

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Hampton County
Deadra L. Jefferson, Circuit Court Judge

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APR - 9 2014

S.C. Supreme Court

SHAWN DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2013-002560

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF HAMPTON

1
} COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 vs.

7 SHAWN DAVIS and DERRICK ADKINS,

8 DEFENDANTS.

} TRANSCRIPT

} OF

} RECORD

} 2010-GS-25-582, 584

} 2010-GS-25-585, 587

9
10 August 2nd - 4th, 2010
Hampton, South Carolina

11
12 B E F O R E:

13 THE HONORABLE D. CRAIG BROWN, Judge, and a jury.

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25 Transcribed by Pamela E. Green, Circuit Court Reporter

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P R O C E E D I N G S

(WHEREUPON, the following takes place outside the hearing of the entire jury panel.)

THE COURT: Is the State ready to proceed?

SOLICITOR STONE: State's ready, Your Honor.

THE COURT: Defense ready to proceed?

MR. BAUER: Yes, sir.

MR. RUFFALO: Yes, Your Honor.

THE COURT: I believe we first have a motion pursuant to Jackson v. Denno, is that correct?

SOLICITOR STONE: Yes, Your Honor.

THE COURT: Defense.

MR. BAUER: I'm sorry. I --.

SOLICITOR STONE: I'm sorry. Is there a motion for a Jackson/Denno hearing at this time?

THE COURT: Yes.

SOLICITOR STONE: My understanding, Your Honor, is -- we already had -- there are two defendants in this case, Shawn Davis and Derrick Adkins. We're already done a Jackson, Johnson/Denno hearing on Shawn Davis.

My understanding, before the jury was coming in today, that we would do the severance motion and anything concerning Bruton, which I think the redacted statements have now been shown to counsel, and then go on and select

1 the jury at three o'clock and then the Jackson/Denno hearing
2 for Derrick Adkins and then start the openings in these
3 cases tomorrow morning.

4 THE COURT: I think you're exactly right. I apologize.

5 SOLICITOR STONE: Thank you, Your Honor.

6 THE COURT: All right. I'll hear from the defense at
7 this time.

8 MR. BAUER: Your Honor, I'm Sam Bauer on behalf of
9 Derrick Adkins, and we would move to separate the trials.
10 Although criminal defendants who are jointly tried for
11 murder are not entitled to separate trials as a matter of
12 right, a motion for severance is left in the discretion of
13 the trial judge. The general rule is, is, arguably, against
14 my position where the indictments allege similar acts and
15 where the evidence introduced encompasses the acts of both
16 defendants particularly. The case law seems to be against
17 us in terms of State v. Dennis and State v. Thompson.

18 However, Your Honor, we would argue in, that in the
19 Thompson case, the holding of the Supreme Court was that the
20 defendant must demonstrate some prejudice in allowing the
21 joint trial, and in this case the prejudice is that there
22 are so many overlapping Bruton and Crawford issues, even
23 with the redacted statements, which I viewed, that when the
24 solicitor intends to introduce videotapes of one defendant
25 saying things about what the other did, which there's no way

1 to deny the implication, although he doesn't say my client's
2 name, he says we all did this, we all did this, we all did
3 that.

4 There's no way around the implications that it's, it's
5 my client, that the direct implication which says we all did
6 it doesn't have to be by name. The prejudice is real and
7 there's no way for me to cross-examine a videotape of a
8 codefendant who's not arguing, not gonna be testifying, and
9 may or may not testify, and this gets us into the Thompson
10 issue of actual prejudice, and the prejudice exists in light
11 of the Supreme, United States Supreme Court holding in
12 Crawford.

13 MR. RUFFALO: Judge, my name is---

14 THE COURT: Yes, sir.

15 MR. RUFFALO: My name is Dudley Ruffalo. I represent
16 Shawn Davis. Not to be redundant, but I join in that
17 motion. Mr. Bauer's correct. There are so many small
18 pieces of information in each one of the statements that
19 overlap, and I think the prejudice can be clear in the sense
20 at some time during the course of the trial that might
21 arise, and I just join in that, in that motion, Judge.

22 THE COURT: What says the State?

23 SOLICITOR STONE: May it please the Court, Your Honor.

24 I agree with Mr. Bauer that the case law is against him
25 on this. The State versus Harris, State versus Dennis all

1 talk about the Judge's discretion in determining whether or
2 not a case should be severed or not, and I call the Court's
3 attention to the specific language in the State versus
4 Holcombe, and I'll hand you up a copy of that.

5 That was a case decided last year, Your Honor. This
6 was sort of an analysis of all of the previous case law that
7 went, that came before it, and what that case specifically
8 says is that a severance, a severance should be granted only
9 when there is a serious risk that a joint trial will
10 compromise a specific trial right of a codefendant or
11 prevent the jury from making a reliable judgment about a
12 codefendant's guilt.

13 In this case it's a little unusual compared to most
14 cases in which we deal with United States versus Bruton
15 issues or, or Crawford versus Washington in that there are
16 four defendants. We are seeking to try two of the four
17 defendants, and their statements are not only not
18 antagonistic, they are consistent. In other words, both
19 defendants say exactly what they did. They say exactly what
20 the codefendant did as well as the, the other two
21 codefendants and everyone agrees.

22 So, the redaction in this was relatively simple in that
23 we went out -- we went into the videotaped statement, took
24 out any reference to the codefendant whatsoever. In the
25 written statement, which I would offer to prepare, just like

1 the Fourth Circuit is suggested, we have those typed up with
2 the, with the reference to the codefendant in those cases as
3 the other individual, which we think covers the Bruton and
4 Crawford versus Washington issue as well.

5 Simply put, Your Honor, this would be one of two
6 choices. Either we try both of these defendants together or
7 we try virtually identical cases back-to-back because they
8 will be the same witnesses, the same evidence, the same
9 statements. There will be little, if any, difference in the
10 two trials in the case.

11 THE COURT: Mr. Bauer, anything further?

12 MR. BAUER: Your Honor, I don't think the inconvenience
13 to the State is a fair ground for consideration under, under
14 Thompson or the calling of cases in South Carolina. The
15 issue is the trial rights of the defendant, as the solicitor
16 so correctly put. And if you look at last years, the Alton
17 case, and what it does, it says that the motion to sever
18 should consider the trial rights of the defendant.

19 Where the statements allegedly made by the codefendant
20 are substantially similar, but differing degree as to who
21 did what, I think that does involve even a more pressing
22 concern because the similarity, in large part, enhances the
23 credibility of an out-of-court statement made by a declarant
24 not testifying today. My client's statement is different in
25 detail than the codefendant's statement. Although the major

1 points might be the same, each person's role is slightly
2 different if you listen to the statements. I think it does
3 affect Crawford and Bruton.

4 THE COURT: Yes, sir.

5 MR. RUFFALO: Just in -- and real brief, Judge, this
6 is -- I don't think it can help for the jury to make
7 conclusions about one defendant above, of the other simply
8 because they're both here, and I think there are statements,
9 in, in light of Crawford, that might come in that might be
10 prejudicial to one defendant as opposed to the other. I
11 just -- I don't want to belabor the point, but I just want
12 to join in his motion to make that very clear.

13 THE COURT: Okay. Anything further, Mr. Solicitor?

14 SOLICITOR STONE: The only other thing I'd add, Your
15 Honor, is that I believe that a curative instruction is, is
16 proper and I think that is, is one way to cover this. But I
17 also think -- State versus Garrett talks specifically about
18 other evidence coming in to draw the inference and this is
19 absolutely proper. In State versus Garrett they redacted
20 the statement to say the defendant and "the other guy." In
21 our redaction, Your Honor, we refer to, to it as an
22 individual not even calling attention to a gender.

23 So, I think we have gone even further than State versus
24 Garrett requires, and I believe that the fact that there's
25 other evidence, clearly there will be in every case other

1 evidence that, that infers the guilt of both defendants,
2 which we clearly have in this case. That's not the
3 standard. The standard is whether or not the redaction
4 itself would point the juror directly to identifying the
5 codefendant, and, and I believe that we've covered it based
6 on that by referring to the other individual.

7 Again, you're also dealing, I think which also helps us
8 with this, you're dealing with four defendants instead of
9 one. So, it's not a question of a statement from one
10 codefendant referring to another guy and that being the
11 other person in the room. In this case, we have four people
12 involved and both of those statements have been redacted to
13 take any specific reference out to the defendant in any type
14 of gender or any other way.

15 MR. BAUER: Your Honor, I think we're about -- I think
16 we've gone past the motion to sever, and we're kind of
17 talking now about the Bruton issues. But with regard to the
18 Bruton, Bruton issue, saying we all did it definitely
19 identifies the co, the other codefendant. It's not implicit
20 when you say we all did it. We all put on gloves. We all
21 put on masks. When you identify one defendant as, one
22 codefendant as being in the car, this is the example I can
23 point to, to additionally we all put on gloves, we all put
24 on masks, they're four people.

25 One person is identified by name in my codefendant's

1 testimony as remaining in the car. One person's identified
2 by a name as being the triggerman. So, that's two out of
3 the four identified by name, and then saying well, he helped
4 Joe turn over the body. It's clear who he's talking about.
5 If, if you identify two by name, and you're talking about
6 the third and the fourth, there's no implication.
7 Particularly if we all did this, there's, there's no way
8 that it's naming my client.

9 SOLICITOR STONE: If I may hand these cases up, Your
10 Honor?

11 I should of done that earlier.

12 THE COURT: Mr. Stone?

13 SOLICITOR STONE: Yes, sir.

14 THE COURT: What do -- and I'm looking at this case you
15 handed up and I'm -- State v. Garrett.

16 SOLICITOR STONE: Yes, sir.

17 THE COURT: In that particular case, you-all properly
18 state what the law is. The motion for severance are
19 addressed at Trial Judge's discretion. Codefendant, as
20 Codefendant Garrett and Davis were not entitled to separate
21 trials in that particular case. It goes on to say that
22 severance shall be granted only when there is a serious risk
23 of joint trial would compromise the specific trial right of
24 a codefendant or prevent the jury from making a reliable
25 judgment about the codefendant's guilt. It goes on to say

1 generally admissions of the statement made by a
2 non-testifying codefendant -- if you're looking, I'm on Page
3 3.

4 SOLICITOR STONE: Yes, sir.

5 THE COURT: Second full paragraph, second column.

6 SOLICITOR STONE: Yes, sir.

7 THE COURT: Generally admission of a statement made by
8 a non-testifying codefendant in implicating the defendant
9 violates confrontation clause and is inadmissible. However,
10 such a statement is admissible against a confessor, is
11 admissible against the confessor in a joint trial references
12 to the codefendant are redacted so as not to implicate the
13 codefendants.

14 Now, under the redacting Mr. Adkins name, I mean does
15 that not, the statement, shown it still would implicate him?

16 SOLICITOR STONE: I -- what I did, Your Honor, is I
17 followed the language and I -- I would call your attention
18 to the end of that paragraph. It talks about the
19 codefendant's statement is admissible because the statement
20 did not, on its face, incriminate the defendant, and I tried
21 to analyze exactly what it meant by that. I went back for
22 some type of insight to that, to Page 2, which is in the
23 second line of what they were trying to do in that case, and
24 what they did in that case and what the Court of Appeals
25 said is proper was the statement which implicated Davis,

1 China, Cunningham, and another guy in the crime was
2 admitted.

3 So, I think I took an extra step, instead of putting
4 another guy, I put another person. So, I tried to follow --
5 and, Your Honor, there's also a Fourth Circuit Court of
6 Appeals case that also gives a little bit of an insight as
7 to how to handle it. In that case, United States versus
8 Akinkoye, A-K-I-N-K-O-Y-E, in that case the prosecutor had
9 the confessions retyped and replaced the defendant's
10 respective names with the phrase another person or another
11 individual, and we followed exactly that in our redactions,
12 and I'll hand those up to you, and I also have that case,
13 and I'll be glad to hand that up to you as well.

14 I think I pronounced that correctly, but I can't
15 guarantee it, Your Honor.

16 THE COURT: Mr. Bauer, anything you want to add?

17 MR. BAUER: Well, Your Honor, that Akinkoye case, and
18 I'm not even gonna try and say I pronounced it right, was
19 decided in 1999. The United States Supreme Court issued the
20 Crawford opinion in 2004 after this case was decided.
21 Crawford hits the issue here in terms of it's hearsay. The
22 statement made by the codefendant is an out-of-court
23 statement made by a person other than the one testifying on
24 the stand.

25 I can't cross-examine it, and in terms of its

1 implication of this defendant, we all did it, we all did it,
2 we all did it, it doesn't matter whether he says it by name.
3 We all is everyone.

4 THE COURT: All right. In this case, this 2002 case,
5 State versus Garrett, it goes on to say, in that same
6 paragraph I was looking at a minute ago, in, in that
7 particular case a curative instruction was given indicating
8 that Davis state, State v. Garrett, Garrett, Davis statement
9 was only to be considered against Davis. The Court went on
10 to say because the statement was redacted and a curative
11 instruction given, we find it does not violate the
12 confrontation clause even given the State's other evidence
13 indicating Garrett was the "other guy."

14 MR. BAUER: And, again, that was also decided
15 pre-Crawford.

16 THE COURT: Let me think about this for a minute.
17 What's the next thing that we have here, the video
18 issue?

19 MR. BAUER: Yes, Your Honor.

20 THE COURT: All right. What's the issue on that?

21 MR. BAUER: Your Honor, with regard to -- I'll start
22 with my client's statement. My client made a statement to
23 law enforcement. That statement was videotaped. I
24 understand available to testify today are the law
25 enforcement, one of the two law enforcement officers, one of

1 the three law enforcement officers present in the room who
2 are to testify.

3 Now, their rendition of what my client said is not
4 hearsay. The videotape itself is, is also not hearsay if
5 it's properly authenticated. The redacted videotape has
6 been created in a presentation form with narration under it.
7 It is suppose to be the transcription of what is being said.
8 It was not done -- the transcription was not done by one of
9 the law enforcement officers who is saying this is what was
10 told to me. It was apparently done by an assistant
11 solicitor, by a deputy solicitor.

12 As such, it is the deputy solicitor's statement as to
13 what the defendant is saying, and I'm automatically gonna
14 call the deputy solicitor as a witness, and basically it's,
15 it is still hearsay. It's what the deputy solicitor is
16 saying my client is saying.

17 THE COURT: Mr. Ruffalo, do you have anything on that?

18 MR. RUFFALO: Nothing too much further than that, but
19 just by example, there are certain sections in the tape that
20 say, for instance, inaudible and that's written by the
21 deputy solicitor in his transcription on the tape.

22 You know, I listened closely to it. Sometimes you can
23 hear words, sometimes you can not. That seems to go almost
24 to a point of editing, and I would only include that in the
25 joining of Mr. Bauer's motion that when you do come across

1 passage that may be somewhat muddies is the commentary by
2 the assistant solicitor as, as inaudible is almost a form of
3 editing.

4 Thank you.

5 THE COURT: Is there any dispute about what is actually
6 being said on the tape?

7 I mean the sword can cut both ways I think. You know,
8 it can go to y'all's benefit just as well as it can go to
9 your detriment.

10 MR. BAUER: Your Honor?

11 THE COURT: I mean if the solicitor sits there and
12 misstates something, I mean you can just as easily use that
13 against him as, as if it helped them or hurt them.

14 MR. BAUER: Well, Your Honor, I think, number one, it
15 is a fair comment on the evidence. So, it wouldn't be any
16 problem with the solicitor playing that during his closing
17 argument or statement, whatever he wanted to comment on it,
18 draw reference to. The problem I think is that introducing
19 it as evidence. The deputy solicitor's version of the
20 statement is now part of the evidence for the jury.

21 SOLICITOR STONE: If I may, Your Honor, just so that
22 the record doesn't have that in there in the case. We're
23 gonna call SLED Agent Teddy Cone. He is the man who
24 actually took the, took the statement that's in the video.

25 We have had him review the transcript, and then we've

1 added to the bottom of it. He will testify that transcript
2 is accurate as to what was in the thing. The statements
3 will actually be verified through, through the, the person
4 who is in the video. It's not gonna be Deputy Thornton
5 involved one way or the other.

6 The issue then becomes is who types it up, and I don't
7 believe there's any -- and let me also make sure that if
8 there is anything in that, and I think they've reviewed it,
9 that the defense thinks we got wrong, we'll be glad to
10 change it. I don't believe that's any errors in that, but
11 if there are, certainly we want that to be accurate.

12 THE COURT: I mean have you-all been provided a copy of
13 this with the---

14 MR. RUFFALO: Yes, sir.

15 THE COURT: ---the typed information at the bottom of
16 the video?

17 MR. BAUER: Yes, Your Honor.

18 THE COURT: Have each of you had an opportunity to
19 review that video along with this type information at the
20 bottom?

21 MR. BAUER: Yes, Your Honor.

22 MR. RUFFALO: Yes, Your Honor.

23 THE COURT: Is there any question about, I guess, the
24 accuracy or inaccuracy of what you-all hear on there?

25 MR. BAUER: No, Your Honor.

1 MR. RUFFALO: No, sir.

2 MR. BAUER: But in terms of the solicitor's argument is
3 now bolstering hearsay with the SLED agent now testifying
4 that the deputy solicitor correctly heard the statement and
5 is repeating it, and that's---

6 THE COURT: Well, I don't know if he can say that the
7 deputy solicitor correctly heard. I mean the jury is here
8 for finder of the fact, and my charge to them is gonna be
9 you can believe all of what a witness says, part of what
10 they say, or none of what they say, and it's up to them to
11 determine whether or not what's typed on the bottom of that
12 screen is authentic and is actually what they heard.

13 MR. BAUER: Well, I think that is, is the question that
14 you're, you're asking. If he's saying that he's gonna have
15 the, the SLED agent verify that that's an accurate
16 transcript, what he's verifying is that the transcript
17 prepared by the deputy solicitor is accurate.

18 MR. RUFFALO: In addition, just as a minor point, Your
19 Honor, the, the written transcription tends to pull the eye
20 away from the actual face of the person who is speaking.
21 Now, as Your Honor correctly said, you're going to counsel
22 the jury that they can hear part of one, believe part of the
23 other or not. It tends to draw the eye away so they're not
24 getting the full scope of the demeanor and looking and
25 concentrating on the face of the defendant speaking. The

1 written portion tends to draw their eye away from it, and I
2 think that's part of the jury's realm is to judge the
3 demeanor of the speaking defendant or of the speaking
4 person.

5 THE COURT: Okay. Anything else from the State on
6 that?

7 SOLICITOR STONE: Nothing, nothing from the State, Your
8 Honor.

9 We also have another case that we would, that I was
10 made aware of at, back to the, to the Crawford issue, and I
11 apologize for skipping around, but this one was the State
12 versus Jaleel Page, and I do not have a copy, but I will
13 make a copy of this that doesn't have writing and things on
14 it. But this was decided April the 3rd, 2008, which
15 obviously that is post-Crawford as well, and that did the
16 analysis exactly the same as the other cases. But I will
17 make a copy of that and I apologize.

18 THE COURT: What's the cite number, Mr. Stone?

19 SOLICITOR STONE: The cite number, Your Honor, is 377
20 SC 576, 660 S.E.2d 296. State versus Jaleel, J-A-L-E-E-L,
21 Page, P-A-G-E.

22 THE COURT: In regards to the video, and at this time
23 unless I hear something different, and you can renew your
24 objection at the appropriate time on this, but at this time
25 I'm gonna allow that. I think under rule, I think it's Rule

1 1004, South Carolina Rules of Evidence, I think it would be
2 permitted. I don't think it's any different than handing
3 the jury a copy of the transcript that was typed up and
4 advising the jury to follow along. I do not have a problem,
5 I do not have a problem, if the party's request, and I will
6 instruct the jury that what they hear is what they should
7 consider. Not what, and I'll come up with some kind of
8 charge if the defendants so desires me to do so, to warn the
9 jury that they perceive any discrepancies between what they
10 see on the screen and what they hear that they should, you
11 know, trust what they hear and not what's on the screen, and
12 I don't think -- I think that's fair to do that.

13 MR. RUFFALO: Yes, sir.

14 THE COURT: Mr. Bauer, anything else on that issue?

15 MR. BAUER: No, Your Honor.

16 THE COURT: Mr. Stone.

17 SOLICITOR STONE: No, sir. Thank you.

18 THE COURT: Anything else other than this severance
19 issue?

20 SOLICITOR STONE: Nothing from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. BAUER: Not -- we're ready on the Jackson hearing,
23 Your Honor. That's the---

24 THE COURT: Okay. I'm gonna step off the bench for a
25 minute. I want to look at something on this severance---

1 SOLICITOR STONE: Yes, sir.

2 THE COURT: ---and I'll be back out here in a minute.

3 (WHEREUPON, a short recess was taken at this time.)

4 (WHEREUPON, on the court reporter's log sheet, there is
5 a notation of a motion on a videotape and ruling by the
6 Court on the videotape and ruling on the Court of the
7 severance motion. However, there is nothing on her
8 audiotape for me to be able to prepare this portion of the
9 transcript.)

10 (WHEREUPON, the following takes place within the
11 presence of the entire jury panel.)

12 THE COURT: Good afternoon, ladies and gentlemen. I
13 trust you-all had a nice two and a half hour lunch. I
14 appreciate you-all being back here in a timely fashion.
15 Sorry to keep you-all waiting. I know some of you were here
16 before three o'clock. We couldn't open the courtroom doors
17 until, until 3:00 or right at 3:00 because we had some
18 issues we had, we had to deal with before you-all came back
19 in here.

20 Anything further from the State right now?

21 SOLICITOR STONE: No, sir.

22 THE COURT: From the defense?

23 MR. RUFFALO: No, sir.

24 MR. BAUER: No, Your Honor.

25 THE COURT: Mr. Stone, call your first case please.

1 SOLICITOR STONE: May it please the Court, Your Honor.
2 The State of South Carolina calls Indictment Number
3 2008-GS-25-584 charging Derrick Adkins with the offense of
4 armed robbery.

5 Indictment 2008-GS-25-582 charging Derrick Adkins with
6 the offense of murder.

7 2008-GS-25-587 charging the defendant, Shawn Lamar
8 Davis, with armed robbery.

9 Indictment 2008-GS-25-585 charging Shawn Lamar Davis
10 with the offense of murder.

11 Your Honor, I previously handed a witness list up
12 there.

13 Do you have that?

14 THE COURT: Yes, sir.

15 SOLICITOR STONE: If you don't I'll get another copy.

16 THE COURT: No, I have it.

17 All right. Ladies and gentlemen, we are about to begin
18 the trial of the State versus Derrick Adkins and the State
19 versus Shawn Leonard Davis. The indictment -- I stand
20 corrected. It's the State versus Derrick Adkins, Adkins,
21 and the State versus Shawn Leonard Davis.

22 The indictment in this case charges that on or about
23 June 23rd, 2007, in Hampton County, South Carolina, the
24 defendant, Shawn Leonard Davis, at [REDACTED]
25 by use of force, threats, or intimidation, while armed with

1 a deadly weapon or while alleging, either by action or
2 words, he was armed, or using a representation of a deadly
3 weapon or other object which a person present during the
4 commission of the robbery reasonably believed to be a deadly
5 weapon, did take and carry away goods and/or monies from a
6 person or immediate presence of Ron Wooten with the intent
7 to permanently deprive the victim of possession thereof in
8 violation of 16-11-330(A) of the South Carolina Code of
9 Laws.

10 The indictment as to Derrick Adkins charges that on or
11 about June 23rd, 2007, in Hampton County, South Carolina
12 with the defendant, Derrick Adkins, at [REDACTED]
13 [REDACTED], which use of force, threats, or intimidation, and
14 while armed with a deadly weapon or while alleging, either
15 by action or words he was armed while using a representation
16 of a deadly weapon or other object which a person present
17 during the commission of the robbery reasonably, reasonably
18 believed to be a deadly weapon, did take and carry away
19 goods and/or monies from the person or immediate presence of
20 Ronnie Wooten with the intent to permanently deprive the
21 victim of possession thereof in violation of, in violation
22 of Section 16-11-330(a) of the South Carolina Code of Laws.

23 with regards to the State versus Derrick Adkins on the
24 charge of murder, the indictment alleges that, in Hampton
25 County, on or about June 23rd, 2007, with malice

1 aforethought, Derrick Adkins, did kill and murder Ronnie
2 wooten by means of shooting him with a gun and that Ronnie
3 wooten did die in Hampton County as a proximate result
4 thereof on June 23nd, 2007, in violation of 16-3-2 of the
5 South Carolina Code of Laws.

6 In State versus Shawn Leonard Davis, with regards to
7 the indictment for murder, it alleges that, in Hampton
8 County, on or about June 23rd, 2007, with malice
9 aforethought, Shawn Leonard Davis did kill and murder Ronnie
10 wooten by means of shooting him with a gun and that Ronnie
11 wooten did die in Hampton County as a proximate result
12 thereof on June 23, 2007, in violation of Section 16-3-10 of
13 the South Carolina Code of Laws.

14 Now, ladies and gentlemen, I have read the indictment
15 as to the charges in this case, but let me emphasize to
16 you-all that the indictment is not evidence. It is simply
17 the formal instrument to bring a case into this Court. The
18 defendants in this case, in these cases are presumed not
19 guilty, they are presumed innocent, and the State must prove
20 each element of these offenses beyond a reasonable doubt.
21 Again, the defendants, Mr. Adkins and Mr. Davis, are
22 presumed innocent and these indictments are simply the
23 charging documents by which cases are brought into this
24 Court.

25 Now, before we select a jury in this particular case,

1 there are several questions which I'll ask you, and I will
2 remind you, ladies and gentlemen, that you're still under
3 oath in answering these questions here.

4 Now, you've heard me indicate that this is the State
5 versus Derrick Adkins and the State versus Shawn Davis.

6 Is anyone ever been related by blood or marriage to
7 either Derrick Adkins or Shawn Davis, if so, please stand.

8 (Juror responds.)

9 THE COURT: All right. If you would, sir, I just need
10 your name and number.

11 Okay?

12 THE JUROR: I don't know the number. Ronald Fields.

13 CLERK: Ronald Fields, Number 87.

14 THE COURT: Are you related to Mr. Adkins?

15 THE JUROR: Davis.

16 THE COURT: Mr. Davis.

17 And how are you related to Mr. Davis?

18 THE JUROR: My wife's first cousin.

19 THE COURT: It's your wife's first cousin.

20 THE JUROR: Yes, sir.

21 THE COURT: The fact that Mr. Davis is your wife's
22 first cousin, would that affect your ability to be fair and
23 impartial to both the State and the defense in this case?

24 THE JUROR: No.

25 THE COURT: Okay. Anything further from the State or

1 you want me to -- do you want me to set him aside or
2 anything further from the State or the defense?

3 SOLICITOR STONE: I think it would be difficult, Your
4 Honor, at this stage. I think we have enough jurors to, but
5 I think that would be difficult as far as any relative being
6 fair to the State much less the defendant.

7 THE COURT: All right. Anything further from the
8 defense?

9 MR. BAUER: He's indicated that it wouldn't affect his
10 ability to be fair and impartial, Your Honor.

11 THE COURT: Okay.

12 MR. RUFFALO: The same, Your Honor, for me too, for
13 Mr. Davis.

14 THE COURT: All right. You may have a seat,
15 Mr. Fields.

16 Yes, ma'am, your name and number?

17 THE JUROR: Dorothy Albany, Number 1.

18 THE COURT: And you're---

19 THE JUROR: Related to Shawn Davis.

20 THE COURT: Ma'am?

21 THE JUROR: Related to Shawn Davis on my mother's side.
22 My grandmama's mother.

23 THE COURT: You're related to Mr. Davis on your
24 mother's side?

25 THE JUROR: Yes, sir.

1 THE COURT: Do you know how?

2 THE JUROR: My mom and his, his grandmama is
3 (inaudible).

4 THE COURT: Mrs. Albany, would that affect your ability
5 to be fair and impartial to both the State and the defense
6 in this case?

7 THE JUROR: No.

8 THE COURT: All right. You may be seated.

9 Ladies and gentlemen, when I read the indictment in
10 this case and in each of these cases I listed or indicated
11 the victim in this case was Mr. Ronnie Wooten.

12 Is anyone ever been related by blood or marriage to
13 either, excuse me, to Mr. Ronnie Wooten, if so, please
14 stand.

15 (Jurors respond.)

16 THE JUROR: I'm Catherine Cook, 98.

17 THE COURT: Mrs. Cook, and what relation is that,
18 ma'am?

19 THE JUROR: Mr. Wooten was my mother's first cousin.

20 THE COURT: Would that affect your ability to be fair
21 and impartial to both the State and the defense in this
22 case?

23 THE JUROR: No, sir.

24 THE COURT: Okay. You may be seated.

25 Yes, ma'am, your name and number?

1 THE JUROR: Evelyn Gray, Number 109. (Inaudible).

2 THE COURT: Ma'am, I can't hear you up here.

3 THE JUROR: His wife, Catherine, and my mother was best
4 friends.

5 CLERK: 109.

6 THE COURT: Would that affect your ability to be fair
7 and impartial to both the State and the defense in this
8 case?

9 THE JUROR: No, sir.

10 THE COURT: Ma'am?

11 THE JUROR: No, sir.

12 THE COURT: Anything -- you may be seated.

13 Has anyone in the jury panel had a close personal or
14 social relationship with either Derrick Adkins or Shawn
15 Davis or Mr. Ronnie Wooten, if so, please stand.

16 (Jurors respond.)

17 THE COURT: Yes, sir, your name and number?

18 THE JUROR: James Gray, one, 110.

19 THE COURT: Would the fact that you've had a close
20 personal or social relationship with any of these parties
21 affect your ability to be fair and impartial in this case to
22 both the State and the defense?

23 THE JUROR: No, sir.

24 THE COURT: Okay. You may be seated.

25 Yes, sir, your name and number?

1 THE JUROR: Robert Bostick, Number 14.

2 CLERK: Number 14, Robert Bostick.

3 THE COURT: Mr. Bostick, the fact that you've had a
4 close personal or social relationship with any of these
5 parties, would that affect your ability to be fair and
6 impartial in the case to both the state and the defense?

7 THE JUROR: No, sir.

8 THE COURT: All right. You may be seated.

9 Can the lawyers approach for just a minute?

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: All right. Ladies and gentlemen of the
13 jury panel, the following is a list of potential witnesses
14 in this case:

15 They include Monty, Monty Wooten.

16 Patricia Bellinger.

17 Loretta Beckett.

18 Laura Meyer.

19 Sergeant Johnny Wells.

20 Officer Jamie Singleton.

21 Doctor Cynthia Schandl.

22 Sergeant Chauncey Solomon.

23 Perry Singleton.

24 Saul Benitez Romero.

25 Sergeant Maurice Hunt.

1 Jerry Ashmore.

2 Special Agent J.J. Evans.

3 Ken Whitler.

4 Anthony Russell.

5 Jimmy Freeman.

6 Special Agent Teddy Cone.

7 Special Agent Melissa Skipper.

8 Has anyone ever been related by blood or marriage to
9 any of the people that I have just listed or is anyone ever
10 had a close personal or social relationship with any of
11 these individuals, if so, please stand.

12 (Jurors respond.)

13 THE COURT: All right, sir. Start on the front right
14 here.

15 Yes, your name and number?

16 THE JUROR: Glenda Smith, 248.

17 THE COURT: And who was it that I called that you had,
18 that you were related by blood or marriage or had a close
19 personal or social relationship with?

20 THE JUROR: I taught a bunch of the officers, Solomon
21 and Russell.

22 THE COURT: All right. The fact that you previously
23 taught two of the officers in this, that are expected to
24 testify, did that affect -- would that affect your ability
25 to be both fair and impartial to both the defense and the

1 State?

2 THE JUROR: No.

3 THE COURT: Okay. Thank you for standing up. You may
4 be seated.

5 Yes, sir, your name and number?

6 THE JUROR: Jeff Freeman, 92.

7 THE COURT: Mr. Freeman, who was it in that list?

8 THE JUROR: Jim Freeman, Mr. Jimmy Freeman.

9 THE COURT: You're related by blood or marriage?

10 THE JUROR: Yes, I think we're cousins by my dad.

11 THE COURT: Okay. The fact that he is, I guess, your
12 dad's cousin, you conveyed to this Court, would that affect
13 your ability to be fair to both the State and the defense in
14 this case?

15 THE JUROR: No, sir, it would not.

16 THE COURT: Okay. Thank you. You may be seated.

17 Yes, ma'am, your name?

18 THE JUROR: Rochelle Speed, 253.

19 THE COURT: 253.

20 And who was it, Mrs. Speed, that I, that you are
21 related by blood or marriage here or had a close personal---

22 THE JUROR: Anthony Russell.

23 THE COURT: Ma'am?

24 THE JUROR: Anthony Russell.

25 THE COURT: would the fact that you know Anthony

1 Russell or the fact that you're related by blood or marriage
2 or have a close personal or social relationship, would that
3 affect you way, in any way, to be fair and impartial to both
4 the State and the defense?

5 THE JUROR: No, sir.

6 THE COURT: Okay. Thank you. You may be seated.

7 Yes, ma'am, your name and number?

8 THE JUROR: Laqueintay Russell, 218.

9 THE COURT: And, ma'am, who was it on that list that
10 you were either related by blood or marriage or have a close
11 personal or social relationship?

12 THE JUROR: Anthony Russell.

13 THE COURT: Would that affect your ability to be both
14 fair and impartial to both the State and the defense in this
15 case?

16 THE JUROR: No, sir.

17 THE COURT: Okay. You may be seated.

18 Mr. Stone, at this time, if you would, stand and
19 introduce your staff and---

20 SOLICITOR STONE: Absolutely.

21 THE COURT: ---yourself.

22 SOLICITOR STONE: My name is Dudley Stone. I'm the
23 solicitor for the Fourteenth Circuit. Trying this case with
24 me is Deputy Solicitor Sean Thornton. Also at the table is
25 Former solicitor Randolph Murdoch, Assistant Solicitor Aaron

1 Gentry, and Mr. Bruce Davis.

2 I think that covers everyone we have in the courtroom
3 Your Honor, Temika Legette. I'm sorry. I didn't see
4 Temika, but she's an assistant solicitor in our office. I
5 don't see anybody else. David Vaux, an Assitant Solicitor
6 in our office. Peggy Durilla is also with us as a victim
7 advocate.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Bauer, and, Mr. Ruffalo, if you-all would stand and
11 introduce yourselves.

12 MR. BAUER: Good afternoon. I'm Sam Bauer. This is
13 Derrick Adkins. He's my client.

14 THE COURT: Anybody that you practice law with, Mr.
15 Bauer, or, Mr. Ruffalo, anyone else?

16 MR. BAUER: Also in my office, although not present in
17 the courtroom, is Mr. Rob Metro. He does mostly Family
18 Court.

19 THE COURT: Mr. Ruffalo.

20 MR. RUFFALO: Good afternoon. My name is Dudley
21 Ruffalo. That is my client, Shawn Davis. I'm from Hilton
22 Head. I practice with my wife, Farradi, who's originally
23 from (inaudible). She's a lawyer also.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, you have heard the list of individuals that are

1 involved in these two cases. Attorneys and staff from
2 Mr. Stone's office as well as attorneys from Mr. Bauer and
3 Mr. Ruffalo's office as well.

4 Has any member of the jury panel or has any member of
5 the jury panel ever been represented by any of the attorneys
6 involved in this case or by their respective firms, if so,
7 please stand.

8 (Juror responds.)

9 THE COURT: Yes, sir, your name and number?

10 THE JUROR: Paul Thomas, Number 269.

11 THE COURT: All right. Mr. Thomas, the fact that you
12 were previously represented by one of these attorneys or one
13 of the attorneys in these firms, does that affect your
14 ability to be fair and impartial to both the State and the
15 defense?

16 THE JUROR: Not at all.

17 THE COURT: Okay. Thank you, sir. You may be seated.

18 All right. Is anyone ever been related by blood or
19 marriage to or have you ever had a close personal or social
20 relationship with any of the attorneys in this case or
21 anyone in their law firms, if so, please stand.

22 (No response.)

23 THE COURT: All right. Is any member of the jury panel
24 formed or expressed an opinion about any issue or matter
25 involved in this case, if so, please stand.

1 (No response.)

2 THE COURT: Is any member of the jury panel aware of
3 any bias or prejudice for either the, either the State or
4 the defendants in this case, if so, please stand.

5 (No response.)

6 THE COURT: Is there any member of the jury panel that
7 was a member of the Grand Jury which issued the indictments
8 in this case, if so, please stand.

9 (No response.)

10 THE COURT: Does any member of the jury panel know of
11 any reason whatsoever why he or she should not serve as
12 jurors in this case with particular emphasis being placed on
13 your ability to be fair and impartial to both the State and
14 the defendants, if so, please stand.

15 (Juror responds.)

16 THE COURT: Yes, ma'am, your name and number?

17 THE JUROR: Jacqueline Holmes, Number 138.

18 THE COURT: Okay. Thank you. Mrs. Holmes, we've made
19 a note of that. Thank you for standing.

20 Does the State have any additional questions you'd like
21 to ask?

22 SOLICITOR STONE: No, sir, not from the State.

23 THE COURT: Mr. Bauer, any additional questions?

24 MR. BAUER: No, Your Honor.

25 THE COURT: Mr. Ruffalo?

1 MR. RUFFALO: No, Your Honor.

2 (Whereupon, a bench conference was held out of the
3 hearing of the jury at this time and the jury panel was
4 selected at this time with the following occurring during
5 the calling of Juror Harry Allen.)

6 CLERK: Number 2, Harry Allen.

7 What says the State?

8 SOLICITOR STONE: Please present Mr. Allen.

9 THE COURT: What says the defense?

10 MR. BAUER: Present the juror.

11 MR. RUFFALO: Present the juror please, Your Honor.

12 MR. BAUER: Your Honor please, I think the juror would
13 like to address the Court, and I don't, I don't want to
14 stick my nose into it, but I'm hearing something. He's
15 wanting to say something and I don't know what it is.

16 THE COURT: The lawyers come up here.

17 (Whereupon, a bench conference was held out of the
18 hearing of the jury with the juror and all attorneys present
19 at this time.)

20 THE COURT: All right. Ladies and gentlemen, we're
21 gonna proceed with jury selection in this matter. Brought
22 to, to my attention Mr. Allen was older than 65-years old.
23 He gets a statutory exemption from serving as a juror. So,
24 it gives him a statutory exemption from serving as a juror,
25 and, therefore, since it was brought to my attention we've

1 excused Mr. Allen from service as a juror in this case or in
2 any other case for that matter.

3 Anything further from the State?

4 SOLICITOR STONE: No, sir, nothing from the State.

5 Thank you, Your Honor.

6 THE COURT: All right. Mr. Bauer?

7 MR. BAUER: No, sir.

8 THE COURT: Mr. Ruffalo?

9 MR. RUFFALO: No, sir.

10 THE COURT: All right. Ms. Nettles, if you'll continue
11 please, ma'am.

12 (WHEREUPON, a jury panel of 12, including two
13 alternates, was seated at this time.)

14 THE COURT: Mr. Stone, any matters of law that we need
15 to take up?

16 SOLICITOR STONE: Not at this time, Your Honor.

17 THE COURT: From the defense, any matters of law we
18 need to take up, Mr. Bauer?

19 MR. BAUER: No, Your Honor.

20 THE COURT: Mr. Ruffalo.

21 MR. RUFFALO: No, Your Honor.

22 THE COURT: For scheduling purposes, can the lawyers
23 approach at this time?

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 THE COURT: All right. Ladies and gentlemen, you-all
2 have been selected as jurors in this case. What we're going
3 to do at this time, there's some additional matters that we
4 need to address. So, I'm gonna, I'm gonna allow you to go
5 home for the night. We're gonna start back at 9:30 in the
6 morning, at 9:30 in the morning.

7 Now, before you go, Mr. Wooten, here I think is going
8 to show you where you need to report back to in the morning
9 at 9:30, and I just want to remind you that, before we start
10 and I will instruct you throughout the course of this trial,
11 that you're not to discuss this case in any manner with
12 anyone. This includes fellow jurors, your friends, your
13 family, people involved in the trial of this case, or anyone
14 else. If anyone tries to talk to you about this case,
15 please let me know immediately upon your return or when
16 you're here. If you're here during the day and somebody
17 tries to talk to you about this case, if you'll let one of
18 these bailiffs know so that we can find out what's going on.

19 You're not to talk about it at any point and nobody's
20 suppose to talk to you about it as well. The attorneys
21 involved in this case or no one, no one. No one can talk to
22 you about this case.

23 I don't think any media is here, but I will tell you
24 and instruct you that you're not to read, watch, listen to
25 any news reports or discussions about this case. Remember,

1 ladies and gentlemen, you are to keep an open mind about
2 this case, and not to discuss it at all with anyone until I
3 instruct you to do so.

4 As I told you a minute ago, we will start back at
5 9:30 in the morning. We'll start with the jury in the
6 morning at 9:30. I would ask that you be back in the jury
7 room at that time.

8 Ladies and gentlemen, I am very much aware and try to
9 take into and do take into consideration with the, the
10 effects that this or the time constraints has had on your
11 life, and I understand that, and please understand that I
12 will do everything I can to keep you here the least amount
13 of time that is possible. In doing that, I would ask that
14 you be prompt when I ask you to be here so we can start as
15 quickly as we can and to move this, move this case along.

16 There are many spokes in the wheel, so to speak, that
17 make this, our Court system in this country, which I think
18 is the best court system in the world, they're many spokes
19 in the wheel that make that run, and you are, you-all are
20 one of those spokes in the wheel that make this system run.
21 So, I'll ask that you be here at 9:30 in the morning.

22 If an emergency comes up, I know everybody has cell
23 phones just about today, but I think Mrs. Nettles, their
24 office, that you-all have a number if an emergency comes up
25 with your family or whatnot, work, tell, ask them to contact

1 the Clerk's Office and let them get a hold, get to me so
2 that we can get a hold of you to address any concerns or
3 emergencies that may come up during the course of this week.

4 I know you-all probably heard a telephone that went off
5 during this process. I heard one at some point, someone
6 over here, am I right?

7 I'm not exactly sure whose telephone it was, but our
8 Supreme Court, the Chief Justice has issued an order that
9 we're not suppose to have cell phones on you to ring in the
10 courtroom. If you do have cell phones, make sure, if
11 they're not off, they're at least on vibrate and I'll
12 consider that as not interfering with this process.

13 Anything further from the State before I excuse the
14 jury?

15 SOLICITOR STONE: No, sir, nothing from the State.

16 THE COURT: From the defense, Mr. Bauer or Mr. Ruffalo?

17 MR. RUFFALO: No, sir.

18 MR. BAUER: No, Your Honor.

19 THE COURT: Mr. Wooten, if you would show them please,
20 sir, where they're suppose to report back in the morning and
21 let them go.

22 Thank you very much.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 (WHEREUPON, Court's Exhibit Nos. 1 through 6 were

Teddy Cone - Direct examination
by Solicitor Stone

1 marked for identification purposes only at this time.)

2 THE COURT: All right. Are we ready to proceed?

3 SOLICITOR STONE: Yes, sir, the State's ready, Your
4 Honor.

5 THE COURT: All right. Mr. Bauer, Mr. Ruffalo?

6 MR. RUFFALO: Yes, sir.

7 MR. BAUER: Yes, Your Honor.

8 THE COURT: All right.

9 SOLICITOR STONE: Your Honor, my understanding is this
10 is a Jackson/Denno hearing on Derrick Adkins statement.

11 Again, the other defendant, we had already completed a
12 Jackson/Denno hearing prior to the last term of Court. So,
13 that is already been ruled on. We are ready at this point
14 to move forward with Derrick Adkins Jackson/Denno hearing.

15 THE COURT: All right.

16 SOLICITOR STONE: The State calls Special Agent Teddy
17 Cone to the stand.

18 TEDDY CONE, being first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR STONE:

22 Q Agent Cone, make sure that microphone is on if you
23 don't mind.

24 A (Witness taps microphone.)

25 Q Okay. Thank you.

Teddy Cone - Direct examination
by Solicitor Stone

1 Special Agent Cone, you are with SLED, is that correct?

2 A That's correct.

3 Q And how long have you been with SLED?

4 A Since '07.

5 Q And what is your job there?

6 What do you do?

7 A Right now I work in the special investigations unit.

8 Q Okay. Were you involved in the investigation and the
9 murder of Lena Quick Shop?

10 A I was.

11 Q And as that investigator, were you a case investigator,
12 were you the lead investigator, what was your role?

13 A I was the case agent.

14 Q Now, during the time of this investigation, did you
15 take a statement from Derrick Adkins?

16 A I did.

17 Q And do you recognize Mr. Adkins in the courtroom today?

18 A I do.

19 Q Can you point him out for the record please, sir?

20 A Yellow shirt.

21 SOLICITOR STONE: Your Honor, just so the record
22 reflects, the gentleman he's pointed out is Mr. Derrick
23 Adkins.

24 Let me, first of all, ask you do you recall when you
25 first talked to Mr. Adkins?

Teddy Cone - Direct examination
by Solicitor Stone

1 A I do.

2 Q And when was that?

3 A On the 4th of September.

4 Q Of what year?

5 A Of eight, 2008.

6 Q And what was the condition of that discussion then?

7 Where were you?

8 How did this come about?

9 A We were at the Hampton County Sheriff's Office
10 substation in Varnville, and we sat him down for a formal
11 interview.

12 Q Was he in custody at that time?

13 A Not that I recall. We brought him in for questioning.

14 Q Pardon me?

15 A We brought him in for questioning.

16 Q Okay. And this was at the Hampton substation?

17 A Substation in Varnville.

18 Q Okay. And this is right down here on the main road as
19 you're coming in?

20 A That would be Varnville. I think it would be this way.

21 Q That way. Sorry about that. I get turned around in
22 the courtroom. Sorry.

23 A Okay.

24 Q The first statement that you took from him was on
25 September the 4th of '08, is that correct?

Teddy Cone - Direct examination
by Solicitor Stone

1 A That's correct.

2 Q And was that about 3:05 in the afternoon?

3 A That's correct.

4 Q Let me first show you State's Exhibit, excuse me,
5 Court's Exhibit No. 1.

6 Your Honor, we'll have the originals tomorrow, but
7 these are copies. We'll take these as Court Exhibits if
8 that's acceptable.

9 THE COURT: Okay.

10 Q Can you tell us what that is please, sir?

11 A It's a standardized SLED form, Miranda rights form.

12 Q And is that a form that has your name on it and your
13 initial?

14 A It does. As a witness, as a witness along with special
15 Agent J.J. Evans.

16 Q Now, the writing at the top of that, who filled that
17 out?

18 A That would be Special Agent J.J. Evans.

19 Q And what does that say?

20 A It's Miranda rights form with place. It's Hampton
21 County substation. Date, 9/4/08. Time 3:05 p.m. and then
22 the Miranda rights.

23 Q Okay. Along each side of these rights on the left side
24 is a, is a blank statement that has initials D.A.

25 Could you tell us about that please?

Teddy Cone - Direct examination
by Solicitor Stone

1 A That is where this rights form was read to Derrick
2 Adkins and he initialed by each line stating that he
3 understood his rights and signed it at the bottom after he
4 was read his waiver of rights.

5 Q And then at the bottom where he signed that is his
6 signature?

7 A That's correct.

8 Q All right. If you will, please, go through, first of
9 all, the first right that was read to him.

10 Are you present when these rights are being read to
11 him?

12 A I am.

13 Q Okay. And go through that, if you will, please.

14 A Place. Hampton County substation. Date. 9/4/08.

15 Time 3:05PM. Before we ask you any questions you must
16 understand your rights. You have the right to remain
17 silent. Anything you say can be used in a Court as evidence
18 against you. You are entitled to talk with, to a lawyer now
19 and have him present now or at anytime during questioning.
20 If you can not afford an attorney, one will be appointed to
21 you, for you without cost. If you decide to answer
22 questions now without a lawyer present you will have the
23 right to stop answering at anytime. You also have the right
24 to stop answering at anytime until you talk to a lawyer.

