

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

OTIS BLAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002622

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD

2009-GS-24-628
2009-GS-24-629
2009-GS-24-630
2009-GS-24-632
2010-GS-24-437

THE STATE,

-vs-

OTIS LAMAR BLAND, JR.,

Defendant.

May 18-19, 2010

B E F O R E:

HONORABLE WILLIAM JEFFREY YOUNG

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Court Reporter

VOLUME I of II

May 18, 2010

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 2:29 p.m., May 18, 2010).

3 THE COURT: Madam Solicitor.

4 MS. BOLEN: Your Honor, thank you. We're
5 before you on some pretrial motions for a case that
6 the State intends to call for trial tomorrow, the
7 State versus Otis Bland. The defendant gave both a
8 written and a videotaped statement and I believe
9 the defense has asked for a Jackson v. Deno hearing
10 on admissibility of the statements.

11 THE COURT: All right. You may call your
12 first witness.

13 MS. BOLEN: Thank you Your Honor. The state
14 calls Detective Haden.

15 CHRISTOPHER MICHAEL HADEN,
16 after being first duly sworn, testified as follows:

17 THE COURT: Good afternoon, sir.

18 DIRECT EXAMINATION

19 BY MS. BOLEN:

20 Q Good afternoon, Detective. If you would,
21 please state your full name for the record.

22 A Christopher Michael Haden.

23 Q Detective Haden, where do you currently work?

24 A I work at Lander University Police Department
25 now.

1 Q How long have worked at Lander?

2 A Since September of 2009.

3 Q Prior to working for the Lander Police
4 Department, in September of '09 where were you
5 employed?

6 A Greenwood County Sheriff's office.

7 Q And how long were you with the Sheriff's
8 office?

9 A Roughly four years.

10 Q And what was your job while at the Sheriff's
11 office?

12 A Investigations.

13 Q Were you working with the Sheriff's office in
14 February of '09?

15 A Yes.

16 Q And what was your job title then?

17 A Criminal investigator.

18 Q And as a criminal investigator what was the
19 nature of your job duties?

20 A My assignment previously was getting a lot of
21 cases like burglary first, burglary second, armed
22 robberies, a lot of major things that happened in
23 Greenwood County.

24 Q Prior to working with the Sheriff's office
25 did you have any training in the area of criminal

1 justice?

2 A Yes.

3 Q What sort of training?

4 A I'm currently enrolled in college to get my
5 Bachelor's Degree in criminal justice. I attended
6 the Criminal Justice Academy in Columbia as well as
7 some classes, extended classes on interview and
8 interrogation, crime scene classes and so forth.

9 Q And are you trained in taking statements from
10 suspects?

11 A Yes.

12 Q Detective Haden, if I could direct your
13 attention to February 24th of '09, were you working
14 for the Sheriff's office on that date?

15 A Yes.

16 Q Did you have an occasion to speak with a
17 gentleman named Otis Bland?

18 A Yes.

19 Q Where did you first meet with him?

20 A I believe when I first spoke to Mr. Bland was
21 in the area of Possum Hollow Road.

22 Q And did you Mirandize him at that time?

23 A No. At that point in time he was not a
24 suspect, just basically, "Did you see anything, did
25 you hear anything," you know, that sort of things.

1 Q Did Mr. Bland then come in to the Sheriff's
2 office?

3 A Yes.

4 Q Do you recall about what time that was?

5 A I do not recall.

6 Q Did you Mirandize Mr. Bland when he came in
7 to the Sheriff's office?

8 A Yes.

9 Q And what form did you use to Mirandize him?

10 A Basically a form the Sheriff's Department has
11 advising them of their Fifth Amendment rights and
12 if they decide to talk to us, then of course they
13 sign it and we go from that point. But normally
14 everything is videotaped.

15 MS. BOLEN: Your Honor, permission to
16 approach the witness?

17 THE COURT: Yes.

18 Q Detective Haden, I'm passing up to you what
19 has been marked for identification purposes as
20 Court's Exhibit 1. Do you recognize that form?

21 A Yes, ma'am.

22 Q And what is that?

23 A That's the advisement of rights form.

24 Q And can you just read those rights just for
25 the record?

1 A Basically the form states, "Before we ask you
2 any questions you must understand what your rights
3 are. You have the right to remain silent.
4 Anything you say can be used for or against you in
5 court. You have the right to talk to a lawyer for
6 advice before we ask you any questions, to have him
7 or her with you at the time of questioning. If you
8 cannot afford a lawyer one will be appointed for
9 you before any questions if you wish. If you
10 decide to answer any questions without a lawyer
11 present you still have the right to stop answering
12 at anytime. You also have the right to stop
13 answering at anytime until you're able to talk to a
14 lawyer."

15 And basically it states the waiver of rights
16 and states, "I have read this statement of my
17 rights and I understand what my rights are. I am
18 willing to make a statement and answer any
19 questions. I do not want a layer at this time. I
20 understand and know what I'm doing. No promises or
21 threats have been made to me and no pressure or
22 coercion of any kind has been used against me," and
23 it is signed by Mr. Bland twice.

24 Q So, that is the form that you read Mr. Bland
25 on February 23rd?

1 A Yes, ma'am.

2 Q Can you explain why he signed it twice?

3 A Initially when we spoke to him I Mirandized
4 him. At that point he was a person of interest.
5 After we spoke to him the first time he became a
6 person of interest, then once he was brought to the
7 Sheriff's office for questioning I read him his
8 Miranda warnings and had him sign it the first
9 time, at which time there was a brief, I guess,
10 intermission after he denied any involvement with
11 the crime we had questioned him about, which we
12 offered a polygraph examination, which he agreed to
13 and upon completion of that polygraph examination
14 the same rights form was read and dated and time
15 stamped for a different time, the same form was
16 used twice.

17 Q And at any point did you read, give him his
18 Miranda rights without the form?

19 A Yes, ma'am.

20 Q When was that?

21 A After the polygraph examination, we used
22 another agency, the Owens Investigative Agency out
23 of Greenville that does polygraph examinations for
24 the Sheriff's office, we took him there after the
25 form was signed the first time. On the way back

1 from Greenville at the conclusion of the polygraph
2 examination Investigator Findley and myself were in
3 the vehicle with Mr. Bland transporting him back to
4 Greenville and I verbally Mirandized him in the car
5 on the way back to Greenwood County.

6 Q And then when you returned back to Greenwood
7 County that is when you read him the form the
8 second time?

9 A Absolutely, yes, ma'am.

10 Q And where was it that you read him the form
11 when you were in Greenwood County?

12 A The Greenwood County Sheriff's office
13 conference room.

14 Q And was there anyone else present besides you
15 and Mr. Bland during that time?

16 A I think initially the person that was there
17 was Major John Murray, the first time that we were
18 interviewing Mr. Bland. The second time it was
19 with Investigator Wayne Findley.

20 Q At any point while you were with him did Mr.
21 Bland seem to be under the influence of any sort of
22 substance to the point where you didn't think he
23 would understand what you were reading to him?

24 A No, ma'am.

25 Q At any point did it seem to you that he was

1 impaired by mental or physical disability that
2 would affect his understanding of what he was
3 doing?

4 A No, ma'am.

5 Q Did Mr. Bland tell you anything that would
6 indicate he was unable to understand the rights you
7 were reading to him?

8 A No, ma'am. On the form, the advice form, I
9 ask each person that I Mirandize or read this form
10 to if they would put a checkmark beside the numbers
11 they have read, meaning they understand it, and I
12 always ask them if they have any questions please
13 ask prior to any questioning.

14 Q When you questioned Mr. Bland was he under
15 arrest?

16 A No, ma'am.

17 Q Was he informed of the nature of what you
18 were investigating?

19 A Yes, ma'am.

20 Q Before you questioned him did you give him
21 his Miranda rights?

22 A Yes, ma'am.

23 Q Did you make any threats or promises to him
24 in order to get him to speak to you?

25 A No, ma'am.

1 Q Was the room comfortable, was he in a
2 comfortable position where if he needed to get up
3 and get a glass of water he could do that?

4 A Absolutely, yes, ma'am.

5 Q At any point did he ask for an attorney?

6 A No, ma'am.

7 Q Did you see him sign the form both times?

8 A Yes, ma'am.

9 Q At any point, at no point during the question
10 did he ask, did he stop and say, "I want to stop
11 and ask for an attorney"?

12 A No, ma'am. At that point he proceeded.

13 Q After you spoke with him did Mr. Bland give a
14 written statement?

15 A Yes, ma'am.

16 MS. BOLEN: Your Honor, permission to
17 approach.

18 THE COURT: Yes, ma'am.

19 Q Detective, I'm passing up what has been
20 marked for identification purposes as Court's
21 Exhibit 2. Do you recognize that, that two page
22 document?

23 A Yes ma'am.

24 Q Can you describe what it is?

25 A It's a handwritten voluntary statement by Mr.

1 Bland signed and dated February 24th, 2009, at
2 approximately 7:04 p.m.

3 Q And did you see Mr. Bland write that
4 statement?

5 A I did. Normally what I do is once they begin
6 to write down a statement, in order to give them
7 time to where they can actually think about what
8 they are writing, I get them started with it as far
9 as the form goes, tell them where to sign and so
10 forth, then I kind of step out of the room, the
11 recorder is still on, so they can have time to
12 think about what they are writing.

13 MS. BOLEN: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 Q And, Detective Haden, can you state what time
17 that statement was given on February 24th?

18 A The time stamp the handwritten voluntary
19 statement was signed was 7:04 p.m.

20 Q And looking back at Court's Exhibit 1, what
21 was the time, what were the times Mr. Bland was
22 Mirandized?

23 A The Miranda form, the first one that was
24 signed, he signed prior to polygraph examination,
25 was dated February 24th, 2009, no time stamp -- I'm

1 sorry, at 1:27 p.m. The second time was 6:43 p.m.
2 That was after completion of the polygraph
3 examination, once we made it back to the Sheriff's
4 office.

5 Q So, the written statement was given after he
6 had been Mirandized?

7 A Yes, ma'am.

8 Q Detective Haden, just for the record, can you
9 read the content of that statement?

10 A Yes, ma'am. Basically location is the
11 Greenwood County Sheriff's office, Law Enforcement
12 Center, the person making the statement is Otis
13 Lamar Bland. The address he gave was [REDACTED]
14 [REDACTED], there is a line here that states a
15 waiver of rights attached, is a waiver of rights
16 attached, I circled yes.

17 The statement. I, on 2/23/09 me and Yoggi
18 and James went to her house but I stayed in the
19 back yard. They told me to watch out. So James
20 went and knocked on her door and she came, she came
21 and James asked her if she needed her yard cut.
22 Then she asked him was he me. That's when we tried
23 to rush in the house, he tried to rush in the house
24 but she slammed the door in his face and we started
25 running. We went into the woods by Possum Hollow

1 Road. They said that they are going to try and get
2 another one. I told them go ahead, I'm not going.
3 So they said they are going to wait in the Jeep and
4 wait for somebody to come so they can rob. The
5 first house we went to was on Parkland Place Road.
6 James had the black .38 in his hand when she came
7 to the door. On the second one I didn't go but
8 they were going to wait in the white Exploer on
9 Sleepy Hollow Road and James had the gun. "

10 MS. BOLEN: Your Honor, at this time the
11 State would move to admit Exhibit 1 and Exhibit 2
12 as Court's exhibits.

13 THE COURT: Any objection for this limited
14 purpose?

15 MR. SHEEK: For them to be court exhibits,
16 no, there is no objection.

17 THE COURT: All right.

18 (Advisement of Rights for was marked and
19 received in evidence as Court's Exhibit
20 Number 1).

21 (Otis Bland's statement was marked and
22 received in evidence as Court's Exhibit
23 Number 2).

24 BY MS. BOLEN:

25 Q Detective Haden, did Mr. Bland also give a

1 verbal statement to you?

2 A Yes, ma'am.

3 Q Do you have a method at the Sheriff's office
4 for recording such statements?

5 A Yes, ma'am.

6 Q What is that method?

7 A An audio/video recorder which actually the
8 eye of the system, I guess if you monitor the
9 system, is in the ceiling of the Sheriff's office,
10 in the conference room, to where you can actually
11 see.

12 Q Is it standard procedure to videotape
13 interviews such as this?

14 A Yes, ma'am.

15 Q Who has access to the videotape?

16 A Just the investigators and the supervisor
17 over investigations.

18 MS. BOLEN: Your Honor, if I may beg the
19 Court's indulgence.

20 Permission to approach, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. BOLEN:

23 Q Detective Haden, I'm handing up what has been
24 marked for identification purpose as Court's
25 Exhibit 3, and do you recognize that?

1 A Yes, ma'am.

2 Q And what is it?

3 A It's a DVR that was used in the DVD recorder.

4 At the conclusion of the interview, the interviews

5 are stored to the hard driver, then transferred to

6 disc for court purposes.

7 Q And have you viewed that DVD?

8 A Yes, ma'am.

9 Q Is it accurate as to the interview you had

10 with Mr. Bland?

11 A Yes, ma'am.

12 Q Has it been altered or changed in any way?

13 A No, ma'am.

14 Q And is it a fair and accurate depiction of

15 the interview that took place?

16 A Yes, ma'am.

17 MS. BOLEN: Your Honor, at this time we would

18 ask to show the video statement for the Court.

19 THE COURT: Very well.

20 MR. SHEEK: Judge, may I move over here?

21 THE COURT: You may move to where you can see

22 it better.

23 MR. SHEEK: Thank you.

24 (DVD marked as Court Exhibit Number 3

25 and was played to the jury).

1 BY MS. BOLEN:

2 Q Detective Haden, for the remainder of that
3 statement does Mr. Bland make any other verbal
4 statements or is he just writing?

5 A He's just writing.

6 Q And at no time either in his verbal statement
7 or when he is writing does he ask for an attorney?

8 A No, ma'am.

9 Q At any time does he give any indication to
10 you that he doesn't understand what he's doing?

11 A No, ma'am.

12 MS. BOLEN: Detective Haden, I don't have any
13 further questions at this time. Please answer any
14 questions Mr. Sheek may have.

15 THE COURT: Mr. Sheek.

16 MR. SHEEK: Thank you, sir.

17 CROSS EXAMINATION

18 BY MR. SHEEK:

19 Q Detective, the first time Otis was Mirandized
20 was by Detective John Murray?

21 A Yes.

22 Q And did Detective Murray speak with Mr.
23 Bland, take a statement from him?

24 A I believe he just Mirandized him.

25 Q And were there any notes taken by Detective

1 Murray as to anything that Mr. Bland said to him in
2 regards to that interview?

3 A No, sir.

4 Q But as far as you know he did speak with him
5 regarding his involvement in this event?

6 A Yes. He and I were in the room with him at
7 the same time.

8 Q The first time you spoke to Mr. Bland was
9 roughly when?

10 A The first time I had the privilege of
11 speaking to him would be the same day, the 24th.

12 Q And at that point did you ask him what his
13 involvement was?

14 A I Mirandized him and as well I did.

15 Q At some point did you ask him to go take a
16 polygraph examination?

17 A I did.

18 Q And was that, was that given by the Owens
19 Detective Agency in Greenville?

20 A Yes, sir.

21 Q I know Mr. Owens will typically ask what the
22 nature of the offense is. Did he ask you all that?

23 A Right.

24 Q And he will typically ask, "If the person
25 indicates any type deception do you want me to

1 question him?" Did he ask you all that?

2 A No, he never asked me that.

3 Q Do you know if Mr. Owens did question Mr.
4 Bland about his alleged involvement in this?

5 A I do know he did not question him.

6 Q Okay. Were you given any type of report from
7 Mr. Owens as far as whether or not Mr. Bland
8 passed, failed, anything else?

9 A He normally would give us a copy, whether
10 there was deception.

11 Q Would the Sheriff's Department have a copy of
12 that report?

13 A Correct.

14 Q Did he give a verbal report on whether he
15 failed, Mr. Bland's performance indicated
16 deception?

17 A Yes.

18 Q Did you convey that to Mr. Bland?

19 A Yes.

20 Q Okay. What was it you said to him, the best
21 of your recollection?

22 A The best of my recollection is I told him the
23 polygraph examination didn't go as he thought it
24 may have went and he did not pass per the
25 polygrapher's examination.

1 Q Did you tell him he needed to come clean,
2 "You need to tell me what is going on," or anything
3 further?

4 A Yes, sir.

5 Q To the best of your recollection what was it
6 you told Mr. Bland he needed to do?

7 A The first thing I did was verbally Mirandize
8 him again and then told him that whatever his
9 involvement was, however minute or how great it may
10 have been he needed to be honest with us so that we
11 can put this issue to rest and move forward.

12 Q And did you indicate to him that you felt
13 like what he had told you before wasn't honest?

14 A Yes.

15 Q Did you indicate to him that it would be
16 better for him to go ahead and be honest now in
17 order to get this taken care of, that type thing?

18 A Correct.

19 Q So, clearly you indicated to him that in his
20 mind he needed to give you a different response to
21 make things better, than what he had previously
22 given?

23 A I told him that the test was deceptive and he
24 needed to be honest about his involvement.

25 Q And when you came back to the police

1 department -- this all happened in one day, right?

