

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County
D. Craig Brown, Circuit Court Judge

RECEIVED

JUN 14 2012

S.C. Supreme Court

PRESTON COSTA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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I N D E XWITNESSES:DIRECTCROSSRE-DRE-

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61

Ms. Campbell

68

ANGELO, WILLIAM

Solicitor

73

Ms. Campbell

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WARREN, HELEN

Solicitor

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Ms. Campbell

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HOLMES, BENJAMIN

Solicitor

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GARST, RYAN

Solicitor

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Ms. Campbell

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WARREN, LISA

Solicitor

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Ms. Campbell

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COSTA, PRESTON

Ms. Campbell

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Solicitor

176

WILSON, CHRISTINE

Ms. Campbell

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Solicitor

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Alternates:

~~#108~~ ~~Norm Westhosen (W-S) D-1~~
 #122 Myra Poplin (W-S)

~~#141~~ ~~Berton Grant (W-R) D-1~~
 #3 Jacqueline Atkin (B-S)

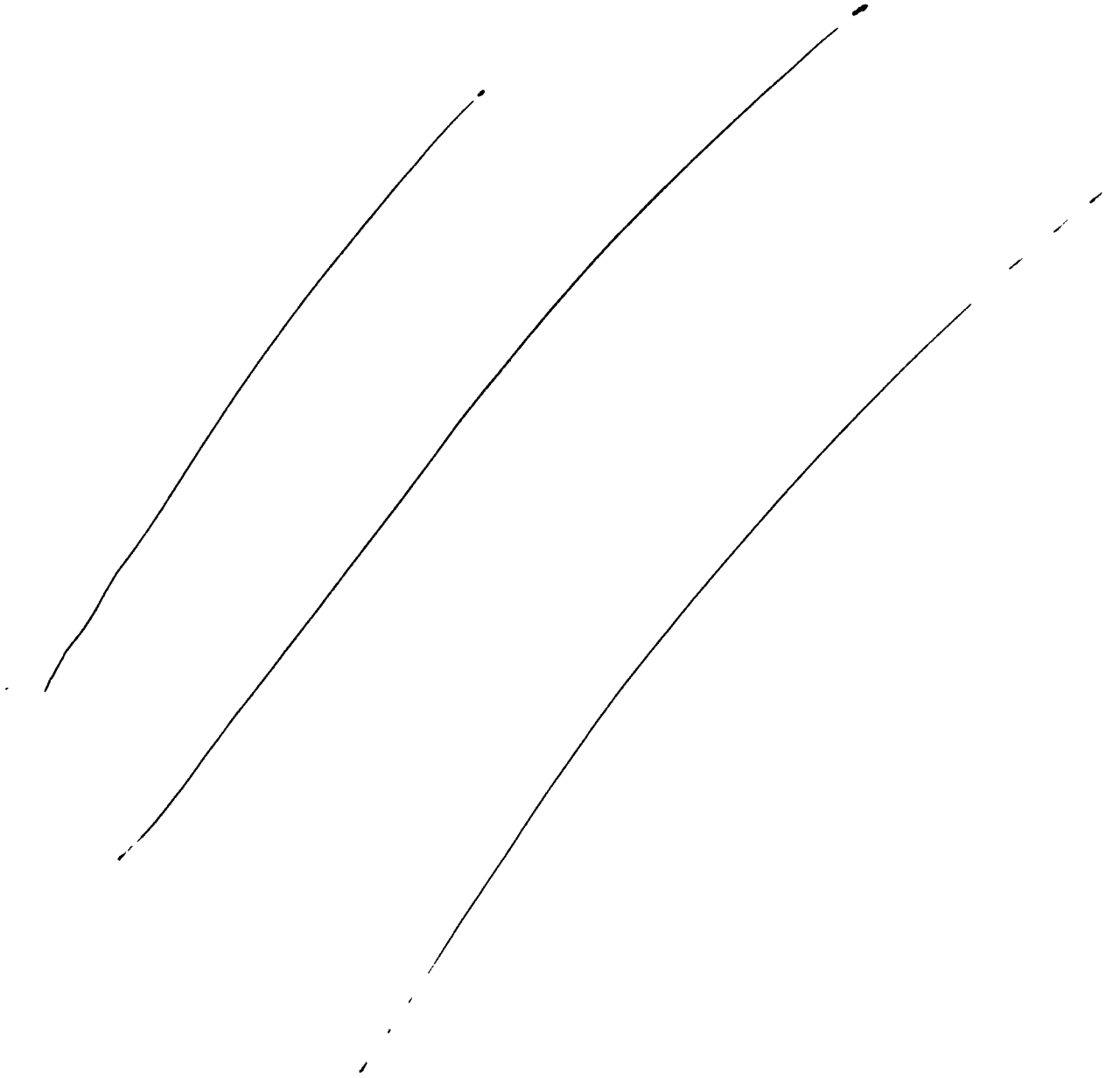
#9 Rebecca Luten (W-S)

Alternates:

~~#108 Roy Westhouse (W-F) D-1~~
 #122 Myra Poplin (W-F)

~~#141 Barton Grant (W-F) D-1~~
 #3 Jacqueline Ather (B-F)

#9 Rebecca Ather (W-F)



State on Costa (B-M)

- #188 Lewis Vessel (W-M)
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 #135 Barbara Seder (W-F)

1 SOLICITOR: Your Honor, this is the defense's
2 motion by Ms. Campbell.

3 MS. CAMPBELL: May it please the Court, Your
4 Honor, I filed a motion with the Court earlier this morning
5 in the State of South Carolina versus Preston Costa.
6 My client is seated directly to my left. My client is
7 currently under indictment for armed robbery and the
8 details within the brief before the Court is the trial
9 history of my client, that this would be the third trial
10 on the same matter.

11 I attached to the motion the case that I'm relying
12 on, the McMillan case, Rule 7, a fax from the Solicitor's
13 Office notifying my client of his trial date, and my
14 letter to the court reporter and as far as I know, I
15 have not received any other word, I've checked my messages
16 even this morning, that Ms. Hartley has the documents
17 from Court Administration yet and Ms. Hartley has
18 indicated to me, as I said, that she would not have them
19 until some time this week to even begin the preparation
20 of the transcript and, of course, Ms. Cummings also is
21 unavailable to provide me with the testimony portions
22 of the transcript. Frankly, Your Honor, we are ready
23 to try the case ---

24 THE COURT: The second trial, both of those
25 court reporters worked the second trial?

1 MS. CAMPBELL: Yes, sir, correct. We're ready
2 to proceed, Your Honor. As soon as the transcript is
3 received by me I don't anticipate it being past the first
4 of the year, if the State would like to go the first
5 week we have court, we have in January, Mr. Costa and
6 I would be prepared to proceed. I can't see that this
7 minor delay would prejudice the State. We've already
8 done this trial twice. Thank you, Your Honor.

9 THE COURT: Well, let me ask you this now. You
10 tried the first case and the second case?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: And you have the transcript of the
13 first trial?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: From your recollection of the testimony
16 in the second trial, are there material differences between
17 the testimony that was given in the first trial from the
18 second trial?

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: And you know who those witnesses
21 are and where those differences are?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: Now, if you had the transcript,
24 of course, you would have it in writing in front of you.
25 If you didn't have the transcript would you be able to

1 THE COURT: What was the longest period of time
2 that any one witness testified?

3 SOLICITOR: Your Honor, it probably maybe would
4 have been thirty minutes and that was the victim and
5 during her testimony we showed a video tape of the incident
6 which is what lengthened it, so that wouldn't be in the
7 transcript, that's a video tape that would be presented
8 again.

9 MS. CAMPBELL: The original transcript from
10 the first trial does not have a time on the witnesses,
11 just page numbers, Your Honor, and it runs probably 35,
12 40 pages on one witness. Officer Garst's testimony ran
13 from page 26 to 63 and that was, like I said, that was
14 the first trial.

15 THE COURT: Okay, any response from the State?

16 SOLICITOR: Yes, Your Honor. First, the State
17 would say that the defense's case provided in Milliken
18 was very case specific, the Court was very careful to
19 point out that it was case specific. I believe that
20 Your Honor has already touched on the fact that if the
21 tapes are available then the transcripts really are not
22 an issue as to whether or not there should be a continuance.
23 The tapes are available, they might not be in Ms. Campbell's
24 hands yet but they could be and the State doesn't plan
25 to try this case until Wednesday. We wanted to pick our

1 jury today and then jump into opening arguments and testimony
2 on Wednesday, which gives her two more days to get the
3 tapes if necessary.

4 However, again, you've already heard, this is
5 the third time we've tried this case. The witness list
6 is the same as the first and the second. Ms. Campbell
7 pointed out a rebuttal witness she called in the second
8 case. To my recollection that was a one question witness.
9 The State didn't have any questions of that witness.
10 She was up and down, I believe, of one if not two questions
11 by the defense.

12 Ms. Campbell did not request these transcripts
13 until after the State sent out trial notices, which would
14 have been a little over a week ago. The second case
15 tried in May. There's been ample opportunity. The State
16 is ready. Again, we've tried this twice, there's not
17 any surprises, the testimony of the witnesses is there.
18 Ms. Campbell and I both have been the attorneys on this
19 case so I don't believe that not having transcripts or
20 tapes prevents her from cross-examining the witnesses
21 effectively. She's already done it twice.

22 THE COURT: Apart from that one witness that
23 you --- you put up a rebuttal witness in the second case
24 live?

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: And you put up that witness to ---

2 THE COURT: One of the officers testified that
3 he had performed some work on this case and that other
4 officer was called to say that that work never took place.
5

6 THE COURT: Okay. And is that a discrepancy
7 that you were aware of because of the fact that the case
8 had been tried a second time?

9 MS. CAMPBELL: Right. As a result of his testimony
10 during the second trial and in response to a question
11 that I asked him, he then gave that information which
12 turned out to be false.

13 THE COURT: Are there any other differences
14 that you can recall now as you stand there between the
15 testimony that any one witness gave in the first trial
16 from the testimony they gave at the second trial?

17 MS. CAMPBELL: Independently, no. In looking
18 at my notes and ---

19 THE COURT: Well let me ask it this way. Did
20 you have opportunities in this second trial to use the
21 transcript of the first trial to cross-examine any witnesses
22 about differences in their testimony?

23 MS. CAMPBELL: Yes, sir, I did.

24 THE COURT: How many times do you think you
25 did that?

1 MS. CAMPBELL: I would say probably five.

2 THE COURT: Five. Well, alright then, and you
3 would like to be able to --- so there were five or so
4 times where the testimony of a witness in the second
5 trial you felt was different from the testimony of a
6 witness in the first trial?

7 MS. CAMPBELL: Correct.

8 THE COURT: And you would like to be able to
9 highlight now only how their testimony in the third trial
10 might differ from one of the others but how the testimony
11 differed from the first to the second trial.

12 MS. CAMPBELL: Right, Your Honor.

13 THE COURT: Well, wouldn't that make it possible
14 for you, if you had the tapes in advance, to go and find
15 those portions of the tapes in advance so that you would
16 have them ready to use during cross-examination?

17 MS. CAMPBELL: Certainly.

18 THE COURT: Okay, all right, anything further?

19 MS. CAMPBELL: No.

20 THE COURT: I'm going to deny the motion for
21 a continuance and what I want to do is to make sure you
22 and I or all of us will work together this morning to
23 make sure those tapes are here as quickly as possible.
24 Who knows where they are right now?

25 MS. CAMPBELL: Well, I can call Ms. Cummings.

1 She is currently still employed with the State of South
2 Carolina and ask her to bring her tapes here. Ms. Hartley
3 would call Court Administration or Your Honor could call
4 Court Administration and find out where Ms. Hartley's
5 tapes are. She is not aware personally of their location
6 at this point, other than Court Administration.

7 THE COURT: All right, well, Ronda is working
8 in Jasper County this week with Judge Gregory and Donna
9 is now in private practice here in Beaufort and so when
10 we break here, why don't you make phone calls to those
11 two court reporters and find out what they know and as
12 far as Ronda is concerned, see when she can get them
13 here and as far as Donna is concerned, just report to
14 me what both of them say and I'll see what I can do.

15 MS. CAMPBELL: Okay.

16 THE COURT: to move this along.

17 MS. CAMPBELL: I'll go call them right now if
18 you would like.

19 THE COURT: All right.

20 MS. CAMPBELL: Your Honor, could we make the
21 motion that I filed a part of the Court's record in this
22 case?

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Thank you.

25 (WHEREUPON, A short break was taken and then

1 the proceedings resumed.)

2 THE COURT: Yes, ma'am.

3 MS. CAMPBELL: May it please the Court, Your
4 Honor, I have, at the Court's direction, left messages
5 for both of the court reporters in this case directing
6 them to contact me directly on my cell phone which I
7 have here at the courthouse and to contact the Court
8 at the courthouse as well. And I have indicated in those
9 messages that the Court was requiring the tapes from
10 the second trail to be produced here at the courthouse.

11 THE COURT: Okay, keep me updated.

12 (WHEREUPON, this hearing was adjourned and
13 a short luncheon recess was taken and then the court
14 proceeded with the drawing of the jury.)

15 THE COURT: All right, ladies and gentlemen
16 of the jury, we are ready to select a jury in the case
17 of the State of South Carolina versus Preston Jamil Costa.
18 Mr. Costa has been indicted in indictment #04-GS-07-
19 925 for armed robbery and in that indictment it is alleged
20 that Preston Costa willfully and unlawfully violated
21 the criminal laws of the state of South Carolina on May
22 25, 2004 at Folly Road Grocery Store located at 489 Sea-
23 side Road, St. Helena, Beaufort County, South Carolina.
24 The defendant did enter the business with intent to commit
25 a crime therein, he pointed a handgun at Lisa Warren,

1 the store manager, threatened to kill her and take
2 approximately \$400.

3 Now in just a second I'm going to ask you a
4 series of questions, different questions but part of
5 the same format that we went through this morning, and
6 I'm going to talk to you in just a second about that.
7 But before I go past this indictment, I want to make
8 sure that each of you understand that the indictment
9 that I just read to you is not in any sense evidence
10 of the allegations that have been made within that
11 indictment. The indictment is simply the formal document
12 that contains the allegations that have been made against
13 the defendant and the indictment serves to process this
14 case and bring it into this court for trial.

15 The defendant has pled not guilty to this indictment
16 and the plea of not guilty casts the burden on the State
17 to prove the defendant guilty beyond a reasonable doubt.
18 And for those of you who are selected to serve on this
19 jury, that will be your job, to determine whether or
20 not the State has met its burden of proving the defendant
21 guilty beyond a reasonable doubt.

22 Now, as I've said, I have a series of questions
23 that I'm going to ask you, we call these voir dire questions.
24 They are questions that relate to this case, they relate
25 to the people and to the issues that will be involved

1 in this case. I would like for you to listen very carefully
2 to these questions and if you have any information that
3 is responsive to a question that I ask, then I would
4 like for you to stand, just as you did this morning,
5 and tell me your answer. Just like this morning also,
6 if you have any reason why you don't want to stand and
7 give your information out loud in front of the other
8 members of the jury panel, then you can just stand at
9 that time and tell me that you would like to speak with
10 me privately and I'll bring you down front and you can
11 answer the question privately with me and with the lawyers.

12 Now, if you know something about this case or
13 if you know some of the people who are going to be involved
14 in this case and if you think that giving your information
15 out loud in front of the other members of the jury panel
16 might expose them to information that they should not
17 be exposed to, then in that event you must come down
18 front and answer the question privately with me and with
19 the attorneys.

20 Now this morning when we went through jury
21 qualifications, you were put under oath. You are still
22 under that same oath so that oath applies to the information
23 that you will be giving me in this voir dire.

24 Ms. Tanner, would you please introduce yourself
25 and anyone else who is going to be assisting you in the

1 trial of this case.

2 SOLICITOR: Yes, sir, Your Honor. Good afternoon,
3 my name is Angela Tanner, I've been with the prosecutor's
4 office here in Beaufort County for a little over six
5 years. Assisting me this week will be Kimberly Smith,
6 another attorney in our office. Other people that work
7 in the courtroom this week but not on this particular
8 case, Lorraine Moss, Nicholas Reed, Steve Knight. Not
9 in the courtroom today but working in the office we have
10 Duffie Stone, Kelly Walker, Carson McDowell and Sean
11 Thornton and Christine Grefe.

12 THE COURT: Is there any member of the jury
13 panel who is related by blood or by marriage to Ms. Tanner
14 or to Ms. Smith, or do you know either one of them in
15 any way, if so, please stand.

16 JUROR: I do know Ms. Tanner.

17 THE COURT: And tell me your name, please.

18 JUROR: Mary Ann Riley.

19 THE COURT: Mrs. Riley. All right, how do you
20 know her?

21 JUROR: She's been to my house for dinner, she
22 and my husband played golf together but I don't feel
23 like it would ---

24 THE COURT: She and your husband played golf?

25 JUROR: I mean, my husband and her husband.

1 THE COURT: Okay. All right, thank you, Ms.
2 Riley. Now you mentioned that they had been to your
3 house and ya'll socialized. Is that something that ya'll
4 do on a regular basis or just occasionally?

5 JUROR: No, just occasionally.

6 THE COURT: All right, thank you, Ms. Riley.
7 Yes, sir.

8 JUROR: I think but I'm not positive but I think
9 that we were involved in their wedding.

10 THE COURT: And what is your name?

11 JUROR: Well, we did the rentals for it so I
12 just wanted to make sure that ---

13 THE COURT: Do you mind telling me your name?

14 JUROR: I'm sorry, Mike Davis.

15 THE COURT: All right, you think you were involved ---

16 JUROR: Renting her stuff for her wedding.

17 THE COURT: Okay. How long ago was that, if
18 you recall?

19 JUROR: I guess a year and a half ago, maybe
20 a year ago.

21 THE COURT: All right, thank you, Mr. Davis.
22 Now at least one of you has recognized Ms. Tanner's husband
23 and there may be others of you who would recognize him
24 during the course of the case. Her husband is P. J.
25 Tanner who is the Sheriff of Beaufort County so if there's

1 any member of the jury panel who also is related by blood
2 or marriage to Sheriff Tanner or who knows him in any
3 way, please stand. Yes, sir. Mr. Watts.

4 JUROR: Yes, sir.

5 THE COURT: How do you know Sheriff Tanner?

6 JUROR: I do a lot of work with the Sheriff's
7 Department, a lot of cases that are involved doing invest-
8 igation for the county.

9 THE COURT: All right, thank you, Mr. Watts.

10 JUROR: I also know Mr. Tanner.

11 THE COURT: All right, thank you, Mrs. Riley.

12 Now you heard Ms. Tanner mention that there are other
13 employees of the Solicitor's Office in this circuit.
14 The Solicitor for this circuit is Randy or Randolph Murdaugh
15 who is from Hampton. He is the elected Solicitor, he
16 has a staff of lawyers and non-lawyers here in Beaufort
17 and in the other counties who prosecute criminal cases.
18 Now that staff includes some of the folks that Ms. Tanner
19 mentioned -- who is Moss?

20 SOLICITOR: Lorraine Moss.

21 THE COURT: Oh, Lorraine Moss and then Steve
22 Knight, Kelly Walker, CARson McDowell, Duffie Stone,
23 Christine Krefe --- who did I leave out?

24 SOLICITOR: Nicholas Reed.

25 THE COURT: Nick Reed, okay. Nicholas Reed and

1 others. Is there any member of the jury panel who is
2 related by blood or by marriage to any of these employees
3 of the Solicitor's office or do you know any of them
4 in any way, if so, please stand. Mr. Watts.

5 JUROR: Duffie Stone, I do a lot of work with
6 Duffie Stone.

7 THE COURT: All right, thank you, sir. All
8 right, Ms. Campbell, would you please introduce yourself
9 and your co-counsel and your client to this jury.

10 MS. CAMPBELL: May it please the Court, Your
11 Honor. My name is Trasi Campbell, I'm the Deputy Public
12 Defender for Beaufort County. This is Preston Costa and
13 on the other side of my client is Mr. Gene Hood, who
14 is the Chief Public Defender for Beaufort County.

15 THE COURT: Is there any member of the jury
16 panel who is related by blood or marriage to Ms. Campbell
17 or to Mr. Hood or to Mr. Costa or do you know any of
18 them in any way, if so, please stand. Mr. Watts.

19 JUROR: I work for Beaufort County and I know
20 all of them.

21 THE COURT: All right. You know, who, the lawyers?

22 JUROR: Yes.

23 THE COURT: Do you know Mr. Costa?

24 JUROR: Yes, I do.

25 THE COURT: All right, sir, I'm going to ask

1 you in just a second to come down front and speak to
2 me privately about how you know Mr. Costa.

3 Yes, sir.

4 JUROR: Arthur Levin. Mr. Hood and I were in
5 Rotary together.

6 THE COURT: Are you still in Rotary together?

7 JUROR: No.

8 THE COURT: Are you out or is he out?

9 JUROR: I don't know about him but I'm out.

10 THE COURT: Thank you, Mr. Levin. Yes, sir.

11 JUROR: I know Ms. Campbell, she's a swim mom,
12 her child ---

13 THE COURT: Tell me your name, please.

14 JUROR: Pat Rooney, \$128.

15 THE COURT: Mr. Rooney, okay. You know her
16 through your children's swimming?

17 JUROR: Yeah, Hilton Head Aquatics...

18 THE COURT: All right, thank you, Mr. Rooney.
19 Yes, sir.

20 JUROR: I'm Gary Glaser, I know Mr. Hood just
21 casually, I've never been over to his house for dinner
22 or anything like that.

23 THE COURT: Okay, well, if you put him on the
24 spot maybe he will fix that. All right, thank you, Mr.
25 Glaser. All right, I want to read to you all a list

1 of potential witnesses in this case and after I have
2 done that I am going to ask you that same question, whether
3 you know or are related to any of these potential witnesses.
4 If the witness is in the courtroom when I call your name,
5 please stand and face the jury.

6 Investigator Ryan Garst of Beaufort County Sheriff's
7 Office; Investigator Jeff Purdy, Beaufort County Sheriff's
8 Office; Deputy Brian Malphrus, Beaufort County Sheriff's
9 Office; Deputy Will Angelo with the Sheriff's Office;
10 Investigator Christine Wilson, Beaufort County Sheriff's
11 Office; Lisa Warren, Helen Warren, Benjamin Holmes, Ellen
12 Rios, Beaufort County Sheriff's Office; Laura Green.
13 Any additional witnesses from the State?

14 SOLICITOR: Nothing from the State.

15 THE COURT: Ms. Campbell?

16 MS. CAMPBELL: I have two, Your Honor. Nichole
17 Smalls who is a records clerk at the Department of Motor
18 Vehicles and Chip Dinkins who runs Pope's Restaurant.

19 THE COURT: All right, now ---

20 MS. CAMPBELL: Oh, Your Honor, one other witness
21 and I apologize. Chris Wilson who is an investigator
22 with the Sheriff's Department, it is likely that she
23 would be called as well.

24 THE COURT: Okay, thank you. Now, we're not
25 actually starting the opening statements and the witnesses

1 in this case until Wednesday morning so that's why these
2 witnesses are not here and sometimes it's difficult for
3 you all to hear a name and automatically, without seeing
4 a face, associate that with somebody that you might know.
5 But think very carefully now, if you think you might
6 recognize some of these names then I want you to stand
7 and tell me that you think you might recognize that person.
8 I'm going to go over the list of witnesses one more time,
9 just read their names, Ryan Garst, Jeff Purdy, Brian
10 Malphrus, Will Angelo, Christine Wilson, Lisa Warren,
11 Helen Warren, Benjamin Holmes, Ellen Rios, Laura Green,
12 Nicoloe Smalls, Chip Dinkins. Is there any member of
13 the jury panel that is related by blood or by marriage
14 to any of these potential witnesses or do you know them
15 in any way, if so, please stand. Mr. Watts.

16 JUROR: Deal with them on a daily basis.

17 THE COURT: All right, if you don't mind and
18 maybe you can't tell me off the top of your head, but
19 which ones do you know?

20 JUROR: All of the officers.

21 THE COURT: All the officers.

22 JUROR: Yes, sir.

23 THE COURT: Any of those ones who are not officers?

24 JUROP: Just officers.
25

1 THE COURT: Okay, Thank you, Mr. Watts. Mr.
2 Levin.

3 JUROR: I know Chip Dinkins.

4 THE COURT: And how do you know him?

5 JUROR: His father is a client and I've known
6 Chip for many years.

7 THE COURT: All right. Yes, sir.

8 JUROR: I know Officer Angelo.

9 THE COURT: And what's your name?

10 JUROR: Gray Murphy.

11 THE COURT: Mr. Murphy, you know Officer Angelo?

12 JUROR: Yes, sir.

13 THE COURT: And how do you know him?

14 JUROR: I know him on a personal level. My
15 wife cuts his hair and also he's been to my house. We
16 go to dinner together, him and his wife and mine.

17 THE COURT: About how often do you go to dinner
18 together?

19 JUROR: Maybe once every three months.

20 THE COURT: Okay. All right, thank you. Okay,
21 a number of you have told me that you know or are related
22 to some of these lawyers or to some of the witnesses
23 and I'm going to go back over the list now of those of
24 you who said you did and ask you this question. Would
25 the fact that you know or are related to these witnesses

1 or these lawyers interfere in any way with either your
2 willingness or your ability to give both the State and
3 the defendant a fair and impartial trial in this case.
4 Ms. Riley?

5 JUROR: It could not make a difference.

6 THE COURT: All right. Mr. Davis?

7 JUROR: Yes, it would.

8 THE COURT: All right, Mr. Davis, I'm going
9 to ask you to come down front in just a second, please.

10 THE COURT: Mr. Watts?

11 JUROR: No.

12 THE COURT: Mr. Levin?

13 JUROR: No, sir.

14 THE COURT: Mr. Rooney?

15 JUROR: No.

16 THE COURT: Mr. Glaser?

17 JUROR: No, sir.

18 THE COURT: Mr. Murphy?

19 JUROR: No.

20 THE COURT: All right, let me speak to Mr. Davis
21 and Mr. Watts.

22 (WHEREUPON, Mr. Watts #158 was interviewed
23 by the Court out of the hearing of the jury panel.)

24 THE COURT: All right, Mr. Watts, you mentioned
25 that you know Mr. Costa.

1 JUROR: Only through Duffie Stone, I do a lot
2 of investigation and I carry a lot of paperwork through
3 the county for tort and liability claims and stuff like
4 that. But not personally.

5 THE COURT: So what did you see that related
6 to Mr. Costa, just some paperwork or you talked to him
7 about it.

8 JUROR: Just paperwork.

9 THE COURT: What did the paperwork say?

10 JUROR: We were dealing with, I'm pretty sure,
11 with an insurance claim that he had.

12 THE COURT: Was it related to this case?

13 JUROR: Not this case.

14 THE COURT: Do you know anything about this
15 case?

16 JUROR: Not at all.

17 THE COURT: Do ya'll know of any kind of insurance
18 claim that he may have?

19 SOLICITOR: I'm not aware of any. Are you talking
20 about Duffie's private law practice?

21 JUROR: Yes.

22 THE COURT: Was it a claim that had been made
23 against the county?

24 JUROR: It's a claim against the county.

25 THE COURT: That Mr. Costa made?

1 JUROR: No, it wasn't Mr. Costa, someone else
2 made the claim and it went through Duffie because he
3 does a lot of the claims for us.

4 THE COURT: All right, well, how did Mr. Costa's
5 name come up?

6 JUROR: I'm not sure if it was written on the
7 paperwork but I do know that name, you know, I don't
8 know him personally but I think it was on some of the
9 written paperwork that Duffie had.

10 THE COURT: Do you recall anything, any of the
11 details about the claim?

12 JUROR: No, I couldn't tell you any of the details.

13 THE COURT: All right, well, do you think it's
14 the kind of thing where you might --- you know, if you
15 got into the --- if you were on the jury in this case
16 and you got into the trial of the case, do you think
17 it is something that you might all of a sudden remember
18 what is it that you saw on that paperwork?

19 JUROR: No, I don't think so.

20 THE COURT: Well, would the fact that you saw
21 that, whatever it was, and you know sort of the context
22 in which it came up, some kind of claim that you think
23 might have been made, although you don't think it was
24 made by Mr. Costa.

25 JUROR: Not by Mr. Costa, I don't think so.

1 THE COURT: Well, would any of that in any way
2 interfere---

3 JUROR: Not at all.

4 THE COURT: --- well, just for the record, I
5 know you know the question I'm going to ask but I need
6 to make sure that the question is complete, but would
7 any of that interfere in any way with either your willing-
8 ness or your ability to give both the State and the
9 defendant a fair and impartial trial?

10 JUROR: Not at all.

11 THE COURT: All right, sir, thank you.

12 (WHEREUPON, Mr. Davis \$179 was interviewed
13 by the Court out of the hearing of the jury panel.)

14 THE COURT: Now, before we talk any more about
15 the relationship that you had with the Tanners, it was
16 the Tanners that you did their wedding, is that correct?

17 JUROR: Well, I know I did.

18 THE COURT: Well, let me tell you then before
19 we go any farther. If you are selected to sit on the
20 jury in this case and it's your responsibility and I'll
21 charge you this, that it's your responsibility to set
22 aside anything that you may know about the case or anything
23 that you may know about the people who are involved in
24 the case, any relationships that you may have with the
25 people who are involved with the case, and to listen

1 very carefully to the testimony and the evidence that
2 comes before you in this courtroom in this trial and
3 then when it comes time to deliberate on that evidence
4 only and not on anything else that you might have known
5 beforehand and then to render a verdict that is based
6 solely on the testimony and evidence that you hear in
7 this courtroom. Now, that's your responsibility as a
8 juror. Now do you think the fact that you know the Tanners
9 and you did work for them when they got married several
10 years ago, would that interfere with your ability to
11 carry out the instruction that I just gave you as a juror?

12 JUROR: Well, honestly, if you are asking me
13 honestly, yeah, probably so, just because, I mean, I
14 know her, I know the quality of person that she is so
15 I'm going to automatically have a bias towards her side.
16 So if you're asking me that question honestly, no. If
17 you're telling me I have to do it, yeah, I'll do my best
18 but I mean I just want to let you know.

19 THE COURT: Well, we understand that there are
20 some people that even though they appreciate their responsi-
21 bility as jurors, they just have personal relationships
22 or biases or prejudices that interfere with their ability
23 to carry out their instructions as a juror. You are
24 telling me that you think that your relationship with
25 the Tanners would interfere?

1 JUROR: Well, also my family history is that
2 both of my parents retired from the Department of
3 Corrections and I taught in the Department of Corrections.
4 So the fact that I know, it's more than just meeting
5 her by chance, it's having a family that you are growing
6 up around and stuff like that. So I was just going to
7 bring that out to you, if that disqualifies me in any
8 way, that's up to you but I'm just saying I wanted to
9 let you know that ahead of time.

10 THE COURT: Okay, thank you. I'm going to let
11 you sit on this side of the courtroom. Thank you. Which
12 one of you moves to strike him?

13 MS. CAMPBELL: I do, Your Honor.

14 THE COURT: All right, I'm going to grant the
15 motion to strike. Frankly, I think he's trying to get
16 out of jury service but nevertheless I believe --- either
17 because he's trying to get out of jury service or because
18 he has truly a relationship that he thinks would interfere
19 with his ability to serve as an impartial juror, I think
20 he should be stricken and I'm going to take him out of
21 the pool.

22 MS. CAMPBELL: Thank you.

23 SOLICITOR: Thank you, Your Honor.

24 THE COURT: Is there any member of the jury
25 panel who themselves or a member of their immediate

1 family is now or who has ever been employed as a law
2 enforcement officer, either city, county, state, military
3 or federal officer. If you or a member of your immediate
4 family has ever been employed as a law enforcement officer,
5 please stand. Mr. Watts.

6 JUROR: It's my day, isn't it?

7 THE COURT: Well, that's okay, we would expect
8 that from your position. You were a law enforcement
9 officer you told me during jury qualifications, is that
10 right?

11 JUROR: Yes.

12 THE COURT: All right, and who did you work
13 for?

14 JUROR: Mr. Cowan.

15 THE COURT: For the Sheriff's Office?

16 JUROR: Yes, sir, for about three years.

17 THE COURT: When was that?

18 JUROR: That was back in the '70's.

19 THE COURT: All right, since then have you worked
20 as a law enforcement officer?

21 JUROR: No, sir.

22 THE COURT: All right, thank you, Mr. Watts.
23 Yes, sir.

24 JUROR: #81, Latulip. My brother was an MP
25 about fifty years ago.

1 THE COURT: All right, thank you, Mr. Latulip.
2 Yes, ma'am.

3 JUROR: I'm #82, my son is a police officer
4 in Effington Township, Pennsylvania currently.

5 THE COURT: Okay, you gave us your number, what's
6 your name?

7 JUROR: Kathleen McCullough.

8 THE COURT: All right, and your son is a police
9 officer now?

10 JUROR: Yes, sir.

11 THE COURT: Okay, thank you, Mrs. McCullough.
12 Yes, ma'am.

13 JUROR: Vera Chaplin, my first cousin is a police
14 officer.

15 THE COURT: Okay, I'm having a little trouble
16 hearing you.

17 JUROR: My first cousin, he's a officer.

18 THE COURT: And where is he?

19 JUROR: In Beaufort.

20 THE COURT: What's his name?

21 JUROR: Alfredo Givens.

22 THE COURT: And your name is Chaplin?

23 JUROR: Yes.

24 THE COURT: Thank you, ma'am. Yes, sir.

25 JUROR: Gary Glaser, #46, in the Marine Corps

1 I was in charge of security for the American Embassy first in
2 Prague, Checzech Republic and then in Switzerland.

3 THE COURT: All right, thank you, Mr. Glaser.
4 Yes, ma'am.

5 JUROR: My name is Gina Warner. My sister in
6 Ohio is a patrolman in Ohio.

7 THE COURT: Thank you, Ms. Warner. Yes, sir.

8 JUROR: Justin Gibson, #181 and I'm not sure
9 what kind of officer that you are looking for but my
10 brother is a correctional officer for the government
11 center in Illinois.

12 THE COURT: All right, thank you, Mr. Gibson.
13 Anybody else?

14 (NO RESPONSE.)

15 THE COURT: All right, now, I want to ask you
16 all a question about what involvement you or a member
17 of your immediate family may have had in any type of
18 criminal case involving an alleged violent crime. So
19 if you have ever been involved in a case where it was
20 alleged that someone had committed a violent crime, you
21 might have been a witness, the defendant, a victim or
22 a prosecutor or an attorney or something like that, if
23 you or any member of your immediate family have ever
24 been involved in a criminal case in which it was alleged
25 that someone had committed a violent crime, please stand.

1 All right, tell me your name, sir.

2 JUROR: Steve Carter, #177.

3 THE COURT: Tell me about it and I want to remind
4 you all that if you want to come down front and speak
5 with me privately about this, you are certainly welcome
6 to do so. Mr. Carter.

7 JUROR: I practiced law for a number of years
8 in Ohio and here and I've defended murder cases and robbery
9 cases.

10 THE COURT: Are you involved in criminal defense
11 here in South Carolina?

12 JUROR: Not typically, no, sir.

13 THE COURT: All right, thank you, Mr. Carter.
14 All right, ma'am, Ms. McCullough.

15 JUROR: Yes, sir. My son has actually been
16 involved with a number of armed robbery and attempted
17 robbery arrests.

18 THE COURT: Is this your son who is the law
19 enforcement officer?

20 JUROR: Yes, sir.

21 THE COURT: Thank you, ma'am. Ms. Riley?

22 JUROR: My step-son is a criminal attorney in
23 Richmond, Virginia. But he specializes in DUI cases.

24 THE COURT: Okay, thank you, ma'am. Mr. Levin.

25 JUROR: My wife recently served as a juror

1 in a murder trial here in Beaufort County.

2 THE COURT: Do you recall the name of that case?

3 JUROR: I do not. It was --- five people were
4 charged in the murder, I don't know their names.

5 THE COURT: All right, sir. Thank you, Mr.
6 Levin. Mrs. Chaplin.

7 JUROR: Yes, could I speak to you privately?

8 THE COURT: Yes, ma'am.

9 (WHEREUPON, Juror #26, Mrs. Chaplin came up
10 to the front and spoke to the Court out of the hearing
11 of the jury panel.)

12 JUROR: My son has a case this week.

13 THE COURT: A case pending with your son?

14 JUROR: Yes.

15 THE COURT: Here, in Beaufort?

16 JUROR: Yes.

17 THE COURT: Okay, is he accused of having committed
18 a crime or is he a victim?

19 JUROR: He's accused.

20 THE COURT: And what is he charged with?

21 JUROR: Well, right now --- uhm --- it was have
22 to do with a car but he did not. I'm saying that because
23 of this, how should I say this, I don't know how to say
24 it.

25 THE COURT: You can just be direct, you don't

1 have to worry about being careful about your words because
2 nobody can hear you except for the five of us.

3 JUROR: Okay, it have to do with uhm --- with
4 a car that actually he was driving but it belonged to
5 someone else and someone drove the car to his house and
6 he ended up driving the car because the person asked
7 him to drive it and then they are saying that he took
8 the car.

9 THE COURT: Stole it?

10 JUROR: That what they want to say but he was
11 never near the person that did it. 'cause they say that
12 he was there.