25 Do you understand these rights?

Teddy Cone - Direct examination
by Solicitor Stone

1 Do you wish to talk with us at this time?

2 Waiver of rights. I've read this statement of my
3 rights and I understand what my rights are. I'm willing to
4 talk now without a lawyer present and I understand and know
5 what I am doing. No promises or threats have been made to
6 me and no pressure or coercion of any kind has been used
7 against me. Signed, Derrick Adkins. Witnessed, Special
8 Agent J.J. Evans and William T. Cone, Jr.

9 Q Okay. Now, all those rights were read to Mr. Adkins?

10 A That's correct.

11 Q And during the time that his, he was read, at that --
12 is it at that point as those rights are being read that he
13 is putting the initial D.A. by those rights?

14 A That's correct.

15 Q And those are all---

16 A After---

17 Q I'm sorry.

18 A After he was read this form, he initialed and signed
19 and that was witnessed.

20 Q Okay. During that time, did anyone threaten Mr.
21 Adkins, coerce him in any way to get him to sign that form?

22 A No, we did not.

23 Q Did he indicate whether or not he understood that form
24 or what the rights as he was read?

25 A He indicated he understood it, initialed, and signed

Teddy Cone - Direct examination
by Solicitor Stone

1 Miranda rights form.

2 Q Okay. Now, assuming that he was -- he was not
3 handcuffed at that time, but he was in a subsection, okay?

4 A Yeah.

5 Q Is that correct or do you recall?

6 A I do not recall if he was cuffed or not at that point.

7 Q Okay.

8 Your Honor, for the purpose of the Jackson/Denno
9 hearing we will, we will stipulate that he is in custody and
10 that that is not an issue.

11 Let me hand you what's been marked as Court's Exhibit 2
12 and ask you if you can identify that please?

13 A It's the same standard form. I filled this one out
14 myself. Hampton County, at the Hampton County Sheriff's
15 Office, Varnville Annex, date, 9/5/08, 5:00PM, same form.

16 Q And the initials on that, are those also Derrick Adkins
17 initials?

18 A That's correct.

19 Q Are those the same rights that you previously read into
20 the record from the first rights form?

21 A That's correct.

22 Q Now, when was this taken, when was this rights read to
23 Mr. Adkins?

24 A At 5:00PM on 9/5 of '08. Actually this is the rights
25 for the video statement.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q Okay. Is that the same rights form actually that is on
2 the video?

3 A That's correct.

4 Q Okay. And during the time of reading -- of course,
5 that's on the video, but during the time of reading these
6 rights, did anyone threaten or coerce Mr. Adkins to, to sign
7 that form?

8 A No, we did not.

9 Q Anything, anyone threatened or coerced him or promise
10 him anything to get him to talk to you?

11 A No, we did not.

12 Q And that is his signature at the bottom as well?

13 A That's signed by Derrick Adkins, witnessed by Chauncey
14 Solomon and myself.

15 Q Let me hand you what's been marked as Court's Exhibit
16 3. Ask if you could identify that to, for me please, sir.

17 A Same standard Miranda rights form. SLED. Let's see.
18 I filled this one out. Hampton County Sheriff's Office,
19 Varnville Annex on 9/8 of '08. 3:40PM. Signed by Derrick
20 Adkins, witnessed by myself and James O. Freeman.

21 Q Okay. And that was the form that Mr. Adkins initialed
22 as well?

23 A That's correct.

24 Q And he signed as well?

25 A And signed.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q When those rights were read to him -- and you read him
2 those rights yourself, is that correct?

3 A Correct.

4 Q All right. And when you read him those rights, did he
5 indicate he understood those rights?

6 A He did.

7 Q Did anyone threaten, coerce, or promise him anything to
8 get him to sign the form or to talk to you?

9 A No, they did not.

10 Q Let me hand you this Court's Exhibit 4. Ask you if you
11 could identify that please, sir.

12 A Same SLED Miranda rights form, standard, and I filled
13 this one out. Hampton County Sheriff's Office, Varnville
14 Annex, 9/9 of '08 at 10:25AM. Signed by Derrick Adkins,
15 witnessed by myself and Maurice Hunt.

16 Q And that statement is initialed by Mr. Adkins?

17 A That's correct.

18 Q And signed by Mr. Adkins?

19 A That's correct.

20 Q During the reading of those rights, did he indicate
21 that he understood those rights?

22 A That's correct.

23 Q And did you promise, threaten, or coerce him, or did
24 anyone in your presence promise, threaten, or coerce him?

25 A No, they did not.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q Now, let me back-up just a little bit and make sure
2 that we understand.

3 There are four rights form that you've just testified
4 to, is that correct?

5 A That's correct.

6 Q All right. The first rights form on September the
7 4th of '08, did Mr. Adkins give you a statement after that?

8 A Mr. Adkins -- let's see. He did.

9 Q And what did he tell you after this first statement?

10 A I did a, let's see, a memo of interview on it
11 September 4th of '08. I'll give you -- do you want the
12 details of the interview?

13 Q Yes, if you don't mind.

14 A Details of the interview. On September 4th, 2008,
15 Special Agent William T. Cone, Jr., Special Agent J.J.
16 Evans, along with Captain Anthony Russell of the Hampton
17 County Sheriff's Office, interviewed Derrick Adkins, address
18 of [REDACTED], South Carolina, 29918,
19 date of birth, [REDACTED], Social Security number
20 [REDACTED], who provided the following information:

21 Marquis Bryant drove the gray Maxima to Ronnie Wooten's
22 store, Lena Quick Stop. Joseph Davis, Shawn Davis, and
23 Derrick Adkins were also in the car. Joseph Davis had on
24 beige rubber gloves and that was it.

25 Q And that's the conclusion of the information he gave

Teddy Cone - Direct examination
by Solicitor Stone

1 you that day?

2 A That's the conclusion of the first interview.

3 Q Now, the second interview, did that occur the next day
4 at about five o'clock?

5 A That's correct.

6 Q And this is one that is on video, is that correct?

7 A That is the video, correct.

8 Q The third statement, the third rights form, was there
9 another statement with that third rights form?

10 A The third rights form he gave a written statement.

11 That was the third Miranda rights form.

12 Q Let me show you what's been marked as State's Exhibit
13 5.

14 Could you identify this please?

15 A That's the voluntary written statement he gave under
16 Miranda.

17 Q All right. This is the, the written statement he gave
18 you after you read him the, the rights for the third time?

19 A That's correct.

20 Q And then the fourth form appears to be done the next
21 day after the written form.

22 Did you get a statement from him at this point?

23 A I interviewed him, I did, and I can give you the
24 details of the interview.

25 Q Okay.

Teddy Cone - Direct examination
by Solicitor Stone

1 A September 9th, 2008, Special Agent William T. Cone,
2 Jr. and Deputy Maurice Hunt with the Hampton County
3 Sheriff's Office interviewed Derrick Adkins, address, [REDACTED]
4 [REDACTED], Estill, SC, 29917, date of birth,
5 [REDACTED]^h, [REDACTED], Social Security Number [REDACTED] who
6 provided the following information:

7 He did not have any more information concerning the
8 Ronnie Wooten murder.

9 Q Now, had you gone over to talk to him again on what --
10 why, why did you do that?

11 A He requested to talk to me.

12 Q And then once you got over there, there was nothing
13 else to add?

14 A He didn't have anything to say. He couldn't add to the
15 investigation.

16 Q All right. The written statement that Derrick Adkins
17 gave you after the third rights form, which is Court's
18 Exhibit 3 --

19 A Right.

20 Q -- did he sign that form?

21 A He did.

22 Q And I say form, but it's actually his written
23 statement?

24 A His written statement. He signed it. Chauncey Solomon
25 and Special Agent J.J. Evans witnessed it.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q Okay. And this is the statement. Let me ask you, if
2 you could to be as -- publish this statement to the Court.

3 A I will. Voluntary statement of Derrick Adkins.
4 Derrick Adkins, Joseph Davis, Shawn Davis, and Marquis
5 Bryant were at my sister's house when we asked my
6 brother-in-law could we loan his car to go see some girl.
7 He had on the mind -- he had on mind that we were going,
8 that where we were going, but we were on the way to Hampton
9 to go see some girl when we were passing the Lena Store and
10 saw the store was opened. Then Joseph had in mind to rob
11 the store.

12 He got Marquis to drop me, Shawn, and Joseph off down
13 by the bridge. So, we were, were -- so, we had mask and
14 glove on. We went walking through the wood up to the store.
15 Joseph went up to the store first and approached Ronnie and
16 me and Shawn stood on the outside as Joseph went in the
17 store, and he held Ronnie at gunpoint and where is the
18 money.

19 I and Shawn was on the step when Joseph fired one shot
20 and shot Ronnie in the head. Then me and Shawn came in the
21 store. That when I helped Joseph look for the money and
22 Shawn was at the cash register. Shawn got cigar and
23 cigarette. We did not get any money. So, me and Shawn went
24 running out of the store. We left Joseph and went running
25 past the old folks home coming in Estill. That was when we

Teddy Cone - Direct examination
by Solicitor Stone

1 flagged Marquis down and he took us back to my sister house.

2 We did not see Joseph till the next day or two. That

3 when I took Shawn to the Mexican house and Shawn sold the

4 gun to the Mexican for \$150. I think I did not know that

5 Joseph was going to shoot, shot Ronnie, but that is how it

6 had happened, and I never told anyone because I thought

7 Joseph would have come and killed me or one of my family

8 member. That why I never went to the police because my life

9 was in danger.

10 Signed by Derrick Adkins, witnessed by Special Agent

11 Evans at, at 9/8 of '08.

12 Q Have you reviewed the video in this case --

13 A I have.

14 Q -- the video and that was, that was running

15 contemporaneously with you interviewing him I believe the

16 second time, is that correct?

17 A That's correct.

18 Q All right. And have you reviewed the redacted versions
19 of that video?

20 A I have.

21 Q Have you reviewed the transcript that goes along with
22 that redacted video---

23 A I have.

24 Q ---that plays along with it?

25 A I have.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q Is it accurate?

2 A Yes.

3 Q Is it accurate as to your memory of, of what was said
4 during the time and who said it?

5 A That's correct.

6 SOLICITOR STONE: Your Honor, at this time, for your
7 benefit, we have it cued up and we'd like to play a portion
8 of that video please.

9 (WHEREUPON, a portion of the video was played for the
10 Court at this time.)

11 Q All right. Now, agent, that is obviously the redacted
12 version.

13 You -- have you reviewed that as well from the original
14 tape?

15 A That's correct.

16 SOLICITOR STONE: Your Honor, my, my suggestion, at
17 this time, is I want to go ahead and show the redacting
18 form, redacted version of that so Your Honor will see it,
19 and, and have that -- we can sort of handle both of those
20 issues at the same time. We have the original if there's
21 any question as to any type of coercion that took place in
22 the original that was redacted out. I will certainly be
23 glad to show the entire, the entire video. But I, I believe
24 certainly it was not redacted until the rights had already
25 gone through, first of all.

Teddy Cone - Direct examination
by Solicitor Stone

1 THE COURT: Okay.

2 SOLICITOR STONE: The only other thing -- let me ask
3 you, agent. I will show you -- let me mark this. Excuse
4 me. Court's Exhibit -- just a moment, Your Honor.

5 (WHEREUPON, the redacted written statement was marked
6 as Court's Exhibit No. 7 for identification purposes only at
7 this time.)

8 Q Let me show you what's been marked as Court's Exhibit
9 No. 7.

10 Do you, do you recognize that?

11 A I do.

12 Q Speak into the microphone.

13 A I do.

14 Q All right. And what is that?

15 A Look likes the statement or redacted statement.

16 SOLICITOR STONE: Your Honor, for your benefit, and
17 I'll hand this up, I spoke with Mr. Bauer who represents Mr.
18 Adkins. There were some changes that he wanted made in this
19 redacted form, but I would like to hand it up to Your Honor.

20 THE COURT: All right.

21 SOLICITOR STONE: That is our intention of the
22 redaction of the written statement.

23 (Pause.)

24 SOLICITOR STONE: That's all we have at this time, Your
25 Honor.

Teddy Cone - Direct examination
by Solicitor Stone

1 THE COURT: And this is the statement, the second
2 statement?

3 SOLICITOR STONE: That -- yes, sir, that is the
4 redacted version, and what my suggestion is, is that, once
5 it's authenticated, that I publish that to the jury so that
6 there won't be any mistake.

7 THE COURT: All right. They're objecting?

8 SOLICITOR STONE: Yes, sir. And that's all we have as
9 to the Jackson/Denno hearing, and I also think that covers
10 us on the Bruton issues as well.

11 THE COURT: Mr. Bauer.

12 CROSS-EXAMINATION

13 BY MR. BAUER:

14 Q Agent Cone, in reference to getting statements from
15 Derrick Adkins, you met with him a total of four times, is
16 that correct?

17 A That's correct.

18 Q The first time that you met with him was on September
19 the 4th of 2008, correct?

20 A Yes, sir, let me get that---

21 Q And at that time---

22 A I said give me a second. Let me get back to it.

23 Q All right. Sorry.

24 A The first time was September 4th at 3:05, Hampton
25 County substation.

Teddy Cone - Cross-examination
by Mr. Bauer

1 Q And when you met with him he was already at the
2 substation for purposes of questioning?

3 A To the best of my memory.

4 Q Well, did you go get him and bring him there?

5 A The very first time, I don't recall.

6 Q And you have no recollection as to how he arrived at
7 the substation?

8 A I don't recall.

9 Q You don't know how long he had been at the substation
10 prior to the questioning?

11 A I do not.

12 Q Do you know who, who, if anyone from law enforcement,
13 had met with him and talked with him prior to your taking
14 that statement from him?

15 A I'm sure that law enforcement---

16 Q I'm not asking you, sir, if you're sure. I'm asking
17 you if you know.

18 A Law enforcement picked him up, but I don't recall who
19 picked him up.

20 Q Okay. Do you know when?

21 A To the best of my knowledge, prior to this interview.

22 Q And do you know how much before the interview?

23 A I do not.

24 Q Do you know if any statements were made to him by law
25 enforcement discussing the case that he was about to be

Teddy Cone - Cross-examination
by Mr. Bauer

1 questioned on by you?

2 A As far as me, I did not speak, not speak with other law
3 enforcement.

4 Q Okay. So, you don't know what the people who picked
5 him up and brought him to the substation and held him there
6 for an indeterminate amount of time said to him, do you?

7 A That's correct.

8 Q And as a result of your meeting with him, and after you
9 Mirandized him, he did make a statement?

10 A He did after I met with him and Mirandized him he made
11 a statement.

12 Q And that statement is summarized in your memorandum of
13 interview reflecting the September 4th interview?

14 A That's correct.

15 Q And in that memorandum of interview, it states, after
16 you identified Derrick Adkins by date of birth and Social
17 Security Number and address, says he provided the following
18 information. Marquis Bryant drove the gray Maxima to Ronnie
19 Wooten's store, the Lena Quick Stop. Joseph Davis, Shawn
20 Davis, and Derrick Adkins were also in the car. Joseph
21 Davis had on beige rubber, rubber gloves.

22 A That's correct.

23 Q Was that statement video recorded?

24 A No.

25 Q Was that statement audio recorded?

Teddy Cone - Cross-examination
by Mr. Bauer

1 A No.

2 Q He kind of stops in an unusual place for it. I mean
3 your interviewing -- you're asking questions about a, a
4 murder and robbery and it just stops with people in the car
5 on the way to the incident, and did that somebody had on
6 gloves.

7 A He didn't have anything further to say.

8 Q Well, he told you he was in the car.

9 How did the interview stop?

10 A The last thing he told me was Davis just had on beige
11 rubber gloves.

12 Q But that's really an unusual place to stop.

13 Did he invoke his Miranda rights and say I want a
14 lawyer?

15 A No.

16 Q Did you ask him at that point were you present when
17 Ronnie Wooten was killed?

18 A No, I mean that's the last thing he told me. I mean he
19 said Joseph Davis had on beige rubber gloves and that was
20 it. That's where we stopped the interview.

21 Q And---

22 A I mean that's where it was at.

23 Q So, when you got to the point where he said Joseph
24 Davis had, Joseph Davis had on beige rubber gloves and he
25 stopped there, did you ask him any more questions?

Teddy Cone - Cross-examination
by Mr. Bauer

1 A I did not. It's as simple as that. That's the last
2 thing he told me. That was during the interview.

3 Q You came back on September 5th?

4 A That's correct.

5 Q And prior to meeting with Mr. Adkins you also
6 Mirandized him at that time?

7 A I did.

8 Q And at that time you videotaped the, the interview?

9 A The entire interview along with Miranda rights being
10 read to him.

11 Q Is the videotape, not the redacted one, but the
12 original videotape, a complete and accurate copy of your
13 interview, your Miranda interview with Derrick Adkins?

14 A The original, yes.

15 Q And that videotape begins -- the original videotape
16 begins with Derrick Adkins already in the room, doesn't it?

17 A That's correct.

18 Q How long have you been in the room talking to y'all
19 before you initiated the videotape?

20 A I'd say just a few minutes.

21 Q Okay.

22 A I don't recall the exact time. (Inaudible).

23 Q And what was discussed during that time?

24 A Nothing.

25 Q He just sat there quietly, didn't say anything?

Teddy Cone - Cross-examination
by Mr. Bauer

1 A Right.

2 Q Is that---

3 A He -- I didn't say.

4 Q Y'all just sat there for a few minutes?

5 A I didn't say anything to him.

6 Q And he didn't say anything to you?

7 A No.

8 Q Y'all just stared at each other for four or five
9 minutes?

10 A Right. I can't speak for other law enforcement, but I
11 had nothing to say.

12 Q Okay. Well, was anybody else in law enforcement
13 talking to him during that time?

14 A I can not recollect. I don't know who was in the room.

15 Q But you were in the room?

16 A Yeah.

17 Q Were you in the room the whole time Derrick Adkins was
18 in the room?

19 A No, I was probably in and out.

20 Q So, you don't know what other people said to him during
21 that time?

22 A I don't know if he was in there or in or out.

23 (WHEREUPON, the audiotape of the court reporter was
24 switched at this time, and begins with the following
25 question.)

Teddy Cone - Cross-examination
by Mr. Bauer

- 1 Q September 8th for another interview, didn't you?
- 2 A That's correct.
- 3 Q And at that time you got a written statement from Mr.
- 4 Adkins?
- 5 A I did.
- 6 Q And that was after Miranda?
- 7 A After Miranda.
- 8 Q Okay. Since you already had a statement on videotape
- 9 from September 22nd, excuse me, from September 5th, what
- 10 was the purpose of returning for the initial statement?
- 11 A Simply I wanted a copy of it in writing.
- 12 Q And was his writing of this statement, was it
- 13 videotaped or audiotaped, your, your interaction with him
- 14 prior to him writing it?
- 15 A Prior to writing his statement --
- 16 Q Yes.
- 17 A -- was it audiotaped or video---
- 18 Q Audiotaped or video.
- 19 A No.
- 20 Q So, what transpired between the two of you to get him
- 21 to write the statement?
- 22 A We just told him we needed to get a statement from him
- 23 after he was Mirandized. It's a voluntary statement.
- 24 Q And then you returned on September the 9th?
- 25 A September 9th, 10:25AM, I read his Miranda rights,

Teddy Cone - Cross-examination
by Mr. Bauer

1 that's correct.

2 Q Okay. And at that time you said you returned because
3 you'd been contacted by Derrick Adkins?

4 A By the detention center that he wanted to speak with
5 me, yeah.

6 Q All right. Do you recall who was it was who, who
7 provided you with that information?

8 A I do not.

9 Q And what happened in that meeting with Derrick Adkins?

10 A He was on a fishing expedition. He -- once I got there
11 and got him in the room he didn't have anything more to say.

12 Q Well, what was he talking to you for?

13 A Basically wasting my time. Information. If he was
14 gonna be charged, what he would be charged with.

15 Q Okay. And now, that, that he was on a fishing
16 information, yeah, fishing mission, is not in your details
17 of interview, your memorandum of interview from
18 September 9th, is it?

19 A No, but I mean I can read you the details of the
20 interview if you'd like --

21 Q Well, I asked you---

22 A --if you'd like.

23 Q I asked you to read it if, if you're agreeing with me
24 that that's not in there.

25 A I agree that's not in there, but I mean it's a---

Teddy Cone - Cross-examination
by Mr. Bauer

1 Q Okay.

2 A ---figure of speech.

3 Q Well, his request for information from you isn't in
4 there at all?

5 A No.

6 Q Was that interaction with Derrick Adkins videotaped or
7 audiotaped?

8 A No.

9 MR. BAUER: One moment please, Your Honor.

10 (Pause.)

11 MR. BAUER: I have no further questions for this
12 witness.

13 SOLICITOR STONE: Nothing else, Your Honor. I
14 accidentally took the Court's Exhibit, Your Honor. I'll
15 hand this back to you.

16 THE COURT: Okay. Nothing else from the State?

17 SOLICITOR STONE: No, sir.

18 THE COURT: Anything else from the defense?

19 MR. BAUER: Nothing else, Your Honor.

20 THE COURT: Officer, you may step down.

21 Defense wish to call any witnesses on this issue?

22 MR. BAUER: No witnesses from the defendant.

23 THE COURT: Mr. Ruffalo, I don't believe you have
24 anything or anything you want to say?

25 MR. RUFFALO: Nothing to say. Thank you very much.

1 THE COURT: I just wanted to make sure everybody's
2 getting their opportunity.

3 MR. RUFFALO: Thank you.

4 THE COURT: The confession of statement by the
5 defendant is admitted into evidence. The Court is required
6 to conduct a hearing outside the presence of the jury to
7 determine whether the confession was voluntary and whether
8 it is admissible under Miranda, and that hearing is pursuant
9 to Jackson v. Denno, 378 U.S. 368.

10 The testimony I've heard here today revolved around
11 four separate statements. One of which occurred on
12 September 4th, 2008, one of which occurred
13 September 5th, 2008, one of which occurred on
14 September 8th, 2000, and one that occurred on September 9,
15 9th, 2008.

16 The State, in these particular matters, bears the
17 burden of establishing voluntariness of the statement and it
18 is up to the Court, up to the Court to determine whether or
19 not those statements were voluntary based upon the
20 preponderance of the evidence. The test of voluntariness is
21 whether a defendant's will was overborne from the
22 circumstances surrounding the giving of the confession.
23 This test takes into consideration the totality of all of
24 the surrounding circumstances. Both the characteristics of
25 the accused and the details of the interrogation.

1 The September 4th, 2008, statement occurred at
2 3:05PM. The September 5th 2008, statement occurred at
3 5:00PM. The September 8th statement occurred at 3:40PM,
4 and the, the September, September 9th, 2008, statement
5 occurred at 10:25AM.

6 In reviewing the totality of circumstances as it
7 pertains to each of these statements, I do not believe or
8 did not hear any evidence or testimony of any threats of
9 violence or any statements that were obtained by any direct
10 or implied promises, however slight, or by the execution of
11 improper influence. I did not hear anything about any
12 issues pertaining to the length of questioning of this
13 defendant. I will note that I viewed the video that
14 pertains I think to the -- was it the September
15 8th statement?

16 SOLICITOR STONE: September 5th I believe. It's the
17 second statement. I believe it was September 5th.

18 THE COURT: Okay. September 5th statement, which I
19 had an opportunity to observe, observe the defendant while
20 he was being questioned. There's no concern being brought
21 to my attention concerning the defendant, Derrick Adkins,
22 maturity, education, physical condition, mental health, or
23 that law enforcement failed to advise him of his rights to
24 remain silent. In each situation it would of been presented
25 with the Court's Exhibit as to each time that this defendant

1 was questioned, was Miranda rights from, which appears to be
2 filled out properly and it was indicated the place, the
3 place the questioning took place, the date, the time, each
4 line with regards to this individual's rights as it pertains
5 to each date indicates that the defendant, Derrick Adkins,
6 initially as to all Miranda right forms from
7 September 4th, September 5th, September 8th, and
8 September 9th, that he signed what appears to be his name
9 on each of these waiver of rights form after being advised
10 of his rights, and based upon what I have heard here today,
11 I do not believe that any of these statements were
12 involuntary.

13 Based upon the preponderance of the evidence, these
14 statements were voluntary as to each of these particular
15 dates, September 4th, September 5, September 8th, and
16 September the 9th of 2008.

17 Anything further with regard to that issue?

18 SOLICITOR STONE: No, sir, not from the State.

19 THE COURT: From the defense?

20 MR. BAUER: No, Your Honor.

21 THE COURT: All right. Let me just say one thing.
22 When I was looking, prior to reading the indictment out
23 loud, the date of the matter, indictments, it's got, and I
24 read -- I corrected it when I read it. It just says that
25 Wooten, Ronnie did die in Hampton County as opposed to

1 Ronnie Wooten. That's not an issue I think under Gentry.
2 But it's easily amendable, and I just wanted to bring that
3 to the State as well as the defendant's attention to the
4 fact that it could be---

5 SOLICITOR STONE: I move to amend that, Your Honor,
6 because I think we just had a comma and it will probably be
7 fine.

8 THE COURT: No, it just says, it's just got his name
9 reversed.

10 SOLICITOR STONE: Okay.

11 THE COURT: So, Shawn Leonard Davis and Derrick Adkins
12 did intend to kill and murder Wooten, Ronnie by means, and
13 it's in two places on the murder indictment, murder
14 indictments.

15 Did y'all have any objection to that being amended?

16 I mean I think it's---

17 MR. RUFFALO: No, sir.

18 THE COURT: ---it is allowed to be amended.

19 MR. RUFFALO: Not as to that.

20 MR. BAUER: No objection.

21 THE COURT: Okay. All right. Thank you.

22 One other thing, I just wanted to put on, this on the
23 record with regards to your previous motion to sever. I
24 denied your motion after listening to you. I just wanted to
25 put a few other things on the record with regard to that

1 issue.

2 I mean I carefully considered whether any harm would
3 result to either defendant as a result of joint trial as I
4 mentioned previously, and I did deny that motion,
5 respectfully deny that motion. From what I've seen,
6 severance should be granted only when there's serious risk
7 that a trial, trial would compromise a specific trial right
8 of a codefendant and prevent the jury from making the right
9 judgment about the codefendant's guilt. Criminal defendants
10 who are jointly tried, and, Mr. Bauer, I mean you, you even
11 indicated this in your argument, criminal defendants who are
12 jointly tried for murder are not entitled to separate trials
13 as a matter of right.

14 In this particular case, they're four codefendants.
15 From what I gleamed from the arguments presented to me, I
16 mean I haven't seen any statements, haven't seen any videos,
17 or anything that would lead me to believe otherwise at this
18 point. The State's indicated they have redacted this
19 individual's name to say another person if I recall
20 correctly, which, from what I've heard thus far, would not
21 specifically implicate this codefendant, this defendant.

22 Again, I think I may of said this before, but I will be
23 happy to give the jury an appropriate charge as far as any
24 statements, that they're to be considered only as it relates
25 to the person giving that statement. Unless I see something

1 else that, that gives me concern before we start this trial,
2 and that's, that's my ruling on the severance issue. And,
3 again, I -- nothing I've seen, other than what you, what
4 you-all have argued, that would give me any concern at this
5 point.

6 Anything further, Mr. Bauer, on this issue?

7 MR. BAUER: No, Your Honor.

8 THE COURT: All right. From the State?

9 SOLICITOR STONE: No, sir, other than, I don't -- not
10 necessarily on that issue, but I would -- I think a curative
11 instruction is proper. I would also ask that an instruction
12 to the jury that, that the video's obviously altered, and I
13 want to make sure that it's clear that that was, that that
14 was altered by the understanding of the parties, that that
15 is irrelevant for the jury in some benign way. I do not
16 want us to show a video that cuts and pastes as well as --
17 without some type of instruction I would be concerned.

18 THE COURT: Well, the one that I just saw?

19 SOLICITOR STONE: Yes, sir. Yes, sir, we have one.
20 The, the -- Shawn Davis is almost identical. It's not
21 obvious, but it -- well, it is, marks that there are cuts
22 out of it, and I just want to make sure that that is clear
23 for the jury so they don't think that the State's altered it
24 in any way, if it's proper.

25 THE COURT: Well, I mean if the defense, in what

1 they're saying, you know, look at this video, what a messed
2 up video---

3 SOLICITOR STONE: That's true.

4 THE COURT: You see what I'm saying?

5 SOLICITOR STONE: I mean---

6 THE COURT: It can kind of cut both ways.

7 SOLICITOR STONE: Yes, sir.

8 THE COURT: If they're over there arguing about that,
9 then they -- I think they opened the door for you to address
10 that issue. If the Court addresses the jury on that issue,
11 you know, in some way or some respect, it kind of brings
12 more attention to it.

13 But you see what I'm saying?

14 SOLICITOR STONE: I do, and that's what, what concerns
15 me is the last case that I handed that unfortunately I
16 wasn't able to give you an extra copy of it, the Jenell case
17 I think is the---

18 THE COURT: I think I got a copy of it now.

19 SOLICITOR STONE: The only thing that concerns me is
20 that's exactly what it appears that happened in there.
21 Everything was redacted fine, but one of the defense
22 counsels brought up something about this, this person and
23 opened the door and the judge allowed the State then to
24 explain it, which is, although they held it to be harmless
25 error, I would prefer not to have any error.

1 So, that's my only concern. If the defense isn't
2 planning on making a big issue out of that, then I certainly
3 don't need to have any particular instruction made to the
4 jury.

5 THE COURT: Well, I mean I think that -- I'm not -- I
6 don't want to tell them what they can and can't argue, but
7 if they opened up that door, I mean the flood gates and come
8 flooding.

9 SOLICITOR STONE: Yes, sir.

10 THE COURT: And -- I mean you gentlemen have been
11 trying cases for a long time. I think that they -- I do
12 whatever y'all -- I mean if y'all want to talk about it from
13 the State and the defense, y'all can address it and we, we
14 can talk about it some more in the morning.

15 SOLICITOR STONE: Yes, sir.

16 THE COURT: But I just want you to know where I'm
17 coming from and what my thoughts are.

18 SOLICITOR STONE: Absolutely.

19 MR. RUFFALO: Just as a matter of housekeeping, Your
20 Honor, your ruling on the motion for severance and
21 Mr. Bauer's client also applies to Mr. Davis in effect that
22 you see no threat of prejudice by their statements as
23 redacted?

24 THE COURT: That is correct. Thank you for addressing
25 that, Mr. Ruffalo.

1 MR. RUFFALO: Yes, sir.

2 THE COURT: Anything further from the State---

3 SOLICITOR STONE: No, sir.

4 THE COURT: ---before we adjourn?

5 SOLICITOR STONE: No, sir.

6 THE COURT: From the defense?

7 MR. BAUER: No, Your Honor.

8 MR. RUFFALO: No, Your Honor.

9 THE COURT: For scheduling purposes, I told the jury to
10 be back here at 9:30.

11 SOLICITOR STONE: Yes, sir.

12 THE COURT: Mrs. Cooley, my court reporter, is driving
13 I think from Mt. Pleasant, is that correct?

14 COURT REPORTER: Yes, sir.

15 THE COURT: So, she's got kind of a haul. I mean I
16 drove from Florence, but I'm not going back to Florence
17 today. I would ask -- I mean I will be here at nine o'clock
18 in the morning.

19 Mrs. Cooley, that's not putting anything on you, but I
20 want, at least, the lawyers involved to be here at nine
21 o'clock.

22 SOLICITOR STONE: Yes, sir.

23 THE COURT: If they're any pre, any issues before we
24 start, I want to know about them before, you know, before
25 9:30 so when Mrs. Cooley gets here we can address those

1 issues because I do not -- I do not like to make the jury
2 wait any longer than they have to. I just don't like to do
3 that, and I don't -- I told them 9:30. I'm gonna try to get
4 in this courtroom as quickly or as close to 9:30 as we---

5 SOLICITOR STONE: Yes, sir.

6 THE COURT: ---can so we can start.

7 Okay. So, is there anything -- any issues that we need
8 to address, please be here, you know, before 9:30.
9 Obviously we can't do anything before Mrs. Cooley gets here.
10 But I just want to be aware of it so we can deal with those
11 issues as quickly as possible.

12 SOLICITOR STONE: Yes, sir.

13 MR. RUFFALO: Yes, sir.

14 THE COURT: All right. Anything further?

15 SOLICITOR STONE: Nothing from the State.

16 THE COURT: All right. We'll stand adjourned until
17 9:30 in the morning. Lawyers be back at 9:00 in the
18 morning.

19 MR. RUFFALO: Thank you.

20 THE COURT: Thank you.

21

22 (WHEREUPON, Court was in recess for the evening.)

23

24

25

1 Tuesday, August 3rd, 2010

2
3 (WHEREUPON, State's Exhibit Nos. 1 through 25 were
4 marked for identification purposes only at this time.)

5 THE COURT: Mr. Ruffalo, are you ready to proceed?

6 MR. RUFFALO: Yes, sir.

7 THE COURT: Mr. Bauer?

8 MR. BAUER: Yes, Your Honor.

9 THE COURT: Mr. Stone?

10 SOLICITOR STONE: Yes, sir.

11 THE COURT: All right.

12 SOLICITOR STONE: May we bring something to your
13 attention really quickly?

14 I think this makes---

15 THE COURT: Yes, sir.

16 SOLICITOR STONE: ---speeds things along.

17 I have shown the exhibits that, that we intend to
18 introduce at the trial to the defense counsel. State's
19 Exhibit 7 is a photograph of the, of the decedent at the
20 time of his death along with a number of other photographs.
21 I don't believe there's an objection from the defense, but I
22 wanted to go ahead and allow you to see the, the issues.

23 We have carefully chosen a photograph that does not
24 show anything particularly graphic. They're certainly
25 other, a lot of other photos that do. But I think Mr. Bauer

1 wanted to put on the record why there's no objection to that
2 picture.

3 THE COURT: Is that correct, Mr. Bauer, and there's no
4 objection to Exhibit No. 7, which is a photograph of the
5 decedent?

6 MR. BAUER: Yes, Your Honor.

7 Having looked at the photo, of the alternative
8 photograph available, each of the evidence was more
9 disturbing, more prejudicial than that one. That's the only
10 picture available that actually minimizes the, the impact to
11 the jury of the seriousness of the wound and of the blood.
12 It certainly -- the solicitor is being considerate in that,
13 and that's why we're not objecting to the Exhibit 7.

14 THE COURT: Is that correct, Mr. Ruffalo?

15 MR. RUFFALO: On behalf of Mr. Davis, we do not object
16 to State's Exhibit No. 7.

17 THE COURT: All right. Mr. Ruffalo, is there anything
18 additional that you wanted to put on the record before we
19 bring the jury out?

20 MR. RUFFALO: No, sir, I believe there is none.

21 Oh, yes, sir, thank you very much. If Your Honor
22 please, at this time I would like Your Honor to inquire of
23 the defendant, Shawn Davis, a few particular matters. One
24 specifically.

25 There was a recent offer, what I call secondary offer

1 in this case, for him to enter a plea, and I would like you
2 to have Mr. Davis stand up and ask that he understands that
3 and make sure that it's on the record that he is rejecting
4 that plea. In summation, I'll just briefly -- the original
5 offer in this case was, of course, to drop the murder and
6 have him plead to the armed robbery for a sentence of 30
7 years, which he rejected. That plea colloquy, colloquy and
8 inquiry and his rejection is on the record earlier by Judge
9 Kinard.

10 Yesterday there was another offer by the State. That
11 offer was to plead guilty to the 30 year sentence for murder
12 with the addition of the armed robbery and the implication
13 being that the burglary second would be dropped. He has
14 rejected that offer also. I would just like you to ask him
15 that he understands he's rejecting that offer, the trial is
16 going forward, and there will be no other offers from the
17 State.

18 THE COURT: All right. Mr. Davis, you've heard your
19 attorney, Mr. Ruffalo, indicate what the offer that was made
20 to you yesterday.

21 Has that offer been explained to you and do you
22 understand that offer?

23 DEFENDANT DAVIS: Yes, sir.

24 THE COURT: Do you understand that once the trial
25 begins, my understanding is that offer is going to be

1 withdrawn --

2 DEFENDANT DAVIS: Yes, sir.

3 THE COURT: -- and that you will not have an
4 opportunity I guess to revisit that offer and you understand
5 that?

6 DEFENDANT DAVIS: Yes, sir.

7 THE COURT: And you, you understand now, it's my
8 understanding and Mr. Ruffalo's understanding that you have
9 rejected the State's offer that was conveyed to your
10 attorney who subsequently conveyed that offer to you
11 yesterday, is that correct?

12 DEFENDANT DAVIS: Yes, sir.

13 THE COURT: Okay. Thank you, Mr. Davis.
14 Anything further, Mr. Ruffalo?

15 MR. RUFFALO: Nothing further. Thank you, Your Honor.

16 THE COURT: Anything further before we bring the jury
17 in from the State?

18 SOLICITOR STONE: Nothing from the State, Your Honor.

19 MR. BAUER: Your Honor, just for, just so the record is
20 clear, Your Honor, the same offer was extended to my, to my
21 client. It wasn't -- and been rejected, and as you
22 mentioned, Mr. Adkins informed me yesterday that he likewise
23 would like to reject that offer.

24 You understood that, right?

25 DEFENDANT ADKINS: Yes, sir.

1 THE COURT: You understand that, Mr. Adkins?

2 DEFENDANT ADKINS: Yes, sir.

3 THE COURT: And you rejected that offer that was
4 conveyed to you yesterday by the State?

5 DEFENDANT ADKINS: Yes, sir.

6 THE COURT: Okay. Anything further?

7 MR. BAUER: Nothing from the defense, Your Honor.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Madam Clerk.

11 (WHEREUPON, the jury was placed under oath at this
12 time.)

13 THE COURT: Good morning, ladies and gentlemen.
14 Mrs. Carolyn Wallace?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. I have appointed you as the
17 forelady of this jury, and I will explain to you in more, in
18 depth later about what your responsibilities are. But just,
19 for right now, I've appointed you as the forelady of this
20 jury, and your job responsibilities will be the spokesperson
21 of this jury, and I will talk to you more about that as we
22 proceed with this trial.

23 Now, ladies and gentlemen, I trust that you-all had a
24 good night. I appreciate you-all being here when I asked
25 you to be back here this morning, and I apologize cause

1 we're starting a few minutes late. But please understand
2 that we were in here getting some matters addressed and
3 dealt with before we brought you-all in here.

4 Now, we're about to begin the trial of the State versus
5 Shawn Leonard Davis and Derrick Adkins, but before we begin
6 this trial I want to tell you that this trial probably will
7 be different from what you might expect. Many people do not
8 have a chance to attend actual Court sessions as you are
9 doing now, and they may think, from watching television or
10 movies or reading books, that trials are always full of high
11 drama, intense action, and rivetting circumstances.

12 while all of these things may be true at times, this
13 trial is not for entertainment. It is a fundamental part of
14 our democracy, a search for the truth and an effort to make
15 sure that justice is done between the parties before the
16 Court. Searching for the truth and making sure that justice
17 is done is often slow, deliberate, and repetitive, the
18 opposite of what you may of seen on television or in movies
19 or read in books.

20 This courtroom is a place of honor dedicated to the
21 protection and preservations of citizens' rights through
22 what many have called the greatest justice system ever
23 created. The attorneys appearing before you are advocates
24 for the parties they represent. But first and foremost,
25 they are officers of the Court sworn to uphold the integrity

1 and fairness of our judicial system, and to help you in the
2 search for the truth.

3 You should expect them to be professional, competent,
4 and ethical in the representation of their clients'
5 interest. Remember that you've taking an oath to try this
6 case and reach a fair and just verdict, and you are also
7 expected to be professional, reasonable, and ethical. Thank
8 you for accepting this important responsibility of jury
9 service and for your contribution today to our justice
10 system.

11 Now, what I will now say is intended to serve as an
12 introduction to the trial of this case. These remarks are
13 not a charge on the law in this case. I will instruct you
14 on the law applicable to this case at the end of the trial
15 before you retire to consider your verdict. This is merely
16 an explanation of the procedure that we will follow in the
17 trial of this case so that you may better understand what
18 may be happening.

19 Each of these defendants in this case is charged by an
20 indictment filed in this Court with the crime of armed
21 robbery and murder, the elements of which will be explained
22 to you later. The indictment, as I told you previously, is
23 simply the charge by which the case is brought into Court
24 and it is not, in any sense, evidence of any allegations it
25 contains.

1 The -- each defendant is pled not guilty to these
2 indictments. The State, therefore, has the burden of
3 proving each of the elements of the indictment beyond a
4 reasonable doubt, and it will be your duty, ladies and
5 gentlemen, to decide whether the State has met that burden.

6 Your purpose, as jurors, is to find and determine the
7 facts. You are the sole judges of the facts. If any time I
8 make any comment regarding the facts, you must disregard it.
9 You are to determine the facts from the testimony you hear
10 and other evidence introduced in Court. It is up to you to
11 determine the inferences which you feel may properly be
12 drawn from the evidence. It is especially important that
13 you perform your duty of determining the facts diligently
14 and conscientiously because ordinarily there is no way to
15 correct an erroneous determination of the facts by a jury.

16 On the other hand, and with equal emphasis, the same
17 law that makes you the judges of the facts makes me the
18 judge of the law. The law, as given by the Court, is the
19 only law you may consider. You must accept and follow it
20 even though you may disagree with it. I can not tell you
21 what the facts are, and you can not disagree with me about
22 what the law is or should be. Your job is to take the law
23 as I give it to you and apply it to the facts as you find
24 them from the testimony of the witnesses and any other
25 evidence that is produced. After doing, after doing that

1 you will render your verdict, a true and just verdict under
2 the solemn oath that you just took as jurors.

3 Until I advise you to begin your deliberations you must
4 not discuss this case with anyone including your fellow
5 jurors, friends, family members, and anyone involved in the
6 case. After the case is submitted to you you must discuss
7 it only in the jury room with your fellow jurors.

8 The attorneys and the parties in this case have been
9 advised that they are not to talk to you at all. So, if you
10 see anyone involved in the case, if they do not say hello
11 they're not being unfriendly. They are just following my
12 instructions.

13 During the trial do not read, listen to, or watch any
14 news reports about this case. This includes anything that
15 may be in the newspapers, or on the Internet, radio, or
16 television. You must not consider anything you may have
17 read or heard about the case outside of the courtroom,
18 whether before or during trial. It is important that you
19 keep an open mind and not decide any issue in the case until
20 all of the evidence has been presented, the parties have
21 made their closing arguments, and I have instructed you on
22 the law in this case.

23 It is your solemn responsibility to determine the guilt
24 or innocence of each defendant, and your verdict must be
25 based solely on the evidence as it is presented to you in

1 this trial, and on the law as I instruct you during and at
2 the close of the trial.

3 Now, in just a moment the solicitor will make what's
4 called an opening statement in which the solicitor will
5 explain to you the issues in this case or at least what the
6 solicitor thinks the issues are in this case. Each of the
7 attorneys for each of the defendants may also make an
8 opening statement although they are not required to do so.

9 What the attorneys tell you during their opening
10 statements is not evidence in this case. It is only their
11 contention as to what the issues are. The evidence,
12 evidence in this case will be presented to you by the
13 testimony of the sworn witnesses from the witness stand
14 and/or by exhibits that may be introduced into evidence.

15 From time to time, during the trial, you may hear one
16 of the lawyers say something like Your Honor, I believe we
17 have a question of law or a matter of law to discuss with
18 you or Your Honor, may we approach the bench or sometimes I
19 myself might find it necessary to excuse you from the
20 courtroom for a short while so the attorneys and I can
21 discuss a matter of law.

22 The reason for this is because you are the judges of
23 the facts in this case, and sometimes, when I am discussing
24 matters of law with the attorneys, it may be necessary for
25 me to make some comment as to the facts in connection with

1 ruling whether or not a particular law applies. I am not
2 suppose to tell you what I think the facts are. So, I will
3 excuse you from the courtroom while these discussions take
4 place so in no way will you be influenced by anything that I
5 may say or do in connection with the facts.

6 In determining what the true facts are in this case,
7 you must decide whether or not the testimony of the
8 witnesses is believable. It will be my responsibility to
9 rule as a matter of law as to whether certain testimony is
10 admissible at all or not. But once the testimony is
11 admitted, whether or not you believe it is solely for you to
12 determine.

13 In deciding whether to believe a witness, you have the
14 right to consider the interest of any witness, the bias of
15 any witness, the prejudice of any witness, the opportunity
16 for the witness to have seen the matter and things about
17 which the witness may testify, and the way the witness acts
18 on the witness stand.

19 You have a right to consider anything that is in the
20 record that will help you evaluate the testimony of the
21 witnesses. That means that it is your duty to pay close
22 attention to these witnesses, to observe the witnesses, to
23 listen to the witnesses, and to pay close attention to the
24 attorneys and to the Court. Don't let your thoughts wonder,
25 but give strict attention to the testimony in the case so

1 that, at the end of all the testimony, after the arguments
2 of counsel and the charge on the law by the Court, you will
3 then be in a position to determine what the true facts are
4 and to apply the law to those facts and thus render a true
5 and just verdict.

6 It is your added duty, Madam Forelady, to preside in
7 the jury room and be the jury spokesperson here in Court.
8 It will also be your duty to write the verdict, but I will
9 give you further instructions about that at the conclusion
10 of the case.

11 In order to preserve everyone's rights, I will give the
12 parties an opportunity to object to anything I have said.

13 Any exceptions to anything that I've said to the jury
14 by the State?

15 SOLICITOR STONE: No, sir, not from the State.

16 THE COURT: By the defense, Mr. Bauer?

17 MR. BAUER: No, Your Honor.

18 THE COURT: Mr. Ruffalo.

19 MR. RUFFALO: No objection, sir.

20 THE COURT: All right. Ladies and gentlemen, we will
21 now begin the trial.

22 Mr. Stone.

23 SOLICITOR STONE: May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 SOLICITOR STONE: The hand of one is the hand of all.

1 The hand of one is the hand of all. That's the law in the
2 State of South Carolina, and that's what this case is about.

3 what the judge will charge you, and as he just
4 explained to you, he is the judge of the law. If he tells
5 you something different than I do, for goodness sakes,
6 listen to him. But what he's gonna tell you, at the end of
7 this case, is just that. That if two or more people get
8 together to commit a crime, such as an armed robbery, and
9 someone is murdered in the process of that armed robbery,
10 armed robbery, everyone participating in the armed robbery
11 is guilty as the triggerman.

12 why am I telling you all that?

13 That's what this case is about. June the 23rd, 2007,
14 Derrick Adkins, Shawn Davis, Joseph Davis, and Marquis
15 Bryant got together, and they decided they were gonna rob
16 the Lena Quick Store and Ronnie Wooten. This is Derrick
17 Adkins here, and this is Shawn Davis here. Together with
18 Shawn Davis' brother, Marquis Bryant, they hatched a plan to
19 rob the, to rob this store and Ronnie Wooten.

20 Joseph Davis went into the store, but before they did
21 that, they all got masks, they all got gloves, and they took
22 with them a loaded .22 caliber handgun. Joseph Davis went
23 into the store. Joseph Davis pulled the trigger and shot
24 Ronnie Wooten in the face. No argument, no struggle. The
25 facts are gonna show you that Ronnie Wooten died pretty much

1 where he was sitting at the beginning of the robbery.

2 Derrick Adkins, this man right here, helped Joseph
3 Davis roll Ronnie Wooten's body over and search it for
4 money. They searched his pants packet. They even searched
5 his socks as he was lying there dying.