2 A Yes.

3 Q You came back from the polygrapher, straight
4 back to the Law Enforcement Center?

5 A Yes.

6 Q And was Mr. Bland riding with you in the car?

7 A Yes.

8 Q And had you told him he was free to go at any
9 point?

10 A No.

11 Q Okay. So, as far as he knew he was actually
12 in custody at that time?

13 A I did inform him he was not under arrest
14 prior to taking him to the polygrapher.

15 Q How about when he was at the polygrapher, was
16 he told then he didn't have to go through with it,
17 he could say no and you all drive him back?

18 A No, I made that clear before we left the
19 Sheriff's office.

20 Q Now, when you came back did you begin the
21 videotaping immediately? Is what we have seen the
22 entirety of what happened?

23 A Right, yes.

24 Q Now, a lot of the tape is hard to understand
25 when he's speaking. You are easy to hear but he's

1 a little bit hard to hear. Does he ever indicate
2 to you in that verbal statement that he knew
3 anything about a robbery prior to going to this
4 first residence?

5 A No.

6 Q Does he say -- let me ask you this, it would
7 be a little quicker. Does he say anything in the
8 verbal statement that might have contradicted what
9 he put in the written statement?

10 A No.

11 Q Do you have any idea what the level of Mr.
12 Bland's education is?

13 A I asked him prior to the second time, and he
14 said tenth grade.

15 Q He's not real sophisticated, is he?

16 A No, but he's able to read and write.

17 Q Well, would you agree with me he is also a
18 little bit slow on understanding certain things?

19 A I'm not at liberty to determine his education
20 level. He responded well to my questions.

21 Q Did he appear to be easily influenced or led?

22 A Not to my understanding, no, sir.

23 Q You took written statements from the alleged
24 co-conspirators or co-defendants in this action?

25 A Yes, sir.

1 Q Did you take any written statements from any
2 of the victims?

3 A No. I actually spoke to them earlier.

4 Q And do you know if any other investigators --
5 you said Wayne Findley was with you at one point?

6 A Coming back after the polygraph examination.

7 Q What was his involvement in this
8 investigation?

9 A A supportive role.

10 Q You said the first time you all spoke to Mr.
11 Bland he was not a suspect?

12 A Correct.

13 Q Okay. What prompted the conversation, how
14 did that come about?

15 A Mr. Bland was contacted in the area shortly
16 after deputies had arrived. Once the call was made
17 to 911, upon their response he was field contacted.

18 Q Okay. And at which point was he developed as
19 a suspect?

20 A A lot later than that. We conducted a
21 canvas. The investigations division, including
22 myself, conducted a canvas of the area, of the
23 people out there to see if anyone may have saw or
24 heard anything related to the crime which we were
25 investigating, at which time several people who

1 lived in the neighborhood informed me as well as
2 other investigators that they had seen Mr. Bland
3 and two other co-defendants leaving from this area.

4 Q When on the tape you referred to the first
5 time he filled out the written form, you said that
6 was with Detective John Murray?

7 A Yes.

8 Q Was he already developed as a suspect by that
9 time?

10 A He was a person of interest.

11 Q Okay. At the point that you took the
12 statement from him that we just watched and the
13 written statement that has been entered by the
14 prosecution had you already taken written
15 statements from the other co-defendants?

16 A I do not recall. We were interviewing those
17 guys kind of simultaneously.

18 Q Do you recall if Mr. Bland was ever told,
19 "Hey, these other guys are saying you're the one,
20 you need to tell us what's going on because they're
21 saying it's you"? Do you recall if that was ever
22 done?

23 A Not to my knowledge.

24 MR. SHEEK: That's all the questions I have,
25 Your Honor.

1 THE COURT: Thank you. Any redirect?

2 MS. BOLEN: Very brief redirect, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BOLEN:

5 Q Detective Haden, you stated Mr. Bland was not
6 under arrest at anytime during this?

7 A Correct.

8 Q Regarding the co-defendants' statements,
9 would it serve to refresh your memory if I were to
10 hand up those statements, as to time taken?

11 A Yes.

12 MS. BOLEN: Your Honor, permission to
13 approach?

14 THE COURT: Certainly.

15 Q Detective Haden, I have handed up the waiver
16 of rights and two written statements from
17 co-defendant Martin and co-defendant Ware. Do they
18 have dates and times on them?

19 A Yes, ma'am, they do.

20 Q What are the statement times?

21 A The date on both these were February 25th,
22 2009. Mr. James Ware's statement, advisement of
23 rights form was time stamped 11:53 a.m. And Mr.
24 Mr. Kiersten Martin's waiver of rights form was
25 time stamped 3:21 p.m.

1 Q What day did you speak to Mr. Bland?

2 A I spoke to him on the 24th, the day prior.

3 Q You took the co-defendants' statements the

4 day after?

5 A Yes.

6 MS. BOLEN: Detective Haden, I don't have any

7 other questions for you.

8 THE COURT: Any recross?

9 MR. SHEEK: Nothing further from this

10 witness.

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

12 (Witness excused).

13 MS. BOLEN: Your Honor, that is the only

14 witness the State has.

15 THE COURT: All right. Mr. Sheek?

16 MR. SHEEK: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. SHEEK: Judge, I wouldn't call any

19 witnesses at this time.

20 THE COURT: All right, thank you.

21 Anything further?

22 MS. BOLEN: Thank you, Your Honor. The State

23 believes based on the testimony heard that both the

24 written statement and the verbal statement were

25 voluntarily given and that they were given after

1 Mr. Bland was informed of his rights under Miranda.
2 He signed the waiver of rights form. There is
3 nothing to indicate that this waiver of rights was
4 given involuntarily or unintelligently. It was
5 explained to him several times and there were no
6 indications that he didn't understand and did not
7 want to go forward. The State believes these
8 statements were voluntarily, the waiver of the
9 rights was voluntary and intelligent and that the
10 statements should be admissible.

11 THE COURT: Mr. Sheek?

12 MR. SHEEK: The defense presented no
13 testimony or evidence to the contrary.

14 THE COURT: Okay. I think this is pretty
15 clear cut. It is very obvious he was given ample
16 opportunities to not testify or not to give a
17 statement. It is documented by the written word as
18 well as on the video. I find that the defendant's
19 statements will be admissible in the trial.

20 MS. BOLEN: Thank you, Your Honor. If we can
21 just address one sort of housekeeping matter.
22 Obviously for the purposes of the Jackson v. Deno
23 we have Had detective Haden reference the
24 polygraph.

25 THE COURT: There will obviously not be any

1 reference to that.

2 MS. BOLEN: Obviously that will be handled
3 and not be any reference in front of the jury.
4 We'll have to work on explaining his rights.

5 THE COURT: I'm sure he won't cross-examine
6 too hard.

7 MR. SHEEK: I won't open that door.

8 THE COURT: Thank you.

9 Anything else? I intend tomorrow, when they
10 come in I will qualify the jury, then we'll strike
11 this jury and then we'll start with opening
12 statements and move on, or did you all have
13 something you had to take up?

14 MS. BOLEN: We had one, an arraignment, if
15 you would like to do that right now.

16 MR. SHEEK: I tell you what, before we do the
17 arraignment I have one motion I would like to make.

18 THE COURT: All right.

19 MR. SHEEK: And I want to make it now to give
20 the prosecution some time overnight to work on it
21 if you grant it. There was some testimony just
22 given with regard to a statement taken from my
23 client by Detective John Murray and a report that
24 would have been generated and provided to the
25 Greenwood County Sheriff's Department by the Owens

1 Detective Agency in Greenville. I have neither one
2 of those in response to my Rule 5 Brady motion.
3 And what I would like to know, were there any notes
4 Mr. Murray took regarding my client's statement,
5 which I think clearly Rule 5 covers. The Owens
6 statement I believe would qualify under Rule 5.
7 While he is not a law enforcement officer he
8 certainly was contracted by law enforcement to take
9 the statement, therefore I would like that.

10 THE COURT: Do you anticipate that they would
11 be exculpatory?

12 MR. SHEEK: I anticipate they may very well
13 be exculpatory but not having seen them I'm not
14 sure.

15 THE COURT: Can you all get those to him
16 fairly quickly?

17 MS. BOLEN: Yes, Your Honor. In response to
18 the issue of Captain Murray, Detective Haden tells
19 me they were together when questioning Mr. Bland,
20 Mr. Bland denied any involvement, so no report was
21 written for that. Regarding the Owens report, I
22 don't have it but I believe we can get that by
23 tomorrow.

24 THE COURT: All right. Very well, they will
25 provide it to you.

1 MR. SHEEK: That's fine, Judge, if I have it
2 by tomorrow.

3 THE COURT: Thank you.

4 Will you bring him forward for the
5 arraignment? Do you waive reading of the
6 indictment?

7 MR. SHEEK: We do, Your Honor.

8 MS. BOLEN: Your Honor, the defendant was
9 charged with several charges in this case,
10 attempted burglary, attempted armed robbery, armed
11 robbery, then two counts of possession of a weapon
12 during commission of a violent offense. The
13 attempted burglary indictment originally did not
14 allege, it was just under the common law, I did a
15 little bit of case law research on it and it
16 appears from the case law I did that the specific
17 offense of attempted burglary first degree is both
18 a statutory and a common law offense so I prepared
19 a waiver indictment, I'm sorry, an information
20 indictment since it didn't really correspond to the
21 warrant and had it presented to the Grand Jury on
22 March 26 of 2010 and it was true billed. The
23 State's position is that it doesn't change any of
24 the original allegations, the original allegations
25 have been the same from the day this happened until

1 now, it is just a more proper way of presenting the
2 charge and we would ask that Mr. Bland be arraigned
3 on that charge.

4 THE COURT: All right. Pass that up.
5 Please place the defendant under oath.

6 (Defendant sworn).

7 THE COURT: You're Otis Lamar Bland, Jr.?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Bland, you have been charged,
10 in addition to the other charges, with attempted
11 burglary first degree and your attorney has waived
12 the reading of the indictment. How do you plead,
13 guilty or not guilty?

14 THE DEFENDANT: Not guilty.

15 THE COURT: Speak into the microphone,
16 please.

17 THE DEFENDANT: Not guilty, sir.

18 THE COURT: Turn it on.

19 THE COURT: All right. How do you plead,
20 guilty or not guilty?

21 THE DEFENDANT: Not guilty.

22 THE COURT: How will you be tried?

23 THE DEFENDANT: Sir?

24 THE COURT: How will you be tried?

25 THE DEFENDANT: By jury.

1 THE COURT: All right, very good. The trial
2 will commence tomorrow.

3 MR. SHEEK: Thank you. Your Honor, so the
4 record is clear, before we close the record, the
5 Solicitor's office had immediately notified me of
6 the action they have taken on the new indictment,
7 had presented it to me, I have reviewed it and it
8 does not change the allegations, just changes the
9 formality.

10 THE COURT: It changes none of your
11 preparation?

12 MR. SHEEK: None at all. I had previous
13 notice of it. We have already discussed the case
14 as burglary first and this just changes it to an
15 attempted burglary first.

16 THE COURT: All right, thank you.

17 MR. SHEEK: Did you say 10:00 o'clock, Your
18 Honor?

19 THE COURT: What time is the jury supposed to
20 come?

21 MS. BOLEN: Whenever would you like?

22 THE CLERK: They are to call back after 6:00
23 p.m. tonight.

24 THE COURT: Why don't we --

25 MS. BOLEN: Usually they come in around

1 10:00.

2 THE COURT: Let's bring the jury in at 10:00.
3 It's going to take us an hour to qualify them and
4 then strike our jury and then we'll be ready to
5 start the trial probably about 11:30.

6 MR. SHEEK: We'll be here for qualification.

7 THE COURT: We will do opening statements, I
8 will give my pretrial charge and then probably
9 break for lunch, start the testimony after lunch.

10 MS. BOLEN: I've got I think six witnesses.
11 I don't anticipate it being very long.

12 THE COURT: If you all could please get me
13 your requests for charge, or not requests for
14 charge, but voir dire questions and your list of
15 witnesses.

16 MR. SHEEK: Yes, sir.

17 MS. BOLEN: Yes, sir.

18 THE COURT: Thank you.

19 MS. BOLEN: Thank you.

20 (Recessed at 3:47 p.m., May 18, 2010).

21 (Reconvened at 10:30 a.m., May 19, 2010).

22 (Jury roll call and qualification).

23 THE COURT: Ladies and gentlemen, thank you,
24 and I find that all of you who have not been
25 disqualified or excused are available and qualified

1 as jurors for this term of court.

2 Why don't we give you all a ten minute break,
3 you all have been in here about an hour, then we'll
4 reconvene at a quarter after and we'll strike our
5 first jury. Thank you. The court is in recess.

6 Could I see the attorneys on the next case?

7 (Recessed at 11:07 a.m.).

8 (Reconvened at 11:18 a.m.).

9 (Unrecorded bench conference).

10 THE COURT: Are all our jurors back?

11 BAILIFF: Yes, sir.

12 THE COURT: All right, Madam Solicitor, are
13 you ready to call your case?

14 MS. BOLEN: Yes, Your Honor. The first case
15 the State is calling is State versus Otis Lamar
16 Bland, Jr., indictment 2009-GS-24-628, 629, 630,
17 632 and 2010-GS-24-437.

18 THE COURT: Just pass the indictments up.

19 All right, ladies and gentlemen, we are about
20 to select a jury for the case of State versus Otis
21 Lamar Bland, Jr. Before we select the jury there
22 are several questions that I will need to ask you
23 and I will remind you that you are still under
24 oath.

25 Now, ladies and gentlemen, one of the reasons

1 that you're under oath at this time while I ask you
2 these questions, because this is such a crucial
3 stage of the trial. Just like a building must have
4 a firm foundation to be strong and protect those
5 who live in it, so must a jury be strong as a basis
6 for a fair and impartial trial for those that
7 participate, the Solicitor for the people and the
8 defendant who is the one on trial. Your answers to
9 these questions are the foundation by which the
10 attorneys will build a jury for this case. They
11 are relying on your truthful answers that will help
12 them strike an unbiased jury who will diligently
13 listen to the facts and deliver a just verdict.
14 Again thank you for your complete truthfulness to
15 these questions.

16 Now, ladies and gentlemen, let me, I'm going
17 to read each of the indictments and again let me
18 remind you, and that is only in case you know
19 something about the case, the indictments are no
20 way indicative that the defendant is guilty of the
21 charges. The defendant has pled not guilty and
22 therefore the State has the burden of proving his
23 guilt beyond a reasonable doubt. But the
24 indictment is simply the papers that bring this
25 case into court.

1 Under the first indictment, 2009-GS-24-628,
2 it says that Otis Lamar Bland, Jr., did in
3 Greenwood County on or about the 23rd day of
4 February, 2009, possess a firearm or visibly
5 displayed what appeared to be a firearm or visibly
6 displayed a knife during the commission of a
7 violent offense, to wit, attempted burglary and/or
8 attempted armed robbery or any lesser included
9 violent offense in violation of Section 16-23-490
10 of the South Carolina Code of Laws.

11 The next indictment, under indictment
12 2010-GS-24-437, it states that Otis Lamar Bland,
13 Jr., did in Greenwood County, state aforesaid, on
14 or about the 23rd day of February, 2009, willfully
15 and unlawfully enter or attempt to enter a dwelling
16 without consent and with intent to commit a crime
17 therein when in effecting entry or while in the
18 dwelling or in immediate flight therefrom he or
19 another participant in the crime was armed with a
20 deadly weapon or explosive or caused physical
21 injury to a person who was not a participant in the
22 crime or used or threatened the use of a dangerous
23 instrument or displayed what was or appeared to be
24 a knife, pistol, revolver, rifle, shotgun, machine
25 gun or other firearm or the attempted entry

1 occurred in the nighttime, the said dwelling being
2 owned and/or occupied by Joan Smith, in violation
3 of the common law of South Carolina and Section
4 16-11-311 of the South Carolina Code of Laws.

5 Under indictment 2009-GS-24-623, he is
6 charged with attempted armed robbery wherein on the
7 same day, the 23rd of February, he attempted to
8 enter the home, or is alleged to have attempted to
9 enter the home of Joan Hughes by means of force or
10 intimidation in in violation of the laws of the
11 State of South Carolina.

12 Indictment 2009-Gs-24-630, the defendant is
13 accused, it says that Otis Lamar Bland, Jr., did in
14 Greenwood County on or about the 23rd day of
15 February, 2009, willfully and unlawfully while
16 armed with a deadly weapon or while alleging either
17 by action or words he was armed while using a
18 representation of a deadly weapon or any object
19 which a person present during the commission of the
20 robbery reasonably believed to be a deadly weapon
21 feloniously take from the person or presence of
22 Isabel Martin by means of force or intimidation
23 goods or monies described as follows. One
24 pocketbook with contents, with intent to deprive
25 the owner permanently of such property, in violation

1 of the laws of the State of South Carolina.

2 Finally under indictment 2009-GS-24-629, Otis
3 Lamar Bland, Jr., did in Greenwood County on the
4 23rd day of February, possess a firearm or visibly
5 displayed what appeared to be a firearm in
6 violation of the laws of the State of South
7 Carolina.

