Reporter

COURT OF COMMON PLEAS AND GENERAL SESSIONS **EXHIBIT RECORD AND RECEIPT FORM**

PLAINTIFF Adarius Dennis
 DEFENDANT State
 CASE NO. 2012-CP-37-0076
 DATE 2-25-13
 DATE ENDED 2-25-13

ATTORNEY Keith Dennis
 ATTORNEY John Whitmire
 JUDGE Cordell Maddox
 COURT REPORTER Renee Tollison

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
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DEFENDANT'S EXHIBITS

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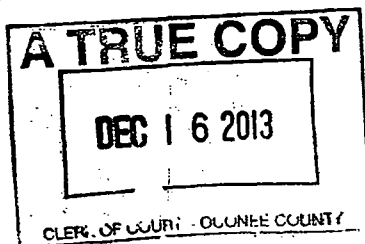
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 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 FEB 25 PM 1 51

Renee Tollison
 COURT REPORTER

Whitfield
 CLERK OF COURT

PAGE 1 OF 1

DATE 2-25-13



STATE OF SOUTH CAROLINA



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CLERK OF COURT - OCONEE COUNTY

PLAINTIFF'S
EXHIBIT
2-25-13
PENGAD 800-631-6989

Be it known that **ADARIUS DENNIS** has satisfactorily completed the Tests of General Educational Development and upon the recommendation of the Director of the Office of Adult Education of the State Department of Education, the State Board of Education awards this diploma, which is regarded to be equivalent to the high school diploma. Given at Columbia, South Carolina, December 2nd, 2010.

[Signature] *[Signature]* *[Signature]* *[Signature]*
CHAIRMAN, STATE BOARD OF EDUCATION STATE SUPERINTENDENT OF EDUCATION GOVERNOR OF SOUTH CAROLINA STATE GED ADMINISTRATOR

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Adarius Q. Dennis,
S.C.D.C. No. 336620,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2012-CP-37-076

ORDER OF DISMISSAL

RECEIVED

JUL 30 2013

S.C. SUPREME COURTFILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 JUL 11 AM 11 00

This matter comes before the Court pursuant to an Application for post-conviction relief (PCR) filed January 27, 2012. Respondent made its Return on May 22, 2012. An evidentiary hearing into the matter was convened on February 25, 2013, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Keith G. Denny, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Suzanne Earle, Esquire, (trial counsel) and Reynaldo Robinson (the victim) testified. This Court also had before it the records of the Oconee County Clerk of Court, court exhibits, the transcript of the proceedings against the Applicant, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Oconee County Clerk of Court's orders of commitment. The Applicant was indicted at the

October 2008 term of the Oconee County Grand Jury for armed robbery (2008-GS-37-1590).

Suzanne Earle, Esquire, represented the Applicant.

The State took the case to trial, and on June 24, 2009 the Applicant was found guilty as indicted in his absence. On August 31, 2009, the Honorable James Williams unsealed the sentence. The Honorable Alexander S. Macaulay sentenced the Applicant to twenty three (23) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Adarius Q. Dennis, Op. No. 2011-UP-352 (S.C. Ct. App. filed June 29, 2011). The Remittitur was issued on July 20, 2011.

At the PCR hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to prepare and consult with Applicant.
 - b. failure to challenge a defective indictment.
 - c. failure to advise Applicant of the solicitor's guilty plea offer.
 - d. failure to make a motion for continuance.
 - e. failure to adequately cross-examine a State's witness.
 - f. failure to request a jury instruction on "withdraw."
2. Ineffective assistance of appellate counsel.
 - g. failure to raise meritorious issues on appeal.

II. Summary of Testimony

At the PCR hearing, Applicant testified. Applicant alleged counsel was ineffective for failing to prepare his case and consult with him prior to trial. Applicant stated he met with trial counsel twice prior to trial. Applicant stated the first meeting occurred at the Oconee County

Detention Center prior to Applicant posting bond. Applicant stated trial counsel provided him no information on the case. Applicant stated the second meeting occurred months later. Applicant stated he met trial counsel at the court house in order to obtain discovery. Applicant stated trial counsel did not review discovery with him. Applicant stated he did not meet with trial counsel again until his case was called for trial. Applicant stated that trial counsel never tried to contact him after he posted bond.