6 Shawn Davis, Joseph Davis brother, this man at the end,
7 took a left when he went into the store. He went behind the
8 cash register, he went behind the counter into the cash
9 register, and tried to get cash out of the cash register.
10 When he couldn't get any cash out of the cash register he
11 took cigarettes and that's all he got. Ronnie Wooten's life
12 was worth a pack of cigarettes.

13 These two people, along with Joseph Davis and Marquis
14 Bryant, committed an armed robbery, and in the process of
15 committing that armed robbery they killed Ronnie Wooten, and
16 that's how two people can be charged with armed robbery and
17 two people can be charged with murder.

18 Now, my job today is to prove to you those facts beyond
19 a reasonable doubt. If I don't do that, your job is to come
20 back here and find them not guilty. Solicitor, you didn't
21 do your job. You didn't prove those facts that I just
22 outlined to you.

23 Well, folks, that's my job, and at the end of this
24 trial I'm gonna ask you one thing and one thing alone. Take
25 the facts as you hear them from the witness stand. Hear the

1 testimony that you are going to hear which includes the
2 confessions of Derrick Adkins and Shawn Davis. Hear the
3 testimony of the person that Shawn Davis and Derrick Adkins
4 tried to get rid of the murder weapon to by selling it to
5 Saul Benitez. Listen to that evidence carefully, and then,
6 as the judge instructs you, apply those facts to the law.

7 Verdict in South Carolina means to speak the truth.
8 That's all it means. Your job, as a juror, is to speak the
9 truth, and that's the only thing I'm gonna ask you to do.
10 At the end of the trial, after you listen to the facts of
11 this case, if I haven't proven those facts, your job is to
12 find him not guilty. But I'm gonna ask you to render a
13 verdict, ladies and gentlemen, that speaks the truth that in
14 accordance with the facts that you hear and the law as the,
15 the judge tells you. The hand of one is the hand of all.

16 Thank you.

17 THE COURT: Mr. Bauer, Mr. Ruffalo, what's your order?

18 MR. RUFFALO: Thank you, Your Honor.

19 If it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. RUFFALO: Morning, ladies and gentlemen.

22 My name is Dudley Ruffalo. I have the pleasure of
23 representing Shawn Davis today, and I wanted to talk to you
24 for a few minutes about trials and courts and kind of what
25 happens here today.

1 The solicitor has outlined what they intend to prove in
2 this case, and he's done so very well. He is also told you
3 that you must listen to those things that come from the
4 witness stand and that is correct. That is how you judge
5 this case and the judge will instruct you on the law and how
6 that operates.

7 We call it a court because, in the old days, people use
8 to come to the king. That was their only outlet. They
9 would go to the King's Court and say I want you to decide
10 this case between this person and I. You've heard stories,
11 of course, before of Solomon and the two women with the
12 baby.

13 Now, we don't go to a King's Court or a Queen's Court
14 anymore today. We are a little more sophisticated and we
15 have the system that we have today, which is probably the
16 best in the world.

17 Imagine if you had a dispute, and you had to go before
18 nice Queen Elizabeth with a big purse and the funny hat
19 asking her to decide everything about an important fact in
20 your life. Just wouldn't work. We have our jury system.
21 That is the most essential and important legal system in the
22 world and we cherish it.

23 The State sits here close to the jury because they have
24 what's called the burden of proof. They must carry the ball
25 towards the goal line. They are the ones that have to prove

1 the case. So, they traditionally sit next to the jury.

2 To be drawn for a jury is awesome and difficult
3 situation. You've probably been somewhat apprehensive about
4 this, a little nervous about it. You are here in this large
5 room with all these folks and a judge and pictures and
6 equipment and it's all very ominous, I want you to be
7 careful about that when you are considering this case.

8 I'm gonna tell you a little story. When I was 15 years
9 old, my dad was a lawyer, and I accompanied him to Federal
10 Court one day, and he had a fellow with him, and I got up
11 there and I saw the marble floors and the statutes and
12 everything, and I turned to him, and in front of this poor
13 fellow I said, my gosh, this guy must of done something
14 really bad, and my father gave me one of those looks like
15 when are you gonna stop saying really stupid things all the
16 time, and the point of story is, is that just because you've
17 been brought here, among the pictures and the books and the
18 tables, doesn't mean you've done anything. It does not mean
19 you've done anything.

20 The, the structure doesn't mean anything. Someone is
21 called the defendant. I've always kind of disagreed with
22 that word because there's absolutely nothing we have to
23 defend. Nothing. The judge will instruct you that it's up
24 to the prosecution to prove the case beyond a reasonable
25 doubt. He will explain to you what that means. There's

1 nothing for us to defend.

2 I'll ask you to be patient during certain boring times
3 or what seems like long and extended cross-examination.
4 You've seen it on television, of course. We sit here and we
5 ask questions of the witness that seem to go on forever
6 seemingly pointless. Cross-examination is basically the
7 only tool that we have. We ask the witnesses questions to
8 figure out what they're saying, and if they know what
9 they're saying, and what they're saying to you.

10 There's an old story from the Bible, Suzanna and the
11 Elders. Suzanna is at her bath on her terrace. The Elders
12 do the original peeping tom thing, and they see her at her
13 bath, and they approach her later on and they say to her, we
14 want you to be with us in the Biblical sort of way.
15 Suzanna, of course, rejects that, and the Elders, being
16 judges, say well, we're gonna go to the king. We're gonna
17 tell him you're an adulter, and you're gonna be stoned to
18 death.

19 They go to the king and the king says huh, okay, let me
20 figure this out. He takes one Elder and separates that
21 Elder from the other, and he asked the first Elder, and he
22 says well, where did the adultery take place that you saw,
23 and the Elder said well, it took place by the fig tree. He
24 said okay. He gets the other Elder and said where did the
25 adultery that you saw take place, and that Mr. Elder said

1 well, it takes place by the bell. The end of the story is
2 that the two elders were stoned to death.

3 Now, no one's gonna get stoned to death here today, but
4 the point of the story is, is that unless the king separated
5 them and asked them discerning questions about the
6 conditions and facts of what they were saying, he would of
7 never discovered the truth. That's what cross-examination
8 is about. That's how we discover the truth.

9 Remember the State has told you that they intend to
10 prove certain things. At the end of the day, when the judge
11 instructs you and says go back in the jury room and I want
12 you to consider this and consider that, and this is the law
13 that you are to use, remember did they actually prove what
14 they said or did they really merely raise a suspicion that
15 something might be the way they say it is. It's a very
16 important point.

17 Did they prove it or did they really raise a suspicion
18 that it might have happened that way?

19 It's often been said that you render a verdict of
20 guilty or not guilty.

21 Many people like to interpret that is, as well are you
22 really rendering a verdict of not guilty or guilty or are
23 you really making a decision as to whether the State has
24 proved, brought up to the level, carried the ball down the
25 field, got them to the yard line, have they proved it or

1 they raised a suspicion that it might be true?

2 I want to thank you very much for listening to me
3 today. I appreciate your time here today, and thank you so
4 much.

5 THE COURT: Mr. Bauer.

6 MR. BAUER: Your Honor, Mr. Prosecutor, members of the
7 jury, may it please the Court.

8 I'm Sam Bauer. I'm, I'm a lawyer from Beaufort County,
9 and this is Derrick Adkins, and about two years ago Judge
10 Buckner appointed me to represent him knowing one day I'd be
11 standing here in front of a bunch of jurors giving an
12 opening statement.

13 The prosecutor's told you what he expects the evidence
14 in the case to be. The prosecutor's opening statement is
15 not evidence. You've been told what the indictments are,
16 the formal charges in this case, but before he's charged
17 with it.

18 Those indictments are also not evidence. The only
19 evidence in this case will come to you from the witness
20 stand. You've heard defense counsel for Mr. Davis explain
21 to you the burden of proof, presumption of innocence, and
22 that you're gonna be asked to consider the evidence and
23 determine whether it rises to proof beyond a reasonable
24 doubt.

25 I am not going to bore you again by explaining all that

1 a second time. You're reasonable jurors. We're entitled to
2 a jury of their peers, and both the prosecution and the
3 defense went through a process of selecting jurors saying
4 some looked right, some didn't, we excused some jurors.
5 You're the jury that all three of these people are here
6 today trusting you to do the right thing.

7 You're the reasonable jurors, you're it, and that's a
8 big burden on you. I'm not asking you, at the beginning of
9 this trial, to do something, to say guilty or not guilty
10 cause you haven't heard any evidence. All I'm asking you to
11 do, while you're sitting here, is one, listen to the
12 evidence, pay attention to what you hear, and what you don't
13 hear, what evidence is, is presented to you, what evidence
14 is missing, if any, here.

15 And as you listen to it, to follow the rules that the
16 judge gave you, and then one of those is the presumption of
17 innocence. That as you listen to that evidence, you hear it
18 through a filter, through a screen, like a fishing hat. I
19 hear what you're saying, but I believe, I presume Derrick
20 Adkins to be innocent. Not technically not guilty, actually
21 innocent. I presume, I believe him to be innocent, and
22 you're having to overcome my belief, my conviction that
23 Derrick Adkins is innocent.

24 At the end of the case I'm gonna ask you to vote not
25 guilty. But all I'm gonna ask you to do now is to be fair.

Patricia Bellinger - Direct examination
by Solicitor Stone

1 THE COURT: Mr. Stone.

2 SOLICITOR STONE: Your Honor, the State calls Patricia
3 Bellinger to the stand.

4 PATRICIA BELLINGER, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR STONE:

8 Q Mrs. Bellinger, pull that mic up to you so I can hear
9 you.

10 A (Witness complies.)

11 Q You good?

12 A Uh-huh. (Affirmative).

13 Q What's your full name, ma'am?

14 A Patricia Bellinger.

15 Q And what do you do, ma'am?

16 A I'm a 9-1-1 dispatcher.

17 Q How long have you been a 9-1-1 dispatcher?

18 A Twenty-nine years.

19 Q Wow, 29 years.

20 All in Hampton County?

21 A Yes.

22 Q All right. And, so, the dispatch system, tell me
23 exactly what that is.

24 What does that system do?

25 A Well, it takes emergency calls for medical and law

Patricia Bellinger - Direct examination
by Solicitor Stone

1 enforcement and dispatches the calls and sends assistance
2 where it's needed.

3 Q Okay. So, people call emergency in to you and then you
4 dispatch---

5 A Yes.

6 Q ---police, ambulance, all of that?

7 A Yes, and fire, yes.

8 Q All right. And fire as well?

9 A Yes.

10 Q All of that -- all those calls, do they come to you
11 from Hampton County?

12 A Sometimes we get other calls, but we transfer to where
13 they need to go.

14 Q Now, the -- as the calls are coming in, are those calls
15 being recorded?

16 A Yes, they are.

17 Q And there's something called a CAD system, is there
18 not?

19 A Yes.

20 Q And what is that?

21 A It records all the calls that comes in and gives a
22 location of where the call is actually in.

23 MR. BAUER: Pardon me, Your Honor.

24 May we approach?

25 THE COURT: Yes.

Patricia Bellinger - Direct examination
by Solicitor Stone

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 Q Okay. Mrs. Bellinger, I'm sorry.

4 The CAD system, this is the recording system that, that
5 records all the incoming and outgoing 9-1-1 calls?

6 A Yes, it is.

7 Q And does it record your voice as well?

8 A Yes.

9 Q And does it record it at the time that it's happening?

10 A Yes, they are.

11 Q All right. Now, I am going to show you what's been
12 marked as State's Exhibit 23 that has been marked as Wooten
13 audio and the transcript of the 9-1-1 call.

14 Have you reviewed what is on that disk, the 9-1-1 call
15 and the transcript that accompanies that?

16 A Yes, I have.

17 Q And did you recognize that as your voice on the 9-1-1
18 call as taking those in?

19 A Yes, it is.

20 Q Is that a fair and accurate depiction of that, of those
21 recordings as they happened at that time?

22 A Yes, it is.

23 SOLICITOR STONE: Okay. Your Honor, at this time I
24 move in State's Exhibit No. 23 and ask to publish that to
25 the jury.

Patricia Bellinger - Direct examination
by Solicitor Stone

1 MR. BAUER: No objection from Defendant Adkins.

2 THE COURT: Any objection, Mr. Ruffalo?

3 MR. RUFFALO: Quite well, Your Honor.

4 THE COURT: No objection?

5 MR. RUFFALO: No objection.

6 THE COURT: Mr. Stone.

7 SOLICITOR STONE: Yes, sir.

8 THE COURT: You may proceed.

9 (WHEREUPON, State's Exhibit No. 23 was received into
10 evidence and published to the jury at this time.)

11 SOLICITOR STONE: That's all we have from this witness,
12 Your Honor.

13 THE COURT: Cross examination, Mr. Bauer, Mr. Ruffalo?

14 MR. BAUER: No, Your Honor.

15 MR. RUFFALO: No questions, Your Honor.

16 THE COURT: Mrs. Bellinger, you may step down. Thank
17 you.

18 SOLICITOR STONE: State calls Laura Meyer to the stand.

19 LAURA MEYER, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR STONE:

23 Q Mrs. Meyer, would you give us your full name please,
24 ma'am?

25 A Laura Meyer.

Laura Meyer - Direct examination
by Solicitor Stone

1 Q You are obviously a first responder paramedic, is that
2 correct?

3 A Yes, sir.

4 Q Okay. Pull the microphone a little bit to you.

5 A (Witness complies.)

6 Q And what exactly is your job title?

7 I know they're different levels of EMS technicians.

8 So, I want to make sure I get the right one.

9 A I'm a paramedic.

10 Q I'm sorry?

11 A I'm a paramedic.

12 Q All right. What does that mean?

13 A That means I deliver the highest level of care for our
14 facility. I can do anything with the heart monitor, and I
15 can start IV's. We go to school for the highest amount of
16 time.

17 Q Are you trained in order to determine whether or not
18 someone is, can be saved or is dead?

19 A Yes, sir.

20 Q And that, that goes along with your training as well?

21 A Yes, sir.

22 Q Now, let me ask you to go back to September 23rd of
23 2007.

24 You were an EMT paramedic at that time?

25 A Yes, sir.

Laura Meyer - Direct examination
by Solicitor Stone

- 1 Q You held the same level of training at that moment?
- 2 A Yes, sir.
- 3 Q All right. Tell me, first of all, do you, do you
- 4 respond with people or you by yourself?
- 5 How does that work?
- 6 A We're on the ambulance. We are South two on ambulance.
- 7 Q And you were present just now during the 9-1-1 call, is
- 8 that correct?
- 9 A Yes, sir.
- 10 Q All right. After the 9-1-1, were you dispatched out to
- 11 the scene at the Lena Quick Store?
- 12 A Yes, sir.
- 13 Q First of all, tell me where that is located.
- 14 A That is in-between the Brian Gates Crossroads and where
- 15 I was stationed at, the Estill Fire Station.
- 16 Q Is that in Hampton County?
- 17 A Yes, sir.
- 18 Q And when you arrived there, were you the first one on
- 19 scene?
- 20 A Yes, sir.
- 21 Q All right. Let me ask you, if you could, first to
- 22 identify what I'm gonna hand you as State's Exhibit No. 1.
- 23 Can you identify that photograph?
- 24 A Yes, sir, that's the outside of the store.
- 25 Q Is that a fair and accurate depiction of the Lena Store

Laura Meyer - Direct examination
by Solicitor Stone

- 1 as you saw it that night?
- 2 A Yes, sir.
- 3 Q All right. State's Exhibit No. 2, ask if you could
- 4 identify that please.
- 5 A That's the front door of the store.
- 6 Q Okay. Same store?
- 7 A Yes, sir.
- 8 Q Is that a fair and accurate depiction of the scene as
- 9 you saw it that night?
- 10 A Yes, sir.
- 11 Q State's Exhibit No. 3, ask if you could identify that
- 12 please.
- 13 A That's the inside of the store, the same store.
- 14 Q All right. Is that to the left or the right as you
- 15 walk in the door?
- 16 A That is to the left.
- 17 Q And is that a fair and accurate depiction of how that
- 18 scene looked when you went in?
- 19 A Yes, sir.
- 20 Q State's Exhibit No. 4, can you identify that?
- 21 A Yes, sir, that is the inside of the store.
- 22 Q Is that a fair and accurate depiction of the scene as
- 23 you saw it?
- 24 A Yes, sir.
- 25 Q State's Exhibit 5.

Laura Meyer - Direct examination
by Solicitor Stone

1 A Yes, that's of the store.

2 Q And is that a fair and accurate depiction as well of
3 the scene?

4 A Yes, sir.

5 Q State's Exhibit 6, is that a fair and accurate
6 depiction of the scene?

7 A Yes, sir.

8 Q And State's Exhibit 7, can you identify that for me
9 please?

10 A Yes, sir, that was the inside of the store to the
11 right.

12 Q Is that a fair and accurate depiction of the scene as
13 you saw it that night?

14 A Yes, sir.

15 SOLICITOR STONE: Your Honor, at this time we move
16 State's Exhibits 1 through 7 into evidence.

17 THE COURT: Any objection, Mr. Bauer?

18 MR. BAUER: No, Your Honor.

19 THE COURT: Mr. Ruffalo.

20 MR. RUFFALO: No, Your Honor.

21 THE COURT: So moved without objection.

22 (WHEREUPON, State's Exhibit Nos. 1 through 7 were
23 received into evidence at this time.)

24 SOLICITOR STONE: Your Honor, at this point, at this
25 time we'd ask to publish these photographs.

Laura Meyer - Direct examination
by Solicitor Stone

1 THE COURT: Any objection, Mr. Bauer?

2 MR. BAUER: No, Your Honor.

3 THE COURT: Mr. Ruffalo.

4 MR. RUFFALO: No, Your Honor.

5 Q Okay. First bring up the---

6 THE COURT: Go ahead.

7 Q First bring up State's Exhibit 1.

8 Now, Mrs. Meyer, this is what has been marked as
9 State's Exhibit 1.

10 Tell us what that is please, ma'am.

11 A That is outside of the door.

12 Q Okay. And then State's Exhibit 2 is gonna be the next
13 picture.

14 Is that the front door of the Lena Store as you saw it
15 that night?

16 A Yes, sir.

17 Q All right. Do you recall if there is any other way in
18 that store?

19 Was that the front door, is there a couple of doors
20 inside, or is that the main entrance?

21 A I'm not sure. We didn't walk around the store.

22 Q Okay. That is the front door?

23 A Yes, sir.

24 Q Okay. State's Exhibit 3. Now you've described this
25 earlier as a fair and accurate depiction.

Laura Meyer - Direct examination
by Solicitor Stone

1 Tell us where that, that photograph is, what, what
2 that's actually depicting.

3 A That is inside the front door to the left.

4 Q All right. That appears to be some type of counter, is
5 that correct?

6 A Yes, sir.

7 Q All right. And the next one.

8 That is the -- what is -- what are we seeing there?

9 A That is further down on the left toward the back of the
10 store, but it's still on the left side.

11 Q Okay. That's still the counter area right there?

12 A Yes, sir.

13 Q Okay. The next one.

14 And what is that depicted?

15 A That is the, further down the left side as well. It
16 looks just a different angle on the counter.

17 Q All right. Now, what is that showing?

18 A That is some of the, the food and stuff that was in
19 there and it looked like maybe taken from the front door. I
20 think it was kind of straight ahead when you opened the
21 door.

22 Q All right. All right. Okay. Let me show you what's
23 been marked as State's Exhibit 7 into evidence.

24 Now, tell me what that is depicted please.

25 A When you walked into the front door, you look to the

Laura Meyer - Direct examination
by Solicitor Stone

1 right on that little -- that was what was there.

2 Q Now, this is, appears to be some type of video poker
3 machine or something like that to the right?

4 A Yes, sir.

5 Q All right. Now, the -- there appears to be a pad of
6 some sort on the chest area.

7 Do you know what that is?

8 A Yes, sir, those were the pads we used to identify what
9 his heart was doing at the time, and the heart showed
10 asystole, which means there was no electrical activity going
11 on.

12 SOLICITOR STONE: Your Honor, I do not believe this --
13 just to make sure, I believe she has testified to expertise
14 in the field of paramedics to be able to establish whether
15 or not someone is alive or not. For that purpose I'd move
16 that she be allowed to testify as to her findings as an
17 expert.

18 THE COURT: Any objection by Mr. Bauer?

19 MR. BAUER: No, Your Honor, not that limited
20 qualification.

21 THE COURT: Mr. Ruffalo.

22 MR. RUFFALO: No objection to the limited testimony.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, let me just tell you this real quick. Normally a
25 person can not give opinion testimony. Normally, when a

Laura Meyer - Direct examination
by Solicitor Stone

1 person testifies, they must testify as to what they either
2 saw, heard, or sensed by smell or something of that nature.

3 Now, the exception when someone's qualified, because of
4 education or experience, they are permitted to give their
5 opinions in certain areas the Court qualifies them as, the
6 way this witness was being qualified.

7 And what were you asking her to be qualified as,
8 Mr. Stone?

9 SOLICITOR STONE: She is qualified as a paramedic that
10 is able to establish death.

11 THE COURT: She's been qualified as a paramedic by
12 virtue of her schooling and experience to determine whether
13 or not someone is alive or dead and this Court finds that
14 she's qualified to do that based upon what they, what I've
15 heard, and without objection by Mr. Bauer or Mr. Ruffalo.
16 That does not mean, just because they're qualified as an
17 expert, does not mean that you must accept the opinion, but
18 is evidence for you to use in any way you see fit to give it
19 the weight and credibility that you believe is appropriate.

20 Thank you, Mr. Stone.

21 SOLICITOR STONE: Thank you, Your Honor.

22 I show you what's been marked as State's Exhibit 13.

23 Can you identify this please, ma'am?

24 A Yes, sir, that was the report we wrote after the call.

25 Q All right. And what type of report is that?

Laura Meyer - Direct examination
by Solicitor Stone

1 A That's what our patient care report. We write it after
2 every call we go on.

3 Q Okay. And that is -- the information in here is
4 accurate as to what your findings were?

5 A Yes, sir.

6 SOLICITOR STONE: Your Honor, at this time we move
7 State's Exhibit 13, the EMS run sheet into evidence.

8 THE COURT: Any objection, Mr. Bauer?

9 MR. BAUER: No, Your Honor.

10 THE COURT: Mr. Ruffalo.

11 MR. RUFFALO: No, Your Honor.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit No. 13 was received into
14 evidence at this time.)

15 Q If you could, referring to State's Exhibit 13, if you
16 could tell the jury what your findings were.

17 A I wrote ambulance got dispatched for a Signal 83. In
18 our codes that is a cardia arrest. When we got there, the
19 patient was lying on his left side. He was, at that time,
20 he had no pulse and he was not breathing. He was lying in a
21 pool of blood and the blood went from his stomach area up to
22 his head. He also had signs where he was stiff. So, I knew
23 it had been a little while since he was down.

24 We did get to talk to his brother briefly. He said he
25 seen him about 9:00 or 9:30, somewhere in there, and he

Laura Meyer - Direct examination
by Solicitor Stone

1 thought he had been robbed. The credit cards and the
2 other---

3 MR. BAUER: I have an objection, Your Honor. Now we're
4 getting into hearsay testimony from the brother.

5 A The---

6 THE COURT: Hold on now, ma'am.

7 what says the State?

8 SOLICITOR STONE: We'll move on past that. That's not
9 the purpose of that report anyway.

10 THE COURT: Let me see the document.

11 (Witness complies.)

12 THE COURT: It's admitted without objection, is that
13 not correct, Mr. Bauer?

14 MR. BAUER: Yes, Your Honor.

15 THE COURT: Mr. Ruffalo.

16 MR. RUFFALO: That's correct.

17 THE COURT: Proceed, Mr. Stone.

18 Q Just finish up after you, after you talked to him.

19 A The credit cards and other wallet contents were on the
20 floor behind him. We called law enforcement at that time.
21 We also put the monitor on him, the heart monitor to show us
22 what was going on. He had no electrical activity at all.
23 So, at that time we pronounced him dead.

24 Law enforcement was called. We -- when we took the
25 pads on him we did not cut the shirt or anything. I didn't

Laura Meyer - Direct examination
by Solicitor Stone

1 see any trauma to him, but then, again, we didn't move him
2 at all due to the fact it was a crime scene and then we just
3 waited on, on law enforcement---

4 Q Okay.

5 A ---and we also notified the coroner.

6 Q That's fine.

7 Let me show you what's been marked as State's Exhibit
8 8.

9 Can you identify that photograph?

10 A Yes, sir, that's where the wallet contents were behind
11 him.

12 Q And is that a fair and accurate depiction of the scene
13 as you saw it?

14 A Yes, sir.

15 SOLICITOR STONE: Your Honor, at this time we move
16 State's Exhibit 8 into evidence.

17 THE COURT: Any objection, Mr. Bauer?

18 MR. BAUER: No, Your Honor.

19 THE COURT: Mr. Ruffalo?

20 MR. RUFFALO: No, Your Honor.

21 THE COURT: All right. So admitted.

22 (WHEREUPON, State's Exhibit No. 8 was received into
23 evidence at this time.)

24 SOLICITOR STONE: And ask Your Honor to publish that to
25 the jury.

Laura Meyer - Direct examination
by Solicitor Stone

1 THE COURT: Yes, sir.

2 Q And where did you -- the monitors are now showing
3 State's Exhibit 8.

4 Where did you see that?

5 A That was right behind him.

6 Q Right behind who?

7 A Mr. Wooten on the floor.

8 Q Okay. And can you tell us what's in that photograph?

9 A It appeared to be credit cards. Just wallet contents.

10 Q Okay. And is that, is that his wallet at the bottom of
11 the photograph?

12 A Yes, sir, it does appear to be his wallet.

13 Q All right. And that is, again, how you found it when
14 you got to the scene?

15 A Yes, sir.

16 SOLICITOR STONE: No further questions at this time,
17 Your Honor.

18 THE COURT: Mr. Bauer.

19 MR. BAUER: No cross-examination.

20 THE COURT: Mr. Ruffalo.

21 MR. RUFFALO: No examination, Your Honor.

22 THE COURT: Mrs. Meyer, you can step down for me.

23 SOLICITOR STONE: Your Honor, the State calls Melissa
24 Skipper.

25 MELISSA SKIPPER, being first duly

Melissa Skipper - Direct examination
by Solicitor Stone

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR STONE:

4 Q Pull that microphone to you.

5 Could you give us your full name please, ma'am?

6 A My name is Melissa Skipper wallace.

7 Q And what do you do, Mrs. Skipper?

8 A I'm employed by the South Carolina Law Enforcement
9 Division commonly known as SLED.

10 Q And what do you do with SLED?

11 A I am assigned to the latent print crime scene
12 department within our forensic laboratory.

13 Q And what does that mean?

14 A I respond to and process crime scenes in all 46
15 counties of this state when requested by state, local, or
16 federal agencies. I also process evidence collected from
17 the scenes as well as evidence submitted to our laboratory
18 for latent fingerprints, fingerprint comparisons, footwear
19 comparisons, and tire/tread comparisons, blood stain pattern
20 analysis, and crime scene reconstruction.

21 Q How long have you been doing that?

22 A Approximately five years.

23 Q Now, in -- September the 23rd, 2007, were you a crime
24 scene technician at that time?

25 A Yes, I was.

Melissa Skipper - Direct examination
by Solicitor Stone

1 Q And were you called to the Lena Quick Store concerning
2 a potential homicide?

3 A Yes, I was.

4 Q Okay. What time -- do you, do you recall exactly when
5 you got to the scene and what your job was once you got
6 there?

7 A If I can refer to my notes?

8 Q Absolutely.

9 A I responded to the scene with Senior Agent Bruce Gantt
10 and we arrived on scene at just after 6:00AM.

11 Q Let me show you what's been marked -- I believe it's
12 11. It's 14. Excuse me.

13 Ask you if you could identify what's been marked as
14 State's Exhibit 14.

15 A That is the crime scene, crime scene diagram that is
16 enlarged so it was created by Senior Agent Bruce Gantt.

17 Q Okay. And were you in consultation with him creating
18 this document?

19 A Yes, I was.

20 Q All right. And this is -- it states not to scale. For
21 the purpose of laying, laying out the store and where
22 everything was found, is this an accurate depiction?

23 A That's an accurate depiction of the front of the
24 business, yes.

25 Q Okay. And would that aid you in your testimony today?

Melissa Skipper - Direct examination
by Solicitor Stone

1 A Yes, it would.

2 SOLICITOR STONE: Your Honor, at this time -- this is
3 the State's Exhibit 14. We move that into evidence.

4 THE COURT: No. 14?

5 MR. BAUER: No objection.

6 MR. RUFFALO: No objection, Your Honor.

7 THE COURT: All right. So entered into evidence,
8 State's Exhibit No. 14, with no objection by Mr. Bauer or
9 Mr. Ruffalo.

10 (WHEREUPON, State's Exhibit No. 14 was received into
11 evidence at this time.)

12 Q Okay. If I could get you to come off the stand?

13 A (Witness comes down from the stand.)

14 SOLICITOR STONE: We need the lights back if we could
15 get those please.

16 Your Honor, I don't want to block you, but I want to
17 make sure the jurors can see if this is about right there.
18 Does that help?

19 All right. Mrs. Skipper, if I could, could I get you
20 to sort of give the, the jury a general idea, if everyone
21 can see that, of what this scene is. Need you to keep your
22 voice up as well.

23 A This is the front entranceway of the store. The road
24 that goes by the store is out in front. This is the, the
25 counter to the side where the cash register was. There's a,

Melissa Skipper - Direct examination
by Solicitor Stone

1 a merchandise shelf in the middle. This labeled as A on the
2 side, these were the gaming machines in the corners and
3 number one was the county -- I'm sorry. Number one was the
4 wallet and contents beside the victim. B is -- there was a
5 chair here and that chair here. C is a blood pool and this,
6 this will be the victim laying in-between the---

7 Q Okay. Let me show you what's already been entered into
8 evidence as State's Exhibit 1.

9 Do you recognize that?

10 A Yes, I do.

11 Q And where does that go on this, on this diagram?

12 A This is the front exterior of the door, which the shot
13 taking the photograph of this area in here.

14 Q All right. Let's see here. There we go. State's
15 Exhibit 2.

16 A State's Exhibit 2 is a close-up view of the front
17 interior of the store.

18 Q All right. Okay. Stay with us.

19 All right. State's Exhibit 3.

20 A State's Exhibit 3 is as you enter the front door of the
21 business and turn to the right. This is gonna be the, the
22 counter where the cash register was with a shot of this
23 area.

24 Q Okay. So, you enter in the business and you turn to
25 the --?

Melissa Skipper - Direct examination
by Solicitor Stone

1 A I'm sorry. To the left.

2 Q Okay. So, this is the photograph area here?

3 A Yes.

4 Q And then State's Exhibit 4.

5 A State's Exhibit 4 is also taken from the front door.

6 It is of the left back corner, which is this back corner

7 here which the cash register's here, and the left back

8 corner of the business.

9 Q Okay. State's Exhibit 5.

10 A State's Exhibit 5 is another photograph of that corner

11 taken from the front of the cash register area. Again, it

12 will be this, this back area, but taken this way.

13 Q Okay. And then State's Exhibit 6.

14 A State's Exhibit 6 is taken from the register area of

15 the back right corner of the business, which is this corner

16 taken from here.

17 Q All right. Now, certainly there's a lot of stuff in

18 these photographs.

19 Do you see -- is there any evidence of disarray,

20 anything as far as turned over furniture, anything like that

21 in these, in these areas here of the store?

22 A You can't see it in the photographs, but there was

23 some, some cigarette packages over in this area.

24 Q Okay. Let me show you State's Exhibit 7 and ask you if

25 you can identify that and tell us where that is on this.

Melissa Skipper - Direct examination
by Solicitor Stone

1 A State's Exhibit 7 is a photograph from the, the door
2 area of the right front corner of the business around the
3 game machines as well as a photograph of the victim in the
4 floor where we found the victim.

5 Q All right. And that is how, when you went and seen
6 this, this is what you saw?

7 A Yes, sir.

8 Q All right. Now, put this up here, but if you would
9 please, there appears to be stools and things like that.

10 Can you tell us what, what the situation is with that?

11 A This is a stool sitting up in front of the, the, the
12 row of game machines. There's another chair that's been
13 knocked over. There's some contents, miscellaneous papers
14 and cards, on the floor behind the victim. It's actually
15 contents of, of his wallet that was dumped out of---

16 Q Let me show you, I didn't mean to interrupt you, but
17 let me show you State's Exhibit 8 and put it into evidence.

18 Are those the contents that you're referring to?

19 A Yes, it is and that's the, the wallet as well which is
20 up under the edge of the, the cooler.

21 Q Okay. Let me show you what's been marked as State's
22 Exhibit 9 for identification.

23 Can you, first of all, showing the jury, can you
24 identify that?

25 A Yes, I can.

Melissa Skipper - Direct examination
by Solicitor Stone

1 Q Is that a fair and accurate depiction of the scene as
2 you saw it?

3 A Yes, it was.

4 Q Let me show you what's been marked as State's Exhibit
5 No. 10 and ask if you can identify that.

6 A Yes, I can.

7 Q Is that a fair and accurate depiction of the scene as
8 you saw it?

9 A Yes, it was.

10 Q Okay.

11 SOLICITOR STONE: Your Honor, at this time we move
12 State's Exhibit No. 9 and 10 into evidence.

13 THE COURT: Any objection, Mr. Bauer?

14 MR. BAUER: No, Your Honor.

15 THE COURT: Mr. Ruffalo.

16 MR. RUFFALO: No objections.

17 THE COURT: So moved.

18 (WHEREUPON, State's Exhibit Nos. 9 and 10 were received
19 into evidence at this time.)

20 Q All right. If you will please show the jury State's
21 Exhibit 9 and tell us what that is.

22 A State's Exhibit 9 is a close-up photograph of the
23 victim's right front pocket as it was found when we
24 responded to the scene. It's turned inside out.

25 Q Come down here so they can make sure they see it down

Melissa Skipper - Direct examination
by Solicitor Stone

1 there, and let me show you State's Exhibit 10 and ask you to
2 publish that to the jury and let them know what that is
3 please.

4 A State's Exhibit 10 is a photograph, a close-up
5 photograph of the trash can by the, the front door on the,
6 the right-hand side of the front door. If you're facing it,
7 it is a carton of Newport cigarettes. It was in the trash
8 can.

9 Q Can you tell if that's a full or empty carton there?

10 A It was opened.

11 Q Okay. I don't have any further questions. If you'd
12 answer any questions that Mr. Bauer or Mr. Ruffalo may have.

13 THE COURT: Mr. Bauer.

14 MR. BAUER: Your Honor, I don't have any questions of
15 this witness, but I have an issue with regards to this
16 witness that we'd like to take up at side bar.

17 THE COURT: All right.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 (At this time, the audiotape was turned off and the
21 tape begins again with the following testimony.)

22 DOCTOR CYNTHIA SCHANDL, being first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR STONE:

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 Q Doctor Schandl, how are you?

2 A Fine. Thank you.

3 Q Did I pronounce your last name correctly?

4 A It's Schandl.

5 Q Schandl?

6 A Uh-huh. (Affirmative).

7 Q If I get that wrong then I apologize for that.

8 what do you do, ma'am?

9 A I'm a forensic pathologist at the Medical University of
10 South Carolina and assistant professor there.

11 Q How long have you been -- an assistant professor as
12 well?

13 A That's correct.

14 Q And what do you do as assistant professor?

15 A I take part in training medical students, individuals
16 who have graduated from Medical School and are interested in
17 pathology doing a residency program. I also direct the
18 forensic pathology fellowship program as assistant
19 professor. So, it's a, it's a teaching role and a research
20 role.

21 Q what else do you do other than teaching roles?

22 A As a forensic pathologist my job is to perform
23 autopsies on individuals to determine their cause of death
24 and the manner of death.

25 Q So, your full title would be forensic pathologist, is

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 that correct?

2 A Yes, that, that is my professional job title.

3 Q And what exactly is a forensic pathologist?

4 A A forensic pathologist is a medical doctor who has
5 been, after finishing medical school, gone on to become, to,
6 to do -- I'm a pathologist by additional training, which, at
7 this time, is four years of additional training, residency,
8 and then also has done an additional year in the forensic
9 pathology fellowship and then taken and successfully taken
10 the American Board of Pathology board examinations in at
11 least anatomic pathology and forensic pathology, and I also
12 have both board examined success in clinical pathology.

13 So, a forensic pathologist is---

14 MR. BAUER: Your Honor, sorry to interrupt, but we
15 would stipulate to her qualifications as a forensic
16 pathologist.

17 THE COURT: Mr. Ruffalo, is that---

18 MR. BAUER: We do, Your Honor.

19 SOLICITOR STONE: Okay. Your Honor, if we -- in that
20 case we would offer her as an expert in the field of
21 forensic pathology.

22 THE COURT: Okay. Ladies and gentlemen, again, I
23 previously instructed you on expert testimony, and I would
24 just instruct you, once again, normally a person can not
25 give opinion testimony. Normally when a person testifies

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 they must testify as to what they saw, heard, or sensed by
2 smell or something of that nature. However, there's an
3 exception when someone is qualified because of educational
4 experience. They're allowed to give their opinions from
5 certain areas if the Court qualifies them in that way.

6 These parties have stipulated that this doctor is a
7 expert in forensic pathology and she can give opinions in
8 that area. That does not mean that you just accept that
9 opinion or her opinion, but it is evidence for you to use in
10 anyway you see fit to give it the weight and credibility you
11 believe as to what is deemed.

12 Anything further, Mr. Stone?

13 SOLICITOR STONE: No, sir, not from the---

14 THE COURT: You may proceed, Mr. Stone.

15 Q Now, the -- are you familiar with the pathology exam
16 that was done, that was done in this case on Ronnie Wooten?

17 A Yes, sir, I am.

18 Q Okay. And what have you done to prepare for your
19 testimony today concerning that pathology?

20 A So, the, the pathology that is performed as a forensic
21 autopsy generates so that the entire process generates a
22 number of diagrams, a number of worksheets, and eventually a
23 written report. In addition to that written report, which I
24 have reviewed, as well as the, the worksheets and diagrams,
25 photographs are also taken along the way during the process

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 of the examination to determine when the individual, the
2 dead individual arrives to our office to, when we're
3 performing the exam. So, we take -- photographs are also
4 available so I can review those photographs.

5 In addition, as part of the examination, tissues are
6 taken and looken, looken at, are looked at under the
7 microscope. We do, again, for any intrusion pathology,
8 disease processes, and I've also reviewed those slides as of
9 the microscope in preparation for, for letting you know what
10 I see.

11 Q All right. Now, there's a term called cause of death
12 and manner of death.

13 Could you, could you explain that a little bit, what
14 the difference is?

15 A Yes. So, I mentioned that a forensic pathologist
16 performs autopsies usually in order to determine the cause
17 of death and the manner of death. The cause of death is, is
18 what we would expect it to be. So, what caused a person's
19 death. Was it a heart attack, was it a gunshot wound, and
20 so on and so forth.

21 The manner of death, on the other hand, is the
22 classification that provides -- and you have five choices.
23 Those include homicide, suicide, accident, and actual and
24 undetermined. So, that is the manner of death. So, we
25 determine the cause of death and then when we put the entire

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 story together, we then determine the manner of death.

2 Q In the case of Ronnie Wooten, what was the manner of
3 death?

4 A The manner of death in this case was homicide.

5 Q And the cause of death?

6 A And the cause of death is a gunshot wound to his nose
7 with injury of the brain.

8 Q Do you also note the angle of the bullet and various
9 things like that as well?

10 A Yes, many practitioners do note the angle, which we
11 call the trajectory of the bullet as it travels from when it
12 hits the skin, in this case, right here to the side of the
13 nose, the left side of the nose, to where the, where the
14 bullet ends up if you recover a bullet as a bullet was
15 recovered in this case. So, that's called a trajectory, and
16 in this case it went back and slightly up.

17 Q Let me show you, if I could, this is just a standard
18 styrofoam I guess you used swig shots, but could you show us
19 on that, using this, exactly what you just indicated to the
20 jury.

21 A Yes, so essentially, the---

22 Q You need to get up?

23 Excuse me.

24 Let them have an opportunity to get over there to where
25 they could see?

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 A If we pretend that this is Mr. Wooten's head, the
2 bullet entered his body here at the nose and this sort of
3 the trajectory. So, it's going back. It entered through
4 the nose and then it continued through the base of the skull
5 and into the, the brain essentially and then, at that point,
6 it hit the back of the inside of the skull and then that
7 bullet bounced back off and the bullet was recovered in that
8 after it had bounced back off into the brain. So, again,
9 the bullet went into, into, into his face and then into the
10 base of the skull, into the brain, and then sort of this
11 way.

12 Q At that angle?

13 A Essentially. Now, let me, let me make sure there
14 weren't any---

15 Q Sure.

16 A This, this is, this is -- what I'm looking at here is
17 that report that I told you about that is generated after
18 the autopsy is performed. And, so, I'm going to check the
19 trajectory to make sure that I'm not telling you wrong.

20 (Pause.)

21 A Okay. The -- it goes from front to back. So, that
22 means it's going in this way front to back. Okay. Slightly
23 upward and it, and it specifies that there was no
24 discernible -- you couldn't tell that it's going to left to
25 right. So, basically just a little bit up and back, and

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 let's see, such as, such as this. So, if I did it right,
2 it's not really going left or right. It's just going
3 straight back, but a little bit up.

4 Q What are defensive wounds?

5 A Defensive wounds are, are essentially anything that,
6 any kind of injuries that we might find on an, on an
7 individual, alive or dead, that indicate that he was in a
8 struggle or trying to protect himself either from, you know,
9 fists or gunshot fire or a knife or some other attack. So,
10 that is what we call defense wounds.

11 Anytime you find wounds that, if the individual's
12 standing, might be to the arms, the hands, the forearms,
13 those would be considered defensive wounds. If the
14 individual was lying down or on their back, he might find
15 the same kind of defensive wounds to the feet, to the toes,
16 to the legs. So, basically anything that that individual is
17 placing between themselves and the attack, whether it's an
18 individual or a, or a bullet or whatever.

19 Q And these are, these are wounds from trying to fight
20 off something or things like that?

21 A That's correct.

22 Q Okay. Were there any defensive wounds on Ronnie
23 Wooten?

24 A No, sir.

25 Q So, other than the single gunshot to the face, that's

Doctor Cynthia Schandl - Direct examination
by Solicitor Stone

1 the only sign of struggle so to speak?

2 A Yes, he, he has some scrapes, we call abrasions, some
3 scrapes to the face. Very superficial scrapes. Not in any
4 particular pattern that I can see. But they are some
5 scrapes to his face so that I, I do not know how he got, and
6 then there's a bump to his head, a little bruise to his
7 scalp, which may have occurred from him being struck. It
8 may have occurred from the fall. I just couldn't tell you
9 how that occurred. So, those are the only other wounds
10 that, that are on, on Mr. Wooten.

11 Q Thank you.

12 I don't have any further questions of this witness,
13 Your Honor.

14 THE COURT: Mr. Bauer, cross-examination?

15 MR. BAUER: I have no questions for this witness.

16 THE COURT: Mr. Ruffalo, cross-examination?

17 MR. RUFFALO: One moment, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. RUFFALO: Thank you, Your Honor. No questions.

21 THE COURT: Mrs. Schandl, is that correct?

22 WITNESS: Yes.

23 THE COURT: You may step down.

24 SOLICITOR STONE: And ask that Doctor Schandl be
25 excused.

Chauncey Solomon - Direct examination
by Solicitor Stone

1 THE COURT: Any objection to Doctor Schandl being
2 excused, Mr. Bauer?

3 MR. BAUER: No, Your Honor.

4 THE COURT: Mr. Ruffalo.

5 MR. RUFFALO: No, Your Honor.

6 THE COURT: Ma'am, you are released from your
7 responsibilities under this subpoena. You are excused from
8 this Court. Thank you.

9 SOLICITOR STONE: State calls Chauncey Solomon to the
10 stand.

11 CHAUNCEY SOLOMON, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR STONE:

15 Q Mr. Solomon, what is -- what do you do, sir?

16 A I work at Hampton County Sheriff's Office. I'm
17 assigned to the criminal investigations.

18 Q Okay. And how long have you been with the Hampton
19 County Sheriff's Office?

20 A Roughly 15 years.

21 Q And what do you do in that role with the Sheriff's
22 office?

23 A Right now I'm assigned to criminal investigation.
24 That's investigating all major crimes that happened within
25 Hampton County whether it's a murder, burglaries, and things

Chauncey Solomon - Direct examination
by Solicitor Stone

1 of that nature.

2 Q Okay. And your rank now is sergeant?

3 A Yes, sir, I'm a detective sergeant.

4 Q Okay. Detective sergeant?

5 A Yes, sir.

6 Q You were also one of the investigators on, in the, the
7 robbery at the Lena Store, is that correct?

8 A Yes, sir.

9 Q All right. And what was your role in that?
10 what did you do?

11 A Well, my role was, once I got there, I was notified
12 some time that night, the 23rd and the 24th. Probably
13 24th cause it lapsed over till after twelve o'clock. Once
14 I got there, just basically trying to observe and start
15 trying to gather information or evidence that would lead to
16 solving the, to finding out what actually happened at the,
17 that day.

18 Q Okay. Now, you've been in the courtroom during the
19 introduction of these evidence, of these exhibits, is that
20 correct?

21 A Yes, sir.

22 Q When I say refer to these, but for the record, that
23 will be State's Exhibit 14, which is the crime scene sketch
24 and photographs 1 through I believe 9 or 1 through 10 for
25 State's Exhibits, is that correct?

Chauncey Solomon - Direct examination
by Solicitor Stone

1 A Yes, sir.

2 Q All right. And you were also at this scene the night
3 this happened?

4 A Yes, sir, I was.

5 Q Are these all fair and accurate depictions of that
6 scene as you saw it?

7 A Yes, sir.

8 Q Is there any -- when you arrived, was Mr. Wooten's body
9 in that position?

10 A Yes, sir.

11 Q And the -- particularly interested in the cigarette
12 box.

13 Did you see that as well right here?

14 A Yes, sir, I seen it.

15 Q Okay. That would be State's Exhibit 10, is that
16 correct?

17 A Yes, sir.

18 Q All right. And could you tell us if, if there, if this
19 is empty, full, if it's opened, or what?

20 A It's opened and it's empty.

21 Q Okay. So, this is actually the outside carton of the
22 individual cigarettes, is that correct?

23 A Yes, sir.

24 Q All right. Did you also attend the autopsy?

25 A Yes, sir, I did.

Chauncey Solomon - Direct examination
by Solicitor Stone

1 Q And where was that?

2 Where did that take place?

3 A In Charleston at the Medical College, the University.

4 Q When I say---

5 A MUSC.

6 Q Oh, I'm sorry. I didn't mean to interrupt you.

7 When I say did you attend it, were you physically

8 present during the autopsy of Mr. Wooten?

9 A Yes, sir, I was there actually in the room with the
10 pathologist.

11 Q Okay. Let me show you what's been marked as State's
12 Exhibit 11, and this a package we will -- if I can borrow
13 some scissors real quick, Your Honor, we'll open these.

14 THE COURT: Here you go.

15 Q First of all, let me, let me show you what's been
16 marked as State's Exhibit 11.

17 Can you identify this package?

18 A It's a package of an item that, from SLED, actually the
19 laboratory in the case number from SLED, and in it is a
20 projectile or slug that came from Ronnie Wooten.

21 Q All right. Now, any of these outside initials, because
22 I'm about to cut this, I want to make sure, are any of these
23 initials your initials?

24 A Yes, it is.

25 Q All right. Where are your initials on that one?

Chauncey Solomon - Direct examination
by Solicitor Stone

1 A Several. This right here, right here, and right here.

2 Q All right. You've indicated three places that appears
3 to be -- is it on tape or under tape?

4 Is that how that---

5 A It's actually on the tape.

6 Q Okay. And what were the purposes of you initialing
7 these things, these items?

8 A Because of the fact that it is evidence and it is
9 sealed, just to make sure that no one else comes and breaks
10 the seal.