8 Again, ladies and gentlemen, I remind you
9 these are just the indictments. He has pled not
10 guilty and therefore he is presumed to be innocent
11 at this time.

12 The first question I have, is there anyone in
13 the jury panel who has ever been related by blood
14 or marriage or had a professional or social
15 relationship with the defendant Otis Bland or the
16 alleged victims Joan Hughes or Isabel Martin? If
17 so, please stand.

18 Yes, ma'am, juror number and name, please.

19 JUROR: Nancy Simpson.

20 THE COURT: Nancy Simpson? What is juror
21 number, please.

22 JUROR: 122.

23 THE COURT: All right, yes, ma'am.

24 JUROR: Relation to Isabel Martin.

25 THE COURT: What is your relation to her?

1 JUROR: Cousin.

2 THE COURT: Cousin?

3 JUROR: Cousin.

4 THE COURT: How distant a cousin?

5 JUROR: Like second.

6 THE COURT: Would the fact that you are a
7 distant cousin of Isabel Martin make it so that you
8 can't be fair and impartial to the State or the
9 defense in this case?

10 JUROR: I can be fair.

11 THE COURT: All right, thank you, ma'am. You
12 may be seated.

13 Now, ladies and gentlemen, this is a list --
14 oh, yes, sir?

15 JUROR: I used to work with Joan.

16 THE COURT: With who?

17 JUROR: Joan, one of the victims.

18 THE COURT: Joan Hughes?

19 JUROR: Yes.

20 THE COURT: How long ago was that, sir?

21 JUROR: Maybe ten years, maybe fifteen.

22 THE COURT: Would the fact that you had
23 worked with Miss Hughes ten or fifteen years ago
24 make it so that you can't be fair and impartial to
25 the State or the defense in this case?

1 JUROR: No.

2 THE COURT: Thank you, sir.

3 Ladies and gentlemen, this is a list of
4 possible witnesses in this case.

5 Joan Smith, Joan Hughes, Isabel Martin,
6 Kiersten Martin, James Ware, Chris Haden, Deputy
7 Mathis, Ray Watson, Wayne Findley, Chad Cox, Sean
8 Williams, Derrick Smith, James Boggs and John
9 Murray.

10 If anyone is related by blood or marriage or
11 has a close personal relationship with any of the
12 witnesses, possible witnesses that I just called
13 out please stand at this time.

14 Yes, sir?

15 JUROR: I know Chris Haden.

16 THE COURT: State your name.

17 JUROR: James Moore.

18 THE COURT: Mr. Moore.

19 THE CLERK: 96.

20 THE COURT: 96.

21 Yes, sir?

22 JUROR: I know Chris Haden.

23 THE COURT: The fact you know Chris Haden,
24 would it make it so you couldn't be fair and
25 impartial to the State and the Defendant in this

1 case?

2 JUROR: No.

3 THE COURT: Thank you, sir.

4 All right, ladies and gentlemen. The
5 attorneys in this case are Patricia Bolen for the
6 Solicitor's office, please stand, and Lance Sheek
7 for the defendant. Is there any member of the jury
8 panel who has ever been represented by either of
9 these attorneys or their law firm? If so, please
10 stand.

11 Thank you, ladies and gentlemen.

12 Has any member of the jury panel formed or
13 expressed an opinion about any issues or matters
14 involved in this case? If so, please stand.

15 Thank you. No one is standing.

16 Is there any member of the jury panel aware
17 of any bias or prejudice toward either the State or
18 the defendant in this matter? If so, please stand.

19 Thank you. No one is standing.

20 Is there any member of the jury panel who is
21 a member of the grand jury who issued the
22 indictment in this case? If so, please stand.

23 No one is standing. Thank you.

24 Is there any member of the jury panel who is
25 a member or contributor to any group which has as

1 its primary concern the promotion of law
2 enforcement or victims' rights? These groups would
3 include but certainly would not be limited to
4 Mothers Against Drunk Drivers, Students Against
5 Drunk Drivers or Citizens Against Violent Crimes.
6 If there is any member of the panel who this would
7 apply to please stand at this time.

8 All right, thank you. No one is standing.

9 Is there any member of the jury panel who has
10 been the victim of a violent crime? If so, please
11 stand.

12 Yes, sir, please state your name.

13 JUROR: Walt Sutton.

14 THE COURT: What number are you, sir?

15 THE CLERK: 133.

16 THE COURT: Yes, sir, 133.

17 JUROR: I was robbed and stabbed

18 THE COURT: How long ago was that, sir?

19 JUROR: Two years.

20 THE COURT: Would the fact you were robbed
21 and stabbed make it so you can't be fair and
22 impartial to the State or the defense in this case?

23 JUROR: No.

24 THE COURT: Thank you, sir.

25 Any one else?

1 Does any member of the jury panel know of any
2 reason whatsoever why he or she should not serve as
3 a juror in this case, with particular emphasis
4 being placed on your ability to be fair and
5 impartial to both the State and the defendant? If
6 so, please stand.

7 All right. Does the State have any
8 additional questions it would like me to ask?

9 MS. BOLEN: No, sir, Your Honor.

10 THE COURT: Does the defense have any
11 additional questions you would like me to ask?

12 MR. SHEEK: No, sir.

13 THE COURT: Thank you. Now, ladies and
14 gentlemen, the computer is going to select a random
15 list of names and as your name is called each side
16 will have an opportunity to strike you. The State
17 will go first and they will have an opportunity to
18 select you as a juror and then the defense will
19 also have an opportunity if the State selects you.

20 Ladies and gentlemen, please don't take it
21 personal, these attorneys have a specific reason,
22 they have a jury they have in mind they want to
23 select so if you're not selected, they can select
24 or strike for any reason except they cannot strike
25 because of your race or your gender. For any other

1 reason they can strike you on their own accord, so
2 again please do not take it personal.

3 Has the computer drawn it up?

4 Is the State ready?

5 MS. BOLEN: Yes, sir, Your Honor.

6 THE COURT: Is the defense ready?

7 MR. SHEEK: The defense is ready.

8 THE COURT: Let me see the attorneys real
9 quick.

10 (Unrecorded bench conference).

11 THE COURT: All right, Madam Clerk, if you
12 will please call our jury.

13 Ladies and gentlemen, you will need to bring
14 your personal items when you come forward in case
15 you're selected and are seated in the jury box.

16 THE CLERK: Number 88, Anthony Link.

17 THE COURT: If you will come forward and face
18 the attorneys.

19 THE CLERK: What say the State?

20 MS. BOLEN: Please present Mr. Ling.

21 THE CLERK: What say the defense?

22 MR. SHEEK: Please swear Mr. Ling.

23 THE CLERK: 59, Michael Gray.

24 What say the State?

25 MS. BOLEN: Please present Mr. Gray?

1 THE CLERK: What say the defense?

2 MR. SHEEK: Please excuse Mr. Gray from the
3 trial of this case.

4 THE CLERK: 121, Kimberly Sherer.
5 What say the State?

6 MS. BOLEN: Please present Miss Sherer.

7 THE CLERK: What say the defense?

8 MR. SHEEK: Please excuse the juror from the
9 trial of this case.

10 THE CLERK: 96, James Moore.

11 What say the State?

12 MS. BOLEN: Please present Mr. Moore.

13 THE CLERK: What say the defense?

14 MR. SHEEK: Please excuse the jurer from the
15 trial of this case.

16 THE CLERK: 125, Brenda Strange.

17 What say the State?

18 MS. BOLEN: Please present Miss Strange.

19 THE CLERK: What say the defense?

20 MR. SHEEK: Please excuse Miss Strange from
21 this trial.

22 THE CLERK: 34, Eric Coates.

23 What say the State?

24 MS. BOLEN: Please excuse Mr. Coates.

25 THE CLERK: 141, Judith Werts.

1 What say the State?

2 MS. BOLEN: Please present Miss Werts.

3 THE CLERK: What say the defense?

4 MR. SHEEK: Excuse the juror from the trial

5 of this case.

6 THE CLERK: 62, John Haynes.

7 What say the State?

8 MS. BOLEN: Please present Mr. Haynes.

9 THE CLERK: What say the defense?

10 MR. SHEEK: Please swear Mr. Haynes.

11 THE CLERK: 57, Julie Going.

12 What say the State?

13 MS. BOLEN: Please present Miss Going.

14 THE CLERK: What say the defense?

15 MR. SHEEK: Please swear Miss Going.

16 THE CLERK: 122, Nancy Simpson.

17 What say the State?

18 MS. BOLEN: Please present Miss Simpson.

19 THE CLERK: What say the defense?

20 MR. SHEEK: Please excuse the juror from the

21 trial of this case.

22 THE CLERK: 134, Aaron VanEvery

23 What say the State?

24 MS. BOLEN: Please excuse Mr. VanEvery.

25 THE CLERK: 127, Robert Taft.

1 What say the State?

2 MS. BOLEN: Please present Mr. Taft.

3 THE CLERK: What say the defense?

4 MR. SHEEK: Please swear Mr. Taft.

5 THE CLERK: Number 2, April Akers?

6 JUROR: Akers.

7 THE CLERK: April Akers. :

8 What say the State?

9 MS. BOLEN: Please present Miss Akers.

10 THE CLERK: What say the defense?

11 MR. SHEEK: Please swear Miss Akers.

12 THE CLERK: 133, Wallace Upton.

13 What say the State?

14 MS. BOLEN: Please present Mr. Upton.

15 THE CLERK: What say the defense?

16 MR. SHEEK: Please excuse Mr. Upton from this
17 trial.

18 THE CLERK: Number 11, Cheryl Barnhart.

19 What say the State?

20 MS. BOLEN: Please present Miss Barnhart.

21 THE CLERK: What say the defense?

22 MR. SHEEK: Please excuse miss Barnhart from
23 this trial.

24 THE CLERK: 101, Eugene Ouzts.

25 What say the State?

1 MS. BOLEN: Please present Mr. Ouzts.
2 THE CLERK: What say the defense?
3 MR. SHEEK: Please swear Mr. Ouzts.
4 THE CLERK: 41, Timothy Dixon.
5 What say the State?
6 MS. BOLEN: Please present Mr. Dixon.
7 THE CLERK: What say the defense?
8 MR. SHEEK: Please excuse Mr. Dixon from this
9 trial.
10 THE CLERK: 18, Kevin Boyle.
11 What say the State?
12 MS. BOLEN: Please excuse Mr. Boyle.
13 THE CLERK: 30, Claudette Carson.
14 What say the State?
15 MS. BOLEN: Please present Miss Carson.
16 THE CLERK: What say the defense?
17 MR. SHEEK: Swear Miss Carson.
18 THE CLERK: 28, Margarita Bylo.
19 What say the State?
20 MS. BOLEN: Please present Miss Bylo.
21 THE CLERK: What say the defense?
22 MR. SHEEK: Please swear Miss Bylo.
23 THE CLERK: 73, Barbara Jadick.
24 What say the State?
25 MS. BOLEN: Please present Mrs. Jadick.

1 THE CLERK: What say the defense?

2 MR. SHEEK: Please swear Mrs. Jadick.

3 THE CLERK: 105, Terry Parks.

4 What say the State?

5 MS. BOLEN: Please present Mr. Parks.

6 THE CLERK: What say the defense?

7 MR. SHEEK: Please swear Mr. Parks.

8 THE CLERK: 64, Charles Hershey.

9 What say the State?

10 MS. BOLEN: Please present Mr. Hershey.

11 THE CLERK: What say the defense?

12 MR. SHEEK: Please swear Mr. Hershey.

13 THE CLERK: 19, Leigh Broome.

14 What say the State.

15 MS. BOLEN: Please present Miss Broome.

16 THE CLERK: What say the defense?

17 MR. SHEEK: Please swear Miss Broome.

18 THE CLERK: Your Honor, that's twelve. Two
19 alternates?

20 THE COURT: Yes, two alternates.

21 THE CLERK: Number 61, James Hawthorne

22 What say the State?

23 MS. BOLEN: Please present Mr. Hawthorne.

24 THE CLERK: What say the defense?

25 MR. SHEEK: Please excuse Mr. Hawthorne from

1 this trial.

2 THE CLERK: 97, John Morris.

3 What say the State?

4 MS. BOLEN: Please present Mr. Morris.

5 THE CLERK: What say the defense?

6 MR. SHEEK: Please excuse Mr. Morris.

7 THE CLERK: Number 3, Jeff Anderson.

8 What say the State?

9 MS. BOLEN: Please spresent Mr. Anderson.

10 THE CLERK: Any excuse for cause from the
11 defense?

12 MR. SHEEK: No, ma'am.

13 THE CLERK: 67, Thomas Holland.

14 What say the State?

15 MS. BOLEN: Please present Mr. Holland.

16 THE CLERK: What say the defense?

17 MR. SHEEK: Swear the juror.

18 THE COURT: All right, ladies and gentlemen,
19 you all have been selected as a jury for the case
20 of Otis Lamar Bland, Jr., and what I'm going to do
21 is dismiss you to the jury room at this time while
22 I take up a few things, then I will bring you back,
23 you will be sworn, I will appoint the foreperson of
24 the jury and then we will proceed. We will
25 probably take lunch and then start with the actual

1 case after that.

2 So, if you will please take them to the jury
3 room.

4 (The jury was excused from the courtroom).

5 THE COURT: All right, are there any
6 objections from the State or the defense to the
7 jury that has been selected and the manner in which
8 it has been selected?

9 From the State?

10 MS. BOLEN: No objection from the State, Your
11 Honor.

12 THE COURT: Thank you.

13 From the defense?

14 MR. SHEEK: No, sir.

15 THE COURT: Thank you. All right, ladies and
16 gentlemen, we have selected the jury that we have
17 for today. I am dismissing you now for the balance
18 of the day. You will call back as you did last
19 night after 6:00 o'clock for further instructions.

20 Ladies and gentlemen, thank you for appearing
21 today and I won't tell anybody you're off this
22 afternoon, so you do what you wish.

23 (The jury panel was excused from the
24 courtroom).

25 THE COURT: Anything from the State?

1 MS. BOLEN: Nothing from the State, Your
2 Honor. I wasn't sure what your schedule today was
3 going to be but if we could ask for just a very
4 quick break.

5 THE COURT: Sure, I will give you a few
6 minutes, then I will give my pretrial charge and
7 you all will do your opening statements and then
8 we'll break for lunch. I imagine that is going to
9 take probably a half hour or whatever. I told you
10 you would not have to start until 2:00 o'clock, I
11 will keep my word.

12 MR. SHEEK: Judge, would you have time, after
13 we complete that and dismiss the jury would you
14 have time to set this one bond? We have the
15 gentleman here from the jail.

16 THE COURT: I will do so.

17 Any other motions?

18 MR. SHEEK: No other pretrial motions.

19 THE COURT: Very well.

20 MR. SHEEK: I'm sorry, there is one I didn't
21 make and I would need to make it and I will be
22 happy to go ahead and put it on the record, but it
23 will be a motion to sequester the witnesses.

24 THE COURT: I didn't mean to prompt you. Do
25 you have any objection to that, Miss Bolen?

1 MS. BOLEN: No, sir.

2 THE COURT: Okay. Anyone who is not the lead
3 investigator or the victim will have to be outside
4 of the courtroom during the opening statements as
5 well as during the testimony until they testify.
6 Once they have testified they may remain.

7 Why don't we take ten minutes.

8 MS. BOLEN: Thank you, Your Honor, that will
9 be great.

10 (Recessed at 11:52 a.m.).

11 (Reconvened at 12:07 p.m.).

12 THE COURT: Is everyone ready?

13 MS. BOLEN: Yes, Your Honor.

14 THE COURT: Is the defense ready?

15 MR. SHEEK: The defense is ready, Judge.

16 THE COURT: All right, let's bring the jury
17 back in.

18 (The jury returned to the courtroom).

19 THE COURT: Mr. Hershey, if you will sit in
20 this chair right here.

21 Have we got all our jurors?

22 All right, Madam Clerk, would you please
23 swear the jury.

24 THE CLERK: Would you please stand and raise
25 your right hand. Do you solemnly swear or affirm

1 that you will well and truly try the issues before
2 the court and a true deliverence make and a true
3 verdict render according to the law and evidence
4 presented, so help you God. Do you?

5 JURORS: Yes.

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

7 THE COURT: Thank you. Mr. Hershey, I am
8 going to appoint you as the foreperson to this jury
9 and I will give you further instructions down the
10 road.

11 Ladies and gentlemen, before we begin this
12 trial I want to tell you that this trial will
13 probably be different from what you might expect.
14 Many people do not have a chance to actually serve
15 on a jury in a court session as you are today and
16 may think from watching TV, watching movies or
17 reading books that trials are always full of high
18 drama and tense action and rivetting circumstances.
19 Now, while all this may be true at times, this
20 trial is not for entertainment. This is a real
21 trial which is a fundamental part of our democracy.
22 This is a search for the truth in an effort to make
23 sure that justice is done. Searching for the truth
24 and ensuring that justice is done is often a slow,
25 deliberate and repetitive action, the opposite of

1 what you have seen on TV, movies and read in books.