13 THE COURT: So he's charged with stealing a
14 car?

15 JUROR: That's what they say.

16 THE COURT: That's what they say, right, I
17 understand.

18 JUROR: And then there's some other stuff that
19 he is charged with. He's charged with also saying ---
20 having to do with drug which he say he didn't do. He
21 was already stop and he say the drug was not his, though.
22 I don't know.

23 THE COURT: Okay. Well, do you think that the
24 fact that your son is facing that pending charge, would
25 that interfere in any way with your ability to be a

1 fair and impartial juror in this case?

2 JUROR: No, there would not be.

3 THE COURT: Okay, thank you, you may have your
4 seat back in the courtroom. Mr. Dore.

5 JUROR: In my capacity as an attorney I have
6 both prosecuted and defended crimes of all types.

7 THE COURT: All right, thank you. Anyone else?

8 (NO RESPONSE.)

9 THE COURT: Is there any member of the jury
10 panel who has any particular interest in the outcome
11 of this case, if so, please stand.

12 (NO RESPONSE.)

13 THE COURT: Is there any member of the jury
14 panel who has formed or expressed any opinion as to the
15 guilt or the innocence of this defendant, if so, please
16 stand.

17 (NO RESPONSE.)

18 THE COURT: Is there any member of the jury
19 panel that would have any bias or prejudice either towards
20 or against the State or the defendant in connection with
21 this case, if so, please stand.

22 (NO RESPONSE.)

23 THE COURT: Is there any member of the jury
24 panel who knows of any reason why you could not give
25 both the State and the defendant a fair and impartial

1 trial, if so, please stand.

2 (NO RESPONSE.)

3 THE COURT: Any additional voir dire from the
4 State?

5 SOLICITOR: Nothing from the State.

6 THE COURT: From the defense?

7 MS. CAMPBELL: No, Your Honor.

8 THE COURT: All right, ladies and gentlemen
9 we are going to strike the jury now. Give us a jury,
10 Madam Clerk.

11 (WHEREUPON, Twelve jurors and three alternates
12 were duly impaneled.)

13 THE COURT: Any exception to the composition
14 or the manner of the selection of the jury from the State?

15 SOLICITOR: Nothing from the State.

16 THE COURT: From the defense?

17 MS. CAMPBELL: If I may have a moment with my
18 client, Your Honor?

19 THE COURT: Certainly.

20 (WHEREUPON, Ms. Campbell consults with her
21 client.)

22 MS. CAMPBELL: No motion.

23 (WHEREUPON, The jury was dismissed until Wednesday,
24 December 7, 2005 at 9:30 a.m. with the usual admonitions.)

25 (WHEREUPON, The following proceeds were held

1 out of the presence and hearing of the jury on Wednesday,
2 December 7, 2005.)

3 THE COURT: All right, you wanted to have a
4 hearing in which you challenged the reliability of the
5 identification procedure that was used after Mr. Costa
6 was arrested by law enforcement, correct?

7 MS. CAMPBELL: That is correct, Your Honor,
8 I'm not sure about whether it was before or after he
9 was arrested for this charge.

10 THE COURT: All right, but if I recall from
11 yesterday, he was identified by a witness shortly after
12 this allegedly occurred and during that identification
13 there was no law enforcement involvement, is that correct?

14 MS. CAMPBELL: Immediately after the armed robbery
15 the eyewitness gave the police a name. That is the form
16 of identification that took place.

17 THE COURT: Well, now, would you agree --- oh,
18 okay, she gave the police a name?

19 MS. CAMPBELL: A name.

20 THE COURT: Well, that doesn't have any
21 constitutional implications in terms of an identification,
22 does it?

23 MS. CAMPBELL: No, Your Honor.

24 THE COURT: All right, so the first event that
25 occurred that has constitutional implications to determine

1 --- I mean, in terms of the reliability of his identification
2 is what now?

3 MS. CAMPBELL: Is the photographic lineup that
4 was presented to the eyewitness some days later after
5 the armed robbery by Officer Garst of the Sheriff's Department.

6 THE COURT: And that is a challenge that has
7 been litigated in this court twice?

8 MS. CAMPBELL: That is correct.

9 THE COURT: And both times the Judge ruled that
10 the identification was not unduly suggestive, is that
11 correct?

12 MS. CAMPBELL: That is correct.

13 THE COURT: All right, well, I'm taking the
14 position that because that is a constitutional issue
15 and because you have already litigated it, it is not
16 to be litigated again and it is decided now. And if
17 you ever get to the point where you need to appeal that,
18 you will be appealing the ruling of Judge Hill, that's
19 my view. And Judge Hill is the first one who decided
20 it, correct?

21 SOLICITOR: Yes, sir.

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: I think once that question is decided
24 it's over until an appellate ruling undoes it. And so
25 given that, there's no need to go into it this morning.

1 Is there anything else that we need to do this morning
2 before we get into opening statements?

3 MS. CAMPBELL: Your Honor, the defense would
4 have an additional motion to sequester the witnesses
5 in the case. Certainly our witnesses are willing to
6 be sequestered but we certainly would expect that that
7 would take place on the State's behalf, it has in the
8 prior two trials.

9 THE COURT: Well, it's my belief that in order
10 for me to sequester the witnesses I must hear from you
11 some reason that justifies my closing the courtroom to
12 that extent and I know you are telling me that the previous
13 two judges did it but explain to me why it is that that
14 is important in this case and particularly since this
15 is the third time around, seems to me that could change
16 the landscape in terms of sequestering the witnesses.

17 MS. CAMPBELL: Yes, sir. Your Honor, as the
18 Court is aware this case has been tried twice before.
19 In both trials testimony has differed significantly from
20 the eyewitness to the two officers as to the physical
21 description of my client and the physical description
22 of the perpetrator of this crime and they have indicated
23 varying stories. We feel that it is important that these
24 witnesses not listen to the testimony today of the officers
25 and the eyewitness listening to one another testify about

1 what was told to them, and what they reported. It's
2 a credibility issue and I understand that's for the jury,
3 however, based on their prior testimony differing numerous
4 times we believe that sequestration is appropriate. In
5 fact, some of the testimony --- well, I'll leave it at
6 that.

7 SOLICITOR: Your Honor, the State argues that
8 that's just not true. Their testimony has been completely
9 consistent during both trials. Ms. Campbell has the
10 transcripts and I think that bears that out. Nothing
11 has changed about the description, it's always been from
12 the moment the gun was shoved in her face, the victim
13 said it was Preston Costa, he lives at this address,
14 his grandmother is this person, that's never changed.

15 The only discrepancy about any description was
16 a bandanna. In the first trial I didn't clarify the
17 fact that when he came in it was on his nose down and
18 it fell down below his chin and she saw his face once
19 it fell down. But she knew him before it even fell down
20 to his chin, that's the only discrepancy and it wasn't
21 a discrepancy, I just didn't clarify it. Ms. Warren
22 said she saw his face and then Ms. Campbell brought out
23 the fact that there had been mention of a bandanna and
24 I didn't go back and fix that. But other than that,
25 there is absolutely no discrepancy about description,

1 any of the events that occurred, evidence collected,
2 it's been completely the same.

3 THE COURT: How many witnesses are there to ---
4 I mean, eyewitnesses are there to what occurred, to the
5 actual commission of the crime?

6 SOLICITOR: Three.

7 MS. CAMPBELL: Three.

8 THE COURT: The victim ---

9 MS. CAMPBELL: And Mrs. Helen Warren and Mr.
10 Benjamin Holmes and Helen Warren also works at the store.
11 Mr. Holmes was a patron of the store.

12 THE COURT: All right, I'll think about that
13 and I will listen to the opening statements unless you ---
14 because I think that's going to give me a better feel
15 for what the situation is and I will better be able to
16 understand whether or not there's a legitimate reason
17 to sequester the witnesses.

18 MS. CAMPBELL: Thank you.

19 THE COURT: Anything else?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Now about the tapes, have you been
22 able to make use of the tapes of the testimony of the
23 second trial as you would have wanted to?

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: Is there anything about the fact

1 that that transcript is not typed that I need to know
2 about now in terms of assisting you to get to the point
3 where you can effectively cross-examine these witnesses
4 that will be called?

5 MS. CAMPBELL: No, sir.

6 THE COURT: And I infer from that then that
7 whatever reason may have existed at one time to continue
8 the case no longer exists?

9 MS. CAMPBELL: We can proceed with the tapes,
10 Your Honor, and the transcript is not necessary so, yes,
11 there is no further objection.

12 THE COURT: All right, just so the record is
13 clear, you made a motion to continue based on your inability
14 to be able to prove what was testified to in the second
15 trial which you thought hampered your ability to cross-
16 examine witnesses in the third trial. And because of
17 the steps we took to get you the tapes and get them to
18 you yesterday, those reasons no longer exist and you
19 are no longer asking for a continuance.

20 MS. CAMPBELL: Fully prepared, thank you.

21 THE COURT: All right, anything from the State?

22 SOLICITOR: Not at this time, Your Honor.

23 THE COURT: All right, we have one juror who
24 is not here, juror #156, Jenna Warner. So it's five
25 minutes after I told them to be here and there are two

1 alternates so I say let's go. Any objection from the
2 State?

3 SOLICITOR: Yes, sir.

4 THE COURT: From the defense?

5 MS. CAMPBELL: No objection.

6 THE COURT: All right, then what we need to
7 do is have the clerk randomly choose one of the three
8 alternates to be placed on the jury. Maybe by the time
9 you do that that juror will be here.

10 CLERK: #122 Myra Poplin.

11 THE COURT: All right, you just did that randomly?

12 CLERK: Oh, no, let me do it again. It's #122,
13 Myra Poplin, the same.

14 THE COURT: Okay. Bring us the jury.

15 (WHEREUPON, The jury returned to the courtroom
16 and the following proceedings were held in their presence
17 and hearing.)

18 THE COURT: All right, Ms. Poplin, would you
19 move down one row, please, and because of one of the
20 jurors who was in the original panel is not here for
21 reasons we don't know, your name has randomly been selected
22 as the person who gets put onto the jury. So good morning,
23 ladies and gentlemen. Hope ya'll had a nice day and
24 a half since we last saw each other. The first thing
25 we will do is to sear the jury.

1 (WHEREUPON, Jury was duly sworn.)

2 THE COURT: Ladies and gentlemen, we are ready
3 to begin the trial in the case of State of South Carolina
4 versus Preston Jamil Costa. Mr. Costa has been indicted
5 in case #04-GS-07-925 for armed robbery and in that indictment
6 it is alleged that Preston Costa willfully and unlawfully
7 violated the criminal laws of the State of South Carolina
8 on May 21, 2004 at Folly Road Grocery Store located at
9 489 Seaside Road, St. Helena, Beaufort County, South
10 Carolina. The defendant did enter the business with
11 the intent to commit a crime therein. He pointed a handgun
12 at Lisa Warren, the store manager, threatened to kill
13 her and take approximately \$400.

14 Now, ladies and gentlemen, as I told you on
15 Monday when we went through jury selection, the indictment
16 is not in any sense evidence of the allegations that
17 are contained within that indictment. The indictment
18 is simply the formal document that contains the allegations
19 that have been made against the defendant and it is a
20 document that processes this case and brings it into
21 this courtroom for trial. The defendant has pled not
22 guilty to that indictment and the plea of not guilty
23 casts a burden on the State of South Carolina to prove
24 the defendant guilty beyond a reasonable doubt. And
25 that will be your job, ladies and gentlemen, to determine

1 after all the evidence has been presented, after you
2 have heard the arguments of the lawyers and after you
3 have had a chance to deliberate among yourselves to deter-
4 mine whether or not the State has proven the defendant
5 guilty beyond a reasonable doubt.

6 Now, ladies and gentlemen, a criminal defendant
7 in South Carolina is never required to prove themselves
8 innocent. The law presumes that a defendant that is charged
9 with a crime is innocent and that presumption of innocence
10 accompanies the defendant from the time he is charged
11 throughout the trial and into the jury room until you
12 reach a verdict of guilt based on evidence that satisfies
13 you of that guilt beyond a reasonable doubt. This presumption
14 of innocence is not merely a legal theory, it's not just
15 a phrase that we use; it is a substantial constitutional
16 right to which every defendant is entitled to receive.

17 Now, the trial of this case will be, in terms
18 of his structure, just like any other case that we try
19 and it can be divided up into five basic phases. The
20 first of those will begin in just a second and we call
21 that the opening statements, when the lawyers will stand
22 before you and they will explain to you what this case
23 is about. They will tell you the issues in the case,
24 they will explain how each side stands on those issues
25 and they will also go over for you some of the evidence

1 that you can expect to see that will relate to those
2 issues.

3 After you have heard the opening statements
4 of the lawyers, we will enter the second phase which
5 is the evidentiary phase, when witnesses will come here
6 to this witness stand, you will hear their testimony
7 and you will probably also have some other evidence such
8 as physical evidence that will eventually become, along
9 with the testimony, part of the basis of the evidence
10 that you will use to decide whether or not the State
11 has met its burden of proof.

12 After all the evidence has been entered we will
13 have the third phase which is the closing arguments where
14 the lawyers will stand before you again and this time
15 they will argue to you as to whether or not the State
16 has met its burden of proof.

17 Then the fourth phase is when I will give you
18 the jury charge and that is when I explain the law that
19 is applicable to this case. And then in the fifth phase
20 you will go back in the jury room and you will deliberate.

21 Now, there are several things that are very
22 important for you to keep in mind as you do your work
23 in this case and I've been over several of these with
24 you already on Monday but I'm going to go over with you
25 again.

1 First of all, you may not discuss this case
2 in any way until I have given you permission to begin
3 your deliberations during that fifth phase of the trial.
4 As I told you on Monday, that is a very important rule
5 for you to keep in mind. It seems to me that it could
6 easy for a juror to inadvertently begin discussing some
7 minor aspect of the case and that would violate the instruction
8 that I have just given you. So please be very careful
9 not to discuss this case in any way.

10 It's also important that you not begin to make
11 up your mind about whether or not the State has met its
12 burden of proof until you have been through all five
13 of those phases, including that fifth phase, when you
14 have a chance to listen to each other discuss the facts
15 in the case because only then are you in the right position
16 to make up your mind as to whether or not the State has
17 met its burden of proof.

18 Now, ladies and gentlemen, your responsibilities
19 as jurors are to set aside anything that you may have
20 heard or learned about this case, any bias or prejudice
21 that you may have that may concern the issues in this
22 case and to listen very carefully to the evidence that
23 will be presented before you here. And then when it becomes
24 time to deliberate solely on that evidence, and to render
25 a verdict that is solely on that evidence based on the

1 law as I will explain it to you.

2 As members of the jury, ladies and gentlemen,
3 you are the exclusive judges of the facts and I am not
4 permitted to indicate to you how I might feel about the
5 facts. So if, during the course of this trial, if I say
6 anything or do anything that might lead you to believe
7 that I have an opinion about the facts, then you must
8 disregard that. But on the other hand, I am the exclusive
9 judge of the law and if you had some idea as to what
10 the law is or what the law should be and if that differs
11 from what I tell you the law is, when I tell you what
12 the law is, then you are obligated under the oath that
13 you have just taken as jurors to set your notion of the
14 law aside and to accept and apply the law precisely as
15 I will explain it to you.

16 Now, one other role that I play in this case
17 is to decide on the admissibility of evidence and from
18 time to time during the course of this trial, I expect
19 that you will hear the lawyers making objections when
20 evidence is offered that they believe does not comply
21 with our rules of evidence. Now when that happens, that's
22 not an effort on the part of the lawyers to try to hide
23 anything from you. That's the way our system of evidence
24 works. When one lawyer feels that evidence has been
25 offered that does not comply with the rules, it is that

1 lawyer's responsibility, not only to her client, but
2 also to the court system to make an objection and then
3 it becomes my responsibility to rule on that objection.
4 If I sustain the objection that means I believe the evidence
5 is not admissible and I will not allow it in for you
6 to consider. If I overrule the objection, that means
7 that I believe the evidence is admissible and I will
8 allow it in and you can consider it. Now most of the
9 time I can do that as I sit here, you will hear one of
10 the lawyers say, objection, they may briefly state the
11 grounds for the objection, and then I will say either
12 sustained or overruled. Sometimes I may have to get the
13 lawyers to walk up here to the bench so that I can discuss
14 it with them privately just for a moment before I rule
15 and sometimes I may actually have to send you all back
16 into the jury room so that I can openly discuss the
17 evidence question. Sometimes I even have to listen to
18 the testimony before I can decide whether or not you
19 can listen to it.

20 All right, Solicitor, you can make your opening
21 statement.

22 SOLICITOR: May it please the Court, Your Honor.
23 Good morning. It's already been told how important jury
24 service is and I think you know that. Let me tell you
25 why I believe it's important. It's important because

1 it's real life, this isn't television. Forget everything
2 you've seen on television. This is real. It's not CSI,
3 it's not Medium, it's not any of those really entertaining
4 shows. They can make a full hour out of a little fiber.
5 Amazing enough, they can trace a car that was sold a
6 certain year to a certain person and before the hour
7 is up they are going to tell you who your suspect is.
8 Wow, that's entertaining, and that's all that is. It's
9 not real, it's television.

10 What this is about, what this job is about,
11 what the courtroom is about and what I do is about people,
12 real people. Back to reality. Reality is Beaufort County,
13 reality is this courtroom, today. And reality is about
14 this case.

15 This case is about this man, Preston Costa,
16 robbing that woman, Lisa Warren. Now, you're going to
17 meet Lisa Warren, she's going to take the stand and she's
18 going to describe for you how on May 21st of last year,
19 Preston Costa came into her store, pointed a gun in her
20 face, told her to give me all your money or I will kill
21 you. He then took the money that their store had earned
22 for the day and left.

23 You are also going to hear Ms. Warren tell you
24 that she knows Preston Costa, she didn't meet Preston
25 Costa for the first time on May 21st. She has known

1 Preston Costa since he was in the fifth grade. She volunteered
2 at the school, she helped teach him to read, she knows
3 his grandmother. She told law enforcement his name is
4 Preston Costa, he lives at he
5 stuck a gun in my face today and he robbed me.

6 When Preston Costa made up his mind to commit
7 an armed robbery he broke the law. When he picked the
8 Folly Road Grocery Store to rob he really messed up because
9 she knows him. This is about people. And at the end
10 of this case I will ask you to find a guilty verdict
11 against Preston Costa for robbing Lisa Warren on May
12 21, 2004 here in Beaufort County. Thank you.

13 THE COURT: Ms. Campbell.

14 MS. CAMPBELL: Thank you, Your Honor, may it
15 please the Court. Good morning. My name is Trasi Campbell,
16 I'm the Deputy Public Defender here in Beaufort County,
17 your county.

18 I want you to know that there's not going to
19 be anyone surprised when Lisa Warren comes and testifies
20 for this court today that she believes that Preston Costa
21 was in her store on 5/21/04. That's not going to be
22 a hammer banging down saying Preston Costa is guilty.
23 We're not going to be surprised when she points at him
24 and says I think that this is the one that did it.

25 What you have to remember is that people make

1 mistakes, physical evidence does not. I think what you
2 will hear is that there was a lot of physical evidence
3 at the Folly Road Grocery Store, in the store and around
4 the store, and every piece of possible physical evidence
5 was left there, untouched, no attempt to go any farther
6 than a cursory investigation of what happened that day
7 at the Folly Road Grocery. There is no fingerprint evidence,
8 there is no DNA evidence, there is no serology evidence,
9 there are no fiber evidence, no hair evidence. And don't
10 underestimate the ability of the Beaufort County Sheriff's
11 Department to get that done in cooperation with the South
12 Carolina Law Enforcement Division.

13 Preston Costa was nowhere near the Folly Road
14 Grocery on 5/21/04. Preston Costa was somewhere else.
15 Preston Costa was with two of his friends, two young
16 gentlemen, Melvin Holmes and Brock Hart(?). And you
17 will hear testimony, in fact we have the individuals
18 here to testify for you, that Melvin Holmes was at the
19 Department of Motor Vehicles and if you are familiar
20 with Beaufort, that's out on Munch Drive, at about 1:21
21 and at that time, he was obtaining his South Carolina
22 identification card. And Nichole Smalls from the DMV
23 will tell you that he was there, she was collecting his
24 money and then after you collect the money then you have
25 to go to the next line and wait on your photo ID to

1 made. The time on that is iffy, five minutes to twenty
2 minutes to maybe an hour after that. In any event, the
3 boys left the Department of Motor Vehicles at 1:21 to
4 1:30. They went to Plum's Restaurant in downtown Beaufort,
5 drove from Munch Drive to Plum's Restaurant. At Plum's
6 Restaurant, you will hear from the owner of that restaurant,
7 that the young man, Dennis Lockhart, had been working
8 for them and he had a paycheck that was available for
9 him to pick up that afternoon. And the young men had
10 come down to Plum's to pick up the money, to pick up
11 the paycheck.

12 Then you will hear testimony that after that,
13 the young men then drove to Preston Costa's home where
14 he lives with his mother, his grandmother and his brother
15 on St. Helena Island. And that they arrived at the home
16 approximately 2:20, 2:25, 2:30, somewhere in there, and
17 that they spoke to his grandmother at that time.

18 I am asking you to challenge the State of South
19 Carolina, as part of your oath, to prove to you, to give
20 you something more than just the blanket statement that
21 I believe this is who did this. To give you something
22 to work with that you can use to say I believe beyond
23 a reasonable doubt that this young man committed this
24 crime.

25 Now, the Court is correct when the Court tells

1 you that the burden is never on a criminal defendant to prove
2 himself innocent.. That's just simply not right and we
3 wouldn't want it to be that way. The Court told you that
4 the State has the burden and the State must prove to
5 you beyond a reasonable doubt that this actually occurred,
6 that Preston Costa was actually there and that he actually
7 committed this crime.

8 I think that you will hear in the testimony
9 that there have been a number of different versions as
10 to what the individual was wearing about his face. And
11 we believe that once you watch the video in this case
12 you will see that the face of the perpetrator of this
13 crime is, in fact, covered up basically below eye level
14 with some sort of object and was reported to the Sheriff's
15 Department by Ms. Warren initially right after this happened
16 that there was a red and white bandanna around the suspect's
17 face.

18 Your Honor, I would renew my motion at this
19 time for sequestration.

20 THE COURT: Let me see ya'll right down here
21 for one second, please.

22 (WHEREUPON, A bench conference was held out
23 of the hearing of the jury as follows:)

24 THE COURT: The three witnesses who are witnesses
25 to the crime are ---

1 SOLICITOR: Lisa Warren, who is the victim,
2 and Helen Warren, her grandmother and Benjamin Holmes.

3 THE COURT: How about the two guys that were
4 allegedly with him that day?

5 SOLICITOR: They're not here.

6 MS. CAMPBELL: They're not going to testify.

7 THE COURT: They aren't going to testify in
8 this trial?

9 MS. CAMPBELL: No.

10 THE COURT: I thought you just told the jury
11 they were going to testify.

12 MS. CAMPBELL: No, the DMV is going to testify
13 that they were there.

14 SOLICITOR: They can only testify that Melvin
15 Holmes was there, they can't say that Preston was there.
16 Only Preston can say that.

17 THE COURT: The sequestration motion was based
18 on the three witnesses who were there at the scene of
19 the crime, it's mainly for those three witnesses?

20 MS. CAMPBELL: Correct.

21 THE COURT: So is it necessary to sequester
22 anybody other than the three witnesses?

23 SOLICITOR: And Ms. Warren is the victim, can't
24 she stay in the courtroom because she's the victim? Under
25 the Victim's Bill of Rights she has a right to be

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1 present in the courtroom.

2 THE COURT: Is she testifying first?

3 SOLICITOR: No.

4 THE COURT: Well, I really don't see that this
5 is any different from any other situation where witnesses
6 have the opportunity to compare their testimony to the
7 testimony of all witnesses and that, in my view, is not
8 a valid basis for sequestering the witnesses and I was
9 trying --- the reason I wanted to listen to the opening
10 statement is that I wanted to see if that evaluation
11 changed based on the facts of the case in light of the
12 fact that this is the third time around, and it seems
13 to me that -- it seems to me that since this is the third
14 time around it's useless for me to sequester the witnesses.
15 And so I think I'm going to deny the motion for sequestration.

16 MS. CAMPBELL: Thank you, Your Honor.

17 SOLICITOR: Thank you.

18 THE COURT: All right, call your first witness.

19 SOLICITOR: Your Honor, the State calls Deputy
20 Malphrus.

21
22 DARRYL B. MALPHRUS, AFTER

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY SOLICITOR:

25 Q. Good morning.

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- 1 A. Good morning.
- 2 Q. Could you state your name for the record, please.
- 3 A. Darryl Brent Malphrus.
- 4 Q. And who are you employed by?
- 5 A. Beaufort County Sheriff's Department.
- 6 Q. And how long have you been employed there?
- 7 A. A little over four years.
- 8 Q. What are your duties at the Sheriff's Office?
- 9 A. I am normally what is considered a road deputy,
- 10 a first responder. When a 911 call comes in it's normally
- 11 a road deputy that's the first to get on the scene and
- 12 that's what I do.
- 13 Q. And were you doing that on May 21, 2004?
- 14 A. Yes, I was.
- 15 Q. And what area were you working in on that day?
- 16 A. I was working St. Helena Island.
- 17 Q. And did you happen to respond to a armed robbery
- 18 call on that day?
- 19 A. Yes, ma'am, I did.
- 20 Q. And where did you respond to?
- 21 A. It was a call in reference to an armed robbery
- 22 at Folly Road Grocery which is on Seaside Road, the inter-
- 23 section of Seaside Road and Folly Road.
- 24 Q. Is that in Beaufort County?
- 25 A. Yes, ma'am.

1 Q. Can you tell you about how long it took you
2 from the time you get the call to the time you get to
3 the Folly Road Grocery Store?

4 A. I would say, give or take a little bit,
5 approximately five minutes or so, it wasn't very long.

6 Q. Deputy Malphrus, I'm going to show you what
7 has been marked as State's exhibit #1, can you identify
8 that?

9 A. Yes, I can.

10 Q. And what is that?

11 A. That is Folly Road Grocery on St. Helena Island.

12 Q. Is that a fair and accurate depiction of how
13 it appeared on that day?

14 A. Yes, ma'am, it is.

15 SOLICITOR: Your Honor, at this time the State
16 moves exhibit #1 into evidence.

17 MS. CAMPBELL: No objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, Photograph of the scene was entered
20 and marked as State's exhibit #1.)

21 Q. Now, Deputy Malphrus, once you arrive on a
22 scene, what do you do?

23 A. I talk to the people that were eyewitnesses
24 or victims is what I do and try to get them to write
25 a statement if they will.

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1 Q. And on this particular date, did you talk to
2 anyone?

3 A. Yes, ma'am. I did.

4 Q. Who did you talk to?

5 A. I talked to Ms. Helen Warren, Ms. Lisa Warren
6 and Mr. Benjamin Holmes.

7 Q. And were they able to give you statements?

8 A. Yes, ma'am, I got statements from all three.

9 Q. Verbal or written?

10 A. I got one written and two verbal.

11 Q. What was the demeanor of everyone when you
12 arrived, if you recall?

13 A. They were very upset.

14 Q. And this was five minutes after you got the
15 call?

16 A. Yes, ma'am, yes, ma'am, they were very emotional
17 and obviously I could tell that something bad had just
18 happened. And it took me a little while to get them
19 toned down a little bit to where they could talk to me
20 and proceed with the investigation.

21 Q. And once you were able to interview these folks,
22 the Warrens and Mr. Holmes, were you able to glean any
23 information from them?

24 A. Yes, I was, yes, ma'am.

25 Q. And what did you do with that information?

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1 A. I got, I thought, some very critical information
2 and when I got the information I got on my radio and
3 put it out on the radio who was the possible suspect
4 that committed the crime.

5 Q. And is that this thing on your shoulder?

6 A. Yes, ma'am, microphone right here, that is
7 correct.

8 Q. And when you hit that microphone, where does
9 that go, where does that information go?

10 A. That information is broadcast to the Beaufort
11 County Sheriff's Department.

12 Q. Other deputies like yourself?

13 A. Yes, ma'am. Everybody working St. Helena and
14 Lady's Island.

15 Q. And what information did you pass along?

16 A. I got a name of a person that committed the
17 crime.

18 Q. And what name was that?

19 A. That was Preston Costa.

20 Q. Did you get any other information?

21 A. Yes, ma'am, I also got some other information.

22 Q. And what was that?

23 A. Ms. Warren indicated what he was wearing and
24 she had indicated that she knew him and I was really
25 amazed that she told me that she knew him.

1 Q. Okay.

2 A. She identified him. And so I got on the radio
3 and said his name.

4 Q. All right, and did you get any other information
5 about Preston Costa?

6 A. I think that was all the information I gave
7 over the radio.

8 Q. All right, on the scene, other than interviewing
9 witnesses, was there anything else you did?

10 A. Yes, ma'am.

11 Q. And what would that be?

12 A. I tried to get some fingerprints. Ms. Warren
13 had indicated to me where Preston --- what he touched
14 and I did the best I could to try to get fingerprints
15 off of the items that was touched.

16 Q. What items did you try to get fingerprints
17 from?

18 A. Ms. Warren indicated to me that Preston touched
19 the cash register box, a keyboard, I believe it was,
20 and a stand that the cash register was on and those three
21 items is what I tried to get a fingerprint off of.

22 Q. And what do you do to try and get a fingerprint?

23 A. I have some dust and I've been trained in lifting
24 fingerprints. I put some dust on it and try to get a
25 fingerprint.

1 Q. And were you able to get fingerprints?

2 A. No, ma'am, I was not able to get a fingerprint.

3 Q. Is that unusual?

4 A. It is on the surface that I tried to get a
5 fingerprint from, yes, ma'am, it was not a good surface
6 to get a fingerprint off of.

7 Q. What do you mean not a good surface?

8 A. It was real ridgey, it was rough and it wasn't
9 smooth, it wouldn't have left a good fingerprint, based
10 on my experience.

11 Q. But you did attempt to?

12 A. Yes, ma'am, I did.

13 Q. But you were unsuccessful?

14 A. I was unsuccessful.

15 Q. And is there anything else you did at the scene,
16 any other evidence that you gathered?

17 A. Yes, ma'am, I asked Ms. Warren about a video,
18 a possible video because normally a lot of convenience
19 stores have a video and she said yes there was a video
20 and she gave me --- I asked her if I could have it and
21 she said yes, I could. And I did take a secured video
22 from her.

23 Q. Can you describe what kind of store this was?

24 A. A convenience store, when you walk in the front
25 door, the cash register is on the left side. They have

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1 a cold cut sandwich, cold meats and things like that
2 in the rear of the store and on the right it's got some
3 rows of snack foods and soft drinks.

4 Q. While you were inside collecting evidence,
5 did anyone else arrive on the scene from the Sheriff's
6 Department?

7 A. Officer Garst responded also, yes, ma'am.

8 Q. Can you describe the entry way of the convenient
9 store?

10 A. It's shaped like a rectangle and the door to
11 the store is on one end of it, it's on the shorter end
12 of the store.

13 Q. And can you describe the door?

14 A. It's a glass door with a push handle on it.

15 Q. Describe the push handle.

16 A. A metal handle, rather than push the glass
17 and get the glass where you have to wash the glass and
18 the glass gets dirty all the time, it's a metal rod running
19 along the door that you can push without getting your
20 fingerprints all over the door.

21 Q. And were you able to collect any fingerprints
22 from the glass door?

23 A. No, ma'am, I was not able to get any fingerprints.

24 SOLICITOR: Thank you, Deputy Malphrus, please
25 answer anything Ms. Campbell may have.

1 CROSS-EXAMINATION

2 BY MS. CAMPBELL:

3 Q. Officer Malphrus, the video that came from
4 the Folly Road Grocery, that was turned over to you,
5 correct?

6 A. Yes, ma'am.

7 Q. And you turned that video into evidence, correct?

8 A. Yes, ma'am.

9 Q. Okay. Now, you never watched that video yourself
10 did you, right?

11 A. I never watched the video, that is correct,
12 yes.

13 Q. And in not watching that video, you don't have
14 your own independent knowledge of where the suspect may
15 have touched something in the grocery store, do you?

16 A. That is correct.

17 Q. Now, there are glass doors, both doors to the
18 entrance of Folly Road Grocery, they are glass doors,
19 correct?

20 A. That is my recollection, yes, ma'am.

21 Q. Now, as an experienced officer in fingerprint
22 collection wouldn't you say that a glass surface would
23 be an excellent surface from which to obtain a fingerprint?

24 A. Yes, ma'am.

25 Q. Now, are you testifying that you dusted for

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1 fingerprints on the glass doors at Folly Road Grocery?

2 A. I did not dust for fingerprints on the glass
3 doors at Folly Road Grocery.

4 Q. But as the first responding officer, though,
5 you're responsible for that, correct?

6 A. For attempting to get a fingerprint, yes, ma'am.

7 Q. You left the crime scene that you went to with
8 no fingerprints, correct?

9 A. That is correct, yes, ma'am.

10 Q. The area, if I may show you in this photograph
11 that has been entered as State's exhibit #1, the photograph
12 there shows the exterior of the Folly Road Grocery as
13 being a sandy area, correct?

14 A. Out of the door of Folly Road Grocery is concrete
15 and cement, mainly asphalt type area, yes, ma'am, a lot
16 of it is paved and heavy gravel. What is not paved has
17 heavy gravel.

18 Q. Off--- I want to say 5 or 10 feet from the
19 main entrance, is a sandy gravel area, correct?

20 A. That is correct, yes, ma'am.

21 Q. Now, you never attempted to obtain any shoe
22 print evidence in the sandy gravelly area of Folly Road
23 Grocery, did you?

24 A. I looked for a possible suspect footprint
25 based on the parking lot of Folly Road Grocery with the

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1 gravel, it's way more gravel than it is sand, and it's
2 partly asphalt. No, ma'am, there was nothing there to
3 get.

4 Q. There were no shoe prints at all in the sand
5 that you could have investigated?

6 A. That is correct, yes, ma'am.

7 Q. Now, you took these statements from Lisa Warren,
8 from Helen Warren and from Benjamin Holmes, correct?

9 A. Yes, ma'am.

10 Q. And you passed that information along, correct?

11 A. Yes, ma'am.

12 Q. And to the best of your knowledge, Helen Warren
13 and Benjamin Holmes are basically lifelong residents
14 of that small St. Helena community, correct?

15 A. That's my understanding, yes, ma'am.

16 Q. And Helen Warren had worked at this store most
17 of her life, correct?

18 A. I had rather --- I'm not sure on that, I'm
19 not sure. That's something you may want to ask her.
20 I don't know how long she had worked there.

21 Q. Well, you didn't ask her how long she had worked
22 there?

23 A. No, ma'am.

24 Q. After you got the call that there had been
25 an armed robbery at the Folly Road Grocery, your testimony

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1 is it took you about five to six minutes to get there,
2 correct?

3 A. Yes, ma'am.

4 Q. And do you remember the route that you took
5 to get the Folly Road Grocery from where you were at
6 the time the call came into you?

7 A. Do I remember with a hundred percent uncertainty,
8 no, ma'am. Am I ninety-five percent sure the route I
9 took, yes, ma'am.

10 Q. Well, as in responding to an armed robbery
11 call you would be on the lookout, wouldn't you, for anything
12 suspicious coming away from the scene, correct?

13 A. Yes, ma'am.

14 Q. And if you had seen anything suspicious you
15 would have catalogued that in your report, right?

16 A. Yes, ma'am.

17 Q. And, of course, that's not in there and you
18 didn't see anything.

19 A. Did not observe anything, that is correct.

20 Q. About how long can you tell the jury that you
21 tried to get a print off of any of the things you tried
22 to print at the Folly Road Grocery?

23 A. Not including testimony that I obtained and
24 not including --- strictly dusting for fingerprints?
25 I'm sorry, can you clarify your question?

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1 Q. Sure. When you said you used dust to get the
2 fingerprints, about how long were you working trying
3 to get a fingerprint from where the witness told you
4 he had touched?

5 A. I would say approximately fifteen minutes.

6 Q. And you felt confident since you had a name
7 that the fingerprint really wasn't essential?

8 A. No, ma'am.

9 Q. No.

10 Q. Officer Malphrus, when you made your report
11 in this case of course you attempted to be accurate,
12 right?

13 A. Yes, ma'am.

14 Q. Because that's essential to preserving the
15 information you were given, right?

16 A. That is correct.

17 Q. And when you made your report in this case
18 you indicted that Ms. Warren told you that the suspect
19 had a red and white bandanna around his face, correct?

20 A. If I remember right the suspect --- Ms. Warren
21 indicated that the gentleman had a red and white bandanna
22 around him, yes, ma'am.

23 Q. I would like to provide you with page 3 of
24 your 3 page report and ask you if your report does not
25 reflect that Ms. Warren indicated to you he had a red

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1 and white bandanna around his face.