Applicant alleged trial counsel was ineffective for failing to advise him of the solicitor's guilty plea offer. Applicant stated trial counsel conveyed the guilty plea offer to him at their second meeting. Applicant stated trial counsel told him the offer was for a ten year negotiated sentence for all of his pending charges. Applicant stated counsel did not advise him of parole eligibility. Applicant stated trial counsel neglected to discuss the offer with him in the weeks leading up to trial. Applicant stated that he was under the impression the guilty plea offer had been revoked. Applicant alleged trial counsel was ineffective for failing to advise him he would be tried in absentia if he decided to violate the conditions of his bond and not return for his trial. Applicant stated that subsequent to jury selection, he was panicked and scared. Applicant acknowledged the trial judge warned him he would be tried in absentia if he neglected to return for the disposition of his case. Yet, Applicant stated he was ignorant of the law. Applicant stated he phoned trial counsel on the second day of trial and explained to her that he was scared. Applicant stated trial counsel failed to tell him his attendance at trial was compulsory. Applicant stated he subsequently learned he could have returned and entered a guilty plea. Applicant stated he was unaware how the trial judge would have proceeded had he returned to court subsequent to absconding. In conjunction to this allegation, Applicant additionally alleged trial counsel was

ineffective for failing to move for a continuance when he was not present on the second day of his trial.

Applicant alleged trial counsel was ineffective for failing to review discovery with him. Applicant stated he told trial counsel that he had nothing to do with the commission of the offense. Applicant stated he did not recall telling trial counsel he had an alibi. Applicant stated he was unaware that his co-defendants had identified him. Applicant stated he had a copy of discovery and knew of the victim, Ronaldo Robinson's, statement. Applicant stated he was also unaware of the pictures taken of the victim and his vehicle. Applicant stated trial counsel did not discuss his right to testify with him. Applicant also stated trial counsel did not consult with him during jury selection. Applicant stated trial counsel neglected to answer his questions regarding the process.

Applicant alleged trial counsel was ineffective for failing to investigate and cross-examine one of his co-defendants, Diverio Manley, prior to trial. Applicant stated trial counsel asked him if he desired having Manley testify on his behalf at trial. Applicant stated he was surprised when Manley testified for the State. Applicant stated he told trial counsel he did not desire her to investigate any potential witnesses at trial. Applicant stated trial counsel failed to cross-examine Manley regarding an oral statement he gave her about Applicant's knowledge of the use of weapons during the commission of the offense.

Applicant alleged trial counsel was ineffective for failing to request a jury instruction on "withdraw." Applicant also alleged trial counsel was ineffective for failing to object to the court's lack of jurisdiction. Applicant stated the Grand Jury did not convene on the day his indictment was allegedly true billed. Applicant further stated the clerk of court canceled the

General Sessions when he was allegedly fraudulently indicted.

Last, Applicant alleged appellate counsel was ineffective for failing to present meritorious issues on appeal. First, Applicant stated appellate counsel failed to argue the trial judge erred in admitting inflammatory pictures of the victim. Second, Applicant stated the trial judge erred in not allowing jury to hear that Applicant was not armed during the commission of the offense. Third, Applicant stated appellate counsel failed to argue the trial judge erred in allowing a discovery violation. In support of his Application, Applicant presented Exhibit 1, a copy of his GED that he has since obtained pursuant to the trial judge's orders.

The victim testified at the PCR hearing. The victim stated he did not believe Applicant received a fair sentence proportionate to his role in the armed robbery. The victim stated the Applicant lured him into the ambush. The victim stated he heard one of the co-defendants call out to Applicant during the commission of the offense. The victim stated that although he did not know who stole shoes from his vehicle, he did not doubt the Applicant was involved in the commission of the offense.