2 Now, this courtroom is a place of honor that
3 is dedicated to the protection and the preservation
4 of our citizens' rights through what has been
5 called and I believe to be the greatest justice
6 system ever created. The attorneys who are
7 appearing before you are advocates for the party
8 they represent but first and foremost they are
9 officers of this court who are sworn to uphold the
10 integrity and the fairness of our judicial system
11 and to help you in your search for the truth. You
12 should expect them to be professional, competent
13 and ethical in the representation of their clients'
14 interests, and remember, ladies and gentlemen, you
15 too just took an oath to listen to the evidence and
16 to reach a fair and just verdict and you are
17 expected to be professional, reasonable and ethical
18 as well.

19 Again let me thank you for accepting this
20 important responsibility of jury service and your
21 contribution to our justice system.

22 Now, what I'm going to tell you now is
23 intended just to serve as an introduction to the
24 trial of this case. These remarks are not a charge
25 on the law. I will charge you the law to be a

1 applied in this case at the end of all the
2 evidence. This is merely an explanation of the
3 procedures that we will follow so that, you know,
4 you may better understand what may be happening,
5 and let me say up front, ladies and gentlemen, you
6 will not be able to take notes during this trial,
7 therefore it is very important that you listen
8 closely throughout this trial.

9 The defendant Otis Lamar Bland, Jr., is
10 charged by indictment filed in this court with the
11 crimes of armed robbery, attempted armed robbery,
12 possession of a weapon during a violent crime,
13 possession of a weapon during the attempt of a
14 violent crime and attempted burglary. The elements
15 of each of these will be explained to you later.

16 The indictments charging the defendant are
17 simply the documents by which the case is brought
18 into court and is not in any sense whatsoever
19 evidence of the allegations contained in the
20 indictment. The defendant has pled not guilty to
21 the charges contained in the indictments so the
22 State therefore has the burden of proving all the
23 elements of each charge of the indictments beyond a
24 reasonable doubt and it will be your duty, ladies
25 and gentlemen, to decide whether the State has met

1 that burden.

2 Your purpose in this trial is to determine
3 the facts of this case. You are to determine the
4 facts from the testimony you hear and other
5 evidence that is introduced here in court. It is
6 up to you to determine the inferences which you
7 feel may be properly drawn from the evidence. It
8 is especially important that you perform your duty
9 diligently and conscientiously because ordinarily
10 there is no way to correct an erroneous
11 determination of facts by a jury.

12 On the other hand and with equal emphasis the
13 same law that makes you the judges of the facts
14 makes me the judge of the law. The law as given to
15 you by me is the only law that you may consider.
16 You must accept this law as I give it to you even
17 though you may disagree with it. I cannot tell you
18 what the facts are and you cannot disagree with me
19 about what the law is or what the law should be.
20 Your job is to take the law as I give it to you and
21 apply it to the facts as you find them from the
22 testimony of the witnesses and any other evidence
23 that is introduced. After hearing the evidence you
24 will deliberate and render a true and just verdict
25 under the solemn oath that you just took as jurors.

1 Until I advise you to begin your
2 deliberations at the conclusion of this case you
3 must not discuss the case with anyone else,
4 including your fellow jurors, except when
5 authorized to do so by me. You may not use a
6 computer or cellular phone or other electronic
7 device with communications capability while in
8 attendance at the trial or during your
9 deliberations. Now, you may use these items at
10 lunch or when we're on break for the evening but
11 still you may not use these to disclose information
12 about the case when you're not in court or any
13 information which would include the following.
14 Information about a party, a witness, an attorney
15 or any other court officer, any news accounts about
16 this case, information collected by your research
17 on any topics raised or any testimony offered by
18 any of the witnesses or any information collected
19 through juror research or any other topic that you
20 might think would be helpful in deciding this case.
21 After the case is submitted to you you must discuss
22 it only in the jury room with your fellow jurors.

23 The attorneys and the parties in this case
24 are advised and have been advised they are not to
25 talk to you at all, ladies and gentlemen, so if you

1 see one of the people involved in this case and
2 they don't even say hello or anything more than
3 that they are not being unfriendly, they are merely
4 following my instructions.

5 Now, ladies and gentlemen, it's very
6 important you keep an open mind and not decide any
7 issue until all of the evidence has been presented,
8 the attorneys have made their closing arguments and
9 I have instructed you on the law. It is your
10 solemn responsibility to determine the guilt or the
11 innocence of the defendant and your verdict must be
12 based solely on the evidence as it is presented to
13 you in this case and on the law as I instruct you.

14 Now, in just a moment the Solicitor will make
15 what is called an opening statement, which will be
16 where she will explain to you what she believes the
17 issues are in this case. The attorney for the
18 defendant may also make an opening statement
19 although he is not required to do so. What the
20 attorneys tell you during their opening statements
21 is not evidence in this case. It is only their
22 contention as to what they believe the issues are.

23 Now, from time to time during this trial you
24 may hear one of the lawyers say something like,
25 "Your Honor, I believe we have a question of law,"

1 or matter of law, "to discuss with you," or, "Your
2 Honor, may we approach the bench," or sometimes I
3 might find it necessary to excuse you from the
4 courtroom for a short period of time so the
5 attorneys and I can discuss a matter of law. Now,
6 the reason for doing this is because, as I have
7 said to you, you are the judges of the facts and
8 sometimes when I'm discussing the law with the
9 attorneys it may be necessary for me to comment on
10 the facts in connection with making my ruling as to
11 whether or not a certain law might apply. As I
12 have said, I'm not supposed to tell you what the
13 facts are so I will excuse you from the courtroom
14 while that discussion takes place so you will in no
15 way be influenced by anything that I might say or
16 do in connection with the facts of this case.

17 Also during the trial you may hear one of the
18 attorneys make an objection to certain evidence
19 that is about to be presented. Now, whether I
20 sustain, which means grant, the objection, or
21 overruled, which means deny the objection, it
22 should not be construed that I favor one side over
23 the other. I do not. Nor should you infer that
24 the objecting party is trying to hide something
25 from you. In this court as in all situations in

1 life there are specific rules that must be
2 followed. The attorneys are merely trying to
3 follow the rules of this court in making an
4 objection and I am only ruling based upon what I
5 believe the law of South Carolina to be concerning
6 the evidence that is about to be presented.

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

15 In deciding whether or not to believe a
16 witness you have the right to consider the interest
17 of a witness, the bias of any witness, the
18 prejudice of any witness, the opportunity of the
19 witness to actually have observed the matters and
20 things about which they testify and the way the
21 witness acts on the witness stand. You have a
22 right to consider anything that is in the record
23 that will help you evaluate the testimony of the
24 witness. That means, ladies and gentlemen, that it
25 is your duty to pay close attention to the

1 witnesses, to observe the witnesses, to listen to
2 the witnesses and to pay close attention to the
3 attorneys and to the Court. Don't let your
4 thoughts wander. Give strict attention to the
5 testimony in this case so that at the end of all
6 the testimony, after the argument of counsel and
7 the charge on the law by me you will then be in a
8 position to determine what the true facts are and
9 to apply the law to those facts and render a true
10 and just verdict.

11 Now, Mr. Foreman, it will also be your
12 additional duty to preside in the jury room and be
13 the jurors' spokesperson here in court. It will
14 also be your duty to write the verdict but I will
15 give you further instructions on that at the
16 conclusion of this case.

17 Now, in order to preserve everyone's rights I
18 will give the parties an opportunity to object to
19 anything that I have stated.

20 Does the State have any objection to my
21 opening comments?

22 MS. BOLEN: No, sir, Your Honor.

23 THE COURT: Does the defense have any
24 objection?

25 MR. SHEEK: We do not, Your Honor.

1 THE COURT: All right, thank you.

2 Ladies and gentlemen, we will now begin this
3 trial.

4 Madam Solicitor.

5 MS. BOLEN: Your Honor, may it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. BOLEN: On February 23rd, 2009, Joan
9 Hughes was staying with her mother at her mother's
10 house in Greenwood County. It was sometime after
11 dusk, before dark, she heard a knock on the door
12 and opened it. There was a young man standing
13 there, they had a brief conversation and then
14 another young man came out from behind a car with a
15 gun and tried to force his way into her house.
16 Miss Hughes was able to shut the door.

17 However, these individuals and a third
18 individual then went on to another house in the
19 same neighborhood. They waited in the front of the
20 house until someone drove up, Isabel Martin, and as
21 she was exiting her car one of the individuals held
22 a gun to her and demanded that she give them her
23 pocketbook.

24 Now, the State believes that the evidence
25 that is going to be presented to you through

1 testimony of witnesses and other forms of evidence
2 will show not only that the defendant Otis Bland
3 was involved in both of these incidences, but also
4 that he was the individual with the gun. He was
5 the one who tried to break into Miss Hughes'
6 mother's house, he is also the one who robbed Miss
7 Martin at gunpoint. I ask you to listen to all the
8 testimony here, consider all the evidence and at
9 the conclusion of the trial I will ask you to
10 consider all the evidence and return a verdict of
11 guilty on all counts for Mr. Bland.

12 Thank you.

13 THE COURT: Thank you, Madam Solicitor.

14 Mr. Sheek.

15 MR. SHEEK: Thank you, Your Honor, may it
16 please the Court.

17 THE COURT: Yes, sir.

18 MR. SHEEK: Ladies and gentlemen of the jury,
19 I introduced myself to you a little while ago, my
20 name is Lance Sheek, I live here in Greenwood,
21 practice law in the Sheek Law Firm and today I
22 represent this young man seated right here beside
23 me, Otis Bland. Otis is a lifelong resident of
24 Greenwood County, he just turned twenty years old
25 last month. Otis comes to you today accused of a

1 crime. The State just told you about what they
2 accuse him of.

3 I have been practicing law now for almost
4 twenty years and I can tell you the visions of what
5 I thought it was going to be coming out of law
6 school and the reality are very different things.
7 The reason I say that is I have learned in twenty
8 years of doing this that accusations are easy to
9 make. Proof is what we're here about. We, as the
10 judge talked to you about TV shows, we see TV slows
11 and we always want that answer, we want at the end
12 of that hour long show to feel good, we know who
13 did it, somebody confessed and everybody goes home
14 happy. Well, that is not real life. Real life is
15 what we're doing here today, real life is fourteen
16 of you have been chosen to serve as jury.

17 The judge told you what you're going to do,
18 you're the finders of the facts, you're the judges
19 of the facts. At the end of this case, after
20 listening to all the testimony, all the evidence,
21 and it will all come from that chair right there,
22 it won't come from me or come from the Solicitor
23 but it will come from that chair, you're to go back
24 in your room and you're going to deliberate, you're
25 going to come up with a verdict. Verdict comes

1 from a word that literally means to speak the
2 truth. That is what we're going to ask you to do.

3 Now, what are you going to have to base that
4 verdict on? You come in today equipped with some
5 tools to do your job with, tools like common sense,
6 a lifetime of judging credibility of people that
7 talk to you, their believability. Those you
8 brought in here with you but to combine with those
9 tools you have to be given the evidence, and whose
10 job is that? The job is the State's job to come to
11 you today with proof of each and every element of
12 the accusation they made against Otis and prove it
13 beyond a reasonable doubt.

14 Now, why have we in this country set that
15 standard? Well, if you think about it, much of our
16 law is based on Biblical standards. If you look
17 back when the law was given in the first five Books
18 of the Old Testament, Moses wrote much of the law
19 at that time. One of the things he said, "If
20 someone comes with an accusation against another
21 person they must come with a second person to
22 corroborate." The reason Moses was writing that
23 was he knew then there were people who made false
24 allegations. This is something that happens.

25 How do you prove a negative? We all like to

1 think if somebody accuses us of something they've
2 got to prove it, right? We're presumed innocent
3 until proven guilty. That is what the law says.
4 Well, I found out in reality oftentimes it's
5 expected of a defendant to come into this courtroom
6 and somehow prove himself innocent. But how we do
7 that? If he doesn't have the witnesses or somebody
8 to prove what happened on February, 2009, how does
9 prove himself innocent? If I said this man sitting
10 right here, Demetrios Andrews, who works with the
11 Solicitor's office three months ago attacked me in
12 the parking lot and I don't have a witness to prove
13 he didn't, how does he prove he's innocent?

14 If I go to a magistrate court and swear out a
15 warrant affidavit, swear out an oath, put my hand
16 on this Bible and say I'm telling the truth, he did
17 it, how does he prove he didn't? The law says I'm
18 supposed to have the proof he did, but if somebody
19 lowers that standard then an innocent man can go to
20 prison. We don't lower that standard.

21 The judge talked to you about upholding
22 fairness and preservation of rights. That's what
23 we're here about today. When the Apostle Paul was
24 writing in the First Century Church, he wrote the
25 church leaders and workers in the church needed to

1 watch out for the widows and the orphans. It
2 wasn't because Paul said those people had more
3 value than the other people in society, it was
4 because those people didn't have power in that
5 society. In that society if you were a widow or
6 orphan you didn't have somebody to stand up for
7 your rights, so the Apostle Paul said watch out for
8 these people.

9 In our society Otis doesn't have power
10 because Otis doesn't have a lot of money, Otis
11 doesn't have Doctor in front of his name, doesn't
12 live in a big house, doesn't drive a fancy car. If
13 Otis could throw a football real well or a baseball
14 really well or play basketball really well, then in
15 our society we would praise him as being something
16 special. If he were accused of a crime you better
17 believe everything would be done to make sure his
18 rights were protected.

19 But Otis doesn't do those things. Otis lives
20 in Greenwood, twenty years old with nobody to look
21 to but me and his hopes that I will come in here
22 and preserve his rights, because if not Otis' job
23 is somehow to be able to do an investigation in
24 February of '09. Otis doesn't have the means to do
25 that but it is the police's job, it is their

1 obligation and when they come to court to accuse a
2 man like Otis of a crime it is their job and
3 obligation to bring to you all the evidence that is
4 available. That is what Otis would expect.

5 When I had been practicing a while and was
6 doing defense work, I started out as a prosecutor
7 and then started doing defense work my mother once
8 asked me, "Could you defend someone if you thought
9 they were guilty?" That is a question a lot of
10 defense lawyers get asked and that would be a
11 problem if I felt like someone was guilty but here
12 is the question, really. When I protect the rights
13 of the defendant like Otis am I just working for
14 Otis. Or am I working for every other member of
15 this community who might ever be charged with a
16 crime? Because that chair is not reserved for
17 Otis. He is sitting in it today but that chair
18 could be for anybody in Greenwood County that got
19 accused of something, and if I let Otis' rights
20 drop down a little lower because Otis doesn't have
21 the money or the fame, then don't I risk everybody
22 else?

23 The reason I say that to you today is because
24 as you listen to the testimony and evidence in this
25 case I want you to think about what was done, what

1 could have been done, what should have been done
2 and what has been proven, because I submit to you
3 what you're going to have, you're going to have
4 some people doing this, you're going to have the
5 State bringing to you what we call co-defendants,
6 that is other people charged with a crime they are
7 charging Otis with, who have said, "I think the
8 best way I can handle this is cut a deal, cut a
9 deal and I'm going to help myself out by giving
10 this statement," and they did that. And I think
11 the State is going to tell you, I submit the
12 evidence is going to show you they came to this
13 courtroom in November of '09 and they stood before
14 a judge and they pled guilty but part of it was
15 they had a deal when they pled guilty. They were
16 getting a break, a big one, and part of that deal
17 was they were going to tell Otis was the one had
18 the gun and did all the bad stuff.

19 But then the State, I submit to you the
20 evidence will show, didn't really trust them so
21 they did this. "Well, we're going to do a sixty
22 day evaluation, we're going to withhold sentencing,
23 we're going to take your guilty plea so you can't
24 change your mind but we're going to withhold
25 sentencing until after you come to court and you

1 point your finger at this young man." The check
2 for the testimony has been written, the amount
3 hasn't been filled in, in other words.

4 Why would the State need to hold that over
5 their head? What other testimony do we have? Do
6 we have a photo line-up? I submit to you the
7 evidence is going to be in this case the victims
8 will say, "Yes, I was shown a photo line-up by
9 somebody from the Sheriff's Department," and the
10 Sheriff's Department is going to say, "We don't
11 know anything about it. If we did it, we don't
12 know who did it or where it went, or if somebody
13 was identified, or if Otis was in the photo
14 line-up." You're going to hear a lot about what
15 was done, you're going to hear a lot more about
16 what wasn't done. You're going to hear about a
17 statement that Otis gave February 23rd, 2009, when
18 the police talked to him, and you're going to hear
19 him tell about how he went with them and how they
20 attempted robbery,. What you are not going to hear
21 anywhere in those statements is Otis saying, "I
22 went there to do a robbery, we were going to do a
23 robbery, we had planned a robbery." What he is
24 telling them is after the fact that is what
25 happened, and then it is not until the next day

1 these other two want to come in and talk to the
2 police about it. And that is how we ended up here
3 today.

4 I would love to think we live in a perfect
5 world. We don't, we live in a real world. I come
6 to you today representing Otis and asking you to do
7 one thing. Your job as a criminal jury, one, is to
8 determine guilt, whether or not it's proven in this
9 case. And there really should be three verdicts.
10 There should be guilty, not guilty and not proven.
11 I'm not asking you to find someone wins or loses in
12 trials because nobody wins or loses in a trial. It
13 is simply an attempt to uphold justice but your
14 verdict not only speaks to guilt or innocence in
15 the trial but it speaks to the standard that we
16 require in Greenwood County before a citizen, one
17 of us, is brought before this courtroom and sat in
18 that chair and accused of a crime.