2 A. That is correct, yes, ma'am.

3 MS. CAMPBELL: That's all I have, Your Honor.

4 THE COURT: Any re-direct?

5 SOLICITOR: Nothing further.

6 THE COURT: Call your next witness.

7 SOLICITOR: State calls Bill Angelo.

8

9 WILLIAM ANGELO, AFTER FIRST

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY SOLICITOR:

12 Q. Good morning.

13 A. 'Morning.

14 Q. Please give your full name for the record.

15 A. William Lee Angelo.

16 Q. And who are you employed by?

17 A. Beaufort County Sheriff's Office.

18 Q. And how long have you been employed there?

19 A. Approximately six years.

20 Q. And what are your duties at the Sheriff's Office?

21 A. I'm assigned to the Northern Division Road
22 Patrol which is anything north of the Broad River Bridge.

23 Q. And were you working there on May 21, 2004?

24 A. I was, ma'am.

25 Q. And what area were you working in?

1 A. I was assigned to the Lady's Island/St. Helena
2 area.

3 Q. And do you recall receiving something over
4 dispatch regarding an armed robbery?

5 A. Yes, ma'am.

6 Q. And based on that what did you do?

7 A. I received a call that came out as an armed
8 robbery at the Folly Road Grocery. At the time I was
9 on Lady's Island and I started responding to Folly Road
10 Grocery.

11 Q. And did you make it to the Folly Road Grocery?

12 A. No, I did not, ma'am.

13 Q. Why not?

14 A. We received information of a suspect's name
15 and we also received information about his address so
16 I responded to that address which was
17

18 Q. And this was the residence of Preston Costa?

19 A. Yes, ma'am.

20 Q. All right, and once you arrived at that residence,
21 what did you do?

22 A. I had dispatched that I was on location, pulled
23 up into the front yard and I parked my car approximately
24 20 to 25 feet from the residence along the driveway.

25 Q. Were you by yourself at the time?

1 A. Yes, ma'am.

2 Q. And could you describe the residence for us
3 a little bit, what it looked like?

4 A. It's a mobile home, it's off the ground
5 approximately I would say 5 feet or so. It has a small
6 wooded porch coming off the front door and around back
7 on the rear of the residence there is a little bit larger
8 deck, approximately --- I would say 20 to 25 feet, I'm
9 not sure exactly how far behind the residence is a wooded
10 area.

11 Q. Is it a single wide, double wide ---

12 A. I believe it's a single wide from what I remember,
13 I'm not one hundred percent sure.

14 Q. And once you arrived at this residence what
15 did you do, what action did you take?

16 A. Approached the front door, I knocked on the
17 front door to see if anybody was at the residence and
18 see if anybody would answer the door.

19 Q. Did anyone answer the door?

20 A. Yes, ma'am.

21 Q. And describe that for us.

22 A. As I knocked on the door, approximately a minute,
23 maybe less, maybe a little bit more, an elderly female
24 answered the door. I asked if Preston Costa lived at
25 this residence and she advised that yes, he does live

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1 here. At that time, as the door was opening, when the
2 elderly female answered the door, I heard what sounded
3 to be the rear door of the residence opening up and then
4 someone running through the wooded area.

5 Q. So you were at the front door?

6 A. Yes, ma'am.

7 Q. And you heard sounds at the back door?

8 A. Yes, ma'am.

9 Q. Can you describe the sounds that you heard?

10 A. What it sounded --- it's kind of heard to describe
11 the sound. If anybody has ever heard a mobile home door
12 open up, you hear that metal noise as the door hits ---
13 as it opens up and then what sounded to be footprints
14 or footsteps running through like leaves, sticks and
15 such things that are located in a wooded area.

16 Q. And then did you go around to the back of the
17 residence to check it out?

18 A. I did go around the back to see what it was.
19 Prior to me going around to the back I asked if Preston
20 was there and she said, yes, he was just here but I think
21 he ran out the back door.

22 Q. And did you go around the back or did you go
23 in the residence or did you leave?

24 A. No, I'm not sure if I went around back first
25 or she said I could come in the residence to check to

1 see if he was still there.

2 Q. Did you do that?

3 A. Yes, ma'am.

4 Q. Would you describe that for us?

5 A. When I walked into the residence, the living
6 room is right soon as you come in the front door, the
7 kitchen is off to the left. She advised me that Preston's
8 bedroom was off to the right and there was only one bedroom
9 down on that right hand side. Immediately I went to
10 the right, looked off to the left, there's one little
11 bathroom there. As I walked past that bathroom I saw
12 clothes laying on the floor and then I walked into the
13 bedroom, did a quick search of the house for him, for
14 any suspect or Preston Costa, anybody in the residence,
15 and I didn't find anybody.

16 Q. Other than a name and an address did you have
17 any other information about the armed robbery suspect?

18 A. Yes, ma'am. The initial call came out that
19 the suspect, they gave a name when the initial call came
20 out from our dispatcher, they gave the name and they
21 gave a brief description of his clothing. They advised
22 that he was wearing jeans and a dark colored, black or
23 possibly dark blue, hoodie sweatshirt and he was wearing
24 a bandanna.

25 Q. Now you mentioned that in the bathroom that

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1 you found some clothing.

2 A. Yes, ma'am.

3 Q. Could you describe that for us?

4 A. Yes, ma'am. As I passed the bathroom, I saw
5 a pair of jeans and I also observed a dark, I believe
6 it was black, hoodie lying there in the bathroom.

7 Q. I ask you if you can identify what has been
8 marked as State's exhibit #2?

9 A. Yes, ma'am.

10 Q. What is that?

11 A. That is the bathroom in Mr. Costa's residence.

12 Q. And is that a fair and accurate picture of
13 how you saw it that day?

14 A. Yes, ma'am.

15 Q. And what is shown in that photograph?

16 A. It shows the hoodie sweatshirt that I observed
17 and the pair of jeans that I observed when I walked passed
18 the bathroom.

19 SOLICITOR: May I publish this to the jury,
20 Your Honor?

21 MS. CAMPBELL: Your Honor ----

22 SOLICITOR: Or can I have the witness step down
23 so he can show it to the jury?

24 THE COURT: It needs to be admitted into evidence
25 first.

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SOLICITOR: I'm sorry, I'm getting ahead of myself. I would like to submit this into evidence, Your Honor.

MS. CAMPBELL: Without objection.

THE COURT: It's admitted.

(WHEREUPON, Photograph of the bathroom with the clothes was entered and marked as State's exhibit @2.)

SOLICITOR: May I have the witness come down from the stand and publish this to the jury?

THE COURT: You may.

SOLICITOR: I would like to do it in two groups.

Q. Would you describe what' sin this photo?

A. Okay, as I said, I walked into the trailer and as you walk towards the bedroom on the lefthand side is the bathroom and as I walked by the bathroom I observed the sweatshirt that was lying here approximately --- it wasn't but about 2 foot in the doorway, I'm not too sure of my lengths, and also the pair of jeans laying on top of this clothing there.

Q. And come down to this end and say that again.

A. As I explained, as you walk into the trailer, the bathroom is located on the lefthand side. I observed the hooded sweatshirt there about 1 or 2 feet in the

Dep. Angelo-Direct by Solicitor

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1 doorway laying on the floor and then a pair of blue jeans
2 laying on top of the floor.

3 Q. Okay, Deputy, you may return to the stand.

4 Deputy Angelo, I'm going to ask you if you can identify
5 what has been marked as State's exhibit #4, containing
6 two items.

7 A. Yes, ma'am.

8 Q. What is this?

9 A. That is the hooded sweatshirt that was located
10 in the bathroom of Preston Costa's residence.

11 Q. Okay, so this is the hooded sweatshirt in the
12 photograph?

13 A. Yes, ma'am.

14 Q. How about this item?

15 A. That was the pair of jeans that was located
16 on top of the toilet inside the bathroom in the residence.

17 Q. And this is depicted as well in the photograph?

18 A. Yes, ma'am.

19 Q. Do you remember anything about the weather
20 on May 21st?

21 A. It was extremely warm that day. I remember
22 because after I had got there, cleared the residence,
23 I moved my patrol car out of the sun into the shade to
24 keep it a little bit cooler, and that's where I stood
25 until the investigator arrived.

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1 SOLICITOR: Your Honor, at this time I would
2 move State's exhibit #4, two items, into evidence.

3 MS. CAMPBELL: No objection, Your Honor.

4 THE COURT: Admitted.

5 (WHEREUPON, Sweatshirt and jeans were entered
6 and marked as State's exhibit #3.)

7 Q. On the day you went to this residence, were
8 you dressed as you are today?

9 A. The same, I just had my short sleeved uniform
10 shirt on.

11 Q. And what were you driving?

12 A. I was driving a 2003 Ford Crown Victoria patrol
13 vehicle.

14 Q. Was it marked and had blue lights and siren
15 and all that stuff?

16 A. Yes, ma'am.

17 Q. Did you actually collect these items and put
18 them into evidence?

19 A. I collected them with Investigator Garst and
20 he placed them into evidence.

21 SOLICITOR: Thank you, Deputy Angelo. Please
22 answer anything Ms. Campbell may have.

23 A. Yes, ma'am.

24 THE COURT: Cross-examination.
25

Dep. Angelo-Cross by Ms. Campbell 82

1 CROSS-EXAMINATION

2 BY MS. CAMPBELL:

3 Q. Officer Angelo, you have previously testified
4 in this case and been sworn under oath to tell the truth,
5 correct?

6 A. Yes, ma'am.

7 Q. And when you testified previously do you recall
8 testifying that you received the name of Preston Costa
9 and that you are, in fact, the one who ran a check through
10 dispatch for an address?

11 A. Yes, ma'am.

12 Q. Now, at 2:35 is the call about the armed robbery,
13 right?

14 A. I believe that was the time, ma'am.

15 Q. And you went, as you testified, going toward
16 Folly Grocery and never made it there, headed over after
17 you found out an address for Preston Costa to his home,
18 right?

19 A. Yes, ma'am.

20 Q. And when you got there, you went to the door
21 and you talked to Preston Costa's grandmother who was
22 home, right?

23 A. The woman identified herself as his grandmother,
24 yes, ma'am.

25 Q. Did you have any reason to disbelief her?

Dep. Angelo-Cross by Ms. Campbell

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1 A. No, ma'am, never met her before.

2 Q. And when you approached that home you did not
3 have your gun drawn.

4 A. No, ma'am.

5 Q. And you had no backup.

6 A. No, ma'am.

7 Q. And you had just received a call that the suspect
8 from the armed robbery was possibly at this location,
9 correct?

10 A. It was his residence, we didn't --- I didn't
11 know that he was there, it didn't come over that he was
12 definitely there, we just --- he possibly could have
13 been there.

14 Q. Now, when you arrived there was a red car parked
15 at Preston's home, correct?

16 A. There was a red car around the rear of the
17 residence.

18 Q. I'm going to hand you what has been marked
19 as Defendant's exhibit #1 and Defendant's exhibit #2.
20 Are those photographs of the red car as it appeared when
21 you arrived on 5/21/04 at Preston Costa's home?

22 A. Yes, ma'am.

23 MS. CAMPBELL: Your Honor, we would Defendant's
24 exhibit #1 and Defendant's exhibit #2 into evidence at
25 this time.

Dep. Angelo-Cross by Ms. Campbell

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1 SOLICITOR: No objection.

2 THE COURT: They are admitted.

3 (WHEREUPON, Two photographs of a red vehicle
4 was entered and marked as Defendant's exhibits #1 and
5 #2.)

6 Q. Now, in the photographs and through your
7 investigation there does not appear to be any marking
8 in that yard that would indicate a car came in there
9 quickly, no torn up grass, nothing.

10 A. Not that I observed, ma'am, no.

11 Q. And when you came up there was no one outside,
12 correct?

13 A. I could only see the front of the residence,
14 there was no one out front, no, ma'am.

15 Q. And Preston's grandmother told you that Preston
16 had been at the home for about five, six minutes, right?

17 A. I believe in my report I said three to five
18 minutes, somewhere in that area.

19 Q. And she also told you that he was at the home
20 with Melvin and with Dennis, right?

21 A. She said that he had just arrived there with
22 Melvin, she wasn't sure of Melvin's last name, and Dennis
23 had driven them there, but she wasn't sure if Dennis
24 was in the residence.

25 Q. And she told you that Dennis was driving the

1 red car, right?

2 A. Yes, ma'am.

3 Q. Okay. And you never saw Preston on 5/21 at
4 the home, correct? You looked for him in the back yard
5 but you didn't personally talk to Preston that moment,
6 right?

7 A. No, I did not personally talk to him.

8 Q. But you did talk to Dennis Lockhart who came
9 up to you when you were sort of walking around the home,
10 right?

11 A. When I was walking around the rear of the residence
12 I heard footsteps coming out of the wooded area. I hid
13 behind the residence and observed somebody walk out of
14 the woods and that's when I detained Mr. Lockhart.

15 Q. Right, and you, of course, interviewed him
16 and talked to him about where he had been and what he
17 had been doing, correct?

18 A. I asked him what he was doing, yes, ma'am.

19 Q. And he told you at that time that he and Melvin
20 and Preston had been to the DMV and the Plaza and then
21 home.

22 SOLICITOR: Your Honor, I would object. She's
23 asking for hearsay, she's asking what other people said.

24 MS. CAMPBELL: This is information he included
25 in his report.

Dep. Angelo-Cross by Ms. Campbell

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1 THE COURT: I sustain the objection.

2 MS. CAMPBELL: Thank you, Your Honor.

3 Q. You never saw any money in the yard, correct?

4 A. No, I did not see any money in the yard.

5 Q. And you never saw any money in the house, correct?

6 A. No, ma'am.

7 Q. And you never saw any money in the red car,
8 right?

9 A. I did not search the red car.

10 Q. And you didn't find a gun in the house.

11 A. No, I did not search the house.

12 Q. And you didn't find a gun in the yard.

13 A. No, ma'am.

14 Q. Now, are you saying that you never looked for
15 any evidence of this armed robbery in the area around
16 this house?

17 A. Just when I walked about the residence, when
18 I went to see what was going on and I heard the footsteps
19 running out. I looked around, I observed the red car,
20 I briefly looked in the red car through the windows,
21 the windows were down. I did not search it. What we
22 call searching is opening the door and going through
23 the vehicle.

24 The residence, I did not search the residence
25 as we would call a search. I looked through there for

1 the defendant and just by talking with Dennis Lockhart,
2 I looked around the residence. I did not search everything
3 individually, no, ma'am.

4 Q. And you were there on this armed robbery call,
5 right?

6 A. Yes, ma'am.

7 Q. Now in the photograph that is marked State's
8 #2 there are or appears to be a pair of bedroom slippers
9 and some sort of bathrobe also on the floor with this
10 clothing in the bathroom and that's what you found when
11 you came in the home, right?

12 A. Yes, ma'am.

13 Q. Like this.

14 A. The way that picture is, yes, ma'am.

15 MS. CAMPBELL: That's all I have.

16 THE COURT: Re-direct?

17 SOLICITOR: Yes, sir, briefly.

18
19 RE-DIRECT EXAMINATION BY SOLICITOR:

20 Q. This red car in Preston Costa's driveway or
21 in his yard, was this collected as a possible getaway
22 car?

23 A. Investigator Garst collected that, yes, ma'am,
24 I made a notification of Dukes telling who does the county
25 towing for us.

Off. Angelo-Re-Direct by Solicitor 88

1 Q. So you set up the towing so that it could be
2 collected as a possible getaway car for an armed robbery?

3 A. Yes, ma'am.

4 Q. And Dennis Lockhart, he came out of the woods
5 that Preston Costa had run into as well?

6 A. Yes, ma'am.

7 SOLICITOR: No further questions, Your Honor.

8 MS. CAMPBELL: Nothing further.

9 THE COURT: You can step down, sir.

10 SOLICITOR: State calls Helen Warren.

11

12 HELEN WARREN, AFTER FIRST

13 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY SOLICITOR:

15 Q. Good morning, Mrs. Warren.

16 A. Good morning.

17 Q. Could you tell us your name for the record,
18 please.

19 A. Helen Warren.

20 Q. And, Mrs. Warren, how long have you lived in
21 Beaufort County?

22 A. All my days.

23 Q. And how many is that, it might be a rude question
24 and I apologize, how many days have you had in Beaufort
25 County?

A. 87.

Mrs. Warren-Direct by Solicitor

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- 1 Q. 87 years.
- 2 A. 86, now, it will be 87.
- 3 Q. 87 in December?
- 4 A. It will be 87 in January.
- 5 Q. January, happy early birthday.
- 6 A. Thank you.
- 7 Q. Now, Mrs. Warren, what part of Beaufort County
- 8 have you lived in all your days?
- 9 A. What part?
- 10 Q. Yes, ma'am, where do you live?
- 11 A. St. Helena Island.
- 12 Q. Is that where you've lived most of your life?
- 13 A. Well, part of my life was at Eddings Point.
- 14 Q. And do you live on St. Helena Island now?
- 15 A. Yes, uh-huh.
- 16 Q. And let me ask you about the Folly Road Grocery
- 17 Store. Are you and your husband the one that opened
- 18 that store?
- 19 A. Right.
- 20 Q. And how long ago was that?
- 21 A. It was around about '65, I think it is.
- 22 Q. It's been a while back.
- 23 A. Yeah.
- 24 Q. And it's a family run business? The family
- 25 runs it?

- 1 A. Well, yes, the family. I'm not any more.
- 2 Q. You're not running it any more?
- 3 A. Oh, no, no.
- 4 Q. Do you ever go in the store any more?
- 5 A. Yes, I go every day.
- 6 Q. You still go every day?
- 7 A. Every day just to be there.
- 8 Q. Yes, ma'am, and do you do anything while you
- 9 are in the store?
- 10 A. Yeah, I try to do something, something to keep
- 11 me going.
- 12 Q. So you do a little bit of work but you don't
- 13 get paid?
- 14 A. No, I don't.
- 15 Q. That's how it works, okay. Now were you inside
- 16 the store on May 21, 2004?
- 17 A. Yes, I was in there.
- 18 Q. And do you remember seeing Lisa get robbed
- 19 that day?
- 20 A. Yeah, I was right there.
- 21 Q. Where were you in the store when that happened?
- 22 A. I was there where the meat is.
- 23 Q. Is that the front of the store or the back?
- 24 A. No, that's the back. Uh-huh.
- 25 Q. Okay, how far back were you from the front

1 of the store? From me to you or was it further back?

2 A. Yeah, about that distance.

3 Q. Back here?

4 A. Yes, uh-huh.

5 Q. Okay, tell me what you saw that day.

6 A. Well, I was so busy talking to this fellow
7 that I was getting the meat for, I didn't see anything
8 until when I hold my head up, the young man was, you
9 know, he was up to the back and I look around and I heard
10 he said, asked me to go around front to the register.
11 I want you to open the register and give me your money
12 out of there. So she didn't move, Lisa didn't move right
13 away, she moved kind of slowly, you know, and after a
14 minute or so she moved because he held the gun on her
15 face and said hurry up, hurry up. So she just had to
16 move and went to the cash register and he asked her to
17 open the cash register and take out whatever was in the
18 cash register he had wanted. But she told him she didn't
19 know what was in the cash register because she just got
20 there only a couple of minutes. So she just, you know,
21 act like she want to get in the register and she didn't
22 do it, I mean, he didn't --- she didn't do it fast enough,
23 he just pull the register down off the counter or whatever
24 it is, pull it down on the floor and he stomp it with
25 his feet and he just break it up and got that pan that

Mrs. Warren-Direct by Solicitor

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1 the cash was in and out the door he went. I was so scared
2 until I couldn't do anything but just look.

3 Q. You didn't say anything?

4 A. I couldn't say nothing, I was so excited.

5 Q. Did you see the gun?

6 A. Yes, it was a short ---

7 Q. Was it a little pistol?

8 A. --- little pistol. And he held that on her
9 and tell us to hurry up and went to the cash register.

10 Q. Now was Lisa in the back with you when it started?

11 A. Yeah, she was on the --- that was on the right
12 hand side. Uh-huh, with the other witness was on the
13 right hand side.

14 Q. Who is the fellow that you were cutting meat
15 for?

16 A. He's right back there, Benjamin Holmes.

17 Q. Okay, and all three of you were in the back?

18 A. Yeah, all three was in the back, uh-huh.

19 Q. So you heard everything and you saw the gun
20 that day?

21 A. Oh, yes, I saw the gun now but I was so scared
22 I didn't know --- I just didn't know what to do with
23 myself.

24 Q. I understand. Did you know this fellow?

25 A. Yes, I --- no, I don't know him too good but

Mrs. Warren-Direct by Solicitor

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1 I know the parents. Because he's younger.

2 Q. Do you know all the young folks in your neighbor-
3 hood these days?

4 A. No, I don't know them, no.

5 Q. Can't keep up with all of them?

6 A. No, huh-uh.

7 SOLICITOR: Thank you, Mrs. Warren. Please
8 answer anything that Ms. Campbell has.

9
10 CROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 Q. Good morning.

13 A. Good morning.

14 Q. Mrs. Warren, do you remember coming up here
15 in court to testify and being sworn to tell the truth
16 on another day?

17 A. No, that was the last time was the first time.

18 Q. Yes, when you came up here before.

19 A. Right, yeah, that was my first time.

20 Q. All right, and do you remember when the Solicitor
21 asked you, do you know the fellow that came in and robbed
22 the store and you said no, I don't know these young children?

23 A. Right, I remember that, yes, ma'am.

24 Q. Okay. Thank you. Didn't the person who came
25 into your store have something covering their face,

Mrs. Warren-Cross by Ms. Campbell

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1 Mrs. Warren?

2 A. The whole face wasn't covered, just part of
3 it --- it was like a mask or something, you know, half
4 of it. I couldn't see his whole face which I don't remember
5 his shirt because he came in so quick, I was so scared
6 I never said anything I should say.

7 Q. Half of his face like a mask?

8 A. Yeah, something he had on to cover part of
9 his face.

10 MS. CAMPBELL: Thank you, that's all I have
11 for this witness.

12

13 RE-DIRECT EXAMINATION BY SOLICITOR:

14 Q. Mrs. Warren, do you remember the first time
15 we asked you a bunch of questions and you said that the
16 young fellow had a hood on around his face.

17 A. I don't know what he had on his face.

18 Q. Could it have looked something like this?

19 A. Yes, something with --- because his whole face
20 wasn't covered.

21 Q. His whole face wasn't covered?

22 A. No.

23 Q. Just some of it?

24 A. Just like that, right, uh-huh.

25 SOLICITOR: Thank you, Mrs. Warren, I have

Mr. Holmes-Direct by Solicitor

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1 no further questions.

2 MS. CAMPBELL: Nothing further.

3 THE COURT: All right, ma'am, you can step down.

4 SOLICITOR: State calls Benjamin Holmes.

6 BENJAMIN HOLMES, AFTER

7 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY SOLICITOR:

9 Q. Good morning, Mr. Holmes.

10 A. Good moring.

11 Q. Would you state your full name for the record,
12 please.

13 A. Benjamin Holmes.

14 Q. Mr. Holmes, where do you live?

15 A. Road.

16 Q. On St. Helena Island?

17 A. St. Helena Island.

18 Q. And about how old are you, Mr. Holmes?

19 A. Seventy-five.

20 Q. And are you a customer of the Folly Road Grocery
21 Store?

22 A. Yes, ma'am.

23 Q. Are you a frequent customer?

24 A. I would say pretty regular.

25 Q. Do you know Ms. Lisa Warren and Mrs. Helen

Mr. Holmes-Direct by Solicitor

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1 Warren?

2 A. Yes, ma'am.

3 Q. Okay, were you a customer on May 21, 2004?

4 A. Yes.

5 Q. All right, can you tell me what you saw that
6 day?

7 A. Well, Mrs. Helen was cutting me a piece of
8 meat and I saw a young man come in and he come right
9 to the back, he had a gun and said give me the money.
10 So ---

11 Q. What did you do?

12 A. I backed up a little bit but I didn't have
13 the money so ---

14 Q. What did he do then?

15 A. Lisa --- he was holding it on Lisa and she
16 stand there a while and then she walk to the front.

17 Q. So you saw the gun?

18 A. Yes, I did.

19 Q. Did you hear anything that he said?

20 A. No more than he asked for the money, I didn't
21 hear anything else.

22 Q. Was he pointing the gun at anybody?

23 A. Yes, he did.

24 Q. Who did he point it at?

25 A. First he put it, you know, on Mrs. Helen

Mr. Holmes-Direct by Solicitor

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1 and then he hold it on Lisa.

2 Q. Mrs. Helen and then you and then on Lisa?

3 A. Uh-huh.

4 Q. He pointed it at everybody that day.

5 A. That's right.

6 Q. Did you know this fellow?

7 A. No, I don't.

8 Q. Did you get a look at him that day at all?

9 A. Not too good.

10 Q. Not too good. Okay, did you see anything about
11 his clothes or do you remember anything about what he
12 looked like?

13 A. I didn't notice too much of that.

14 Q. You just saw a gun?

15 A. I saw a gun and I just step back and try to
16 get out of the way.

17 Q. Yes, sir.

18 SOLICITOR: Please answer anything that Ms.
19 Campbell may have for you.

20 MS. CAMPBELL: I have no questions.

21 THE COURT: All right, sir, you can step down.
22 All right, we will take about a ten minutes break before
23 we resume the testimony. Ya'll can go back in the jury
24 room now.

25

Dep. Garst-Direct by Solicitor

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1 (WHEREUPON, A short break was taken and then
2 the proceedings resumed.)

3 THE COURT: Call your next witness.

4 SOLICITOR: Your Honor, the State, pursuant
5 to Rule 803, would present State's exhibit #3 into evidence.
6 It is a public record regarding the temperature on that
7 day.

8 THE COURT: Let me see it. Any objection to
9 it?

10 SOLICITOR: It is a public record indicating
11 that on May 21, 2004 it was 88 degrees here in Beaufort
12 County.

13 MS. CAMPBELL: No objection.

14 THE COURT: All right, well it's admitted into
15 evidence and you can retroactively publish the contents
16 of it now that I have admitted it into evidence.

17 (WHEREUPON, Temperature chart was entered and
18 marked as State's exhibit #3.)

19 SOLICITOR: It was 88 degrees in Beaufort County
20 on May 21, 2004. Thank you. State calls Deputy Ryan
21 Garst.

22 RYAN GARST, AFTER FIRST
23 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY SOLICITOR:

25 Q. Good afternoon, Deputy Garst.

Dep. Garst-Direct by Solicitor

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1 A. Good morning.

2 Q. Who are you employed by?

3 A. The Beaufort County Sheriff's Office.

4 Q. And what kind of duties have you performed
5 while working at the Sheriff's Office?

6 A. I began my career on the patrol division. After
7 about three years I went into the investigations division
8 and then after two years of that, I went back to the
9 patrol division.

10 Q. And on May 21, 2004, what were you doing?

11 A. I was assigned as an investigator to St. Helena,
12 South Carolina.

13 Q. And is that here in Beaufort County?

14 A. Yes, it is.

15 Q. And did you work an armed robbery in that location
16 on May 21st?

17 A. I did.

18 Q. And could you tell me the location of the incident?

19 A. It was at the Folly Road Grocery, I think it's
20 489 Seaside Road, St. Helena Island, Beaufort County,
21 South Carolina.

22 Q. Okay. When you first got the call, how quickly
23 would an investigator get the call? Is it the same as
24 a first responder?

25 A. Depending on where that investigator was

Dep. Garst-Direct by Solicitor

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1 if they're at the office it may take a little longer
2 to get to --- it would take a lot longer to get to the
3 location. But usually ---

4 Q. So the road deputy ---

5 A. The road deputy is usually the first one there
6 and they have to actually call out for the investigator.

7 Q. And did that occur in this case?

8 A. Yes, it did.

9 Q. And were you assigned to the armed robbery
10 at the Folly Road Grocery?

11 A. I was.

12 Q. Can you tell me, after you first received the
13 call, what did you do?

14 A. I was responding to the Folly Road Grocery
15 from, I believe I was coming from the office, and I heard
16 that Cpl. Angleo was -- he came over the air and said
17 he was going to the location to
18 look for Preston Costa, because that was the suspect
19 that was dispatched over the radio. I had information
20 that Officer Malphrus was already at the Folly Road Grocery
21 and had that scene under control, so I was responding
22 to a possible second crime scene to look for evidence,
23 witnesses, interviews, and also to back up Cpl. Angelo.

24 Q. And that was at the suspect's residence?

25 A. Yes, ma'am.

1 Q. Okay, and once you arrived there, what did you
2 do?

3 A. I met up with Cpl. Angelo and Preston Costa's
4 grandmother, I believe her name was Mrs. Green, and was
5 directed towards some possible evidence.

6 Q. Let me show you what has been marked as State's
7 exhibit #4, do you recognize these items?

8 A. Yes, ma'am.

9 Q. All right, and where do you know these items
10 from?

11 A. They were sitting in a community bathroom inside
12 --- or common bathroom inside

13 Q. And did you do anything with those items?

14 A. I collected them due to them being consistent
15 with the description given by -- what the suspect was
16 wearing during the armed robbery.

17 Q. Do you remember anything about the weather
18 that day?

19 A. I know it was hot because I spent most of this
20 case outside looking for evidence and I remember that
21 I was pretty sweaty, it was hot.

22 Q. Did you observe a vehicle outside?

23 A. I did.

24 Q. And what, if anything did you do with the vehicle?

25 A. I looked inside for any evidence in plain view

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1 sight and being there was no evidence in plain view sight,
2 I believe that it had possibly some connection with the
3 armed robbery so I secured the vehicle by having it towed
4 by a county wrecker to an impound lot and then I secured
5 a search warrant from a magistrate.

6 Q. Did you find anything in the vehicle that was
7 helpful?

8 A. No, I didn't.

9 Q. Did you search?

10 A. Yes, ma'am.

11 Q. Were you able to find the gun used in the robbery?

12 A. No, ma'am.

13 Q. Did you find Preston Costa that day?

14 A. No, ma'am.

15 Q. Once you left Preston Costa's residence, what
16 did you do?

17 A. I went to the Folly Road Grocery Store to speak
18 with Officer Malphrus and to also look for evidence and
19 interviews.

20 Q. Okay, and what exactly did you do there?

21 A. I --- when I first got there I met with Officer
22 Malphrus and he said that he had processed the inside
23 of the store for fingerprints. And from there, I went
24 from the --- I was in the parking lot of the Folly Road
25 Grocery and met with a bystander who said that she

1 had seen some money laying on the ground.

2 Q. What did you do about that?

3 A. I followed basically a trail of money from
4 the Folly Road Grocery to probably a block, northbound
5 on Seaside Road towards Bird's Nest Lane, and collected
6 the money.

7 Q. And I ask you if you can identify what has
8 been marked as State's exhibit #7?

9 A. It's a Sheriff's Office evidence bag, plastic,
10 with --- labeled the armed robbery from Folly Road Grocery
11 Store with my case number, my name, my badge number and
12 \$53.98 in paper currency and coins.

13 Q. And where did that come from?

14 A. This was part of the trail of money that led
15 from the grocery store to Bird's Nest Lane.

16 Q. And did you describe picking it up almost like
17 a Hansel and Gretel ---

18 A. Exactly like that, exactly.

19 SOLICITOR: Your Honor, at this time the State
20 would move exhibit #7 into evidence.

21 MS. CAMPBELL: No objection, Your Honor.

22 THE COURT: All right, it's admitted, let me
23 see ya'll for just one second, please.

24 (WHEREUPON, \$53.98 in coins and currency was
25 entered and marked as State's exhibit #7.)

1 (WHEREUPON, A bench conference was held out
2 of the hearing of the jury and the court reporter.)

3 Q. And, Officer Garst, as you followed this trail
4 of money, where did it lead you?

5 A. It lead to a dirt road known as Bird's Nest
6 Lane, it's on St. Helena, probably a block from the grocery
7 store.

8 Q. Did you find Mr. Costa there?

9 A. No, ma'am.

10 Q. Did you find anything there?

11 A. I found some what looked like to be tire tracks.

12 Q. And were you able to do anything with those
13 tire tracks?

14 A. I photographed them with a digital camera,
15 a digital camera.

16 Q. Were you able to use them in any kind of comparison
17 with the car that you collected at Preston's residence?

18 A. The tire tracks that were left on Bird's Nest
19 Lane were in very soft sand that once the car had driven
20 off, basically the sane collapsed upon itself which basically
21 left very little detail on the tread. I photographed
22 them, I looked at whatever detail I could get from the
23 tread or the picture and compared it to the tire, the
24 car that I had seized from Preston Costa's residenc and
25 I couldn't tell, there was just not enough detail in

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1 the picture to match to anything.

2 Q. In preparation for your testimony today have
3 you prepared any exhibits to help aid your testimony?

4 A. Yes, I have.

5 Q. And I ask you if you can identify what has
6 been marked as State's exhibit #5.

7 A. That is the map of the ---

8 Q. Can you identify it?

9 A. Yes, yes, I can.

10 Q. And you prepared this for court today?

11 A. Yes, ma'am.

12 SOLICITOR: At this time the State moves this
13 into evidence, Your Honor.

14 MS. CAMPBELL: Without objection.

15 THE COURT: It's admitted.

16 (WHEREUPON, Map was entered and marked as State's
17 exhibit #5.)

18 Q. What exactly is exhibit #5, Investigator?

19 A. It's the map of basically the area between
20 Preston Costa's residence and the Folly Road Grocery.
21 It details the distances from the houses, the house and
22 the business.

23 SOLICITOR: May I have the witness leave the
24 stand and publish it to the jury?

25 THE COURT: You may.

1 Q. Deputy Garst, would you describe for the jury
2 what is on this map?

3 A. This is the Sea Island Parkway or highway 21,
4 this is where Preston allegedly worked. This red dot
5 represents Preston Costa's house which is ---

6 Q. What is the address of Preston Costa's residence?

7 A.

8 Q. And is that in Beaufort County?

9 A. Yes, ma'am.

10 Q. And what's next?

11 A. 49 Seaside Road which is Folly Road Grocery
12 Store.

13 Q. And is that also Beaufort County?

14 A. Yes, it is.

15 Q. What is the distance between Preston Costa's
16 residence and the Folly Road Grocery Store?

17 A. 3.42 miles at 55 miles an hour.

18 Q. Thank you. Now, as part of your investigation,
19 did you have an opportunity to talk to the victim Lisa
20 Warren?

21 A. Yes, I did.

22 Q. And did you ever have an opportunity to show
23 her a photo lineup?

24 A. Yes, ma'am.

25 Q. What is a photo lineup, first of all?

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1 A. It's a --- when you have a --- when you have
2 a suspect or a suspect description, height, weight, race,
3 sex, we take those characteristics and we look for photo-
4 graphs that are similar, that may have those similar
5 characteristics.

6 Q. Did you do that in this case?

7 A. Yes, I did.

8 Q. I'm going to ask you if you can identify what's
9 been marked as Court's exhibit #1 for identification.

10 A. I can.

11 Q. What is that?

12 A. This is the photo lineup folder that I created
13 for this case.

14 Q. And is Preston Costa in that photo lineup?

15 A. Yes, he is.

16 Q. What number is he?

17 A. Number 3.

18 Q. What did you do, if anything, with that photo
19 lineup?

20 A. After creating the photo lineup I made contact
21 with Mrs. Helen Warren and allowed her to review it ---

22 Q. Helen or Lisa?

23 A. Lisa, I'm sorry. And allowed her to review
24 it to see if the Preston Costa that she knew was the
25 Preston Costa that I also knew to eliminate anyone

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1 anyone else as being a suspect.

2 Q. And did you show this to Lisa?

3 A. Yes, I did.

4 Q. And did you make any suggestion to her about
5 any of the photographs when you showed it to her?

6 A. No, ma'am, I did not.

7 Q. What did you do, how did you present it to
8 her?

9 A. First I told her that I had a photo lineup
10 for her to look at and then on the back of the photo
11 lineup card, there is a paragraph that we are required
12 to read to them.

13 Q. Read that to the jury.

14 A. Okay.

15 THE COURT: Why don't you offer it into evidence
16 first if you are going to.

17 SOLICITOR: I apologize. I wasn't going to.

18 THE COURT: Okay, then well never mind unless
19 there's some objection.

20 MS. CAMPBELL: Well, Your Honor, I have a prior
21 objection to this ---

22 THE COURT: Yes, and I was going to say that
23 based on my ruling this morning, you do not need to make
24 a contemporaneous objection.

25 MS. CAMPBELL: The record reflects that, thank

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1 you, Your Honor.

2 Q. And this just goes to the suggestability or
3 lack thereof, what did you tell Ms. Warren about this
4 particular item.

5 A. What did I tell her? I just told her to look
6 at it and see if the person had robbed her was in one
7 of the photos.

8 Q. Was she able to pick one out?

9 A. Yes, she was.

10 Q. Who did she pick out?

11 A. She picked out Preston Costa.

12 Q. All right, and did you have her do anything
13 with that?

14 A. I had her put her initials by the photograph
15 that she picked out and I had her sign and date and time
16 the back of the folder.

17 Q. The Preston Costa in the photograph that you
18 provided to Ms. Warren and she picked out as the person
19 who robbed her, is he in the courtroom today?

20 A. Yes, he is.

21 Q. Would you please point him out to the jury?

22 A. Gray suit, tie beside Ms. Campbell.

23 SOLICITOR: Thank you, Your Honor. Please let
24 the record reflect that he has identified the defendant.

25 SOLICITOR: I have no further questions, Your

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1 Honor.