11 Q Okay. Got you.

12 All right. Your Honor, at this time we would open this
13 package.

14 Let me ask you, inside State's Exhibit 11 is another
15 package.

16 Could you tell us what that is please?

17 A It's another package from a SLED wrapping. Actually
18 from, from the actual autopsy from a Doctor Schandl who
19 actually performed the autopsy.

20 Q All right. And was that -- was this signed in your
21 presence?

22 A Yes, it was.

23 Q All right. And that -- you're particularly looking at
24 this white sticker on the back of the envelope, is that
25 correct?

Chauncey Solomon - Direct examination
by Solicitor Stone

1 A Yes, sir.

2 Q All right. All right. Tell me how that came about,
3 the, inside the package -- and, again, Your Honor, I will,
4 will open this.

5 Inside this package there seems to be -- and it is
6 sealed. So, I apologize for that.

7 Okay. Inside that is a yellow manila, small manila
8 envelope, is that correct?

9 A Yes, it is.

10 Q All right. And then this white sticker on the back,
11 that was, that was sealed in your presence by the
12 pathologist?

13 A Yes, it was.

14 Q Okay. And that was sealed after this other item which
15 appears to be a projectile that was taken, was put in, is
16 that correct?

17 A Yes, sir.

18 Q And that was in your presence?

19 A In my presence.

20 Q Where did the projectile come from?

21 A It came from either the victim, Mr. Ronnie Wooten's
22 head, placed into the envelope and sealed and given to me.

23 Q All, all done in your presence --

24 A Yes, sir.

25 Q -- is that right?

Chauncey Solomon - Direct examination
by Solicitor Stone

1 Now, was there anything done to this -- and we call it
2 a projectile.

3 This is a bullet, this is a spent bullet?

4 A Yes, sir, spent bullet. I'm sorry.

5 Q And was all this -- did anyone change or alter that in
6 anyway when they placed it into this sealed envelope?

7 A No, sir.

8 Q Okay. And what did you do with it once you received
9 it?

10 A Took it to SLED headquarters, which is in Columbia
11 forensic lab.

12 Q Okay. All right.

13 Okay. I don't have any further questions of this
14 witness at this time, Your Honor. He may be recalled.

15 THE COURT: Cross-examination, Mr. Bauer.

16 MR. BAUER: None at this time.

17 THE COURT: Mr. Ruffalo.

18 MR. RUFFALO: Nothing at this time, Your Honor. Thank
19 you.

20 THE COURT: Officer Solomon, you may step down.

21 WITNESS: Thank you.

22 THE COURT: Ladies and gentlemen, we're gonna take our
23 morning break. We've been going at it for about an hour and
24 half now. I don't want to keep it going longer than an hour
25 and a half without giving you-all a morning break.

1 I just remind you that, during this break, you're not
2 to discuss this case in any manner with anyone. This
3 includes your fellow jurors, family, friends, anybody.
4 You're not to discuss this case at all. Keep an open mind
5 about the case till I instruct you to begin your
6 deliberations.

7 We're gonna take a break at this time. Please go to
8 your jury room. We'll give you about a 15 minute break and
9 bring you back out here in a minute.

10 If you would, move that thing down there please, sir.

11 BAILIFF: Yes, sir.

12 THE COURT: Everybody remain seated while the jury
13 leaves the courtroom.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Is that door closed?

17 BAILIFF: Yes, sir.

18 THE COURT: Anything from the State while, before we
19 take a break?

20 SOLICITOR STONE: The only other thing, Your Honor, we
21 have a ballistics expert or tool marks expert who will
22 testify later concerning the testing of the bullet, but I
23 understand there is a stipulation as to the internal chain
24 at SLED with the markings as they appear on the sealed
25 packages and things like that. But I wanted to clarify that

Saul Romero - Direct examination
by Solicitor Thornton

1 MR. RUFFALO: I would like to hear Mr. Bauer's
2 objection.

3 THE COURT: Again, stand.

4 MR. RUFFALO: Oh, I'm so sorry, sir.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. Objection to the, by Mr. Bauer
8 with regard to the admission of this into evidence is
9 overruled.

10 (WHEREUPON, State's Exhibit No. 12 was received into
11 evidence at this time.)

12 THE COURT: You may proceed, Mr. Thornton.

13 SOLICITOR THORNTON: Thank you, Your Honor.

14 Q Mr. Romero, I'm gonna hand you what's marked for an
15 exhibit as State's Exhibit 24 and 25.

16 would you look at those documents please, sir?

17 A (Witness complies.)

18 Q All right. Do you recognize those documents?

19 A Yes.

20 Q All right. And what, what -- as to State's Exhibit 24,
21 sir, what is that document?

22 A This shows here is where he signed and identified the
23 person that was with Shawn Davis when they sold him the
24 picture.

25 Q All right, sir. And I'm sorry, I should of asked you

Saul Romero - Direct examination
by Solicitor Thornton

1 to be a little bit more specific.

2 Earlier you said Shawn Davis sold you the gun. Was
3 it -- you said -- was somebody with him?

4 A Yes.

5 Q All right. And is that the person you identified as
6 being with Shawn Davis?

7 A Yes.

8 Q Did you sign or make some, make some mark indicating
9 that, that the person pictured as Number 2 is the person
10 with Shawn Davis when that gun was sold to you?

11 A Yes.

12 Q And are those -- is that your signature and initial
13 next to picture number two?

14 A Yes.

15 Q I'm gonna hand you what's been marked again as State's
16 Exhibit No. 25.

17 Now, have you seen that document before?

18 A Yes.

19 Q And what is that document?

20 A Pictured in the case the person I saw with the pistol
21 where I signed and identified him.

22 Q And who is the person who sold you that gun?

23 A Shawn Davis.

24 Q How do you know Shawn Davis?

25 A We were in school together. We went to school at the

Saul Romero - Direct examination
by Solicitor Thornton

1 same time.

2 Q Was that in the Estill area?

3 A Yes.

4 Q Have these documents been altered or changed in anyway,
5 and I'm speaking of State's Exhibit 24 and 25 for
6 identification?

7 A No.

8 SOLICITOR THORNTON: Your Honor, I'd ask that State's
9 Exhibit 24 and 25 be moved into evidence at this time.

10 THE COURT: Any objection, Mr. Bauer?

11 MR. BAUER: No objection.

12 THE COURT: Mr. Ruffalo?

13 MR. RUFFALO: No objection, Your Honor.

14 THE COURT: So admitted without objection.

15 (WHEREUPON, State's Exhibit Nos. 24 and 25 were
16 received into evidence at this time.)

17 Q Mr. Romero, do you see the two people that sold you the
18 gun in the courtroom?

19 A Yes.

20 Q All right. Can you point them out for me?

21 A Shawn Davis.

22 Q Shawn Davis.

23 Are you pointing to the man here at the very end in the
24 white shirt?

25 A Yes, and that's his cousin.

Saul Romero - Direct examination
by Solicitor Thornton

1 Q Are you indicating the person in the yellow shirt?

2 Is that the person that was with Shawn Davis when he
3 sold you the gun?

4 A Yes.

5 SOLICITOR THORNTON: Your Honor, I'd ask the record
6 reflect that Mr. Romero has identified both Shawn Davis and
7 Derrick Adkins as the people that sold him the gun.

8 THE COURT: The record so shows as well.

9 SOLICITOR THORNTON: Permission to publish, Your Honor?

10 THE COURT: Yes, sir.

11 Q Mr. Romero, what did you do with the gun after you got
12 it?

13 A He gave it to his girlfriend to save, to her so she
14 could save it.

15 Q Did he ever go -- did you -- I'm sorry.

16 Mr. Romero, did you ever go back and get the, this
17 pistol?

18 A No.

19 Q All right. At some point, Mr. Romero, did you give the
20 gun to someone else?

21 A No.

22 Q Mr. Romero, do you know a man named Jerry Ashmore?

23 A Yes.

24 Q Did, at anytime, he get this gun?

25 A He gave it to him to give to the police department.

Saul Romero - Direct examination
by Solicitor Thornton

1 Q Okay. I'm sorry if I was unclear earlier.

2 Did you, at some point, get this gun, State's Exhibit

3 No. 12, and give it to a person?

4 A Yes.

5 Q And who was that person?

6 A Jerry Ash -- Jerry.

7 Q All right. Other than -- Mr. Romero, do you have any
8 knowledge about the murder of Ronnie Wooten or the robbery
9 of Ronnie Wooten?

10 A None.

11 Q Did either Mr. Adkins or Mr. Davis, when they sold you
12 this gun, did they tell you that they used it in a crime?

13 A No.

14 Q All right.

15 Your Honor, the Court's indulgence for one moment.

16 (Pause.)

17 Q Mr. Romero, you indicated Derrick Adkins was, you said,
18 Shawn Davis' cousin to your knowledge, is that correct?

19 A He's thought so because they're always together.

20 Q All right. Do you know Derrick Adkins?

21 A Yes.

22 Q All right. And do you know -- where do you know him
23 from?

24 A We went to school together and he lives right across
25 the way across the tracks.

1 now just to make sure that's correct.

2 THE COURT: Is that correct, Mr. Bauer?

3 MR. BAUER: We stipulated to the chain of custody while
4 it was within SLED handling.

5 THE COURT: Mr. Ruffalo.

6 MR. RUFFALO: That is correct, Your Honor.

7 THE COURT: Anything further before we take a break?

8 SOLICITOR STONE: No, sir, thank you.

9 THE COURT: All right. We'll start back at 11:30.

10 SOLICITOR STONE: Yes, sir.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: Anything from the State before we bring the
13 jury back in?

14 SOLICITOR THORNTON: Yes, sir, Your Honor.

15 On behalf of the State, Your Honor, my next witness is
16 gonna be Mr. Saul Benitez Romero. He is here, Your Honor.
17 He has an interpreter with him. He does speak and, and
18 understand English fairly well, but he's more comfortable
19 with an interpreter and I didn't know how Your Honor --
20 judges's are different as far as how they want to proceed.
21 But we'll certainly swear, at the appropriate time, swear
22 his interpreter in as well as Mr. Romero.

23 And before I call them to the stand, judge, with the
24 jury in the room, I wanted to bring that to the Court's
25 attention and get direction from you how you like to handle

1 that.

2 THE COURT: What I would I guess prefer to do is go
3 ahead and bring him here up --

4 SOLICITOR THORNTON: Yes, sir.

5 THE COURT: -- and let's go ahead and do the
6 interpreter's oath, and I can instruct the jury that he is
7 going to be interpreting, that he is taken the oath to do an
8 interpretation and his interpretation is to be true and
9 accurate translation.

10 SOLICITOR THORNTON: Yes, sir, be happy to.

11 THE COURT: Any objection by that, Mr. Bauer?

12 MR. BAUER: No, Your Honor.

13 THE COURT: Mr. Ruffalo.

14 MR. RUFFALO: No, Your Honor.

15 THE COURT: Any objection to him interpreting for him?

16 MR. RUFFALO: No, sir.

17 MR. BAUER: No, sir.

18 THE COURT: Mr. Ruffalo.

19 MR. RUFFALO: No, sir.

20 THE COURT: What about as to his qualifications?

21 MR. BAUER: No, sir.

22 (WHEREUPON, the interpreter was placed under oath at
23 this time.)

24 THE COURT: Have him sit back down and I don't know how
25 y'all, how do y'all want to put, you know, put Mr. Benitez

1 on the stand or Mr.---

2 SOLICITOR THORNTON: It's Mr. Romero, Judge. Saul
3 Romero is, is the witness. Mr. Fred Garcia, for the record,
4 Your Honor, is the person who the clerk just swore. He will
5 be the interpreter. My suggestion, Your Honor, Mr. Garcia
6 and I talked about this this morning. My suggestion would
7 be when I call Mr. Romero to the stand, Mr. Garcia can come
8 with him, and Mr. Garcia can stand a little bit to the, well
9 to Mr. Russell's right right here by the flag, Judge, and
10 that way the jury can see him and what's going on. I think
11 defense counsel will be able to see Mr. Garcia interpreting
12 as well.

13 THE COURT: And let me make a note of this. I know it
14 was brought to my attention earlier by Mr. Bauer and Mr.
15 Ruffalo about the fact that they have some difficulty from
16 where the defense table is placed in seeing the witnesses on
17 the witness stand.

18 Is that correct, Mr. Bauer?

19 MR. BAUER: Yes, Your Honor. When the witness is
20 testifying from the witness stand it's quite difficult to
21 see him. The Court has granted permission for counsel to
22 move freely about the courtroom as necessary to be able to
23 see the witnesses. My client, at current, has some
24 difficult time seeing, actually seeing the witness testify,
25 and I think Mr. Davis is completely unable to see the

1 witness.

2 THE COURT: Well, let me just say this.

3 Mr. Ruffalo, you want to say anything?

4 MR. RUFFALO: Well -- and I didn't mean to interrupt,
5 Your Honor. I just wanted to say that, you know, our
6 objection was, is that Mr. Davis could not see the witness
7 as they were testifying. It's a confrontation issue albeit
8 a minor one. It is the defendant's right to view, to view
9 his witnesses, but I've spoken to Mr. Davis and he says that
10 he has no problem with it. He hears everything perfectly
11 and he understands the proceedings and he can hear the
12 testimony of the witnesses.

13 THE COURT: Well, let me just say this. I mean I've
14 looked at some things here. The confrontation clause allows
15 for meaningful, right to meaningful cross-examination, and
16 while I understand that defendants here may have some
17 difficulty in observing the witnesses here, I don't think
18 it's a confrontation issue. I think confrontation is
19 satisfied by the fact that you-all, as their lawyers, have a
20 right to meaningful cross-examination.

21 As part of the confrontation clause, it requires a
22 witness to testify, as you well know, under oath, and submit
23 to cross-examination so that the jury, so that the jury can
24 observe the witness' demeanor and assess his or her
25 credibility. So, I don't think that's a confrontation issue

1 here, but I note any objection that you have.

2 But you've indicated, Mr. Ruffalo, that your client
3 does not object to that, is that correct?

4 MR. RUFFALO: That's correct and I further explained to
5 them that it's a little different in this situation where
6 it's not a direct victim testifying against him. And in
7 that case I would ask the Court for permission to permit,
8 for this defendant to be able to move into the view of that
9 direct confrontation of a witness. He understands the
10 difference of those two kinds of witnesses, and I thank you,
11 you for hearing me out.

12 THE COURT: Well -- and also, like I've said
13 previously, and I think I've said this at side bar, I really
14 can't help the design that the, the design of the courtroom
15 which affects y'all's ability to see the witness. But as,
16 as the attorneys in this case, the attorneys that represent
17 Mr. Adkins and Mr. Davis, and who -- you both can get up and
18 observe the witnesses if you, if you need to in any respect
19 with regards to that.

20 Okay?

21 MR. RUFFALO: Thank you, Judge, for hearing us.

22 THE COURT: All right. Anything further from the State
23 before we bring the jury back in?

24 SOLICITOR THORNTON: Nothing from the State, Your
25 Honor.

1 THE COURT: From the defense, Mr. Bauer?

2 MR. BAUER: No, Your Honor.

3 THE COURT: Mr. Ruffalo?

4 MR. RUFFALO: No, sir.

5 THE COURT: Okay. Please bring the jury please, sir.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: Mr. Stone.

9 SOLICITOR STONE: Yes, sir.

10 THE COURT: You're recognized.

11 SOLICITOR THORNTON: Thank you, Your Honor.

12 Your Honor, I'll be taking this witness.

13 Mr. Saul Benitez Romero please.

14 SAUL BENITEZ ROMERO, being first duly
15 sworn, testified as follows:

16 THE COURT: Ladies and gentlemen, the state is called a
17 witness of Mr. Saul Benitez Romero. Standing Mr. Romero's
18 left is Mr. Garcia. Mr. Garcia is here as an interpreter
19 for Mr. Romero.

20 Let me just say that Mr. Garcia is taken an oath, and
21 his oath is that he will trans, that his translation will be
22 a true and accurate translation of the testimony, that he
23 omits no part of the testimony or to add any, or to add to
24 any of the testimony, and the translation is to be a true
25 and accurate translation.

Saul Romero - Direct examination
by Solicitor Thornton

1 Anything with regards to what I've instructed the jury
2 from the State?

3 SOLICITOR THORNTON: No, sir.

4 THE COURT: From the defense, Mr. Ruffalo?

5 MR. RUFFALO: No, sir.

6 THE COURT: Mr. Bauer?

7 MR. BAUER: No, Your Honor.

8 THE COURT: Mr. Thornton, you may proceed.

9 SOLICITOR THORNTON: Thank you, judge.

10 DIRECT EXAMINATION

11 BY SOLICITOR THORNTON:

12 Q Mr. Romero, where do you live?

13 A State of South Carolina.

14 Q All right, sir. Do you live in Hampton County or
15 Beaufort County?

16 What county do you live in?

17 A Estill.

18 Q Estill.

19 Mr. Romero, do you work anywhere?

20 A For the Green Room.

21 Q All right, sir. And how long have you worked for them?

22 A Seven years.

23 Q All right. And did you go to school in Estill?

24 A Yes.

25 Q Okay. Mr. Romero, I'm going to hand you what's been

Saul Romero - Direct examination
by Solicitor Thornton

1 marked as State's Exhibit No. 12.

2 Your Honor, for the record, as I pull this out, I want
3 to indicate to the Court it has been made safe pursuant to
4 Court guidelines.

5 Mr. Romero, I'm gonna hand you what's been marked as
6 State's Exhibit 12.

7 Do you recognize that?

8 A Yes.

9 Q And what is that, Mr. Romero?

10 A That's a pistol that Shawn Davis sold me.

11 Q All right. How much did Shawn Davis sell you that
12 pistol for?

13 A One hundred dollars.

14 Q Does that pistol appear to be in the same condition as
15 it was when he sold it to you?

16 A Yes.

17 Q Has it been altered or changed in anyway other than the
18 padlock being put on it?

19 A No.

20 SOLICITOR THORNTON: Your Honor, at this time I'd ask
21 State's Exhibit 12 be moved into evidence.

22 THE COURT: Any objection by you, Mr. Bauer?

23 MR. BAUER: Your Honor, at this point I don't think --
24 yes, there is an objection.

25 THE COURT: All right. Mr. Ruffalo.

Saul Romero - Direct examination
by Solicitor Thornton

1 Q All right.

2 A Close to my house.

3 Q So, you went to school with both Derrick Adkins and
4 Shawn Davis, is that correct?

5 A Yes.

6 Q How long have you known them?

7 How many years?

8 A About five or six years.

9 Q I have no further questions. Thank you very much,
10 Mr. Romero. Please answer any questions Mr. Bauer or Mr.
11 Ruffalo have.

12 THE COURT: Mr. Bauer.

13 MR. BAUER: Please the Court..

14 CROSS-EXAMINATION

15 BY MR. BAUER:

16 Q What school did you attend that was the same as Shawn
17 Davis?

18 A The high school.

19 Q High school.

20 And what was the name of that school?

21 A He can't remember. Something like Gainer or something
22 like that high school.

23 Q Do you know where it was?

24 A About five minutes out of the town from, from Estill.
25 Out, out of Estill.

Saul Romero - Cross-examination
by Mr. Bauer

1 Q Five minutes outside of the town of Estill?

2 A Yes, sir.

3 Q Ask him if that's correct.

4 A Yes.

5 Q And were you in the same grade as Shawn Davis?

6 A No.

7 Q Were you on a sports team with Shawn Davis?

8 A No.

9 Q In the same activities or clubs as Shawn Davis?

10 MR. RUFFALO: Objection, Your Honor. That's a little
11 long.

12 (WHEREUPON, at this time Mr. Ruffalo began speaking
13 Spanish.)

14 MR. RUFFALO: It's a little long.

15 Could we have that separated?

16 (WHEREUPON, at this time Mr. Ruffalo began speaking
17 Spanish.)

18 INTERPRETER: Okay.

19 What I said was I knew him a lot because we use to get
20 together when -- the Hispanics use to get together and play
21 soccer in a soccer field, and Mr. Davis use to come and join
22 us and play with us more, quite often. We got to know him
23 that way.

24 Q So, was the soccer game that you're talking about at
25 school or some place else?

Saul Romero - Cross-examination
by Mr. Bauer

1 A No, just outside.

2 Q Okay. So, where you knew him wasn't from school?

3 It was from playing soccer?

4 A Both on the soccer field and school.

5 Q Okay. So, you and -- I asked if you were in the same
6 grade as, as he was and you said no.

7 Did you, did you---

8 A No.

9 Q Did you share any classes with him?

10 A No.

11 MR. BAUER: Just one moment please, Your Honor.

12 (Pause.)

13 Q This school that you went to that was outside of
14 Estill, do you remember what year it was that you were there
15 with Shawn Davis?

16 A 2006 and 2007.

17 Q 2006 and 2007.

18 And what grade would you have been in at that time?

19 A In eighth grade.

20 Q Eighth grade in 2006 or 2007?

21 A He said he was in school since 2005.

22 Q You were at school till 2005?

23 A No, he started in 2005.

24 Q Okay. And you stayed at that school until 2006/2007?

25 A 2006. 2006.

Saul Romero - Cross-examination
by Mr. Bauer

1 Q Okay. So, just 2005 and 2006, and you were in, you
2 were in the eighth grade at that time?

3 A He said he was eighth or passed to the ninth.

4 Q And was Mr. Davis older or younger than you?

5 A He said he was in a higher grade than I was.

6 MR. BAUER: One moment, please.

7 (Pause.)

8 MR. BAUER: I have no further questions for this
9 witness.

10 THE COURT: Mr. Ruffalo.

11 MR. RUFFALO: One moment, Your Honor. Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. RUFFALO: No questions for Senor Romero.

16 THE COURT: Any redirect?

17 SOLICITOR THORNTON: None, Judge. Ask he be excused.

18 THE COURT: All right, sir. You may be excused. You
19 may be excused.

20 Any objection to this gentleman being excused?

21 MR. RUFFALO: No objection to excusing Senor Romero on
22 behalf of Shawn Davis.

23 SOLICITOR THORNTON: J.J. Evans.

24 J.J. EVANS, being first duly
25 sworn, testified as follows:

J.J. Evans - Direct examination
by Solicitor Thornton

1 DIRECT EXAMINATION

2 BY SOLICITOR THORNTON:

3 Q J.J., I realize these questions every time I ask them
4 are ridiculous, but where do you work, sir?

5 A At SLED.

6 Q And is that South Carolina Law Enforcement Division?

7 A It is.

8 Q And what do you do for SLED?

9 A I'm a special agent investigator in the special
10 investigations unit.

11 Q All right, sir. Do you have any connection or did you
12 do any work on a case that we're here about today involving
13 the murder of one Ronnie Wooten?

14 A I did.

15 Q All right, sir. And did you, at any point, retrieve a
16 gun associated with this case?

17 A I did.

18 Q All right, sir. I'm gonna hand you what's been
19 admitted into evidence as State's Exhibit No. 12, and ask
20 you if you can identify that for me please.

21 A It appears to be the same gun. I would have to check
22 the serial number that I wrote down on the chain of custody
23 to be sure. But it appears to be the same one.

24 Q All right, sir. Do you have that with you?

25 You have the chain of custody form with you?

J.J. Evans - Direct examination
by Solicitor Thornton

1 A No, sir.

2 Q All right, sir.

3 Your Honor, Court's indulgence for one moment.

4 (Pause.)

5 SOLICITOR THORNTON: Your Honor, I apologize for the
6 delay.

7 Q Mr. Evans, I'm gonna hand you a document and ask you to
8 look at that and see if it refreshes your memory as to SLED
9 Item 35?

10 A Yes, sir, it's the same gun.

11 Q All right, sir. And is that the gun, in fact, you
12 retrieved as part of this case?

13 A It is.

14 Q And who did you get it from, Mr. Evans?

15 A Mr. Jerry Ashmore.

16 Q All right, sir. And what did you do with it when you,
17 after you received it?

18 A I delivered it to Special Agent Cone to be turned into
19 evidence.

20 Q All right. Is that Teddy Cone?

21 A It is.

22 Q All right, sir. And does it appear in the same
23 condition today as it did when you, other than it's got I
24 understand a padlock wrapped through it, other than that,
25 does it appear to have been altered or changed in anyway?

J.J. Evans - Direct examination
by Solicitor Thornton

1 A Not at all.

2 Q Thank you, sir. I have no further questions. Please
3 answer any questions that Mr. Bauer or Mr. Ruffalo has for
4 you.

5 THE COURT: Mr. Bauer, any cross-examination?

6 MR. BAUER: No questions.

7 THE COURT: Mr. Ruffalo?

8 MR. RUFFALO: No questions, Your Honor.

9 THE COURT: Sir, you may step down.

10 SOLICITOR THORNTON: Teddy Cone.

11 TEDDY CONE, being first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR THORNTON:

15 Q Agent Cone, who do you work for, sir?

16 A State Law Enforcement known as SLED.

17 Q All right, sir. And you've been in the room and heard
18 the testimony.

19 Do you recognize what is already up here at the witness
20 stand as State's Exhibit No. 12 that's been in evidence?

21 A I do.

22 Q All right, sir. And can you tell me what that is?

23 A It's Regulation Model 99. It's the weapon I turned
24 into SLED for evidence storage.

25 Q All right, sir. And is that the weapon that you

Teddy Cone - Direct examination
by Solicitor Thornton

1 received from J.J. Evans?

2 A It is.

3 Q All right, sir. And what you were doing just now, is
4 that checking the serial number?

5 A That's correct.

6 Q All right, sir. And did you -- who brought it from
7 SLED back to Hampton County for this trial?

8 A I did.

9 SOLICITOR THORNTON: All right, sir. Your Honor, this
10 witness is gonna be subject to recall later. But I have no
11 further questions for him now.

12 Ask you answer any questions that either Mr. Bauer or
13 Mr. Ruffalo have for you.

14 MR. BAUER: No questions, Your Honor.

15 MR. RUFFALO: No questions, Your Honor.

16 THE COURT: Sir, you may step down.

17 SOLICITOR STONE: Your Honor, state calls Ken Whitler.

18 KEN WHITLER, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR STONE:

22 Q Mr. Whitler, what do you do, sir?

23 A I'm employed by the South Carolina Law Enforcement
24 Division that's also known as SLED in the forensic services
25 department, which is the laboratory and the firearms.

Ken Whitler - Direct examination
by Solicitor Stone

1 Q How long have you been -- I'm sorry. I didn't mean to
2 interrupt you.

3 How long have you been with SLED?

4 A Since 1997.

5 Q And in that time have you spent the entire time in the,
6 in the, what I would call firearms, is that correct?

7 A That's correct.

8 Q All right. Have you spent that entire time in
9 firearms?

10 A Yes, I have.

11 Q And as working in that department, what exactly do you
12 do?

13 A I compare bullets and cartridge cases to guns to see if
14 they were, if those items were fired by a particular gun.
15 If no gun is submitted, then we try to determine if the
16 bullets were fired by the same gun or the cartridge cases
17 were fired by the same gun.

18 Q What kind of background do you have that allows you to
19 do this type of testing?

20 A Okay. There's no degree in firearms identification,
21 which is what I have. You have to learn it from other
22 qualified examiners, and I learned it when I was employed by
23 the FBI. I went in the FBI laboratory and underwent their
24 training program, which took approximately two years, where
25 you work with qualified examiners. You work a lot of real

Ken Whitler - Direct examination
by Solicitor Stone

1 cases plus test cases, and then you do what we consider an
2 independent study where you do a lot of shooting of guns and
3 cartridge, to look at bullets and cartridge cases. By the
4 time you finish the training period you have worked with all
5 the examiners in the unit, and when they all feel that you
6 have reached a level of competence that's needed to do this
7 work, they give you a series of three tests. And if you
8 successfully complete the three tests, then the FBI will
9 certify you as a, to do firearms identification for them.

10 In 1991 I successfully completed the training period
11 and three tests and was certified to do firearms
12 identification for the FBI laboratory. In 1997 I got a call
13 from SLED and they offered me a chance to have a lot short
14 commute and be closer to home and come back to South
15 Carolina, and I was, I took the position with the SLED
16 firearms department.

17 Q Okay. So, you've been in this position roughly 19, 20
18 years, is that right?

19 A Approximately, yes.

20 Q Okay. And you've done tests obviously throughout this
21 time, is that correct --

22 A That is correct.

23 Q -- that period of time?

24 Have you ever been qualified as an expert in this field
25 before?

Ken Whitler - Direct examination
by Solicitor Stone

1 A Yes, I've been qualified over 225 times in various
2 state, federal, and territorial courts.

3 Q All right. Just so that I am specific, what would your
4 qualification -- what would your expertise be?

5 A Firearms identification.

6 Q Firearms identification.

7 That include both bullets and ballistics as well as
8 handguns, is that right?

9 A Yes.

10 Q Firearms identification?

11 A That's correct.

12 SOLICITOR STONE: Your Honor, at this time we offer
13 Mr. Whitler as an expert in firearms identification.

14 MR. BAUER: No objection.

15 MR. RUFFALO: No objection, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, again,
17 I've given you instruction on expert testimony. That same
18 instruction that I previously given you applies with regards
19 to this witness since he has been qualified as an expert in
20 firearms identification. Again, you're not required to
21 accept the opinion of this expert. You use his testimony
22 and the evidence in anyway that you see fit.

23 You may proceed, Mr. Stone.

24 SOLICITOR STONE: Thank you, Your Honor.

25 Q Let me show you what's been, been marked as State's

Ken Whitler - Direct examination
by Solicitor Stone

1 Exhibit 11, and ask you if you can tell us -- I know there's
2 a series of things. I'll get to this in just a moment.
3 Those are a series of envelopes.

4 If you can explain those to me please?

5 A Well, the first envelope was the container that the or
6 envelope that the evidence was originally received in.
7 Within that envelope was this smaller envelope which
8 contained the, the fired bullet. When I returned it I
9 placed it in this heat sealed envelope and sealed it with my
10 initials, and then replaced it in this envelope, which I
11 also sealed and initialed. I dated and initialed when I
12 returned it.

13 Q Now, when it comes to you or when it came to you, I'm
14 assuming, it was in this smaller yellow envelope?

15 A Yeah, it was in the smaller envelope inside this one.

16 Q Okay. And that was sealed?

17 A Yes, it was.

18 Q And the stamp that I think was testified earlier from
19 the pathologist, that was in tact when you received it?

20 A That's correct.

21 Q All right. And, so, when you received the item inside,
22 which is now I guess in this clear bag, you placed it there,
23 is that correct?

24 A That's correct.

25 SOLICITOR STONE: Okay. At this time, Your Honor, we

Ken Whitler - Direct examination
by Solicitor Stone

1 move State's Exhibit 11 into evidence.

2 THE COURT: Mr. Bauer.

3 MR. BAUER: No objection.

4 THE COURT: Mr. Ruffalo.

5 MR. RUFFALO: No, sir, thank you.

6 THE COURT: So moved into evidence without objection.

7 (WHEREUPON, State's Exhibit No. 11 was received into
8 evidence at this time.)

9 Q Okay. Now, if I could get you to come off the stand
10 please, and show, show the jury exactly what we're talking
11 about. It's very hard to see.

12 A This is the bullet that was submitted.

13 Q All right. What can you tell the jury about that
14 particular bullet?

15 A I examined it and determined that its pistol
16 characteristics are most consistent with it being a .22 long
17 rifle.

18 Q All right. When you say long rifle, and I apologize
19 for interrupting, but to me long rifle means long gun.

20 Is that, is that what---

21 A That's just the name of the caliber. You have .22 Rem
22 fire series. You have .22 shorts, .22 short, and .22 long
23 rifle. The bullet diameter stays the same basically. The
24 bullet for the long rifle is slightly heavier than for a .22
25 short and the case is longer. We didn't have a case for

Ken Whitler - Direct examination
by Solicitor Stone

1 this incidents. All we had was the bullet. Based on the
2 weight and the characteristics, it's consistent with being a
3 long rifle, a bullet from a long rifle cartridge and not a
4 short.

5 Q But it doesn't have to be fired from a rifle?

6 A No, it can be shot from a handgun or a rifle.

7 Q Okay. What can you tell us about that particular
8 bullet as far as the condition?

9 A It's in very poor condition. It has a few land and
10 groove compressions remaining on it. Enough that you can
11 use it for elimination purposes, but it doesn't have
12 sufficient marks that you can use to identify it to a
13 specific firearm.

14 Q All right. What is a land and groove when you say
15 that?

16 what do you mean by that?

17 A Well, the barrel of the firearm has grooves in it so
18 that it will lay, twist either to the right or to the left
19 so that when the bullet goes down the barrel, it's, it will
20 spin and stabilize so it will be accurate for a long
21 distance. When the bullet goes down the barrel, those marks
22 are impressed into the surface of the bullet. So we can
23 look at a bullet and present it. If it goes down the barrel
24 it has six grooves in it, and the groove is the part that's
25 cut away from the cartridge left in the barrel because of

Ken Whitler - Direct examination
by Solicitor Stone

1 lands.

2 So, we call them lands and grooves. As the bullet goes
3 down the barrel, it has six lands and grooves. We can see
4 that in, in some, submitted a firearm that only has five
5 land and grooves, we could tell very quickly that that
6 firearm could not fire that bullet because it didn't have
7 the right number of land and grooves.

8 The remaining land and grooves on this, because it's so
9 damaged, there was only three remaining, but based on
10 their -- we can do calculations and determine that they're
11 most likely based on this being a .22 long rifle bullet that
12 it probably fired from a firearm with six lands and grooves
13 in the barrel. But, like I said, that's as far as it goes
14 with it. Any gun with the same width of the land and groove
15 impressions could of fired this bullet, this bullet, but you
16 can't go any further and say it was fired by a specific
17 firearm.

18 Q Let me show you what's been marked as State's Exhibit
19 12 with the trigger lock mechanism obviously and that being
20 the red thing.

21 Did you take a look at this?

22 Did you test fire or what did you do with State's
23 Exhibit 12?

24 A When I received this I test fired it and so that I
25 would have known bullets. I know where they came from as I

Ken Whitler - Direct examination
by Solicitor Stone

1 shot them and test fired them. Then I put the test bullets
2 in this bullet on a comparison microscope, which is a
3 microscope that let's you look at two objects at the same
4 time.

5 Basically what you do is try to see if you can match
6 these striation markings or scratches on the bullet and put
7 there by the gun barrel on the pistol and marks on the
8 submitted bullet. And as I said before, this bullet was in
9 such a poor condition that there was just not enough
10 debridement to the marks. If everything on this had been
11 matched up to the other gun, it still wouldn't of been
12 enough to be able to say if it was fired by that gun and
13 involving another firearm of similar rifle.

14 So, what -- that leaves us with the conclusion that
15 this bullet could of been fired by this gun or any other gun
16 with similar markings.

17 Q Okay. Thank you. If you would answer any questions
18 Mr. Bauer or Mr. Ruffalo may have.

19 THE COURT: Mr. Bauer.

20 CROSS-EXAMINATION

21 BY MR. BAUER:

22 Q If you just -- so that I understand, so the jury
23 understands the value of saying it's consistent with, that
24 means that any firearm in circulation in the world with the
25 right number of grooves, lands and grooves could of fired

Ken Whitler - Cross-examination
by Mr. Bauer

1 this gun as far as (inaudible)?

2 A Yes, sir, the same width. I mean that's the only other
3 class characteristic is the width. You could have two guns
4 with the same number of land and grooves, but one could have
5 wider grooves than the other, and that would enable you to
6 determine, but as far as that bullet with that gun, it could
7 of been fired by that gun or another similar model that had
8 similar rifling in it.

9 Q And at SLED, you have some resources, some books that
10 you can look and see a Charter Arms .22 pistol has so many
11 lands and grooves, right?

12 A Yes.

13 Q And a Smith & Wesson .22 has so many lands and grooves
14 and a Ruger .22?

15 A Yes.

16 Q All right. How many other guns made, besides this one,
17 have the same number of lands and grooves?

18 A There would be -- I provided a list. There was
19 literally probably dozens.

20 Q Okay. Dozens of models of which---

21 A Manufacturers. I don't know how many models.

22 Q Okay. Dozen of manufacturers, each making more than
23 one model maybe?

24 A Probably.

25 Q And each producing that model in, in a plant of some

Ken Whitler - Cross-examination
by Mr. Bauer

1 type. So, there might be a hundred thousand guns out there
2 or more with the same number of class characteristics that
3 are consistent with that.

4 A That's correct.

5 MR. BAUER: One moment please, Your Honor.

6 (Pause.)

7 MR. BAUER: No further questions for this witness.

8 THE COURT: Mr. Ruffalo.

9 MR. RUFFALO: No questions, Your Honor. Thank you.

10 THE COURT: Any redirect?

11 SOLICITOR STONE: Nothing else, Your Honor.

12 THE COURT: Sir, you may step down.

13 SOLICITOR STONE: And may we approach as to scheduling,
14 Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: All right. Ladies and gentlemen, we are
19 going to take our lunch break at this time. There's some
20 issues that we have to deal with, and I told you before we
21 started this trial there would be sometimes that some issues
22 we have to deal with outside of your presence, and I know I
23 gave you a two and a half hour lunch break yesterday. I'm
24 gonna cut back that on a little bit, and I'm gonna give you
25 a two hour lunch break today until 2:15, until 2:15.

1 I'm gonna ask that you be back in your jury room at
2 2:15 and then we will start as promptly as possible. I've
3 told the attorneys we'll probably start back at 2:15 and
4 that gives us, us an opportunity here in the courtroom to
5 deal with those issues that we need to deal with and also
6 give us an opportunity to have lunch as well.

7 So, I'm gonna ask you -- I'm gonna allow you to go at
8 this time and go to lunch. I will, once again, caution,
9 caution you, do not discuss this case with anybody, your
10 fellow jurors, your friends, family, anyone involved in this
11 trial. Not to discuss this case with anyone. Do not go out
12 during any of your breaks and try to do any investigation on
13 your own. Remember to keep an open mind about this case
14 until I instruct you to begin your deliberations.

15 So, I'm gonna allow you to go to lunch at this time and
16 look forward for you to be back at 2:15.

17 Thank you, ladies and gentlemen.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Mr. Bauer.

21 MR. BAUER: Your Honor, previously at side bar I had
22 mentioned an objection as to State's Exhibit 12, which was
23 the gun identified by a Witness Romero. At that point we
24 objected based on chain of custody. Mr. Romero testified
25 that he had received the gun, given it to his girlfriend,

1 then retrieved it, and gave it to a person who had not yet
2 testified. So, the gun was out of his possession and
3 control while it was with his girlfriend and given to
4 another person like the intermediary to law enforcement or
5 intermediary for Romero turning the gun over to law
6 enforcement.

7 The gun is -- it is, at least, some semi fungible.
8 It's like any other gun of its class or characteristics.
9 The testimony, particularly the SLED agent, that the bullet
10 in this case is only been consistent with a class and
11 character that makes that distinction important. It's a
12 somewhat fungible item and we would object to the chain of
13 custody.

14 THE COURT: What says the State?

15 SOLICITOR THORNTON: Your Honor, a couple different
16 things and I'll be brief. Number one, that this is not a
17 semi fungible item. It is absolutely fungible. That
18 firearm, Exhibit No. 12, has a serial number on it that at
19 least two people have testified to and checked. It is
20 identifiable from every other version of its kind.

21 Secondly, Your Honor, Mr. -- and as such, Judge, I
22 don't even need to have a chain of custody. All I have to
23 do is have a person who is in the chain identify it and say
24 it hasn't been altered. Would be the State's position
25 number one.

1 Number two, Judge, to the extent that the Court would
2 be more comfortable or Mr. Bauer is more comfortable with
3 the change, the person Shawn Davis sold it to has testified
4 that's the gun that Shawn Davis sold. He said he gave it to
5 Jerry Ashmore, and J.J. Evans from SLED has testified he got
6 it from Jerry Ashmore. J.J. Evans said he gave it to Teddy
7 Cone. Teddy Cone got on the stand and told the Court that
8 he turned it into evidence.

9 All of them have indicated it has not been altered or
10 changed and Ken Whitler from SLED, who examined it,
11 indicated that he had gotten that pistol and test fired it
12 and went through his examinations with the bullet itself,
13 Judge.

14 So, I don't think I needed the chain, number one.
15 Number two, I think I have a complete chain, even though
16 Mr. Ashmore hasn't testified, every person in the chain has
17 been identified and every person who has testified is said
18 the gun is not been altered. I ask respectfully you deny
19 that motion.

20 THE COURT: All right. And I previously -- I'm sorry,
21 Mr. Ruffalo.

22 MR. RUFFALO: And I'm sorry, Judge. I know it's the
23 conditions of our situation here.

24 THE COURT: I understand. Mr. Bauer had spoken and I
25 want to give you an opportunity to speak as well. I'll be

1 happy to hear you.

2 MR. RUFFALO: I just wanted to join in that motion when
3 you make your decisions.

4 THE COURT: Okay. Well, I had previously overruled
5 the, the objection at side bar. I mean to establish chain
6 of custody -- each person who handled the evidence in
7 question is not required to testify. I think that's
8 standard under the law. So, I would overrule that
9 objection, and each of those individuals, and the individual
10 that testified when he purchased the firearm that it was in
11 the same condition from when he purchased the firearm, and
12 it was identified by more than one law enforcement officer
13 as being the firearm that was provided to them, and it
14 appeared to be in the same condition when they received it
15 from the individual that purchased the firearm ultimately to
16 SLED. Therefore, I will overrule that objection.

17 The only thing, other, other, kind of moving on to a
18 different issue here real quick, I just want to put on the
19 record also, Mr. Garcia, who was the interpreter for
20 Mr. Romero, prior to Mr. Garcia, prior to his testimony, his
21 testimony being Mr. Romero's testimony, Mr. Garcia took an
22 oath as an interpreter. Mr. Bauer nor Mr. Ruffalo or both
23 of them stipulated as to his qualifications as an
24 interpreter, and so that issue is not addressed with regard
25 to their qualification.

1 Isn't that -- is that correct, Mr. Bauer?

2 MR. BAUER: Yes, Your Honor.

3 THE COURT: Is that correct, Mr. Ruffalo?

4 MR. RUFFALO: That is correct, sir.

5 THE COURT: All right. Is there anything else that we
6 need to address prior to breaking for lunch from the State?

7 SOLICITOR STONE: Nothing from the State, Your Honor.

8 THE COURT: From the defense, Mr. Bauer?

9 MR. BAUER: No, Your Honor.

10 THE COURT: Mr. Ruffalo.

11 MR. RUFFALO: No, sir.

12 SOLICITOR STONE: Your Honor, I apologize for
13 interrupting. Did we -- I don't recall if we put it on the
14 record as to the testimony that we're gonna redact.

15 Did we do that this morning?

16 THE COURT: I don't think so.

17 SOLICITOR STONE: In that case I think we do need to
18 cover that on the record, Your Honor. My understanding is
19 that they're two references in the statement of both Derrick
20 Adkins and Shawn Davis that refers to gang activity.

21 THE COURT: Right.

22 SOLICITOR STONE: The defense has asked that that be
23 taken out and I have consented to that with the
24 understanding that Your Honor will explain to the jury that
25 there may be cuts and splices and sections missing from the

1 video that is a result of information that is not relevant
2 to this case, and that they should gather nothing from that.
3 And I think that can be put in with the curative instruction
4 that you would give as to United States versus Bruton that
5 they can take the testimony only as to the defendant
6 testifying or the defendant speaking in the confession.

7 THE COURT: Okay. Is that correct, Mr. Bauer?

8 MR. BAUER: That is correct. With regard to the gang
9 activity, the solicitor has agreed to remove the reference
10 to that in both the videotape and the, the transcript on
11 both Mr. Davis' and Mr. Adkins' statement, and in
12 consideration for that, the defendant has agreed not to make
13 any comment with regard to the editing and jumps that will
14 necessarily be in the video as a result of those places and
15 the State's agreement to redact that portion with regard to
16 the gang activity.

17 THE COURT: Anything further from the State?

18 SOLICITOR STONE: No, sir.

19 THE COURT: Mr. Ruffalo, do you have anything else?

20 MR. RUFFALO: That's my understanding of the agreement,
21 Your Honor.

22 THE COURT: Okay. Well, we've got two hours, two hours
23 and 15 minutes. I'll give you an hour and fifteen minutes
24 for lunch. I know I've indicated that, please hold it down,
25 that you-all are going to work on that over the break. I

1 trust that you will and there's an issue, how about let me
2 know. If it comes to something that we can't agree, I've
3 asked the jury to be back here at 2:15, and I'll, I'll try
4 and not leave the courthouse. So, if y'all need me --

5 SOLICITOR STONE: Yes, sir.

6 THE COURT: -- and --

7 SOLICITOR STONE: Thank you, Your Honor.

8 MR. BAUER: Thank you, Judge.

9 (WHEREUPON, Court was in recess for the lunch break.)

10 THE COURT: Anything from the State before we bring the
11 jury back in?

12 SOLICITOR STONE: No, sir, State's ready.

13 THE COURT: Anything from the defendant, Mr. Bauer?

14 MR. BAUER: No, Your Honor.

15 THE COURT: Mr. Ruffalo?

16 MR. RUFFALO: No, Your Honor.

17 THE COURT: Bring us the jury.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: Mr. Stone, are you ready to proceed?

21 SOLICITOR STONE: We are, Your Honor. Our first
22 witness will concern the issue that we brought up earlier
23 with the jury instructions.

24 THE COURT: You want me to go ahead and instruct them?

25 SOLICITOR STONE: I would.

1 THE COURT: Okay. Ladies and gentlemen of the jury, I
2 hope you-all had a good lunch.

3 Before we get started here, there -- it's been brought
4 to my attention that they're going to, it's going to be
5 video played, at least two videos I believe, and there have
6 been, both of these videos have been condensed to some
7 degree for the efficiency purposes. These videos being
8 condensed have been agreed upon by the state, the attorney
9 for the state and as well as the attorneys for Mr. Adkins
10 and Mr. Davis. Just wanted to let you know that for purpose
11 of these videos being played.

12 Anything further from the State?

13 SOLICITOR STONE: No, sir, I think that, that---

14 THE COURT: From the defense on that issue?

15 MR. BAUER: No, Your Honor.

16 MR. RUFFALO: No, Your Honor.

17 SOLICITOR STONE: Your Honor, the state calls special
18 Agent Teddy Cone to the stand, back to the stand.

19 THE COURT: Officer Cone, is that correct?

20 WITNESS: Yes, sir.

21 THE COURT: Remind you that you're still under oath,
22 sir.

23 WITNESS: Yes, sir.

24 TEDDY CONE, having been previously
25 sworn, testified as follows:

Teddy Cone - Direct examination
by Solicitor Stone

1 DIRECT EXAMINATION

2 BY SOLICITOR STONE:

3 Q All right. Special Agent Cone, I know you've testified
4 earlier.

5 You are a SLED agent, is that correct?

6 A That's correct.

7 Q And you have been with SLED for how long now?

8 A Since '07.

9 Q All right. And pull that microphone up to you so I can
10 hear you please --

11 A Since '07.

12 Q -- cause the acoustics aren't great.

13 You were one of the investigating officers on this
14 case, is that correct?

15 A That's correct.

16 Q And during your investigation, did you interview Shawn
17 Davis?

18 A I did.

19 Q All right. And do you recall when that was?

20 A The very first interview was on 9/4/08.

21 Q And you interviewed him a number of times, is that
22 correct?

23 A That's correct.

24 Q Okay. Let me first show you what's been marked as
25 State's Exhibit 20.

Teddy Cone - Direct examination
by Solicitor Stone

- 1 Ask if you can identify that for me please.
- 2 A That is the videotaped interview of Shawn Davis.
- 3 Q All right. Now, that, that, in itself, what is that
- 4 form?
- 5 A It's a Miranda rights form, SLED standard form.
- 6 Q Okay. Now, what is the purpose behind that form?
- 7 A To give the subject that you're interviewing their
- 8 rights.
- 9 Q Okay.
- 10 A Miranda rights.
- 11 Q And that is for Shawn Davis, is that correct?
- 12 A That's correct.
- 13 Q Okay. You were present during the reading of those
- 14 rights and the explanation of those rights?
- 15 A I was.
- 16 Q Okay. First of all, if you could, explain to jury in
- 17 that -- I will go ahead at this time, Your Honor, and move
- 18 that into evidence. That is State's Exhibit No. 20.
- 19 THE COURT: Any objection by the defense, Mr. Bauer?
- 20 MR. BAUER: No, Your Honor.
- 21 THE COURT: Mr. Ruffalo?
- 22 MR. RUFFALO: No objection, Your Honor.
- 23 THE COURT: So admitted.
- 24 (WHEREUPON, State's Exhibit No. 20 was received into
- 25 evidence at this time.)