19 Basically you have heard people making tongue
20 in cheek comments, good enough for government work,
21 and that is kind of made jokingly when it is not
22 quite up to the standard you would want but it's
23 good enough for government work and I submit to you
24 the evidence will show that's what this
25 investigation was, good enough for government work

1 but it's not good enough for our justice system,
2 not good enough to place our people at risk.

3 Listen carefully to this testimony. Proverbs
4 says he who tells a story seems right until another
5 comes along. The writer of that Proverb knew you
6 want to believe them, you don't want to believe
7 somebody is not telling you the truth but when that
8 person comes along to question it maybe you say, "I
9 didn't get the complete story the first time."
10 Keep an open mind until all this evidence is in.

11 I thank you for being here. I know it's
12 inconvenient, I know this isn't you all's job but
13 without you all justice doesn't go forward in
14 Greenwood County, so I thank you for your time and
15 thank you for your attention.

16 THE COURT: Thank you, Mr. Sheek.

17 All right, ladies and gentlemen, I imagine
18 you're getting a little hungry so I'm going to
19 dismiss you for lunch. I'm going to remind you
20 that when you're on breaks you're not to discuss
21 the case with anyone, as you are sworn to uphold
22 that, as I told you. Thank you. We will resume
23 court at 2:00 o'clock, so you will have an hour and
24 a half for your lunch break. I ask you to be back
25 here a little bit early so we may start promptly at

1 2:00.

2 Thank you, ladies and gentlemen.

3 (Jury excused from the courtroom).

4 THE COURT: Anything from the State or the
5 defense before we adjourn for lunch?

6 MS. BOLEN: Nothing.

7 THE COURT: All right.

8 MR. SHEEK: Nothing for the defense.

9 THE COURT: Court is in recess until 2:00
10 p.m.

11 MR. SHEEK: Your Honor, now that the jury is
12 sworn is my client free to go to lunch or remain in
13 custody?

14 THE COURT: Do you all have any objections to
15 that?

16 MS. BOLEN: No, Your Honor, that's fine.

17 THE COURT: Be sure to let him know if he
18 does not come back that will not stop this trial,
19 we will move forward whether you're here or not.

20 MR. SHEEK: I'll make sure he understands.

21 (Recessed at 12:34 p.m.).

22 (Reconvened at 2:07 p.m.).

23 THE COURT: Are we ready to proceed?

24 MR. SHEEK: We are, Judge.

25 MS. BOLEN: Yes, sir.

1 THE COURT: All right, let's bring our jury
2 in.

3 BAILIFF: All right, sir.

4 (The jury returned to the courtroom).

5 THE COURT: All right, ladies and gentlemen,
6 I hope you had a nice pleasant lunch and are filled
7 up and ready to hear some testimony this afternoon.

8 I notice that some of you all are sitting in
9 the same seats. Commonly only the foreman has to
10 sit in the same seat. If you all want to get a
11 different view or whatever you may move around.

12 Let's see, Solicitor, are you ready to
13 proceed with the testimony?

14 MS. BOLEN: Yes, sir, Your Honor.

15 THE COURT: You may call your first witness.

16 MS. BOLEN: Thank you, Your Honor. The State
17 calls Joan Hughes.

18 JOAN HUGHES,
19 after being first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BOLEN:

22 Q Good afternoon, Miss Hughes. State your full
23 name for the record.

24 A Joan Smith Hughes.

25 Q And, Miss Hughes, where do you live?

1 A I live in Waterloo.

2 Q And what is your Mother's name?

3 A Joan Smith.

4 Q Where does your mother live?

5 A She lives at [REDACTED] [REDACTED] [REDACTED] [REDACTED] in

6 Greenwood.

7 Q Is that in Greenwood County?

8 A Yes.

9 Q Is that a house she owns?

10 A Yes, she does.

11 Q Do you have an occasion to go over to your

12 mother's house?

13 A Yes, I'm there a lot. She is older and I

14 have to take care of her and stuff.

15 Q Were you at your mother's house on February

16 23rd of 2009?

17 A Yes.

18 Q Do you remember what time you were there?

19 A I was there most of the day, all night.

20 Q Miss Hughes, how is your mother's house set

21 up, how many doors does it have?

22 A Two.

23 Q Where are they located?

24 A There is a front door and then there is a

25 door on the side which we call the back, it's on

1 the side. The front and then the other door is
2 over here.

3 Q Do you have a driveway?

4 A Yes. That's where the side door is, the
5 driveway.

6 Q Is there a back yard?

7 A Yes.

8 Q Is the back yard fenced?

9 A Yes.

10 Q Miss Hughes, if you could come down I will
11 show you a map. And just for demonstrative
12 purposes, can you point out where your mother's
13 house is?

14 A There.

15 Q Okay. Would you just circle the driveway?

16 A All of it?

17 Q Yes. And where is the side door, if you can
18 just sort of mark --

19 And then where is the back yard?

20 A This is part of the back yard, this is part
21 of it.

22 Q So there is a fence that goes --

23 MR. SHEEK: Your Honor, my apologies, Miss
24 Hughes doesn't have a microphone.

25 THE COURT: Would you all give her the

1 microphone?

2 THE WITNESS: I'm sorry, Your Honor.

3 THE COURT: I was noticing the same thing.

4 Thank you.

5 BY MS. BOLEN:

6 Q Okay. So, this is, what you circled here is
7 the driveway, correct?

8 A Yes.

9 Q Okay. This is the back yard?

10 A Yes.

11 Q And you put a little line where the door is?

12 A Right.

13 Q And where is the fence on the back yard?

14 A This side of the house, it comes up the side.

15 Q You can have a seat back on the witness
16 stand. Thank you.

17 Can you approximate how high the fence is in
18 your mother's back yard?

19 A Probably five feet -- no, four foot, I
20 believe.

21 Q Do you have any dogs in that yard?

22 A Yes. There was one at that particular time
23 but now there's two.

24 Q Did your mother have a storage shed in her
25 yard?

1 A Yes.

2 Q Where is that located?

3 A It's straight back from the driveway. There
4 is no fence around that part of the yard.

5 Q The storage shed is not fenced in?

6 A No.

7 Q Directing your attention back to the evening
8 of February 23rd of 2009, were there any cars
9 parked in the driveway that evening?

10 A Yes.

11 Q Do you know how many?

12 A Just one, I believe, just hers.

13 Q And do you know where it was parked in
14 relation to the side door?

15 A Right at it.

16 Q What happened on the night of February 23rd,
17 2009?

18 A There was a knock at the door, I answered,
19 and there was a guy asking if he could rake my
20 leaves and I told him, "No, you have to ask my
21 mom," so I turned around, actually I closed the
22 door and turned around and spoke to her, she was
23 sitting at the table, which was right by the side
24 door, and I said this guy wanted to know if he
25 could rake some leaves and she said, "Well, ask him

1 if he's Otis' son," so I went back to the door and
2 I said, "Are you Otis' son," and he said, "Otis"?
3 And he kind of stepped back and that is when out of
4 the corner of my eye I seen this guy running at me
5 waving a gun and I tried to get back into the house
6 and get the door shut.

7 Q And were you able to shut the door?

8 A Yes, thankfully.

9 Q Just backtracking a little bit, can you
10 describe the build of the first person who came to
11 the door?

12 A He was short and thin.

13 Q Did you get a good look at him?

14 A Yes. I had seen him previously when I was
15 outside, he would come and talk to me about doing
16 yard work and so I was familiar with him. I didn't
17 know who he was but I was familiar with him.

18 Q And the second person, where did they come
19 from?

20 A From right behind my mom's car.

21 Q And did you notice what that person was
22 wearing?

23 A It was dark clothing but all I mostly saw, he
24 was tall, I mostly just saw the gun.

25 Q Can you describe his build?

1 A He was tall and thin.

2 Q Did you know what sort of gun it was?

3 A Big. I don't really know. I just saw him
4 waving it and I was trying to get back in the
5 house.

6 Q Is there like a side yard or does the
7 driveway go right up against the house?

8 A It pretty much goes right up against the
9 house. It is not much space there.

10 Q How close to you and the door did the person
11 with the gun get?

12 A Probably within three or four feet.

13 Q Did you have to push the door?

14 A Yes. I don't know who or what, I don't know
15 if he had gotten to the door or if the other guy
16 was holding the door but I had to struggle to get
17 it shut.

18 Q But you were able to get it shut?

19 A Yes.

20 Q Miss Hughes, you mentioned that you spent a
21 fair amount of time with your mother, is that
22 right?

23 A Yes.

24 Q Are you familiar with her everyday
25 activities?

1 A Yes.

2 Q Of your own personal knowledge have you ever
3 known Otis Bland's son to work at your mother's
4 house?

5 A Not personally but she told me that he had
6 come over and asked to do some work when he wanted
7 to make some money, he would rake some leaves for
8 her.

9 MS. BOLEN: Beg a moment of the Court's
10 indulgence, Your Honor.

11 THE COURT: Yes, ma'am.

12 Q Miss Hughes, just a few more questions. Is
13 your mother's house in Greenwood County?

14 A Yes.

15 Q Just to clarify the build of the two
16 individuals you saw, can you just give a general
17 description of what you observed about their build?

18 A One of them was short and thin and the other
19 one was tall and thin.

20 Q And which one was at the door?

21 A The short one.

22 Q And which one was behind the car?

23 A The tall one.

24 Q Did the one at the door have a gun?

25 A No, not that I saw.

1 MS. BOLEN: I don't have any further
2 questions at this time. Please answer any
3 questions Mr. Sheek may have for you.

4 THE COURT: Mr. Sheek.

5 CROSS EXAMINATION

6 BY MR. SHEEK:

7 Q Miss Hughes, about what time of day was this?

8 A It was almost night, it was still not quite
9 dark but not daylight either.

10 Q Okay. Was there a light outside at this
11 doorway that helps light up the area?

12 A Yes. There is also a spotlight on the shed
13 out toward the driveway.

14 Q Now, you said the shorter individual came to
15 the door, you spoke to him about whether or not you
16 needed some yard work?

17 A Right.

18 Q What was he wearing?

19 A He had on something dark also. It seemed
20 like it was a navy blue windbreaker, maybe a black
21 tee-shirt.

22 Q Did he have a hat on, that you could see?

23 A I don't think so.

24 Q What about gloves, was he wearing gloves?

25 A No.

1 Q You said when the other individual began
2 running you tried to shut the door. This gentleman
3 was pushing on it, trying to push it open?

4 A No. I was trying to pull it shut and he was,
5 he put his hand at the bottom of the door and when
6 he did that I just turned around and grabbed the
7 inside door.

8 Q Did you talk to a Deputy Williams about this
9 on the night that it happened?

10 A I don't know. I don't remember a name.
11 There was Chris and some other guys.

12 Q Do you recall telling a deputy that you tried
13 to shut the door but the subject began pushing on
14 the door trying to gain entry?

15 A Yes.

16 Q Okay. Is that what happened?

17 A Yes.

18 Q Okay.

19 A That was the inside door, though, not the
20 storm door.

21 Q Okay. What was this inside door made of,
22 wood or --

23 A You know, metal, metal type door.

24 Q It's got a hard surface? Was it a painted
25 surface?

1 A I don't know.

2 Q No reason, though, if this gentleman is
3 pushing on the door struggling, obviously his
4 fingerprints are there, right?

5 A Should have been, yes.

6 Q Do you know if anybody ever checked that door
7 for fingerprints?

8 A Not that I know of.

9 Q If their incident report indicated you told
10 them he was pushing on the door that night, that is
11 not information they got later, is it?

12 A Actually I think what I told him was I don't
13 know if, it felt like it was hitting on something
14 like maybe they stuck their foot in there, I'm not
15 sure if I ever said they were actually pushing with
16 their hand.

17 Q Okay. Well, then, if you think that is what
18 you stated, if the incident report states you said
19 the subject was pushing on the door, then their
20 incident report doesn't accurately reflect what you
21 told them?

22 A Well, I'm not positive about that. I was
23 very upset at the time.

24 Q Okay.

25 A But I do know when I was trying to get the

1 door closed I couldn't get it closed, it was like
2 something was holding it. I thought maybe they
3 were trying to get in or pushing on it or had their
4 foot in it or something.

5 Q This individual you saw come running up from
6 the direction of the car, was he wearing a hat or a
7 mask?

8 A I don't know.

9 Q You said he was waving a gun?

10 A Yes.

11 Q Were you ever shown any photo line-ups to see
12 if you could identify either the person at the door
13 or the person running from the car?

14 A Yes, on a piece of paper.

15 Q Okay. And who showed you that?

16 A I'm not sure.

17 Q Was this the person from the Greenwood County
18 Sheriff's Department?

19 A Yes.

20 Q And you saw a piece of paper. Did it have
21 pictures on it, photographs?

22 A Yes.

23 Q Do you recall how many individuals were
24 photographed on it?

25 A Maybe a dozen.

1 Q And were you able from those photographs to
2 identify either the individual running from the car
3 or the one pushing on the door?

4 A No. They were terrible pictures.

5 Q But you told the police the night they took
6 the statement from you that you would be able to
7 identify at least the individual pushing on the
8 door?

9 A Yes, the one that I talked to.

10 Q Now, when they showed you this photo line-up
11 would you say it was some time after the incident?

12 A Yes.

13 Q Okay. Do you recall how long after the
14 incident?

15 A A few days maybe.

16 Q Okay. So it wouldn't have been the day of
17 the incident or the day right after?

18 A No.

19 Q Were any names discussed with you by any
20 member of the Greenwood County Sheriff's Department
21 as people they felt were suspects? Did they ever
22 mention any names to you?

23 A Not really. The only thing was when I told
24 them that my mom told me to ask them if it was
25 Otis' son, they wanted to know was it Otis Bland

1 and they kind of went from there.

2 Q Do you think one of these people on the
3 photograph sheet may have been Otis Bland?

4 A I don't know.

5 Q Do you recall if this gentleman seated right
6 here, if his picture was one of those on that piece
7 of paper?

8 A I don't know.

9 MR. SHEEK: That's all I have.

10 THE COURT: Any redirect?

11 MS. BOLEN: Very brief redirect, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BOLEN:

14 Q Miss Hughes, you stated that you weren't sure
15 if it was a hand or a foot against the door. Is
16 that right?

17 A Yes.

18 Q You don't know that there was necessarily a
19 hand against the door?

20 A No. It just felt like there was something
21 there, I couldn't get it shut all the way and I was
22 struggling and hollering for my mom to call 911.

23 MS. BOLEN: Beg the Court's indulgence, Your
24 Honor.

25 Q Miss Hughes, just for clarification, can you

1 explain what sort of doors are on your mom's house,
2 like a screen door and other doors, can you just
3 explain that?

4 A Yes. There is a storm door and then an
5 inside door. The storm door opens like to the
6 outside and then the other closes this way.

7 Q And --

8 A I couldn't get the storm door, I was trying
9 to pull the storm door, he put his hand on the
10 bottom of the door, and I do know that he did try
11 to hold the storm door and so I just reached around
12 and grabbed the inside door and was trying to push
13 it shut.

14 Q Okay. Do you know which individual did that?

15 A The short guy put his hand on the door, the
16 other one was running and I was trying to pull the
17 door shut.

18 MS. BOLEN: Nothing further.

19 THE COURT: Any recross based on those
20 questions?

21 MR. SHEEK: No recross.

22 THE COURT: Thank you. The witness may step
23 down.

24 (Witness excused).

25 THE COURT: Madam Solicitor, you may call

1 your next witness.

2 MS. BOLEN: The State next calls Isabel
3 Martin.

4 THE COURT: Miss Martin.

5 ISABEL MARTIN,
6 after being first duly sworn, testified as follows:

7 THE COURT: You may proceed.

8 MS. BOLEN: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. BOLEN:

11 Q Good afternoon, Miss Martin.. Can you please
12 state your full name for the record?

13 A Isabel Martin.

14 Q And, Miss Martin, where do you live?

15 A [REDACTED],
16 Greenwood.

17 Q Is that in Greenwood?

18 A Greenwood County.

19 Q Could you describe your street for the jury?

20 A I live on a cul-de-sac, [REDACTED], I
21 live in the last house, there is a little
22 cul-de-sac and as you turn in I'm in the last house
23 on the cul-de-sac.

24 Q Do you have neighbors on each side of you?

25 A Well, they is down from the cul-de-sac. I

1 live up in the corner and they lives down. I have
2 neighbors but they are not like on each side of me,
3 they are sort of down to the front on each side.

4 Q And what is behind your house?

5 A Mostly trees but I have a fenced in back yard
6 back there.

7 Q Do you have a garage?

8 A I have one of those aluminum carports that I
9 drive under, a double aluminum carport.

10 Q And where is that located in reference to
11 your house?

12 A It's on the side. I have a side door also, I
13 have a front door and a side door. My aluminum
14 carport is right there on the side so when I pull
15 my car in I pull right beside the side door.