Trial counsel testified at the PCR hearing. Trial counsel was appointed to represent Applicant in July of 2008. Trial counsel first met with Applicant in local detention on the day she was appointed. Trial counsel met with Applicant five or six times prior to trial. Trial counsel filed for discovery and reviewed it with Applicant. Trial counsel provided a complete copy of discovery to Applicant that included photographs of the victim's injuries. Trial counsel stated Applicant told her he was not present in the county during the commission of the offense. Trial counsel stated Applicant told her he was in Greenville, South Carolina, visiting his girlfriend. Applicant did not provide trial counsel the girlfriend's name or address nor did he provide trial

counsel with receipts or other evidence to corroborate his story. Because Applicant provided no basis for her to investigate the girlfriend, trial counsel did not pursue an extensive investigation on the matter. Trial counsel explained to Applicant that various witnesses identified him at the scene of the offense. Trial counsel stated Applicant was not forthcoming with her regarding his presence at the scene during the commission of the offense. Furthermore, trial counsel stated Applicant was uncooperative and missed several appointments with her.

Trial counsel conveyed the solicitor's plea offer to Applicant. Trial counsel stated the solicitor offered to allow Applicant to plead guilty to the lesser included offense of strong armed robbery along with unrelated charges. Because trial counsel did not represent Applicant on all of his pending charges, she carefully crafted her advice on the matter. Trial counsel stated she reviewed the State's evidence with Applicant and explained to him "hand of one" accomplice liability. Trial counsel stated that as a matter of practice, she never tells her clients how much time they will serve on a sentence.

Trial counsel interviewed Applicant's co-defendant, Diverio Manley, prior to trial. Trial counsel stated that Diverio Manley told her the offense was planned but that Applicant was unaware that his co-defendants were armed. Trial counsel stated Manley was originally slated to testify on Applicant's behalf. However, prior to trial, trial counsel stated Manley recanted and admitted to lying to her. Because Applicant absconded, trial counsel decided not to cross-examine the witness on the matter. Trial counsel stated Applicant hindered her ability to present a defense because he would not tell her if he was present at the scene. Nor did Applicant select a defense theory of the case for trial counsel to pursue. Trial counsel stated she tried to impress the importance of attorney/client communication with Applicant. As a result, trial counsel pursued

the defense that Applicant did not participate in the commission of the armed robbery without conceding that he was present at the scene. Second, trial counsel stated she was weary of Diverio Manley providing further testimony regarding Applicant's involvement in the armed robbery. Trial counsel stated that because Applicant absconded during his trial, she was unable to consult with Applicant for trial strategy regarding the cross-examination of State's witnesses. Trial counsel stated she cross-examined the State's witnesses to the best of her ability under the circumstances. Trial counsel stated she had no knowledge that Applicant would abscond during his trial.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of ~~plea~~^{trial} counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A.

This Court finds Applicant has failed to meet his burden to prove trial counsel was ineffective for failing to prepare his case and consult with him during representation. This Court finds trial counsel's testimony credible and Applicant's testimony not credible. A criminal defense attorney has a duty to perform a reasonable investigation. Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 597. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Id. at 331-32, 642 S.E.2d

at 597 (internal quotes and citation omitted). Trial counsel met with Applicant on numerous occasions, reviewed discovery, and conducted a reasonable investigation into Applicant's case. This Court finds trial counsel was thoroughly diligent and prepared. Additionally counsel met with the lead investigator assigned to the case. Furthermore, Applicant failed to produce any beneficial evidence to support this allegation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("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.").

This Court also finds Applicant failed to prove trial counsel was ineffective for not consulting Applicant during jury selection. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). "The selection of a jury is inevitably a call upon experience and intuition. The trial lawyer must draw upon his own insights and empathetic abilities." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing Romero v. Lynaugh, 884 F.2d 871, 878 (5th Cir.1989) (emphasis added)). "In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." Id. This Court finds Applicant's testimony not credible. Applicant failed to specifically allege how trial counsel's strategic decision to exercise peremptory strikes was detrimental to the verdict. Therefore, these allegations are denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to challenge an alleged defective indictment. "[A]n indictment is a notice document.