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by Solicitor Stone

1 Q Let me also show you what's been marked as State's
2 Exhibit No. 19.

3 Can you identify that?

4 A That's also a SLED Miranda rights form.

5 Q And that concerns Shawn Davis?

6 A That's correct.

7 Q Okay. And you read or those were read in your
8 presence, is that correct?

9 A I did not witness these. That was Special Agent J.J.
10 Evans and Anthony Russell.

11 Q Okay.

12 A But I was there.

13 Q Okay. You watched those being read to him?

14 A That's correct.

15 SOLICITOR STONE: All right. At this time we, we offer
16 State's Exhibit No. 19 into evidence.

17 THE COURT: Any objection, Mr. Bauer?

18 MR. BAUER: No, Your Honor.

19 THE COURT: Mr. Ruffalo?

20 MR. RUFFALO: No, sir.

21 THE COURT: Admitted without objection.

22 (WHEREUPON, State's Exhibit No. 19 was received into
23 evidence at this time.)

24 Q Okay. All right. Now, if you would please, sir,
25 State's Exhibit 19 and 20, they are the, basically the same

Teddy Cone - Direct examination
by Solicitor Stone

1 form, are they not?

2 A That's correct.

3 Q When you read an individual their rights, how do you do
4 that?

5 How does -- what goes on with that?

6 A You document the place, the date, and the time. You
7 read it line-by-line verbatim. You have the subject you're
8 interviewing to initial by each line that he understands his
9 rights, and then you read the waiver of rights at the
10 bottom, two witnesses signed, and also subject being
11 interviewed.

12 Q The first where you indicated the time and place of the
13 interview, what, what is on State's Exhibit 19 and State's
14 Exhibit 20?

15 A On the, Exhibit 19 place is Hampton County Sheriff's
16 Office. Substation, that's down in Varnville. 9/4/08 at
17 6:23PM. State's Exhibit 20, Hampton County Sheriff's Office
18 Complex in Varnville. 9/5 of '08 to 2:50PM.

19 Q Read, if you would, publish to the jury the rights that
20 you, that were given to Shawn Davis on those two dates.

21 A Place, Hampton County substation, his Miranda rights
22 form, 9/4 of '08, 6:23PM. Before we ask you any questions
23 you must understand your rights. You have the right to
24 remain silent. Anything you say can be used in the Court as
25 evidence against you. You are entitled to talk to a lawyer

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1 now or have him present now or at anytime during
2 questioning. If you can not afford an attorney, one will be
3 appointed for you without cost. If you decide to answer
4 questions now, without a lawyer present, you will still have
5 the right to stop answering at anytime. You also have the
6 right to stop answering at anytime until you talk to a
7 lawyer.

8 Do you understand these rights?

9 Do you wish to talk to us at this time?

10 Then you read the waiver of rights. I've read the
11 statement of my rights and I understand what my rights are.
12 I am willing to talk now without a lawyer present. I
13 understand and know what I am doing. No promise or threats
14 have been made to me and no pressure or coercion of any kind
15 has been used against me. Signed Shawn Davis. Witnessed
16 Anthony Russell and Special Agent J.J. Evans.

17 Q Okay.

18 A That's 19.

19 Q And is that the same as 20?

20 A Same as 20. Only difference is the time and the date
21 and the witnesses.

22 Q Okay. And that is Shawn Davis' signature at the bottom
23 of this form, is that correct?

24 A That's correct.

25 Q Okay. Now, the initials that are beside each one of

Teddy Cone - Direct examination
by Solicitor Stone

- 1 those rights as you read them indicates the letters S.D.
2 A Shawn Davis.
3 Q And who put those down there?
4 A Shawn Davis.
5 Q Okay. And those are on both forms, 19 and 20?
6 A That's correct.
7 Q The signature at the bottom and the initials on the top
8 are his, is that correct?
9 A That's correct.
10 Q All right. During the time that these rights were read
11 to him, did anyone coerce him, threaten him, promise him
12 anything in any way to get him to talk?
13 A Not at all.
14 Q Okay. Now, the two statements, one on the night, the
15 4th and one on the 5th, either one of these videotaped?
16 A The one on the 5th, the 2:50PM, is videoed.
17 Q And did he, did he give you a statement on the 4th as
18 well?
19 A He did.
20 Q And does that consist of what is on the 5th that is
21 actually videotaped?
22 A That's correct.
23 Q All right.
24 A He was interviewed on the 4th and I did a memo.
25 Q Okay. Now, let me ask you -- let me show you what's

Teddy Cone - Direct examination
by Solicitor Stone

1 been marked as State's Exhibit 26.

2 Ask if you can identify this.

3 A That's the video of---

4 Q Microphone.

5 A That's the video of Shawn Davis.

6 Q Okay. And there's also a transcript that runs along
7 with that, is that correct?

8 A That's correct.

9 Q Have you reviewed that transcript?

10 A I have.

11 Q Is it accurate?

12 A It is.

13 SOLICITOR STONE: Okay. Your Honor, at this time --
14 let me -- at this time, Your Honor, we would move into
15 evidence State's Exhibit 26 and publish that part of the
16 disk that concerns Shawn Davis.

17 THE COURT: Mr. Bauer?

18 MR. BAUER: No objection.

19 THE COURT: Mr. Ruffalo?

20 MR. RUFFALO: No objection.

21 THE COURT: Without objection, Mr. Stone, you may
22 proceed.

23 SOLICITOR STONE: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit No. 26 was received into
25 evidence at this time and a portion was played for the jury

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by Solicitor Stone

1 at this time.)

2 Q I want to show you what's been marked as State's
3 Exhibit 22.

4 Can you identify that please?

5 A That's the photo I -- that's the photo I showed Shawn
6 on the different types of weapons and that's where he
7 circled the weapon that most resembled the weapon used in
8 the robbery.

9 Q All right. And that is what we just saw on the video,
10 is that correct?

11 A That's correct.

12 SOLICITOR STONE: Your Honor, at this time we move
13 State's Exhibit 22 into evidence.

14 THE COURT: Any objection, Mr. Bauer?

15 MR. BAUER: No, Your Honor.

16 THE COURT: Mr. Ruffalo?

17 MR. RUFFALO: No, sir.

18 SOLICITOR STONE: And permission to publish to the
19 jury, Your Honor?

20 THE COURT: So moved into evidence, Exhibit, State
21 Exhibit No. 22 without objection. Permission to publish.

22 (WHEREUPON, State's Exhibit No. 22 was received into
23 evidence at this time.)

24 Q And that is Shawn Davis' signature here beside that
25 circled---

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by Solicitor Stone

1 A Yes, sir, that's the one on the end.

2 Q Let me show you what's already been put into evidence
3 as State's Exhibit 25, the photo lineup indicating, among
4 other people, Shawn Davis?

5 A That's correct. That's where Saul Benitez Romero, who
6 testified earlier, that he circled Shawn, positively ID'd
7 him.

8 Q Now, you put this together --

9 A Right.

10 Q -- or had this put together?

11 A SLED did in Columbia.

12 Q Okay.

13 A The photo lineup.

14 Q The photo that Saul picked out or picture, photograph
15 number four, who is that of?

16 A Number four, Shawn Davis.

17 Q Okay. Do you see Shawn Davis in the courtroom today?

18 A I do.

19 Q Could you pick it out for me please?

20 A White shirt, far end, sitting next to Mr. Ruffalo.

21 SOLICITOR STONE: Please let the record indicate, Your
22 Honor, the officer has chosen Shawn Davis, picked out Shawn
23 Davis.

24 THE COURT: Yes, sir, so shown.

25 Q Now, Investigator or Special Agent, did you also

Teddy Cone - Direct examination
by Solicitor Stone

1 interview Derrick Adkins?

2 A I did.

3 Q And you interviewed him a couple times as well, did you
4 not?

5 A That's correct.

6 Q And those statements that you obtained, did you obtain
7 statements from Mr. Adkins?

8 A I did.

9 Q Let me first show you State's Exhibit -- excuse me.
10 I'm sorry.

11 Let me first show you State's Exhibit No. 16 and ask
12 you if you can identify that for me first please?

13 A That's the Miranda rights form that was read to Derrick
14 Adkins before his video interview dated 9/5/08, 5:00PM,
15 Hampton County Sheriff's Office.

16 Q Now, this form -- and I'll just hand that to you -- at
17 this time, Your Honor, we move State's Exhibit 16 into
18 evidence.

19 THE COURT: Any objection, Mr. Bauer?

20 MR. BAUER: No, Your Honor.

21 THE COURT: Mr. Ruffalo?

22 MR. RUFFALO: No, sir.

23 THE COURT: Without objection. So noted.

24 (WHEREUPON, State's Exhibit No. 16 was received into
25 evidence at this time.)

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by Solicitor Stone

1 Q All right. That is also a similar form, I'm assuming,
2 as the one that you read to Shawn Davis, is that correct?

3 A That's correct. Same form signed by different people.

4 Q Okay. Well, I hate to make you go back through this,
5 but I want to make sure we're clear on this as far as Mr.
6 Adkins is concerned as well.

7 Please, if you would, explain that form to the jury and
8 tell us what's on it.

9 A This is the standard SLED Miranda rights form. It
10 states the place, date, and time, and the actual Miranda
11 rights and waiver of rights as witnessed by the two people
12 and signed by the person being interviewed.

13 Q And those -- what does that indicate as far as the
14 time, the time and the place?

15 A Place is Hampton County Sheriff's Office, Varnville
16 annex. Date's 9/5/08 and 5:00PM.

17 Q And what are those rights exactly?

18 A His Miranda rights.

19 Q Did you read those to him or were those read to him in
20 your presence?

21 A I witnessed it. That's correct.

22 Q And if you will publish his rights to the jury?

23 A Place, Hampton County -- Miranda rights. Place,
24 Hampton County Sheriff's Office, Varnville annex. Date
25 9/5/08, time 5:00PM. Before we ask you any questions you

Teddy Cone - Direct examination
by Solicitor Stone

1 must understand your rights. You have the right to remain
2 silent. Anything you say can be used in Court as evidence
3 against you. You're entitled to talk to a lawyer now and
4 have him present now or at anytime during questioning. If
5 you can not afford an attorney one will be appointed for you
6 without cost. If you decide to answer questions now,
7 without a lawyer present, you would still have the right to
8 stop answering at anytime. You also have the right to stop
9 answering at anytime until you talk to a lawyer.

10 Do you understand these rights?

11 Do you wish to talk to us at this time?

12 waiver of rights. I've read the statement of my rights
13 and I understand what my rights are. I'm willing to talk
14 now without a lawyer present. I understand and know what I
15 am doing. No promises or threats have been made to me and
16 no pressure or coercion of any kind has been used against
17 me. Signed Derrick Adkins. Witnessed Chauncey Solomon and
18 myself.

19 SOLICITOR STONE: Permission to publish to the jury,
20 Your Honor?

21 THE COURT: All right.

22 Q Let me ask you on this, on this form, on the right
23 column here, there are initials that say D.A.

24 whose initials are those?

25 A Derrick Adkins.

Teddy Cone - Direct examination
by Solicitor Stone

1 Q And who wrote those initials down there?

2 A Derrick Adkins.

3 Q During the time that you read these rights to him, did
4 he indicate he understood those rights?

5 A He did.

6 Q Did you promise, coerce, or threaten him in anyway to
7 get him to talk to you?

8 A No, I did not.

9 Q And is this on video as well?

10 A That is correct.

11 SOLICITOR STONE: Your Honor, at this time State's
12 Exhibit 26 we've already moved into evidence, we would
13 ask -- well, let me -- excuse me just a moment.

14 And I asked you on the other one, but this State's
15 Exhibit 26, have you reviewed the video of the interview
16 with Derrick Adkins on this?

17 A I have.

18 Q And the transcript that goes along with it, did you---

19 A I have.

20 Q ---read that?

21 A That's -- I have.

22 Q Is it accurate?

23 A It is.

24 SOLICITOR STONE: Your Honor, at this time we move
25 State's Exhibit 26, the section concerning Derrick Adkins,

Teddy Cone - Direct examination
by Solicitor Stone

1 into, into evidence.

2 MR. BAUER: Your Honor, the, the only issue that we
3 need to address is the same issue that was addressed at
4 pretrial ruling, which is to protect the record on that.

5 THE COURT: The ruling remains the same. Objection
6 overruled.

7 SOLICITOR STONE: Permission to publish at this time,
8 Your Honor?

9 THE COURT: Yes, sir.

10 SOLICITOR STONE: Thank you.

11 (WHEREUPON, State's Exhibit No. 26 was published for
12 the jury at this time.)

13 Q Mr. Cone, let me show you what's been marked as State's
14 Exhibit 21.

15 Ask if you can identify that please.

16 A These are images of the guns, different types of
17 weapons.

18 Q These are the two sheets that you showed Derrick Adkins
19 in the video just then?

20 A That's correct.

21 SOLICITOR STONE: Your Honor, at this time we move
22 State's Exhibit 21 into evidence.

23 THE COURT: Any objections, Mr. Bauer?

24 MR. BAUER: No objections.

25 THE COURT: Mr. Ruffalo?

Teddy Cone - Direct examination
by Solicitor Stone

1 MR. RUFFALO: No, sir.

2 THE COURT: So moved without objection.

3 (WHEREUPON, State's Exhibit No. 21 was received into
4 evidence at this time.)

5 SOLICITOR STONE: Permission to publish to the jury,
6 Your Honor?

7 THE COURT: Yes, sir.

8 Q Agent, the circle and the initials at the bottom
9 indicate D.A.

10 Who is that?

11 A Derrick Adkins.

12 Q And these -- this is the form that he filled out in
13 this video that we just watched?

14 A That's correct.

15 Q Show you what's already been put into evidence as
16 State's Exhibit 24.

17 Is this a similar photo lineup created by SLED?

18 A That's correct.

19 Q And in this photo lineup, this was the one shown to
20 Saul Benitez Romero?

21 A That's correct.

22 Q Is that correct?

23 A That's correct.

24 Q Number two is this photograph.

25 Who is that?

Teddy Cone - Direct examination
by Solicitor Stone

1 A Derrick Adkins. That's where Saul positively ID'd him
2 as the guys holding the gun, who sold the weapon.

3 Q All right. And do you see Derrick Adkins in the
4 courtroom today?

5 A I do.

6 Q Could you point him out for us please?

7 A By the podium in the yellow shirt.

8 SOLICITOR STONE: We don't have any further questions
9 of this witness at this time.

10 THE COURT: Mr. Bauer, cross-examination.

11 CROSS-EXAMINATION

12 BY MR. BAUER:

13 Q Special Agent Cone, you first met Derrick Adkins on
14 what day?

15 A The first interview?

16 Q Yes.

17 A Let me refer to my notes a second.

18 (Pause.)

19 A First interview with Derrick Adkins was 9/4 of '08,
20 3:05PM, Hampton County Substation.

21 Q And when you met with him, he was already at the
22 substation?

23 A That's correct.

24 Q And when you met with him, before you talked with him,
25 he was given his Miranda rights, correct?

Teddy Cone - Cross-examination
by Mr. Bauer

1 A I gave him his Miranda rights.

2 Q And, so, before you interviewed him, before you asked
3 him any questions, you Mirandized him?

4 A That's correct.

5 Q And you previously identified, by State's Exhibit from
6 your, the next day when you interviewed Derrick Adkins, but
7 you gave him the same Miranda rights warning on
8 September 4th that you gave him on September 5th,
9 correct?

10 A That's correct.

11 Q So, on September 4th you told him you didn't have to
12 answer any questions?

13 A I read him his Miranda rights.

14 Q Okay. And that included that he could remain silent,
15 yes?

16 A The first one I read.

17 Q And that included that he had the right to talk to a
18 lawyer?

19 A Correct.

20 Q And that he didn't have to continue to answer
21 questions, he could assert his rights at anytime?

22 A That's correct.

23 Q And he talked with you freely and voluntarily on the
24 point?

25 A He did, myself and Special Agent Evans.

Teddy Cone - Cross-examination
by Mr. Bauer

1 Q And you actually made notes in a memorandum of
2 interview from that, didn't you?

3 A I did.

4 Q That statement was not videotaped, was it?

5 A It was not.

6 Q And that statement Derrick Adkins didn't handwrite a
7 report for you, did he?

8 A No, he did not.

9 Q You came back the next day on September 5th and
10 interviewed him again, correct?

11 A That's correct, a video statement.

12 Q And when you interviewed him on September 5th, which
13 is the same place?

14 A That's correct.

15 Q And, again, you made sure that he'd been advised of his
16 Miranda rights?

17 A That's correct.

18 Q And on videotape you're telling him you have the right
19 to remain silent?

20 A I read him the Miranda rights form on video.

21 Q And that said you told him, it's on videotape, you have
22 the right to remain silent?

23 A That's correct.

24 Q And you told him that anything he said could be used as
25 evidence against him in a court of law?

Teddy Cone - Cross-examination
by Mr. Bauer

- 1 A Correct.
- 2 Q And you told him that he had the right to a lawyer?
- 3 A I did.
- 4 Q And you told him that he could assert those rights at
- 5 anytime?
- 6 A Correct.
- 7 Q And after advising him of those rights, he voluntarily
- 8 gave you a statement on videotape?
- 9 A He did.
- 10 Q And while he was sitting there with you, he answered
- 11 all of the questions that you asked him?
- 12 A That's correct.
- 13 Q He never asserted his rights at that time?
- 14 A No.
- 15 Q Now, at that time you didn't have him also handwrite a
- 16 statement, did you?
- 17 A That was at a later date.
- 18 Q Okay. So, on September 8th you met with Derrick
- 19 Adkins again?
- 20 A Correct.
- 21 Q And on September 8th, again, you Mirandized him?
- 22 A I did.
- 23 Q Went through all the same rights again?
- 24 A That's correct.
- 25 Q Did you get him, again, to sign a waiver of Miranda?

Teddy Cone - Cross-examination
by Mr. Bauer

1 A I did.

2 Q And at that time did you ask him to write a statement
3 for you?

4 A I did.

5 Q And did he do so?

6 A He did.

7 Q Was the statement in his own handwriting or did
8 somebody else write it for him?

9 A Actually Deputy Solomon wrote the statement at
10 Derrick's request.

11 Q Was that videotaped?

12 A It was not.

13 Q Was it audiotaped Derrick dictated a statement?

14 A It was not.

15 Q At the end of the statement was he read the statement
16 that -- at the end of the transcription process, did you or
17 the deputy read the writing back to Derrick and have him
18 confirm that it was correct?

19 A We let him read it, he initialed it at the beginning
20 and the end showing that there were, nothing would be added
21 to this statement and he was also provided a copy for his
22 own records.

23 Q At anytime during that process on the 8th did he assert
24 his rights?

25 A He did not.

Teddy Cone - Cross-examination
by Mr. Bauer

1 Q Cooperated with you fully on September the 8th?

2 A That's correct.

3 MR. BAUER: One moment please, Your Honor.

4 (Pause.)

5 MR. BAUER: I have no further questions of this
6 witness.

7 THE COURT: Mr. Ruffalo.

8 MR. RUFFALO: May I beg the Court's indulgence one
9 moment?

10 THE COURT: Yes, sir.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MR. RUFFALO:

14 Q Special Agent, you were also present when Shawn Davis
15 gave his statement, correct?

16 A The written statement?

17 Q Yes.

18 A Which statement?

19 Q Written statement.

20 A Let me check my notes.

21 (Pause.)

22 A I was.

23 Q And the same thing occurred, Sergeant Solomon wrote
24 the, the statement for Mr. Davis?

25 A The best of my recollection that Shawn actually wrote

Teddy Cone - Cross-examination
by Mr. Ruffalo

1 his own statement.

2 Q Okay. Thank you very much.

3 THE COURT: Any redirect?

4 SOLICITOR STONE: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY SOLICITOR STONE:

7 Q I'd forgotten to hand you this earlier. I apologize.

8 Statement -- let me hand you State's Exhibit 15.

9 Ask if you could identify that for me please.

10 A That is Miranda rights form for Derrick Adkins.

11 Q That's the first one that you read to Mr. Adkins on the
12 4th, is that correct?

13 A That's correct.

14 Q And the writing on here is consistent with what you've
15 talked about in previous Miranda statements?

16 A That's correct.

17 Q And concerning what Mr. Bauer was asking you earlier,
18 this is the statement you read to Mr. Adkins?

19 A That's correct.

20 SOLICITOR STONE: Your Honor, we move statement,
21 State's Exhibit 15 into evidence.

22 THE COURT: Any objection?

23 MR. BAUER: No, Your Honor.

24 THE COURT: Mr. Ruffalo.

25 MR. RUFFALO: No, sir.

Teddy Cone - Redirect examination
by Solicitor Stone

1 THE COURT: So moved without objection.

2 (WHEREUPON, State's Exhibit No. 15 was received into
3 evidence at this time.)

4 Q And the statements that Mr. Bauer asked you about
5 earlier, are all those consistent with what we saw on the
6 video?

7 A Correct.

8 SOLICITOR STONE: No -- nothing else, Your Honor.

9 THE COURT: Any recross?

10 MR. BAUER: No, Your Honor.

11 THE COURT: Mr. Ruffalo.

12 MR. RUFFALO: No, sir.

13 THE COURT: Sir, you may step down.

14 SOLICITOR STONE: May I have just a moment, Your Honor?

15 THE COURT: Yes, sir.

16 SOLICITOR STONE: Thank you.

17 (Pause.)

18 SOLICITOR STONE: Your Honor, with that the State
19 rests.

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, you have heard all the evidence that the State intends
22 to put up in this case. At this time there are some matters
23 of law that we do have to take up outside of your presence.
24 I'm gonna ask you to go to the jury room at this moment, and
25 while we address those issues, I would remind you once again

1 not to discuss this case at all until you are instructed to
2 do so by the Court.

3 So, at this, this time, if you'll go to your jury room,
4 please.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Mr. Bauer.

8 MR. BAUER: Your Honor, on behalf of Derrick Adkins I
9 would move for a directed verdict. Even taking the evidence
10 in the light most favorable to the non-moving party as
11 you're required to do, we believe the State is failed to put
12 sufficient evidence into the record from which a reasonable
13 jury could find Mr. Adkins guilty of murder and armed
14 robbery.

15 THE COURT: What I'll do is I'll hear from the State
16 and I'll go back to you, Mr. -- well, I don't want you, I
17 don't want you to have to do, to make the same argument
18 twice.

19 All right. Mr. Ruffalo, I'll be happy to hear from
20 you, sir, if that's okay.

21 MR. RUFFALO: Not to belabor the point, our directed
22 verdict would essentially be the same thing. But taken in
23 the light most favorable, they did not put sufficient
24 evidence in the record.

25 THE COURT: Mr. Stone.

1 SOLICITOR STONE: Yes, sir.

2 Please the Court, Your Honor.

3 We've had testimony in this case of the fact that it
4 happened, it happened in Hampton County, that Ronnie Wooten
5 was robbed at gunpoint, that the plan, in fact, was to rob
6 Ronnie Wooten at gunpoint. There is testimony, and, in
7 fact, the, the robbery weapon is into evidence, and not only
8 the robbery, of course, as well, but the weapon supporting
9 the murder.

10 There's been testimony as to the cause of death being
11 homicide and that the murder was committed, and, in fact,
12 with the statements of both individuals, taken by
13 themselves, indicating that each one of them was involved in
14 the planning of the armed robbery, with the execution of the
15 armed robbery, and as a result of the armed robbery, the
16 murder of Ronnie Wooten.

17 We, we submit to Your Honor there's more than ample
18 evidence in this case to go to the jury.

19 THE COURT: All right. All right. The ruling on the
20 defendant's motion for directed verdict, the Trial Court is
21 not, excuse me, is concerned with the existence of evidence,
22 but not its weight. If there's any direct or any
23 substantial circumstantial evidence reasonably tending to
24 prove the guilt of the accused, from which guilt may be
25 fairly and logically deduced, the case should be submitted

1 to the jury.

2 I've listened to the testimony of each of these
3 witnesses here today, and I do believe, without commenting
4 on the weight of the evidence, I do believe that the state
5 is produced sufficient evidence as to the charge of murder
6 as well as to the charge of armed robbery that would, that
7 would warrant the case going to the jury, and I will
8 respectfully deny your motion, each of your motions,
9 Mr. Bauer, and, Mr. Ruffalo, for directed verdict as to each
10 of the charges that your clients are facing here today.

11 MR. RUFFALO: Thank you, Your Honor.

12 THE COURT: All right. Anything further right now?

13 MR. BAUER: No, Your Honor.

14 MR. RUFFALO: No Your Honor.

15 SOLICITOR STONE: No, sir.

16 THE COURT: Anything before I bring the jury back in?

17 MR. BAUER: Your Honor, is it still your plan that we
18 close and charge tomorrow?

19 THE COURT: Yes, what I would need to -- what I would
20 plan on doing, I guess this is the stage and point where
21 you-all have to make decisions as to whether or not you want
22 to put up any evidence and whether or not your client's
23 gonna testify. What I would propose doing at this moment is
24 going ahead and advising your clients of their right to
25 testify, put that on the record, make sure they understand

1 that right, and make them make a decision on that issue at
2 this point.

3 And what I would do, after advising them of their right
4 to testify, I would propose bringing the jury back out here,
5 and at that point in time, depending upon what y'all's plan
6 is, if you rest, I will then excuse the jury for the day,
7 and I will bring them back in the morning and we will argue
8 and charge at that point. If you plan on putting up any
9 evidence, then we'll proceed through.

10 But what I would propose doing is going ahead and
11 advising your client of their right.

12 Mr. Derrick, Mr. Derrick Adkins, if you would stand
13 please sir.

14 (Defendant complies.)

15 THE COURT: Mr. Shawn Davis, if you would stand please
16 sir.

17 (Defendant complies.)

18 THE COURT: Madam Clerk, would you please place them
19 under oath?

20 (WHEREUPON, both defendants were placed under oath at
21 this time.)

22 THE COURT: All right. Mr. Derrick Adkins and
23 Mr. Shawn Davis, at this time I'm going to explain to each
24 of you certain of your rights. If you do not understand
25 anything I say, please let me know. If you want me to

1 explain anything in more detail, please let me know.

2 You understand that, Mr. Adkins?

3 DEFENDANT: Yes, sir.

4 THE COURT: Mr. Davis?

5 DEFENDANT: Yes, sir.

6 THE COURT: All right. We have now reached the stage
7 of the trial where you may present your defense, Mr. Adkins
8 and Mr. Davis. You have the right to claim the protections
9 given to you by the Fifth Amendment to the Constitution of
10 the United States. This amendment states, in part, no
11 person shall be compelled, in any criminal case, to be a
12 witness against himself. This means that you can not be
13 required to testify in this case. You have the right to
14 testify on your own behalf. However, no one can make you
15 testify. This is a personal right and no one can waive this
16 right except you.

17 Do you understand that, Mr. Adkins?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that, Mr. Davis?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. If you decide to testify, you
22 will be subject to the same rules that govern other
23 witnesses, and you may be examined and cross-examined on any
24 relevant issues in this case. In addition, if you have any
25 convictions involving dishonesty or false statements or for

1 crimes punishable by imprisonment for more than one year,
2 and this Court determines that the probative value of
3 admitting this evidence outweighs its prejudicial effect to
4 you, the solicitor will be able to introduce your record to
5 attack your credibility.

6 If you decide to testify, this decision on your part
7 must be freely, voluntarily, and intelligently made with
8 knowledge of the protections given to you by the Fifth
9 Amendment and the consequences of your decision to testify.
10 If you decide not to testify, I will instruct the jurors
11 that they can not give the fact that you did not testify any
12 consideration whatsoever, and that there's to be absolutely
13 no prejudice to you because you did not testify. It's left
14 entirely up to you whether or not you testify. You may talk
15 with your attorneys, your family, and friends, or anyone
16 else, but the final decision will be left entirely up to
17 you.

18 Do you understand that, Mr. Adkins?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that, Mr. Shawn Davis?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do each of you understand what I have, what
23 I have explained to you, Mr. Derrick Adkins?

24 DEFENDANT: Yes, sir.

25 THE COURT: Mr. Shawn Davis?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do either of you have any questions about
3 what I have explained to you, Mr. Adkins?

4 DEFENDANT: No, sir.

5 THE COURT: Mr. Davis?

6 DEFENDANT: No, sir.

7 THE COURT: Okay. Have you discussed with your lawyer
8 whether you should or should not testify, Mr. Adkins?

9 DEFENDANT: Yes, sir.

10 THE COURT: Mr. Davis?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you wish to talk with your lawyer
13 anymore at this time, Mr. Davis -- Mr. Adkins?

14 DEFENDANT: Yes, sir.

15 THE COURT: Mr. Davis.

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. Brief -- talk to your lawyers,
18 gentlemen.

19 (Pause.)

20 THE COURT: Mr. Derrick Adkins, you indicated
21 previously that you, that you wanted to talk to your lawyer
22 concerning your right to testify.

23 Have you had an opportunity to talk with your lawyer,
24 Mr. Adkins?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you need anymore time at this -- do you
2 need anymore time to talk to your lawyer about your right to
3 testify?

4 DEFENDANT: No, sir.

5 THE COURT: All right. Do you wish to testify.

6 DEFENDANT: No, sir.

7 THE COURT: Sir?

8 DEFENDANT: No, sir.

9 THE COURT: Okay. All right. Mr. Shawn Davis, you
10 indicated also that you needed some additional time to talk
11 to your lawyer before, Mr. Ruffalo.

12 Have you had an opportunity to talk with your lawyer?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you need any additional time to talk to
15 Mr. Ruffalo?

16 DEFENDANT: No, sir.

17 THE COURT: Sir, do you wish to testify?

18 DEFENDANT: No, sir.

19 THE COURT: All right. Anything further from the State
20 or the defense at this time?

21 SOLICITOR STONE: Not from the State, Your Honor.

22 THE COURT: All right. Gentlemen, you may be seated.

23 What I will do is I will go ahead and bring the jury
24 back in, and I will recognize you, Mr. Bauer, and you can
25 rest, and I'll recognize you, Mr. Ruffalo, and you can rest,

1 and then I'll cut the jury loose for the day, and then you
2 can renew your motions, and then we'll adjourn for the day.

3 I would like to talk with the lawyers before you-all
4 leave here today just briefly to discuss, preliminarily
5 discuss the charge for tomorrow. I want to get you out of
6 here as quickly as possible so we can go ahead and get that
7 put together.

8 SOLICITOR STONE: Yes, sir.

9 THE COURT: Anything before we bring the jury back in
10 from the State?

11 SOLICITOR STONE: No, sir.

12 THE COURT: Anything from the defense, Mr. Ruffalo or
13 Mr. Bauer?

14 MR. BAUER: No, Your Honor.

15 MR. RUFFALO: No, sir.

16 THE COURT: Okay. Please bring us the jury.
17 We will start back at 9:30 in the morning.

18 SOLICITOR STONE: Yes, sir, thank you.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: Mr. Bauer.

22 MR. BAUER: Your Honor, Derrick Adkins, the defense
23 rests.

24 THE COURT: All right. Mr. Ruffalo.

25 MR. RUFFALO: Yes, sir, we rest.

1 THE COURT: Thank you, gentlemen.

2 All right. Ladies and gentlemen of the jury, you have
3 heard all the testimony that you're going to hear in this
4 case. There are some additional matters of law that we have
5 to address. We're going to recess for this evening.

6 During this overnight break, just as each and every
7 other break that you've taken from yesterday and I've
8 instructed you after you were jurors in this case through
9 today, I will now instruct you again that you're not to
10 discuss this case in any manner with anyone. This includes
11 your fellow jurors, your friends and family, people involved
12 in the trial of this case.

13 Again, if anyone tries to talk to you, please let me
14 know immediately, and, again, do not read, watch, or listen
15 to any news reports or discussions about the trial.
16 Remember to keep an open, keep an open mind about this case
17 until I instruct you to begin your deliberations.

18 Anything from the State before I excuse the jury?

19 SOLICITOR STONE: No, sir.

20 THE COURT: From the defense, Mr. Bauer?

21 MR. BAUER: No, Your Honor.

22 THE COURT: Mr. Ruffalo?

23 MR. RUFFALO: No, sir.

24 THE COURT: All right. Ladies and gentlemen, I'm gonna
25 ask you be back in your jury room tomorrow morning at 9:30,

1 9:30AM be back where you, where you came this morning, where
2 you came after lunch, and I just ask you to be back there at
3 9:30 in the morning, and we'll start as promptly as we can
4 at 9:30.

5 Okay. Thank you, ladies and gentlemen.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. Mr. Bauer.

9 MR. BAUER: Your Honor, on behalf of the Defendant
10 Derrick Adkins, I would renew my directed verdict motion on
11 the grounds previously stated on the record.

12 THE COURT: Okay. Mr. Ruffalo.

13 MR. RUFFALO: Yes, Your Honor. On behalf of the
14 defendant, Shawn Davis, I would renew my motion for directed
15 verdict on the grounds that we previously put on the record.

16 THE COURT: All right. Again, I will respectfully deny
17 your motions for directed verdict, and I do believe that the
18 State has produced evidence of sufficient evidence. Again,
19 I'm not really to comment on the sufficiency of the weight.
20 That's to be determined by the jury, but I believe the State
21 has produced evidence of each of these charges going to the
22 jury based on the testimony that's come from this witness
23 stand during the course of this trial.

24 Now, I will respectfully deny each of your motions as
25 to each of the charges against your clients.

1 MR. RUFFALO: Thank you.

2 THE COURT: All right. We will stand adjourned until
3 9:30 in the morning, all right, unless there's something
4 before we adjourn.

5 Anything from the State?

6 SOLICITOR STONE: No, sir.

7 THE COURT: From the defense, Mr. Bauer, Mr. Ruffalo?

8 MR. RUFFALO: No, sir.

9 MR. BAUER: No, Your Honor.

10 THE COURT: We'll stand in adjournment until 9:30 in
11 the morning.

12

13 (WHEREUPON, Court was in recess for the evening.)

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wednesday, August 4th, 2010

THE COURT: Mr. Stone --

SOLICITOR STONE: Yes, sir.

THE COURT: -- Mr. Bauer, before you-all got here this morning, I know that, and I'm not mentioning Mr. Ruffalo because I've already told him, but in reviewing the jury charge with you-all yesterday, one thing that I left out and thought about it this morning when I woke up was the statement of the defendants, both of them, statements have been admitted in of the defendant, and that wasn't in there when we talked yesterday.

MR. BAUER: Yes, sir.

THE COURT: I was actually testing you-all to see if you-all would bring that up.

SOLICITOR STONE: We failed miserably, judge.

THE COURT: Yes, sir, I did too. So, I'm just kidding. I was not testing you-all. But I thought about that first thing this morning. We have added that --

SOLICITOR STONE: Yes, sir.

THE COURT: -- to the charge that we did yesterday.

SOLICITOR STONE: And this is in line with Bruton and the, and that the statements can only be used against the individual person?

THE COURT: Right.

1 SOLICITOR STONE: Yes, sir.

2 THE COURT: Let me see here.

3 (Pause.)

4 THE COURT: What I'm gonna put in here, gentlemen, is
5 near the conclusion of the charge on the statement of the
6 defendant charging in the case is the State has the burden,
7 has the burden of proving, beyond a reasonable doubt, that
8 the alleged statement was voluntary. If you determine it
9 was, you may, may give the statement any further
10 consideration that you deem proper in considering this,
11 considering the statement, and when I -- if you determine it
12 was, referring to the statement, you may give the statement
13 any further consideration that you deem proper in
14 considering the statement only against the party giving the
15 statement. You must decide what weight, if any, should be
16 given to the alleged statement. If you determine the
17 alleged statement was not the free and voluntary statement
18 of the defendant, you should not consider the statement at
19 all.

20 Is that sufficient, Mr. Bauer?

21 MR. BAUER: Yes, Your Honor.

22 THE COURT: Mr. Ruffalo?

23 MR. RUFFALO: Yes, Your Honor.

24 THE COURT: Mr. Stone?

25 SOLICITOR STONE: Yes, sir.

1 THE COURT: All right. Anything further at this time
2 before we bring the jury out?

3 SOLICITOR STONE: Not from the State, Your Honor.

4 THE COURT: Mr. Stone, Mr. Stone, are you gonna open on
5 the law?

6 SOLICITOR STONE: I may do it, all of it at one time.
7 I think they go last anyway. So, I'm gonna do---

8 THE COURT: Okay. I'm sorry. You're right.

9 SOLICITOR STONE: Yes, sir.

10 THE COURT: You're right. They didn't put up any
11 evidence.

12 All right. Anything further from the State before we
13 bring the jury out?

14 SOLICITOR STONE: No, sir.

15 THE COURT: From the defense, Mr. Bauer?

16 MR. BAUER: No, Your Honor.

17 THE COURT: Mr. Ruffalo.

18 MR. RUFFALO: No, Your Honor.

19 THE COURT: We did go back in and -- we did go back in
20 and separate the verdict forms out like I told you we would
21 do yesterday, and I believe that's what everybody wanted.
22 So, we did get that fixed.

23 Okay. Everybody ready?

24 SOLICITOR STONE: Yes, sir.

25 THE COURT: Bring the jury.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: Good morning, ladies and gentlemen of the
4 jury. I trust everyone had a good evening last night.

5 Is there anything, Madam Forelady, before we begin?

6 JUROR: No, sir.

7 THE COURT: We're at, as I told you yesterday, you have
8 heard all the evidence that you're gonna hear in this case.
9 We're going to now move forward in proceeding with closing
10 arguments, and again, as I told you, preliminarily, before
11 we began this trial, just like opening statements, this is
12 not evidence. This is the attorneys' view of the evidence
13 and their arguments to you.

14 At this time I'll recognize Mr. Stone.

15 SOLICITOR STONE: Please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 SOLICITOR STONE: The first thing I want to talk to you
18 about is what an armed robbery is, and there's a real good
19 reason for that because what an armed robbery is is crucial
20 to this case.

21 What is it?

22 An armed robbery is somebody taking a gun like this
23 one, loading it, putting it in somebody's face, and saying
24 give me your money or else. It's not a burglary. It's not
25 where you maybe break into someone's home and maybe they're

1 not there. It's not a snatch and grab. It's not grabbing
2 somebody's purse and running off with it.

3 An armed robbery is sticking a gun in somebody's face
4 and saying give me your money or what?

5 Or I'll kill you.

6 Give me your money or I'll kill you.

7 Two options in a robbery, money or death. That's it.

8 And when you plan on an armed robbery, you plan for two
9 options, money or death. Cause an armed robbery is bringing
10 the threat of death to somebody if they don't give you their
11 money, and what we all know now is that Ronnie Wooten didn't
12 give them any money, and as a result of that he's dead.

13 Now, the facts that you heard, the evidence that you
14 heard from the witness stand, the statements that you heard
15 from those defendants all give you a very clear picture of
16 what happened. These two people right here, Derrick Adkins
17 and Shawn Davis, planned to bring the threat of death to
18 somebody in order to get their money.

19 Did they plan to murder Ronnie Wooten?

20 I don't know.

21 Think about what Derrick Adkins told you. Think about
22 what this guy said. It wasn't personal to him. Anybody
23 would of done. Anyone. It was random. He was gonna ride
24 till he found somebody to rob. He didn't care about Ronnie
25 Wooten, it didn't matter, and he wasn't gonna rob a place.

1 He was gonna rob a person.

2 That's what they planned. We know they planned it.

3 They planned it around a loaded gun. They got a gun. They
4 got gloves. They crept through the woods to get to the
5 store, and when they went in, one held the gun, shot Ronnie
6 Wooten, said give me your money or else. Ronnie Wooten
7 didn't give them any money and he got killed.

8 We know after that, after that now, Derrick Adkins goes
9 on in the store and helps search the deadman's pockets and
10 his, and his socks.

11 What does Shawn Davis do?

12 Shawn Davis goes in behind the counter. He goes to the
13 cash register.

14 And when he couldn't get any cash, what did he do?

15 He got some cigarettes. Took the time to throw the
16 empty carton in the trash can on the way out the door.

17 That's what the plan was. They were gonna rob somebody by
18 bringing the threat of death to them, and if he didn't give
19 them the money, somebody was gonna die, and somebody did
20 die.

21 Now, for an armed robbery, for you to convict these two
22 people of armed robbery, the evidence is clearly there.

23 They planned it. They executed it. They even helped get
24 rid of the murder weapon after it was over with. But I've
25 told you at the very beginning of this trial this case is

1 about the hand of one is the hand of all. I've spent a lot
2 of time trying to figure out how to explain the hand of one
3 is the hand of all and I got to tell you it's tough. It's
4 confusing because it's lots of legal terms, but the bottom
5 line is it really isn't that complicated. It's what we live
6 in our daily lives. It's what we know in our daily lives.

7 Mr. Ruffalo, in his opening argument, said, you know
8 what, the State's gonna have to push that ball down the
9 field and they're gonna have to get it close to the end
10 zone.

11 well, that kind of reminds me of something. That's
12 what the hand of one is the hand of all is all about. It's
13 a team. Just like a football team or a basketball team.
14 The team scores a touchdown. They call prosper. Somebody
15 gets penalized. The team gets penalized.

16 why?

17 Because everybody, just like in this case, has a job.
18 Marquis Bryant's job was to drop them off. He was the
19 drop-off and pickup driver. And then these two, along with
20 Shawn Davis' brother, job was to go in, bring the threat of
21 death to Ronnie Wooten, and take one of the options, either
22 the money or the death. Everyone had a job. Everybody was
23 on that team.

24 And, so, when it all comes down to it, if they'd of
25 gotten the money, they've of all won. But today they sit

1 here because they all should be penalized. They were a team
2 then, and they're a team now, and I don't mean to trivialize
3 this. I don't mean to say, you know, a murder and an armed
4 robbery is the same as a football game. It's not. Although
5 I got to tell you I think it is to him.

6 It wasn't personal to Ronnie Wooten. We were just
7 gonna ride around till we found somebody. It was random.

8 Now, the issue that you have is was Ronnie Wooten's
9 death a probable result of this armed robbery. Well, it
10 wasn't a result of anything else. Well, what I'd like you
11 to think about, when you try to decide whether or not you
12 hold these people as part of that team, whether or not you
13 hold these people culpable for Ronnie Wooten's death, you
14 should think of a couple of things about this.

15 Number one, what did they think was gonna happen?

16 why the gun?

17 why the loaded gun?

18 You know, we've heard, since we were little, you don't
19 play with loaded guns, people get hurt. If I sat here and
20 talked to a fifth grade class and said don't play with a
21 loaded gun, somebody will get killed, there's not a fifth
22 grader in America that would challenge me on that. We all
23 know that. We've all known that. They weren't playing with
24 the gun. The gun was essential. That had to have the gun
25 and it had to be loaded in order to carry out the plan,

1 which was give me your money or you die. It was a loaded
2 gun.

3 And, number two, I think what you can do, when you're
4 looking in and trying to determine what's in somebody's
5 heart and what's in their mind, part of what you can do is
6 you can hear what they said, hear what they talk about, hear
7 how they describe it, and I'm talking about Derrick Adkins,
8 but let me talk about Shawn Davis a second.

9 what did Shawn Davis say when he was first asked, when
10 he was first asked, you think Joseph meant to kill him?

11 Now, throughout the, throughout the statement he went
12 back and said no, he didn't mean to, no, he didn't, but
13 that's not what his testimony, what he said the first time.

14 what did he say the first time?

15 Do you have that statement?

16 UNIDENTIFIED PERSON: Yes, sir.

17 THE COURT: Play that for me. I want you to look and
18 listen to what it is that Shawn Davis said when he was
19 asked.

20 (WHEREUPON, a portion of the statement of Shawn Davis
21 was played for the jury at this time.)

22 SOLICITOR STONE: He'd take his first option. I didn't
23 catch that the first couple of times I watched that.

24 He takes his first option?

25 There are options?

1 Wonder what option number two was?

2 Maybe option number two was Ronnie gives them his money
3 and they're able to get out?

4 But clearly the first option, option number one, Ronnie
5 didn't give him his money and he shot and killed him.

6 Remember what the pathologist said?

7 No defensive wounds. There wasn't any sign of
8 struggle. He walked in and he said give me your money, and
9 when he didn't, he shot him right in the face. Right in the
10 face. He said give me your money or you die, and Ronnie
11 Wooten didn't give them the money, and he's dead. That's
12 what they planned. That's what they executed.

13 Now, for you to hold those criminally liable, for you
14 to sit there and say yeah, they're that part of that team
15 and was part of the, that's, that's the natural consequence
16 of what happens when you stick a gun in somebody's face and
17 tell them give me your money or die, that's pretty good
18 evidence, but it's not the best evidence. Not by a long
19 shot.

20 You know, in our daily lives, what we do is we judge
21 people based on what?

22 Not what they say, but what they do.

23 You know, we listen to what people say and it gives us
24 some idea, but in the end it's all about what people do and
25 not what they say. The choices that they make. If the

1 question is whether or not Ronnie Wooten's death was a
2 natural consequence of this armed robbery, I submit to you
3 that they weren't even surprised. This was part of what
4 happens in armed robberies. It's what you do. You bring
5 the threat of death to somebody, and if they don't give you
6 the money they die.

7 And if for nothing else, think about this.

8 What did they do?

9 Sure, they saw the gun -- they took the gun with them.
10 They knew it so well that they described it, a .22 caliber
11 black in color handgun. They knew it so well that they even
12 tried to dispose of it by selling the murder weapon. This
13 was part of it the entire time, and the issue is do they get
14 a pass by now saying well, I didn't hold the gun.

15 No, ma'am.

16 No, sir, that's not the law in South Carolina.

17 They knew the gun. They knew it was there. Sure, all
18 of that's true.

19 But what did they do after Ronnie Wooten was shot and
20 killed?

21 If you look at nothing else, look at that.

22 What did they do after he hit the ground?

23 Where were they standing?

24 They were standing at the door.

25 This chart shows you where they were. These two people

1 right here, Derrick Adkins and Shawn Davis, were right here
2 at this door. Boom. Ronnie Wooten hits the ground.

3 what do they do?

4 Did they say oh, my God, what have you done?

5 Did they say hey, I didn't bargain for this, I'm gone?

6 Did they not say anything at all and just turnaround
7 and run?

8 Because if they'd of done any of that, maybe, just
9 maybe they're not part of the team.

10 That's not what they did, did they?

11 Can you imagine somebody lying on the ground, kicking
12 their last breaths of life, and this guy going in and
13 searching their pocket and rolling him over and trying to
14 find money on him and searching his socks?

15 And this man, this man here having the callousness of
16 walking in the store looking over, he's dead, he's still
17 kicking, but he's dead?