2 THE COURT: Cross-examination.

3
4 CROSS-EXAMINATION

5 BY MS. CAMPBELL:

6 Q. Officer Garst, you've been with the Sheriff's
7 Department five or six years now?

8 A. Yes, ma'am.

9 Q. And you were sent to the police academy to
10 train you for your job at the Sheriff's Department, right?

11 A. Yes, ma'am.

12 Q. And when you were at the police academy you
13 received no training in how to properly conduct a photographic
14 lineup, isn't that true?

15 A. That is correct.

16 Q. And any training that you have received on
17 how to properly conduct a photographic lineup was basically
18 passed down to you from other officers at the Sheriff's
19 department?

20 A. The experienced investigators, yes, ma'am,
21 but they are officers of the Sheriff's Department, yes,
22 ma'am.

23 Q. And there is no manual promulgated by the
24 Sheriff's Department on telling you how to do this
25 procedure correctly.

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1 A. That's correct.

2 Q. So you have no set written standards before
3 you when you are making a photographic lineup, right?

4 A. We have standards, I mean, we --- there are
5 standards.

6 Q. Right, but they are not written standards for
7 you to follow, correct?

8 A. They are not written, no, ma'am.

9 Q. Now, there are --- when you prepared this photo-
10 graphic lineup for Ms. Warren, two of the young men that
11 you were told that were with Preston on his errands that
12 day are in that photographic lineup, Dennis Lockhart
13 and Melvin Holmes.

14 A. Yes, ma'am.

15 Q. And ---

16 A. Excuse me, just to clarify, they weren't told
17 to me by the victim. She didn't know that they were
18 together.

19 Q. I understand that.

20 A. Okay.

21 Q. But you had the information that those two
22 individuals were with Preston Costa on that day from
23 your officers and from information given to you by other
24 witnesses in this case.

25 A. Yes, ma'am.

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1 Q. Okay. And there is, in photograph #6 when you
2 put this lineup together, having the information you
3 had about what was going on with the suspect, you put
4 a person in that lineup whose eyes are closed, number
5 6, his eyes are closed completely, aren't they?

6 A. Yes, ma'am.

7 Q. You put another individual, if I may, in this
8 lineup, #2, a fellow by the name of Byron Singleton,
9 and you put him in that lineup and he is also known to
10 Ms. Warren, correct?

11 A. I don't know, I don't have any information
12 about that.

13 Q. You have absolutely no training in the difference
14 between a sequential lineup and a photographic lineup,
15 correct?

16 A. That is correct.

17 Q. And just by its terminology you might be able
18 to determine that a sequential lineup would be when you
19 take the photographs of the individuals and you show
20 it to someone and the next one and so forth and so on,
21 would that be fair to say?

22 A. (No response.)

23 Q. Sequential would mean that.

24 A. I'm not sure, I've never had to do one, I've
25 never done one of those.

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1 Q. Now, you showed these photos, these lineup that
2 you put together, to Ms. Warren in the parking lot of
3 the Sheriff's Department, isn't that correct?

4 A. It was on the grounds of the Sheriff's Office,
5 that's correct.

6 Q. Well, actually it was in the parking lot, haven't
7 you testified to that previously?

8 A. I believe I would have said it was on the sidewalk
9 between the rear of the Sheriff's Office and the jail.

10 Q. Would it be fair to say you said it was outside
11 the back door, outside like in the parking lot area on
12 the sidewalk, would that be fair?

13 A. Yes, ma'am.

14 Q. And you made no attempt to ascertain prior
15 to showing her the photographic lineup if she may or
16 may not have known any of the other boys in this lineup,
17 correct?

18 A. No, ma'am.

19 Q. Now, this black jacket that was taken from
20 the Costa home and the jeans, you never sent any of that
21 to anyone to determine if you could connect that clothing
22 to Preston Costa, did you?

23 A. No, ma'am. It was told to me by his grandmother
24 that they were his, he was wearing them that day.

25 Q. You don't have that in your report, do you,

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1 Officer Garst?

2 A. I believe I have that interview of Mrs. Green.

3 Q. I'll come back to that in a moment, Officer
4 Garst. You, at this time, were the lead investigator
5 in this case, correct?

6 A. Yes, ma'am.

7 Q. And you are no longer with the investigative
8 division of the Sheriff's department, right?

9 A. No, ma'am, that's correct.

10 Q. Now you were told and given information and
11 included it in your report that the suspect had a red
12 bandanna covering his face, correct?

13 A. That is correct.

14 Q. And you, in your capacity as the lead investigator,
15 secured the video from the armed robbery, right?

16 A. Yes, I did.

17 Q. And --- well, when did you watch that video?

18 A. It was --- I don't know exactly what date it
19 was but it was viewed. I mean, I couldn't tell you the
20 exact date, a couple of days later.

21 Q. You didn't view it before you attempted to
22 secure evidence at the crime scene though, did you?

23 A. No, ma'am, I didn't secure the video. I never
24 looked at it because Officer Malphrus had already secured
25 it.

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1 Q. Have you since had an opportunity to view the
2 video?

3 A. Yes, ma'am.

4 Q. And in the video isn't it true that the suspect
5 in this case stomped heavily on the cash box two to three
6 times, correct, in an attempt apparently to open it up?

7 A. I would have to look at it again but I know
8 it hit the floor, I'm not sure if I remember him kicking
9 it.

10 Q. Now you believe obviously because you towed
11 it to secure a search warrant for it, that that red car
12 in these photographs was used in this armed robbery,
13 correct, as to get away car?

14 A. I had reasonable suspicious enough to believe
15 that, yes, ma'am.

16 Q. Well, you were able to get a search warrant
17 for it, weren't you?

18 A. Yes, ma'am.

19 Q. Okay. And you totally processed that car?

20 A. I did.

21 Q. Thoroughly.

22 A. I did.

23 Q. Okay. And in thoroughly processing this car
24 you also have told us that you took some photographs
25 of the tire impressions that you believe were related

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1 to this crime, correct?

2 A. Yes, ma'am.

3 Q. And I'm going to hand you what has been marked
4 as Defendant's #3,4 and 5 and ask you if you can identify
5 those?

6 A. Yes, I can.

7 Q. Okay, and those are photographs that you took?

8 A. Yes, ma'am.

9 MS. CAMPBELL: Your Honor, we would move Defendant's
10 #3,4 and 5 into evidence at this time.

11 SOLICITOR: No objection.

12 THE COURT: Admitted.

13 (WHEREUPON, Three photographs of the tire treads
14 were entered and marked as Defendant's #3, 4 and 5.)

15 Q. Now, you testified that you took those photographs
16 and determined that there was just simply nothing more
17 that you could do. You couldn't make a cast of them,
18 you couldn't do anything to further secure that for analysis
19 against that red car, right?

20 A. That's correct.

21 Q. Now, you testified that you made an independent
22 comparison between the tires on this red car and those
23 photographs that you took, correct?

24 A. I knew that there wasn't enough detail in the
25 tire tread that I photographed to compare to anything.

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1 I mean, it wasn't enough detail on there to say that
2 it came from the tire or any tire. It was not enough
3 detail there.

4 Q. Are you testifying today that you didn't compare
5 those tire photographs to the tires on this red car and
6 ask for assistance for that comparison?

7 A. I did do that.

8 Q. Okay. So you did make a comparison between
9 those tire photographs and the tires on this red car?

10 A. Yes, ma'am.

11 Q. Okay. And you made a determination that they
12 don't match?

13 A. With what I had I determined that.

14 Q. Well, didn't you feel like you wanted some
15 kind of backup opinion perhaps, someone to kinda solidfy
16 what you thought, right?

17 A. Yes, ma'am.

18 Q. Okay. And then you went and contacted Chris
19 Wilson at the Sheriff's Department and asked her to back
20 up your opinion, right?

21 A. Yes, ma'am.

22 Q. Now, that procedure right there that we just
23 discussed, comparing the photographs to this red car
24 and asking Chris Wilson to help you back up your opinion
25 is nowhere reported in any of your information about

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1 this case to the State or to me, correct?

2 A. That is correct. The photographs that I had
3 held no evidentiary value.

4 Q. And you decided that the fact that you had
5 performed that test it simply didn't need to be reported.

6 A. I wouldn't call it a test.

7 Q. Then the comparison, it didn't need to be reported?

8 A. No, ma'am.

9 Q. Now, when you did process the red car, search,
10 you found no coins and no dollar bills in that car, correct?

11 A. That is correct.

12 Q. And you found no cash register in that car?

13 A. That is correct.

14 Q. You found no bandanna in the car?

15 A. That is correct.

16 Q. No mask in the car?

17 A. That is correct.

18 Q. And no gun in the car?

19 A. That is correct.

20 Q. Now, as the lead investigator, as what you
21 have termed going to a possible second crime scene, you
22 took some things into evidence and searched Preston Costa's
23 home, right?

24 A. No, ma'am.

25 Q. You did not look for the gun that was used

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1 in an armed robbery moments before where you believed
2 the suspect to be?

3 A. No, ma'am.

4 Q. So if you didn't look for the gun, obviously
5 you didn't look for the bandanna, right?

6 A. No, ma'am, that's correct.

7 Q. When you come here today you have absolutely
8 no physical evidence to connect Preston Costa to the
9 armed robbery, correct?

10 A. No, ma'am, that's not correct.

11 Q. You had no fingerprints, correct?

12 A. That's correct.

13 Q. You have no footprint evidence, correct?

14 A. That is correct.

15 Q. Now obviously you believe the person who committed
16 this armed robbery had a gun, right?

17 A. Yes, ma'am.

18 Q. And you believe, through your investigation
19 and what had been reported to you, that Preston Costa
20 ran into the woods right behind his house, right?

21 A. I believe that, yes.

22 Q. And you believe that he was possibly armed,
23 correct?

24 A. Yes, ma'am.

25 Q. Now, there was no perimeter with law enforcement

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1 set up around Preston's house, was there?

2 A. No, ma'am, there was --- not perimeter.

3 Q. You know, kind of rope off whoever may have
4 run, right?

5 A. That is correct.

6 Q. And you didn't call out the dog tracking team
7 to hunt for Preston that night, correct?

8 A. That is correct.

9 Q. In fact, Officer Garst, you gave Preston's
10 grandmother and/or mother your card with your phone number
11 on it.

12 A. Yes, ma'am.

13 Q. And you said when you talk to Preston, have
14 him give me a call, right?

15 A. Yes, ma'am.

16 Q. And when Preston came home that evening, after
17 talking to his mother and his grandmother, they called
18 you, right?

19 A. Yes, ma'am.

20 Q. And during your conversation with them, you
21 informed them don't come in, I'll see you Monday morning,
22 come down and talk to me then, right?

23 A. I'm not sure how the conversation went but
24 he came in sometime that Monday or the next day.

25 Q. Are you testifying today that you didn't say

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1 come on in Monday and I'll talk to you, I mean, isn't
2 that what you said?

3 A. Yes, that's the gist of it but I'm not sure
4 what the exact wording was.

5 Q. And so the person that you believed, I suppose
6 at this point, had committed this armed robbery, you
7 were in touch with him and you didn't say stay where
8 you are, I'll come get you, you didn't say that, did
9 you?

10 A. No, ma'am, I was ---

11 Q. And, in fact, Monday morning, Preston and his
12 mother and Dennis Lockhart showed up just like they said
13 they would to talk to you about whatever your concerns
14 were when you came by the house on Friday, right?

15 A. That is correct.

16 Q. And you took a statement from Dennis Lockhart,
17 correct?

18 A. I believe so, yes, ma'am.

19 Q. And you talked to Preston?

20 A. I believe so.

21 Q. And you received information as to where the
22 boys had been that day, right?

23 A. Yes, ma'am.

24 Q. Now, in following up on that information, you
25 went out to the Department of Motor Vehicles and talked

1 to Nichole Smalls, correct?

2 A. That is correct.

3 Q. And she gave you a printout or information
4 that, in fact, corroborated what you had been told that
5 Melvin Holmes was at the Department of Motor Vehicles
6 at 1:21 renewing his ID card, correct?

7 A. I was not provided a printout. I know we have
8 a printout but I don't believe that I got that.

9 Q. But you received that information.

10 A. Yeah, we received that information, right.

11 Q. On that day?

12 A. That's correct.

13 Q. That you went out there.

14 A. Yes.

15 Q. And then you left from there and you went to
16 Plum's to confine that Dennis Lockhart worked there and
17 that there was a check available for him to pick up on
18 that day, correct?

19 A. That's correct.

20 Q. And you found that information to be true,
21 right?

22 A. Excuse me?

23 Q. That was true, Dennis Lockhart worked there
24 and ---

25 A. Yes, that's correct, that's correct.

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1 Q. And when you wrote your report about this case,
2 you decided that that information was not important and
3 you didn't include that information in your report either,
4 did you?

5 A. (No response.)

6 Q. That you had gone to the DMV, that you had
7 gone to Plum's in an effort to corroborate what you had
8 been told, it's not in your report, is it?

9 A. No, ma'am.

10 Q. Now, you've provided this map for our jury
11 to ascertain where is Plum's, Folly Road Grocery and
12 Preston's home. Obviously when you were investigating
13 this case, you're going to run that route that day to
14 see if you can find any evidence along the route, right?

15 A. From Plum's to ---

16 Q. From Folly Grocery to Preston's home.

17 A. I'm not sure which route I took.

18 Q. Well, money, as you've testified, was being
19 dropped about like Hansel and Gretel ---

20 A. Yes, right.

21 Q. And there may have been further evidence along
22 that trail, correct, along the highway?

23 A. No, ma'am, I don't believe there was further
24 evidence on that trail.

25 Q. Did you drive it, did you walk it?

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- 1 A. I walked it, I walked it for several hours.
- 2 Q. And you found nothing?
- 3 A. Found nothing. Except the money.
- 4 Q. Okay. And all that you found, the money and
- 5 the coins and the change, was within basically maybe
- 6 less than 30 yards to 50 yard from the Folly Grocery,
- 7 correct?
- 8 A. It was probably 75 or 100 yards.
- 9 Q. When you went to the Folly Grocery Store, you,
- 10 yourself, did not dust for prints at the store, correct?
- 11 A. That's correct.
- 12 Q. Officer Garst, you took what has been marked
- 13 as State's exhibit #7 and you, I believe, attempted to
- 14 retrieve fingerprints off of this money, the dollar bills,
- 15 is that correct?
- 16 A. Yes, ma'am.
- 17 Q. And you did that from over a year after this
- 18 armed robbery took place, didn't you?
- 19 A. No, ma'am.
- 20 Q. You took them in May, 2005?
- 21 A. I would have to see where that shows that I
- 22 did that. I believe I processed it a lot earlier than
- 23 that. I would have to see that in writing but I believe
- 24 I processed that as soon as I got it. I wouldn't have
- 25 waited a year to process that for evidence.

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1 Q. Do you know that this money has been sent and
2 processed over a year after this armed robbery took place?

3 A. (No response.)

4 Q. Are you aware of that?

5 A. No, ma'am.

6 Q. Well, do you know that there were no fingerprints
7 retrieved off of this money?

8 A. Yes, ma'am, I processed that but I didn't find
9 any fingerprints on it.

10 Q. So based on that, Officer Garst, it would be
11 your testimony that you never sent this money to South
12 Carolina Law Enforcement Division for them to analyze,
13 correct?

14 A. That's correct.

15 MS. CAMPBELL: That's all I have, Your Honor.

16 THE COURT: Re-direct examination.

17 SOLICITOR: May we approach, Your Honor?

18 THE COURT: Certainly.

19 (WHEREUPON, A bench conference was held out
20 of the hearing of the jury and the court reporter.)

21

22 RE-DIRECT EXAMINATION BY SOLICITOR:

23 Q. Officer Garst, I want to show you what has been
24 marked as State's exhibit #8. Earlier we were discussing
25 the photo lineup that you showed Ms. Warren. Is exhibit

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1 #8 a fair and exact copy of that photo lineup? Front and back?

2 A. It is.

3 SOLICITOR: Your Honor, at this time State moves
4 State's exhibit #8 into evidence.

5 MS. CAMPBELL: Your Honor, I'm not going to
6 state my objection again, it is on the record.

7 THE COURT: The objection that we addressed
8 earlier is preserved but ---

9 MS. CAMPBELL: I do not object to that form,
10 the paper copy form.

11 THE COURT: Then it's admitted.

12 (WHEREUPON, Photographic lineup was entered
13 and marked as State's exhibit #8.)

14 Q. Deputy Garst, Ms. Campbell asked you about
15 checking out Preston's alibi being with Melvin Holmes
16 at the DMV.

17 A. Yes, ma'am.

18 Q. Were you able to determine what time Melvin
19 Holmes was at the DMV?

20 A. No, ma'am.

21 Q. Were you able to determine that it was at least
22 an hour before the armed robbery?

23 A. Yes, ma'am, I was aware.

24 Q. So his alibi actually puts him coming back
25 towards his house an hour before the armed robbery.

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1 A. That's correct.

2 MS. CAMPBELL: Your Honor, I'm going to object.

3 THE COURT: On what basis?

4 MS. CAMPBELL: Your Honor, the witness has testified
5 he as not given information as to the time that Melvin
6 Holmes was at the DMV. He has no point of reference
7 then to answer the Solicitor's question about, you know,
8 it was an hour. He's testified he doesn't know, he wasn't
9 given that information.

10 THE COURT: Well, that's something that you
11 can address on cross-examination. I overrule that objection.

12 Q. And in this lineup that you showed Ms. Warren,
13 how many days after the armed robbery did you actually
14 show her this lineup?

15 A. It was four days.

16 Q. Four days after she had already told you it
17 was Preston Costa that robbed her?

18 A. That is correct.

19 Q. Now, when Preston's mother called you, talking
20 about the card that you left, did she tell you where
21 Preston was?

22 A. No, she did not.

23 Q. So why --- can you explain why would you tell
24 a defendant to turn himself in? Why wouldn't you just
25 go out there and go get him?

1 A. I'm not sure if I understand your question.

2 Q. Did you know where Preston was?

3 A. No, I did not.

4 Q. Did you know where to go look for him?

5 A. No, I did not.

6 Q. Why would you give a defendant or a suspect
7 in any crime the opportunity to turn himself in?

8 A. In my experience as an investigator and officer
9 at the Sheriff's Office, it's very good to build a rapport
10 with everyone you have to deal with, whether it be a
11 victim, a witness, a suspect. It makes interviewing
12 and interrogation a lot easier. Knowing that Island
13 as well as I did and knowing that there wasn't any physical
14 violence involved, I believed that it would have been
15 to my best interest and the case's best interest for
16 him --- to give him the opportunity to come in on his
17 own.

18 Q. Does that mean when you talked to his mother
19 and said, okay, how about bring him on in, did you stop
20 looking for him, did the Sheriff's Office stop looking
21 for Preston Costa that weekend?

22 MS. CAMPBELL: Your Honor, I'm going to object.

23 THE COURT: Sustained.

24 MS. CAMPBELL: Thank you.

25 Q. Ms. Campbell asked you about in your report

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1 about a bandanna.

2 A. That's correct.

3 Q. What exactly did your report say about that
4 bandanna?

5 MS. CAMPBELL: Your Honor, we've been over this
6 and I'm going to object. She had full opportunity to
7 go over the bandanna with him and she didn't do it any
8 further than that and I think it's improper re-direct.

9 SOLICITOR: Your Honor, this is re-cross and
10 in her cross-examination she asked ---

11 THE COURT: All right, if the objection is to
12 it being improper re-direct, then that objection is over-
13 ruled.

14 Q. What did it say?

15 A. My report says that suspect entered the Folly
16 Road Grocery Store wearing a red bandanna around his
17 face and shortly after he entered, it fell from around
18 his face and Ms. Warren could identify the suspect as
19 Preston Costa. Thus the bandanna had fallen while he
20 was inside the store.

21 SOLICITOR: Thank you, no further questions.

22 MS. CAMPBELL: Nothing further.

23 THE COURT: You may step down. Call your next
24 witness, Solicitor.

25 SOLICITOR: State calls Lisa Warren.

1 LISA WARREN, AFTER
2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY SOLICITOR:

4 Q. Good afternoon, Ms. Warren.

5 A. Good afternoon.

6 Q. Please state your full name for the record,
7 please.

8 A. Lisa Ann Warren.

9 Q. Ms. Warren, where do you live?

10 A. St. Helena, Road.

11 Q. How long have you lived there.

12 A. Since '73.

13 Q. Since '73. Are you married?

14 A. Yes.

15 Q. And what is your husband's name?

16 A. Esmenell Warren.

17 Q. And how are you related to Mrs. Helen Warren?

18 A. Granddaughter-in-law, but it's like my grand-
19 mother to me.

20 Q. And do you have a family?

21 A. Yes, two children.

22 Q. Boy or girl?

23 A. Both, one each.

24 Q. And what are their ages?

25 A. 22 and 19.

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1 Q. And you raised your family here in Beaufort
2 County?

3 A. Yes.

4 Q. On St. Helena Island?

5 A. Yes.

6 Q. Now, where do you work?

7 A. St. Helena Early Learning Center, but right
8 next door I was working at the elementary school after
9 they built a new school, I'm at the new school now.

10 Q. And what do you do there?

11 A. Teacher's assistant.

12 Q. How long have you been doing that?

13 A. I've been doing that for about fifteen years.

14 Q. And how did you get involved in that?

15 A. I volunteer one day a week all day in my children's
16 classroom from the time they were in kindergarten.

17 Q. So the 22 year old, since she was in kindergarten
18 you have been volunteering at least every week?

19 A. Every week, one day a week.

20 Q. Now, how are you related to the Folly Road
21 Grocery Store?

22 A. My husband and I took that over about six years
23 ago because my grandfather got ill. He pass now and
24 my grandmother is at no age to run the store.

25 Q. That's Mrs. Helen's husband?

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1 A. Yes.

2 Q. And do you ever work in the Folly Road Grocery
3 Store?

4 A. Yes.

5 Q. How often do you work there?

6 A. Now --- at that time or now?

7 Q. Well, back in May of 2004.

8 A. Okay, every day.

9 Q. And what time would you normally work?

10 A. I would get there at 2 o'clock. I work at
11 the school in the morning and then I would leave, I'm
12 out in the ministry as one of Jehovah's Witnesses, I
13 do that work from 9:30 until time for me to be at the
14 store at 2 because the person that works there in the
15 morning drives a school bus and she has to leave at 2.

16 Q. So you volunteer at the school in the mornings,
17 is that correct?

18 A. I got hired as a result of volunteering in
19 my children classroom, I got hired at the school so I'm
20 employed with Beaufort County Schools. But I'm part
21 time, I'm there at 6 in the morning and then I leave
22 and then I go out in the ministry and then I'm to the
23 store at 2.

24 Q. And what do you do as part of your ministry?

25 A. Go door to door and encourage people to read

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1 the Bible and share scriptures with them from the Bible.

2 Q. And you do that in your community on St. Helena?

3 A. Yes.

4 Q. And then you go to work at the grocery store?

5 A. Right.

6 Q. On May 21, 2004, were you working that day?

7 A. Yes.

8 Q. About what time did you get there?

9 A. 2 o'clock.

10 Q. Okay. And once you arrived at 2 o'clock, what
11 did you do?

12 A. I had a brief discussion with the clerk that's
13 fixing to leave and make sure, you know, anything she
14 need to tell me and then I stack boxes --- it was hot
15 that day so I was making sure --- we have a what we call
16 a flat box, it's cooler than the standup box, so we stack
17 most of our drinks in there first and then move it to
18 the standup box as needed. So I was making sure that
19 the beer and soda, whatever drinks needed to be put in
20 that box from when I first got there, that's what I did.

21 Q. Was there anybody in the store with you that
22 day?

23 A. Yes. My grandmother and Mr. Ben Holmes.

24 Q. And who is Mr. Holmes?

25 A. Sitting in the back right there.

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1 Q. Is he a relative or a customer?

2 A. Customer.

3 Q. Now, on this date, did anything out of the
4 ordinary happen?

5 A. Yes.

6 Q. Start describing that for us, where were you
7 when it started to happen?

8 A. At that time I was to the back of the store
9 where Mr. Ben Holmes and my grandmother was because I
10 had finished stacking the boxes and so I would go back
11 to see if she needed any assistance as well as chat with
12 Mr. Holmes. So my grandmother was actually behind the
13 meat counter but Mr. Ben and I were on the other side
14 and then the door opened. When our door opens, since
15 we have an alarm system, it makes a ringing noise, like
16 a bell, so we heard the door open and I looked towards
17 the front of the store and the person was coming toward
18 me with the gun which was Preston.

19 Q. All right, how close did he get to you in the
20 back of the store?

21 A. Like right to the edge of where this is from
22 where I'm sitting now. He came right on up to us and
23 asked for money. Mr. Holmes said I don't have any money.
24 I just stood there like I was in shock and then I realized
25 that my grandmother was right there also. So he was

1 like, give me the money, hurry up, hurry up. So I moved
2 from where I was and headed toward the front of the store
3 where the cash register was.

4 Q. At that time did you see a gun?

5 A. Oh, yeah, when he first entered you could see
6 the gun in his hand.

7 Q. Was he pointing it at anything?

8 A. When he first entered the store?

9 Q. Yes.

10 A. Straight back to where we were. When you walk
11 in, you can see that there's no one in the front. So
12 as he comes down the back aisle, the gun is in hand already.

13 Q. And you said you walked toward the cash register,
14 is that correct?

15 A. Right.

16 Q. Did he come with you?

17 A. Oh, yeah, he held the gun on me the whole time
18 I was traveling up.

19 Q. And once he got to the cash register, what
20 did he do?

21 A. I fingered with it so as not to open it because
22 I'm like, you know, as much as you struggle to make a
23 dollar and here I have to hand it over to someone that's
24 robbing me, but I could tell he was getting more and
25 more aggravated and demanding the money so I got the

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1 bag that we keep like change in from under the counter,
2 handed it thinking that he would take it and leave. He
3 opened it and said there's nothing in here, open the
4 register. And I was like I can't get it open. And then
5 he banged on the top of the counter with a loud noise
6 and I said, well, I'm sorry, but I'm so nervous I just
7 can't get the cash register open. So he just threw the
8 whole thing, pulled it down to the floor.

9 Q. The whole cash register?

10 A. The whole --- it's a computer like cash register
11 where the drawer and everything sat on top of the counter.
12 So he pulled the whole thing to the floor, the drawer
13 popped loose, he banged it on the side of the meat box
14 that I had stacked the drinks in and when the drawer
15 broke a loose from it, then he took it, pushed the door
16 open with his arm and left.

17 Q. Now you said you could tell he was getting
18 aggravated, how could you tell that?

19 A. Because he kept saying, hurry up, hurry up
20 or I will kill you, hurry up, give me the money.

21 Q. Was he yelling?

22 A. Yes.

23 Q. What was he doing with the gun while he was
24 saying these things?

25 A. He kept it, you know, on me.

1 Q. How close were you and Preston?

2 A. Like our counter is not that wide, so he was
3 right on the counter like and I'm right behind the counter
4 and even though I was bending down to get the bag and
5 stuff, I kept my eyes looking right at him.

6 Q. Did you get a good look at his face?

7 A. Yes, ma'am.

8 Q. Did he do anything to try and conceal his face
9 from you?

10 A. His face was not concealed. He had on a black
11 hoodie which stopped about here, but I could see all
12 his facial features, even his nose. There was a red and
13 white bandanna on the lower part of his neck, like maybe
14 a person may have tried to use it, but when he entered ---
15 when I saw him there was nothing covering any part of
16 his face. It was lower.

17 Q. All right, is there anything special about
18 Preston's face that you remember?

19 A. The tatoos on the side of his eye.

20 Q. All right, and had you ever seen those before?

21 A. He didn't have it when he was in fifth grade
22 but he's come in the store and I've seen it on him.

23 Q. Now, you said that Preston Costa robbed me.

24 How do you know Preston Costa?

25 A. He was in fifth grade in my son's class at

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1 St. Helena elementary and also I been to his house on
2 numerous times in the witnessing work that I'm engaged
3 in and the volunteer work that I'm engaged in. So ---
4 and then he would come in the store and in St. Helena
5 you know basically the people in your community if, you
6 know, you've been there for a while.

7 Q. How often would you have seen him at the school
8 as a child?

9 A. Every week.

10 Q. Every week.

11 A. I actually went in --- he was in my son's class
12 so I was in that class every week on Thursday and I would
13 spend the whole day there. I would bring my son to school
14 and I would stay there until school was out. And I knew
15 most of the boys in his class because at first I had
16 an objection to him even being placed in that particular
17 class based on ---

18 MS. CAMPBELL: Your Honor, I'm going to object.
19 Could we have a sidebar on that?

20 THE COURT: I'm going to sustain the objection
21 unless you want to have a proceeding outside the presence
22 of the jury so that I can hear what she's going to say
23 but until I've done that, I will sustain the objection.
24 Sustain the objection as to the reason she wanted the
25 son --- the defendant excluded from her son's class.

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1 SOLICITOR: I think we will move on, Your Honor.

2 Q. So you had an opportunity to see Preston once
3 a week for how long?

4 A. The entire fifth grade year.

5 Q. And since fifth grade, how often would you
6 have seen him?

7 A. I don't know how often to tell you.

8 Q. Did you watch him grow up, would that be fair?

9 A. Yes, yes. And he comes in the store maybe ---
10 I'm not always there when people come in, but whiles
11 I've been there I've seen him maybe two or three times
12 a month.

13 Q. And about his residence, what involvement have
14 you had going to his house?

15 A. I've spoken with his grandmother, shared scriptures
16 with him, I knew that he lived --- his grandmother used
17 to live across the road in her own house and we would
18 talk to her there and then she moved with her daughter.
19 We've talked to her there. So we work that area I would
20 say every four to six weeks.

21 Q. So you've actually read scripture to Costa?

22 A. To his grandmother, not to him.

23 Q. And has he been home when you have done that?

24 A. He --- yes, he have answered the door at times
25 that I've knocked there.

1 Q. While he's robbing you, if you know him, did
2 you say, Preston, why are you doing this?

3 A. No, I did not call his name because I was so
4 afraid that if he knew that I knew him that he would
5 shoot me with that gun right there in my face but from
6 my knowledge it's like even if you know the person, you
7 don't let them know you know who they are.

8 Q. How much money was in the register that day,
9 do you know?

10 A. No, ma'am, exactly, I do not know. It's whatever
11 we had made from that morning and we opened at 8:30 to
12 2:00, because I didn't change the drawer over and count
13 out, I was going to do it later after I had put the drinks
14 in because, like I say, it was hot so my concern was
15 to get the drinks in the box so when the customers come
16 in it's cold.

17 Q. So you still had the morning's till in the
18 drawer?

19 A. Correct.

20 Q. What's your average morning till?

21 A. Anywhere from 2 to \$400.

22 Q. Now once Preston leaves the store, what do
23 you do?

24 A. Before he --- well, once he left --- before
25 he left we have a button under the counter that goes

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1 right to the alarm system so I was pushing that button
2 while I was giving him the money bags and whatnot. And
3 so by the time he left, the phone was ringing and it
4 was ADT confirming that there had been a burglary and
5 then --

6 Q. A burglary or a robbery?

7 A. A robbery.

8 Q. What did you tell them?

9 A. What did I tell ADT?

10 Q. Yes.

11 A. I let them know that we had been robbed and
12 that I knew who the person was and they told me that
13 officers were responding.

14 Q. And did you talk to anyone else?

15 A. Mr. Holmes and my grandmother, I told them
16 that I knew who it was. And I told them the person name.

17 Q. And this was immediately after the robbery?

18 A. Right, we were still in the store because we
19 didn't go outside. The cash register and the stuff that
20 he threw on the floor was still there in the walkway,
21 we didn't touch any of that stuff so no one could really
22 get in or out.

23 Q. Now when the officers arrived what did you
24 tell them?

25 A. That I had been robbed and it was Preston,

1 and I knew who it was and I knew where he lived.

2 Q. And is there any doubt in your mind at all
3 that it was Preston Costa that robbed you on May 21,
4 2004?

5 A. No, ma'am.

6 Q. Several days later did you meet with Deputy
7 Garst?

8 A. Yes, he called me and he asked me if I could
9 meet him and I told him yes.

10 Q. And did you meet with him on that day?

11 A. Yes.

12 Q. And what did you do when you met with him?

13 A. He met me outside downstairs and then he asked
14 me to step in to the building, right where we come in
15 and get checked in like. We stepped to the side and he
16 told me that he had a photo lineup that he wanted to
17 see if I could identify the person that robbed me and
18 that I was no under any obligation to select someone
19 and he read me the little paragraph in the back and then
20 he handed it to me and then I selected the person in
21 here.

22 Q. How long did you look at it?

23 A. Not very long because I knew it was Preston,
24 I know him when I see him.

25 Q. And did you do anything with that photographic

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1 lineup?

2 A. He asked me if I would initial it.

3 Q. And did you do that?

4 A. Yes.

5 Q. I'll ask you if you can identify State's exhibit
6 #8?

7 A. Yes.

8 Q. Are those your initials there?

9 A. Yes, ma'am.

10 Q. In your store, do you have video surveillance
11 set up?

12 A. Yes.

13 Q. Did you have it working on the 21st of May,
14 2004?

15 A. Yes, ma'am.

16 Q. And did you provide that to anyone?

17 A. Yes, the officer asked me if we had it and
18 I told him yes. He came around to where the monitor
19 was, rewind it, took a look at it, asked if he could
20 have the tape, we ejected it and he took the tape with
21 him.

22 Q. Ms. Warren, I'm going to ask you if you can
23 identify what has been marked as State's exhibit #6.
24 Can you identify this?

25 A. That's the video that was taken from the store.

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1 Q. Okay.

2 A. The day of the robbery.

3 Q. Is that a fair and accurate depiction of what
4 happened that day?

5 A. Yes.

6 Q. Let me fast forward it a little bit. Is this
7 a fair and accurate depiction?

8 A. Yes.

9 SOLICITOR: Your Honor, at this time the State
10 would move State's exhibit #6 into evidence.

11 MS. CAMPBELL: Without objection.

12 THE COURT: It's admitted.

13 (WHEREUPON, Video tape was entered and marked
14 as State's exhibit #6.)

15 SOLICITOR: If I may, Your Honor, I would like
16 to publish this to the jury with Ms. Warren.

17 THE COURT: All right, you may.

18 (WHEREUPON, The video tape was played for the
19 jury.)

20 Q. Ms. Warren, I'm going to start the tape and
21 have you describe what is on the screen here. What does
22 this show?

23 A. The front of the store. This is the flat box
24 that I have for the drinks to be cold, this is the standup
25 box that I move them to afterwards, this is the front

1 door.

2 Q. All right, and what is this?

3 A. This is Mr. Holmes' truck on the outside. This
4 is the outside drive up to the store and we have the
5 soda machine, the coke machine on the outside of the
6 building.

7 Q. All right, and how about this screen?

8 A. That's the drink box.

9 Q. And this screen?

10 A. This is the aisle, front door and we have the
11 aisles going straight back and then right in this area
12 is like where the meat counter is.

13 Q. And ---

14 A. This is the register here. And this is Preston
15 with the gun in his hand and there's no one to the front.
16 He then comes down this aisle where we are in the back.

17 Q. All right, what's going on right now?

18 A. He already went towards the back where we are.

19 Q. Let me ask you about the time stamp in the
20 bottom right. Tell me about that.

21 A. It's one hour off because it's a light flash
22 that will go off and on, we have to call ADT in to reset
23 it. There's an interruption, the light goes off and then
24 it throws it off so it's one hour off.

25 Q. So it's actually 1:26 at this time?

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1 A. Yes.

2 Q. Okay. Now, what's going on here?

3 A. The gun is being held on me. Here he has come
4 back up from the back and I'm behind the counter and
5 he's on the other side, right up to the counter. This
6 is the counter space. I'm back here behind the register.

7 Q. What's he saying?

8 A. Hurry up, hurry up, give me the money. See
9 the gun is in the hand pointed down because I'm down
10 there where we keep out paper bags and stuff like that.

11 Q. Okay.

12 A. That's when he threw the register down, standing
13 on the side of the machine and dragged it on toward the
14 door.

15 Q. All right, let's enlarge this.

16 A. This is when he entered, the gun is in his
17 hand. And he's proceeding on to the back where we are.

18 Q. And what is he saying?

19 A. He doesn't --- when he first enters, he doesn't
20 say anything until he gets back to where we are and that's
21 when he asked us for money. Now, the gun is being held
22 on me because I'm back up to the front again. We could
23 see his nose, there's no bandanna, his face isn't covered,
24 the facial features, the nose, the mouth, the eyes, all
25 that I can see.

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1 Q. What is that in the far right corner? Is that
2 you?

3 A. This is me right at the register. And he's
4 demanding that I open it and so the gun is in his hand,
5 he's looking back where Grandma Helen is and Mr. Holmes
6 is and that's why --- when he points down there with
7 the gun, I would move away from the register and that's
8 when he slammed it to the floor. And then he hits it
9 one time and goes on out the door.

10 Q. Thank you.

11 Q. Ms. Warren, Preston Costa, you say, robbed
12 you and the person on that video tape, is he in the courtroom?

13 A. Yes.

14 Q. Would you point him out for the jury, please?

15 A. Sitting right there in the gray suit with the
16 tie and white shirt.

17 Q. And the Perston Costa that you've known since
18 the fifth grade and ministered at his house, and that
19 put a gun in your face on May 21st, is he in this courtroom?