16 Q What is the lighting, outdoor lighting like
17 at your house?

18 A I have a light on the side and on the front
19 door but I had left home early that day and I
20 didn't get back until about 8:00 o'clock, so the
21 only light was on was my streetlight right at the
22 back yard but it shines, you know, right there
23 under the carport outside, where the side door is.

24 Q Miss Martin, if you would just for
25 demonstrative purposes, if you could just come up

1 and show on this map where your house is. I'm
2 going to hand you a pen just to mark some things.
3 Can you circle where your house is on that?

4 A This is the cul-de-sac here, my house is
5 right here at the end of this cul-de-sac. It's a
6 dead-end that come all the way around and this is
7 my driveway coming up this side and that is my
8 carport right there.

9 Q Can you just circle where the carport is?

10 A The carport is right here where my driveway
11 come in.

12 Q And do you have an entrance to the house,
13 near the carport?

14 A Yes. It's the side door right here, come in
15 under the carport.

16 Q And can you just circle where the closest
17 neighbors are?

18 A I guess the closest neighbor is down to the
19 front, my closest neighbor is right here, over here
20 on this side of the cul-de-sac.

21 Q And are these the woods behind your house
22 here?

23 A These are the woods, and my whole back yard
24 is fenced in.

25 Q Thank you. You can return to the witness

1 stand.

2 All right, ma'am. I would like to direct your
3 attention to the evening of February 23rd, 2009.

4 Do you remember what you were doing that evening?

5 A Yes. We had went out to dinner so I didn't
6 get back until about 8:00 o'clock that night. It
7 was a Christian song on the radio that I liked to
8 listen to so I just sat there in the car awhile and
9 then when the song was over I stepped out of the
10 car and I saw two guys coming around the front of
11 my house. I thought they were just walking up, you
12 know, I'm in my own yard, I wasn't thinking I was
13 fixing to get robbed, so I just stepped out of the
14 car and he just came up to me and had a gun and
15 stuck a gun to my temple and told me to give it up,
16 so I asked him give what up, he said, "Give me your
17 pocketbook." That is when me and him made eye
18 contact. He had a bandanna on. So I looked
19 around, I saw the other little guy then. At first
20 it made me sort of angry, you know, I'm in my own
21 yard, I was thinking I was fixing to get robbed in
22 my own yard. So I just give them my pocketbook,
23 you know, he held the gun to my head, he took my
24 pocketbook, so I first asked him, I said, "What,
25 give up what?" He said, "Give me your pocketbook,"

1 so I just gave him my pocketbook. He just got my
2 pocketbook and he ran on out of the front yard with
3 that other little fellow and they took off on in
4 the front of the house, I don't know which way they
5 went. So I went in the house, opened my door and
6 called 911, so that is when the police was there in
7 no time. I think they was already in the
8 neighborhood looking for them.

9 Q Okay. You said there were two people?

10 A It was two people but one had come up close,
11 he came on, he walked on up to me, he was about a
12 foot from me, I made eye contact, he sort of
13 dropped his head like he was embarrassed for
14 whatever he was doing, his self, I looked right in
15 his eyes, he had this bandanna on and he had these
16 gloves on with the kind of gloves cut off at the
17 fingers, he had the gun in his hand, it wasn't full
18 gloves, it was the kind of gloves that the fingers,
19 the fingers were cut out, you know, just this part
20 was covered up. He was dressed in dark clothes.
21 He was real skinny, I can remember that.

22 Q Do you remember anything else about his
23 build?

24 A He wore dark clothes, you know, and he had
25 dark gloves on.

1 Q You said he held a gun to your temple?

2 A He didn't touch my temple but he had it up to
3 my head on this side.

4 Q Did you notice what kind of gun it was?

5 A I don't know anything about guns, I just know
6 it was a large gun, pretty big gun, I don't know
7 much about what what kind of gun.

8 Q How close to you was he?

9 A He came all the way up to me, like he was no
10 more than a foot away from me, that is when we made
11 eye contact.

12 Q Did you get a good look at his eyes?

13 A I got a good look at his build and his eyes.

14 Q Was there any light in the carport?

15 A Yes. The streetlight, you know, where we
16 were, the streetlight was shining, you know, right
17 on him.

18 Q Did you get a good look at this person?

19 A I got a good look at him.

20 Q If you saw him again would you be able to
21 identify him?

22 A I will never forget his build, his build and
23 his eyes, the way he looked, like he didn't want me
24 to look straight at him, he dropped his head, was
25 embarrassed, he didn't want me to get a good look

1 at him.

2 Q Do you see that person in the courtroom
3 today?

4 A Yes, he's in here.

5 Q Can you point him out to the jury?

6 A Yes, I remember him.

7 MS. BOLEN: May the record please reflect --

8 Q Are you pointing to the gentleman in the
9 black shirt with the white writing?

10 A Yes.

11 MS. BOLEN: May the record reflect the
12 witness is pointing to the defendant?

13 THE COURT: The record will so reflect.

14 BY MS. BOLEN:

15 Q The other person you saw, how far away was
16 that person from you?

17 A He stood back sort of like in my front yard,
18 he didn't come up.

19 Q Was he shorter or taller than the person with
20 the gun?

21 A He was shorter, he was a little heavier, I
22 could tell he was heavier.

23 Q He was heavier and shorter?

24 A He was a little heavier than the guy that
25 came up closer to me.

1 Q Did you see what happened, where these two
2 individuals went after this happened?

3 A He just got my pocketbook and then he just,
4 when he walked up he had the gun back like that,
5 you know, with the gun behind him, and then he just
6 went on around the front of my yard.

7 MS. BOLEN: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Yes, ma'am.

10 Q Miss Martin, to the best of your memory what
11 was in your pocketbook?

12 A My daughter had gave me a camera, and most
13 all my contacts, my Social Security card, my
14 license, you know, insurance card, most of my cards
15 and cash and my phone, and just mostly my camera,
16 phone, a good number of stuff a woman will have, my
17 bank card and stuff like that.

18 MS. BOLEN: Miss Martin, I don't have any
19 further questions for you at this time. Please
20 answer any questions Mr. Sheek may have for you.

21 THE COURT: Mr. Sheek.

22 MR. SHEEK: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. SHEEK:

25 Q Ma'am, describe for me again, what was the

1 person that came up and took your purse wearing?

2 A It was dark clothes and he had, the hand he
3 had the gun with, I looked over at it, at his hand,
4 he had dark gloves on. It wasn't, it was the kind
5 of gloves that I guess basketball, you know,
6 baseball players wear with the fingers out.

7 Q Okay. Did he have, you said he had a
8 bandanna on?

9 A He had a bandanna on.

10 Q Where was the bandanna?

11 A Across his face. That is why I could look in
12 his eyes, I made eye contact.

13 Q Did you say he had goggles on, too?

14 A No, I didn't say it.

15 Q You said he had a bandanna covering his face?

16 A Yes.

17 Q The say that person with a bandanna covering
18 his face is sitting right here?

19 A I can tell from his build and shape. When I
20 first came in I knew it was him because of how he
21 was shaped, skinny. He came no more than a foot
22 from me.

23 Q You can recognize him because of his build?

24 A Because of his build and how he, when we
25 looked at each other in the eyes.

1 Q When did he look at you in the eyes here?

2 A I hadn't looked in his eyes.

3 Q You said just a minute ago --

4 A I seen him before when we had the trial
5 before.

6 Q Okay. So, when you came to court and were
7 told that is the defendant, that is when you said
8 that's him?

9 A No, nobody told me that was him.

10 Q Since the police have done photo line-ups,
11 I'm sure you got one, right?

12 A No, I didn't get one.

13 Q They never showed you a photo line-up?

14 A They never showed me a photo line-up.

15 Q Did you ever get your pocketbook back?

16 A What, now?

17 Q Did you ever get your pocketbook back?

18 A I never got my pocketbook or nothing.

19 Q Do you know if the police recovered the
20 pocketbook?

21 A I don't think so.

22 Q How long was this person standing there
23 talking to you when he took your pocketbook?

24 A Well, he didn't really say a whole lot, he
25 just told me give it up.

1 Q So, very quick?

2 A He walked up to me and told me give it up and
3 I told him, I asked him, I said give what up, and
4 it almost make me angry.

5 Q This was after dark?

6 A It was getting dusk dark.

7 Q And then he and the other person ran off, you
8 say?

9 A They went on back around the front of my
10 yard.

11 Q Why don't you show us on this map which
12 direction he ran, if you don't mind. I will give
13 you that pen, just draw a line which way you saw
14 him running.

15 A Okay. This is the side of my carport, that's
16 my driveway coming in, they ran right on around in
17 front of my yard.

18 THE COURT: Is the mike on?

19 BAILIFF: Yes, sir.

20 A They run right on around the front of my
21 yard.

22 Q When did you last see them?

23 A When I last saw him that night?

24 Q That night.

25 A I didn't see them anymore after they ran on

1 around, I went on in the house.

2 Q So, they were running this direction you have
3 drawn the line in?

4 A Run around this way, this is the front of my
5 house.

6 Q Okay. There has been some mention in some of
7 the police reports about -- you can take the stand
8 again, I'm sorry. There was some mention in the
9 police reports about an abandoned Ford Explorer or
10 Jeep white in color near your house. Do you know
11 anything about that?

12 A No.

13 Q Did you ever notice a white in color vehicle
14 parked in a yard near your house around that time?

15 A No.

16 Q These individuals that approached you, did
17 you see them exiting any vehicles?

18 A No.

19 Q Where did they come from when they approached
20 you, what direction did they come from?

21 A They came from the front of my house.

22 Q So, up here where the cul-de-sac is?

23 A Yes. There is a house right there, over
24 there on the right if you are going this way. That
25 house is abandoned but a lot of peoples go through

1 there, they done made a path through there to get
2 to the other road on the other side.

3 Q When you pulled up did you park under this
4 metal shed that you've got to cover your car?

5 A I parked under my carport. I had to get out
6 beside the carport. I have two cars under there.

7 Q What kind of car were you driving?

8 A I was driving my 2000 Honda.

9 Q You said you sat there to listen to a song
10 you liked?

11 A Uh-huh (Affirmative).

12 Q Do you remember which song it was?

13 A I sure don't.

14 Q Do you remember how long you sat there
15 listening to the song?

16 A It was almost finished, I finished listening
17 to it.

18 Q You were there less than a minute, do you
19 think?

20 A No more than a minute.

21 Q You got out of the car, were the people
22 approaching you then?

23 A At the time I got out, by the time I stepped
24 out under my carport I saw two guys, one was
25 walking on up to me, that's the reason why I

1 thought they was coming up to say something to me,
2 you know, you don't think you're going to get
3 robbed in your own yard, you know, I was just
4 thinking they was coming up telling me something or
5 saying something to me at the time.

6 Q Well, would it be fair, then, to assume they
7 were approaching your vehicle before you got out?

8 A I don't know. I can't speak for them.

9 Q Okay. When you first noticed them do you
10 recall roughly where they were standing? Were they
11 in your yard at that point?

12 A One of them was standing in the back of my
13 yard, one of them was walking up to me.

14 Q Okay.

15 A That is when I thought, one standing back,
16 one was walking to me, I thought he was coming to
17 tell me something or say something to me or
18 something, since I was in my own house.

19 Q The police interviewed you that night,
20 correct?

21 A Yes.

22 Q Did they come back and interview you any more
23 after that?

24 A The police?

25 Q Yes.

1 A No.

2 MR. SHEEK: Thank you. That's all I have.

3 THE COURT: Miss Bolen, any redirect?

4 MS. BOLEN: If I could have a moment, Your
5 Honor.

6 Your Honor, I don't have any further
7 questions for Miss Martin.

8 THE COURT: Thank you, Miss Martin. You may
9 step down.

10 (Witness excused).

11 THE COURT: Yes, ma'am?

12 MS. BOLEN: Thank you, Your Honor.. The State
13 next calls James Ware.

14 JAMES WARE,
15 after being first duly sworn, testified as follows:

16 THE COURT: You may proceed.

17 MS. BOLEN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. BOLEN:

20 Q Good afternoon, Mr. Ware. Would you please
21 state your name for the record?

22 A James Glenn Ware.

23 Q Mr. Ware, where do you live?

24 A [REDACTED].

25 Q Mr. Ware, are you a co-defendant in this

1 case?

2 A Yes, ma'am.

3 Q Have you pled guilty?

4 A Yes, ma'am.

5 Q Do you remember what you pled guilty to?

6 A I can't hear.

7 Q Do you remember what you pled guilty to?

8 A Do I remember what I pled guilty to?

9 Q Yes.

10 A Yes, ma'am.

11 Q Can you state which charges you pled to?

12 A Strong armed robbery, second degree burglary,
13 and I think another strong arm robbery if I'm not
14 mistaken.

15 Q Was there any negotiation or plea deal given
16 to you by the State?

17 A No, ma'am.

18 Q Have you been sentenced yet?

19 A No, ma'am.

20 Q And when you are sentenced is there any
21 recommendation or plea deal from the State?

22 A No, ma'am.

23 Q Are you here testifying under subpoena?

24 A Yes, ma'am.

25 Q Mr. Ware, I would like to direct your

1 attention to February 23rd, 2009. Do you remember
2 what you were doing that evening?

3 A Yes, ma'am. I was playing basketball with
4 Kiersten Martin.

5 Q Does Kiersten ever go by another name?

6 A Yoggi.

7 Q Did you meet up with anyone else that
8 evening?

9 A Besides him?

10 Q Yes.

11 A Before the incident happened?

12 Q Prior to the incident happening did you meet
13 up with anyone else?

14 A No, ma'am, besides Otis Bland and Yoggi,
15 that's it.

16 Q At some point Otis Bland joined you?

17 A Yes, ma'am.

18 Q Did you already know him?

19 A Yes, ma'am.

20 Q What did you do after playing basketball?

21 A After we had played basketball we went to
22 Yoggi's house and sat on the porch and then after
23 that we had a phone call, so we went to Otis'.
24 After that Otis had asked me, "Are you down with
25 this," I said no, turned around and said no, and

1 after that we had went to the lady's house.

2 Q Just to back up for a minute. Did you know
3 what he meant with are you down with this?

4 A Not at first, until he told me.

5 Q What did he tell you?

6 A Down for a lick.

7 Q And what is a lick?

8 A Robbing.

9 Q So, after that discussion happened what
10 happened next?

11 A We had went to the lady's house, I had
12 knocked on the door, then Otis came around with the
13 gun and the lady had shut the door.

14 Q Did you see what what kind of gun it was?

15 A I seen it but I don't know what kind of gun
16 it was.

17 Q Did you have a gun?

18 A No, ma'am.

19 Q And did Mr. Martin have a gun?

20 A No, ma'am.

21 Q But did you see Otis with a gun?

22 A Yes, ma'am.

23 Q Do you recall where this happened,
24 approximately?

25 A I know it happened at Country Homes, I don't

1 know the address.

2 Q Is that in Greenwood County?

3 A Yes, ma'am.

4 Q And just backing up to go over a few details,
5 did you go up to someone's house?

6 A Yes, ma'am.

7 Q Did someone knock on the door?

8 A I knocked on the door.

9 Q Do you remember if it was a side door or
10 front door?

11 A Side door, I believe.

12 Q Where was, if you know, where was Mr. Martin
13 during that time?

14 A I don't know where he was at.

15 Q Do you know where Mr. Bland was?

16 A Behind the Jeep.

17 Q After you knocked on the door did you see Mr.
18 Bland do anything?

19 A He tried to go in the house with her then but
20 the lady closed the door.

21 Q After she closed the door what did you do
22 next?

23 A Ran.

24 Q Where did you run to?

25 A We went to a friend's house. We went to the

1 friend's house but he wasn't there, so we had went
2 and sat down in the car that was parked in the
3 yard.

4 Q Where was this, do you remember?

5 A I don't know. Otis had said that the next
6 person that come up he was going to rob them, so it
7 was another lady that came to her house, she had
8 just pulled up in her yard and Otis -- well, first
9 he told me to get the gun and do it but I told him
10 no, and so that is when he went up to the house and
11 right before she got out of the car he pulled a
12 gun, he told her to give him the pocketbook, so he
13 grabbed the pocketbook and ran.

14 Q Where were you when this happened?

15 A I was still in the yard. I was in the other
16 yard, close to the path.

17 Q Were you in that woman's yard or the
18 neighbor's yard?

19 A Say that again.

20 Q Were you in that woman's yard or a yard next
21 to her's?

22 A The yard next to her's.

23 Q What happened after that?

24 A We started running.

25 Q Do you remember where you ran?

- 1 A On Possum Hollow Road, that's all I recall.
- 2 Q Now, what road did this second incident
- 3 happen on? Do you remember the name?
- 4 A I think Possum Hollow.
- 5 Q Were you able to see Mr. Bland put the gun to
- 6 this woman's head?
- 7 A Yes, ma'am.
- 8 Q Would you happen to know where Mr. Martin was
- 9 at that time?
- 10 A Right beside me.
- 11 Q Did you see Mr. Bland do anything with the
- 12 pocketbook after he took it?
- 13 A No, ma'am.
- 14 Q What about the gun, did you see him do
- 15 anything with the gun?
- 16 A No, ma'am.
- 17 Q Did Mr. Bland have anything on his face?
- 18 A A ski mask.
- 19 Q Did you happen to meet up with an officer
- 20 that night?
- 21 A Yes, ma'am.
- 22 Q Was that after the second incident?
- 23 A Yes, ma'am.
- 24 Q Were you with Mr. Bland when that happened?
- 25 A Yes, ma'am.