18 Goes to the cash register to get cash out, and when he
19 can't do it, he says I'll just take some cigarettes?

20 That's what they did after Ronnie Wooten was killed,
21 and I would submit to you, ladies and gentlemen, that tells
22 you exactly what's in their heart, exactly what's in their
23 mind, and when you go back and you think about whether or
24 not these two are just as responsible as the other members
25 of the team for Ronnie Wooten's death, think about what's in

1 their heart and you think about what was in their mind that
2 day, that night. Think about that, and when you come back
3 in and give us a verdict that speaks the truth.

4 Thank you.

5 THE COURT: Mr. Bauer.

6 MR. BAUER: Your Honor, Prosecutor, members of the
7 jury, may it please the Court.

8 These boys aren't murderers. These boys aren't
9 murderers. All the evidence is in. We're just now arguing
10 about what the evidence means, and the evidence means these
11 boys aren't murderers.

12 When we started this trial I gave a short opening
13 statement. I didn't want to bore you, tell you unnecessary
14 things. I didn't, at that point, ask for a verdict because
15 you hadn't heard any evidence.

16 Now's my chance. Now's Mr. Davis chance for you to
17 hear the law and the facts and understand why, legally,
18 these boys are entitled to a not guilty verdict on the
19 charge of murder.

20 Three important concepts, burden of proof, presumption
21 of innocence, proof beyond a reasonable doubt. The
22 prosecutor didn't even mention those, I don't think, in his
23 closing argument.

24 First, the burden of proof. Derrick or Shawn, they
25 don't have to prove anything. The burden of proof of

1 proving murder is on the State. It's on this team. with
2 all of its resources; it has the burden of bringing you the
3 evidence not just of armed robbery. Not just that somebody
4 is dead. But that these two boys are guilty of murder.

5 And, and I apologize to the family out here. I am not
6 trying to make light of your loss. I'm not trying to
7 minimize it.

8 But that family doesn't get to decide guilty or not
9 guilty. Just like Derrick or Shawn's family don't get to
10 decide guilty or not guilty. They're not in a position to
11 do it fairly, and we picked you as the jury. State and
12 defense agreed that we trusted this case to you because you
13 would be in a position to do it fairly, to listen to the
14 evidence and decide did the State bring me the evidence to
15 satisfy its obligations, and did that evidence overcome the,
16 the presumption of innocence.

17 I believe, I presume Derrick and Shawn are innocent of
18 this charge of murder. Not -- technically not guilty.
19 Actually innocent of murder.

20 And is that evidence proof beyond a reasonable doubt?

21 Did the State bring it, all the evidence they had to
22 prove it?

23 Did that evidence overcome my belief that he was
24 innocent, and did that evidence rise to a level of beyond a
25 reasonable doubt?

1 So, we start with the presumption of innocence. The
2 scales are tipped not just a little bit, but completely in
3 Derrick and Shawn's behalf. I believe them to be innocent.

4 To convict, the State would have to put evidence on its
5 side of the scale, put evidence on its side of the scale not
6 just to tip it a little bit, but to tip it so conclusively
7 in their side that they wrote guilty for murder, that you
8 are convinced beyond a reasonable doubt.

9 It's kind of hard to explain reasonable doubt, and,
10 and -- but to the extent that I think can, it's proof that
11 would leave you convinced firmly of the guilt and would be
12 proof so strong that you would not hesitate to act in the
13 most important of your own decisions.

14 Let's talk about some other law, armed robbery. Armed
15 robbery is a robbery, the taking and carrying away of the
16 personal property of another, by force or the threat of use
17 of force. An armed robbery is the robbery that takes place
18 while you arm yourself with a deadly weapon. A knife, a
19 gun, some other deadly weapon.

20 Murder is the unlawful killing of another with malice
21 aforethought. So, murder has some physical parts, unlawful,
22 killing of another person, and some mental parts, malice,
23 evil heart or guilty mind. The judge will define malice for
24 you, and it's the judge's job to explain the law. He is the
25 only arbiter of the law in this case. He'll tell you what

1 law to apply.

2 So, if I say something that's different from what the
3 judge says or if the prosecutor says something that's
4 different than what the judge says, that man in the black
5 robe is the only one who gets to tell you conclusively what
6 the law is.

7 If that's the law that we're dealing with in this case,
8 how do we get to armed robbery or murder when those boys,
9 the only evidence is, did not have a gun in their hands?

10 Well, that's what everybody's been talking about, this
11 hand of one hand of all or accomplice liability.

12 Well, the hand of one hand of all is shorthand or a way
13 of trying to explain a much bigger concept. It is, in a
14 way, a legal fiction. It's the law, but it tries to explain
15 a much more difficult concept by making it smaller.

16 Clearly Joseph Davis' hands were not actually Derrick
17 or Shawn's hands. That's a fiction that we use to help
18 explain a bigger concept, the, the concept of accomplice
19 liability.

20 Well, an accomplice is guilty for the acts of somebody
21 else, Derrick or Shawn would be guilty of the acts of
22 somebody else in one of two ways. One, if there's an actual
23 agreement. We agreed we're gonna do something. This is
24 what we agree to do. We agree to commit an armed robbery.

25 Okay. We agreed to commit an armed robbery, I'll be

1 the get away driver, Mr. Stone you go in the convenience
2 store with the pistol. Well, in that case, we've agreed to
3 an armed robbery even though the pistol's in somebody else's
4 hand I am guilty of it, and, in that case, the hand of one
5 is the hand of all. The gun was in somebody else's hand,
6 but I am guilty of that.

7 That direct agreement to commit a crime would make
8 Derrick or Shawn guilty of armed robbery if the evidence is
9 that they agreed to commit an armed robbery with Joseph
10 Davis.

11 What is the evidence in this case?

12 well, the only evidence in this case about what
13 happened inside that convenience store was what?

14 The statement of these two boys.

15 SLED officers came and met with Derrick once, twice,
16 three times, four times.

17 Did he say I ain't talking to you?

18 Did he say I want my lawyer?

19 On four occasions, after being given his Miranda
20 rights, he said this is what happened, let me tell you.

21 Oh, you want to come back and videotape it?

22 I'll tell you on video.

23 After you videotape, you want to come talk to me and I
24 will handwrite it?

25 I'll handwrite it.

1 And a fourth time for another statement.

2 Shawn Davis did apparently the same thing. That's the
3 only evidence of what the agreement was and was not and what
4 happened inside that convenience store. They introduced no
5 other evidence that connected those two boys with the crime.
6 The evidence is the State's, the State's burden to find it.
7 If there's some evidence they got to find it. Their job is
8 to show it to you. That's the only evidence.

9 They're bound by the evidence they present to you,
10 which is that there was no agreement to commit a robbery.
11 See, there was no agreement to commit a murder. The only
12 agreement was for the robbery, and not only did they not
13 have the guns in their hand, not only did they not agree to
14 the murder, not only did they give the State the only
15 evidence that was brought before you today, they gave the
16 statements that led to finding and recovering the murder
17 weapon, which can now be used in the trial of the real
18 killer who's not here today.

19 I told you there were two ways for the hand of one to
20 be the hand of all and one is an express agreement. We
21 agree we're gonna do something. Using example one, the
22 result is the verdict should be not guilty because there is
23 no express or clear agreement to commit a murder.

24 If we were in that case there wouldn't be much for you
25 to do except listen to the evidence and come back with a

1 verdict. That'd be easy. The prosecutor was doing his job,
2 and you would just be signing off on a form. We're in this
3 other case where, in order to convict of a murder, you've
4 got to find that is a natural or probable consequence of
5 what they agreed to do.

6 Is it a natural consequence?

7 Does murder necessarily flow from armed robbery?

8 It can't because it necessarily flows -- is it a
9 natural consequence?

10 No.

11 But it could be more probable. So, let's talk about
12 that.

13 Is it natural or probable?

14 well, it's definitely not natural.

15 Is it a probable consequence?

16 Probability, what does probable mean?

17 It means more likely than not. A probable consequence
18 is one that will occur in 51 percent of the cases or more.
19 The judge will charge you that in order to find these boys
20 guilty of murder, you've got to find that it's a natural,
21 not that, or probably consequence of the armed robbery. The
22 State carries the burden of proof.

23 Have they proved to you probabilities of murder as a
24 result of armed robbery?

25 Have they said what the statistics are, what the odds

1 are?

2 It defies our common experience, and yours, as jurors,
3 to say that a murder happened more likely than not,
4 51 percent of the time in every armed robbery.

5 So, it's, I submit, not natural or probable, but that's
6 the State's theory. And, see, the first one, to find him
7 guilty of armed robbery, you just look at the evidence based
8 on the statements and you reach a verdict. The evidence
9 leads to a verdict. In this case, it relies on the State's
10 theory. As he said, I submit to you that, I argue to you
11 that, your finding these boys guilty of murder wouldn't
12 depend on the evidence. It would depend on your taking the
13 evidence and looking at it and agreeing with someone else's
14 theory. The State's theory of how you should see it.

15 In fact, the armed robbery does not necessarily, or by
16 law, probably create the murder. The judge will give you
17 the verdict forms in this case. One form for Derrick, one
18 form for Shawn, and he'll say as to each of these
19 defendants. You can find him guilty of one and not guilty
20 of the other.

21 The judge will tell you you don't necessarily have to
22 find him guilty of murder just because you find him guilty
23 of armed robbery. If that were the law, the judge would
24 instruct you members of the jury, if you find the defendants
25 guilty of armed robbery, then I instruct you, as a matter of

1 law, they must be guilty of murder, but that's not the law.

2 In order to get that guilty verdict, the State requires
3 you to believe their theory and say that they proved the
4 probability in this case beyond a reasonable doubt. In
5 fact, the judge will tell you that, as you apply reasonable
6 doubt to this case, if your conscious is satisfied by either
7 verdict, that any reasonable doubt exist, if there's any
8 reasonable possibility, then you must find the defendant not
9 guilty.

10 So, the State builds this bridge out of evidence and
11 they want you to cross it. Well, on one side is the
12 presumption of innocence and that's where we started this
13 trial. We're all on this side together, presumption of
14 innocence, believe and not guilty. Believe he's an innocent
15 man, and the State wants to build a bridge for you, a safe
16 enough bridge that you'll cross it, without hesitation,
17 without reasonable doubt, all the way to this side over
18 here, that's guilty.

19 Well, it's not Joseph Davis that we're talking about.
20 To build a bridge with Joseph Davis, we'd been saying well,
21 we can rely on a legal inference, the use of a deadly
22 weapon, infers malice. So, for Joseph Davis, we see the
23 gun, we can infer, as a matter of law, that malice is in his
24 head or in his heart. That's the evidence. Cross the
25 bridge.

1 Now they're trying to take this bridge from the
2 inference of malice, to Joseph Davis' harder head, over to
3 these boys. Well, now the bridge has strength from just a
4 legal inference to a theory. The theory the State wants you
5 to go and cross this bridge without hesitation. That's a
6 pretty long bridge, and it's not as strong as we'd like, and
7 the prosecutor doesn't have to cross it with you, it's just
8 you, and you've got to cross this bridge together,
9 unanimously, because your verdict must be unanimous.

10 But you also have to cross it individually. You've got
11 to say, in each of your minds, I believe, beyond a
12 reasonable doubt, that they're guilty or not guilty. I want
13 you to listen to your fellow jurors and deliberation is part
14 of the process, but the verdict has to be true to you too.

15 And when you go back in that jury room, it's your jury
16 room and your courthouse. The judge is presiding over this
17 courtroom. He's the ultimate decider of the law in this
18 case. He's from the Upstate.

19 This lawyer and this lawyer and I, we live within
20 ten miles of each other on Hilton Head. It's not our
21 courtroom either. It's your courtroom. This is your
22 courtroom. This is your jury room. These deliberations are
23 yours and this verdict is yours, and the truth is these boys
24 are not guilty.

25 THE COURT: Mr. Ruffalo.

1 MR. RUFFALO: Thank you, Your Honor.

2 Solicitor, ladies and gentlemen of the jury, I
3 introduced myself at the beginning of this trial, and I took
4 a long time explaining some things to you. I'm not gonna
5 spend a lot of time with you here today. A lot has been
6 said. There's a lot for you to think about and digest. I'm
7 going to talk to you about a couple of things that I would
8 like you to keep in mind as you're deliberating this case,
9 and Mr. Bauer has done an excellent job reviewing law and
10 inferences, theories.

11 I want to point out a couple of things for you to
12 consider and I think, at the outset, everybody can agree
13 that Joseph Davis walked into the Lena Quick Store and he
14 put a gun in the face of Ronnie Wooten and he shot and
15 killed him. That was a wicked, wicked deed, a savage wicked
16 deed.

17 I believe that a group of people could decide that
18 there was no one else in Joseph Davis' presence when he did
19 that, but I'm not here to talk about Joseph Davis. I'm here
20 to talk about Shawn Davis. I'm here to separate the truly
21 wicked from the truly misguided. Joseph Davis will have his
22 day of atonement. He'll have his day to pay or be presented
23 or come to terms with whatever his wicked deeds are and that
24 he has to come to terms with.

25 I'm only gonna mention a couple of things to you cause

1 I know you've been paying attention. I've watched you
2 throughout the entire trial, and you've been very attentive,
3 and you've looked at everything and listened to everything,
4 and there is so much for you to consider and to go over.

5 I want you to consider that there's something to be
6 said for a young man -- and if you listened to the ages that
7 were discussed with the, Mr. Romero, you know these folks
8 are in their early twenties. At least Shawn is. To say no,
9 I'll talk to you, fine, I'll tell you whatever you want to
10 know, I'll sit down, I don't need a lawyer, I don't want a
11 lawyer, I know I can have a lawyer, I don't need one, I'm
12 gonna tell you exactly what I did and what I'm responsible
13 for.

14 what did that DVD say when you were listening about
15 Shawn?

16 I went there to rob. I did not go there to kill.

17 Fairly simple. There's not a lot to it. It's just a
18 couple of minutes of him talking to some police officers.

19 One of the things you may want to know is why go with
20 gloves and masks?

21 If your original agreement and intention is to kill the
22 only witness, why would you want to hide your face and your
23 fingerprints?

24 Because I think everybody understood, because they were
25 just gonna rob the place.

1 This is a transcript of all of that interlineation that
2 you saw below on the DVD, you know, as the words presented
3 themselves like in a dubbed movie. There's so much in here
4 that I could read from, but I want to remind you of a couple
5 of things that you saw and read.

6 I've marked an awful lot of them, but there are only a
7 few that are important.

8 When he was talking with Officer Solomon, Officer
9 Solomon says money?

10 What part of it did they search?

11 Mr. Davis - like the pockets, the front pockets and
12 stuff. I'm not lying to you, Chauncey. I'm not lying.

13 Mr. Solomon - I believe you. We go way back. I
14 believe you. They searched his pockets, and then what, his
15 wallet?

16 Did they go through his wallet?

17 Mr. Davis - I don't know if he threw it down or what
18 because when my heart started pounding I had to go out.

19 Mr. Solomon - you started what?

20 My - Mr. Davis - my heart started pounding that when we
21 run.

22 Mr. Solomon - you were afraid?

23 Yeah, I mean I never thought he would shoot him.

24 That's extremely important. He repeats that a number
25 of times throughout his interview that that was not

1 something he expected.

2 I've marked an awful lot in here. I'm not gonna read
3 it all cause I know you-all paid attention very well.

4 Armed robbery. It's easy to understand how a group of
5 people can get together and decide to throw the book at
6 Shawn for armed robbery.

7 Throw the book, where does that come from?

8 In the old days they didn't bang the gavel when you
9 were guilty. The judge had a big giant book, and he would
10 write the decision in it, and he would hand it down to
11 another person to keep it. He would -- that's throwing the
12 book at them.

13 You can understand how somebody would throw the book at
14 Shawn for armed robbery. I meant to rob. I knew I was
15 gonna rob. I went there for that.

16 Murder. A very difficult stone to cast. Murder.
17 Armed robbery.

18 If you believe he is not guilty of murder, for what all
19 the various reasons are, maybe it's just in your heart,
20 maybe it's your analysis of the law, how the judge gives it
21 to you, maybe it's what you think was in Shawn's heart or
22 what you think went on, if that is true, be courageous in
23 your decision. Be courageous in your decision about armed
24 robbery if that's what you believe and you believe he's
25 guilty of that and that's what he intended to do. But also

1 be courageous in your decision not to cast this stone.

2 In my religion, they say act as though you have faith
3 and faith will be given to you. Act with courage and
4 perseverance and dedication and steadfastness, and courage
5 and steadfastness will be given to you.

6 If this is what is to be, this is what is to be. But
7 this, you can let this slip from your hand. You can let
8 this slip out of your hand and not throw this. I ask that
9 you consider that.

10 I ask that you separate the truly wicked, the killer,
11 the person who would shoot someone in the face, separate
12 them from the truly misguided who may have gone to do one
13 thing, but did not want to do another thing.

14 There is great redemptive value for people, young
15 people. There is great redemptive value in a lesson to be
16 punished for what you did, and to be exonerated for what you
17 did not. People can be redeemed when they have learned that
18 they are punished for what they did and expect and
19 understand it, but redeemed for what they did not.

20 Who among us in this room, at some time in their lives,
21 has not gotten on their knees in the dark and begged God for
22 another chance?

23 Thank you.

24 THE COURT: Ladies and gentlemen of the jury, it is now
25 my duty, as the trial judge under the Constitution of this

1 state, to charge and instruct you on the law applicable to
2 this case. It is your duty, as jurors, to accept and apply
3 the law as I will now state it to you.

4 Furthermore, it is your exclusive duty to decide all
5 the issues of fact in this case and to, and to determine the
6 effect, the value, weight, and truth of the evidence. Both
7 the State and the defendants have a right to expect that you
8 will carefully consider and evaluate the evidence and apply
9 the law of this case to it so that in the end, both the
10 State of South Carolina and each defendant, will receive a
11 fair and impartial trial.

12 Now, ladies and gentlemen, I want you to understand
13 that, when I use the word defendants, I refer to Mr. Derrick
14 Adkins and Mr. Shawn Leonard Davis. I charge you that they
15 are two, two defendants in this case each of whom is charged
16 with armed robbery and murder.

17 The case of each defendant and the evidence and the law
18 concerning that defendant should be considered separately
19 and individually. Your verdict does not have to be the same
20 for both defendants. The fact that you may find one
21 defendant guilty or not guilty should not control your
22 verdict as to the other defendant.

23 Where more than one person is charged with a crime, if
24 the evidence warrants it, you may convict one and acquit the
25 other or you may acquit both or you may convict both. It

1 will depend upon your view of the testimony and evidence.
2 You must take each defendant and consider the evidence as to
3 that defendant and my instructions to you on the law. You
4 will then write a separate verdict of guilty or not guilty
5 for each individual defendant.

6 It is also important to understand that the State of
7 South Carolina, in separate indictments, charges each
8 defendant, Mr. Derrick Adkins and Mr. Shawn Leonard Davis,
9 with the offenses known as armed robbery and murder. Each
10 indictment charges a separate and distinct offense. You
11 must decide each indictment separately as applied to each
12 defendant on the evidence and the law applicable to it
13 uninfluenced by your decision as to any other indictment.

14 The defendants may be convicted or acquitted on any or
15 all of these offenses charged. You will be asked to write a
16 separate verdict of guilty or not guilty on each indictment.

17 I want to remind you that the fact that the defendants
18 were arrested, charged, and indicted in this case is not
19 evidence in this case and can not be considered by you as
20 evidence of guilt in this case nor does it create any
21 presumption or inference of guilt. These documents are
22 simply the formal written instruments which contain the
23 charges made against the defendants. It is the formal
24 documents by which this case is brought into this Court.

25 To these charges the defendants have entered a plea of

1 not guilty. Their plea of not guilty places the burden of
2 proof on the State to prove the guilt of the defendants to
3 you, the jury, beyond a reasonable doubt.

4 It's vital to understand that the defendants are
5 presumed, under the law, to be innocent of these charges.
6 It is a fundamental rule of our law that a defendant,
7 irrespective of the seriousness of the charge against him,
8 is always presumed innocent of the crimes for which he is
9 charged unless and until his guilt had been proved by
10 evidence that satisfies you, the jury, beyond a reasonable
11 doubt.

12 The presumption of innocence is not a mere legal theory
13 or a legal phrase. The presumption of innocence is very
14 important and you need to understand that this presumption
15 accompanies the defendant from the time of their arrest and
16 appearance in this Court and continues with a defendant even
17 after you retire to the jury room to deliberate. In other
18 words, the defendants receive the benefit of the presumption
19 of innocence until the very end of this trial when you, the
20 jury, will deliberate upon the evidence and decide whether
21 the State is proven their guilt beyond a reasonable doubt.

22 Now, what is reasonable doubt in the law?

23 A reasonable doubt is a doubt that would cause a
24 reasonable person to hesitate to act or is proof that leaves
25 you firmly convinced of the defendant's guilt. There are

1 very few things in this world that we know with absolute
2 certainty. So, even in criminal cases, the law does not
3 require proof that overcomes every possible doubt. However,
4 if, based on your consideration of the evidence, you are
5 firmly convinced that the defendant is guilty of the crimes
6 charged, you must find the defendant guilty. If, on the
7 other hand, you think there is a real possibility that the
8 defendant is not guilty, you must give the defendant the
9 benefit of doubt and find him not guilty.

10 Jury, please understand that reasonable doubt may rise
11 from evidence which is been presented in the case or from
12 the lack of evidence in the case. It is your responsibility
13 to determine whether or not reasonable doubt exists as to
14 the guilt of the defendant. I charge you that the defendant
15 is entitled to every reasonable doubt arising in the whole
16 case. If, upon any issues of fact essential to conviction
17 and a verdict of guilty, you have a reasonable doubt as to
18 how that issue should be resolved, it would be your duty to
19 resolve that reasonable doubt in favor of the defendant.

20 Thus, in summary, it is important to understand that
21 the defendants are not required to prove their innocence.
22 Instead, the State is required, by law, to prove every
23 essential element of the offenses charged against the
24 defendant by evidence which satisfies you of their guilt
25 beyond a reasonable doubt. Only then can you convict a

1 defendant and find him guilty.

2 Now, they're two types of evidence which are generally
3 presented during trial, direct evidence and circumstantial
4 evidence.

5 Direct evidence is the testimony of a person who claims
6 to have actual knowledge of the facts such as an eye
7 witness. It is evidence which immediately establishes the
8 main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It is
11 evidence which immediately establishes collateral facts from
12 which the main fact may be inferred. Circumstantial
13 evidence is based on inference and not on personal knowledge
14 or observation. The law makes absolutely no distinction
15 between the weight or value to be given to either direct or
16 circumstantial evidence. Nor is a greater degree of
17 certainty required of circumstantial evidence than of direct
18 evidence.

19 You should weigh all of the evidence in the case. If,
20 after weighing all of the evidence, you are not convinced of
21 the guilt of the defendant beyond a reasonable doubt, you
22 must find the defendant not guilty.

23 Now, now, ladies and gentlemen, I further instruct you
24 that the fact that a defendant in a trial of a criminal case
25 did not testify on his own behalf is not a factor to be

1 considered by you in anyway in your deliberations and in
2 your consideration on the question of the guilt or innocence
3 of the defendant. In this regard, the defendant has the
4 constitutional right to remain silent, and the exercise of
5 this right must not be considered by you in your
6 deliberations.

7 The fact that the defendant did not testify should not
8 even be discussed in the jury room. The burden of proof, as
9 I have stated to you, is on the State. The defendants have
10 no obligation to prove their innocence. The burden of proof
11 remains with the State to prove the defendant's guilt beyond
12 a reasonable doubt, and the fact that a defendant did not
13 testify is not a factor to be considered by you at all.

14 Now, during this trial, you and I have separate duties
15 to perform. As a trial judge, it's my responsibility to
16 preside over this trial and I also have the duty to rule
17 upon the admissibility of the evidence offered during the
18 process of this trial. In that regard you are to consider
19 only the competent evidence before you, and you are to
20 disregard from the matter any testimony ordered stricken
21 from the record of this case during the progress of the
22 trial if there was any, and you're to consider only the
23 testimony which is been presented from this witness stand
24 together with any exhibits admitted into the record of this
25 case and any stipulations of counsel made into the record.

1 Furthermore, I have the additional duty to charge you
2 on the applicable law of this case, and in that regard I am
3 the sole judge of the law in this case. It is your duty to
4 accept and apply the law as I will instruct you.

5 If you have any preconceived ideas as to what the law
6 is or what the law ought to be, and it does not agree with
7 what I tell you the law is, you are obligated, under your
8 oath, to abandon these preconceptions because you are sworn
9 to accept the law precisely as I will instruct you on.

10 In this trial, you are the sole and exclusive judge of
11 the facts, and I am the judge of the law. Do not infer that
12 I have any opinion about the facts in this case from
13 anything I have said during the course of this trial in
14 ruling upon the admissibility of evidence or otherwise or
15 from anything that I now say during the course of this
16 charge to you. In this regard, the law simply does not
17 permit me to have an opinion about the facts. As jurors, it
18 is your duty alone to determine the effect, the value, the
19 weight, and truth of the evidence presented during the
20 course of this trial.

21 In determining what the facts in this case are, you
22 must judge the credibility, which simply means the
23 believability of the witnesses and the value or weight to be
24 given to their testimony. You alone must decide the force,
25 effect, and truth of the testimony.

1 In making this decision, this decision, they're many
2 things you may and should take into consideration such as
3 the appearance and manner of the witness on the stand, the
4 characteristic often referred to as the demeanor of the
5 witness.

6 Was the witness forthright or hesitant?

7 Was the witness' testimony consistent or did it contain
8 discrepancies?

9 Was what the ability -- excuse me. What was the
10 ability of the witness to know the facts about which he or
11 she testified?

12 Did the witness have a cause or reason to be biased and
13 prejudiced in favor of the testimony he or she gave?

14 Was the testimony of the witness corroborated or made
15 stronger by other testimony and evidence or was it made
16 weaker or impeached by such other testimony and evidence?

17 Now, during the course of this trial you've heard
18 testimony from individuals qualified, qualified as experts.
19 The rules of evidence ordinarily do not permit witnesses to
20 testify to opinions or conclusions. An exception to this
21 rule exists for witnesses we call expert witnesses.

22 A witness, who by education and experience, has become
23 an expert in some art, science, profession, or calling may
24 state an opinion as to the relevant and material matter in
25 which the witness claims to be an expert, and may also state

1 the reasons for the opinion. You should consider any expert
2 opinion received in evidence in this case, and like any
3 other evidence, give it the weight you think it deserves.

4 If you decide that the opinion of an expert witness is
5 not based on sufficient education and experience or if you
6 conclude that the reasons given in support of the opinion
7 are not sound or that the opinion is outweighed by other
8 evidence, you may disregard the opinion entirely. An expert
9 witness' testimony is to be given no greater weight than
10 that of any other witness simply because the witness is an
11 expert. Further, you are not required to accept an expert's
12 opinion even though it is not contradicted.

13 You also heard testimony from police officers during
14 this trial. Please understand that the testimony of police
15 officers is not entitled to more weight than that of any
16 other witness. You are the sole judges of the credibility
17 of the witness and you are not to give more weight to a
18 police officer's testimony solely because he is a police
19 officer. Rather, you should judge an officer's testimony by
20 the same standard that you apply to all other witnesses.

21 As jurors, please understand you have the right to
22 believe a small portion of a witness' testimony and discard
23 the larger portion or vice versa. You may believe all of a
24 witness' testimony or none. You may believe the testimony
25 of a single witness against that of many witnesses or the

1 other way around.

2 Now, ladies and gentlemen, you also heard statements
3 that were alleged to have been made by each defendant, and
4 they were admitted into evidence in this case. While the
5 Court has determined that the statements were admissible, I
6 instruct you that you make the ultimate decision of whether
7 or not the defendant's made the statements. If the
8 defendants did make the statement, you must determine
9 whether the statements were made by the defendant
10 voluntarily and of his own free will. This means the
11 statements were not caused by pressure, force, fear,
12 threats, coercion, or intimidation, or by oath or a promise
13 of leniency or a reward of any kind.

14 In determining whether the statements were voluntary,
15 you should consider both the characteristics of the
16 defendant and the details of the questioning. Some of the
17 factors that you must consider are the age of the defendant,
18 the defendant's lack of education or, education or lack of
19 education, the defendant's mental ability or capacity, the
20 defendant's IQ or intelligence, the defendant's background
21 and environment, the place and length of detention, the
22 nature of the questioning, and the advice or lack thereof to
23 a defendant's Constitutional rights including, but not
24 limited to, the right to remain silent. That any statement
25 could be used against him in a court of law. The right to

1 have a lawyer present. That if he could not afford a
2 lawyer, a lawyer will be appointed to represent him without
3 any cost, and that he could stop making a statement at
4 anytime.

5 You must carefully consider all of the surrounding
6 circumstances before you give any weight to an alleged
7 statement. The State has the burden of proving, beyond a
8 reasonable doubt, that the alleged statement was voluntary.
9 If you determine it was, you may give the statement any
10 further consideration you deem proper in considering the
11 statement only against the party giving the statement. You
12 must decide what weight, if any, should be given to the
13 statement, to the alleged statement. If you determine the
14 statement was not free and voluntary, you should not
15 consider the statement at all.

16 In exercising your mental process in attempting to
17 decide the truth, the law simply requires that you exercise
18 your good judgment, your common sense, your sense of logic
19 and reason, and your experiences in life. You then apply
20 these attributes to the evidence and apply the law as I
21 state it to you and thus arrive at a verdict.

22 Now, in order to establish criminal liability,
23 criminal, criminal intent is required. For example, the
24 mental state required to be proven by the State for a
25 particular crime might be purpose, intent, knowledge,

1 reckless, or criminal negligence. Criminal intent must
2 be proven by the State beyond a reasonable doubt. Criminal
3 intent is always a matter that must be determined by the
4 jury from the circumstances surrounding the situation.

5 There is no way to prove intent to a mathematical
6 certainty. There is no way medical science can dissect a
7 person's brain and determine what the person had in mind.
8 So, the law says that criminal intent may be inferred from
9 the circumstances shown to have existed. This is how you
10 make a determination of whether or not the element requiring
11 intent was necessary, was present.

12 It is not necessary to establish intent by direct and
13 positive evidence, but intent may be established by
14 inference in the same way as any other fact by taking into
15 consideration the acts of the parties and all of the facts
16 and circumstances of the case.

17 Criminal intent is a mental state, a conscious
18 wrongdoing. It is up to you to determine what the defendant
19 intended to do based on the circumstances shown to have
20 existed.

21 Criminal intent can arise from an action or a failure
22 to act. It may arise from negligence, recklessness, or an
23 indifference to duty or to consequences that is considered
24 by the law to be the equivalent of criminal intent.

25 You've heard the phrase hand of one, hand of all. And

1 if a crime is committed by two or more people who are acting
2 together in committing the crime, the act of one is the act
3 of all. A person who joins with another to commit an
4 unlawful act is criminally responsible for everything done
5 by the other person which happens as a probable or natural
6 consequence of the acts, of the acts done in carrying out
7 the common plan and purpose. If two or more people are
8 together, acting together, assisting each other in
9 committing the offense, the act of one is the act of all or
10 as, or as it is sometimes said, the hand of one is the hand
11 of all.

12 Prior knowledge that a crime is going to be committed
13 without more is not sufficient to make a person guilty of
14 that crime. Mere knowledge that another person is going to
15 commit a crime, even if the defendant is present when the
16 crime is committed, is not sufficient to convict the
17 defendant as a principal. Guilt as a principal is shown by
18 actual or constructive presence at the scene as a result of
19 prior arrangement.

20 Therefore, a finding of a prior arranged plan or common
21 scheme is necessary for a finding of guilt as a principal.
22 The State must prove, beyond a reasonable doubt, by
23 competent evidence the theory of the hand of one is the hand
24 of all. A principal in a crime is one who either actually
25 commits the crime or who, or who is present aiding,

1 abetting, or assisting in committing the crime.

2 When a person does an act in the presence of and with
3 the assistance of another, the act is done by both. Where
4 two or more, acting with a common plan or intent, are
5 present at the commission of a crime, it does not matter who
6 actually commits the crime. All are guilty. The hand of
7 one is the hand of all.

8 Present at the commission of a crime means to be
9 sufficiently near to aid, abet, and assist in the commission
10 of the crime. However, mere presence at the scene of a
11 crime is not sufficient to convict one as a principal on the
12 theory of aiding and abetting. Intent is also a necessary
13 element. For there must have been a common design or intent
14 to commit the crime, and the crime must have been committed
15 pursuant thereto with the person aiding and abetting by some
16 overt act.

17 Intent means intending the result which actually
18 occurs. Not accidentally or involuntary. Intent may be
19 shown by acts and conduct of a defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent. The State must prove these elements beyond a
22 reasonable doubt.

23 Now, as previously stated, each defendant's charged
24 with armed robbery. In order to prove the offense of armed
25 robbery under the hand of one theory, the State must first

1 prove, beyond a reasonable doubt, that the defendant took
2 personal property from the person or presence of another
3 person. Property's in the presence of a person if it is
4 within the person's reach, inspection, observation, or
5 control so that the person could, if not overcome with
6 violence or prevented by fear, keep possession of the
7 property.

8 The State must also prove, beyond a reasonable doubt,
9 that the defendant carried the property away intending to
10 permanently deprive the owner of the property, and to keep
11 the property for the defendant's own use. The slightest
12 removal of the property or the complete possession of the
13 property, even for an instant by the defendant, is
14 sufficient to show a taking and carrying away of the
15 property. The taking and carrying away of the property must
16 have been done with violence or by putting the owner of the
17 property in fear of violence.

18 Finally, the State must prove, beyond a reasonable
19 doubt, that the defendant was armed with a deadly weapon
20 during the robbery. A deadly weapon is any article,
21 instrument, or substance which is likely to cause death or
22 great bodily harm. Whether an instrument is being used as a
23 deadly weapon depends on the facts and circumstances of each
24 case.

25 The following are examples of instruments which may be

1 deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
2 dagger, a knife, a slingshot, metal knuckles, razors,
3 gasoline, a firebomb, or Molotov cocktail, and lighter
4 fluid.

5 The defendants are also charged with murder. Under the
6 hand of one theory, the State must prove, beyond a
7 reasonable doubt, that the defendant killed another person
8 with malice aforethought. Malice is hatred, ill will, or
9 hostility towards another person. It is the intentional
10 doing of a wrongful act without just cause or excuse and
11 with an intent to inflict an injury or under circumstances
12 that the law can infer an evil intent.

13 Malice aforethought does not require that malice exist
14 for any particular time before the act is committed, but
15 malice must exist in the mind of the defendant just before
16 and at the time the act is committed. Therefore, there must
17 be a combination of the previous evil intent and the act..
18 Malice aforethought may be expressed or inferred. These
19 terms express and inferred do not mean different kinds of
20 malice, but merely the manner in which malice may be shown
21 to exist. That is either by direct evidence or by inference
22 from the facts and circumstances which are proven.

23 Express malice is shown when a person speaks words
24 which express hatred or ill will toward another or when the
25 person prepared beforehand to do the act which was later

1 accomplished.

2 Malice may be inferred from conduct showing a total
3 disregard for human life. Inferred malice may also arise
4 when the deed is done with a deadly weapon. A deadly weapon
5 is any article, instrument, or substance which is likely to
6 cause death or great bodily harm. Whether an instrument has
7 been used as a deadly weapon depends on the facts and
8 circumstances of each case.

9 Ladies and gentlemen, I am now drawing near to the end
10 of my charge, and I want you to be, to clearly understand
11 that you are not partisans or advocates for the State of
12 South Carolina or these defendants. You do not serve as
13 jurors to reward your friends or punish your enemies.

14 In this regard, you have been selected by both the
15 State and the defendants to be fair and impartial. It is
16 your duty, by your joint deliberations, to determine the
17 truth in this case giving to the defendants the benefit of
18 every reasonable doubt on each and every issue. Then to the
19 facts which you determine to be true, you should take and
20 apply the law which has been given to you by this Court, and
21 thus arrive at a verdict which speaks the truth in this
22 case.

23 In fact, the word verdict, which has a Latin
24 derivative, means a true saying. Thus, when you have
25 accomplished these responsibilities, you will have satisfied

1 your oath as jurors and you will have discharged your duty
2 to this Court.

3 Madam Forelady, I will be sending back the verdict form
4 to the jury room with you along with the evidence. When you
5 arrive at a verdict as to the charges in this case as
6 applied to each defendant, you will write your verdict on
7 the form. If the State's failed to prove guilt of the
8 defendant beyond a reasonable doubt, your verdict will be
9 two words, not guilty. Likewise, if the State has proved
10 the guilt of the defendant beyond a reasonable doubt, your
11 verdict will be one word, guilty.

12 Now, Madam Forelady, once a decision has been made,
13 check the appropriate box for whichever choice is your
14 verdict.

15 The verdict that you render in this case must be the,
16 the verdict of each and every juror. It must be your
17 unanimous verdict. All 12 jurors must agree on the verdict
18 which you authorize the forelady to write for the jury.

19 Madam Forelady, and members of the jury, I want you to
20 further understand that the order in which the choices of
21 verdict appear on the verdict form are not suggestive of any
22 verdict on the part of this Court. The verdict in this case
23 to be determined by you, the jury, not the Court.

24 Furthermore, ladies and gentlemen, please understand
25 that even though I have given the verdict form or will give

1 the verdict form to the forelady, it is not her verdict
2 alone. It is the verdict of all 12 of you, and I emphasize
3 again it must be unanimous.

4 Now, I now ask you to please retire to your jury room.
5 Do not begin your deliberations until you are told to do so.
6 The law requires that I now consult with the attorneys to
7 make sure that I've not left anything out of these
8 instructions. After I have checked with the attorneys, the
9 bailiff will bring any items of evidence along with the
10 verdict form, and you will be instructed to begin your
11 deliberations.

12 Also, should you have any questions during your
13 deliberations, you must put them in writing, put the
14 questions in writing if you have any, and send them to me by
15 the bailiff who will be placed immediately outside the jury
16 room during your deliberations.

17 Once you reached your verdict, please knock on the jury
18 room door and ask the bailiff to advise the Court that you
19 have reached a verdict, and we will return you to the
20 courtroom as promptly as possible.

21 Now, let me ask you-all, before you retire to the jury
22 room, is everybody -- all the jurors feel okay?

23 (Inaudible response.)

24 THE COURT: I'm gonna ask you at this time to retire to
25 the jury room, but do not begin your deliberations until

1 you're instructed to do so.

2 Thank you.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Any objection to the charge by the State?

6 SOLICITOR STONE: No, sir.

7 THE COURT: By the defense, Mr. Bauer?

8 MR. BAUER: No, Your Honor.

9 THE COURT: Mr. Ruffalo?

10 MR. RUFFALO: No, sir.

11 THE COURT: All right. We're in the process of
12 bringing the verdict forms out. I'll let y'all look at
13 them. If y'all will go ahead and look at the evidence.

14 One thing I didn't, I meant to say to the jury before I
15 sent them back was that I was not gonna send the firearm
16 back.

17 Do y'all have any objection -- there's no live
18 ammunition.

19 SOLICITOR STONE: There's no live ammunition and they
20 have the safety with the trigger lock or whatever this is
21 from SLED.

22 THE COURT: Okay. All right. Then I'm gonna allow,
23 allow it to go back.

24 SOLICITOR STONE: Thank you.

25 THE COURT: I mean I ordinarily do not do that,

1 especially if there's live ammunition as part of the
2 evidence.

3 SOLICITOR STONE: There is, there is none whatsoever.

4 THE COURT: Okay. I didn't remember seeing any.

5 SOLICITOR STONE: There was none.

6 THE COURT: Okay. But if you will all -- Mr. Stone---

7 SOLICITOR STONE: Yes, sir.

8 THE COURT: ---Mr. Bauer, Mr. Ruffalo, if you-all come
9 up here and look at the evidence and make sure---

10 SOLICITOR STONE: Yes, sir.

11 THE COURT: ---everything is there and ready to go
12 back. Once y'all have gathered the evidence and the verdict
13 form, Mrs. Nettles, the two alternates---

14 CLERK: Yes, sir.

15 THE COURT: ---once you get the evidence, they can take
16 that back.

17 CLERK: You want them to come back in here and you want
18 to talk to them?

19 THE COURT: Yes.

20 (Pause.)

21 SOLICITOR STONE: Mr. Bauer and Mr. Ruffalo indicate,
22 judge, they are satisfied. The evidence is ready.

23 SOLICITOR STONE: All right. Mr. Wooten, would you
24 bring out the two alternate jurors?

25 (Pause.)

1 THE COURT: Mr. Stone, Mr. Ruffalo, and Mr. Bauer, come
2 up.

3 (WHEREUPON, a bench conference was held at this time.)

4 THE COURT: All right. It's been brought to my
5 attention -- a note was sent out by the forelady, Mrs. Karen
6 Lawless, in which we made a part of the record here,
7 indicating and I will read it into the record -- well, I'm
8 not gonna read it specifically, but essentially saying that
9 one of the jurors, appears to be Brandon Sampson, Juror
10 Number 221, is indicating that he would like to be excused
11 and be replaced with an alternate. The note does say, in
12 good conscious, he does not know if he can render a
13 decision. Prior to excusing the jury to the jury room, I
14 instructed them not to begin their deliberations and they
15 included all the jurors along with the two alternates.

16 So, what I'm gonna do at this time, I'm going to ask
17 the bailiff to bring Mr. Sampson out here, and I'm gonna put
18 him on the witness stand and confirm what this note says.
19 And then what I'm going to do after that is excuse him to a
20 separate room, a separate room from the jury panel, allow
21 the State and the defense to put whatever they want to on
22 the record, and then I'm gonna, I'm gonna excuse him if, in
23 fact, he says he can not render a fair and impartial
24 decision in this case, and we will, at that point, seat one
25 of the alternate jurors under the statute I believe that it

1 requires that their names be placed into a hat, and they're
2 gonna be drawn out of the hat. It's not in the order that
3 they were selected, but under the statute, their, their name
4 is placed into a hat. I don't think we have a hat in here.

5 So, it will be placed in a cup unless there's an
6 objection by, by either parties and we'll select an
7 alternate and we'll proceed with allowing them to proceed
8 with their deliberations once we've addressed that issue.

9 So, if you would, bring out Mr. Brandon Sampson.

10 (WHEREUPON, the following takes place within the
11 presence of Mr. Sampson.)

12 THE COURT: Put him under oath.

13 CLERK: Yes, sir.

14 Mr. Sampson, would you come right here and let me swear
15 you in?

16 (WHEREUPON, Mr. Sampson was placed under oath at this
17 time.)

18 THE COURT: Mr. Sampson, if you would, have a seat.

19 Mr. Sampson, it's been brought to my attention by
20 Mrs. Wallace, who is a, who is the forelady of this jury
21 that you have indicated that you would like to be excused to
22 be replaced with an alternate, is that correct, sir?

23 THE JUROR: Yes, sir.

24 THE COURT: Is that request to be excused and replaced
25 with an alternate based upon the fact that you can not, in

1 this case, render a fair and impartial decision, is that
2 correct, or do you believe that you can render a fair and
3 impartial decision in this case, in these cases?

4 THE JUROR: I don't want to.

5 THE COURT: Okay. All right. All right. I'm gonna --
6 attorneys come up here for just a second.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: All right. Mr. Sampson, I'm gonna ask
10 Mr. Wooten if he would take you to a separate room, separate
11 and apart from the jury, so that I can address the attorneys
12 in this matter at this time.

13 Okay.

14 (WHEREUPON, the following take place outside the
15 juror.)

16 THE COURT: All right. Anything from the State with
17 regard to me addressing this issue?

18 SOLICITOR STONE: No, sir.

19 THE COURT: From the defendant, Mr. Bauer?

20 MR. BAUER: Your Honor, on behalf of Derrick Adkins
21 we'd ask that the juror remain on the jury, on the jury in
22 this case instead of --

23 THE COURT: Okay.

24 MR. BAUER: -- instead of being excused.

25 When asked by the Court if he was able to reach a fair

1 verdict, an impartial verdict, his answer was not that he
2 could not. He said he didn't want to. He didn't mention,
3 at the outset, in court or disclose any response to a voir
4 dire question, which it failed to disclose prior or which he
5 is suddenly remembered. It seems that he is reflecting, and
6 this is prior to any deliberations taking place, he's
7 reflecting just that it's a difficult case and doesn't want
8 to. He didn't give any reason for saying I don't want to.
9 He said maybe. He and every other citizens don't want to
10 sit on a tough case.

11 THE COURT: Mr. Ruffalo.

12 MR. RUFFALO: My objection would be the same. At least
13 what I'd like to put on the record is that he didn't say I,
14 I can not be fair. He just said that I don't want to do
15 this. That's not a reason or temerity is not a reason for
16 excusing a juror.

17 Thank you, Judge.

18 THE COURT: All right. Anything in response to that?

19 SOLICITOR STONE: No, sir.

20 THE COURT: All right. Bear with me just a second,
21 please.

22 (Pause.)

23 THE COURT: Well, I've heard from the attorneys, what
24 Mr. Ruffalo have said and what Mr. Bauer have said. Let me
25 make it abundantly clear on the record that the jury has not

1 even begun deliberations yet. They've been instructed not
2 to begin deliberations.

3 Each of these jurors took an oath, prior to even seeing
4 the evidence, in which gives an indication to me and that
5 this young man has said here, here today he does not want to
6 fulfill his obligations that he took under that oath, and
7 for that reason I am going to strike him for cause because I
8 do not believe that he can fulfill his obligations under the
9 oath that he took in this courtroom.

10 And, so, what I'm gonna do is I'm gonna excuse
11 Mr. Brandon Sampson. The jury is not begun deliberations
12 yet, which, in no way, I believe prejudice, prejudices
13 either defendant, and the jury will be able to deliberate
14 with 12 individuals.

15 Now, Mrs. Nettles, what I would ask you to do is go
16 ahead and put the two jurors names on the, on a piece of
17 paper, as Yolanda Williams and Mrs. Cynthia Frazier.

18 CLERK: Okay.

19 THE COURT: Put them in a cup.

20 CLERK: Does, does it need to be printed from the
21 computer or---

22 THE COURT: It doesn't matter.

23 CLERK: ---or is it just something that we can write?

24 THE COURT: I don't think it matters at all. You can
25 write it.

1 CLERK: Just put the numbers on a piece of paper?

2 MR. RUFFALO: Whatever the judge instructs, but
3 we'll---

4 CLERK: Okay. We can do it that way.

5 THE COURT: You can write their name or their number,
6 or their number.

7 CLERK: Okay.

8 THE COURT: Mrs. Yalonda Williams juror number was 291.

9 CLERK: 291?

10 THE COURT: And Mrs. Cynthia Frazier is 91 is what I
11 have here.

12 CLERK: 291 and 91?

13 THE COURT: 291 and 91. Separate them.

14 CLERK: I have -- I still have my drawing.

15 You want me to put them in there or just put them a
16 cup?

17 THE COURT: Let one, Mr. Bauer or Mr. Ruffalo can draw
18 it out.

19 CLERK: Y'all come draw.

20 MR. BAUER: Your Honor, I would ask that one of the
21 clerks draw instead of one of counsel.

22 THE COURT: You would defer?

23 MR. RUFFALO: Yes.

24 MR. BAUER: I think so.

25 THE COURT: I just wanted to give you-all an

1 opportunity.

2 MR. RUFFALO: Well, thank you, Judge.

3 MR. BAUER: Thank you.

4 CLERK: Okay. 91.

5 THE COURT: Mrs. Cynthia Frazier is, is Juror Number
6 91, and she will be seated as the alternate, as the, as the
7 juror in place of Mr. Brandon Sampson. So, if you would
8 bring Mrs. Yolanda Williams out at this time.

9 Where are the verdict forms?

10 Have they been sent back?

11 BAILIFF: No, sir.

12 CLERK: You need them up here?

13 (WHEREUPON, Juror Williams was excused at this time.)