20 A. Yes, ma'am.

21 Q. Would you point him out for the jury?

22 A. Sitting right there.

23 SOLICITOR: Please let the record indicate that
24 she has indicated the defendant.

25 Thank you, Ms. Warren, I have no further questions.

Ms. Lisa Warren-Cross by Ms. Campbell

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1 CROSS-EXAMINATION

2 BY MS. CAMPBELL:

3 Q. Ms. Warren, did I understand you correctly
4 that you and Officer Malphrus watched that video tape
5 at the store?

6 A. He looked at it. He asked was it running at
7 the time and I said, yes. We then watched the entire
8 tape. He asked me if I could find that section, rewind
9 it to that. He confirmed that we could see it and he
10 asked if he could have the tape.

11 Q. Ms. Warren, the entire time this was going
12 on there was a gun in your face, correct?

13 A. Yes.

14 Q. And it's fair to say that you were very nervous
15 and afraid, correct?

16 A. I would think that's fair, anybody that has
17 a gun in their face.

18 Q. And, of course, nothing like this had ever
19 happened to you before, correct?

20 A. Not to me personally.

21 Q. And your day began at 6 a.m. that day, correct?

22 A. Every day, I'm at work at 6.

23 Q. Right.

24 A. Uh-huh.

25 Q. So actually before that it began?

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1 A. (No response.)

2 Q. Now you testified Mrs. Helen is in the store
3 right frequently, right?

4 A. She comes down approximately every day to have
5 something to do. She's not like a worker but she sits
6 and companies us.

7 Q. And Mr. Holmes is a frequent customer, right?

8 A. Yes.

9 Q. And you know Melvin Holmes in State's exhibit
10 #8, correct?

11 A. Uh-huh.

12 Q. And you know Dennis Lockhart in this, correct?

13 A. Are you asking me if I know them in the picture?

14 Q. Yes.

15 A. I know them but when you say State's #8, would
16 you tell me what that is.

17 Q. Do you know #1?

18 A. Yes.

19 Q. Okay. Do you know #2?

20 A. No.

21 Q. Do you know #4?

22 A. Yes.

23 Q. Do you know #5?

24 A. Yes.

25 Q. Do you know #6?

1 A. No.

2 Q. Okay. And #6 is the young man whose eyes are
3 completely shut, correct?

4 A. I don't know if they are completely shut, they
5 appear to be in that picture but some people do have
6 sleepy looking eyes although they are open so I can't
7 say if it's completely shut.

8 Q. Can you see his eyeballs in that picture?

9 A. No.

10 Q. Okay, thank you. When you met with Officer Garst,
11 if I understand your testimony correctly, you met with
12 him inside the Sheriff's Department, correct, when you
13 looked at that lineup?

14 A. He met me outside because I didn't know where
15 to come, to go. He told me he would meet me so when
16 I got outside, walking up, he was outside already and
17 he greeted me and then we stepped inside of the building.

18 Q. And inside of the building is where you looked
19 at the photographic lineup and was read the information
20 on the back of the lineup, correct?

21 A. Yes.

22 MS. CAMPBELL: That's all I have.

23 SOLICITOR: Nothing further, Your Honor.

24 THE COURT: All right, you can step down, ma'am.
25 Anything else from the State?

1 SOLICITOR: No, sir, Your Honor. With that,
2 the State rests.

3 THE COURT: All right, ladies and gentlemen,
4 we are going to break for lunch. Be back in the jury
5 room at 2 o'clock. Have a nice lunch and I'll see you
6 at 2 o'clock.

7 (WHEREUPON, The jury was dismissed for lunch
8 and the following proceedings were held in the absence
9 and out of their hearing.)

10 THE COURT: Any motions?

11 MS. CAMPBELL: Your Honor, at this time the
12 defendant would make his motion for a directed verdict.
13 I can tell you that based on the standard the State
14 must use --- that the Court must use at this point, which
15 is the Gripon Standard, we feel like the defendant is
16 entitled to a directed verdict. There has been uhm ---
17 suspicion which is not sufficient. State must have a
18 substantial amount of evidence to proceed at this point.
19 I would further add that we feel as if the obvious conflicts
20 in the testimony from the witnesses, both at this trial
21 and from prior trials, and inconsistencies in what has
22 been reported does not rise to the level that the case
23 should be submitted to the jury. Thank you, Your Honor.

24 THE COURT: I hate to think what would happen
25 to me if I granted a directed verdict based on

1 inconsistency in the testimony. I deny your motion.

2 MS. CAMPBELL: Thank you, Your Honor.

3 THE COURT: Anything further at this time?

4 SOLICITOR: Your Honor, we have a matter from
5 the State. If the defendant testifies he has a prior
6 record that we would impeach him on.

7 THE COURT: All right, are you aware of what
8 those convictions are from previous trials?

9 MS. CAMPBELL: Your Honor, if my memory is correct,
10 the State has a carrying a weapon on school property
11 and an assault.

12 SOLICITOR: Assault and battery of a high and
13 aggravated nature.

14 MS. CAMPBELL: Correct. Previously we have
15 argued those matters before the Court. I can tell you
16 that we would object to the carrying a weapon on school
17 property as the inference is that it is violent, it involves
18 a weapon as in this case and I believe under the 44
19 analysis, along with the Lyle, we would object to that.
20 Also, I have ---

21 THE COURT: What does it carry, does it carry
22 more than a year?

23 MS. CAMPBELL: Well, that's the thing. The carryi
24 a weapon on school property does not carry more than
25 a year, you know, at the time he was 14 years old.

1 In Juvenile Court it's an indetermine sentence if you're
2 convicted but the statute says zero to one year. The
3 ABHAN, of course, is zero to ten and that would be ---

4 THE COURT: Does it carry more than a year?

5 SOLICITOR: Not more than five years and/or
6 more than \$1,000, 16-23-430.

7 MS. CAMPBELL: I'm sorry, Your Honor, I thought
8 it carried up to a year.

9 SOLICITOR: Unlawful carrying of a gun does
10 but carrying a weapon on school property carries up to
11 five.

12 MS. CAMPBELL: Okay, I must be confused then.
13 So you've got weapon on school property?

14 SOLICITOR: Yes, ma'am.

15 MS. CAMPBELL: In any event, Your Honor, we
16 would still contend that even if it is relevant, any
17 probative value is outweighed by the danger of unfair
18 prejudice to my client as well.

19 THE COURT: Do you have other witnesses that
20 you intend to call?

21 MS. CAMPBELL: I do, Your Honor, my client intends
22 to testify and you would need to question him on the
23 record about his intention. I have Nichole Smalls from
24 the DMV and a representative from Plum's. In addition,
25 Chris Wilson from the Sheriff's Department, I have four

1 witnesses.

2 THE COURT: All right, do you intend to put
3 your client up, if he testifies, do you intend to put
4 him up first or after the others?

5 MS. CAMPBELL: First.

6 THE COURT: All right, so I'm assuming that
7 you have had this conversation with him about his right
8 to testify and also his right to remain silent and his
9 responsibility to decide between those two on at least
10 two occasions during trial and on other occasions before
11 each of the trials, including this one?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: And so you're satisfied I suppose
14 that he fully understands his right to testify and his
15 right to remain silent?

16 MS. CAMPBELL: He does.

17 THE COURT: Did he testify in the first two
18 trials?

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: And so I assume then that the Judges
21 in those two trials concluded that he understood his
22 right to remain silent and his right to testify?

23 MS. CAMPBELL: They did.

24 THE COURT: All right. Then we'll discuss that
25 with him again after --- I will discuss that with him

1 again after lunch. We will resume at 10 minutes until
2 so that I can have that discussion with him. How old
3 was he when he committed the ABHAN?

4 SOLICITOR: 2002, that would have been three
5 years ago and it would have made him 16.

6 THE COURT: And that is a General Sessions
7 conviction?

8 SOLICITOR: It's Juvenile as well.

9 MS. CAMPBELL: Your Honor, I would just mention,
10 too. The weapon on the school property was a baseball
11 bat in the trunk of his brother's car.

12 SOLICITOR: That makes it even less prejudicial,
13 it's completely different from this case.

14 THE COURT: Well--- my inclination is to say
15 that there appears to be very little probative value
16 in the conviction for carrying a weapon on school property.
17 That primarily because of the fact that he was 14 years
18 old and committed a crime. And so I think that there
19 is --- there is certainly some unfair prejudice in it
20 in the sense that it tends to label him as a person who
21 is prone to violence. In order to admit that conviction,
22 I've got to find that the probative value outweighs the
23 potential for unfair prejudice and I don't think it does.
24 So I'm inclined to rule that it's inadmissible. I'll
25 think about that, it's a Juvenile conviction also?

1 SOLICITOR: Yes, sir, Your Honor, but he was,
2 I believe, 16 when it occurred.

3 THE COURT: And how old was he when this occurred?

4 SOLICITOR: 17, 18.

5 THE COURT: What's the conviction date for the
6 ABHAN?

7 SOLICITOR: September 24, --- no, September
8 5, 2002, it was pending ---

9 THE COURT: September the 5th is the day of
10 the conviction?

11 SOLICITOR: Well, I'm sorry, April 1st, 2004.

12 THE COURT: That the date of the conviction?

13 SOLICITOR: That's the day he was referred to
14 R & E. So one month before this incident, Your Honor.

15 MS. CAMPBELL: Your Honor, I may be able to
16 save the Court a little bit of time. After conferencing
17 with Mr. Hood, we are going to withdraw our objection
18 to the assault and battery charge if the State wishes
19 to cross-examine my client with that, we're not going
20 to object. So our objection is withdrawn as to that
21 charge. And I believe that's all we have.

22 THE COURT: All right. We will reconvene at
23 10 minutes til 2 for the purpose of my talking to the
24 defendant about his rights to remain silent.

25 (WHEREUPON, The luncheon recess was held and

1 then the proceedings resumed out of the presence and
2 hearing of the jury.)

3 THE COURT: Ms. Campbell, is there anything
4 that you need to bring to my attention before I speak
5 to your client?

6 MS. CAMPBELL: No, Your Honor.

7 THE COURT: Mr. Costa, please stand and raise
8 your right hand.

9 (WHEREUPON, Defendant was duly sworn.)

10 THE COURT: Mr. Costa, you have been through
11 this several times before I understand but I want to
12 make sure that you understand your rights to remain silent
13 and your right to testify in this case. Is it true that
14 you have had a discussion about these subjects with your
15 lawyer several times over the last several months?

16 MR. COSTA: Yes, sir.

17 THE COURT: And you think you understand it?

18 MR. COSTA: Yes, sir.

19 THE COURT: Now, let's talk about it for a minute
20 so that I can make sure that you understand it. You
21 have the right to remain silent and that right comes
22 to you through the Fifth Amendment to the United States
23 Constitution. And that means that you cannot be compelled
24 or made to testify in this case. If you choose not to
25 testify in this case, then I will instruct the jury very
clearly that you have a constitutional right to remain

1 silent and that they cannot use your exercise of that
2 right against you. I will not even permit them to discuss
3 in the jury room the fact that you choose not to testify.

4 On the other hand, you have the right to testify
5 and if you choose to testify, as you heard us discussing
6 earlier today right before lunch, you become subject
7 to cross-examination and that cross-examination could
8 be on any subject that relates to this case, including
9 your credibility which brings in the question of whether
10 or not the conviction for assault and battery of a high
11 and aggravated nature would be brought before the jury.
12 In other words, they might be told that you have that
13 conviction as it might reflect on your credibility.

14 Now, have you understood everything that I just
15 discussed with you?

16 MR. COSTA: Yes, sir.

17 THE COURT: Now one other thing that is very
18 important for you to understand that even though you
19 should listen to your lawyers and perhaps you could listen
20 to family members if you have folks here whose advice
21 you trust, but after you have done that and after you
22 have heard what they say about what you should do, you
23 are the one who has to make this decision, nobody else
24 can make that decision for you. Do you understand that?

25 MR. COSTA: Yes, sir.

1 THE COURT: Now, do you need any more time now
2 to talk to your lawyer or to anyone else about the decision
3 that you must make as to whether or not you wish to testify?

4 MR. COSTA: Just one moment.

5 THE COURT: Certainly.

6 (WHEREUPON, The defendant confers with his
7 attorney.)

8 THE COURT: All right, Mr. Costa, have you had
9 enough time to speak to your lawyer about what you wanted
10 to talk about?

11 MR. COSTA: Yes, sir.

12 THE COURT: Are you ready to make a decision
13 about whether or not you wish to testify?

14 MR. COSTA: Yes, sir.

15 THE COURT: What is that decision?

16 MR. COSTA: I want to testify.

17 THE COURT: You are going to testify?

18 MR. COSTA: Yes, sir.

19 THE COURT: All right, anything else ya'll need
20 to bring to my attention now before we --- I guess we've
21 got a jurors that aren't here yet?

22 BAILIFF: I'll go check, Your Honor.

23 THE COURT: Go check. Let me look through your
24 requests to charge real quick. Still don't see the State's
25 requests.

1 SOLICITOR: I put them on your laptop in your
2 office. I have another copy, though, I can give you
3 my copy.

4 THE COURT: All right, the presumption of innocence
5 and reasonable doubt, I will give my standard charge.
6 I haven't heard any prior inconsistent statements, have
7 I?

8 SOLICITOR: No, sir.

9 THE COURT: Ms. Campbell?

10 MS. CAMPBELL: I'm sorry, Your Honor.

11 THE COURT: You've given me a charge on prior
12 inconsistent statements but I don't believe there has
13 been any prior inconsistent statements so far.

14 MS. CAMPBELL: Your Honor, may I review my notes
15 and come back to that one prior to our charge?

16 THE COURT: Yes, we will just talk about it
17 at the end of the trial. Prior record of the defendant,
18 I've got a standard charge on that so I'll charge it.

19 Alibi. Have you raised the alibi defense or
20 will you have when you're done?

21 MS. CAMPBELL: Your Honor, my client will testify
22 and place himself in another area.

23 THE COURT: Is that an alibi defense?

24 MS. CAMPBELL: Yes, sir. He will give the testimony
25 as to where he was at the time the crime was being committed.

1 And he will have two other witnesses who will give
2 information corroborating his version of where he was.

3 THE COURT: All right, I'll think about it.
4 I think under that argument, I would have to charge alibi
5 every single time a defendant took the stand and denied
6 being absent from the scene of the crime, wouldn't I?

7 MS. CAMPBELL: If he places himself somewhere
8 else and his grandmother gives testimony of the officers
9 placing him at home at approximately the time that the
10 armed robbery is taking place, I think there is evidence
11 in the record through the State's case that he was at
12 home with his grandmother. He will testify ---

13 THE COURT: What did the officer say about what
14 the grandma said?

15 MS. CAMPBELL: That Preston was at the home
16 and had been there five to six, seven minutes when the
17 officer arrived there.

18 THE COURT: Is that inconsistent with him
19 committing an armed robbery five to six to seven minutes
20 before?

21 MS. CAMPBELL: I believe that the time line
22 does not fit.

23 THE COURT: All right, I'll think about it.
24 But now you're going to put up these other two witnesses,
25 just out of curiosity it's going to be interesting to

1 see how you are going to improve on what the officer
2 says they said by putting those witnesses on the stand.
3 But, we'll see.

4 SOLICITOR: Your Honor, if I may, at the time
5 Ms. Campbell presents these witnesses the State will
6 object because they are completely irrelevant. One witness
7 will testify that Melvin Holmes was at the DMV an hour
8 prior to the armed robbery. They don't know anything
9 about Preston Costa.

10 The next witness will testify that Dennis Lockhart
11 had a check produced for him sometime that day. They
12 don't know Preston Costa, they don't know if Dennis
13 Lockhart even picked that check up that day or if it
14 was mailed to him. That's the extent of their testimony,
15 that's all they can testify to. It doesn't relate to
16 the defendant, it doesn't establish an alibi, it's possibly
17 about what two other people may have been doing that
18 day. So the State is going to object that those witnesses
19 are simply irrelevant to this case.

20 And that's why we presented the alibi request
21 for charge because an alibi has to establish where he
22 was so that it makes it impossible for him to have
23 committed this crime, nothing that the defense has
24 presented makes it impossible for him to have committed
25 a crime at 2:30.

1 MS. CAMPBELL: Your Honor, if I may briefly,
2 I would just say again that the testimony from those
3 two witnesses corroborate the statements that my client
4 and Dennis Lockhart made to the Sheriff's department
5 as to where they were, who they were with and the jury ---

6 THE COURT: Well, the statements that Dennis
7 Lockhart made to the Sheriff's Department has got nothing
8 to do with this case so far. Is that correct?

9 MS. CAMPBELL: No, I believe it does. It serves
10 to confirm ---

11 THE COURT: But it's not in evidence.

12 MS. CAMPBELL: The officer testified that Dennis
13 Lockhart gave him that information as to where they were
14 at. So it is in evidence, that he spoke to him and Dennis
15 Lockhart told him where they were and that is in evidence.
16 And it corroborates what my client has said to Officer
17 Garst from the ---

18 THE COURT: Do you believe that's in evidence?

19 SOLICITOR: No, sir, I think she was trying
20 to elicit that and I objected to hearsay. I don't know
21 that it ever got that far.

22 THE COURT: Well, it's clearly hearsay. If
23 it had gotten in to one of my ears I would have perked
24 up about it. I don't recall hearing --- I recall hearing
25 the officer say that he went to the DMV and that he

1 went to Plum's or spoke to somebody at Plum's, but I
2 do not recall hearing the officer say that Lockhart said
3 that they were doing a certain thing at a certain time.
4 If I had heard that --- if I heard that and didn't pick
5 up on it, then it's time for me to move on to some other
6 job. I don't believe I heard that.

7 MS. CAMPBELL: As I said, Your Honor, it is
8 corroboration of where my client indicated to the Sheriff's
9 Department he was, who he was with. The Sheriff's Department
10 took that information, obtained verification that the
11 events my client told them were occurring actually were
12 occurring at those times, that Melvin was at the Department
13 of Motor Vehicles on that date at that time securing
14 his ID and that, in fact, the check was at the restaurant
15 for ---

16 THE COURT: When did you clients make that statement
17 to law enforcement?

18 MS. CAMPBELL: As soon as he met with them Monday
19 morning.

20 THE COURT: All right, let me see if I can work
21 through this. Your client is going to testify that he
22 was with this guy, who is the guy who was at the DMV?

23 MS. CAMPBELL: Melvin Holmes.

24 THE COURT: Melvin Holmes at the DMV an hour
25 before the armed robbery occurred, is that right?

1 MS. CAMPBELL: Correct. And Dennis was there
2 as well, all three boys were there.

3 THE COURT: But the only evidence --- is it
4 true that the only evidence that is going to be in this
5 record that your client is with them is the testimony
6 of your own client?

7 MS. CAMPBELL: That's correct.

8 THE COURT: All right, I don't think that on
9 that record the simple --- I don't think that the fact
10 that Holmes was at the DMV an hour before the crime was
11 committed is relevant. The fact that he was there, in
12 my view, is not relevant until we hear the testimony
13 of Dennis Holmes. Now, it could possibly be relevant
14 that your client said that at a certain point in time
15 if he has been accused later of having made an inconsistent
16 statement or if he is accused later of having recently
17 fabricated the fact that he was with Holmes. It could
18 come in ---

19 MS. CAMPBELL: Well, it is in evidence already
20 through Officer Garst. He has testified that he went
21 to the Department of Motor Vehicles ---

22 THE COURT: But that's not what we are talking
23 about. We're talking about whether or not somebody from
24 the DMV can testify that Holmes was there an hour before
25 the crime was committed. And in my view, it makes no

1 difference --- well, certainly on the record that exists
2 right now, it makes no difference where Holmes was at
3 any time in the history of the world. But if your client
4 testifies that he was with Holmes and whatever, they
5 went to the DMV, then you want to offer proof that Holmes
6 was at the DMV.

7 MS. CAMPBELL: Correct.

8 THE COURT: An hour before the crime. You know,
9 thinking --- why do you want to do that? Why do you
10 want to raise the question of why you didn't bring Holmes
11 to testify? You've already got the officer who has testified
12 that he went and checked and that Holmes was at the DMV.
13 That's a strategic question.

14 MS. CAMPBELL: Yes, it is, so I would have to ---

15 THE COURT: But it's a big one, it's just like
16 a pink elephant in the middle of the room I think. But
17 anyway, the question is whether or not it is relevant.
18 You contend it corroborates your client's testimony that
19 he is at the DMV.

20 MS. CAMPBELL: And it begins the time line ---

21 THE COURT: Well, is there anything about what
22 this witness from the DMV is going to testify to that
23 connects Holmes to Costa in that time frame?

24 MS. CAMPBELL: No, she does not remember.

25 THE COURT: Well, I'm going to exclude it.

1 I'm going to exclude it. Now, what about the person
2 from the restaurant? The testimony is, as I understand
3 what the Solicitor just said, there was a check available
4 for Lockhart to pick up at some point during the course
5 of that day?

6 MS. CAMPBELL: That is correct.

7 THE COURT: Are you going to offer any evidence
8 as to what time the check was picked up?

9 MS. CAMPBELL: He will not.

10 THE COURT: Well, then I sustain the objection.
11 Those witnesses are free to go. Ready for the jury?

12 MS. CAMPBELL: I am.

13 SOLICITOR: State is ready.

14 THE COURT: About the witness from the restaurant,
15 in order for the testimony that there was a check available
16 for Lockhart to pick up to be connected to this case,
17 in order for the jury to find that it be connected to
18 this case, they would have to speculate as to when, if
19 at all, the check was picked up and the relevance of
20 testimony cannot be based on a speculative connection.
21 There's got to some evidentiary basis for the jury to
22 make that connection and finding none, I find the evidence
23 to be irrelevant and I exclude it.

24 MS. CAMPBELL: Thank you.

25 THE COURT: Bring us the jury.

1 THE COURT: Hold the jury one second, Mickey.
2 Ms. Campbell, does that change in any way --- do you
3 want to talk to your client again now in light of my
4 rulings about whether or not he still wishes to testify?

5 MS. CAMPBELL: Your Honor, I have just been
6 talking to him and he intends to testify.

7 THE COURT: All right, in your discussions with
8 him, does the fact that those two witnesses are not being
9 allowed to testify, does that change the analysis of
10 whether or not he testifies or is the analysis still
11 basically the same? I understand that you have told
12 me the outcome that you think are the same.

13 MS. CAMPBELL: I believe that the analysis is
14 essentially the same. He has information to provide.

15 THE COURT: All right, bring in the jury.

16 (WHEREUPON, The jury returned to the courtroom
17 and the following proceedings were held in their presence
18 and hearing.)

19 MS. CAMPBELL: May it please the Court, Your
20 Honor, we would call Preston Costa to testify.

21
22 PRESTON COSTA, AFTER
23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MS. CAMPBELL:

25 Q. Preston, please state your name.

1 A. Preston Costa.

2 Q. Preston, how old are you?

3 A. Nineteen.

4 Q. And what is your birth date?

5 A.

6 Q. Where do you live, Preston?

7 A. St. Helena.

8 Q. Exactly where on St. Helena do you live?

9 A.

10 Q. Preston, how long have you lived there?

11 A. Uhm --- probably about 12 years now.

12 Q. And who lives with you at that home on

13 ?

14 A. My grandmother, my mother and my brother.

15 Q. And your brother, Donald, was he here with
16 you earlier today?

17 A. Yes, ma'am.

18 Q. But he's not here right now?

19 A. No, ma'am.

20 Q. And how about your grandmother, is she here?

21 A. No, ma'am.

22 Q. Where is she?

23 A. She is home.

24 Q. Is she well?

25 A. No, no, ma'am.

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- 1 Q. Preston, do you go to school or are you taking
2 any classes or anything like that for your education?
3 A. Adult education.
4 Q. And do you work?
5 A. I was, yes, ma'am.
6 Q. Who do you work with or what have you done
7 in the past while you are taking classes?
8 A. Working for elderly aunt.
9 Q. And what is wrong with her?
10 A. She's up in age, can't move around.
11 Q. And does she live close by you?
12 A. Yes, ma'am.
13 Q. Preston, do you drive an automobile?
14 A. No, ma'am.
15 Q. Do you own a gun?
16 A. No, ma'am.
17 Q. Do you remember, Preston, an officer from the
18 Sheriff's department came to your home on May 21, 2004?
19 A. Yes, ma'am.
20 Q. First let me take you back just a little bit.
21 When you were, let's say, 15, 16, you got in some scrapes
22 at school with some other boys, fussing and fighting,
23 would that be a fair statement?
24 A. Yes, ma'am.
25 Q. Okay. And as a result of that, did you go

1 to juvenile court?

2 A. Yes, ma'am.

3 Q. And something like maybe an assault and battery
4 conviction at that point.

5 A. Yes, ma'am.

6 Q. For fussing at school.

7 A. Yes, ma'am.

8 Q. And when you left your home on May 21, 2004,
9 did you tell this jury why you thought the police officer
10 was at your home that day?

11 A. Because I had missed recently juvenile court
12 date and I thought they had a warrant to come pick me
13 up.

14 Q. And so when you thought he was there to pick
15 you up for missing a court date when you were 15 or 16,
16 what did you do?

17 A. I told Dennis Lockhart to go tell --- well,
18 I told him to answer the door and he said, why, and I
19 said I think I got a warrant for juvenile and that's
20 when I left out the back door.

21 Q. And at some point did you then figure out why
22 actually the officer was at your house?

23 A. Later on that day, yes, ma'am.

24 Q. What did you do, Preston, did you call anyone?

25 A. My mother.

1 Q. Okay, you called your mom and when you talked
2 to your mom, did you learn why they were looking for
3 you?

4 A. At first, no. I asked her if she know why
5 the police was there and she said no. Then later on when
6 I came up there, when I went to the house, she gave me
7 a card that Mr. Garst left and Mr. Garst told me to call
8 him and then when I called him, that's when I found out.

9 Q. And when you talked to Officer Garst, well
10 you talked to him Friday night, right?

11 A. You could say between evening and nighttime,
12 yes, ma'am.

13 Q. All right. And based on your conversation
14 with Officer Garst you were told to come to the Sheriff's
15 Department Monday morning, right?

16 A. Yes, ma'am.

17 Q. Did you do that?

18 A. Yes, ma'am.

19 Q. Okay. Did you stay home that weekend?

20 A. Yes, ma'am.

21 Q. Okay. And when you were at home that weekend,
22 did anyone from the Sheriff's Department come by to check
23 on you or find out what you were doing?

24 A. No, ma'am.

25 Q. When you went to see Officer Garst on Monday

- 1 morning, did you take anyone with you?
- 2 A. My mother and Dennis Lockhart.
- 3 Q. And did Officer Garst talk to you that morning?
- 4 A. Yes, ma'am.
- 5 Q. And did he talk to Dennis Lockhart?
- 6 A. Yes, ma'am.
- 7 Q. And do you know if Dennis gave him a statement?
- 8 A. I believe he did.
- 9 Q. When you talked to Officer Garst on Monday
- 10 morning, these events having happened on Friday, did
- 11 you tell him then --- well, this is where I was, this
- 12 is what I was doing?
- 13 A. Yes, ma'am.
- 14 Q. What did you tell Officer Garst you were doing
- 15 that day?
- 16 A. I told him first we was at the DMV and after
- 17 we left the DMV we went to Plum's and after we left from
- 18 Plum's we went to my house, home.
- 19 Q. To your home.
- 20 A. Yes.
- 21 Q. And were you able to give him approximately
- 22 times as to when you were at these places and what you
- 23 were doing there?
- 24 A. Yes, ma'am.
- 25 Q. Do you remember what time you told him you

1 remembered being at the Department of Motor Vehicles?

2 A. Uhm --- it was around 1.

3 Q. And do you remember telling him what time you
4 think you may have gotten home to your grandmother's?

5 A. Yes, ma'am.

6 Q. Do you remember what time that was?

7 A. 'Bout between 2:20, 2:20, close to 2:30.

8 Q. And did you tell him about talking to your
9 grandmother when you got home?

10 A. (No response.)

11 Q. Preston, do you own or wear a watch?

12 A. No, ma'am.

13 Q. Who was driving you and Melvin on May 21, 2004?

14 A. Dennis Lockhart.

15 Q. And, Preston, were you and Melvin and Dennis
16 driving in what's been marked as Defendant's exhibit
17 #1 and Defendant's exhibit #2?

18 A. Yes, ma'am.

19 Q. And whose car is that?

20 A. Dennis Lockhart's.

21 Q. Do you see your home in those photographs?

22 A. Yes, ma'am.

23 Q. Where is the car parked in your yard?

24 A. In the back yard.

25 Q. Did you work with your aunt that day?

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1 A. No, ma'am.

2 Q. Now, Preston, you know Lisa Warren from the
3 Folly Road Grocery, right?

4 A. Yes, ma'am.

5 Q. How long have you known her?

6 A. Uhm --- I want to say a couple of years.

7 Q. You have been in her store before, right?

8 A. Yes, ma'am.

9 Q. Well, were you at the Folly Grocery on May
10 21, 2004?

11 A. No, ma'am.

12 Q. Did you put a gun in Lisa Warren's face and
13 demand her money?

14 A. No, ma'am.

15 Q. Preston, do you recognize these bedroom slippers?

16 A. Yes, ma'am.

17 Q. Okay. Whose bedroom slippers are these?

18 A. My mothers.

19 Q. Preston, what size shoe do you wear?

20 A. Between 8½ and a 9.

21 Q. Now have you seen that jacket before that was
22 in your home?

23 A. Yes, ma'am.

24 Q. And do you know whose jacket that is?

25 A. My brothers.

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1 Q. Preston, when you left the Department of Motor
2 Vehicles, tell this jury where you went with your friends.

3 A. When we left DMV? To Plum's.

4 Q. When you left the DMV.

5 A. To Plum's.

6 Q. And what did you do downtown?

7 A. Mr. Dennis Lockhart was going to Plum's to
8 pick up a paycheck.

9 Q. And did ya'll park?

10 A. Yes, ma'am.

11 Q. And who walked around to get the check?

12 A. All three of us left out the car.

13 Q. And do you remember what you did or how long
14 you were downtown?

15 A. Uhm --- I say between 15, 25 minutes probably.

16 Q. And when you left from there you went home?

17 A. Yes, ma'am.

18 MS. CAMPBELL: Thank you, Your Honor, that's
19 all I have.

20

21 CROSS-EXAMINATION

22 BY SOLICITOR:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Isn't it true in prior testimony you said

1 that you didn't know Ms. Warren, you knew her son?

2 A. Uhm --- I think I said I didn't know her but
3 I know of her.

4 Q. But today you said that you know her and you've
5 known her for two years.

6 A. I said a couple of years.

7 Q. And she can identify you.

8 A. Is that a question or are you telling me?

9 Q. It's a question, do you think that she can
10 identify you?

11 A. From coming in the store, yes, ma'am.

12 Q. Is that why you tried to wear a bandanna that
13 day?

14 A. I didn't have no bandanna.

15 Q. When did you get those tattoos on your cheek?

16 A. Uhm --- couple of years ago, can't remember
17 the exact date.

18 Q. Now, Ms. Campbell was talking about some scrapes
19 that you got into in juvenile court, wasn't that actually
20 just a month prior to this armed robbery?

21 A. Uhm --- I think that is when I got convicted,
22 it didn't just happen like a month before but that's
23 when I got convicted.

24 Q. And wasn't that a little more than a scrape?

25 A. Uhm ---

1 Q. Weren't you actually convicted of assault and
2 battery of a high and aggravated nature?

3 A. That's what they charge me with, yeah.

4 Q. And that's what they convicted you of?

5 A. Yes, ma'am.

6 Q. And the day that the officers came to your
7 house on May 21st, when you ran out the back door.

8 A. Yes, ma'am.

9 Q. You said you thought that it was because of
10 this thing, the juvenile court thing?

11 A. Yes, ma'am.

12 Q. Wasn't it more that you were hoping that that
13 is what it was about and not the armed robbery?

14 A. I don't know nothing 'bout no armed robbery
15 to run from a armed robbery.

16 Q. And you said that you sent Dennis to the door
17 to find out what was going on while you ran out the back
18 door.

19 A. Yes, ma'am.

20 Q. Well, why did Dennis run with you?

21 A. I don't know nothing that Dennis did, I left
22 the house by myself.

23 Q. All right, was Dennis your get away car driver
24 that day?

25 A. There was no get away car, no, ma'am.

1 Q. And you said that you were at your home that
2 weekend prior to turning yourself in.

3 A. Yes, ma'am.

4 Q. Isn't it true that you really were hiding out
5 somewhere with a girlfriend that weekend, not at your
6 momma's house.

7 A. No, ma'am.

8 SOLICITOR: I have no further questions, Your
9 Honor.

10 MS. CAMPBELL: Nothing further.

11 THE COURT: You may step down. Call your next
12 witness.

13 MS. CAMPBELL: Your Honor, at this time the defense
14 would call Christine Wilson.

15
16 CHRISTINE WILSON, AFTER
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MS. CAMPBELL:

19 Q. Please tell this jury your name and your rank
20 at the Sheriff's Department.

21 A. Sgt. Christine Wilson.

22 Q. And, Sgt. Wilson, how long have you been working
23 at the Sheriff's Department?

24 A. I'm been in law enforcement almost sixteen
25 years.

1 Q. And just at the Sheriff's Department or in other
2 capacities?

3 A. In other capacities.

4 Q. And you know Officer Garst who works for the
5 Sheriff's Department, correct?

6 A. Yes, I do.

7 Q. And in reference to this case, did you, yourself,
8 look at photographs and process evidence in reference
9 to this red car or any part of this red car?

10 A. I looked at photographs.

11 Q. And did you process any evidence in reference
12 to the red car?

13 A. Not in reference to the red car, no.

14 MS. CAMPBELL: Thank you, Your Honor, that's
15 all I have.

16

17 CROSS-EXAMINATION

18 BY SOLICITOR:

19 Q. Investigator Wilson, you say you didn't process
20 any evidence, did you look at anything?

21 A. I did.

22 Q. And what was that?

23 A. I believe I looked at some currency, some bills.

24 Q. And what were you looking for?

25 A. Laten fingerprint impressions.

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1 Q. Did you find anything?

2 A. No, I did not.

3 Q. Did you try?

4 A. I tried.

5 Q. And if someone say like Investigator Garst
6 with less experience has got a question for a backup
7 opinion, would he come to you for something like that?

8 A. Yes, he would.

9 Q. And that's standard procedure at the Sheriff's
10 Office?

11 A. Yes, it is.

12 SOLICITOR: No further questions.

13 THE COURT: You can step down, ma'am. Ms. Campbell?

14 MS. CAMPBELL: Your Honor, the defense rests.

15 THE COURT: Any reply?

16 SOLICITOR: No, sir.

17 THE COURT: All right, ladies and gentlemen,
18 we will take about a ten minutes break and we will come
19 back for closing arguments. You may retire to your jury
20 room.

21 (WHEREUPON, Jury retired to the jury room and
22 the following proceedings were held in the absence of
23 the jury.)

24 THE COURT: All right, I'm not charging a specific
25 alibi defense. In other to qualify for an alibi defense

1 you have got to give the Court something specific as
2 to where the defendant was, specifically where he was
3 at a specific point or range of time. I am however,
4 going to emphasize the State's burden of proving that
5 it was, in fact, this defendant and not someone else
6 who committed the crime. Which is, I believe, is essentially
7 what you are asking me to do and, of course, that's some-
8 thing the State has to prove in every case. The reason
9 that alibi is really charged as the law has developed
10 is simply to make, in my view, is simply to make it clear
11 that it remains the State's burden of disproving the
12 alibi if there is alibi evidence offered. And so that's
13 the way I'm handling this.

14 I will charge prior record of the defendant.
15 I don't know of any evidence of prior inconsistent statements,
16 is that correct?

17 MS. CAMPBELL: The only thing that I had in
18 my notes, Your Honor, was Mrs. Helen Warren's statement
19 where she testified here that she knew the person or
20 could recognize him from the neighborhood and then in
21 the first trial she had testified, no, I don't know him,
22 I didn't know him at all, I don't know these children.

23 THE COURT: Well, did you bring that out in
24 this trial?

25 MS. CAMPBELL: Yes, sir, I cross-examined her

1 with the record from the first trial.

2 THE COURT: All right. Well, I'll charge it.
3 I mean, it's really a matter for closing argument anyway
4 but I'll charge it.

5 All right, I don't think identification applies
6 here. I think that there are two components to that
7 charge. One is just what I said a minute ago, which
8 is to make sure that the jury understands that it's the
9 State's responsibility to prove the identity of the
10 defendant. The other component of it is to make sure
11 that the jury understands the factor that they can look
12 at in assessing the believability of an identification
13 when the identification is the only evidence that ties
14 the defendant to the case. I mean, here you have somebody
15 who claims to have known the defendant and while there
16 is an identification, it's simply corollary to the fact
17 that the victim claimed to have known the defendant basically
18 for pretty much the defendant's entire life.

19 So do you think that analysis is incorrect?

20 MS. CAMPBELL: I do and I would ask that you
21 charge identification. It is essential, it's critical
22 and that particular charge I think is appropriate.