The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. A defendant must challenge the sufficiency of an indictment before the jury is sworn." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499; S.C.Code Ann. § 17-19-90 (2003). This Court finds Applicant failed to produce credible evidence that showed he was improperly indicted. See Weathers v. State, 319 S.C. 59, 62, 459 S.E.2d 838, 839 (1995) ("Absent evidence to the contrary, the regularity and legality of proceedings in general sessions court is presumed."). This Court finds the indictment in question was facially valid. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to advise Applicant of the terms of the guilty plea offer. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). This Court finds trial counsel's testimony credible and Applicant's testimony not credible. This Court finds trial counsel adequately advised Applicant on the terms and applicable punishment of the solicitor's guilty plea offer. Trial counsel provided sound advice regarding Applicant's exposure for incarceration. Trial counsel also provided sound advice regarding the strength of the State's evidence. This Court finds trial counsel was not

deficient in declining to advise Applicant on how the guilty plea offer would have affected Applicant's collateral pending charges. This Court finds Applicant failed to produce credible evidence on this issue. This Court also finds ~~it telling~~ Applicant protested his innocence by telling trial counsel he had an alibi. Applicant failed to present credible testimony that indicated he desired a guilty plea. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to make a motion for continuance when Applicant did not appear on the second day of trial. "A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence." State v. Patterson, 367 S.C. 219, 229, 625 S.E.2d 239, 244 (Ct.App.2006). "A trial judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend." State v. Ravenell, 387 S.C. 449, 455-56, 692 S.E.2d 554, 557-58 (Ct. App. 2010). This Court finds trial counsel's testimony credible and Applicant's testimony not credible. The trial judge continued Applicant's surety bond and warned him that if he failed to return to court the following day, he would be tried in his absence. (Trial Tr. p.29). This Court finds the motion lacked merit. This Court further finds Applicant failed to present credible evidence that ^{trial} ~~plea~~ counsel told him he was not required to return to court for his trial. Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for her performance in cross-examining a State's witness. When reviewing a counsel's

performance, there is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (citing Strickland, *supra*). This Court finds trial counsel's testimony credible. Trial counsel interviewed Manley prior to trial. This Court finds trial counsel's decision not to cross-examine Manley on his inconsistent statements for impeachment purposes was a product of sound trial strategy. Applicant failed to provide trial counsel a consistent version of the facts of the offense. Applicant initially claimed he was not present in Anderson at the time of the offense. Although Applicant conveyed to trial counsel that his story might be false, Applicant waived on whether he was present at the scene of the offense. Applicant's decision to ignore the trial judge's order to be present at his trial further exacerbated trial counsel's dilemma in presenting a defense. As a result, trial counsel made the strategic decision to limit her cross-examination of Manley. Trial counsel stated that because Applicant was not present to testify and deny Manley's statements, she feared further harmful testimony from the witness that could not be refuted. Thus, this Court finds trial counsel's strategy on the matter valid. See Ingle v. State, 348 S.C. 467, 471, 560 S.E.2d 401, 403 (2002) (counsel must articulate an objectively reasonable strategy to avoid a finding of ineffectiveness). Therefore, this allegation is denied and dismissed.

F.

This Court finds Applicant's allegation that trial counsel was ineffective for failing to request a jury charge on "withdraw" is without merit. "[I]f a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both." State v. Kelsey, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998). This Court finds the trial

judge properly issued jury instructions on "hand of one" and "mere presence." (Trial Tr. pp.181-3). Therefore this allegation is denied and dismissed.

G.

This Court finds Applicant failed to meet his burden to prove appellate counsel was ineffective for not raising meritorious issues on appeal. "Although appellate counsel is required to provide effective assistance of counsel, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). First, this Court finds Applicant failed to prove appellate counsel was deficient for not raising a discovery violation issue on appeal. "Discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant applies to evidence within the actual possession of the prosecution and to evidence within the possession of other government agencies." State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998) aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999). The solicitor provided trial counsel copies of photographs intended to be admitted as evidence. (Trial Tr. 45). Trial counsel argued the solicitor failed to provide information regarding the origins of the photographs. The trial judge ruled trial counsel's objection did not trigger a potential Rule 5, SCRimP, concern. This Court agrees. The solicitor properly complied with Rule 5, SCRimP, on the matter. Therefore, appellate counsel was not deficient for exercising her discretion to not raise this issue on appeal.