1 Q Is Otis Bland taller than you?

2 A Yes, ma'am.

3 MS. BOLEN: Your Honor, beg the Court's
4 indulgence one moment.

5 Q Mr. Ware, I just have a few more questions
6 for you. Backing up to when you and Mr. Martin
7 were playing basketball, did you at that point plan
8 by yourself to do this?

9 A Repeat that again.

10 Q When you and Mr. Martin were playing
11 basketball was it your idea to do this?

12 A No, ma'am.

13 Q When Mr. Bland asked you if you were down to
14 doing a lick did you know what that meant?

15 A Yes, ma'am, I knew what it meant.

16 Q What did he intend by that?

17 A I really do not know.

18 MS. BOLEN: Mr. Ware, I don't have any
19 further questions. Will you please answer any
20 questions Mr. Sheek may have.

21 THE COURT: Mr. Sheek.

22 CROSS EXAMINATION

23 BY MR. SHEEK:

24 Q Now, Mr. Ware, this young lady has asked you
25 questions, you said you haven't received any deals

1 of any kind from the State. Is that true?

2 A Yes, sir.

3 Q That's what you're telling these jurors right
4 now, no deals?

5 A Yes, sir.

6 Q You pled guilty to what you were charged
7 with?

8 A Yes, sir.

9 Q What were you charged with, armed robbery?

10 A Now, or before?

11 Q Well, let's talk about what you were charged
12 with the first time. Were you charged with armed
13 robbery?

14 A The first time I was charged with, there was
15 two pistol charges, an armed robbery.

16 Q And burglary in the first degree?

17 A Burglary first and attempted armed robbery.

18 Q That's not what you pled to, though, is it?

19 A No, sir.

20 Q Because the deal was you could plead to a
21 strong armed robbery, what they commonly call a
22 common law robbery?

23 A Yes, sir.

24 Q What is the difference between that charge
25 and the armed robbery charge?

1 A I don't know.

2 Q Was there a reason you wanted to plead to
3 strong armed and not armed? Did somebody tell you
4 there was a minimum time on the armed and not on
5 strong armed?

6 A No, sir.

7 Q You don't remember being told you can't make
8 parole on strong armed? Do you remember discussing
9 that?

10 A Can you repeat that?

11 Q Did anybody discuss with you you can make
12 parole on a charge of armed robbery?

13 A Huh-uh (negative).

14 Q Okay. Did anybody discuss with you whether
15 or not that is a violent crime?

16 A That's a what crime?

17 Q Violent.

18 A I know that's a violent crime.

19 Q Is strong armed?

20 A I don't think so.

21 Q Burglary first degree, did you plead to that?

22 A No, sir.

23 Q You pled to burglary second?

24 A Yes, sir.

25 Q Did that likewise get you out of any minimum

1 time the Court had to give you?

2 A I don't know, sir.

3 Q Well, now, you pled and the judge did a sixty
4 day evaluation. Is that true, you pled in
5 November, correct?

6 A Yes, sir.

7 Q When was that sixty day evaluation finished?

8 A I don't know. I think it was like sometime
9 in February.

10 Q Okay. Since February have you found out you
11 could be sentenced to any term in prison?

12 A No, sir, I hadn't been sentenced yet.

13 Q Do you know of any reason why we're waiting
14 until we do this?

15 A No, sir.

16 Q Does it have something to do with after this
17 case is over?

18 A Yes, sir.

19 Q I want to ask you about the night of February
20 23rd, 2009. You said you were at Kiersten Martin's
21 house or Yoggi's house?

22 A Yes.

23 Q When did a phone call from Yoggi come in?

24 A After we got through playing basketball.

25 Q When you gave your written statement to the

1 police did you say anything about playing
2 basketball?

3 A Yes, sir.

4 Q You said you went to Otis'. Do you recall
5 that?

6 A Yes, sir.

7 Q What was Otis wearing when you got there?

8 A I can't remember. Bluejeans, pants or
9 shorts, I forgot what color shirt.

10 Q You said shorts?

11 A I said pants or shorts.

12 Q Which one was it?

13 A I can't remember at this time.

14 Q How did this conversation come about to go to
15 this first house and commit this lick, as you said?
16 Tell us everything you can remember about that.

17 A It really was no conversation. All it was
18 was just like, "Well, are you down," and I said no.

19 Q Okay, hold it right there a second. So, you
20 get to Otis' house and the first thing out of his
21 mouth is, "Are you down with it?"

22 A Yes, sir.

23 Q You said no, referring to what? What were
24 you referring to when you said no? What were you
25 talking about?

1 A What he was talking about, asked me do I want
2 to do it, I said no.

3 Q Do what?

4 A Rob the lady.

5 Q You said -- the first thing you said, rob the
6 lady?

7 A Rob the lady.

8 Q Well, there must have been some conversation
9 about committing the robbery?

10 A There really was no conversation.

11 Q So, all was said, "Are you down with that,"
12 you assumed it meant go rob the lady at her house?

13 A Yes, sir.

14 Q Why would you make that kind of assumption
15 from that one statement? Can you tell us?

16 A Can you repeat that?

17 Q Can you tell us why you would make an
18 assumption that the phrase are you down with that
19 means go rob a lady at her house?

20 A Before he even said that he mentioned about
21 it.

22 Q So, there was a conversation before that?

23 A I overheard it. I heard when he was talking
24 to Yoggi, I think he was talking to Yoggi about it,
25 he said, "I got a lick." Then he turned around and

1 asked did I want to do it, I told him no.

2 Q Okay. Do you recall, you know, he said, "Are
3 you down with that," and your answer was no?

4 A Yes, sir.

5 Q Because you already knew what he was talking
6 about?

7 A Yes, sir.

8 Q Did you give a written statement to the
9 Greenwood County Sheriff's Department?

10 A Yes, sir.

11 Q And that document I just handed you, is that
12 a copy of that written statement?

13 A It's my copy, yes, sir.

14 Q Okay. When you wrote that statement were you
15 telling the truth?

16 A Yes, sir.

17 Q And on that statement when you say that Otis
18 says, "Are you down with that," what is your
19 response?

20 A I told him no.

21 Q On your written statement, what did you say
22 there?

23 A "Down with what?"

24 Q It doesn't say anything on that about any
25 prior statement about a robbery, does it?

1 A No, sir, not on the statement. I know I knew
2 what he was talking about. By that time I knew it
3 but I still said no.

4 Q Okay. So, the statement is incorrect?

5 A Not the statement, I didn't say it's
6 incorrect.

7 Q Let me see that. Just so I can clarify with
8 the jury, when Otis supposedly said are you down
9 with that what was your response, no, or was your
10 response down with what?

11 A Down with what.

12 Q So, when you just testified you said no, why
13 did you tell us that?

14 A Repeat that.

15 Q You just a minute ago, before we looked at
16 the statement you said your answer was no. Why did
17 you tell the jury your answer was no when your
18 answer really was down with what?

19 A Because I didn't remember that to put it down
20 on my statement, so I said no.

21 Q The answer to the question though is, "I
22 don't remember what I put in my statement and I'm
23 doing the best I can today," right?

24 A I guess.

25 Q I mean, you're doing the best you can to tell

1 the police what it was you need to say but you
2 can't remember what you wrote, because you want
3 that deal, don't you, Mr. Ware?

4 A What deal?

5 Q I'm assuming when we actually do get to
6 sentencing you want the State to say you're
7 cooperating?

8 A Understanding what?

9 Q When you actually get to sentencing for the
10 reduced charges you pled to do you want the
11 prosecutors to say you cooperated, you did
12 everything you were supposed to, you came and
13 testified?

14 A I don't know.

15 Q Sir, if you're testifying from your memory
16 your memory shouldn't be any different from what
17 you wrote down, should it?

18 A Huh-uh (negative).

19 Q But it is. My question to you is why. Why
20 is it different?

21 A It ain't different.

22 Q Okay. When you got to the house what did you
23 do?

24 A The first one or second one?

25 Q First house.

1 A Knocked on the door.

2 Q Well, before that did you walk up or did you

3 drive to the house?

4 A I walked.

5 Q Was Otis with you?

6 A Yes, sir.

7 Q Was Yoggi with you?

8 A Yes, sir.

9 Q You said Otis stayed next to some type of

10 vehicle. Where was that?

11 A He was behind the Jeep.

12 Q Okay. And did Otis at this time have a gun?

13 A Yes, sir.

14 Q You did not see it?

15 A No, sir.

16 Q Okay. Did you approach the lady's house?

17 A Yes, sir.

18 Q What did you approach it to do?

19 A Knock on the door and ask for yard work.

20 Q Okay. And what was your understanding of

21 what was to happen at that time?

22 A Say it again.

23 Q Well, when you went to knock on the door were

24 you really wanting to do yard work?

25 A No, sir.

1 Q What was your understanding of what you were
2 going to the house for? Why did you all go?

3 A To pull a lick.

4 Q Well, since you told the jury you told him
5 no, you weren't down with that, you weren't going
6 to do it, when did you change your mind?

7 A I changed my mind, I changed my mind after I
8 asked for the yard work but before anything else
9 could have happened Otis ran up with a gun.

10 Q Okay. So, you changed your mind after you
11 asked for yard work. When you approached the door
12 you were intending to really do some yard work?

13 A At first but then --

14 Q Do you do a lot of yard raking and grass
15 cutting after dark?

16 A Used to, around that time. I really was
17 looking for yard work but it was too late.

18 Q You just told the jury you didn't change your
19 mind and decide to do a robbery until after you
20 asked for yard work.

21 A I know that.

22 Q When you approached the door you weren't
23 planning on robbing her?

24 A I wasn't planning on robbing her.

25 Q What were you planning on doing?

- 1 A First I really was planning on doing the yard
2 work.
- 3 Q So, it was your intention to do yard work
4 after dark at this lady's house.
- 5 A I asked her did she need help with her yard
6 work.
- 7 Q Was it your intention at that time that Otis
8 and Yoggi were going to assist with the yard work?
- 9 A I don't know.
- 10 Q When she went to shut the door did you
11 attempt to stop her?
- 12 A Huh-uh (negative), no, sir.
- 13 Q Okay. So, when she says the person at the
14 door, were you the person at the door talking to
15 her?
- 16 A Yes, I was, because she called my name.
- 17 Q Did somebody else run up and put their hand
18 on that door to stop it from being closed?
- 19 A Otis did.
- 20 Q Okay. So, the person pushing on the door,
21 according to your testimony, was Otis. You're sure
22 about that?
- 23 A Yes, sir.
- 24 Q Okay. All right, what happened then?
- 25 A After she closed the door we ran.

1 Q Where did you run to?

2 A We run to one of our friend's home.

3 Q Who was that?

4 A Josh.

5 Q Okay. Where does Josh live?

6 A I don't know exactly. He's on Possum Hollow.

7 Q And what did you do at Josh's house?

8 A We was seeing if he was at home but he
9 wasn't, so all three of us got in the Jeep, it was
10 a Jeep parked in the yard that nobody use.

11 Q A Jeep parked in the yard at Josh's house on
12 Possum Hollow Road?

13 A Yes, sir.

14 Q And how long did you all sit there?

15 A Not too long because after Otis had said he
16 wanted to do another lick the other lady had came
17 up and parked in the yard and when she got out of
18 the car then Otis ran up and put the gun to her and
19 told her to give up her pocketbook.

20 Q Wait a second. When this woman pulled up,
21 tell me exactly what you remember talking about
22 from the time you saw this car approaching, until
23 the time Otis ran up, as you say, with the gun.

24 A We got in the car and he said he wanted
25 another lick and that the next person had come up

1 he was going to rob them.

2 Q What did you say?

3 A I didn't really say nothing.

4 Q Okay.

5 A So that when she came up, parked her car and

6 she got out, Otis ran up to her with a gun and took

7 it and --

8 Q Okay. Otis ran up, put the gun in her face?

9 A Yes, sir.

10 Q What was he wearing when that happened?

11 A He changed clothes, so he had on a black

12 coat.

13 Q Where did he change clothes?

14 A At the house he was at.

15 Q Where was that?

16 A That was on Possum Hollow, too.

17 Q You all went back to his house and then went

18 to Josh's house?

19 A No.

20 Q Where did he change clothes, then?

21 A When we went to the first house he had on

22 some blue jeans, pants or shorts. Before we left

23 to go to the first house he had changed clothes, so

24 the same clothes he had on at the first house he

25 had on at the second house.

1 Q He changed clothes prior to going to the
2 first house, I got you. Okay. What was he
3 wearing, then, when he ran up and supposedly took
4 the lady's pocketbook?

5 A The black coat and black ski mask.

6 Q That is one of these ski masks you pull over
7 your head, with a hole cut out for the eyes?

8 A Yes.

9 Q Toboggan type cap?

10 A Yes, sir.

11 Q And gloves?

12 A No gloves.

13 Q Okay. Was it a black ski mask or dark
14 colored?

15 A It was dark colored, I ain't going to say it
16 was black.

17 Q After he took her pocketbook what happened?

18 A We ran.

19 Q Okay. You all ran together?

20 A Yes, sir.

21 Q Where did you all run to?

22 A We ran back to find out where was Otis at.

23 Q Where was that, back on Possum Hollow?

24 A Possum Hollow.

25 Q Did you all look in the pocketbook?

1 A Yes, sir.

2 Q What was in it?

3 A Nothing.

4 Q Was it disposed of, thrown away somewhere?

5 A I don't know what he did with it after that.

6 Q You never saw the pocketbook after that?

7 A No.

8 Q Did you leave at some point?

9 A Yes, sir.

10 Q When did you leave?

11 A After we had seen the police coming we had

12 left, me and Otis had walked down by where the

13 policemen was at, the police was asking him

14 questions.

15 MR. SHEEK: Your Honor, if I may, I'm going

16 to ask the defendant to read his written statement.

17 THE COURT: You may.

18 Q Would you mind reading the written statement

19 you gave on February 25th, '09?

20 I'm sorry, read it outloud for the jury.

21 A The whole thing?

22 Q Yes, sir.

23 A All right.

24 THE COURT: Please speak into the microphone.

25 A "I was at Kiersten's house and he had got a

1 phone call from Otis, so we walked to where Otis
2 was. Then Otis asked me am I down. I said down
3 with what. So we walked to a woman's house. I ask
4 her do she need her yard raked."

5 Q And you said Otis asked her that?

6 A I asked her that.

7 Q You asked her that, okay..

8 A "Do she need her yard raked. Then she said
9 am I Otis' son, and when I told her no that's when
10 Otis came with the gun and the lady had shut the
11 door in his face so I ran. Then Kiersten and Otis
12 had followed me. Then I went to my friend named
13 Josh's house but he wasn't there so we had sat in a
14 car that was parked in Josh's yard. Then Otis said
15 I need another lick. I got out of the car --"

16 Q So, you got out and walked away?

17 A "And said you and Kiersten is by yourselves.
18 Then a woman's car had pulled up. So Otis told me
19 to grow some balls and I said I have balls but I
20 ain't doing it. So Otis ran up on the woman with
21 the gun and took her pocketbook and ran off with
22 it. Then I walked the other way to my friend's
23 house but he wasn't there. Then me, Otis and
24 Kiersten had met at the boy's house and sat there
25 for a while. Then when I was going out of the

1 house Kiersten and Otis had walked together and I
2 walked down the street. Me and Otis had met up and
3 we had talked to the police. The police had asked
4 us where we going and I said home and Otis said he
5 was going to his friend's house. So I went to the
6 house and my grandma had told me Kiersten had
7 called me, so I called him and he ask me was
8 everything okay and I said no. I told him that the
9 police was going to look or find us. Then he said
10 no, they is not, and I said watch and see. At the
11 house on Parkland Place Road Otis had the gun the
12 whole time. At the house on Sleepy Hollow I saw
13 Otis point the gun at the lady and Kiersten was
14 with him and I was standing by the path."

15 Q Is that your signature on the bottom of it?

16 A Yes, sir.

17 MR. SHEEK: Your Honor, I move to have this
18 marked as Defense Exhibit 1.

19 THE COURT: Any objection?

20 MS. BOLEN: No, Your Honor.

21 THE COURT: Without objection it will be
22 Defense Exhibit Number 1.

23 (Witness' statement marked and received
24 in evidence as Defendant's Exhibit 1).

25 BY MR. SHEEK:

1 Q Mr. Ware, when you gave the police a written
2 statement you said, in the written statement when
3 you said, "Otis wanted a lick, you got out of the
4 car and said you and Kiersten go by yourself,"
5 that's what you told the police but you just told
6 the jury a different story, right? You never said
7 you got out of the car and you were by yourself?

8 A No, sir.

9 Q You said you stayed there until he did this
10 other robbery?

11 A The house was right beside where we was at.
12 Otis and Kiersten was there right like two houses
13 away from where we was at, so I did basically, I
14 did stay where I was at when I got out of the car.