14 THE COURT: I'm excusing Mrs. Williams, who is the
15 other alternate and I've excused her at this time.

16 SOLICITOR STONE: Okay.

17 THE COURT: If you would bring -- I'm gonna bring
18 Mr. Sampson back in, and I'm gonna excuse him.

19 Anything else before we bring him back before I excuse
20 him?

21 SOLICITOR STONE: No, sir, not from the State.

22 MR. BAUER: Nothing additional, Your Honor.

23 MR. RUFFALO: Nothing, sir.

24 (WHEREUPON, Juror Sampson was excused at this time.)

25 THE COURT: Now, Mr. Wooten, step back and tell the

1 jury they can begin their deliberations.

2 THE COURT: Can the attorneys approach just a minute?

3 (WHEREUPON, a bench conference was held at this time.)

4 THE COURT: Mr. Adkins and Mr. Davis can leave while
5 the jury's deliberating.

6 We'll stand at ease for about 15 minutes.

7 (Whereupon, the jury began deliberations at 11:30AM and
8 sent a note out at 11:38AM.)

9 THE COURT: All right. Back on the record, there's
10 been a note sent out by the jury indicating that they want a
11 written statement, the video statement for both Shawn Davis
12 and Derrick Adkins.

13 I do not recall actual transcripts, written
14 transcripts, admitted into evidence during the course of the
15 this trial. I know Mr. Ruffalo, in his closing, had a
16 transcript in his hand I think he referred to, but I don't
17 think the actual written transcripts were in evidence.

18 What I would propose doing is bringing them back in
19 here and letting them watch the videos in their entirety
20 again.

21 Anything from the---

22 SOLICITOR STONE: I have no objection to that or they
23 could -- actually I think -- it depends on how you read that
24 note. It seems to me they're asking for just the transcript
25 as part of the video, and that would be the part that was

1 running along the bottom of the video.

2 But it's fine if you bring them in, Your Honor. It
3 would also be acceptable to the State for a bailiff to take
4 a computer back to play it for them if they want to stay in
5 the jury room. I don't have any objection to that.

6 THE COURT: Well, I mean I don't have -- you know, I'm
7 not computer savvy enough where I can do anything, but I
8 wouldn't want -- I mean I just rather it stay in here --

9 SOLICITOR STONE: Yes, sir.

10 THE COURT: -- in open court, be done where I think
11 that would be the best way to handle it.

12 Anything -- what's your position, Mr. Bauer?

13 MR. BAUER: Your Honor, as the statement was not
14 introduced separately from the video, I agree with the Court
15 and I would, I would only ask that if they want to hear
16 it -- I think the Court could ask them if they want to hear
17 the entirety of the video or the portion that they want cued
18 up so that we give them what they ask for if it is in
19 evidence.

20 MR. RUFFALO: I would reiterate that, Judge. Basically
21 just saying that only if you want to. I only have the video
22 with the transcription below it to give you because there is
23 no transcript entered in evidence, and then offer, if would
24 you like that, is that what you want, and let them decide
25 whether they want that or not. But I agree with it being in

1 open court.

2 THE COURT: All right.

3 MR. RUFFALO: The note looks like it talks about the
4 transcript.

5 THE COURT: All right. I can, I can write back on here
6 that they, the written transcripts were not introduced into
7 evidence, that their option is to come back in here and
8 watch the videos.

9 Is that, is the okay?

10 MR. RUFFALO: That sounds good to me, judge.

11 MR. BAUER: Yes, Your Honor.

12 THE COURT: And I can put in it what I've written. The
13 transcript of videos were not -- transcripts from the video
14 were not introduced into evidence. You-all can come back
15 into Court and watch the videos in its entirety or to a
16 point where the jury, as a whole, is satisfied.

17 Is that sufficient?

18 MR. RUFFALO: Yes, sir.

19 MR. BAUER: Yes, Your Honor.

20 THE COURT: Mr. Stone.

21 SOLICITOR STONE: Yes, sir.

22 THE COURT: All right. I'll read this verbatim what
23 I'm sending back. The transcripts from the videos were not
24 introduced into evidence. You-all can come back in, into
25 court and watch the videos in their entirety or until.

1 you-all have heard what you want to hear.

2 Is that sufficient, Mr. Stone?

3 SOLICITOR STONE: Yes, sir.

4 THE COURT: Mr. Bauer?

5 MR. BAUER: Yes, Your Honor.

6 THE COURT: Mr. Ruffalo?

7 MR. RUFFALO: Yes, Your Honor.

8 (WHEREUPON, the Court's note was sent back to the jury
9 at 11:43AM and another note was sent out from the jury at
10 11:59AM.)

11 THE COURT: All right. I received a note again from
12 the jury which I'll make a Court's Exhibit. They do want to
13 watch the view, excuse me, they want to view the statement
14 of Shawn Davis and Derrick Adkins. So, if you would -- I'm
15 gonna allow them to do that.

16 Any objection by the State?

17 SOLICITOR STONE: No, sir.

18 THE COURT: Mr. Bauer, Mr. Ruffalo?

19 MR. RUFFALO: No, sir.

20 MR. BAUER: No, Your Honor.

21 THE COURT: I'm gonna ask Mr. Thornton if he would cue
22 that up for us.

23 SOLICITOR THORNTON: Yes, sir.

24 THE COURT: I'm gonna bring the jury back in. They've
25 also asked -- they would like for me to charge them once

1 again on the law of the, and they put it at this, the one
2 act (hand), all acts (hand), and law, which is hand of one
3 hand of all. At least that's my interpretation of their
4 note.

5 So, after reviewing the videos, unless there's an
6 objection, unless you-all have an objection that changes my
7 mind, I intend to charge them once again on the hand of one
8 hand of all.

9 Any objection by the state?

10 SOLICITOR STONE: No, sir.

11 THE COURT: By Mr. Bauer?

12 MR. BAUER: No, Your Honor.

13 THE COURT: Mr. Ruffalo?

14 MR. RUFFALO: No, sir.

15 THE COURT: Okay. Mr. Thornton, you ready, sir?

16 SOLICITOR THORNTON: Not yet, judge. We're waiting on
17 it to come up right now.

18 THE COURT: Okay. All right. Any preference by either
19 attorneys as to which one is played first?

20 MR. RUFFALO: No, sir.

21 THE COURT: Which one was played first during the
22 course of the trial?

23 I can't remember. I think it was Mr. Davis' statement.

24 SOLICITOR THORNTON: It was I believe.

25 THE COURT: Play Mr. Davis' statement first, and then

1 Mr. Adkins statement. Play it the way it's played during
2 the course of the trial.

3 Y'all ready for the jury?

4 SOLICITOR THORNTON: Yes, sir.

5 MR. BAUER: Yes, sir.

6 THE COURT: Please bring us the jury.

7 If y'all would like to see this note, you're welcome to
8 see it. It will be made a Court's Exhibit.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: Madam Forelady, I have received your note,
12 and we are going to play those videos statements at this
13 time, and after the video statements are played, I will
14 charge you under the law with regards to the issue that
15 you-all have sent.

16 Okay. Mr. Thornton.

17 SOLICITOR THORNTON: Yes, sir.

18 (WHEREUPON, the video statements of both defendants
19 were played for the jury at this time.)

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, you've seen the videos of each that you've requested.
22 I'm now going to charge you the hand of one hand of all that
23 you have requested also.

24 Now, if a crime is committed by two or more people who
25 are acting together in committing a crime, the act of one is

1 the act of all. A person who joins with another to commit
2 an unlawful act is criminally responsible for everything
3 done by the other person which happens as a probable or
4 natural consequence of the acts done in carrying out the
5 common plan and purpose. If two or more people are
6 together, acting together assisting each other in committing
7 the offense, the act of one is the act of all or, as it is
8 sometimes said, the hand of one is the hand of all.

9 Prior knowledge that a crime is going to be committed
10 without more is not sufficient to make a person guilty of
11 that crime. Mere knowledge that another person is going to
12 commit a crime, even if the defendant is present when the
13 crime is committed, is not sufficient to convict the
14 defendant as a principal. Guilt as a principal is shown by
15 actual or constructive presence at the scene as a result of
16 prior arrangement.

17 Therefore, a finding of a prior arranged plan or common
18 scheme is necessary for a finding of guilt as a principal.
19 The State must prove, beyond a reasonable doubt, by
20 competent evidence, the theory of the hand of all is the
21 hand of all.

22 A principal in a crime is one who either actually
23 commits the crime or who is present aiding, abetting, or
24 assisting in committing the crime. When a person does an
25 act in the presence of and with the assistance of another,

1 the act is done by both. Where two or more, acting with a
2 common plan or intent are present at the commission of a
3 crime, it does not matter who actually commits the crime.
4 All are guilty. The hand of one is the hand of all.

5 Present at the commission of a crime means to be
6 sufficiently near to aid and abet and assist in the
7 commission of the crime. However, mere presence at the
8 scene of a crime is not sufficient to convict one as a
9 principal on the theory of aiding and abetting. Intent is
10 also a necessary element where there must have been a common
11 design or intent to commit the crime and the crime must have
12 been committed pursuant thereto with the person aiding and
13 abetting by some overt act.

14 Intent means intending the result which actually
15 occurs. Not accidentally or involuntary. Intent may be
16 shown by acts and conduct of the defendant and other
17 circumstances from which you may naturally and reasonably
18 infer intent. The State must prove these elements beyond a
19 reasonable doubt.

20 Ladies and gentlemen, that is, concludes the charge on
21 the hand of one hand of all, and we have answered or allowed
22 you to view the video as you requested, and I've charged you
23 on the hand of one, hand of all. Now I'm going to ask you
24 to return to your jury room and continue your deliberations.

25 Thank you.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Anything from the State?

4 SOLICITOR STONE: No, sir.

5 THE COURT: From the defense, Mr. Bauer?

6 MR. BAUER: No, Your Honor.

7 THE COURT: Mr. Ruffalo?

8 MR. RUFFALO: No, sir.

9 THE COURT: All right. We'll stand at ease.

10 (WHEREUPON, the jury began deliberations again at
11 12:50PM and returned with a verdict at 2:20PM).

12 THE COURT: All right. I have been informed that we
13 have a verdict. I am going to bring the jury back in.

14 If there is anyone in the courtroom who does not feel
15 as though they can control their emotions regardless of what
16 the verdict is, now is your time to leave.

17 Can everybody in the back hear me?

18 If you can not control your emotions regardless of what
19 the jury's verdict is, now is your opportunity to leave.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 CLERK: Madam Forelady, have you reached a verdict?

23 THE JUROR: Yes, we have.

24 (Pause.)

25 CLERK: State of South Carolina, County of Hampton, the

1 State of South Carolina versus Shawn Leonard Davis,
2 Indictment Numbers 2008-GS-25-585, 2008-GS-25-587, verdict
3 number one, as to the charge of armed robbery, we, the jury,
4 unanimously find the defendant, Shawn Leonard Davis, guilty.

5 Number two, as to the charge for murder, we, the jury,
6 unanimously find the defendant, Shawn Leonard Davis, not
7 guilty. Signed by Carolyn Williams, 8/4/2010.

8 The State of South Carolina, County of Hampton, the
9 State of South Carolina versus Derrick Adkins, Indictment
10 Numbers 2008-GS-25-582, 2008-GS-25-584, verdict number one,
11 as to the charge of armed robbery, we, the jury, unanimously
12 find the defendant, Derrick Adkins, guilty.

13 Number two, as to the charge of murder, we, the jury,
14 unanimously find the defendant, Derrick Adkins, not guilty.
15 Signed Carolyn Williams, foreperson, 8/4/2010.

16 THE COURT: Anything from the defense, Mr. Bauer?

17 MR. BAUER: No, Your Honor.

18 THE COURT: Mr. Ruffalo?

19 MR. RUFFALO: No, sir.

20 THE COURT: Anything from the State?

21 SOLICITOR STONE: No, sir.

22 (WHEREUPON, the jury panel was dismissed at this time.)

23 THE COURT: Mr. Stone.

24 SOLICITOR STONE: Yes, sir.

25 THE COURT: The defendants can be brought around for

1 sentencing.

2 SOLICITOR STONE: Yes, sir.

3 MR. BAUER: Your Honor, do you want both defendants
4 together or separate?

5 THE COURT: We can do them together.

6 Sentencing sheets?

7 SOLICITOR STONE: We're doing those now, Your Honor.

8 THE COURT: Okay. Could the attorneys approach for
9 just a minute while they're working on the, on the
10 sentencing sheets?

11 (WHEREUPON, a bench conference was held at this time.)

12 THE COURT: All right. Sign the sentencing sheets.

13 SOLICITOR STONE: They're just handing them up, Your
14 Honor.

15 THE COURT: Mr. Stone.

16 SOLICITOR STONE: Please the Court, Your Honor.

17 Shawn Leonard Davis has a prior conviction on July the
18 13th, 2004, for assault and battery of high and aggravated
19 nature. He received an eight year sentence suspended on
20 three years probation and three years later he was convicted
21 of what appears to be grand larceny in which he received a
22 youthful offender sentence, and that -- actually start date
23 on that was January of 2008.

24 Derrick Adkins has a conviction in April of 2007 for
25 two counts of grand larceny and possession of less than one

1 gram of methamphetamine or cocaine base. That appears to be
2 a probationary sentence as well, and it appears that maybe
3 that was a violation of his probation at one time as well.

4 We have three members of the family that would like to
5 address the Court if Your Honor will hear from them.

6 THE COURT: Yes, sir.

7 SOLICITOR STONE: Thank you.

8 Donna Wooten.

9 THE COURT: Yes, ma'am. If you would, please state
10 your full name for the record.

11 MRS. WOOTEN: Donna Wooten.

12 THE COURT: Yes, ma'am, be happy to hear from you.

13 MRS. WOOTEN: Your Honor, I understand that, the charge
14 that they have been brought on is armed robbery, and due to
15 their negligence and their participation in an armed
16 robbery, it did result in my daddy's death.

17 They robbed my, my daughter and my niece with the
18 chance of growing up with at least one grandparent. I lost
19 my mother one year before this, and I've had these boys
20 coming to my job where I work, and I've had to fix them food
21 not knowing that they were involved in anything, and they
22 were just look at me and I would tell them to have a safe
23 weekend knowing that they were participating in at least one
24 part of what happened to my father.

25 He was the backbone of the family, and has left

1 everything on my shoulders to be the backbone now. And I
2 ask that whenever you go to sentence them to please give
3 them the maximum because I don't want anybody else to have
4 to go through what I've had to go through. Not once is
5 anybody offered an apology to my family or to me and it
6 wasn't fair. My mother was taken from me with cancer, and
7 my father was taken from me not by choice, but by people who
8 made wrong decisions.

9 THE COURT: Thank you, Mrs. Wooten.

10 SOLICITOR STONE: Jackie McBride.

11 This is Jackie McBride, Your Honor.

12 THE COURT: Thank you. Thank you.

13 Mrs. McBride, be happy to hear from you.

14 MRS. MCBRIDE: Yes, sir, Your Honor.

15 THE COURT: Please identify yourself for the record. I
16 know Mr. Stone has done so, but I want you to do it.

17 SOLICITOR STONE: Yes, ma'am.

18 MRS. MCBRIDE: Okay. I would like to introduce myself.
19 I am the deceased sister.

20 I'm very hurt, as well as other members of the family
21 are hurt, over the heinous crime that was convicted, that,
22 that was committed against my brother, against the father of
23 his children, against this whole family. It was an
24 unnecessary crime. Ronnie was minding his own business, and
25 these people came in with the intent of robbing him. He

1 ended up losing his life.

2 Ronnie was a good person. Many years ago -- I knew him
3 from the time he was born almost, but many years ago I knew
4 when he went to Vietnam to serve his country, he dodged
5 bullets over there, and he comes home a few years later, and
6 he didn't dodge a bullet of -- these people just did it to
7 him intentionally and on purpose, and my plea to you today
8 is that you exercise the authority vested in you to ensure
9 that they pay for their crime, that they can't do it to
10 other people, other citizens that don't deserve what
11 happened to him.

12 I thank you.

13 THE COURT: Thank you, ma'am.

14 SOLICITOR STONE: Reverend Moore.

15 REVEREND MOORE: Your Honor, I'm Reverend Charles W.
16 Moore, Ronnie's brother-in-law. Because of the crime
17 committed, I just wanted to share with you and those that
18 are in the hearing of my voice that he was a loving, caring
19 person. He served in Vietnam. He served his country well.
20 There was things that he never talked about from when he was
21 over there.

22 But I've seen him -- he was a loving caring person.
23 One time accidentally a dog was tied to the back of our
24 truck without him knowing. He drug the dog down the road
25 and he literally cried from doing that, and this crime that

1 was committed, you know, has put a hardship on the family.

2 But some three years now and it's gonna even be longer.

3 But he loved his daughter, his son, his granddaughter.

4 There was a granddaughter he never got to see because his

5 life was taken from him shortly. He's gived some of these

6 fellows standing here before you today a job and working.

7 Some of them bagging corn for him.

8 I've seen people pawn stuff to him that was junk, and

9 he knew it was junk, but he knew that they needed some

10 money.

11 So, what did he do?

12 He'd give them more money, and it's hurt the community

13 over there. It hurt the business. Someone's running the

14 store now, but it hurts the business there, and he was a

15 loving caring person. And I want you, as you sentence this

16 crime today, I want you to take into consideration what was

17 taken from us, a loving caring person who cared for his

18 family.

19 He was more like a brother to me than being my

20 brother-in-law. He was like a daddy because he always

21 wanted to know that we had things to eat. My health, he

22 would get things for me without me even asking because he

23 cared, and I want you to just take into consideration that

24 this can't happen again like that.

25 Your Honor, a life taken, you know, just -- well, if it

1 was at random or what and robbing him, and I mean no money
2 was taken involved. Just cigarettes. And that, you know,
3 and that's, that's ashamed. But I just ask you to consider,
4 you know, what's been taken way from us and I thank you.

5 THE COURT: Thank you, sir.

6 Mr. Stone, anything else from the State?

7 SOLICITOR STONE: Your Honor, the maximum sentence in
8 this is 30 years. I can not imagine what would be a more
9 appropriate sentence than say in this situation. I
10 unfortunately can't ask you for any more than that because I
11 assure you, had he been convicted, either one of these
12 individuals convicted for murder, I certainly would have.

13 I think what you see before you is, quite frankly, two
14 career criminals. I have no doubt in my mind that if they
15 get out of prison they will do something just like this
16 again. Their rap sheets seems to indicate that as well.

17 I didn't see anything in those statements or anything
18 else that showed the slightest bit of concern for Ronnie
19 wooten or anyone else, and I would ask you to consider
20 giving both of these individuals the maximum sentence, and I
21 thank you for hearing from me.

22 THE COURT: All right. Mr. Bauer, I'll be happy to
23 hear from you and then I'll be happy to hear from you, Mr.
24 Ruffalo, or vice versa. I'll let you gentlemen decide
25 whatever you think is best for you.

1 MR. BAUER: Your Honor, we're only here on an armed
2 robbery. With regard to the armed robbery, you have a
3 tremendous amount of discretion in sentencing.

4 I'd like you to take into account two things. One is
5 my client's young age. I've been doing this for 20 years,
6 and I've seen these kids do things in their young twenties
7 that in their thirties they would never think about doing.
8 And even if you gave him 15 years or 20 years, by the time
9 he came out of prison he would be past the age of danger,
10 past the age when these kids think without knowing what it
11 means.

12 The second thing I'd like you to consider is that when
13 he was approached by law enforcement he cooperated. There
14 has to be some credit for being the one who says I will tell
15 the truth, I admit my responsibility, this is what I did,
16 and every time they came there he did, detailed his
17 involvement in the crime.

18 THE COURT: Anything else, Mr. Bauer?

19 MR. BAUER: No, Your Honor.

20 THE COURT: Your client like to say anything?

21 He's not required to say anything and I understand
22 he -- I completely understand if he does not want to say
23 anything for appeal purposes. I understand that.

24 MR. BAUER: Can I ask him, Your Honor?

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. BAUER: My client indicates he does not wish to
3 further address the Court.

4 THE COURT: Okay. Mr. Ruffalo, be happy to hear from
5 you, sir.

6 MR. RUFFALO: Thank you, Your Honor.

7 On behalf of Shawn, I can't think of improving on the
8 two points that Mr. Bauer brought up that we are here on
9 just the armed robbery.

10 Secondly, young people, particular of this age,
11 can't see the future. They can't discern the big picture.
12 They tend to think in short sentences.

13 As Mr. Bauer said, 15 years from now they wouldn't
14 consider even going near something like this. I would ask
15 that you take that into consideration. I would ask that you
16 sentence him to an appropriate sentence for his age and for
17 his immediate response to law enforcement, and his matter of
18 fact confession upon everything, and I would ask that you
19 give him credit for time served.

20 Thank you, sir.

21 THE COURT: Mr. Ruffalo, I'll give your client the same
22 opportunity. He is not required to say anything, but be
23 happy to hear, hear anything he has to say.

24 MR. RUFFALO: I think he's -- I don't think so, judge.

25 (Pause.)

1 THE COURT: How much time have they been in?

2 How much time have they been in?

3 MR. RUFFALO: It's been over two years.

4 MR. BAUER: They've been in jail since September the
5 4th.

6 UNIDENTIFIED PERSON: Derrick Adkins, 748 days.

7 THE COURT: 748 days each?

8 UNIDENTIFIED PERSON: Shawn 600 and --.

9 THE COURT: And the other was 748?

10 UNIDENTIFIED PERSON: Yes, sir.

11 (Pause.)

12 THE COURT: All right. I've listened to the testimony
13 during the course of this trial, and I viewed the videos
14 just as the jury did and as they, before they made their
15 decision in this case in finding each of these gentlemen
16 guilty of armed robbery.

17 I recognize these men were 20 years old at the time
18 this occurred. They're 20 years old, and that age you're
19 old enough to join the military, to fight for this country
20 and behalf of this country.

21 And as many of us in this courtroom who have children,
22 and one of the things that I teach or make an effort to
23 teach my children on a daily basis is that they're
24 consequences, consequences, consequences to your actions,
25 and how important it is to think about what you do before

1 you do it. Each decision that we make in this life, in some
2 way, shape, or form, has an affect on other people to some
3 extent.

4 One of the other things that is so important is being,
5 lies in the choice of who you hang out with. I was always
6 taught that your friends can build you up or they can bring
7 you down. It's unfortunate that the crime that was
8 committed here resulted in the death of someone, and what
9 was disturbing to me about the statements was that you four
10 gentlemen set out to rob someone, and not just someone,
11 anyone.

12 The jury, in this case, has spoken and the type of
13 conduct that occurred resulting in Mr. Wooten's death is the
14 type of conduct that can not be tolerated.

15 Sentence on Indictment 2008-GS-25-587, State versus
16 Shawn Davis, is the defendant is hereby committed to the
17 State Department of Corrections for a period of 30 years.
18 Defendant is given credit for 699 days he has done. By
19 statute he is required to be given credit for that.

20 Indictment Number 2008-GS-25-584, State versus Derrick
21 Adkins, defendant is hereby committed to the State
22 Department of Corrections for a period of 30 years.
23 Defendant is to be given credit for the 748 days that he is
24 done.

25 It's not something that any judge takes pleasure in

1 handing down a sentence of, of this nature, and of this
2 magnitude because you hate to see young men such as
3 yourselves make the type of mistakes that you made, but with
4 those mistakes comes severe and tremendous consequences, and
5 the mistake you-all made that day resulted in an individual
6 being killed, and that's the Sentence on, of this Court as
7 to each of those indictments.

8 Good luck to you, gentlemen.

9 MR. RUFFALO: Thank you, judge.

10 (WHEREUPON, the notes from the jury were marked as
11 Court's Exhibit Nos. 8 through 10 for identification
12 purposes only at this time.)

13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Hampton County, South Carolina, on the 2nd, 3rd, and 4th day of August, 2010, as reported by Brenda Cooley and transcribed by myself to the best of my ability.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 10th, 2012



PAMELA E. GREEN, Court Reporter

292

mt 14

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF Hampton

2011 AUG -8 PM 1:43

IN THE COURT OF COMMON PLEAS

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2011-CP-25-320

Full name and prison number (if any) of Applicant.

Shawn Davis # S.C.D. 342092

BY

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correction Inst 990 University Highway Bishopville SC 29011
2. Name and location of Court which imposed sentence Hampton County Court House
3. Name(s) of co-defendant(s) (if any) Joseph Davis Derrick Adkins moran's Bryant.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-25-0587 Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 4th 2010 30 years
 - (b) _____

SC Attorney General
RECEIVED

Revised 3/2003

AUG 15 2011

Referred to M. Gaudman

Answered _____

ATTORNEY GENERAL'S OFFICE
RECEIVED 8/15/11

293

MP ADMINISTRATIVE INSTRUCTIONS

FILE ☒ OPEN ☐ END

WE ☐ COPIES MADE

DATE TO ☐

RECORD ☐ TRANSCRIPT

RECORDS ☐ OTHER RECORDS

OTHER ☐

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel failed to file a direct appeal
- (b) Trial Counsel failed to inform Defendant of his right to appeal
- (c) " " failed to file an notice of intent to file.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Amendment to the US Constitution Violation Ineffective Assistance of Counsel
- (b) Prosecutor's Misconduct { Due process and equal protection of the law }
- (c) Presenting the Gun which was not the same used in the crime False evidence

Fraud upon the Court
SCRC 6B(2)(3)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Allowed improper evidence to be introduced into the Record and failed to object
- (b) Prosecutors presented false evidence to the Jury, Counsel failed to object
- (c) TRIAL Counsel's failure to file direct Appeal notice of Intent to Appeal

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~YES~~ NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Trail counsel failed to file a notice of intent to appeal or a direct appeal
- (b) Prosecutor's presented false evidence to the Courts, Counsel failed to object
- (c) Violations of the 6th, 10th and 14th Constitution/Amendments.

17. 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 applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Dudley Broad Street Buffalo P.O. Box 7911 21 D. New Orleans Road Hattah Island S.C. 299

ii. _____

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. Trial NAME of Attorney Dudley Broad Street Buffalo

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Any and all relief the Court feels is due and available under SC Code § 17-27-80(a)(b) and (c).

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Hampton)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sharon Davis Sharon Davis

SWORN to and subscribed before me this 29
day of July, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Sharon Davis Sharon Davis
Applicant

SWORN or affirmed to and subscribed before me this

29 day of July, 2011.

(Signature)
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON) CASE NO. 2011-CP-25-320

SHAWN DAVIS #342092,
APPLICANT,

v.

STATE OF SOUTH CAROLINA,
RESPONDENT.

AMENDED APPLICATION FOR PCC

BY _____
MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2013 MAR 26 AM 9:14

FILED

TO: South Carolina Attorney General's Office

The Applicant, Shawn Davis, re-asserts paragraphs 1 through 20 of his original Post Conviction Relief Application. The Applicant, Shaw Davis, would further allege to the Court that he has been prejudiced by ineffective assistance of counsel as follows:

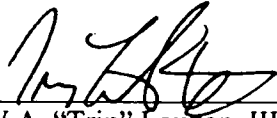
21. The Applicant, Shaw Davis, alleges that his trial counsel should have requested the Court to charge the jury of the lesser-included crimes of Armed Robbery, which are Attempted Armed Robbery and Larceny. There was evidence in the record that the Defendants were attempting to take money from the victim and/or his business with a handgun, and they were unsuccessful. This was the prior arranged plan before they entered the store. The State proceeded under the legal theory of hand of one; is the hand of all. There was only one gun, and there were four Co-Defendants. Without this legal theory, only the Defendant with the gun could be criminally charged with murder and/or (attempted) armed robbery.

A jury could confer from the facts that stealing cigarettes is not a natural or probable consequence of attempting to rob a store/victim of money with a handgun, and this is an issue for the jury to determine. A Trial Judge does not need to weigh the evidence, just whether or not there is any evidence. Clearly, there was evidence in the

record that this was an attempted armed robbery for money under the legal theory of hand of one; is the hand of all, and that a jury could conclude that the Applicant's acts were outside the natural or probable consequences of an armed robbery for money, when the Applicant solely committed the crime of larceny according to the evidence in the record.

22. The Applicant, Shawn Davis, has been prejudiced by his trial counsel's ineffective assistance of counsel because the jury could very well have found him guilty of attempted armed robbery, which would have reduced ten (10) years off of his thirty (30) year sentence, or they could have just found him guilty of larceny only, which would have been a time served sentence. That he should be entitled to a new jury trial.

SOLOMONS & LAWTON, PC

By: 

W.A. "Trip" Lawton, III
Attorney for PCR Applicant
P.O. Box 969
Estill, SC 29918
(803) 625-3232

March 26, 2013
Estill, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON)

C.A. No. 2011-CP-25-0320

Shawn Davis,
S.C.D.C. No. 342092,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

In response to the post-conviction relief application filed August 8, 2011^a, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Hampton County Clerk of Court's orders of commitment. The Applicant was indicted during the December 2008 term of the Hampton County Grand Jury for armed robbery (2008-GS-25-0587) and murder (2008-GS-25-0585). Dudley Bradstreet Ruffalo, Esquire represented the Applicant.

The Applicant proceeded to trial and on August 4, 2010, the Applicant was found guilty of armed robbery and not guilty of murder. The Honorable D. Craig Brown sentenced the Applicant to thirty (30) years imprisonment for the armed robbery. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Hampton County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Allowed improper evidence to be introduced into the record and failed to object."
 - b. "Trial counsel's failure to file direct appeal, Notice of intent to appeal."
2. Prosecutorial misconduct.
 - a. "Prosecutors presented false evidence to the jury, counsel failed to object."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is 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 an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal.

Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent requests that this allegation be summarily dismissed as it is not an issue for post-conviction relief.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

December 14, 2012

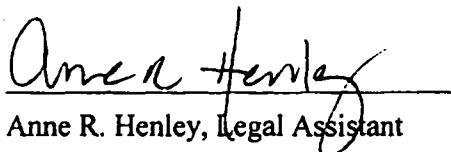
³ The Applicant's post-conviction relief application was filed four (4) days beyond the one (1) year from the date of judgment statute of limitations as required under S.C. Code Section 17-27-45. The State will respond to this Application as if it were timely filed.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	
	)	
	)	2011-CP-25-0320
	)	
SHAWN DAVIS, #342092	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Shawn Davis, # 342092
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

DATED this 14th day of December, 2012


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON) CASE NO.: 2011-GS-25-00320

SHAWN DAVIS,)
)
APPLICANT,)
)
VS.)
)
STATE OF SOUTH CAROLINA)
)

POST CONVICTION RELIEF HEARING

held before the Honorable Deadra L. Jefferson
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina
on Wednesday, August 28, 2013, Commencing at 9:33 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

Shawn Davis v. The State
Post Conviction Relief Hearing
August 28, 2013

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Winston A. Lawton, III, Esquire
Solomons & Lawton
Post Office Box 969
Estill, South Carolina 29918

FOR THE STATE: Ashleigh R. Wilson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Shawn Davis v. The State
Post Conviction Relief Hearing
August 28, 2013

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EXHIBITS

[None]

Shawn Davis v. The State
Post Conviction Relief Hearing
August 28, 2013

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Davis v. The State
Post Conviction Relief Hearing
August 28, 2013

PROCEEDINGS

1
2 THE COURT: This is Shawn Davis vs. the State of
3 South Carolina, 2008-GS-25-587. It is before the
4 Court on an application for post conviction relief
5 which was filed on August 8th, 2011, with an amended
6 petition having been filed on March 26 of 2013. A
7 return in this case was filed. I have a return dated
8 December 14th of 2012.

9 Was there an additional return filed for the
10 amended application?

11 MS. WILSON: No, Your Honor.

12 THE COURT: The applicant went to trial on
13 August 4th of 2010 and was found guilty of armed
14 robbery and not guilty of murder. Judge Brown
15 sentenced him to thirty years imprisonment for the
16 armed robbery. There was not a direct appeal filed.

17 He alleges ineffective assistance of counsel,
18 allowed improper evidence to be introduced into the
19 record and failed to object, failure to file a direct
20 appeal and prosecutorial misconduct, which his counsel
21 failed to object.

22 In his amended application he alleges that his
23 counsel should have requested a lesser included charge
24 of armed robbery or attempted armed robbery and
25 larceny.

Davis v. The State
Post Conviction Relief Hearing
August 28, 2013

1 The State is represented by Ms. Wilson. The
2 applicant is represented by Mr. Lawton.

3 Is the applicant ready to proceed?

4 MR. LAWTON: Your Honor, may we approach?

5 THE COURT: Yes.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: The applicant may call his first
9 witness.

10 MR. LAWTON: We call the attorney, Dudley
11 Ruffalo.

12 THE COURT: Come to the stand, sir, to be sworn.

13 MR. RUFFALO: Good morning, Judge.

14 THE COURT: Good morning.

15 [Whereupon, Mr. Ruffalo comes forward]

16 THE COURT: If you would raise your right hand
17 to be sworn.

18 [Whereupon, Mr. Ruffalo is duly sworn by the
19 Court as follows: do you swear or affirm the
20 testimony you give will be the truth]

21 THE WITNESS: Yes, ma'am. So help me God.

22 THE CLERK OF COURT: If you would have a seat,
23 Mr. Ruffalo, and state your full name for the record,
24 spelling your last name for the court reporter.

25 [Whereupon, Mr. Ruffalo takes the witness stand]

Davis v. The State
Post Conviction Relief Hearing
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1 THE WITNESS: My full name is Dudley Bradstreet
2 Taft Ruffalo. R-U-F-F-A-L-O.

3 THE COURT: You may proceed.

4 MR. LAWTON: Good morning, Mr. Ruffalo.

5 THE WITNESS: Good morning, sir.

6 MR. LAWTON: How are you doing?

7 THE WITNESS: Good.

8 - - - - -

9 DUDLEY B. RUFFALO,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. LAWTON:

14 Q. Do you recognize Shawn Davis in the courtroom?

15 A. I do now, yeah.

16 Q. Okay. And when did you begin representing him
17 in this matter?

18 A. About a year before the trial.

19 Q. Okay. And the trial was in August of 2010?

20 A. I believe so.

21 Q. Okay. Were there any pretrial offers?

22 A. Yes.

23 Q. Okay. What were they?

24 A. The offer was to dismiss the murder charge and
25 plead guilty to armed robbery for a thirty-year sentence.

MIA PERRON, CVR-CM-M

-7-

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1 Q. And during your representation of Mr. Davis, did
2 you have any concerns about his competency?

3 A. No, none whatsoever.

4 I'm not a health professional but in my thirty
5 years as a lawyer I do a lot with people, psychiatrists,
6 psychologists. You know, I've done a lot of GBMI on our
7 pleas.

8 One of the things you look for -- well, there's
9 about five or six different things you look for when
10 you're kind of evaluating: can the person communicate
11 with you properly, do they understand what you're saying,
12 do their conversations become tangential; that is, when
13 you start talking about cars, in three sentences do they
14 end up talking about taxidermy -- do they have memory
15 loss, do they have non-functioning basic computation
16 skills such as adding numbers and, you know, knowing who
17 the president is and all that sort of stuff.

18 So, yeah, I met with him a lot and it was
19 obvious that there wasn't anything that I could rationally
20 go to a judge before and say I have a problem with this
21 fellow in terms of his competency.

22 Q. Okay. What about any McNaughton issues, as far
23 as --

24 A. Well, that wouldn't rise to the level of
25 McNaughton. I mean, he just -- he was -- he was normal.

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1 Q. You felt like he understand as far as, you know,
2 what the gravity were against him?

3 A. Well, the only problem we did have was -- is
4 that even though he had a full confession, he had a little
5 problem in the beginning understanding why he should not
6 be able to plead guilty to petit larceny for stealing a
7 pack of Newports during the course of the incident. But
8 after a little bit of time, he began to understand the
9 concept of felonies and what happens during murders and
10 planned armed robberies and so forth.

11 Q. And this was a hand of one, hand of all matter;
12 is that correct?

13 A. Basically, yeah.

14 Q. And it wasn't alleged that he was the gunman?

15 A. No, sir.

16 Q. Okay. And you would admit he did give a
17 confession in this matter; correct?

18 A. Yes.

19 If I call correctly, it was fairly complete.

20 Q. And you had a co-counsel representing another
21 codefendant?

22 A. No, we weren't co-counsel. We -- yeah, we had
23 two defendants in the same trial.

24 Q. But y'all tried the case --

25 A. -- Mr. Bower represented --

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1 Q. -- at the same time?

2 A. -- and I cannot recall his name at the time.

3 Q. Okay. And y'all had a theory in this case;
4 correct?

5 A. A working theory.

6 Q. Okay. And tell the judge what y'all were trying
7 to convey to the jury as far as --

8 A. Well, I think it was less legal than it was
9 practical. It was -- you know, they had elected one
10 person to go in with a weapon and hold the storekeeper at
11 bay. They had planned to go in and open the cash
12 register. There was also some discussion about they
13 believed that over the course of the years he was
14 participating in illegal activities, like trading cocaine
15 for stolen objects and so forth, and then maybe look for
16 that.

17 The person went in and to their surprise, he
18 just shot the fellow. And when they heard the shots, they
19 ran in. And Mr. Davis admitted that he had attempted to
20 reach in the deceased's pockets. They had tried to get
21 the cash register open but could not. And he ended up
22 taking a pack of I believe it was Newports.

23 Q. And you would agree the testimony was when the
24 Newports were taken, the victim was already dead; correct?

25 A. I believe so.

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1 I mean, I couldn't say for sure. I mean, how
2 would you know.

3 Q. But as far as through the prosecution through
4 Solicitor Stone, the whole theory from the confessions and
5 everything on the prosecution side is they went in there
6 to take money; is that correct?

7 A. Well, yes. And then this other illusionary kind
8 of concept that there may have been other things there.
9 Drugs and so forth.

10 And there was -- the solicitor was Sean
11 Thornton.

12 Q. Okay. I believe Mr. Stone was involved.

13 A. He was there, yeah.

14 Q. But as through the confessions of the four co-
15 defendants, they were mainly going in there to get money;
16 correct?

17 A. Well, as I said before, it was money and then
18 sort of this underlying thing that they were somewhat
19 angry, at least one of them was, that -- I believe the
20 person that did the shooting had said something about,
21 well, he owes me money. And there was this indication of
22 previous bartering behavior on some illegal basis. But
23 that was never quite clear.

24 Q. Okay. But you wanted to convey to the jury that
25 under the hand of one, hand of all theory, that they had

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1 to have an agreement in order for them to be guilty of
2 murder; is that correct?

3 A. If I recall.

4 I'm not exactly sure what you're trying to say.
5 I mean, our position was is that -- our theory was, at
6 least mine was, is that Shawn had absolutely no idea that
7 anybody was going to be killed and that he should not be
8 held responsible for that. If anything, you know, you try
9 to direct the jury's anger away from murder and possibly
10 to the fact that he was robbing someone. It's a delicate
11 balance.

12 Q. And so in other words, just what I said, that,
13 you know, your theory was for Mr. Davis telling the jury
14 that they couldn't find him guilty of murder because he
15 didn't agree with the others or agree with the gunman --

16 A. Uh-huh.

17 Q. -- you know, they didn't get in the car and say,
18 we're going to kill this guy --

19 A. Right.

20 Q. -- they're all in the car saying, hey, let's go
21 to Lena and we're going to get money from this guy --

22 A. Yeah. The --

23 Q. -- is that correct?

24 A. -- Lena Quick Stop, yeah.

25 Q. Okay. And --

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1 A. Well, there was this -- like I said, there was
2 this undercurrent mentioning of the fellow was involved in
3 illegal activities and that he would trade drugs for
4 stolen items. I don't think that was ever proved or that
5 was really a rumor.

6 But that was mentioned by both Mr. Davis, to me
7 personally, that this guy was doing a lot of illegal stuff
8 and there might have been drugs there. Something like
9 that.

10 Q. And you would agree that they were unsuccessful
11 in getting any money?

12 A. I believe that's true.

13 Q. They attempted to --

14 A. Open the cash register.

15 Q. -- attempted to open the cash register and they
16 weren't successful?

17 A. [No response]

18 Q. And you would agree that you didn't ask the
19 judge to charge attempted armed robbery; is that correct?

20 A. No, I did not, because I am -- you know, my
21 personal feeling was is that the armed robbery was
22 complete when he took the Newports.

23 Q. And explain that to the judge.

24 A. Well, I mean, my theory was is that they agreed
25 to rob the place. Whether or not they -- one person shot

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1 the person or tied him up, they went in and stole items.
2 Be kind of difficult to argue that, an attempt.

3 Q. But you would agree, though, that, you know,
4 that's kind of conflicting with your old theory with the
5 murder thing? You know, you wanted the jury to believe
6 that in order to convict him of murder, you know, that had
7 to be the intent of all of them agreeing that, hey, we're
8 going to murder somebody? Otherwise, it would be on that
9 one person who did the shooting.

10 A. That's true.

11 But I've found over the years that when arguing
12 before a jury in a murder case, it's less logic than it is
13 art.

14 Q. Right.

15 But you understand the difference between armed
16 robbery looking at thirty years and attempted armed
17 robbery looking at twenty years?

18 A. Oh, I understand, of course. Yeah.

19 Q. And as far as hand of one, hand of all, they
20 went in there with one mission, one main mission. I know
21 you're talking about maybe some other theories --

22 A. Right.

23 Q. -- didn't get into the --

24 A. Right.

25 Q. -- transcript, as far as I'm concerned, because

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1 that's all I have.

2 A. Exactly.

3 Q. I wasn't there.

4 -- is that they were going in there to get money
5 either on this person or from his cash register?

6 A. Well, I think the agreement was that they were
7 going to rob him. Whether it was cash register or, you
8 know, jelly donuts, you just don't know.

9 MR. LAWTON: One moment, Your Honor.

10 [Whereupon, Mr. Lawton and Mr. Davis confer]

11 MR. LAWTON: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Uh-huh.

14 [Whereupon, Mr. Lawton reviews documents]

15 MR. LAWTON: I need to mark -- I guess just
16 going to mark the prior transcript.

17 THE COURT: The transcript is already a part of
18 the record.

19 MR. LAWTON: Okay.

20 Q. [Mr. Lawton] Mr. Ruffalo, I'm showing you
21 what's already in. I would like for you to read line 22,
22 page 218 through page 220, line 20. I've got them marked.

23 A. Okay.

24 Q. And this is from the State's closing argument
25 from Solicitor Stone.

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1 A. Solicitor Stone, line 22, 218: an armed robbery
2 is someone taking a gun like this one, loading it, putting
3 it to someone's face and saying, give me your money or
4 else. It's not a burglary. It's not where you maybe
5 break into someone's home and maybe they're not there.
6 It's of a snatch and grab. It's a grabbing someone's
7 purse and running off with it. An armed robbery is
8 sticking a gun in someone's face and saying give me your
9 money. Or what. Or I'll kill you. Give me your money or
10 I'll kill you. Two options in a robbery: money or death.
11 That's it. And when you plan an armed robbery, you plan
12 for two options: money or death. Because an armed
13 robbery is bringing the threat of death to someone if they
14 don't give you their money. And what we all know now is
15 that Ronnie Wooten didn't given them any money. As a
16 result of that, he is dead. Now, the facts that you
17 heard, the evidence that you heard from the witness stand,
18 the statements that you heard from all those defendants,
19 all give you a very clear picture of what happened. These
20 two people right here, Derick Atkins and Shawn Davis,
21 planned to bring the threat of death to someone in order
22 to get their money. Did they plan to murder Ronnie
23 Wooten? I don't know. Think about what Derick Atkins
24 told you. Think about what this guy said. It wasn't
25 personal to him. Anybody would have done. Anyone. It

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1 was random. He was going to ride until he found somebody
2 to rob. He didn't care about Ronnie Wooten. It didn't
3 matter. He wasn't going to rob a place, he was going to
4 rob a person.

5 How far did you want me to go? I'm sorry.

6 Q. To the line --

7 A. Oh. There it is, yes. I'm so sorry.

8 That's what they planned. We know they planned
9 it. They planned it around a loaded gun. They got a gun.
10 They got gloves. They crept through the woods to get to
11 the store. When they went in, one held the gun, shot
12 Ronnie Wooten, said, give me your money or else. Ronnie
13 Wooten didn't give them any money and he got killed. We
14 know after that -- after that now. Derick Atkins goes on
15 in the store and helps search the dead man's pocket and
16 his socks. What does Shawn Davis do? Shawn Davis goes
17 behind the counter. He goes to the cash register. And
18 when he couldn't get any cash, what did he do?

19 You have a mark there ending, but you also have
20 another one at the next paragraph.

21 Q. Oh. Let me see.

22 A. See there and there. So you want this he --

23 Q. Yeah.

24 A. -- got some cigarettes. Okay. Yeah. Okay.

25 He got some cigarettes, took the time to throw

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1 the empty carton in the trash can on the way out the door.
2 That's what the plan was. They're going to rob somebody
3 by bringing the threat of death to them and if he didn't
4 give them money somebody was going to die and somebody did
5 die.

6 Q. Also, Mr. Ruffalo, as far as an appeal,
7 obviously thirty years is a substantial sentence; correct?

8 A. Correct.

9 Q. And under double jeopardy, the State of South
10 Carolina can never bring murder charges against him;
11 correct?

12 A. Correct.

13 Q. He was exonerated; correct?

14 A. [No response]

15 Q. Now, you didn't file a notice of appeal in this
16 matter?

17 A. No, sir.

18 Q. Why is that?

19 A. Well, immediately after the trial Shawn was very
20 elated. And I -- you know, when they begin to lead them
21 back into the back area, I said, look, Shawn, you can --
22 you can appeal this if you want to. And I'll always
23 remember his words because he always called me Ralfellie
24 instead of Ruffalo. And my joke to him was I'm not a
25 sixteenth century Italian painter, which he sort of

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1 understood. But he said -- I said, do you want me to
2 appeal this; you can appeal this. He said, no, you did
3 good Ralfellie, you did good. And that was it.

4 Q. But you do realize that he's -- you do realize
5 he's one charge away from being free at this point?

6 A. Well, we're all one step away from eternity,
7 aren't we? I understand what you're saying.

8 Q. If the matter is appealed and they offer him a
9 new trial, he's facing armed robbery.

10 A. He's facing armed robbery.

11 Q. And that's it. And there's really no incentive
12 not to appeal this -- appeal this matter?

13 A. Well, that's his choice, not mine.

14 Q. Well, what all did you go --

15 Did you explain to him that under double
16 jeopardy he'll never be facing murder again?

17 A. Well, we had lengthy talks about that. I said,
18 if you're lucky enough to win the murder charge, which you
19 might. We talked a lot about that.

20 Q. That's not the question I'm asking, sir. I'm
21 asking after he was exonerated on the murder charge, did
22 you explain to him that, hey, you're no longer looking at
23 that charge anymore if the appeal is successful and you're
24 looking at a new trial, it's just facing this armed
25 robbery again?

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1 A. Oh. Yeah.

2 I told him they can't try him for the murder
3 again. Because we had --

4 Q. You did?

5 A. -- because we had some time at the table. I
6 mean, when the case was over, you know, Judge Brown
7 allowed us some time at the table to sit there and talk.
8 Sam did the same with his client. He sat there. Well,
9 actually, Sam moved over to the solicitor's table so that
10 he could talk privately with his client, I could talk
11 privately with Shawn. And I kind of explained to him kind
12 of what's going on. They can't try you for the murder
13 again. You know, do you want to do this. And he just
14 said, no, didn't want to -- didn't --

15 Q. Well, do you know if Mr. Baur appealed his?

16 A. Mr. Baur did not appeal his.

17 Q. He did not appeal his?

18 A. No.

19 Q. Okay.

20 A. You can't do what they don't ask you to do.

21 Q. Right.

22 And did -- you obviously only had ten days. I
23 mean, did you take an opportunity to maybe write him a
24 letter to make sure this was what he wanted to do?