Second, Applicant failed to prove appellate counsel was ineffective for failing to raise an alleged Rule 403, SCRE, violation on appeal. "The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Dickerson, 395 S.C. 101, 116; 716 S.E.2d 895, 903 (2011). "A trial court has particularly wide

discretion in ruling on Rule 403 objections." See State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We ... are obligated to give great deference to the trial court's judgment [regarding Rule 403]."). Trial counsel made a motion to suppress photographs that showed the victims' injuries after the commission of the offense. (Trial Tr. pp.37-47). The solicitor argued the photographs were relevant to corroborate the victim's testimony regarding the injuries he sustained. The trial judge ruled the pictures were relevant to the armed robbery charge. (Trial Tr. pp.41-2). The trial judge made rulings on all ten pictures. The trial judge granted trial counsel's motion to suppress on three of the pictures finding "the prejudicial value would have outweighed the probative value." (Trial Tr. p.47). Applicant failed to prove that the trial judge's admissibility findings constituted an abuse of the trial judge's discretion. Therefore, this Court finds appellate counsel was not deficient for exercising discretion to not raise this issue on appeal.

Last, this Court finds Applicant's assertion that appellate counsel was ineffective for not arguing the trial judge precluded the jury from hearing ~~that~~ Applicant was unarmed during the offense is wholly without merit. When Applicant absconded and abandoned his defense, he waived his right to testify. Therefore these allegations are denied and dismissed.

II.

This Court finds Applicant also failed the second prong of Strickland – that he was prejudiced by trial counsel's performance. The victim testified on Applicant's behalf at the PCR hearing. Echoing his trial testimony, the victim stated Applicant was involved and guilty of the armed robbery. Additionally numerous other witnesses, including a co-defendant, testified to

Applicant's role in the commission of the offense.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

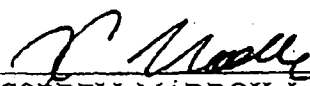
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

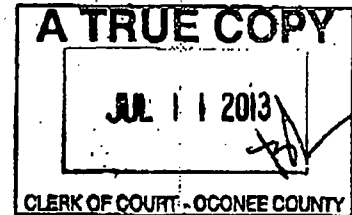
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 3rd day of July, 2013.


J. CORDELL MADDOX, Jr.,
Presiding Judge
Tenth Judicial Circuit

Walhalla, South Carolina



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 JUL 11 AM 11 00

KEITH G. DENNY, P.A.
P.O. Box 101
Walhalla, SC 29691

Hon. Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211



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

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

The State, Respondent,

v.

Adarius Quante Dennis, Appellant.

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

Unpublished Opinion No. 2011-UP-352
Submitted June 1, 2011 – Filed June 29, 2011

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Assistant Attorney General
Christina J. Catoe, all of Columbia; and Solicitor Christina
T. Adams, of Anderson, for Respondent.

PER CURIAM: Adarius Quante Dennis appeals his sentence for armed robbery, arguing the circuit court abused its discretion when it penalized him for exercising his right to a trial. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Johnson, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (holding that, except in exceptional circumstances, "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review").

AFFIRMED.

FEW, C.J., HUFF, J., and GOOLSBY, A.J., concur.

^[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

327

WITNESSES
REED G. OCSD

R. Reed

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

OCT 20 2008

Term

ARREST WARRANT NUMBER

K363093

THE STATE

VS.

Adarius Quante Dennis

ACTION OF GRAND JURY

True Bill

Michael D. Stiles
Foreperson of Grand Jury
Date: OCT 20 2008

VERDICT

Smith

William B. Cannon 6/24/09

Foreperson of Petit Jury
Date:

DRW

Indictment for

Armed Robbery

SC Code: 16-11-0330(A)
CDR Code: 0139

2008 OCT 20 P 12:51

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

Ad

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Oconee)

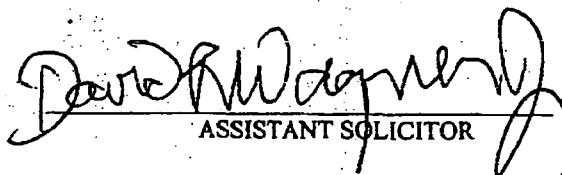
OCT 20 2008

At a Court of General Sessions, convened on _____, the Grand Jurors of
Oconee County present upon their oath:

Armed Robbery

That **Adarius Quante Dennis** did in Oconee County, on or about the **June 22, 2008**, while armed with a deadly weapon, to wit: a handgun, or while alleging either by action or words he/she 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: five boxes of shoes from the person or presence of Renaldo Robinson. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 329

COUNTY OF Oconee
 STATE VS.
Mr. Adarius Quante Dennis
 AKA:
 Race: B Sex: M Age: 23
 DOB: SS#
 Address: Anderson, SC 29624
 DL#: SID#:

INDICTMENT/CASE#: 2008GS371590

A/W#: K363093

Date of Offense: 6/22/2008

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly ar

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

David R. Wagner
 Wagner, David Rhys SC Bar#

Defendant

Suzanne Earle 1819
 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of (23) days/months/years or ☐ under the ~~Youthful Offender Act~~ not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~
~~months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of~~
~~probation, which are incorporated by reference.~~

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Cr
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered PTUP days/hours Public Service Employment

Total: \$ 3,742.00 plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
§ 3% to County (if paid in installments)	\$	\$ 3.90

TOTAL

\$ 133.90

Beverly H. Whitfield
 Clerk of Court

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, 47.12
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Judge Code:

K- 363093

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
OCCONEE COUNTY

THE STATE
against

DENNIS, ADARIUS GUANTE

Address: Anderson, SC 29627

Phone: SSN:

Sex: M Race: B Height: 5'0 Weight: 150

DL State: DL#:

DOB: Agency ORI# SC0237000

Prosecuting Agency: SHER DEPT

Prosecuting Officer: ANY LAUREL DEETER

Offense: ARMED ROBBERY W/DEADLY WEAPON

Offense Code: 0139

Code/Ordinance Sec: 16-11-330 (A)

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant DENNIS, ADARIUS GUANTE
on 07/16/08
Signature of Constable/Law Enforcement Officer 296 533

RETURN WARRANT TO:

OCCONEE COUNTY SHERIFF'S OFFICE
O.L.E.C.
415 SOUTH PINE STREET
WALHALLA, S.C. 29691

☐ County/ ☐ Municipality of
OCCONEE COUNTY

Personally appeared before me the affiant REED, G
being duly sworn deposes and says that defendant DENNIS, ADARIUS GUANTE
did within this county and state on 06/22/08 violate the criminal laws of it

State of South Carolina, (or ordinance of ☒ County/ ☐ Municipality of OCCONEE
in the following particulars:
DESCRIPTION OF OFFENSE: ARMED ROBBERY W/DEADLY WEAPON
16-11-330 (A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID ALONG WITH OTHERS WHILE ARMED WITH A HANDGUN, DID ROB
THE VICTIM, REMALDO DEON ROBINSON, IN A DRIVEWAY AT
SENECA, SC. THE DEFENDANT AND OTHERS TOOK FIVE BOXES OF SHOES WITH EACH
BOX CONTAINING SIXTEEN PAIRS OF SHOES VALUED AT \$600.00. THIS INCIDENT
OCCURRED IN SENECA, SC, IN OCCONEE COUNTY AND WAS INVESTIGATED BY OCSO.
REPORT STATEMENT AND PHOTO LINEUP ON FILE. CASE NUMBER 0816935.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
OCCONEE

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe in
on 06/22/08 defendant DENNIS, ADARIUS GUANTE
did violate the criminal laws of the State of South Carolina (or ordinance of OCCONEE) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY W/DEADLY WEAPON
16-11-330 (A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on JUNE 23, 2008

Signature of Issuing Judge (L.S.)

Judge Code: 033
B.A. NORTON

ORIGINAL

ARREST WARRANT

Affiant's Address: 3002 B CHURCH ST
WALHALLA, SC 29691
Affiant's Telephone: 864 638-4111

Judge's Address: 208 BOOKER DRIVE
WALHALLA, SC 29691
Judge's Telephone: 864 638-4125
Issuing Court: ☒ Magistrate ☐ Municipal

COMPUTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ADARIUS QUANTE DENNIS,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge abuse his discretion in sentencing appellant to 23 years when his co-defendant, and the actor responsible for pistol-whipping the victim, received only 10 years for his plea to armed robbery?

STATEMENT OF THE CASE

Adarius Quante Dennis was indicted by the Oconee County grand jury for armed robbery on October 20, 2008. He was tried between June 22-24th, 2009 before the Honorable Alexander S. Macaulay and a jury. He waived his right to be present at his trial. He was represented by Suzanne Earle, Esquire. He was convicted and sentenced to 23 years. He received his sentence on August 31, 2009.

This appeal timely follows.