23 THE COURT: Why is it essential and critical?
24 I'll look at it, I'll think about it, I'll look at some
25 cases on it and see. So I don't know whether I'm charging

1 that or not. But still, even if I don't though, you
2 are perfectly free to argue because the identification
3 is in evidence that there are reasons that the jury could
4 discredit that identification. The question is only ---
5 the topic that we're discussing doesn't address whether
6 or not you can argue it. The question we are addressing
7 is simply whether or not I charge the jury regarding
8 those factors and I will decide during the course of
9 your closing arguments whether or not to do that.

10 Who gave me a third party guilt request to charge?
11 That's a rule of evidence, that's not regarding jury
12 charge.

13 Okay, have I covered everything? Prior record
14 and prior inconsistent statements and possibly identification.
15 Everything else is pretty standard. In case you want
16 to know, the structure of my charge, I'm charging that
17 there are six elements that the State must prove. They
18 must prove the identity of the person who committed this
19 crime, that is, that it was this defendant who committed
20 the crime and not some other person. Second the State
21 must prove that the defendant took personal property
22 from the person or presence of another person. Third,
23 that the State must prove the defendant carried the property
24 away. Fourth, the State must prove that the defendant
25 intended to permanently deprive the owner of the property

1 and to keep the property for the defendant's own use.

2 Fifth, the taking and carrying away of the property must
3 have been done with violence or by putting the owner
4 of the property in fear of violence. And, finally, the
5 State must prove beyond a reasonable doubt that the defendant
6 was armed with a deadly weapon during the robbery.

7 All right, bring in the jury.

8 (WHEREUPON, The jury returned to the courtroom
9 and the following proceedings were held in their presence
10 and hearing.)

11 MS. CAMPBELL: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, ma'am.

14 MS. CAMPBELL: Now we come to the closing arguments.
15 I listened to the Solicitor's opening statement and I
16 want to tell you that she's right about one thing in
17 this case. This is very real. This is this young man's
18 very real life in your hands. I will tell you that,
19 as we all know, people make mistakes, physical evidence
20 does not, videos do not. You may see for yourself the
21 video that shows the perpetrator of this crime wearing
22 a mask.

23 This is not some other part of the country and
24 this is not a television show. This is Beaufort County
25 and we have to expect that Beaufort County will be held

1 to the same standard as the rest of this country. We
2 have to expect that the people we put in charge of
3 investigating our cases don't leap to conclusions and
4 don't investigate cases as in this case. We have to
5 expect that if they do something on their case, they
6 will report it to all of us, and not conceal that evidence
7 from Mr. Costa and from his attorney. You demand more
8 and you should. You deserve more and you haven't gotten
9 more. Preston Costa certainly deserves more.

10 What is the evidence in this case? Officer
11 Malphrus testified that Lisa Warren told him absolutely
12 the suspect had a red bandanna covering his face. Officer
13 Garst testified that Lisa Warren told him the suspect
14 had a red bandanna covering his face.

15 Now, Lisa Warren testified today before you
16 that there was nothing on the suspect's face. Helen
17 Warren testified that the suspect had some sort of mask
18 on his face.

19 Let's talk a little bit about the information
20 Lisa Warren gave you about the tattoos. Now wouldn't
21 you think that with an identifying characteristic like
22 that, that that information would be included somewhere
23 in the information and report that the officers write
24 down immediately from the witness to this case. Absolutely
25 no testimony before you about any tattoos.

1 Now, this black sweatshirt. Obviously it was
2 in a common area of this home which was used by everyone.
3 Thousands, of course, of black hooded sweatshirts are
4 sold in this United States every year. There's been
5 no connection provided to you between this young man
6 and this sweatshirt other than it's in his home. It's
7 not been connected to being at that location.

8 Now, the shoes that were collected from the
9 bathroom area clearly belong to a woman, a much smaller
10 sized foot than Preston had.

11 Look at the video and watch the suspect jumping
12 up and down, kicking that cash register. Now, if you
13 had been an officer investigating this case and you watched
14 the video, you would know that the suspect likely had
15 an injury to his ankle, should have. But when given the
16 opportunity to talk to and/or look at Preston on Friday
17 evening, no need to do that.

18 There is no fingerprint evidence for you, there
19 are no shoe print evidence although a sandy parking lot,
20 footprints everywhere. No tire prints compared in any
21 forensic manner for you to look at, except what the officers
22 tell you and I tell you, this is consistent, that the
23 tires don't match. The red car is not at Folly Road Grocery,
24 Officer Garst told you, it's not a match. He even asked
25 another officer, do they match? No, they don't match.

1. The first part of the document is a list of names and addresses of the members of the committee.

1 I can tell you with confidence and I think you
2 know this that a single identification is very shakey
3 ground to ask a jury to make a decision on. And that's
4 what you are being asked to do.

5 Now mistakes happen and we can't fault Ms. Warren
6 for a mistake. She was upset, she was terrified, she
7 had a gun pointed in her face, her day had started out
8 well earlier than 6 o'clock in the morning. And if she
9 made a mistake, okay. And I told you when we started
10 out, she's been saying and been convinced from the get-
11 go that that's the way it happened and that's who it
12 was and she's not going to change, no matter what.

13 Now, I submit to you that the reason they didn't
14 fully investigate this case is they didn't believe her.
15 If you have an armed robbery suspect and you're going
16 to his house and it's just happened and you think he's
17 got a gun and Beaufort County doesn't set up a perimeter?
18 They know he just moments before left the house and there's
19 no search of the woods for the gun, there's no search
20 for him at all. They don't call in back up. The officer
21 walks up to the front door of this home without a gun
22 drawn, absolutely at ease with the entire situation.

23 And when they do talk to this young boy, they
24 say, you know what, Officer Garst told you, it really
25 wasn't any violence done, he wasn't concerned, come on

1 in Monday morning, I know how to deal with these people,
2 be good with them and they will cooperate with you and
3 so he let him come in on Monday morning. But it was
4 Friday afternoon. And there were two other people in
5 the store and they told you they were there and they
6 told you what they did or didn't see. And, as I said,
7 Helen Warren said he had a mask on his face.

8 Now, the testimony was that Preston Costa came
9 in that store often, often enough that you have to ask
10 yourself what kind of sense does it make to rob a store
11 where they've known you since you were ten years old.
12 Not much.

13 Preston gave Officer Garst the information as
14 to where he was as soon as he could and that information
15 was confirmed by Officer Garst. He told you he went
16 to the DMV, he checked out the story, Melvin Holmes was
17 having that ID made at 1:20 something, he told you he
18 then went downtown to Plum's, the check was there for
19 the young man, Dennis Lockhart, he confirmed all of that.
20 He didn't bother to tell any of us that in his report
21 until we were able to find out about it and bring it
22 out for you.

23 Now, Preston had told you like many a young
24 boy in his day, he's gotten into a few fights at school.
25 He got in trouble for it, he went to juvenile court for

1 it. Now, you can't hold that against him in this case.
2 The Judge will tell you that. But he did tell you, I
3 missed my court date, I was young, I thought they were
4 coming to pick me up because I missed by court date,
5 I ran out, stupid mistake, but I did. And as soon as
6 he called his momma and came back home he tried to find
7 out why they were really there.

8 If you look at the time line in this case it
9 simply doesn't fit. If the boys were at the DMV around
10 1:20 and it takes how long to get through that line to
11 get the photo done after that, they drive all the way
12 downtown on Friday afternoon to Plum's, park the car,
13 go in, get the check, come back out and then have to
14 rush out to St. Helena now, mind you, after running all
15 these errands to commit this armed robbery. And then
16 drive straight home, because they know you, you might
17 as well go on home.

18 If you look at the video for yourselves and
19 I encourage you to do that, I think you will make your
20 own individual determination that the face was covered
21 in this case. And if you believe each and every one
22 of you has your own individual experiences and opinions
23 and you bring all of that to your deliberations and you
24 must remain true to that and make your own individual
25 decision. Judge Few will give you the law in this case.

1 particularly on reasonable doubt and I submit to you
2 that is a very serious matter. Because the shakey ground
3 that you are standing on is constantly moving and you've
4 heard that from the testimony. If you can't get a firm
5 footing to make your decision, then you must find Preston
6 not guilty, the State has failed the challenge that you
7 gave them. There's simply no time for this to have occurred
8 with Preston Costa and his friends running their errands
9 and then commit this armed robbery. There is reasonable
10 doubt, there is doubt absolutely.

11 And, finally, I submit to you again, this is
12 real, this is Beaufort County, this is his young life.
13 I submit that the State failed on the challenges that
14 you gave them and you must return a verdict of not guilty
15 in this case. He wasn't there. Thank you.

16 SOLICITOR: May it please the Court, Your Honor.
17 Defense counsel is right about one thing, it is my burden
18 of proof, I've got to prove to you the crime occurred
19 and Preston Costa committed this. You've already witnessed
20 this, the defense can take any information and twist
21 it any way they want to. They don't have to prove a
22 thing to you. In fact, they got up here and told you
23 about this big alibi, he's running around with his friends.
24 Is that what Melvin told you? Did Melvin come in this
25 courtroom and say that his buddy was with him? No.

1 How about Dennis? Did Dennis come in here and
2 tell you that his buddy was with him, we were running
3 errands all day? No. If that's what was happening,
4 where are his friends? Why didn't they show up today?
5 Because it's not true.

6 And Ms. Campbell points out, well, why would
7 somebody robs somebody that knows them. Don't waste
8 too much time on figuring out the thought processes of
9 someone who would commit an armed robbery to begin with.
10 Don't give him that much credit. And remember, he attempted
11 to use a bandanna to cover his face but Ms. Warren told
12 you and Officer Garst told you that it's in his report
13 that she told him it fell down. He tried but it fell
14 down.

15 I told you in the beginning that this case is
16 about people. This case is about Lisa Warren knowing
17 the man that robbed her, she knows Preston Costa. She
18 didn't say, I think it was Preston Costa, it might have
19 been Preston Costa. She said Preston Costa put a gun
20 in my face, told me to give me the money or I'll kill
21 you and then took money from her store. She said she
22 tried to keep him from doing it because, you know, it's
23 hard to earn a living and she wanted to take as much
24 time, maybe he'll take the bag, maybe he's run. But he
25 took her money.

 How is she so positive that it was Preston Costa?

1 She's known him since he was in the fifth grade. She
2 didn't meet him on the day of the robbery, she didn't
3 meet him with a gun in her face. She's known him when
4 he was in the fifth grade. She watched him grow up on
5 St. Helena Island. He's come in her store. He admits
6 he's been in her store, a lot. He admits that she knows
7 him. He admitted she can identify him. Did you catch
8 that?

9 She's been to his house. She knows his grandmother.
10 She's read scripture to his family. She knows him, knows
11 him. She didn't just identify him that day, she knows
12 Preston Costa.

13 Obviously this case has a lot to do with credi-
14 bility and the Judge is going to instruct you on what
15 that's all about. What is credibility, what makes a
16 credible witness? Demeanor. What was Ms. Warren's
17 demeanor when she testified to you? Did it change? Did
18 she have to think about her answers? Or did she just
19 come out and tell you what happened to her? Did she
20 ever pause? Did she ever change her story? No.

21 What about Preston Costa's demeanor? Did it
22 ever change? When Ms. Campbell was asking him questions,
23 he would answer one way. When I asked him questions,
24 did he get a sarcastic grin on his face and think it
25 was funny? Did anybody see that? His demeanor, demeanor

1 shows credibility. Was he lying, was he lying? Who has
2 got more reason to lie today?

3 Credibility, Ms. Warren, she tells you she gets
4 up at whatever time she gets up, she's at the school
5 at 6 a.m. She's been volunteering for so long they hired
6 her. Her children are out of school, but she still goes
7 and works at the school and gives her time to the school.
8 She leaves the school and she goes to minister to people.
9 May I read you scripture? May I tell you about Jesus?
10 That's her time, that's how she chooses to spend it.

11 After she does that, she goes and works in the
12 family business, a family run grocery store with her
13 grandmother-in-law. She has basically three jobs, she's
14 raised two children, she's lived here in this community
15 her whole life.

16 What about Preston Costa's credibility? A month
17 before this he's convicted of assault and battery of
18 a high and aggravated nature. They want to diminish
19 it and call it a scrape. Just like they want to diminish
20 the fact that he stuck a gun in Lisa Warren's face.

21 He runs from the police. That's not coming from
22 the State, that's not coming from me. Preston Costa told
23 you, I ran from the police. What does that tell you about
24 his credibility? Do you believe that he ran because
25 he had been in trouble in juvenile court or do you think

1 he was hoping that's why they're there. Please let it
2 be that and not this armed robbery I just left a few
3 minutes ago.

4 If you believe his alibi, that he was with Melvin
5 and Dennis, even though they don't back him up, if you
6 believe it he says he and Melvin were at the DMV an hour
7 before the armed robbery and then they went to his house,
8 headed towards Folly Road Grocery Store.

9 To make your decision I propose this. Walk the
10 path, walk the path of this case. Where does it start?
11 It starts here, the Folly Road Grocery Store. There's
12 an armed robbery somewhere around 2:30 in the afternoon
13 at this grocery store. That's where your path starts.
14 The suspect runs out of the door, taking with him the
15 drawer with the money in it, all the while little bits
16 are falling out towards the path he takes. Follow that
17 path.

18 It then leads to Preston's house. Officers
19 respond, wait a minute, the armed robbery occurs about
20 2:30. Malphrus says he gets there within about five
21 or six minutes, gets everybody to calm down a little
22 bit and then he puts over the radio, Preston Costa, here's
23 his address. Angelo responds to that residence, give
24 or take a few more minutes. Here's what he finds. In
25 Preston's bathroom, clothing fitting the description

1 of the suspect that just armed robbed Folly Road Grocery
2 Store. This is at Preston's house. Now, remember, Preston's
3 house is 3.42 miles from the Folly Road Grocery Store.
4 This was taken --- or Angelo got there say 15 to 20 minutes
5 and found this. It's 88 degrees, it's 88 degrees on
6 May 21st, that's hot. Ya'll live in Beaufort County,
7 you know, 88 degrees in Beaufort County, throw in some
8 humidity, it's hot. You're going to be wearing this
9 on May 21st when it's 88 degrees in Beaufort County?
10 Are you? How about this? Are you going to be wearing
11 this? Preston was. Now ask yourself, why do you wear
12 this at 2:30 in the afternoon when it's 88 degrees outside?
13 Maybe to conceal something, like your identity because
14 you're robbing a store that you frequent?

15 Look at something in this photo. See where
16 the jeans are found. They're on the toilet. They were
17 quickly discarded. No one has used that toilet recently
18 or else those clothes haven't been there very long.
19 Preston ran in the house, took these very hot clothes
20 off and then ran out the back door.

21 The video tape. Lisa Warren. Please watch this
22 again, look very closely. There's no mask, you will see
23 a nose, you will see a mouth, it's grainy, no question,
24 it's black and white. Please, watch this and see where
25 this leads you. What path do you follow when you look

1 at this evidence? Preston Costa, May 21, 2004 put a
2 gun in Lisa Warren's face and said give me all your money
3 or I will kill you. He's guilty of armed robbery. Thank
4 you.

5 THE COURT: Ladies and gentlemen, now that you
6 have heard all of the evidence and the arguments in the
7 case, it becomes my responsibility to instruct you on
8 the law that is applicable to this case.

9 Under our constitution and code of law of South
10 Carolina only the jury can make the findings of fact
11 in this case and as I told you earlier today, I am not
12 permitted to indicate to you how I might feel about the
13 facts. So if I have said anything or done anything during
14 the course of this trial to lead you to believe that
15 I have an opinion about the facts, then you must disregard
16 that.

17 But on the other hand, I am the exclusive judge
18 of the law and if you have some idea as to what the law
19 is or what the law should be and it differs from what
20 I now tell you the law is, then you are obligated under
21 the oath that you have taken as jurors to set your notion
22 of the law aside and to accept and apply the law precisely
23 as I now explain it.

24 Now to determine the facts in this case, you
25 will have to evaluate the credibility which, of course,

1 means the believability of the witnesses who have been
2 called on to testify. And some of the things that you
3 might wish to consider as you decide whether or not to
4 believe a witness' testimony about a particular subject
5 includes the following: the manner and appearance of
6 the witness who testified. Is he or she straightforward
7 or hesitant in answering questions? Is the testimony
8 of a witness consistent or inconsistent? How the witness
9 come to know the facts that he or she has testified to
10 and what is that witness' ability to know those facts?
11 is there some reason that a witness might want to give
12 testimony that would help or hurt one side or the other?
13 Is the testimony of a witness strengthened or weakened
14 by other testimony and evidence?

15 As members of the jury, you can believe as much
16 or as little of each witness' testimony as you think
17 is appropriate to do. You can believe the testimony
18 of one witness against all of the rest of them or you
19 can do just the opposite, and you are not required to
20 accept testimony as true even if it is uncontradicted.

21 Now you have heard testimony that the defendant
22 has been convicted of a crime other than the crime for
23 which he is now on trial. Now this evidence may be considered
24 by you, if you conclude that it is true, only in deciding
25 whether the defendant's testimony is believable and

1 for no other reason. You must not consider the defendant's
2 prior record as any evidence of the defendant's guilty
3 of the crime he is charged with in his case today. You
4 may not draw from this evidence the inference that because
5 the defendant committed a prior crime that he is the
6 type of person who would have committed this crime. That
7 is an absolutely impermissible inference.

8 The fact that the defendant was arrested and
9 charged and indicted in this case is not evidence and
10 cannot be considered by you in any way as evidence of
11 the defendant's guilt, nor does it create any presumption
12 or inference of guilt. As I told you earlier today,
13 the indictment is simply the formal written instrument
14 which contains the allegations that have been made against
15 the defendant and it is the document that serves to process
16 this case and bring it into this court for trial.

17 The defendant has pled not guilty to this indictment
18 and the plea of not guilty casts the burden on the State
19 to prove the defendant guilty beyond a reasonable doubt.
20 A person charged with committing a crime in South Carolina
21 is never required to prove themselves innocent.

22 Now it is a very important rule of law in our
23 country that a defendant in a criminal trial will always
24 be presumed to be innocent of the crime with which he
25 has been charged unless and until his guilt has been

1 proven by evidence that satisfies you of that guilt beyond
2 a reasonable doubt. This is what we refer to as the
3 presumption of innocence and it's not merely a legal
4 phrase or a legal theory. It is a substantial constitutional
5 right to which every defendant is entitled. The presumption
6 of innocence accompanies the defendant from the time
7 he is charged throughout the trial and into the jury
8 room until you reach a verdict of guilt that is based
9 on evidence that satisfies you of that guilt beyond a
10 reasonable doubt.

11 A reasonable doubt is a doubt which makes an
12 honest, sincere, conscientious juror, in search of the
13 truth in the case, to hesitate to act. Proof beyond
14 a reasonable doubt must therefore be proof of such a
15 convincing character that a reasonable person would not
16 hesitate to rely on it and act on it in the most important
17 of his or her own affairs. Proof beyond a reasonable
18 doubt can also be described as proof that leaves you
19 firmly convinced of the defendant's guilt.

20 Now there are very few things in this world
21 that we know with absolute certainty. And in criminal
22 cases, the law does not require proof that overcomes
23 every possible doubt. If, based on your consideration
24 of the evidence, you are firmly convinced that the defendant
25 is guilty of the crime charged, then you must find him

1 guilty. But on the other hand, if you think that there
2 is a real possibility that he is not guilty, then you
3 must give him the benefit of the doubt and found him
4 not guilty.

5 The defendant is charged with armed robbery
6 and in order to convict the defendant of this crime,
7 the State must prove six elements, each beyond a
8 reasonable doubt.

9 First, the State must prove the identity of
10 the person who committed this crime. That is, the State
11 must prove that it was this defendant who committed the
12 crime and that it was not someone else.

13 Second, the State must prove that the defendant
14 took personal property from the person or presence of
15 another person.

16 Third, the State must prove that the defendant
17 carried the property away.

18 Fourth, the State must prove that the defendant
19 intended to permanently deprive the owner of the property
20 and to keep the property for the defendant's own use.

21 Fifth, the State must prove a taking and a carrying
22 away of the property that it was done with violence or
23 by putting the owner of the property in fear of violence.

24 And, finally, the State must prove that the
25 defendant was armed with a deadly weapon during the

1 robbery.

2 Now, regarding the identify of the person who
3 committed this crime, identification testimony is an
4 expression of belief or impression by a witness. You
5 must determine the accuracy of the identification of
6 the defendant. You must consider the believability of
7 each identification witness in the same way as any other
8 witness. You may consider whether the witness had
9 adequate opportunity to observe the offender at the time
10 of the offense. Now this could be affected by things
11 like how long or how short of a time was available, how
12 far or close the witness was, the lighting conditions
13 and whether the witness had the chance to see or know
14 the person in the past.

15 I instruct you that the burden of proof remains
16 on the State and it extends to every elements of the
17 crime charged, and this specifically includes the burden
18 of proving the identity of the defendant as the person
19 who committed this crime.

20 Property is in the presence of a person if it
21 is within the person's reach, inspection, observation
22 or control, so that the person could, if not overcome
23 with violence or presented by fear, keep possession of
24 the property.

25 The slightest removal of the property or the

1 complete possession of the property, even for an instant,
2 by the defendant is sufficient to show a taking and a
3 carrying away of the property.

4 A deadly weapon is any article, instrument or
5 substance which is likely to cause death or great bodily
6 harm and whether an instrument has been used as a deadly
7 weapon depends on the facts and the circumstances of
8 each individual case.

9 Now, ladies and gentlemen, in just a second
10 I'm going to send you back to your jury room to begin
11 your deliberations. When I do that, I'm going to ask
12 you not to begin your deliberations because I may have
13 some matters of law that I have to take up with the lawyers.
14 While I'm doing that, I would like for you to select
15 a foreperson to serve this jury. The job of the foreperson
16 is to preside over the deliberations and when necessary
17 to communicate with me and those communications will
18 have to be in writing. Now, one of the times when you
19 will have to communicate with me is when you reach a
20 verdict and you will have with you in the jury room the
21 indictment and on the back of the indictment, in the
22 lower lefthand corner, you will see the word VERDICT
23 and below that word verdict there are four blank lines.
24 On one of those blank lines, the foreperson would write
25 the unanimous verdict of the jury, and your verdict

1 does have to be unanimous. Your options for your verdict
2 are either guilty or not guilty. And once the jury has
3 unanimously agreed on one of those two verdict options,
4 the foreperson would write that verdict on one of those
5 blank lines, and then sign it and date it and notify
6 the bailiff that you have reached a verdict and then
7 we will get you back out here into the courtroom to receive
8 your verdict.

9 You will notice on the back of the indictment
10 that also there are several date stamps and dates printed,
11 there is a signature of the foreperson of the grand jury,
12 a date and some other information that really has nothing
13 to do with the trial of this case. There's no reason
14 for you to consider anything on the indictment except
15 for the body of the indictment which I have now read
16 you twice, I read it to you during jury selection and
17 I read it to you during --- right before opening statements
18 and also for you to use the verdict form on the back
19 of the indictment in the lower lefthand corner. That
20 other information is meaningless in terms of what your
21 job is which is to determine whether or not the State
22 has met its burden of proving the defendant guilty beyond
23 a reasonable doubt.

24 Ms. Aiken and Ms. Outen, would you two please
25 remain in your seats. The rest of your please go back

1 into the jury room, select a foreperson and when you
2 have selected a foreperson, notify the bailiff as to
3 who it is. When I send to you the indictment and the
4 exhibits, the bailiff will have an instruction at that
5 time that you can begin your deliberations.

6 Now, let me say one more thing before you go.
7 You have a video tape that has been admitted into evidence
8 and if you all would like to have the monitor brought
9 back into the jury room so that you can watch the video
10 tape, just let us know that and we will send it back.

11 (WHEREUPON, Jury retired to the jury room and
12 the following proceedings were held in the absence of
13 the jury.)

14 THE COURT: Any exceptions to the charge?

15 SOLICITOR: Nothing from the State.

16 MS. CAMPBELL: Your Honor, subject to my prior
17 objections, on what you charged I don't have any objections
18 to that but I did ask the Court, and we've been over,
19 to charge some other matters.

20 THE COURT: What was that?

21 MS. CAMPBELL: The alibi charge and we've been
22 through all of that. I would just renew all of my objection
23 and ---

24 THE COURT: All right, well, be specific with
25 me about your jury charge objections. You object to

1 my decision not to charge alibi.

2 MS. CAMPBELL: Not to charge alibi, that's correct.

3 THE COURT: Any other objections?

4 MS. CAMPBELL: No, sir.

5 THE COURT: All right.

6 MS. CAMPBELL: Your Honor, and for the record
7 I would renew my objection throughout this trial and
8 also renew my motions for a directed verdict and that's
9 all we have. Thank you, Your Honor.

10 THE COURT: Is there anything on that video
11 tape was not shown to the jury?

12 SOLICITOR: No, sir.

13 THE COURT: When I was standing over there looking
14 at it you showed them everything that was on that tape?

15 SOLICITOR: Yes, sir, but it needs to be rewound
16 from the beginning but that's all that's one it. And
17 it starts the very beginning of the tape.

18 THE COURT: All right, ya'll check and agree
19 on the exhibits and then once you have done that, we
20 will send the exhibits and the indictment back to the
21 jury room and they can begin their deliberations.

22 The foreperson is Gary Glaser, juror #46.

23 (WHEREUPON, Note from jury was entered and
24 marked as Court's exhibit #1.)

25 (WHEREUPON, The jury began their deliberations

1 at 3:40 p.m.)

2 MS. CAMPBELL: Your Honor, just specifically
3 for the record, I would renew my objection to the Court
4 ruling that my two witnesses ---

5 THE COURT: There is no procedural basis for
6 you to renew those objections every time. I made my
7 rulings and that's done.

8 MS. CAMPBELL: Thank you.

9 (WHEREUPON, A note was sent out from the jury
10 at 3:45 P.M..)

11 THE COURT: to my utter astonishment the jury
12 wants to know, " Why didn't Dennis Loackhart and Warren
13 Holmes testify?"

14 MS. CAMPBELL: Your Honor, I think we would
15 ask that the Court instruct them that they cannot shift
16 the burden to the defendant and the burden of proof remains
17 on the State absolutely throughout the trial and their
18 deliberations.

19 SOLICITOR: Those are defense witnesses, they're
20 not shifting the burden, Your Honor, they want to know
21 why the alibi witnesses didn't testify. I just think
22 that you charge them that they just make a decision based
23 on the evidence that they've heard. I don't know that
24 there's anything about shifting the burden, those are
25 defense witnesses.

1 MS. CAMPBELL: It was paramount that the defendant
2 does not have to prove his innocence and I think that
3 that needs to reiterated to the jury, the burden rests
4 with the State.

5 THE COURT: How about if I say that is not a
6 matter for your considerations, you must make your decision
7 based on the testimony and evidence that is before you
8 at this time.

9 SOLICITOR: That's great with the State, Your
10 Honor.

11 MS. CAMPBELL: We would continue to ask that
12 you recharge on the burden of proof and it is improper
13 to ---

14 THE COURT: Well, maybe it is a matter for their
15 consideration.

16 SOLICITOR: The defendant is the one that brought
17 their names up, not the State. These are ---

18 THE COURT: I'm going to say, I cannot answer
19 that question, you must make your decision based on the
20 testimony and evidence that is before you.

21 SOLICITOR: Or just I can't answer that question,
22 write it on a note and send it back to them.

23 THE COURT: Well, let's don't dance around the
24 fact that that is the most obvious question that any
25 human being would ever have come up with after sitting

1 through the trial of this case, and it's not my job to
2 come in behind the defendant's either inability to get
3 those witnesses here or decision not to get those witnesses
4 here and bail them out of that difficulty or if it was
5 the State's --- if there were witnesses that were thought
6 to be called by the State it wouldn't be my job to bail
7 the State out of the dilemma. It's not my job to bail
8 either side out of the dilemma.

9 Now, if the defendant had chosen to put up no
10 evidence, this might be a slightly different situation
11 and perhaps at that point, it would be advisable to make
12 it clear that the State retains the burden of proof and
13 that the defendant has no burden coming forward with
14 evidence. But the defendant, having chosen to come
15 forward with evidence, I believe that the State could
16 very well have argued in closing argument the same question
17 that the jury has just raised and it would have been
18 a permissible argument. So, I'm going to charge something
19 along the lines of I can't answer that question and if
20 ya'll have anything particular to say about the exact
21 language I will hear from you.

22 MS. CAMPBELL: If you are choosing not to charge
23 what we've requested then I cannot answer that question
24 would be the only option.

25 SOLICITOR: Yes, sir, State agrees.

1 THE COURT: All right, mark it as a Court's
2 exhibit, ya'll take a look at it and make sure you have
3 no objections to it, send it back to the jury.

4 (WHEREUPON, Note from the jury was entered
5 and marked as Court's exhibit #1.)

6 (WHEREUPON, The note was sent back to the jury
7 and they continued their deliberations.)

8 THE COURT: Ms. Campbell, you can put that charge
9 in the record if you want to but even if you don't, I
10 think your exception is preserved because you basically
11 asked that the concept of alibi be charged and I denied
12 to charge the concept. It wasn't that I needed a specific
13 proposal from you but you can put it in the record if
14 you want to.

15 MS. CAMPBELL: Thank you, Your Honor.

16 (WHEREUPON, Alibi charge was entered and marked
17 as Court's Exhibit #2.)

18 (WHEREUPON, The jury sent out a question at
19 6:00 p.m.)

20 THE COURT: All right, they have sent us another
21 question and ya'll can come look at it and see how I've
22 answered it. The question is, " Is there a way to get
23 enhanced single frames of the video?" And I have
24 answered, " You must base your decision in this case
25 on the evidence already before you."

1 MS. CAMPBELL: No objection from the defense,
2 Your Honor.

3 SOLICITOR: No objection.

4 THE COURT: All right, send it back.

5 (WHEREUPON, Note was entered and marked as
6 Court's exhibit #3.)

7 THE COURT: All right, counsel, they have sent
8 an oral request through the bailiff that they be allowed
9 to go home for the evening, which we have been discussing
10 back in my chambers, and I'm still thinking about my
11 response to that question. Anybody have anything they
12 want to put on the record, other than advice as to how
13 I should decide that question.

14 SOLICITOR: No, sir.

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: All right.

17 (WHEREUPON, The jury reached a verdict at 6:25
18 p.m. and returned to the courtroom.)

19 THE COURT: Mr. Foreman, has the jury reached
20 a verdict?

21 FOREPERSON: Yes, sir.

22 THE COURT: Pass it to the bailiff, please.

23 CLERK: Case #04-GS-07-925, The State of South
24 Carolina versus Preston Jamil Costa, WE, THE JURY, FIND
25 THE DEFENDANT GUILTY. Signed by the Foreperson.

1 Mr. Foreman, was this your verdict?

2 MR. FOREMAN: Yes, ma'am.

3 CLERK: If it was the verdict of all the jurors,
4 please indicate by saying I do.

5 (WHEREUPON, All jurors said, "I do.")

6 THE COURT: Anything further before we move
7 into sentencing?

8 MS. CAMPBELL: Your Honor, we would ask that
9 the jury be polled individually.

10 (WHEREUPON, The jury was polled individually
11 and all jurors answered in the affirmative.)

12 THE COURT: Anything further?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: All right, bring the defendant around.

15 THE COURT: CDR code 139?

16 SOLICITOR: Yes, sir.

17 THE COURT: Anything else from the State?

18 SOLICITOR: No, sir, Your Honor. You've heard
19 his prior record, he was only 17 or 18 when this occurred.
20 His adult record, he currently has other charges pending,
21 you've heard his convictions.

22 THE COURT: And would the victim like to say
23 anything?

24 SOLICITOR: No, sir.

25 THE COURT: Ms. Campbell.

1 MS. CAMPBELL: May it please the Court, Your
2 Honor, in mitigation and in trying to help the Court
3 fashion its sentence in this case, I would like the Court
4 to hear us briefly. As the Court is aware, the minimum
5 sentence for armed robbery is ten years and, of course,
6 the maximum sentence is thirty years in prison. And
7 any portion of that that the Court should sentence my
8 young client to is basically a day for day sentence.
9 He would have to serve the entire sentence, he should
10 assume that, the rule basically 85 percent of that sentence
11 before he's eligible for parole.

12 In mitigation, Your Honor, he's extremely young.
13 He has extremely strong family ties to this community
14 as the Court has heard. We have tried this case twice
15 before, Your Honor, both times the jury could not reach
16 a decision on this case. His mother has been here
17 unfaithfully supporting him, as well as his brother. His
18 grandmother would be here if she were able. This young
19 man has minimal experience with the criminal justice
20 system and we would ask you to consider the minimum
21 sentence. Thank you, Your Honor.

22 THE COURT: Anything you want to say, sir?

23 MR. COSTA: No, sir.

24 THE COURT: Mr. Costa, the sentence of the Court
25 is that you be committed to the Department of Corrections

1 for twenty-five (25) years. Good luck to you.

2 SOLICITOR: Thank you, Your Honor.

3 THE COURT: I'm assuming that you are going
4 to make a motion for a new trial at some point?

5 MS. CAMPBELL: After i talk to my client. There
6 may be another motion that he may or may not want to
7 make once I have an opportunity to speak with him.

8
9 (WHEREUPON, The following proceedings were
10 held the next morning, December 8, 2005.)

11 THE COURT: Are you making a motion for a new
12 trial?

13 MS. CAMPBELL: At some point in the next ten
14 days I will, yes.

15 THE COURT: All right, well, when you make your
16 motion for a new trial, there are several pieces of information
17 that I'm going to want to hear. I want to know, first
18 of all, whether or not anybody ever bothered to check
19 to see whether Mr. Costa actually had a court date between
20 April 4th and the date of the crime. Did anybody check
21 to see if he did?

22 (NO RESPONSE.)

23 THE COURT: Did he testify in the first trial?

24 SOLICITOR: Yes, sir.

25 THE COURT: That the reason he ran was because

1 of the court date?

2 SOLICITOR: Yes, sir, the first and the second.

3 THE COURT: And nobody has checked to see if
4 he actually had a court date?

5 SOLICITOR: He was just placed on probation.

6 THE COURT: I can tell you that it seems highly
7 unlikely that he did, given the fact that he had been
8 convicted of ABHAN in Family Court on April 4th, as I
9 recall, and this crime was committed six weeks later.
10 It seems to me very likely that if he had other charges
11 pending that those charges would have been dealt with
12 on April 4th and it seems highly unlikely that there
13 was time between those two dates for a court date to
14 be scheduled. I mean, to me that's a critical piece
15 of information and I frankly am absolutely astonished
16 that it was not brought before the Court.

17 And the other thing that I am going to want
18 to know is what have the respective investigations that
19 you all performed revealed about what these two so-called
20 alibi witnesses would have said if they had testified.

21 SOLICITOR: Your Honor, I know during the first
22 trial we were unable to locate them and they both had
23 outstanding warrants and were on the run from law enforce-
24 ment. I believe by the second trial at least one of
25 them had been incarcerated.

1
2 THE COURT: And I was told yesterday I think
3 both of them are in prison right now.

4 SOLICITOR: One just got out; one is still in
5 the Department of Corrections.

6 MS. CAMPBELL: You're referring to Dennis Lockhart
7 and Melvin Holmes, not the DMV and Plum's correct?

8 THE COURT: That's correct.

9 MS. CAMPBELL: Okay.

10 THE COURT: I infer from ya'll's silence that
11 nobody knows?

12 MS. CAMPBELL: I'll have to get back to the
13 Court on that information.

14 SOLICITOR: May I ask Your Honor, do you want
15 us to do some type of letter to you or do you want that
16 in the courtroom the next time it's brought to you, how
17 do you want us to provide you this information?

18 THE COURT: She's going to make a motion for
19 a new trial and you will have a chance to respond and
20 we will deal with it in some fashion as we move through
21 that.

22 SOLICITOR: Yes, sir.

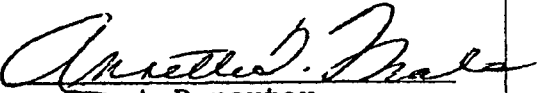
23
24 END OF TRANSCRIPT.
25

CERTIFICATE

I, the undersigned, Annette T. Mole, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a accurate and complete Transcript of Record of the above-captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 5th day of December, 2005.

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

MAY 2, 2006

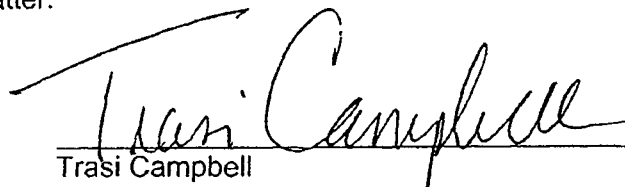

Court Reporter

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2004-GS-07-00925

STATE OF SOUTH CAROLINA)
vs) NOTICE OF MOTION AND
PRESTON COSTA) MOTION TO RECONSIDER
SENTENCE

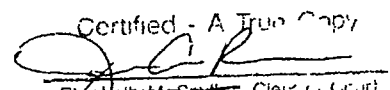
YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through her undersigned attorney, hereby moves this Honorable Court for Reconsideration of its Order and Sentence imposed on December 7, 2005 in reference to the above captioned matter.

This motion is based upon all applicable common law, case law, and statutory laws governing this matter.