25 A. Well, the problem with that is practicality. I

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1 mean, they'll take him back to the county jail. In
2 probably less than eight hours, he'll be going up to
3 Columbia or one of the reception centers.

4 You write him a letter at the county jail, it's
5 not going to make it to him in a couple of weeks. You
6 write him a letter to central corrections and say get this
7 to Shawn Davis, it's not going to happen within that
8 period of time.

9 You explain to him that this is it, this is the
10 time you've got to tell me, this is when, this is now.

11 Q. Did you get anything in writing from him,
12 signing, saying he didn't want this to be appealed?

13 A. No, sir.

14 Q. You didn't?

15 A. No.

16 Q. And --

17 A. You've got to remember Shawn a was very
18 difficult person to work with. Throughout my
19 representation, he was always complaining that I wasn't a
20 real lawyer. He went to Judge Buckner and tried to get me
21 relieved. He kept saying that he had big people on the
22 outside that were going to hire him a really big-time
23 lawyer and this was all going to be taken care of.

24 At some point during the trial he leaned over at
25 the table and said to me, you know, you may not make it

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1 through this. And I asked him what he meant by that and
2 he said, well, I've got people on the outside. And at
3 that point, you can't write that on a piece of paper and
4 stick it in your shoe. You have to --

5 Q. Well, what did you do --

6 A. You have to --

7 I just -- I want to finish this, if you don't
8 mind..

9 Q. Go ahead.

10 A. You have to go back to the judge's chambers and
11 say, judge, this has occurred, I don't want it to
12 interrupt the trial, I don't feel that, you know, it's
13 bothering me that much but I do need to make you aware of
14 it. And I believe the judge broke for that afternoon and
15 when -- you know, I drove about seventy miles away to
16 home. He said, make me up an affidavit and we'll seal it
17 and put it in the file, which we did.

18 So, you know, Shawn was a difficult person to
19 work -- get him to sign something, probably not going to
20 happen.

21 Q. Safe to say you were ready to distance yourself
22 from Mr. Davis as soon as this trial was over; is that
23 correct?

24 A. No.

25 If he had asked me to do something, I would have

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1 done it. I was willing to stick through the trial with
2 him, even though he had made this veiled threat. I mean,
3 he was in a bad spot.

4 Q. Would you realize -- you said earlier he was
5 pretty elated when he got the not guilty on the murder;
6 correct?

7 A. Correct.

8 Q. I mean, do you believe he was even thinking
9 clearly at that point?

10 A. Sure.

11 We had some time to sit down at the table. The
12 judge allowed that.

13 Q. I mean, how long?

14 A. Oh, I don't know. Nine minutes, eleven minutes,
15 fourteen minutes, something like that. To just say, look,
16 you've got to concentrate, think clearly, this is what
17 we're doing, this is what's happened, this is what they
18 can do, this is what they can't do, you can appeal this.
19 You know, he just kept saying, you did good, Ralfellie,
20 You did good.

21 Q. But you didn't advise him to -- you have no
22 reason not to appeal this?

23 A. I don't know exactly what I said. But I know I
24 would have gone through that and said, you have a right to
25 this, do you want it.

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1 Q. But that's not what I'm asking you. As an
2 attorney, and a very experienced attorney -- and obviously
3 I'll disagree with my client, if he made those comments.
4 But under the scenario we're looking at where thirty years
5 is -- you know, eighty-five percent, or, you know, max it
6 out, depending on how parol is, that, you know, those type
7 -- and take the murder charge off the thing. If you've
8 got armed robbery and a guy gets thirty years at trial,
9 you might as well appeal it, let's make sure that
10 everything was done proper, to give him that chance of a
11 second trial if something was messed up. And obviously he
12 wasn't afforded that opportunity. Is that correct?

13 A. Well, no, he wasn't.

14 But you've got to be careful of that. I read a
15 lot of literature on the ethics of public defenders. And
16 I'm not a public defender myself. But I should have
17 probably brought some of them with me. One of them, the
18 best publications, is from the ABA recently. It's called
19 Ethical Questions for a Public Defender. One of the
20 things they stress in there is don't do anything that your
21 client doesn't ask you to do, don't file stuff that your
22 client doesn't ask you to file, you're also in control,
23 you don't have to argue motions that you don't think are
24 proper and so forth.

25 So I think the general ethical consideration is

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1 make him aware of his rights, make him seriously aware of
2 it, and follow what he wants to do.

3 Q. Okay. You would agree that I believe it was
4 Judge Brown didn't advise him, as well, on the record that
5 he had a right to appeal this?

6 A. If I recall, that's correct.

7 Q. Didn't advise him?

8 A. Yeah.

9 And that was -- it was Judge Brown's first
10 murder trial.

11 Q. And that could have been something that's
12 appealable, as well?

13 A. I don't -- you know, I didn't get into that.

14 MR. LAWTON: Beg the Court's indulgence.

15 [Whereupon, Mr. Lawton and Mr. Davis confer]

16 MR. LAWTON: I have no further questions.

17 THE COURT: Any questions for the witness?

18 MS. WILSON: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 CROSS-EXAMINATION

21 BY MS. WILSON:

22 Q. Mr. Ruffalo, how long have you been practicing
23 law?

24 A. I was admitted to practice in April of 1982.

25 Q. And about how much of that would was in -- how

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1 much of your career have you spent in criminal law?

2 A. Probably ninety percent of it. I was in private
3 practice, for a couple of years, doing criminal defense.
4 I was an assistant solicitor for the fourteenth circuit
5 for many years. I went back into criminal defense. I
6 became a full-time municipal judge for three years and
7 then back into criminal defense.

8 Q. And were you retained or appointed to represent
9 Mr. Davis?

10 A. I was appointed.

11 Q. And do you recall how many times you got to meet
12 with him before he went to trial?

13 A. I could look in here. But it had to be at least
14 a dozen or fourteen, at least, I'm sure.

15 Q. And did you file Brady or Rule 5 motions on his
16 behalf?

17 A. Yes.

18 Q. And did you review the discovery, that you
19 received, with him?

20 A. Yes, ma'am.

21 Q. And did you discuss the elements of the charges
22 he was facing and what the State had to prove?

23 A. Yes, ma'am.

24 Q. Did you discuss his versions of the facts?

25 A. Oh, yes.

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1 Q. And did he make a statement or give any
2 confession in his case?

3 A. Yes.

4 Q. And could you kind of go over the substance of
5 that confession? Do you recall?

6 A. Well, and I have not played that DVD again, and
7 I'm sorry I have not, in preparation for this.

8 But I believe all of them sat down with a SLED
9 agent. And one of the remarkable things I remember about
10 it is how cautious the SLED agent was in constantly
11 reminding them about their right to a lawyer and giving
12 them the forms to sign. And they all discussed it freely
13 and openly.

14 Q. Did you discuss any possible defenses with him?

15 A. Yes, ma'am. As a matter of course, I would
16 have. I mean, I don't --

17 Q. Do you recall what defenses you could have --
18 you talked to him about presenting on his behalf at trial?

19 A. Well, certainly competency was not an issue.
20 But, you know, it's kind of an odd thing. It's murder and
21 armed robbery where he was not the shooter but you're in
22 front of a jury and you're charged with murder and armed
23 robbery. I think your job, in many ways, is to direct
24 their anger away from the murder and say if you're going
25 to do anything, you know, this may be the charge which you

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1 can find some clarity on.

2 I remember using in my closing a book and a
3 stone, asking them, you know, not to throw stones at him,
4 of course, and stone him to death for something he really
5 didn't want to do; but if you're going to throw the book
6 at him, you know, throw the book at him for this.

7 Q. Did the applicant give you any potential leads
8 or witnesses to investigate?

9 A. Not really.

10 Q. And what kind of investigation did you do in
11 this case?

12 A. You know, I read all the material. I studied
13 all the Rule 5 stuff. You know, I drove up to the scene
14 of the crime twice and wandered around there. I talked as
15 much as I could with other counsel, which is always
16 somewhat problematic. You have to be careful of that.
17 You know, spoke to the police officers. Conversations
18 with the solicitors. That's about as much as you can do.

19 Q. Did you have enough time to prepare for trial?

20 A. Oh, yes.

21 Q. Mr. Lawton kind of gave you a line of
22 questioning about Mr. Davis' competency. Did you think he
23 was able to assist in his defense?

24 A. Oh, yes.

25 Q. And you never had a thought that maybe you

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1 needed to have him evaluated?

2 A. None whatsoever. And I -- as I said, my
3 practice -- I work with a lot of young people and
4 addiction problems and psychiatric commitments and done a
5 lot of GBMIs and so forth. So I'm -- you know, I want to
6 say I'm not a -- I'm not pretending to be a health-care
7 professional. But you run across a lot of base
8 information. And there's about four or five indicators
9 that you look for: you know, drifting tangential
10 thinking, and ability to compute and understand current
11 events, and all that sort of stuff.

12 Q. And did you see any of those indicators in
13 Mr. Davis?

14 A. No, ma'am.

15 Q. Are you aware of the elements of armed robbery?

16 A. Yes.

17 Q. Okay. And did you think that the evidence the
18 State presented at trial was sufficient to meet the
19 elements of armed robbery?

20 A. Oh, yes. I'm sorry to say.

21 Q. You said you talked to Mr. Davis about his right
22 to appeal; is that correct?

23 A. Oh, yes.

24 Q. And, ultimately, it's your client or defendants'
25 choice whether or not they choose to appeal; is that

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1 correct?

2 A. That is correct.

3 Q. And Mr. Davis told you he didn't want to file an
4 appeal?

5 A. He said he did not want to file anything, that
6 he was very happy. He thanked me very, very much. He
7 kept repeating that phrase, you did good, Ralfellie. And
8 he was happy. I -- you know.

9 You have to be cautious about doing things that
10 your client doesn't ask you to do. There's a fine line
11 between making your decision process sort of overriding
12 theirs. You have to be somewhat cautious. It's an
13 ethical line that you have to be careful crossing.

14 Q. Did you think that there were any issues during
15 this trial that might have been meritorious for appeal?

16 A. Well, the only issue that would have been would
17 have been joinder, and that, of course, was solved by the
18 -- you know, the situation there with the not guilty. I
19 don't think joinder was an issue, certainly an appealable
20 issue, if --

21 Q. And did you consider requesting a lesser-
22 included offense jury instruction?

23 A. I didn't think it was an honest motion I could
24 make.

25 MS. WILSON: Thank you.

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1 THE WITNESS: Thank you.

2 THE COURT: Any redirect?

3 MR. LAWTON: No, Your Honor.

4 THE COURT: Thank you, Mr. Ruffalo.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: If you would stay with us, in the
7 event that the State needs to re-call you.

8 [Whereupon, Mr. Ruffalo is excused and exits the
9 witness stand]

10 THE COURT: You may call your next witness.

11 MR. LAWTON: The applicant calls Mr. Davis.

12 THE COURT: Sir, if you would stay at counsel
13 table and raise your right hand to be sworn.

14 Remain at counsel table. Raise your right hand.

15 [Whereupon, Mr. Davis is duly sworn by the Court
16 as follows: do you swear or affirm the testimony you
17 give will be the truth]

18 THE WITNESS: Yes, ma'am.

19 THE COURT: If you would have a seat for me,
20 please, and state your full name for the record.

21 THE WITNESS: Shawn Don [phonetic] Davis.

22 THE COURT: You may proceed.

23 MR. LAWTON: One moment, Your Honor.

24 [Off the record momentarily]

25 THE COURT: You may continue.

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1 MR. LAWTON: Good morning, Mr. Davis.

2 THE WITNESS: Good morning.

3 - - - - -

4 SHAWN DAVIS,

5 Having Been First Duly Sworn,

6 was Examined and Testified as Follows:

7 DIRECT EXAMINATION

8 BY MR. LAWTON:

9 Q. How old are you?

10 A. Twenty-eight.

11 [Off the record momentarily]

12 MR. LAWTON: We'll start -- I'll start over,
13 Your Honor.

14 THE COURT: Go ahead.

15 Q. [Mr. Lawton] How old are you, sir?

16 A. Twenty-eight.

17 Q. And where were you born?

18 A. Washington, D.C.

19 Q. Okay. And when did you move down to South
20 Carolina?

21 A. After my mom deceased.

22 Q. And what happened to your mom?

23 A. My mom got chopped up in body parts. I never
24 seen her a day in my life.

25 Q. So how old were you when you moved down here?

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1 A. About five weeks old.

2 Q. And what area of South Carolina did you move to?

3 A. Hampton County. Estill.

4 Q. Okay. And tell us about your educational
5 background.

6 A. Well, once I grown up and realized what was
7 going on, what happened to my mom, that took an effect on
8 me and then I haven't been right ever since. I mean, some
9 stuff I can remember, some stuff I can't. Had a total
10 effect on me.

11 Like I've been telling Ruffalo during my trial,
12 give me an evaluation. Because anytime you have a murder
13 charge, you supposed to have an evaluation. And he ain't
14 did none of that. He didn't check my history or nothing.

15 Q. Okay. Well, how far did you get in school?

16 A. I went to twelfth grade.

17 Q. Okay. And were you in any special-ed courses?

18 A. Yes. Back and forth.

19 Q. Well, did you graduate?

20 A. No, sir.

21 Q. You didn't graduate?

22 A. No, sir.

23 Q. Did you get a GED?

24 A. No. I got kicked out.

25 Q. Got kicked out.

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1 Okay. And as far as after the trial was over,
2 tell us what happened. Was there any talk about an
3 appeal?

4 A. No, sir, it was not.

5 Once the judge sentenced me to thirty years, he
6 asked me if I have anything to say. I say, no, sir. And
7 the officer was walking us back out and Mr. Ruffalo was
8 telling me -- he was patting me on my shoulder and tell me
9 to take care. So I asked him about the appeal. He walk
10 away. And I walk in the back. Once I got to prison, it
11 was about a few months later I write a letter to the clerk
12 of court, to Ms. D. Nettles, and see if I have any
13 paperwork there on my direct appeal. And it wasn't. She
14 said I didn't have no paperwork at all about an appeal or
15 anything. So, therefore, Ruffalo didn't put in for my
16 appeal.

17 Anytime you go to trial, you supposed to have a
18 direct appeal. I don't care who say who don't want none,
19 you supposed to sign a waivey [phonetic]. I ain't never
20 signed a waivey or nothing.

21 MR. LAWTON: No further questions at this time,
22 Your Honor.

23 THE COURT: Any questions for the witness?

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Davis, so is it your testimony -- it's your testimony today that you spoke to Mr. Ruffalo about an appeal?

A. Yes, ma'am.

Q. So you did spoke to --

A. Yes, ma'am.

Q. -- you spoke to him about it?

A. [Indicates affirmatively]

Q. And when did you speak to him?

A. After the trial when we was walking out, he came by me right by the probation officer and he pats me on my shoulder and tell me, have a nice day. And I tell him I would like to have my direct appeal. And he said he was going to put it in -- put in for it. And that's when I walk out.

When he said on the stand me and him sat down to the table for minutes, we never did sat down to no table and neither went to the back. I walked straight out of the courtroom, me and my codefendant, by L.T. Mosen. And the SLED agent was walking my co-d out and we went straight in the holding cell and back to the county. We did not set to no table and discuss nothing.

Q. Did he ever -- so you talked to him about an

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1 appeal. So when you spoke to him, did he tell you you had
2 a right to appeal?

3 A. No. He said he going to put it in for me.

4 MS. WILSON: Okay. Thank you.

5 THE WITNESS: You're welcome.

6 THE COURT: Any redirect for the witness?

7 MR. LAWTON: Nothing, Your Honor.

8 THE COURT: Any further witnesses?

9 MR. LAWTON: No, Your Honor.

10 THE COURT: Anything from the state?

11 MS. WILSON: Yes, Your Honor.

12 The State would like to briefly re-call Mr.
13 Dudley Ruffalo.

14 THE COURT: Sir, if you would come back to the
15 stand. I'll remind you that you're still under oath.

16 THE WITNESS: Yes, ma'am.

17 [Whereupon, Mr. Ruffalo retakes the witness
18 stand]

19 THE COURT: State your name for the record.

20 THE WITNESS: Yes, ma'am. Dudley Bradstreet
21 Taft Ruffalo. R-U-F-F-A-L-O.

22

23

24

25

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1 DUDLEY B. RUFFALO,
2 Having Been Previously Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILSON:

6 Q. Mr. Ruffalo, are you aware of the defendant's
7 background?

8 A. Yes, to some degree.

9 Q. And did anything in his background alarm you to
10 make you think that he had any competency issues?

11 A. No.

12 I mean, I always take a life history of folks
13 when I first meet them. And, you know, I knew that his
14 mother was a victim of a murder and he had some different
15 issues going on there.

16 And of course you acquire his school records, as
17 much as you can get. Well, a lot of those sometimes are
18 not available. But we did get a packet of his school
19 records and when you look through them, they're primarily
20 behavioral problems not, you know, emotional or
21 psychiatric disturbances.

22 Q. And did he ever indicate while you represented
23 him, or at trial, that he wanted to be evaluated?

24 A. No, ma'am.

25 Q. And when you spoke to him about his appeal,

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1 did you have a substantive conversation with him about it
2 or --

3 A. Yes.

4 Q. -- was it just in passing, as he indicated?

5 A. Well, I try to make sure that they calm down and
6 I say, look at me, okay, this is important.

7 Q. So it was a substantive discussion?

8 A. Yes, ma'am.

9 MS. WILSON: Thank you.

10 THE COURT: Any questions for the witness?

11 MR. LAWTON: Briefly, Your Honor.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. LAWTON:

15 Q. You understand that he's not an attorney;
16 correct?

17 A. Correct.

18 Q. And you've got a lot more education than he
19 does; correct?

20 A. Correct.

21 Q. And as you say, that you sat down and talked to
22 him about an appeal process; correct?

23 A. Correct.

24 Q. Did you --

25 A. Not the process. I'm so sorry. Not the

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1 process, but briefly described that he had the right to
2 that and what -- you know, just really briefly what it is.

3 Q. But you didn't get into the legal issues of
4 double jeopardy and why he had no reason not to appeal
5 this?

6 A. No.

7 I told him that they could never bring the
8 murder charge again.

9 Q. But did you advise him whether he should appeal
10 this?

11 A. I advised him he has a right to it and basically
12 what would happen. I don't do appeals myself. And, of
13 course, it would have been turned over to the appellate
14 division. But I, you know, of course gave him the basics.

15 Q. Back to my question. Did you advise him whether
16 or not he should appeal this?

17 A. I did not advise him as to what my opinion was.

18 Q. But you're his attorney; correct?

19 A. Yes.

20 Q. You're supposed to be advising him, because you
21 have a lot more knowledge when it comes to this area, and
22 you're telling the judge that you did not advise him
23 whether or not he should appeal it?

24 A. My opinion was is the trial went pretty well and
25 it would have been a useless exercise.

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1 MR. LAWTON: Okay. Thank you, Your Honor.
2 THE COURT: You're welcome.
3 Any redirect?
4 MS. WILSON: Nothing from the State, Your Honor.
5 THE COURT: Sir, you may step down.
6 THE WITNESS: Thank you.
7 THE COURT: You're welcome.
8 Anything further from the State?
9 MS. WILSON: Nothing further from the State.
10 THE COURT: Any rebuttal testimony?
11 MR. LAWTON: No, Your Honor.
12 THE COURT: Anything further from the applicant?
13 MR. LAWTON: Are we going to do any closings?
14 Or how do you want to do that?
15 THE COURT: If you would like, you can.
16 MR. LAWTON: I would like about a two-minute
17 recess, Your Honor.
18 THE COURT: For what purpose?
19 MR. LAWTON: I just drove an hour.
20 [Off the record momentarily]
21 THE COURT: We can do that.
22 MR. LAWTON: All right. Thank you.
23 [Whereupon, a recess is taken from 10:16 a.m to
24 10:18 a.m.]
25 - - -

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CLOSING ARGUMENT

THE COURT: Are we ready?

MR. LAWTON: Yes, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. LAWTON: Judge -- and, obviously, the transcript is an exhibit, it's already in, and, you know, if you want to take time just to --

THE COURT: I read before court. I've already read the transcript.

MR. LAWTON: You've already read it.

THE COURT: Uh-huh.

MR. LAWTON: And you know as well as I do, or more so, that the defense's complete theory was that, you know, obviously, we know about hand of one, hand of all. It allows a person who doesn't have the gun to be just as culpable as the person who has the gun. And, you know, if it's one person and there's no gun, there's no armed robbery. Obviously, you know, there was a person there that had a gun and so we've got murder on the table and we've got armed robbery on the table here. And they -- during their closing, the defenses were pushing heavily that as far as hand of one, hand of all, there's got to be an agreement. And through all those confessions and all the evidence,

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1 nobody ever contemplated, hey, we may go in there and
2 kill this guy. It wasn't discussed in any of the
3 confessions. And that's what most of their
4 confessions were, that, you know, we're going to go in
5 there and take money, we need money. And, you know,
6 during their arguments that's what they presented to
7 the jury that, hey, you cannot find our clients --
8 specifically my client, Shawn Davis, guilty because
9 nobody made an agreement to go in there and murder
10 this guy.

11 And under this situation, of course, they were
12 going in there to rob the person. And obviously it's
13 my position that I was an attempted armed robbery. I
14 was uncompleted, based on a hand of one, hand of all
15 theory. That they went in there. They agreed upon,
16 that we're going to get money. You know, they went
17 through his pocket. He didn't have anything, didn't
18 have a wallet. They picked up the cash register,
19 threw it down, tried everything in their might to get
20 money and they were unsuccessful. And based on the
21 confessions, it said that my client did take some
22 cigarettes going out of the store. And, you know, I
23 think, looking at the probability of what may happen
24 with the jury, they bought that argument, you know,
25 dealing with the murder. Why did they not give the

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1 jury the opportunity to buy the argument with
2 attempted armed robbery, that nobody agreed to go in
3 there and take cigarettes? That was on my own guy's
4 own volition, that he did it on his own and that, you
5 know, they should have --

6 As far as the prejudice, Your Honor, is this:
7 you know, we're looking at a substantial difference, a
8 ten-year difference, that was left on the table. You
9 know, a lot of times -- you see it all the time in
10 PCRs and appeals. You know, the defense attorney
11 doesn't request, you know, to allow the jury an option
12 of a lesser included such as attempted armed robbery.

13 And as far as the appeal, Your Honor, as you
14 heard from Mr. Ruffalo -- and he's the attorney in
15 this situation. Obviously, he's got a lot of
16 experience. You know, you've heard briefly from
17 Mr. Davis. You know, special-ed classes, what-have-
18 you. He's got to advise him on this process. And as
19 you know, murder is now and forever off the table.
20 The only thing he is facing, if this thing were to be
21 retried, is an armed robbery. And, like you said, You
22 never -- you know this, Judge: you never know what a
23 jury is going to do. You know, if he was doing the
24 reasonable thing, he should have advised him -- if
25 this conversation happened -- obviously, he's denying

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1 that it didn't get very far -- to advise him, hey, you
2 need to appeal this; you never know what's going to
3 happen with these joinder issues and those type
4 things; to give yourself an opportunity at a second
5 trial. And I think that -- you know, that's -- there
6 are smart appellate attorneys out there to be able to
7 read the transcript, pick up something I didn't pick
8 up, and give him an opportunity to make sure that the
9 judge made all the proper rulings and, you know, give
10 him the opportunity.

11 As far as a McNaughton -- or any competency
12 issues, Judge, I just -- I think out of an abundance
13 of caution -- you know, you heard the defendant not
14 even calling his attorney by the right name the whole
15 time. You know, I don't think it would hurt to get an
16 SCDC doctor to take a look at him, just make sure
17 everything is there. You know, it wasn't done the
18 first time. Normally, you should do that on the front
19 end. He's brought this up, you know, not aware of
20 these type issues, and I think that he should be
21 afforded the opportunity to get evaluated and make
22 sure that, you know, he knew what was going on when he
23 was giving his confessions and at the time of this
24 alleged crime.

25 Thank you, Judge.

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1 THE COURT: You're welcome.

2 Anything from the State?

3 MS. WILSON: Briefly, Your Honor.

4 - - - - -

5 CLOSING ARGUMENT

6 MS. WILSON: May it please the Court.

7 THE COURT: Yes, ma'am.

8 MS. WILSON: It's the State's position that
9 Mr. Davis has failed to carry his burden of proving
10 that counsel was ineffective and that prejudice
11 resulted from counsel's performance.

12 With regard to Mr. Davis' -- the issue of Mr.
13 Davis' competency: Mr. Davis has failed to present
14 any evidence that, if evaluated, Mr. Davis would have
15 been found incompetent his day in trial. Also, Your
16 Honor, case law says we can rely on counsel's
17 perception to determine if his client is competent or
18 needs to be evaluated and we have testimony from Mr.
19 Ruffalo that he didn't have any indication in his
20 experience as an attorney and with, you know,
21 psychiatric issues in his law practice, he didn't have
22 any indication that Mr. Davis was not competent, and
23 that he could assist with him -- he could assist with
24 his defense at trial.

25 With regard to the allegation about counsel

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1 failing to file an appeal, Mr. Ruffalo provided
2 credible testimony that he not only advised Mr. Davis
3 of his right to appeal but was told by Mr. Davis that
4 he didn't want to appeal. And we all know that it's
5 the defendant's choice about whether he wants to
6 pursue an appeal, not his attorney.

7 Also, Mr. Ruffalo provided testimony that
8 Mr. Davis was aware that murder was off the table and
9 that they would be challenging the armed robbery
10 conviction.

11 Lastly, Your Honor, Mr. Davis -- with regard to
12 whether or not counsel should have requested a lesser
13 included defense: he failed to show that an
14 instruction was warranted by the evidence. And the
15 evidence show that -- shows that Mr. Davis took some
16 cigarettes, which would have been him committing the
17 robbery and completing it.

18 Also, Mr. Ruffalo gave credible testimony that
19 he felt the request would not be an honest request to
20 the Court, based on the evidence.

21 And the State would just request that you deny
22 and dismiss his post conviction relief application
23 with prejudice.

24 [Whereupon, the Court reviews documents]

25 THE COURT: I've reviewed the trial record in

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1 this matter and I have now had the ability to consider
2 the testimony of Mr. Ruffalo and the applicant
3 regarding the allegations raised in the application
4 for post conviction relief.

5 This Court finds that the applicant has failed
6 to meet his burden of proof. I'll take the issues as
7 they were raised. The Court finds Mr. Ruffalo's
8 testimony to be credible on the issues raised and
9 gives great weight to that testimony. He has an
10 inordinate amount of criminal experience. And, again,
11 taking the issues in the order that they raised. And
12 I may take them out of order. I apologize if I do.

13 Dealing with the appeal: Mr. Ruffalo has no
14 duty to force a client to file an appeal. His only
15 obligation is to advise him of his right to file an
16 appeal and then follow the instructions of his client.
17 He does not have the obligation to force his will upon
18 a client. I find his testimony credible that he
19 advised Mr. Davis of his right to appeal, that he
20 likewise advised him before and during the trial
21 regarding the issues of double jeopardy. And I also
22 find credible that he did not, meaning Mr. Davis, ask
23 him to file an appeal. As it regards -- and, again, I
24 reinforce for the record he has no duty, ethically or
25 otherwise, in case law, to require a defendant to file

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1 an appeal or to impose, again, his will about it on a
2 client. He's only required to advise him of his
3 right.

4 And along with that, the Court has absolutely no
5 obligation to advise a litigant of their right to
6 appeal. That is not within the ambient of the Court's
7 responsibility. In some aspects, it could even be
8 inferred as an act of advocacy. It is not the Court's
9 responsibility, and it is certainly not an appealable
10 issue on any front. And so the trial court certainly
11 had no obligation to advise Mr. Davis of his right to
12 appeal the case.

13 The Court also finds that there were no
14 competency issues that needed to be explored.
15 Certainly, I have had the opportunity to observe
16 Mr. Davis. I do not think -- and, really, it is
17 not -- the issue is not where he is now. The issue is
18 where he would have been at the time of trial. He
19 could have, in the intervening years, developed some
20 issues but that certainly would have no bearing on,
21 one, his ability to understand the proceedings, or
22 assist in his representation. I find credible
23 Mr. Ruffalo's testimony that he did not have any
24 concerns about Mr. Davis' ability to understand the
25 proceedings and to assist in his representation. It

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1 is clear to me from his testimony here today that he
2 clearly understands the proceedings and that he did
3 and was an active part in his representation and
4 advocacy at the time of trial. It is not uncommon for
5 criminal defendants to have low or functional IQs.
6 But Mr. Ruffalo -- and that does not mean they don't
7 understand the proceedings and certainly would not
8 meet a Blair or a McNaughton standard of incompetence
9 or bearing on his competency. Mr. Ruffalo is very
10 clear in his testimony that he had the applicant's
11 history from school and it did not indicate any of
12 those type issues, that it was more along the lines of
13 disciplinary issues, not emotional or psychological
14 issues. And so to that extent, he made an appropriate
15 evaluation or investigation of his client's background
16 regarding any competency issues. But based on what
17 I've observed today, there would have been absolutely
18 no basis to have ordered him to be evaluated.

19 As it regards any request for a lesser included
20 offense, it certainly, and I've read the record, was
21 not warranted by the evidence in this case. He could
22 have requested it. The Court may well have even
23 instructed it. But it is unlikely, based on these
24 facts, that he ever would have been found guilty of a
25 lesser included offense.

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1 Under the facts as they were presented in this
2 case, either he committed the armed robbery or he
3 didn't. The wrinkle in this case is the accomplice
4 liability, that being the hand of one is the hand of
5 all. He didn't have to have the gun. He didn't have
6 to form an intent to kill someone. Really, under the
7 theory, he could have been found guilty of murder.
8 It's just that probably -- and I don't know how it all
9 played out, because when you read a cold record it's
10 very different than being there in person.

11 But apparently the jury gave him the benefit of
12 the doubt because under the accomplice liability, even
13 if they didn't agree to kill somebody, he's
14 responsible for every act that could have been
15 anticipated once that plan was put into action. So,
16 really, under the facts of this case, he could well
17 have been found guilty of murder and it would have
18 been supported by the facts as they were presented in
19 this record. And so it is believable to me -- and I'm
20 certain Mr. Ruffalo advised him of that -- that he
21 told him you did good because he dodged a bullet,
22 quite frankly, on being found not guilty of the murder
23 and the jury gave him all benefit of the doubt. Which
24 they should do if they have any doubts regarding
25 whether he, in fact, had formed this intention to have

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1 committed a murder. And it appears from the record
2 that they gave him the benefit of basically somebody
3 going off on a tangent apart and separate from the
4 plan. But they don't --

5 When you form an intent to act in concert to
6 commit a robbery, you don't have to agree on what you
7 plan to steal. The point is you plan to go and steal.
8 So whatever was taken, that was the plan. And
9 according to this record, they had an intention and a
10 plan to go and rob this particular person. The
11 elements of armed robbery do not require that any
12 particular thing be taken. The only requirement is
13 that you take something that belongs to someone else,
14 that you carry it away with the intention to
15 permanently deprive the owner of that property, and to
16 keep it for your own use. It has to be done with
17 violence or by putting the owner of the property in
18 fear of violence. And that certainly was accomplished
19 in this case, under the theory of accomplice
20 liability, because of him acting in concert with these
21 other individuals to commit a robbery, and that person
22 had a gun.

23 And so, unfortunately -- or I don't know, I
24 guess -- and his -- from his perspective, and from a
25 layperson's perspective very often, in his mind, I

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1 only took a pack of cigarettes. But under the
2 elements of the case law, he took someone else's
3 personal property with the intention to deprive it,
4 with violence or fear of violence, that being the hand
5 of one theory.

6 Now, under a different set of circumstances, if
7 a gun were not involved, a lesser included offense may
8 well have been appropriate. But under the facts of
9 this case, it is doubtful to me that a trial judge
10 would have instructed it because it's just simply not
11 supported by the facts.

12 Mr. Ruffalo was between the proverbial rock and
13 hard place. Either his client did it or he didn't do
14 it. There is no gray area with this. You can't argue
15 under accomplice liability that my client only took a
16 pack of cigarettes and he didn't have the gun, because
17 that is -- the hand of one theory consumes all of
18 that.

19 So under a different set of facts, he might well
20 have been entitled to a lesser included offense. But
21 under the facts of this case, it simply should not
22 have been supported. And he must not -- he must show
23 not only that he failed to do it, but that he suffered
24 some prejudice from it. And under the facts of this
25 case, it's just hard -- I'm hard-pressed to see how he

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1 would have been entitled to that instruction or if it
2 would have even made any appreciable difference
3 because of the factual posture of this case. Because
4 either the jury is going to believe he did it or he
5 didn't do it. There's no gray area under accomplice
6 liability regarding the facts of this case.

7 So under -- and under the facts, and based on
8 his confession to the police, he took the cigarettes,
9 which means he committed the robbery and he completed
10 it, coupled with the accomplice liability of the other
11 person with the gun. That's the fear of violence with
12 the taking. So there is no support in the record for
13 an instruction on a lesser included offense.

14 And even -- and I've reviewed the record and I'm
15 hard-pressed to glean -- I tend to agree with Mr.
16 Ruffalo that an appeal of this, a direct appeal of
17 this, would have been an exercise in futility. I
18 think appellate counsel simply would have done an
19 Anders brief and it would have been dismissed.

20 And even if he got a retrial, it still would not
21 eliminate the accomplice liability theory aspect of
22 this case. It would have been retried the same way
23 and he still would have been right back at square one.
24 He wouldn't have been tried without his accomplices.
25 They still would have been able to bring in that

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1 evidence on accomplice liability. And you never know,
2 at this point they may well have come and testified
3 against him, or the person would have come and
4 testified against him, because they didn't have
5 anything to lose. They're at the department of
6 corrections. So you never know how that may have
7 played out. It may have well have worked against him.
8 I don't know. I'm not clairvoyant. I can't look into
9 the future. But it would not have changed the theory
10 of this case.

11 He wouldn't have been tried on an armed robbery
12 without the accomplice liability just because he was
13 getting a retrial. That would not change the State's
14 posture or theory on the case. They still would have
15 been able to try it exactly the way they tried it the
16 first time. The only difference is you wouldn't --
17 they may well have been able to exclude the fact that
18 the victim in this case died, but that's the only
19 factual circumstance or nuance that may have been
20 excluded. But I don't' think that would have
21 factually changed the posture of this case.

22 Based on those observations and findings of fact
23 and conclusions of law, the application for post
24 conviction relief is denied.

25 The State's attorney will provide the Court with

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1 a proposed order within fifteen days of today. She'll
2 provide that to applicant's counsel.

3 And if you have any changes or modifications
4 that you wish to request, please make Ms. Wilson aware
5 of those so that y'all can work those out before it's
6 submitted to me. I don't sign orders just as they are
7 sent to me. I'm going to make a bunch of changes to
8 it anyway. So if you have any changes you want her to
9 consider or to include -- not consider, include prior
10 to it being finalized, please make her aware of that.
11 She may well agree to some of which you are requesting
12 and y'all can get that worked out before it gets to
13 me.

14 MR. LAWTON: Your Honor, for the record, I'll
15 just put my objection on the record on those three
16 issues: the appeal, competency issue and --

17 THE COURT: I don't think you can make any
18 exceptions after the Court has ruled. You've made
19 your argument, I've considered it, and the Court has
20 ruled.

21 MR. LAWTON: Okay.

22 THE COURT: Thank you.

23 [HEARING CONCLUDES AT 10:37 P.M.]
24
25

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C E R T I F I C A T E

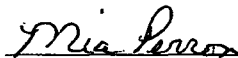
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Deadra L. Jefferson, on Wednesday, August 28, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 7th day of February, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

FILED

2013 NOV 14 AM 10:59

IN THE COURT OF COMMON PLEAS

WYLLING D. H. FILES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2011-CP-25-0320

Shawn Davis, #342092,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Winston A. Lawton, III, Esquire
Ashleigh R. Wilson, Esquire
Dudley B. Ruffalo, Esquire
August 28, 2013
Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 8, 2011. The Respondent made its return on December 14, 2012. The Applicant amended his application on March 26, 2013. An evidentiary hearing on the matter was convened on August 28, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Winston A. Lawton, III, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the trial transcript, the Hampton County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's original and amended applications, and the Respondent's return.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Hampton County Clerk of Court. The Applicant was indicted at the December 2008 term of the Hampton County Grand Jury for one (1) count of Armed Robbery¹ (2008-GS-25-0587) and one (1) count of Murder² (2008-GS-25-0585). He was represented by Dudley B. Ruffalo, Esquire.

The Applicant proceeded to trial and was found guilty of Armed Robbery and not guilty of Murder. On August 4, 2010, the Applicant was sentenced by the Honorable D. Craig Brown to thirty (30) years for Armed Robbery. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his original application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Allowed improper evidence to be introduced into the record and failed to object"
 - b. "Trial counsel's failure to file direct appeal, notice of intent to appeal"
2. Prosecutorial misconduct.
 - a. "Prosecutors presented false evidence to the jury, counsel failed to object"

The Applicant amended his application on March 26, 2013 to allege he is being held in custody unlawfully for the following reason:

1. Trial counsel should have requested the Court charge the jury on the lesser-included offenses of Armed Robbery, which are Attempted Armed Robbery and Larceny.

¹ An offender who commits Armed Robbery is guilty of a most serious, violent felony and, "upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. CODE ANN. § 16-11-330(A) (1996).

² A defendant who is convicted of Murder is guilty of a most serious, violent felony and "must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life" without possibility of parole. S.C. CODE ANN. § 16-3-20(A) (2010).

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At the hearing, the Applicant abandoned all grounds for relief except ineffective assistance of counsel for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to request that the Applicant be evaluated for mental competency.
 - b. Counsel failed to file an appeal for the Applicant.
 - c. Counsel failed to request the jury be charged on the lesser included offenses of attempted armed robbery and larceny.

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 conclusion of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

Dudley B. Ruffalo, Esquire, testified that he represented the Applicant for the year leading up to his trial. Counsel testified he has been practicing law since 1982 and has spent the majority of his career practicing criminal law. Counsel testified he was appointed to represent the Applicant and met with him twelve (12) to fourteen (14) times prior to trial. He testified he filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the discovery material with the Applicant. Counsel testified he discussed the elements of the charges, his constitutional rights, range of penalty, and what the State was required to prove with the Applicant. He testified they also discussed the Applicant's version of the facts.

Counsel testified he also discussed with the Applicant possible defenses. Counsel testified their strategy was to direct the jury's attention away from the murder by arguing the

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Applicant was not the shooter, that the Applicant never agreed to murder the victim, and that the Applicant "had no clue anyone would be killed." Counsel testified the Applicant gave him no witnesses or leads to investigate prior to trial. He testified his investigation of the case involved reviewing all discovery materials, viewing the scene twice, speaking with the co-defendants' attorneys, and speaking with the police officers and solicitors. Counsel testified he had ample time to prepare for trial.

Counsel testified prior to trial, the State offered the Applicant a plea to thirty (30) years for Armed Robbery and a dismissal of the Murder charge. Counsel testified he met with the Applicant frequently—at least twelve (12) to fourteen (14) times—and had no concerns about the Applicant's competency prior to trial. Counsel testified he has extensive experience with psychiatrists and has handled many cases involving guilty, but mentally ill clients. Counsel testified he looks for several factors when evaluating whether his clients have competency issues, including his client's life history, ability to communicate and understand, memory loss, and functioning computation skills. He further testified that the Applicant did not exhibit any of the "indicators" that would have triggered in his mind the need for a competency evaluation. He testified the Applicant never indicated he wanted to be evaluated. He testified he obtained the Applicant's school records, which indicated mostly behavioral problems and no psychological, psychiatric, or emotional issues. Counsel also testified that he was aware of the Applicant's family background and that, based on his experience, the Applicant did not need to be evaluated for competency. Counsel testified he had no concerns regarding the Applicant's competency or his ability to assist in his representation. He further testified that the Applicant was capable and did assist in his defense.

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Counsel testified the Applicant was not the gunman, but confessed to his involvement in the crime. He testified this was clearly a "hand of one" case dealing with accomplice liability. He testified the State's evidence clearly established that there was an agreement between the Applicant and his co-defendants prior to and upon entering the premises to steal drugs and or money from the victim. He further testified the evidence reflected that this agreement was not limited to stealing cash from the register. He testified the Applicant's working defense theory was that the co-defendants elected one person to hold the victim at gunpoint while the others robbed the store and the co-defendants were surprised when the victim was shot. He testified the Applicant admitted going into the victim's pockets and stealing a pack of Newport cigarettes after he was shot, but that the State's theory was that all co-defendants entered the store to rob someone by the threat of death. Counsel testified that, although he felt that the target offense of Armed Robbery had been committed, thus precluding a charge on the lesser included offense of Attempted Armed Robbery, the defense's position was to direct the jury's attention away from the murder and argue that the Applicant had no idea the murder would take place. Counsel testified the State's evidence clearly met the elements of Armed Robbery. He further testified he had no "honest" factual basis in the record upon which to base any request for a lesser-included charge of Attempted Armed Robbery.

Counsel testified that he spoke with the Applicant about his right to appeal immediately after trial. He further testified that when the Applicant was acquitted of Murder, he was elated. Counsel testified the Applicant congratulated him on a job well done and told him he did not want to file an appeal. Counsel testified that he asked the Applicant if he wanted to file an appeal and his response was "No, you did good Ruffalo. You did good." Counsel testified he had lengthy talks with the Applicant about the possibility of being acquitted of the Murder charge.

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He testified he explained to the Applicant that if he was successful on the Murder charge, double jeopardy would have barred him from being tried again for Murder. Counsel testified that, because he told the Applicant that he had to tell him if he wanted an appeal immediately after the verdict, it was not practical to write a follow up letter about an appeal. Counsel testified he never received any letters from the Applicant indicating he wanted an appeal after trial. Counsel further testified the Applicant was thinking clearly after the verdict and that, during the approximately nine (9) to fourteen (14) minutes they conversed after the verdict was read, he made the Applicant seriously aware of his right to appeal. Counsel testified that, had the Applicant requested an appeal, he would have filed one on his behalf but that the only issue that could have been addressed on appeal was the joinder issue. Counsel also testified that he thought the Applicant's trial went well and that an appeal would have been a "useless exercise." He further testified that even though the Applicant was a difficult client at times accusing him of not being a "real" lawyer and making veiled threats regarding his safety, he did not take any of it seriously and would still have filed the appeal had the Applicant requested it. He further testified that he keeps abreast of the ethics materials for public defenders and would not exceed the scope of a client's request regarding the filing of an appeal.

The Applicant also testified. He testified he was twenty-eight (28) years old and was born in Washington, DC and at the age of five (5) weeks moved to South Carolina after his mother's death. The Applicant testified he never met his mother because her body was chopped up. He testified he moved to Estill, South Carolina and experienced emotional problems after his mother's death. He testified he told counsel he wanted to be evaluated. He testified he went to the 12th grade, but got kicked out of school and did not graduate or get his GED. The Applicant testified he asked his attorney to file an appeal, but did not speak with counsel about an appeal.

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He further testified that he was not aware an appeal had not been filed until informed by the Clerk of Court's office.

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 by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the

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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 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges, and what the State was required to prove, the range of penalty, the Applicant's constitutional rights, the 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 counsel's testimony credible and the Applicant's testimony not credible. This Court finds that the 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, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of

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reasonableness.

This Court finds trial counsel was not ineffective for failing to have the Applicant evaluated for competency prior to trial. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975). See State v. Finklea, 308 S.C. 379, 382, 697 S.E.2d 543, 546 (2010). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). When deciding whether a client is competent to stand trial, counsel may reasonably rely on his own perceptions. Id.

This Court finds the Applicant has failed to carry his burden of proving that there is a reasonable probability that he would have been found incompetent at the time of his trial had he been evaluated. This Court also finds persuasive counsel's testimony that his interactions with the Applicant did not warrant concern as to the Applicant's competency. This Court further finds the Applicant's competency at the time of trial did not warrant further investigation as the record is clear that the Applicant understood his trial proceeding and was able to actively assist counsel during his representation. This Court also finds counsel adequately investigated the Applicant's family and educational background. None of the background information provided by the Applicant is sufficient to warrant a concern regarding his competency to stand trial. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel should have had the Applicant evaluated for competency prior to trial.

This Court finds that counsel was not ineffective for failing to file a notice of appeal of the Applicant's guilty verdict. The United States Supreme Court has rejected a "bright-line rule

that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Court instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. This Court finds the Applicant was advised by Counsel of his right to appeal and indicated to Counsel that he did not want to pursue an appeal. This Court finds credible Counsel’s testimony that he discussed the right to appeal extensively with the Applicant. This Court also finds credible Counsel’s testimony that the Applicant was elated about the Murder acquittal and told him that he did not want to appeal. This Court also finds Counsel only had an obligation to advise the Applicant of his right to appeal and follow the Applicant’s instructions. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel failed to file a notice of appeal for the Applicant at the conclusion of trial.

This Court finds trial counsel was not ineffective for failing to request a jury instruction for the lesser included offense of Attempted Armed Robbery and Larceny where such a request is unsupported by the facts. A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which the jury could infer that a defendant committed the lesser offense rather than the greater. State v. Pressley, 292 S.C. 9, 10, 354 S.E.2d 777, 777 (1987) (citing State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984); State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984)).

This Court finds counsel was not ineffective for failing to request jury instructions on the lesser included offenses of Attempted Armed Robbery and Larceny. This Court finds jury

instructions on the lesser included offenses of Attempted Armed Robbery and Larceny were not warranted by the evidence presented at trial and the Applicant would not have been found guilty of those offenses. See S.C. CODE ANN. § 16-11-330(B) (2003) (Attempted Armed Robbery); State v. Moore, 374 S.C. 468, 477, 649 S.E.2d 84, 88 (Ct. App. 2007) ("Larceny is a lesser-included offense of the crime of Armed Robbery."). The evidence presented at trial shows the defendants agreed to rob the victim and to steal something, which agreement was sufficient to meet the elements of Armed Robbery. This Court also finds the defendants did not have to agree on what to steal in order to be convicted of Armed Robbery. Since the Applicant confessed to being with his co-defendants and taking cigarettes during the robbery, it is unlikely he would have been convicted of any lesser included offenses and the Applicant was not prejudiced as a result.

This Court also finds persuasive counsel's testimony that he felt the armed robbery was complete and he could not in good faith request a charge on the lesser-included offenses to Armed Robbery. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for requesting a jury instruction on Attempted Armed Robbery and Larceny.

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. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation.

See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all allegations are hereby denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea 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 this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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[Signature]

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 7th day of November, 2013

DL Jefferson

The Honorable Deadra L. Jefferson
Presiding Judge

Charleston
At Chambers

, South Carolina

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DLJ

WITNESSES

✓ Special Agent Teddy Cone, Jr.

Solomon

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ARREST WARRANT NUMBER

1813725

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ACTION OF GRAND JURY

TRUE BILL

Robert H. Swickard Jr.

Foreperson of Grand Jury
Date: DEC 15 2008

VERDICT

Guilty

Carol Wallace 8/4/10

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008GS25-0587

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

December, Term 2008

THE STATE

vs.

Shawn Leonard Davis

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon

SC Code: 16-11-0330(A)
CDR Code:0139

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

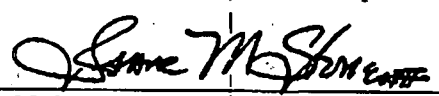
2008GS25-587

At a Court of General Sessions, convened on December 5, 2008, the Grand Jurors of Hampton County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly

That on or about June 23, 2007, in Hampton County, South Carolina, the Defendant, Shawn Leonard Davis, at [REDACTED] [REDACTED], by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed, while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Ronnie Wooten with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Isaac M. Stone, III
Solicitor, 14th Judicial Circuit