ARGUMENT

The trial court judge abused his discretion in sentencing appellant to 23 years when his co-defendant, and the actor responsible for pistol-whipping the victim, received only 10 years for his plea to armed robbery.

Appellant was tried for armed robbery between June 22nd and 24th, 2009. He waived his right to be present for his trial. See Rule 16, SCR Crim.P. As his attorney informed the court, he was "scared." ROA p. 77 At trial, his co-defendant testified against him. The co-defendant had already pleaded guilty and was sentenced at the time of the trial. ROA p. 59-75. At the end of trial, the judge sentenced appellant, and his sentence was sealed. It was unsealed on August 31, 2009 and appellant received a 23 year sentence. ROA p. 79-82

At the time of the sealed sentencing, on June 24th, 2009, counsel requested the minimum, the same as the testifying co-defendant received:

Mr. Dennis does work, he's got a four-year-old child, Your Honor. And I know he didn't show for court. In talking with him I also understand he didn't come because he was scared. And his codefendant who is the one who actually had the gun and who was the one who beat the victim in this case received a ten-year sentence on this and I would just ask your Honor to consider the minimum sentence on the armed robbery for my client.

ROA p. 77, ll. 10-20.

The state objected to this:

MR. WAGNER: No, sir, your Honor, other than I don't think it's fair to compare one to the other necessarily in this case. I think this one guy was involved with it just as much as the other, and the other guy at least to his credit cooperated with the police and came to court and told the truth and he tried to help out. This defendant did not.

ROA p. 78, ll. 2-8.

The judge then stated:

THE COURT: I understand. The court never considers whether or not an individual exercised his rights, to include the right not even, to waive the right to be present at trial. But the court does have to consider a prior record and those things that reflect the seriousness of the offense. All right.

ROA p. 78, ll. 9-14.

Appellant's prior record, as stated by the state, include a carrying a pistol under the age of 21 and possession of crack, a disorderly conduct, a criminal domestic violence, driving under suspension, and failure to stop for a blue light. ROA p. 76, l. 21- p. 77, l. 7. The state did not inform the judge what prior record the testifying co-defendant had.

The judge abused his discretion by sentencing appellant to 13 years more than his co-defendant because the significant discrepancy suggests that the judge penalized appellant for exercising his right to a trial. While the judge stated that he had to take into account appellant's prior record, he did not ask the state to provide the co-defendant's record to ensure some consistency in their sentences. Without the judge's asking the state for the additional information, it appears that the judge gave appellant that sentence based solely on appellant's decision to go to trial, and his waiver of the right to be present at it. Appellant had a right to waive his presence at his trial. State v. Ravenell, ___ S.E.2d ___, WL 1028966 (March 17, 2010); State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007); State v. Goode, 299 S.C. 479, 385 S.E.2d 844 (1989). See also Rule 16, SCRCrimP. Under these circumstances, the 23 year sentence amounts to cruel and unusual punishment.

"An abuse of discretion occurs when the trial court's ruling is based on an error of law or factual conclusion without evidentiary support." State v. Tumbleston, 376 S.C. 90, 93, 654 S.E.2d 849, 851 (Ct. App. 2007). An excessive sentence can violate the 8th Amendment to the Federal Constitution and the South Carolina State Constitution. State v.

Conally, 227 S.C. 507, 88 S.E.2d 591 (1955). *See also* State v. Kimbrough, 212 S.C. 348, 46 S.E.2d 273 (1948) (an excessive sentence can violate our state provision forbidding cruel and unusual punishment); South Carolina State Constitution, Article I, §19. Appellant respectfully asks for a new sentencing.

CONCLUSION

For the preceding reason, appellant respectfully asks this court to grant him a new sentencing hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Franklin-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 22nd day of July, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 22, 2010



ELIZABETH A. FRANKLIN-BEST
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

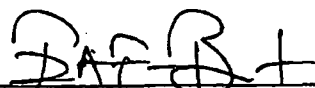
V.

ADARIUS QUANTE DENNIS,

APPELLANT

CERTIFICATE OF SERVICE

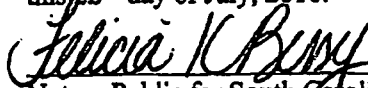
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of July, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 22nd day of July, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires. June 21, 2020.