Trasi Campbell
Deputy Public Defender
Attorney for the Defendant

December 12, 2005

2005 DEC 13 PM 12:27
CLERK OF COURT
BEAUFORT, S.C.

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) INDICTMENT NO. 2004-GS-07-00925

STATE OF SOUTH CAROLINA)
)
 vs.) NOTICE OF MOTION AND
) MOTION FOR NEW TRIAL
 PRESTON COSTA,) PURSUANT TO RULE 29
)
 Defendant.)
 _____)

TO: ANGELA TANNER, ASSISTANT SOLICITOR, 14TH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that Defendant through his undersigned counsel will move before this Honorable Court, as soon as counsel can be heard, for a new trial pursuant to South Carolina Rule of Criminal Procedure 29, on the following grounds:

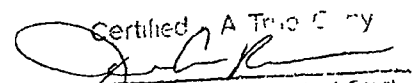
1. The Court erred in denying Defendant's Motion for Directed Verdict.
2. The Court erred in refusing to allow the Defendant's two alibi witnesses to testify at his trial as they had done in the two previous trials.
3. The Court erred in denying Defendant's request to charge alibi as had been done in the Defendant's two previous trials.
4. The Court erred in refusing to hear the Defendant's Motion to Suppress the out of court identification of the Defendant by the victim as had been done in the two previous trials.
5. The evidence presented by the State of South Carolina did not support the verdict.

Respectfully submitted,


 Trasi Campbell
 Defendant
 CLERK OF COURT
 BEAUFORT COUNTY

Beaufort, South Carolina
 December 12, 2005

2005 DEC 13 PM 12:27

Certified A True Copy

 Elizabeth M. Smith - Clerk of Court
 Beaufort County, SC

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Beaufort County

 John C. Few, Circuit Court Judge

RECEIVED

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRESTON COSTA,

APPELLANT

 FINAL BRIEF OF APPELLANT

 ROBERT M. DUDEK
 Deputy Chief Appellate Defender for Capital Appeals

 South Carolina Commission on Indigent Defense
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 PO Box 11589
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 (803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to allow appellant to present corroborating witnesses to support his alibi testimony that he was at the Department of Motor Vehicles and elsewhere at or around the time of the robbery since this testimony was relevant and appellant had the right to present a corroborated defense?

STATEMENT OF THE CASE

Appellant was indicted by the Beaufort County grand jury for the offense of armed robbery. R. 151. His case came on for trial on December 5, 2005 before the Honorable John C. Few and a jury. Trasi Campbell represented appellant. Angela M. Tanner was the assistant solicitor. R. 1.

At the conclusion of the trial the jury found appellant guilty. R 148, ll. 23 – 25. Judge Few sentenced appellant to twenty-five years imprisonment. R. 149, l. 24 – 150, l. 1.

This appeal follows.

ARGUMENT

The court erred by refusing to allow the defense to present witnesses supporting his alibi defense. This testimony was relevant, and the judge's ruling excluding it was arbitrary.

Relevant Facts

Beaufort County Sheriff's Deputy Darryl Malphrus testified that on May 21, 2004 he was dispatched to an armed robbery call at the Folly Road Grocery Store on St. Helena Island. R. 7, l. 4 – 8, l. 11. When he arrived at the store he spoke with Helen Warren, Lisa Warren, and Benjamin Holmes. He testified they were all “very upset.” R.8, ll. 4 – 13. Malphrus testified he was “amazed” when Warren told him that she knew appellant, and that appellant was the man who robbed the store. R. 10, ll. 18 – 25.

Helen Warren testified that a “young man” came in and held a gun near Lisa Warren's face and demanded money. R. 37, l. 5 – 38, l. 23. Warren admitted she could not see the man's entire face and that she did not know the identity of the robber. R. 39, l. 20 – 40, l. 6.

Alibi

Defense counsel told the jury in her opening argument that “Preston Costa was nowhere near the Folly Road Grocery on 5/21/04 . . . Preston Costa with two of his friends . . . [were] at the Department of Motor Vehicles . . . And Nichole Smalls from the DMV will tell you that he was there . . . “ R 3, l. 13 – 5, l. 17. The first trial in this case ended in a mistrial after the judge ruled it was a “close call” on whether he should allow Nichole Smalls of the DMV to testify, but he allowed her to testify that appellant's friend, Melvin Holmes, was there at the DMV at 1:21 p.m. on the day in question. That corroborated appellant's testimony. R. 98 - 110. Appellant also had Lantz Price – who owned Plums

Restaurant—to testify that a “final paycheck” was available for “Mr. Lockhart,” appellant’s other friend, on the day of the robbery R. 3, l. 13 – 5, l. 17.

Defense counsel in this case also told the jury that after the 1:21 p.m. visit to the DMV “they went to Plums Restaurant . . . you will hear from the owner of that restaurant that the young man, Dennis Lockhart, had been working for them and he had a paycheck to pick up that afternoon. And the young men had come down to Plum’s to pick up the money, or pick up the paycheck. Then you will hear testimony that after that, the young men then drove to Preston Costa’s home . . . and that they arrived at the home approximately 2:20, 2:25, 2:30, somewhere in there.” R. 3, l. 13 – 5, l. 17.

Deputy Ryan Garst testified that appellant’s house was 3.42 miles from the Folly Road Grocery Store. R. 52, ll. 15 – 17. On cross-examination defense counsel questioned Deputy Garst about “following up” on information that appellant actually had been at the Department of Motor Vehicle around the time of the robbery. The following occurred on cross-examination of Deputy Garst:

Q. And she gave you a printout or information that, in fact, corroborated what you have been told that Melvin Holmes was at the Department of Motor Vehicles at 1:21 renewing his ID card, correct?

A. I was not provided a printout. I know we have a printout but I don’t believe that I got that.

Q. But you received that information.

A. Yeah, we received that information, right.

Q. On that day?

A. That’s correct.

Q. That you went out there.

- A. Yes.
- Q. And then you left from there and you went to Plum's to confirm that Dennis Lockhart worked there and that there was a check available for him to pick up on that day, correct?
- A. That's correct.
- Q. And you found that information to be true, right?
- A. Excuse me?
- Q. That was true, Dennis Lockhart worked there and - - -
- A. Yes, that's correct, that's correct.
- Q. And when you wrote your report about this case, you decided that that information was not important and you didn't include that information in your report either, did you?
- A. (No Response.)
- Q. That you had gone to the DMV, that you had gone to Plum's in an effort to corroborate what you had been told, it's not in your report, is it?
- A. No, ma'am.
- Q. Now, you've provided this map for our jury to ascertain where is Plum's Folly Road Grocery and Preston's home. Obviously when you were investigating this case, you're going to run that route that day to see if you can find any evidence along the route, right?
- A. From Plum's to - - -
- Q. From Folly Grocery to Preston's home.
- A. I'm not sure which route I took.

Q. Well, money, as you've testified, was being dropped about like Hansel and Gretel - - -

A. Yes, right.

Q. And there may have been further evidence along that trail, correct, along the highway?

A. No, ma'am, I don't believe there was further evidence on that trail.

Q. Did you drive it, did you walk it?

A. I walked it, I walked it for several hours.

Q. And you found nothing?

A. Found nothing. Except the money.

R. 68, l. 3 – 70, l. 3.

Warren claims appellant was the robber

Lisa Warren testified she knew appellant as a child and she claimed he was the robber of the store. R. 81, l. 16 – 88, l. 1. An in camera conference occurred to discuss appellant's alibi defense and whether the judge would charge the jury on alibi. The judge initially responded that he did not think an alibi instruction was called for because he would have to charge alibi "every single time a defendant took the stand and denied being absent from the scene of the crime." R. 98, ll. 3 – 6.

The solicitor then told the judge that the state would object to the defense presenting alibi or corroborating witnesses for appellant. She said that one witness (Smalls) would testify that Melvin Holmes was at the DMV an hour prior to the armed robbery. The next witness (Price) will testify that Dennis Lockhart had a check produced for him sometime that day. The solicitor claimed that an alibi had to establish where the defendant was and

had to make it impossible for him to have committed the crime. The solicitor's further maintained that the defense could not conclusively prove appellant was elsewhere at the time of the crime. Defense counsel correctly stated she had the right to corroborate appellant's testimony that he was elsewhere at the time of the robbery. R 98, l. 3 – 102, l. 3. Counsel noted the testimony of Officer Garst and she told the judge she wanted to present an alibi defense. The judge refused to allow the defense to call witnesses to support an alibi defense or corroborate appellant's testimony as he had done in the first trial that ended in a mistrial. R. 100, l. 1 – 104, l. 23. The judge ruled the evidence was "speculative" and irrelevant and that he would not allow it. R. 104, ll. 14 – 23.

Appellant then testified that he told Deputy Garst he was with the other young men at the Department of Motor Vehicles and that they then went to Plum's and after that they went to his house. Appellant said he believed Dennis Lockhart gave a statement supporting his alibi defense. R. 110, l. 3 – 111, l. 7. Appellant said Dennis Lockhart was driving that day in Dennis' car. R. 113, ll. 3 – 20; R. 113, ll. 1 – 17. Appellant denied he was at the grocery store and that he committed the armed robbery. R. 112, ll. 9 – 14.

Defense counsel took exception to the judge's refusal to charge alibi. The jury then sent the judge a note during deliberations asking – as the judge put it "to my utter astonishment the jury wants to know 'why didn't Dennis Lockhart and Warren Holmes testify?'" (sic). R. 144.

Discussion

The definition of relevant evidence is broad. Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). See Rule 401,

SCRE. See also State v. West, 313 S.C. 426, 438 S.E.2d 256 (1993). The judge's ruling in outright denying appellant the right to present a defense, and to present defense witnesses to support his alibi was arbitrary and unjustified. The fact that appellant's alibi was not, in the judge's view, watertight did not justify denying him the right to present that defense where the evidence was relevant to the *jury's consideration of his defense*

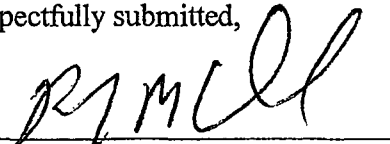
In Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006), the United States Supreme Court, 9-0, held that a trial court could not apply arbitrary rules prohibiting a defendant from presenting a complete defense on third-party guilt. The fact that the third party guilt evidence was not "watertight" did not justify excluding it. Here the issue is really whether appellant was denied the right to present an alibi defense - - with relevant corroborating evidence. See Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142 (1986); Chambers v. Mississippi, 410 U.S. 285, 93 S.Ct. 1038 (1973). A defendant has the right to present a defense and the scales of justice are on his side when it comes to the right to present relevant evidence in his defense. See Rock v. Arkansas, 483 U.S. 44, 107 S.Ct. 2704; United State v. Scheffer, 523 U.S. 303, 118 S.Ct. 1261 (1998).

The logic of the trial court in this case is hard to follow. One thing in this case is clear though – appellant was allowed to present the alibi evidence before another judge in his first case, and he was not convicted. That leaves a bad odor about this case similar to Holmes v. South Carolina, and appellant understands the state can call the case whenever and before whatever judge it chooses. The judge's apparent reasoning that appellant had to completely "tie up" his alibi defense or he had no right to present it was error. It was an arbitrary and erroneous ruling on relevant evidence. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Beaufort County Court of General Sessions for a new trial

Respectfully submitted,



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

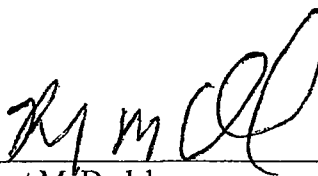
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April 7, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 7, 2008

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

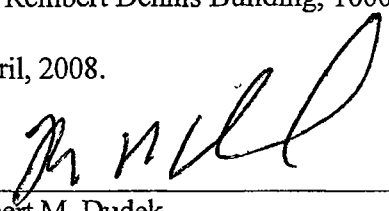
V.

PRESTON COSTA,

APPELLANT

CERTIFICATE OF SERVICE

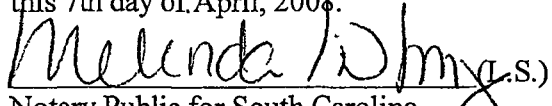
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire, Senior Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 7th day of April, 2008.



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2008.



(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

PRESTON COSTA,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

Is Costa's Issue available for appellate review?

II.

Did the trial judge err by excluding irrelevant testimony from witnesses that failed to support an alibi defense?

STATEMENT OF THE CASE

Respondent concurs with the procedural Statement of the Case of Appellant Preston Costa.

STATEMENT OF FACTS

Lisa Warren worked at her family's convenience store on St. Helena Island in Beaufort County. On the afternoon of May 21, 2004, she was there with her mother and a customer. (R. 89-90, 41-42, 79-80). Warren testified Costa entered the store shortly after two o'clock. He had a gun and demanded money. Warren walked over to the cash register and handed Costa a bag of change. Costa demanded she open the cash register and he threatened to kill her. Warren told Costa she could not open it, so Costa then "pulled it down to the floor" and banged on it. When the drawer broke loose, Costa grabbed it and walked out of the store. (R. 80-82).

The police were contacted and Deputy Darryl Malphrus responded almost immediately thereafter. Warren identified Costa for him. (R. 7-10, 87-88). A bulletin was issued for Costa. (R. 10-11). Costa was described as wearing a red and white bandana, "jeans and a dark colored, black or possibly dark blue, hoodie sweatshirt . . ." (R. 18, 23).

Deputy William Angelo proceeded to Costa's home.¹ Angelo testified an "elderly" woman, who identified herself as Costa's grandmother, answered the door. She confirmed Costa lived there and had been there "three to five minutes . . ." (R. 20-21, 28-30). Angelo recalled she also told him Costa had arrived with "Melvin" and that "Dennis" drove them there. (R. 30-31). Angelo said there was a red car parked "around the rear of the residence" when he arrived. (R. 29).

Angelo said that during this time, he heard "what sounded to be the rear door of the residence opening up and then someone running through the wooded area." (R. 23). Angelo

¹Costa's trailer was 3.42 miles from the convenience store. (R. 52).

proceeded through the trailer and went to Costa's bedroom. Costa was not inside the trailer. (R. 22-23). Angelo testified that when he went outside to search the back of the trailer, he detained Dennis Lockhart when he walked out of the woods. (R. 31, 34).

The police subsequently seized a pair of jeans and a "hoodie" from the bathroom of the trailer. (R. 23-26, 47). The red car was towed. (R. 47-48). No evidence was seized from the car. (R. 32, 48, 64). However, the police discovered a trail of money (\$53.98) extending from the store for about a block. (R. 48-49, 70). At this spot there were some tire tracks, but there was insufficient detail to match them to the tires on the red car. (R. 50-51, 62-63).

The armed robbery was captured on the security camera and the videotape was admitted into evidence at trial. (R. 12, 89-93).²

Warren identified Costa as the armed robber at a photographic lineup conducted several days after the robbery.³ (R. 52-53, 88-89).

Costa turned himself in to the police three days after the armed robbery. (R. 66-67, 74).

²The videotape is in the possession of this Court.

³Warren testified she recognized Costa, because he was in her son's class at school and she had been to his house on numerous occasions to read Scripture to his grandmother. (R. 83-85).

ARGUMENT

Costa's Issue is not available for appellate review. The trial judge did not err by excluding irrelevant testimony from witnesses that failed to support an alibi defense. (Costa's Issue; Respondent's Issues I & II).

The State presented evidence Costa robbed a convenience store while armed with a gun.

As previously noted, Deputy Angelo testified Costa's grandmother told him Costa had been there "three to five minutes" before he arrived. She also told Angelo that Costa arrived with "Melvin" and "Dennis" drove them there. Angelo recalled there was a red car parked "around the rear of the residence" when he arrived. During this time, Angelo heard "what sounded to be the rear door of the residence opening up and then someone running through the wooded area." Angelo went into the trailer, but Costa was not inside. Angelo went outside to search the back of the trailer. He then detained Dennis Lockhart as he walked out of the woods.

Deputy Ryan Garst was assigned to investigate the armed robbery. (R. 46). Garst testified he proceeded to Costa's trailer. There, he seized clothing from the bathroom and secured the car in the driveway. (R. 46-48). Garst said no evidence was found in the car and tire prints at the scene where money was discovered had insufficient detail to match them to the tires on the car. (R. 48-51). Garst testified Warren identified Costa at a photographic lineup. (R. 52-55).

On cross-examination, Garst testified Costa turned himself in on the Monday following the armed robbery. Lockhart came with him. (R. 67). Garst said that as a result of

his conversation with them, he went to the Department of Motor Vehicles (DMV) and spoke to an employee. The following colloquy occurred:

[DEFENSE COUNSEL:] And she gave you a printout or information that, in fact, corroborated what you had been told that Melvin Holmes was at the Department of Motor vehicles at 1:21 renewing his ID card, correct?

[GARST:] I was not provided a printout. I know we have a printout but I don't believe that I got that.

[DEFENSE COUNSEL:] But you received that information.

[GARST:] Yeah, we received that information, right.

* * *

[DEFENSE COUNSEL:] And then you left from there and you went to Plum's to confine [sic] that Dennis Lockhart worked there and that there was a check available for him to pick up on that day, correct?

[GARST:] That's correct.

[DEFENSE COUNSEL:] And you found that information to be true, right? . . . That was true, Dennis Lockhart worked there and - - -

[GARST:] Yes, that's correct, that's correct.

[DEFENSE COUNSEL:] And when you wrote your report about this case, you decided that that information was not important and you didn't include that information in your report, either, did you? . . . And that you had gone to the DMV, that you had gone to Plum's in an effort to corroborate what you had been told, it's not in your report, is it?

[GARST:] No, ma'am.

[DEFENSE COUNSEL:] Now, you've provided this map for our jury to ascertain where is Plum's, Folly Road Grocery and Preston's home. Obviously when you were investigating this case, you're going to run that route that day to see if you can

find any evidence along the route, right?

[GARST:] From Plum's to - - -

[DEFENSE COUNSEL:] From Folly Grocery to Preston's home.

[GARST:] I'm not sure which route I took.

(R. 68-69).

In response to the questions on cross-examination about Holmes' whereabouts before the robbery, the following occurred on redirect examination:

[ASSISTANT SOLICITOR:] Ms. Campbell asked you about checking out Preston's alibi being with Melvin Holmes at the DMV.

[GARST:] Yes, ma'am.

[ASSISTANT SOLICITOR:] Were you able to determine what time Melvin Holmes was at the DMV?

[GARST:] No, ma'am.

[ASSISTANT SOLICITOR:] Were you able to determine that it was at least an hour before the armed robbery?

[GARST:] Yes, ma'am, I was aware.

[ASSISTANT SOLICITOR:] So his alibi actually puts him coming back toward his house an hour before the armed robbery.

[GARST:] That's correct.

(R. 72-73).

After the State rested its case, the trial judge and counsel discussed the proposed requests to charge. Defense counsel argued Costa was entitled to a charge on alibi, because "[Costa] will give testimony as to where he was at the time the crime was being committed.

And he will have two other witnesses who will give information corroborating his version of where he was.” (R. 97-98). The State objected to the defense presenting testimony from these witnesses. The assistant solicitor noted one witness would testify Holmes was at the DMV one hour prior to the armed robbery. She stated the other witness would testify Lockhart had a check produced for him sometime that day. The assistant solicitor argued this testimony was irrelevant, since an alibi had to establish where the defendant was “so that it makes it impossible for him to have committed this crime, nothing that the defense has presented makes it impossible for him to have committed a crime at 2:30.” (R. 99).

The trial judge addressed the alibi issue as follows:

. . . I don’t think that the fact that Holmes was at the DMV an hour before the crime was committed is relevant. That fact that he was there, in my view, is not relevant until we hear the testimony of Dennis Holmes . . . We’re talking about whether or not somebody from the DMV can testify that Holmes was there an hour before the crime was committed. And in my view . . . it makes no difference where Holmes was at any time in the history of the world. But if [Costa] testifies that he was with Holmes and whatever, they went to the DMV, then you want to offer proof that Holmes was at the DMV.

(R. 102-103).

The trial judge then asked defense counsel, “is there anything about what this witness from the DMV is going to testify to that connects Holmes to Costa [at the DMV]?” Defense counsel admitted, “No, she does not remember.” (R. 103). The trial judge then excluded testimony from this witness. (R. 103).

The trial judge next addressed the issue of testimony “there was a check available for Lockhart to pick up at some point during the course of that day.” (R. 104). The trial judge asked defense counsel, “Are you going to offer any evidence as to what time the check was

picked up?” Defense counsel responded, “[h]e will not.” (R. 104). The trial judge excluded this testimony as speculative and inadmissible. He ruled “there’s got to [be] some evidentiary basis for the jury to make that connection [about when the check was picked up].”

Costa then testified on his own behalf at trial. Costa admitted he fled out the back door of the trailer when Angelo arrived. Costa claimed he ran because he missed a court date for a prior juvenile offense and he thought they had a warrant for his arrest. (R. 107-08, 114-15). Costa testified he told Deputy Garst that “we” were at the DMV “around 1,” and they then went to Plum’s so Lockhart could pick up a paycheck. Costa claimed he told Garst they then went to his house. Costa said they arrived at his house “between 2:20 . . . close to 2:30.” He claimed Lockhart was driving. (R. 110-11, 113). Costa denied he was at the convenience store or committed the armed robbery. (R. 112).

At the conclusion of the defense, the trial judge refused to charge alibi to the jury. (R. 118-19).

On appeal, Costa argues the trial judge erred by refusing to allow the defense to present witnesses corroborating an alibi defense, because the testimony was relevant.⁴ The

⁴As noted, the trial judge refused to admit testimony from the two witnesses. Following Costa’s testimony, he decided not to charge the jury on the law of alibi. There were no objections to the refusal to charge alibi and Costa did not request an instruction on alibi at the conclusion of the jury instructions. Therefore, any argument regarding the refusal to charge on alibi is not preserved for appeal. State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005), *rev’d on other grounds*, 374 S.C. 9, 647 S.E.2d 207 (2007); see also State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999)[to preserve objection to jury charge, defendant must raise the issue at trial].

The State further notes that Costa’s “Statement of Issues on Appeal” contains no reference to the refusal of the trial judge to charge the jury on alibi. (BOA at 3). Therefore, the trial judge’s ruling in this regard is not available for appellate review. See Rule 208(b)(1)(B), SCACR [“Ordinarily, no point will be considered which is not set forth in the

Issue is without merit.

The admission or exclusion of evidence was left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002); State v. Horton, 359 S.C. 555, 598 S.E.2d 279, 285 (Ct. App. 2004). The trial judge's ruling on the admissibility of evidence cannot be reversed on appeal absent an abuse of discretion. State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257, 263 (Ct. App. 2000). An abuse of discretion occurs when the trial judge's ruling is based on an error of law. Id. For an error to warrant reversal, however, the error must result in prejudice to the appellant. Id. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

A defendant has a constitutional right to fully present a defense. State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986); State v. Grace, 350 S.C. 19, 564 S.E.2d 331 (Ct. App. 2002). However, "[t]he right to present a defense is not unlimited, but must 'bow to accommodate other legitimate interests in the criminal trial process.'" State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586, 594 (Ct. App. 2001)[quoting Rock v. Arkansas, 483 U.S. 44, 55 (1987)], *rev'd on other grounds by*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "While defendants are entitled to a fair opportunity to present a defense, that right does not encompass the right to present any evidence, regardless of its admissibility under the rules of evidence." Hamilton, 543 S.E.2d at 594.

statement of the issues on appeal"]; State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)[holding appellate court cannot consider argument not set forth in the statement of issues on appeal]; State v. Crocker, 366 S.C. 394, 621 S.E.2d 890, 893 n 1 (Ct. App. 2005)[declining to address an argument not set forth in the statement of issues on appeal].

“To establish an alibi the accused must show that he was at another specified place at the time the crime was committed, thus making it impossible for him to have been at the scene of the crime.” State v. Robbins, 275 S.C. 373, 271 S.E.2d 319, 320 (1980); accord State v. Anders, 326 S.C. 392, 483 S.E.2d 780 (Ct. App. 1997), *rev’d on other grounds*, 331 S.C. 474, 503 S.E.2d 443 (1998).

Initially, the State notes Costa did not proffer the testimony of the two witnesses.⁵ A proffer of testimony is required to preserve the issue of whether the testimony was properly excluded by the trial judge. A reviewing court may not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been. State v. Hall, 312 S.C. 95, 439 S.E.2d 278 (1994); see also State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984)[stating that failure to make offer of proof prevents appellate court from determining whether exclusion of testimony is prejudicial and thus precludes the appellant from raising the issue on appeal]; State v. Roper, 274 S.C. 14, 260 S.E.2d 705, 708 (1979)[“It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been”]; State v. Hawkins, 310 S.C. 50, 425 S.E.2d 50, 59 (Ct. App. 1992)[holding that since there was no proffer of the expert testimony, the appellate court cannot assess its potential relevance and thereby determine whether the trial judge abused his discretion by the exclusion]. The failure of Costa to proffer the testimony of his witnesses precludes appellate review of the Issue.

⁵Pursuant to the State’s earlier Motion to Strike, this Court excluded a trial transcript that was not proffered to the trial judge in this case. The transcript was purportedly from Costa’s first trial which ended in a mistrial.

In any event and as previously noted, the two witnesses would only purportedly testify: (1) Holmes was at the DMV about one hour prior to the armed robbery, and (2) there was a Plum's paycheck available for Lockhart the day of the armed robbery. As defense counsel readily admitted at trial, however, one witness could not remember whether Costa was at the DMV with Holmes, and the other witness could not testify when the paycheck was picked up (or if it was ever picked up). Therefore, these witnesses would be unable to show with any degree of certainty whether Costa was not at the convenience store at the time of the armed robbery.⁶

A purported alibi which left it possible for Costa to be the guilty person was no alibi at all. Robbins, 271 S.E.2d at 320; see also Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995)[holding trial counsel's failure to contact alleged alibi witness did not prejudice the defendant, where the witness merely placed the defendant in Florida earlier in the morning and the crimes occurred more than eleven hours later in Williamsburg County]. There was, therefore, no error in the trial judge's exclusion of this irrelevant and speculative testimony.

⁶It is interesting to note the jury during their deliberations inquired about the absence of testimony from either Holmes or Lockhart. (R. 144). The testimony of these two witnesses was not, however, proffered by Costa at trial.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

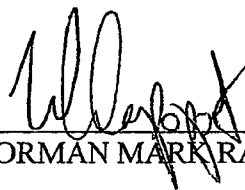
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

I. McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: 

NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 28, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

PRESTON COSTA,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

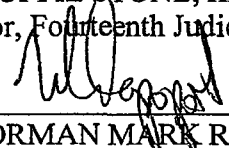
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

I. McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

By: 

NORMAN MARK RAPOPORT

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 28, 2008

RECEIVED
APR 28 2008
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

PRESTON COSTA,

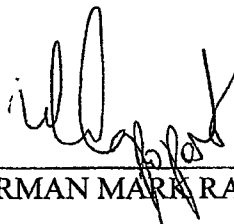
Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Dudek, Chief Deputy Attorney for Capital Appeals, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 28th day of April, 2008.



NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

APR 29 2008

SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Few, Circuit Court Judge

RECEIVED

JAN 15 2006

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRESTON COSTA,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

ROBERT M. DUDEK
Deputy Chief Appellate Defender for Capital Appeals

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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TABLE OF AUTHORITIES

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State v. West, 313 S.C. 426, 438 S.E.2d 256 (1993).....5

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ARGUMENT IN REPLY

The court erred by refusing to allow the defense to present witnesses supporting his alibi defense. The state's position that this did not establish an absolute alibi showing it was impossible for him to have committed the crime misses the point. The testimony was relevant to the jury's consideration of alibi, and the judge's ruling excluding it was arbitrary.

The state on appeal argues that “these [alibi] witnesses would be unable to show with any degree of certainty whether Costa was not at the convenience store at the time of the armed robbery. A purported alibi which left it possible for Costa to be the guilty person was no alibi at all.” *citing Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) which held the defendant was not prejudiced by the failure of trial counsel to call witnesses to testify the defendant was in Florida earlier that morning where the crime did not take place in Williamsburg County until eleven hours later. Brief of Respondent at 14.

Appellant respectfully submits the state is confusing two concepts: The right to an alibi instruction versus the right to call alibi witnesses, and the prejudice prong of an ineffective assistance of counsel claim versus the right to call alibi witnesses at trial.

As this Court will recall, defense counsel told the jury in her opening argument that “Preston Costa was nowhere near the Folly Road Grocery on 5/21/04 . . . Preston Costa with two of his friends . . . at the Department of Motor Vehicles . . . And Nichole Smalls from the DMV will tell you that he was there . . . “ R. 3, l. 13 – 5, l. 17.

Defense counsel also told the jury that after the 1:21 p.m. visit to the DMV “they went to Plums Restaurant . . . you will hear from the owner of that restaurant that . . . Dennis Lockhart, had been working for them and he had a paycheck to pick up that afternoon. And the young men had come down to Plum's to pick up the money, or pick up the paycheck.

Then you will hear testimony that after that, the young men then drove to Preston Costa's home . . . and that they arrived at the home approximately 2:20, 2:25, 2:30, somewhere in there." R. 3, l. 13 – 5, l. 17.

The solicitor then told the judge that the state would object to the defense presenting alibi or corroborating witnesses for appellant. She said that one witness (Smalls) would testify that Melvin Holmes was at the DMV an hour prior to the armed robbery. The next witness (Price) will testify that Dennis Lockhart had a check produced for him sometime that day. The solicitor claimed that an alibi had to establish where the defendant was and had *to make it impossible for him to have committed the crime*. The solicitor's further maintained that the defense could not conclusively prove appellant was elsewhere at the time of the crime. However, defense counsel correctly stated she had the right to corroborate appellant's testimony that he was elsewhere at the time of the robbery. R. 98, l. 3 – 102, l. 3.

Counsel noted the testimony of Officer Garst and she told the judge she wanted to present an alibi defense. The judge refused to allow the defense to call witnesses to support an alibi defense or corroborate appellant's testimony as the judge had done in the first trial that ended in a mistrial. R. 100, l. 1 – 104, l. 23. The judge ruled the evidence was "speculative" and irrelevant and that he would not allow it R. 104, ll. 14 – 23.

As this Court will also recall, appellant then testified that he told Deputy Garst he was with the other young men at the Department of Motor Vehicles and that they then went to Plum's and after that they went to his house. Appellant said he believed Dennis Lockhart gave a statement supporting his alibi defense. R. 110, l. 3 – 111, l. 7. Appellant said Dennis Lockhart was driving that day in Dennis' car. R. 113, ll. 3 – 20; R. 113, ll. 1 – 17.

Appellant denied he was at the grocery store and that he committed the armed robbery. R. 112, ll. 9 – 14.

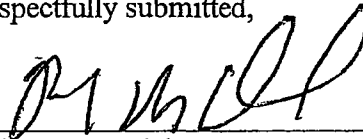
Defense counsel took exception to the judge's refusal to charge alibi. The jury then sent the judge a note during deliberations asking – as the judge put it “to my utter astonishment the jury wants to know ‘why didn’t Dennis Lockhart and Warren Holmes testify?’” (sic). R. 144.

The judge's ruling in outright denying appellant the right to present a defense, and to present defense witnesses to support his alibi was arbitrary and unjustified. The fact that appellant's alibi was not, in the judge's view, watertight did not justify denying him the right to present that defense where the evidence was relevant to the jury's consideration of his defense. See Rule 401, SCRE. See also State v. West, 313 S.C. 426, 438 S.E.2d 256 (1993); Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006).

CONCLUSION

By reason of the argument in this reply brief, and the argument in appellant's initial brief his conviction should be reversed and this case remanded to the Beaufort County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek

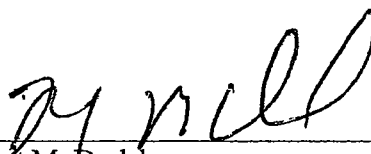
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

April 7, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

A handwritten signature in black ink, appearing to read "R. M. Dudek", is written over a horizontal line.

Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

April 7, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

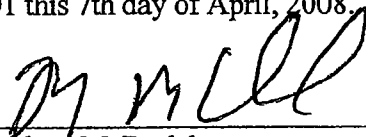
V.

PRESTON COSTA,

APPELLANT

CERTIFICATE OF SERVICE

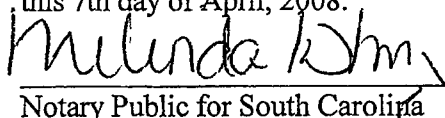
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire, Senior Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201 this 7th day of April, 2008.



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Preston Costa,

Appellant.

Appeal From Beaufort County
John C. Few, Circuit Court Judge

2009 MAY -4 PM 4:43
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT S.C.

Unpublished Opinion No. 2009-UP-158
Submitted March 2, 2009 – Filed March 31, 2009

AFFIRMED

Deputy Chief Defender for Capital Appeals Robert
M. Dudek, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W McIntosh,
Assistant Deputy Attorney General Salley W Elliott,
Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Issac McDuffie Stone, III, of Beaufort, for Respondent.

PER CURIAM: Preston Costa appeals his conviction for armed robbery. Costa alleges the trial court erred in excluding testimony from two witnesses corroborating Costa's alibi defense. We affirm pursuant to Rule 220(b), SCACR, and the following authority: State v. Homewood, 241 S.C. 231, 242, 128 S.E.2d 98, 102-03 (1962) (holding the admissibility of testimony is largely within the discretion of the trial judge and his exercise thereof will not be disturbed on appeal unless there is an abuse of discretion).

AFFIRMED.¹

HEARN, C.J., PIEPER and LOCKEMY, concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

April 30, 2009

REMITTITUR

The Honorable Elizabeth M. Smith
102 Ribaut Road Rm 208
PO Box 1128
Beaufort, SC 29901-1128

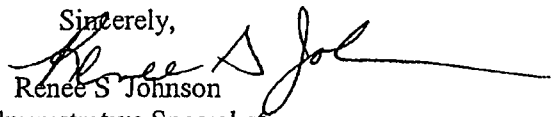
Re The State v Costa, Preston
2004-GS-07-00925

5311829

Dear Mrs. Smith:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The exhibit being returned is State's Exhibit 6 (video tape). Please sign attached copy of this letter and return to acknowledge receipt of this item

Sincerely,

Renee S. Johnson
Administrative Specialist

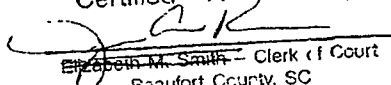

JFB/rj

cc: Appellate Defender Robert M. Dudek
Preston Costa #312879
Senior Assistant Attorney General Norman Mark Rapoport
I McDuffie Stone, III

Receipt Acknowledgement

Name. _____ Date. _____

Certified - A True Copy


Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

2009 MAY -4 PM 4:43
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2009C07023

STATE OF SOUTH CAROLINA)
 County of Beaufort)
Preston Costa #312879)
 Full name and prison number, if any, of applicant.)

In the Court of Common Pleas

2009 MAY 15 PM 2:08
 BEAUFORT COUNTY
 CLERK OF COURT
 BEAUFORT, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

v.)
State of South Carolina)
 Name of Respondent)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Kirkland Correctional Inst. 4344 Broad River Road, Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Beaufort County Court House General Session
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 (a) # 04-GS-07-925 - Armed Robbery
 (b) _____
 (c) _____
4. The date upon which sentence was imposed and the terms of the sentence.
 (a) December 5, 2005
 (b) 25 years -
 (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ A plea of not guilty
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. Appellate Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed - #2009-UP-158
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. (Submitted 3/2/09) Filed March 31, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. (Submitted 3/2/09) Filed March 31, 2009
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Due Process Violation - By The Judge
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Counsel Seriously failed to argue the issue of Alibi witness in a strong manner.
- (b) Judge committed due process violation by not allowing the applicant to call alibi witness
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law ?

YES

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NO

- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. The Court erred by refusing to allow the defense to present witnesses supporting his alibi defense
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. Appellate Court
- ii. _____
- iii. _____
- iv. _____

- (c) the disposition thereof:

- i. Affirmed
- 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.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a)

(b)

(c)

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ✓

(b) your trial, if any? ✓

(c) your sentencing? ✓

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i.

(P.C.R) Tracy Campbell Public defender office

ii.

1905 Duke St. Beaufort S.C. 29902

iii.

Robert M. Duke Appellate Court

(b) the proceedings at which each such attorney represented you:

i.

Post Conviction Relief.

ii.

Appellate Court

iii.

18. State clearly the relief you seek in filing this application.

A New Trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)

VERIFICATION

I, Preston Costa, 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.

Prest Costa

Sworn to and subscribed before me

This 13 day of May, 2009

Hair Brats L.S.

Notary Public for South Carolina

My Commission Expires _____ My Commission Expires November 8, 2017

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Preston Costa, 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 or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Prest Costa
Applicant

Sworn to and subscribed before me

This 13 day of May, 2009

Hair Brats L.S.

Notary Public for South Carolina

My Commission Expires _____ My Commission Expires November 8, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2009-CP-07-2323
	)	
Preston J. Costa, #312879,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief (PCR) application filed May 15, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the June 2004 term of the Beaufort County Grand Jury for armed robbery (04-GS-07-925). Trasi Campbell, Esquire, represented the Applicant. On December 5-7, 2005, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable John C. Few sentenced the Applicant to confinement for twenty-five (25) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek, Esquire, represented Applicant on appeal. After full briefing, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Costa, Op. No. 2009-UP-158 (S.C. Ct. App. filed March 31, 2009). The Remittitur was issued on April 30, 2009.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections, the Record on Appeal, the Final Brief of Appellant, the Final Brief of Respondent, the Final Reply Brief of Appellant, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur issued April 30, 2009.

II.

In his current application for post-conviction relief, the Applicant alleges the following grounds for relief:

1. Ineffective assistance of counsel in that counsel seriously failed to argue the issue of alibi witness in a strong manner.
2. Judge committed due process violation by not allowing Applicant to call alibi witness.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland)

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant asserts that the trial judge committed a due process violation by not allowing Applicant to call an alibi witness. The Respondent submits that this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. In fact, Applicant raised this issue on direct appeal, and the Court of Appeals affirmed the conviction and sentence. Therefore, the Court should summarily dismiss this allegation.

V.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

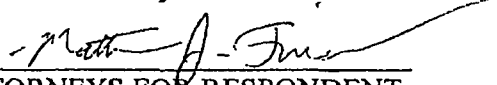
Respectfully submitted,

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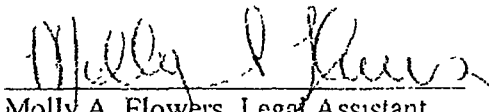
12/30, 2009.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2009-CP-07-2323
	)	
PRESTON J. COSTA, 312879.	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid

Thomas J. Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

DATED this 30th day of December, 2009.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) 09-CP-07-2323

PRESTON COSTA,)
)
 PLAINTIFF,)
)
 vs.) TRANSCRIPT OF RECORD
)
)
THE STATE OF SOUTH)
CAROLINA ,)
)
)

 DEFENDANT.)

APRIL 18, 2011
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

CHARLES T. BROOKS III, ESQ.,
Attorney for the Plaintiff.

MATTHEW J. FRIEDMAN, ESQ.,
Attorney for The State.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
APRIL 18, 2011
(PRESTON COSTA V. STATE OF SOUTH CAROLINA)
(PCR HEARING)
(09-CP-07-02323)

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E X H I B I T S

IDENTIFICATION

ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(CASE NO.: 09-CP-07-2323)

(APRIL 18, 2011 - 10:25 A.M.)

THE COURT: All right, Mr. Brooks.

MR. BROOKS: I was just reading; I was---

THE COURT: You ready to proceed?

MR. BROOKS: We're ready.

THE COURT: Is The State ready to proceed?

MR. FRIEDMAN: Yes, Your Honor.

THE COURT: All right, Mr. Brooks.

MR. BROOKS: Your Honor, we would call Mr. Costa to the
stand.

THE COURT: If you'd come around, please sir?

(WHEREUPON, WITNESS CAME FORWARD.)

(WHEREUPON, PRESTON COSTA WAS DULY SWORN AND TESTIFIED
AS FOLLOWS:)

THE COURT: Sir, if you'll come around here and state
your full name for the record, okay?

MR. COSTA: Preston Costa.

COURT REPORTER: Your Honor, he's going to need to speak
up; I can't hear him. If he can adjust the microphone?

THE COURT: Can you stand up and adjust that microphone,
sir? All right, mash the button right below 'til the green
light come on. There you go, thank you.

COURT REPORTER: Thank you.

1 THE COURT: Speak into it.

2 MR. COSTA: Preston Costa.

3 MR. BROOKS: Ready, Judge?

4 THE COURT: Yes, sir.

5 PRESTON COSTA, DIRECT EXAMINATION BY MR. BROOKS:

6 Q Uh -- Mr. Costa, you brought this application for a
7 P-C-R; is that correct?

8 A Yes, sir.

9 Q And who was your lawyer at your trial?

10 A A Ms. Trasi Campbell.

11 Q And she was Court appointed?

12 A I believe so; yes, sir.

13 Q You didn't go out and pay her, right?

14 A No, sir.

15 Q O- -- okay -- all right. And you were convicted of --
16 of these offenses; is that correct?

17 A Yes, sir.

18 Q Now, the -- the -- what you and I talked about in
19 bringing this, uh app- -- bringing this application is -- did
20 you have -- did you have any alibi witnesses?

21 A Yes, sir.

22 Q Did you tell her about these alibi witnesses?

23 A Yes, sir.

24 Q And who are the names of these alibi witnesses?

25 A Uh -- actually, there are four. Uh -- Lance Price,

1 Nicole Smalls, and Melvin Holmes, and, uh, Dennis Lockhart
2 which we have in, uh, the stand back there.

3 Q So Mr. Lockhart and Mr. Holmes actually are in Court
4 here today; is that correct?

5 A Yes, sir.

6 Q Now, when this crime took place, were you with them?

7 A Yes, sir.

8 Q Where were you?

9 A Uh -- first we were to, uh, the D-M-V. Then we went to
10 Plums. Then we went back to my house.

11 Q D-M-V and where?

12 A Plums restaurant.

13 Q Okay. And then back to?

14 A My house.

15 Q And were they with you the whole time?

16 A Yes, sir.

17 Q And were you with them the whole time?

18 A Yes, sir.

19 Q Did you tell your lawyers---

20 A Yes, sir.

21 Q ---prior to trial?

22 A Yes, sir.

23 Q Did you -- did you know where Mr. Holmes was and
24 Mr. Lockhart?

25 A (No response.)

1 Q Did you know where they were; where they could be found?

2 A Yes, sir.

3 Q And you told her that too?

4 A Yes that I recall; yes, sir.

5 Q But during your trial those guys weren't brought in to
6 testify; is that correct?

7 A No, sir.

8 Q And that's your -- that's your allegation here today, is
9 that your lawyer didn't interview and bring in your alibi
10 witnesses; is that correct?

11 A Yes, sir.

12 Q Okay; is there anything else you want to tell The Court
13 about your P-C-R and about your lawyer other than your alibi
14 witnesses not being called?

15 A Uh -- no, sir.

16 Q And that's pretty much it?

17 A Yes, sir.

18 Q And as a result of that, you want this judge to give you
19 a new trial; is that correct?

20 A Yes, sir.

21 Q Now, you sat here and you heard Judge Brown tell
22 everybody what P-C-R is and what relief you get and what that
23 means; is that correct?

24 A Yes, sir.

25 Q And you totally understand that?

1 A Yes, sir.

2 Q As a matter of fact, you and I discussed that before?

3 A Yes, sir.

4 Q And you still want your new trial; is that correct?

5 A Yes, sir.

6 Q Okay.

7 MR. BROOKS: No other questions, Judge.

8 MR. FRIEDMAN: One thing, Your Honor; just briefly.

9 PRESTON COSTA, CROSS-EXAMINATION BY MR. FRIEDMAN:

10 Q Mr. Costa, you, uh -- you testified that you told
11 Ms. Campbell about the alibi witnesses?

12 A Yes, sir.

13 Q Um -- did she tell you like potential problems about
14 calling them to trial?

15 A Uh -- she thought it wouldn't-a been best to call them.

16 Q I'm sorry?

17 A She said that she didn't think it would be best to call
18 them.

19 Q Um -- do you recall whether or not she asked for an
20 alibi instruction at -- at trial from the Judge?

21 A Uh -- it's been a while right now and I can't, uh...

22 MR. FRIEDMAN: I have nothing further, Your Honor.

23 MR. BROOKS: No other questions of this witness, Judge.

24 THE COURT: All right, sir, you may step down. Thank
25 you, Mr. Costa.

1 (WHEREUPON, WITNESS STEPPED DOWN.)

2 MR. BROOKS: We would call Melvin Holmes to the stand.

3 (WHEREUPON, WITNESS CAME FORWARD.)

4 THE CLERK: Here, sir; put your left hand on the Bible,
5 raise your right hand please.

6 (WHEREUPON, MELVIN HOLMES WAS DULY SWORN AND TESTIFIED
7 AS FOLLOWS:)

8 THE CLERK: Please be seated.

9 THE COURT: Sir, if you'll come around and state your
10 full name for the record please? And spell your last name
11 please.

12 MR. HOLMES: Melvin Holmes; H-O-L-M-E-S.

13 THE COURT: Thank you, sir. Mr. Brooks?

14 MELVIN HOLMES, DIRECT EXAMINATION BY MR. BROOKS:

15 Q Mr. Holmes, you know Mr. Costa?

16 A Yes, sir.

17 Q How do you know him?

18 A My best friend.

19 Q Okay; now, do you remember him coming to trial on these
20 charges?

21 A Yes, sir.

22 Q Okay; did anybody call you and talk to you about what
23 you knew about this case?

24 A No, sir.

25 Q Prior to trial, nobody at all?

1 A No, sir.

2 Q Not until you talked to me, is that right?

3 A Yes, sir.

4 Q Now, on the day that these -- this stuff happened --
5 this crime happened, uh, was Mr. Costa with you?

6 A Yes, sir.

7 Q Do you remember -- do you remember him being with you?

8 A Yes, sir.

9 Q And how do you remember that?

10 A 'Cause, um, uh, we was at his house that day and
11 Mr. Lockhart came to pick us up to take me to the
12 D-M-V to get my I-D.

13 And then when we left from the D-M-V we went to Plums to
14 pick up Mr. Lockhart's check.

15 Q And was Mr. Costa with you the whole time?

16 A Yes, sir.

17 Q Do you remember the times?

18 A Um -- to tell you the truth, I really can't recall.

19 Q But you -- are you -- are you sure that it was going on?
20 That he was with you during the time that this crime
21 occurred?

22 A Yes, sir.

23 Q Okay; and you've never talked to his lawyer about it, is
24 that right?

25 A Not once.

1 Q Okay; and do you remember when you-all separated? When
2 he was no longer with you? Where you -- whether you went
3 home or whatever? Do you remember that?

4 A Yes, sir.

5 Q Was that at night?

6 A That was when the Police came into his house.

7 Q So he was with you the entire time up until the Police
8 came to arrest him?

9 A Yes, sir.

10 Q Okay. Do you remember what time you-all got together --
11 or approximately? I know it's been a while.

12 A Yeah, it -- I know it was, um -- I can't really recall.

13 Q But it was in the daytime?

14 A Yes, sir; it was in daytime.

15 Q Okay, and was it in the morning?

16 A Uh -- approximately about ten, eleven o'clock.

17 Q Okay, and -- but it -- but it -- it definitely was
18 before twelve?

19 A Yes, sir.

20 Q And during that whole time you were with Mr. Costa and
21 Mr. Costa was in your presence?

22 A Yes, sir.

23 Q And no law enforcement personnel talked to you and no
24 lawyer on his behalf talked to you, is that correct?

25 A That's correct.

DENNIS LOCKHART, DIRECT EXAMINATION BY MR. BROOKS

1 Q And you live -- what's your address?

2 A

3 Q Okay, and you would have been here to testify for him
4 like you're testifying today?

5 A Yes, sir.

6 Q Okay.

7 MR. BROOKS: No other questions.

8 THE COURT: Thank you, Mr. Brooks. Cross-examination?

9 MR. FRIEDMAN: No questions, Your Honor.

10 (WHEREUPON, WITNESS STEPPED DOWN.)

11 MR. BROOKS: We call Mr. Dennis Lockhart.

12 (WHEREUPON, WITNESS CAME FORWARD.)

13 THE CLERK: Left hand on the Bible, raise you right
14 hand.

15 (WHEREUPON, DENNIS LOCKHART WAS DULY SWORN AND TESTIFIED
16 AS FOLLOWS:)

17 THE CLERK: Please be seated.

18 THE COURT: Sir, state your full name for the record
19 spelling your last name please.

20 MR. LOCKHART: Dennis Lockhart, L-O-C-K-H-A-R-T.

21 THE COURT: Pull that mic -- if you can pull that mic
22 down if you would, please sir? Look here, pull the whole arm
23 down. There you go, thank you.

24 Mr. Brooks?

25 DENNIS LOCKHART, DIRECT EXAMINATION BY MR. BROOKS:

1 Q Mr. Lockhart, do you know Mr. Costa?

2 A Yes, sir.

3 Q How do you know him?

4 A Friends.

5 Q Okay; do you remember the day that this crime took
6 place?

7 A Yes, sir.

8 Q Um -- do you remember being around Mr. Costa? Can you
9 tell me about it?

10 A Uh -- I met them at, um, his house and I took Mr.---

11 Q What -- what -- you -- you're pointing. When you met
12 him at his -- who are you talking about? Whose house?

13 A Um -- Preston.

14 Q Okay; go ahead.

15 A And I took Melvin to the, um, D-M-V. And after from the
16 D-M-V we left and I went to Plums, got my check, and then we
17 went back to his house.

18 Q Was Mr. Costa with you that whole time?

19 A Yes, sir.

20 Q And did you stay with him the whole time?

21 A Yes, sir.

22 Q Now, the only time that he might have been out of your
23 presence is when you went in to get your check and Mr. Holmes
24 stayed in the car; is that right?

25 A Yes, sir.

1 Q And then -that would-a took maybe a minute or two, is
2 that right?

3 A Yes, sir.

4 Q Then you came back?

5 A Yes, sir.

6 Q 'Cause you were the one driving?

7 A Yes, sir.

8 Q Okay; and, were you at his house when he got arrested?

9 A Yes, sir.

10 Q So, do you recall about what time you came by in the car
11 and picked everybody up?

12 A Uh -- I believe it was in the morning; I can't
13 remember -- I can't remember the exact time.

14 Q Okay; but up until -- but -- but after you picked him up
15 in the morning, he was with you the entire time with the
16 exception of you getting out of the car and going to get your
17 check?

18 A Yes, sir.

19 Q Did anybody call to talk to you about what you knew
20 about this case?

21 A No, sir.

22 Q No law enforcement officers?

23 A No, sir.

24 Q His trial lawyer or anybody on his trial lawyer's
25 behalf?

1 A No, sir.

2 Q Um -- matter of fact, the first time you talked about it
3 was when I talked to you out there in the hall; is that
4 right?

5 A Yes, sir.

6 Q Okay. And you're sure of this now?

7 A Yes, sir.

8 Q Okay. Answer any questions for the Attorney General.

9 THE COURT: Mr. Friedman?

10 MR. FRIEDMAN: No questions, Your Honor.

11 THE COURT: All right, sir, you may step down
12 Mr. Lockhart.

13 (WHEREUPON, WITNESS STEPPED DOWN.)

14 THE COURT: Mr. Brooks?

15 MR. BROOKS: I beg The Court's indulgence.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 CONFERENCE, OFF THE RECORD.)

18 (WHEREUPON, COURT RESUMED.)

19 MR. BROOKS: No other -- no other -- no other questions,
20 no other witnesses. That's the Applicant's case, Judge.

21 THE COURT: All right. Mr. Friedman?

22 MR. FRIEDMAN: Thank you, Your Honor. The State would
23 call Trasi Campbell.

24 (WHEREUPON, WITNESS CAME FORWARD.)

25 (WHEREUPON, TRASI CAMPBELL WAS DULY SWORN AND TESTIFIED

TRASI CAMPBELL, DIRECT EXAMINATION BY MR. FRIEDMAN

1 AS FOLLOWS:)

2 THE CLERK: Be seated.

3 TRASI CAMPBELL, DIRECT EXAMINATION BY MR. FRIEDMAN:

4 Q Good morning, Ms. Campbell.

5 A Good morning.

6 Q How long have you been practicing law?

7 A I was admitted to The Bar in 1991.

8 Q How much of that time has been in criminal law?

9 A Um -- ninety-five percent.

10 Q And you were appointed to represent Mr. Costa in this
11 case?

12 A I was.

13 Q Do you recall about how many times you met with him?

14 A Over twenty.

15 Q Do you recall if you discussed the elements of the
16 charge and what The State is required to prove?

17 A Multiple times.

18 Q I believe he was charged with armed robbery; is that
19 correct?

20 A He was.

21 Q Uh -- did you discuss potential defenses with him?

22 A I did.

23 Q All right, what was his defense at trial?

24 A Alibi -- (after pause) and mistaken identity.

25 Q I'm sorry?

1 A And mistaken identity -- got the wrong person.

2 Q Did he file any Brady or Rule 5 motions?

3 A I did.

4 Q Uh -- did he give you the names of any potential alibi
5 witnesses?

6 A He did, and the Rule 5 materials gave me those names as
7 well.

8 Q Did you have a chance to speak with any of those alibi
9 witnesses?

10 A I did.

11 Q And -- and who was that?

12 A I talked with Mr. Lockhart at the Beaufort County
13 Detention Center on August 9th 2004.

14 Q Um -- and what did you discuss with him?

15 A I discussed, uh, what his, uh, testimony may be, uh, in
16 reference to Preston's case.

17 Q And did you think he would be a helpful witness at
18 trial?

19 A I did not.

20 Q Why is that?

21 A I felt as if his credibility would be an issue and a
22 negative impact on my presentation of the case on behalf of
23 Mr. Costa.

24 Mr. Lockhart, um, was a current client of mine at that
25 time with a -- a pending armed robbery and other legal

1 issues.

2 Q Were you able to speak with any other witnesses?

3 A Yes, I did.

4 Q Who was that?

5 A I spoke with the owner of Plums Restaurant and I spoke
6 with the represent from the D-M-V in my efforts to establish
7 the timeline on the alibi for Mr. Costa.

8 I have no independent notes in reference to Mr. Holmes,
9 as I do for Mr. Lockhart. However, my investigator's notes
10 in my file reflect a conversation with Mr. Holmes confirming
11 his position that he was with Mr. Costa at the D-M-V on the
12 day of the armed robbery.

13 Q Was there anything to establish a timeline as far as,
14 uh, when they were at the D-M-V and when the, uh, armed
15 robbery took place?

16 A Yes, there was.

17 Q And what was that?

18 A Well, we have the time that the armed robbery takes
19 place on Saint Helena. I was able to backtrack, uh, and
20 obtain the business records, um, from the Department of Motor
21 Vehicles, and the testimony from the D-M-V clerk, and the
22 receipt that Melvin Holmes was at the D-M-V, um, at a certain
23 time. I -- I want to say maybe an hour before the armed
24 robbery.

25 Um -- then I was able to trace the step to Plums

1 Restaurant. Uh -- Chip Dinkins is the owner of Plums. He
2 was able to come in and testify that Dennis Lockhart's check
3 was picked up, um, at -- at approximately that time, if you
4 will. During the course of the day, the check was picked up
5 and -- and gone.

6 Um -- and so that gave us a starting point then from
7 certainly the D-M-V to, uh, Folly Road on Saint Helena, uh,
8 in terms of how fast can you get from one point to next, and
9 that was our timeline.

10 Q So you decided not to call, uh, Mr. Holmes and
11 Mr. Lockhart as witnesses at trial?

12 A I did; there were three trials in this case. In the
13 first trial I made that decision and we had, um, a hung jury.

14 In the second trial I made that decision as well with
15 Mr. Costa and an -- an additional hung jury.

16 And in the third trial, with the same evidence, Judge
17 Few refused to grant the alibi charge and Mr. Costa was
18 convicted.

19 Q So you did not call them in -- in any of the three
20 trials?

21 A I did not. (After pause) I would add, um, in addition,
22 as part of, uh, the decision-making process on that, um --
23 and I believe I have related this to you earlier -- um, both
24 Mr. Holmes and Mr. Lockhart were part of the six-pack photo
25 lineup, uh, that was admitted into evidence in -- in the

1 trial in all three cases.

2 MR. FRIEDMAN: (After pause) Beg The Court's indulgence.

3 Q And Judge Few did not charge alibi during his jury
4 instructions; is that right?

5 A He would not do that, no.

6 MR. FRIEDMAN: I have nothing further, Your Honor.

7 THE COURT: Mr. Brooks, cross-examination?

8 TRASI CAMPBELL, CROSS-EXAMINATION BY MR. BROOKS:

9 Q Ms. Campbell---

10 A Yes, sir?

11 Q ---what do you recall about Judge Few -- the reasoning
12 behind Judge Few not allowing the alibi instruction?

13 A He -- if I recall correctly, he said he wanted more
14 than, um, the D-M-V clerk and more than the owner of Plums to
15 establish an alibi.

16 He -- I guess his logic was, if I recall correctly,
17 that he wanted, uh, the actual people who were with
18 Mr. Costa.

19 Q And the first two occasions that you had trials---

20 A Correct.

21 Q ---those prior -- those judges allowed you to have alibi
22 instruction, is that correct?

23 A Correct.

24 Q Based on that same evidence?

25 A Correct, based on the testimony of the witnesses, yes.

1 Q And both of those ended up in hung juries?

2 A That's correct.

3 Q Now, Judge Few had said he wanted the actual people, and
4 one of the---

5 A I -- I -- I'm just not sure. I -- I believe that was
6 it; I don't remember what he said.

7 Q Okay. And one of the actual people was Mr. Holmes?

8 A Correct.

9 Q That you said you did not talk to, is that correct?

10 A I have no records of me speaking to Mr. Holmes.

11 Q But -- and -- and Preston told you about Mr. Holmes?

12 A I knew about Mr. Holmes, yes.

13 Q Okay. And Mr. Holmes was not called to testify at any
14 of those trials, specifically the third one in which
15 Mr. Costa was convicted?

16 A Correct.

17 Q But you did talk to Mr. Lockhart?

18 A Correct.

19 Q He was a client of yours?

20 A Correct.

21 Q And even though you weren't talking to him at the best
22 location, he did confirm what Mr. Costa had told you; isn't
23 that correct?

24 A According to my notes, he confirmed.

25 Q Okay; yet -- well, let me ask you this.

1 A Uh-huh?

2 Q During his trial -- Mr. Costa's trial -- was
3 Mr. Lockhart still a resident of Beaufort County Detention
4 Center?

5 A As far as I know; I honestly can't say.

6 Q Okay. He may have or may not have been; okay.

7 A I don't know.

8 Q But did you check out Mr. Holmes? Where -- where the --
9 what his situation was from a criminal standpoint in his --
10 as opposed to Mr. Lockhart?

11 A I was familiar with both Melvin Holmes and Dennis
12 Lockhart, and felt that, um, their credibility would have
13 been an issue and would have been more of a problem for
14 Preston. Particularly since they were also in -- in the
15 photo lineup. Um -- I felt that that was damaging and, um,
16 wasn't sure how to overcome that other than trying to
17 establish the alibi timeline in the manner that didn't hurt
18 him.

19 Q Now, Mr. Friedman asked you a question and you said that
20 you saw that they were in the lineup; is that correct?

21 A That's correct.

22 Q Was Mr. Holmes picked out of the lineup?

23 A No.

24 Q Was Mr. Lockhart picked out of the lineup?

25 A No; only Preston.

1 Q They were -- they -- their pictures just happened to be
2 submitted as a part of the police's investigation for
3 purposes of a lineup to the -- I guess in this case the
4 victim?

5 A Correct -- right, they're booking photos, right.

6 Q Right, and they weren't picked out?

7 A No -- no.

8 Q Do you know how the, uh, police come up with the, uh,
9 photo lineups?

10 A They appear to be booking photos.

11 Q Okay. Isn't one of the things that they do when they
12 get other pictures---

13 A Uh-huh?

14 Q ---is they take them from the D-M-V?

15 A I don't know.

16 Q Okay.

17 A I don't know how they did that six-pack lineup.

18 Q Okay; but, just for clarification---

19 A Uh-huh?

20 Q ---those two guys were not picked out?

21 A I have no recollection of anyone other than Preston
22 being identified as the perpetrator of this crime; correct.

23 Q So it's possible that even though their photos were
24 submitted and they were not picked out that they were still
25 telling the truth in confirming what Preston said? Which

1 was, it wasn't me -- I wasn't there?

2 A It's totally possible.

3 Q Okay. But, of course, those individuals were never
4 called?

5 A I did not call them.

6 Q Okay.

7 MR. BROOKS: No other questions.

8 MR. FRIEDMAN: Nothing further, Your Honor.

9 THE COURT: Ms. Campbell, you may step down.

10 MS. CAMPBELL: Thank you, Your Honor.

11 (WHEREUPON, WITNESS STEPPED DOWN.)

12 THE COURT: Anything else from The State?

13 MR. FRIEDMAN: No other witnesses from The State, Your
14 Honor.

15 THE COURT: All right, Mr. Brooks, be happy to hear to
16 (sic) you with regard to any argument that you have.

17 MR. BROOKS: Judge, I'll be brief. It's a brief P-C-R.
18 Uh -- basically, I'm sure Your Honor has gathered from this,
19 Mr. Costa's position is, it wasn't me -- wasn't there.

20 He -- he's testified he told his lawyer, provided the
21 alibi defense. And, what's most important, Judge, is he got
22 witnesses here who confirm this is where he was, that they
23 were with him at the actual time all this went down. And,
24 that these individuals were not picked out of -- picked out
25 of a lineup and their faces -- photos were submitted.

1 They're here to testify and provide this man an alibi,
2 which is what they would have testified to at trial.

3 Um -- and I would presume to The Court that they're easy
4 to contact considering they're here and they're not even
5 under subpoena.

6 Uh -- we feel that this is evidence to show that, uh, my
7 client, uh, should have been pro- -- allowed to have these
8 witnesses at his trial; that that would have made a
9 significant difference in the outcome and he would have been
10 acquitted.

11 Um -- and we would ask The Court to give him a new
12 trial. I can't say a hundred percent 'cause there's no
13 guarantees in life, Judge, but I feel that this situation --
14 not having them -- prejudiced him. As -- as such, he should
15 be granted a new trial in this matter.

16 **THE COURT:** Thank you, Mr. Brooks. Mr. Friedman?

17 **MR. FRIEDMAN:** Briefly, Your Honor. Uh -- The State
18 would submit that the Applicant has failed to meet his
19 burden.

20 **COURT REPORTER:** Repeat please?

21 **MR. FRIEDMAN:** I'm sorry. The State would submit that
22 the Applicant has failed to meet his burden of showing
23 ineffective assistance of Counsel.

24 Um -- Counsel made a strategic decision not to call
25 Mr. Holmes and Mr. Lockhart as witnesses at trial.

1 Um -- she testified that she spoke with Mr. Lockhart,
2 uh, at Beaufort County Detention Center prior to the trial;
3 she did not think he was credible.

4 Uh -- her investigator spoke with Mr. Holmes.

5 Um -- both of these individuals were in the photo
6 lineup, uh, which was in evidence, uh, at trial, uh, and she
7 didn't think either one of them would be helpful at trial.

8 Um -- we would submit that that was a reasonable --
9 reasonable trial strategy.

10 Um -- the case had been tried two times before this
11 and -- and they -- neither one of them testified at either
12 one of those trials and both a hung jury.

13 Um -- and we would submit that her performance was not
14 deficient and we ask that The Court deny and dismiss the
15 application.

16 MR. BROOKS: Judge -- Judge, if I may reply?

17 THE COURT: Yes, sir; I'll be happy to hear from you.

18 MR. BROOKS: Uh -- Judge, we haven't heard from The
19 State as far as why these guys were not credible. We haven't
20 heard anything; they just said they weren't credible.

21 Now, we could presume that since Mr. Lockhart was
22 actually in jail that maybe he might not have been the most
23 credible 'cause of where the conversation was taking place
24 and the fact that he was in jail. But, of course, that -- we
25 haven't heard anything to apply that way to Mr. Holmes, who

1 will also testify that he was with Mr. Costa during this
2 duration of -- of time.

3 Uh -- Judge, you know, we've -- we've submitted -- we
4 have provided our burden and met our burden to The Court of
5 showing ineffective assistance of Counsel and then also
6 showing how it prejudiced him.

7 Um -- Counsel testified that two mistrials with the same
8 evidence -- same evidence meaning not these two guys but the
9 D-M-V clerk and the owner of Plums -- that those were
10 mistrials. The third one, when not granted the alibi, uh,
11 charge, the client was convicted. Counsel testified that she
12 thought maybe the Judge wanted the actual people who were
13 there or with Mr. Costa.

14 Mr. Costa had given her that; these guys are here to
15 testify.

16 We haven't heard anything about why they were not
17 going to be credible. We may presume that just because
18 Mr. Lockhart's in jail that he might not be the most
19 credible, even though he confirmed being and confirmed now
20 that he was with Mr. Costa.

21 We haven't heard anything to talk about why Mr. Holmes'
22 credibility would not be the best. He confirms what
23 Mr. Costa had told her then and says today. And, we've got a
24 note where the investigator may have talked to him. Of
25 course, we don't have that investigator here. We've got

1 the -- the witnesses here to testify.

2 Judge, we would submit that we have more than met our
3 burden in this matter and Mr. Costa should get a new trial.

4 THE COURT: Anything else from The State?

5 MR. FRIEDMAN: No, Your Honor.

6 THE COURT: All right, I'll let you gentlemen know,
7 okay? Thank you, Mr. Brooks.

8 (WHEREUPON, HEARING ENDED AT 10:54 A.M.)

9 *****END OF REQUESTED TRANSCRIPT*****
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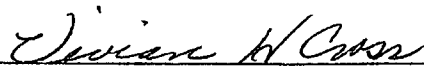
STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON THE 18TH DAY OF APRIL 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JANUARY 15, 2012


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Preston Costa, #312879,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-07-2323

ORDER OF DISMISSAL

11 MAY 16 PM 4:46
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 15, 2009. The Respondent made its Return on December 30, 2009. An evidentiary hearing into the matter was convened on April 18, 2011 at the Colleton County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Trasi Campbell, Esquire, also testified at the hearing. Melvin Holmes and Dennis Lockhart also testified at the PCR hearing. This Court had before it the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Record on Appeal, the Final Brief of Appellant, the Final Brief of Respondent, the Final Reply Brief of Appellant, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur issued April 30, 2009, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the June 2004 term of the Beaufort County Grand Jury for armed robbery (04-GS-07-925). Trasi Campbell, Esquire, represented the Applicant. On December 5-7, 2005, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable John C. Few sentenced the Applicant to confinement for twenty-five (25) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek, Esquire, represented Applicant on appeal. After full briefing, the South Carolina Court of Appeals affirmed the conviction and sentence State v. Costa, Op. No. 2009-UP-158 (S.C. Ct. App. filed March 31, 2009). The Remittitur was issued on April 30, 2009.

ALLEGATIONS

In his PCR application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel failed to call Dennis Lockhart and Melvin Holmes as alibi witnesses at trial.
2. Judge committed due process violation by not allowing Applicant to call alibi witness.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80

(2003).

Applicant testified that he told counsel about his alibi witnesses, including Melvin Holmes and Dennis Lockhart. He testified that counsel told him it would not be best to call these witnesses at trial.

Melvin Holmes testified that Applicant was his best friend. He asserted that he did not talk with anyone about the case. He testified that he would have testified on Applicant's behalf. Mr. Holmes testified that he did not recall times, but he was with Applicant and Mr. Lockhart at the DMV and Plum's restaurant on the day of the crime.

Dennis Lockhart testified that Applicant was his friend. He asserted that he was with Applicant on the date of the crime. He testified that no one spoke with him about the case.

Trial counsel testified that she met with Applicant more than 20 times prior to trial. She testified that Applicant told her about the potential alibi witnesses, and the Rule 5 materials also referenced these witnesses. Counsel testified that she spoke with Dennis Lockhart at the Beaufort County Detention Center when he was incarcerated for a pending armed robbery charge. She asserted that she did not think Mr. Lockhart would be a credible witnesses. She contended that Mr. Lockhart would not have helped the Applicant at trial. Counsel also testified that her investigator spoke with Melvin Holmes. She asserted that Holmes' receipt from the DMV was one hour before the armed robbery.

Counsel testified that this was Applicant's third trial. She testified that the first two trials each resulted in a hung jury. She asserted that she did not call Mr. Lockhart or Mr. Holmes as a witness at any of the three trials. Counsel testified that Mr. Lockhart and Mr. Holmes were both in the photo lineup, which was in evidence.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that counsel’s testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred

with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to call Mr. Lockhart and Mr. Holmes as witnesses at trial. Testimony from Mr. Lockhart and Mr. Holmes would not have established a true alibi because Applicant could have been present with these witnesses at the DMV and Plum's restaurant and still committed this armed robbery. Counsel was unable to establish a timeline of events for the entire day in question. Moreover, counsel testified that she did not think the witnesses would be credible or helpful to Applicant's case. The two witnesses were also in the photo lineup, which was in evidence at trial.

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for

employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Here, counsel testified that she believed these two witnesses would have had a negative impact on her presentation of the case. This Court finds that counsel made a reasonable strategic decision under the circumstances.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, including due process violation by the trial court not allowing Applicant to call alibi witnesses, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

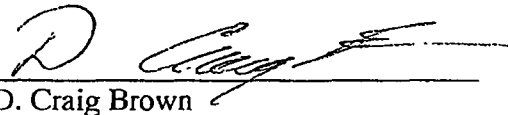
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of April, 2011.


 D. Craig Brown
 Presiding Judge
 14th Judicial Circuit

Florence, South Carolina.

ARREST WARRANT
E- 311829
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Beaufort

THE STATE
against 20040521241
Costa, Preston, Jamel
Address _____
St Helena, SC
Phone _____ SS# _____
Sex M Race B Height 508 Weight 170
DL State N/A DL # None
DOB _____ Agency ORI# 0070000
Prosecuting Agency BCSO
Prosecuting Officer L/Cpl R. Garst
Offense Armed Robbery
Offense Code _____
Code/Ordinance Sec 16-11-330(A)

This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of
Beaufort The accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge (L.S.)
Date _____

RETURN
A copy of this arrest warrant was delivered to
defendant Costa, Preston
on 5-25-04
Lcp. McShullen 4141
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO
Judge D. Smith

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Beaufort)

AFFIDAVIT

Personally appeared before me the affiant L/Cpl R. Garst who
being duly sworn deposes and says that defendant Costa, Preston
did within this county and state on 05-21-04 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars
DESCRIPTION OF OFFENSE Armed Robbery 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 intentionally and willfully violated the criminal laws of the state of SC
on 05-21-04 at the Folly Road Grocery Store located at 489 Seaside Road St Helena,
Beaufort County, SC The defendant did enter into the business and pointed a handgun
at Lisa Warren, the store manager. The defendant attempted to conceal his identity
with a red bandana but Warren identified the defendant when the bandana fell from
around his mouth The affiant has witness to prove same

Sworn to and subscribed before me)
on 5/24/04)
[Signature] (L.S.))
Signature of Issuing Judge

[Signature]
Signature of Affiant
Affiant's Address 2001 Duke Street Beaufort, SC
Affiant's Telephone 470-3217

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Beaufort)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY
It appearing from the above affidavit that there are reasonable grounds to believe that
on 05-21-04 defendant Costa, Preston, Jamel
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below
DESCRIPTION OF OFFENSE:

Armed Robbery 16-11-330(A)
Now, therefore, 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
[Signature] (L.S.)) Judge's Address P.O. Box 2207
Signature of Issuing Judge) Beaufort, SC 29902
Judge Code _____) Judge's Telephone _____
Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

2004-GS-07-00925

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RANDOLPH MURDAUGH III. , Solicitor

COURT OF GENERAL SESSIONS

06/24/2004

TERM

ARREST WARRANT NUMBER

11829

THE STATE
VS.

6/25/2004

ACTION OF GRAND JURY

True Bill

COSTA, PRESTON JAMEL

White Culbertson

1-14-05

VERDICT

(GUILTY)

recalled

Indictment for

*offered by
Judge*

Robbery/Armed Robbery

9-15-05

SC Code : 16-11-0330(A)

CDR Code: 0139

Class:

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

INDICTMENT
2004-GS-07-00925

At a Court of General Sessions, convened on 06/24/2004 the
Grand Jurors of BEAUFORT COUNTY present upon their oath:

Robbery/Armed Robbery
=====
16-11-0330(A)

PRESTON COSTA WILLFULLY AND UNLAWFULLY VIOLATED THE CRIMINAL LAWS OF THE
STATE OF SC ON 5/21/04 AT FOLLY ROAD CROCCERY STORE LOCATED AT 489 SEASIDE
ROAD, ST. HELENA, BEAUFORT COUNTY, SC. THE DEFENDANT DID ENTER THE BUSINESS
WITH THE INTENT TO COMMIT A CRIME THEREIN, HE POINTED A HANDGUN AT LISA
WARREN, THE STORE MANAGER, THREATENED TO KILL HER AND TAKE APPROX. \$400.00.

Against the peace and dignity of the State, and contrary to the statute
such case made and provided.

[Handwritten signature]

SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEBeaufort

VS.

Preston J Costa

AKA:

Race:

DOB:

ex: M

SS#:

Age:

Address:

City, State, Zip

DL#

S.T. Helena, SC 29520

SID#

INDICTMENT/CASE#

2004 -GS- 07 - 925

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

E-311829May 21, 200416-11-(330(A))0 / 1 / 3 / 9☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0, 1, 3, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cynthia M. Tanner
SolicitorPaul Costa
DefendantTraci Campbell
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee. \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73 3, 1B TP (Law Enforce. Funding)

§33 7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$	
\$100	\$	<u>100.00</u>
\$100	\$	
\$12	\$	
\$500	\$	
\$25	\$	<u>25.00</u>
\$100	\$	
\$50	\$	
\$40/ea	\$	
\$3.25	\$	<u>3.25</u>
TOTAL	\$	<u>128.25</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel, §35 13 TP
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

Court Reporter

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)