15 Q Okay. So your testimony is the house you
16 were staying at was right beside this house?

17 A Like two houses.

18 Q Okay. So Otis ran up and stuck the gun in
19 her face and robbed basically your neighbor?

20 A No, she wasn't my neighbor.

21 Q Does she live two houses down?

22 A I mean, I don't stay at the house that I was
23 at.

24 Q Okay. You said in the written statement that
25 Otis said grow some balls and you said, "I have

1 balls but I ain't doing it." That's what you said
2 in the written statement, right?

3 A Yes, sir.

4 Q You didn't say that when you testified to the
5 jury. I asked you specifically what you all talked
6 about, remember? Why didn't you tell them about
7 that?

8 A I didn't tell the whole thing.

9 Q Okay. So when you took your oath you
10 promised to tell the truth, all the truth and
11 nothing but the truth?

12 A Yes.

13 Q Okay. Now, you said Otis took, ran up, took
14 her pocketbook and ran off with it, then you walked
15 this other way. That is what you said in your
16 written statement?

17 A What's that?

18 Q In your testimony you said you all ran
19 together to this other house?

20 A Yes, the other house that we been up at.

21 Q Was that the one right beside where the car
22 was parked?

23 A No, sir.

24 Q Why would you say in the written statement
25 you walked the other way but you testified today

1 you ran together to the other house?

2 A Because I had walked away but I had went back
3 the other way and we had met up in the same spot.

4 Q You walked the other way but you all ran
5 together?

6 A No. When we met up we ran together, when we
7 met back up we ran together.

8 Q All right. Let me be sure about your
9 testimony here today. Well, let me ask you this.
10 Your testimony today is different from your written
11 statement. Which is more accurate, your written
12 statement or your memory today?

13 A My statement, I guess.

14 Q Now that you have testified do you anticipate
15 sentencing fairly soon?

16 A What, now?

17 Q Now that you have testified do you expect the
18 sentencing in your case fairly soon?

19 A Very soon?

20 Q Yes.

21 A I guess. I don't know.

22 Q Well, this is the only thing you've got left
23 to do before you can be sentenced, right?

24 A Yes, sir.

25 MR. SHEEK: All right thank you. That's all.

1 THE COURT: Any redirect?

2 MS. BOLEN: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BOLEN:

5 Q Mr. Ware, I just have a few brief questions
6 for you. On your testimony on direct did you say
7 there wasn't much conversation before the second,
8 before the first incident?

9 A Yes, ma'am.

10 Q And did you say anything about conversation
11 before the second?

12 A No, ma'am.

13 Q Did you know Otis Bland prior to this night?

14 A Did I know him?

15 Q Yes.

16 A Yes, ma'am.

17 MS. BOLEN: Beg the Court's indulgence, Your
18 Honor.

19 Q Mr. Ware, have you been promised any specific
20 sentence by the State?

21 A No, ma'am.

22 Q You don't know what you're to be sentenced
23 to?

24 A No, ma'am.

25 MS. BOLEN: No further questions.

1 THE COURT: Thank you. Any recross based on
2 her redirect?

3 MR. SHEEK: No, Your Honor.

4 THE COURT: Okay, thanks. All right, you may
5 step down.

6 (Witness excused)).

7 THE COURT: All right, ladies and gentlemen,
8 I think is is a good time for a mid afternoon
9 break. If you will, go into the jury room. Please
10 do not discuss anything about the case, as you have
11 been so ordered. Thank you. We'll take a fifteen
12 minute recess.

13 (The jury was excused from the courtroom)).

14 THE COURT: All right, court is in recess
15 until by that clock 3:35.

16 MS. BOLEN: Thank you, Your Honor.

17 (Recessed at 3:25 p.m.).

18 (Reconvened at 3:36 p.m.).

19 THE COURT: All right, let's bring our jury
20 in.

21 BAILIFF: All right, sir.

22 (The jury returned to the courtroom).

23 THE COURT: All right. Did you all get a
24 refreshing little break there? It helps to stay
25 alert.

1 Is the State ready to call its next witness?

2 MS. BOLEN: Yes, sir, Your Honor. The State
3 calls Kiersten Martin.

4 THE COURT: All right.

5 KIRSTEN MARTIN,

6 after being first duly sworn, testified as follows:

7 THE COURT: Good afternoon.

8 You may proceed.

9 MS. BOLEN: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. BOLEN:

12 Q Good afternoon, Mr. Martin. Can you please
13 state your full name for the record?

14 A Kiersten Eugene Martin.

15 Q How do you spell your first name?

16 A K-i-e-r-s-t-e-n.

17 Q Do you go by a nickname?

18 A Yoggi.

19 Q Mr. Martin, are you a co-defendant in this
20 case?

21 A Yes.

22 Q And have you pled guilty?

23 A Yes.

24 Q Did you plead guilty to reduced charges?

25 A Yes.

1 Q Do you remember what you pled guilty to?

2 A Attempted common law robbery and second
3 degree burglary.

4 Q Did you have any negotiation or plea deal
5 with the State when you pled?

6 A What do you mean?

7 Q Did the State promise you anything?

8 A I had to.

9 Q You don't know at this time what your
10 sentence was?

11 A No.

12 Q Mr. Martin, I would like to direct your
13 attention to the evening of February 23rd of 2009.
14 Do you remember what you were doing that evening?

15 A Yes.

16 Q Okay. What were you doing and who were you
17 with?

18 A I was with Otis Bland and James Ware. We had
19 two armed robberies that we was part of, that we
20 all did.

21 Q And how did that come about?

22 A Like I received a phone call from Mr. Bland
23 and me and Mr. Ware, we walked down to where Mr.
24 Bland's location was. I guess he hatched the plan,
25 "Like I need to pull a lick," you know, I guess he

1 had a plan, he needed some money, I guess. So he
2 asked was I down. I was like, I hesitated at first
3 and said no but I finally gave in to his plan.
4 When me and Mr. Ware finally gave in to his plan we
5 walked to this lady's house named Miss Hughes, I
6 think. The plan was Mr. Ware was supposed to go to
7 the door, ask the lady for yard work and while Mr.
8 Ware do that Mr. Bland was going to rush in the
9 door, all us was. Basically that is what we was
10 going to do but the plan failed and we ran.

11 Q Let me stop you there for a minute to back up
12 a little bit. You and Mr. Ware walked to where Mr.
13 Bland was located?

14 A Yes.

15 Q So, were you with Mr. Ware before you met up
16 with Mr. Bland?

17 A Yes.

18 Q Do you recall what you two were doing?

19 A We were playing like basketball or something,
20 just hanging out before we met up with him.

21 Q Had you met Mr. Bland before that night?

22 A Like did I know him?

23 Q Yes.

24 A Yes.

25 Q Do you recall approximately where the house

1 was you were just describing?

2 A It was on Parkland Place, [REDACTED] [REDACTED] [REDACTED].

3 Q Was that in Greenwood County?

4 A Yes.

5 Q And you stated that the plan was to try to
6 get into that house?

7 A Yes.

8 Q Where were you located in reference to the
9 house?

10 A Like the driveway was right here, I think, I
11 was on the opposite side.

12 Q And do you recall where Mr. Ware was?

13 A He was at the door.

14 Q And do you recall where Mr. Bland was?

15 A The back side of the car.

16 Q From where you were, were you able to see
17 what Mr. Ware and Mr. Bland were doing?

18 A Yes.

19 Q And what did you see Mr. Ware do?

20 A He just asked the lady could he do some yard
21 work for her and after that Mr. Bland just tried to
22 rush in the house.

23 Q Did you see Mr. Ware with a gun at all?

24 A Yes. I'm not sure if it, I seen some sort of
25 weapon.

1 Q You saw what?

2 A I seen some sort of firearm, I don't know, I
3 seen some sort of firearm.

4 Q Who had the firearm?

5 A Mr. Bland.

6 Q Did you have a firearm at all?

7 A No.

8 Q What did you see Mr. Bland do?

9 A After Mr. Ware asked to do the yard work Mr.
10 Bland tried to rush in the house but Miss Hughes,
11 she jerked the door away from Mr. Ware, so then the
12 plan failed so that is when we started running.

13 Q Did Mr. Bland have a gun?

14 A Yes.

15 Q Did you know what kind of gun it was?

16 A No.

17 Q What did you do after, after that incident?

18 A We ran to another street where a friend's
19 house and we just sat in his Jeep and then kind of
20 talked about what was happening, and after awhile
21 we seen this car coming down the road, so we was
22 like we're going to go try this house, so what
23 happened, after we got out of the Jeep we ran to
24 Miss Martin's house, and Mr. Ware stood back at the
25 edge of the house and Miss Martin, Miss Martin was

1 like getting out of her car and Mr. Bland walked up
2 to her and said give it up. And Miss Martin handed
3 him her pocketbook.

4 Q Did Mr. Bland have a gun at that time?

5 A Yes.

6 Q Where were you during that incident?

7 A I was like -- like I was close to him but I
8 wasn't with him. Like I was at the side of the
9 house but I could see everything that was going to
10 take place.

11 Q And was that also in Greenwood County?

12 A Yes.

13 Q Did you see Mr. Bland take the pocketbook
14 from Miss Martin?

15 A Yes.

16 Q Did you see what he did with it after taking
17 it?

18 A No.

19 Q Did you see what he did with the gun after
20 that? What did you do after that?

21 A We all went our separate ways. I went home,
22 he went to his destination, Mr. Ware went to his
23 destination.

24 Q Did you meet up at all again after that?

25 A No.

1 Q Is Mr. Bland taller than you?

2 A Yes.

3 Q The person that you saw with the gun at Miss

4 Hughes' house and Miss Martin's house, do you see

5 that person in the courtroom?

6 A Yes.

7 Q Can you point him out for the jury?

8 A Right here.

9 MS. BOLEN: May the record please reflect he

10 is pointing to the defendant?

11 THE COURT: It so reflects.

12 MS. BOLEN: Beg the Court's indulgence, Your

13 Honor.

14 BY MS. BOLEN:

15 Q Mr. Martin, just a few more quick questions.

16 When you and Mr. Ware met up with Mr. Bland was

17 there any discussion about what you were going to

18 do?

19 A Yes.

20 Q And who initiated that discussion?

21 A I'm sorry, could you like repeat the

22 question, I'm sorry.

23 Q Was there any discussion about what you were

24 going to do?

25 A When we met?

1 Q Yes.

2 A Yes.

3 Q Who initiated that discussion?

4 A Mr. Bland.

5 Q And, Mr. Martin, are you here today under
6 subpoena?

7 A Yes.

8 MS. BOLEN: No further questions. Please
9 answer any questions Mr. Sheek may have.

10 THE COURT: Mr. Sheek.

11 CROSS EXAMINATION

12 BY MR. SHEEK:

13 Q How did you get the subpoena?

14 A The State issued it.

15 Q Who gave it to you?

16 A It was the Solicitor.

17 Q Where were you when he gave it to you?

18 A I was sitting in the room right here.

19 Q Because you got a call from your lawyer that
20 this trial was going on and you needed to come up
21 here and testify, right?

22 A Yes, sir.

23 Q So you didn't come up here because some
24 officer came and served a subpoena on you, you came
25 in here because your lawyer said, "Look, you need

1 to go testify"?

2 A No, I had came because I was subpoenaed to
3 come.

4 Q But you just told this jury you got the
5 subpoena sitting in that room right over there, by
6 the Solicitor sitting at the table?

7 A Yes.

8 Q When was that given to you, what day?

9 A It was on February 25th.

10 Q February 24th and it had this court date on
11 it?

12 A Yes, sir.

13 Q Do you have that subpoena with you?

14 A No, it didn't have the Court date on it. It
15 was just a subpoena to let me know the trial would
16 be going on soon.

17 Q And they gave you a subpoena and said, "We
18 want you to testify, we'll get in touch with your
19 lawyer, he'll tell you when we need you," right?

20 A Yes, sir.

21 Q Your lawyer is Carson Henderson?

22 A Yes, sir.

23 Q Mr. Henderson gave you a call and said,
24 "They're going to try Otis Bland, you need to come
25 up there and testify," right?

1 A Yes, sir.

2 Q Because part of your plea deal was you were
3 going to testify, right?

4 A Yes, sir.

5 Q That's the reason you got the reduced charges
6 from the State, is that right?

7 A Yes, sir.

8 Q And you haven't been sentenced, have you?

9 A No, sir.

10 Q And they were waiting to sentence you until
11 after you testify?

12 A Yes, sir.

13 Q Okay. Now, you and Mr. Ware were together
14 when you met up with Otis?

15 A Yes.

16 Q At anytime were Mr. Ware and Otis alone on
17 the night of February 23rd, '09?

18 A I'm not sure.

19 Q Well, when you all met up with Otis were you
20 and Mr. Ware and Otis together through both of
21 these robberies?

22 A Yes.

23 Q Okay. When did Mr. Bland, Otis, change
24 clothes?

25 A Like after the last house.

- 1 Q After the last house, okay. And what did he
2 change into after the last house?
- 3 A I don't remember.
- 4 Q He didn't go change clothes before the first
5 house, did he?
- 6 A Yes, sir.
- 7 Q So, he changed clothes twice?
- 8 A Yes, sir.
- 9 Q Okay. When he went and changed clothes the
10 first time where did he do that?
- 11 A He was at Tony's house.
- 12 Q Tony's house?
- 13 A Yes.
- 14 Q When you all went to Tony's house was Tony
15 there?
- 16 A No, sir.
- 17 Q Mr. Bland had some clothes there that he
18 changed into?
- 19 A Yes, sir.
- 20 Q Did he go in -- was someone else at Tony's
21 house that let him in?
- 22 A He was living there at the moment.
- 23 Q He was living there at the time?
- 24 A Yes, sir.
- 25 Q And when he went and changed clothes the

1 second time did he also do that at Tony's house?

2 A Yes, sir.

3 Q You all were all together at that time?

4 A Yes.

5 Q Was Mr. Ware with you when he changed clothes
6 the second time?

7 A Yes, sir.

8 Q Okay. After the robbery when you said Mr.
9 Bland stuck the gun in the lady's face and took her
10 purse did you all go straight from there to the
11 house where he changed clothes?

12 A Yes.

13 Q How far was it from where this robbery
14 occurred, to that house?

15 A It was on the next road.

16 Q On the next road?

17 A Yes, sir.

18 Q Okay. So, when you just told this jury a few
19 minutes ago after that robbery you all went your
20 separate ways that is not true? You're now telling
21 us you went to a house with Mr. Bland and he
22 changed clothes?

23 A Yes.

24 Q Which one is it?

25 A We went like, after he changed clothes we

1 went our separate ways, I should have phrased it
2 like that.

3 Q Okay. You gave a written statement to the
4 police, right?

5 A Yes, sir.

6 Q And you said that you all went and sat in
7 this Jeep. That was after the first time?

8 A Yes, sir.

9 Q Now, at the first house who went up to the
10 door?

11 A Mr. Ware.

12 Q And you said at some point you saw Mr. Ware
13 with a weapon?

14 A No, sir.

15 Q You never saw Mr. Ware with a weapon?

16 A No, sir.

17 Q Okay. Did you not in response to Miss
18 Bolen's questions not say that you saw Mr. Ware
19 with a weapon at some point?

20 A I never said Mr. Ware had the weapon.

21 Q Who had the weapon?

22 A Mr. Bland.

23 Q Okay. When you all got together with Mr.
24 Bland tell this jury the best of your recollection
25 all the conversations you had regarding what was

1 going to happen at this house.

2 A The only conversation we really had was where
3 everybody would be located at the house and what
4 was going to happen.

5 Q And who participated in this conversation?

6 A All three of us did.

7 Q And to your recollection what was that
8 conversation, where was everybody going to locate?

9 A Mr. Ware initially was to go to Miss Hughes'
10 door and ask her for work. Me and Mr. Bland was
11 just like around the area and he was behind the
12 car, I was on the other side of the car.

13 Q And at some point did you all plan what was
14 going to happen after Mr. Ware asked if she wanted
15 the work done, had you all planned what was going
16 to happen after Mr. Ware asked Miss Hughes if she
17 wanted work done?

18 A Yes, sir.

19 Q What was the plan was going to happen after
20 that?

21 A That we was just going to rush into her
22 house.

23 Q Any doubt in your mind Mr. Ware was aware of
24 this plan?

25 A Sir?

1 Q Any doubt in your mind Mr. Ware knew of this
2 plan?

3 A No, sir.

4 Q He participated in conversations planning it,
5 so when he went to the house and asked her for work
6 there was no intention that the three of you all
7 would actually get some yard work, was there?

8 A No, sir.

9 Q Now, you said after that you ran and you hid
10 in your home boy's Jeep, right?

11 A Yes, sir.

12 Q Did Otis say something after you all hid in
13 the Jeep?

14 A He was kind of like he was upset.

15 Q Was there conversation between he and Mr.
16 Ware whether or not there was going to be another
17 attempted robbery?

18 A It was between all three of us.

19 Q Okay. Did Mr. Ware get out and walk away,
20 get out of the car and say, "I'm not going to do
21 this," and walk away?

22 A No.

23 Q Did Mr. Bland tell Mr. Ware, "Hey, grow some
24 balls"?

25 A Yes, sir.

1 Q He did say that?

2 A Yes, sir.

3 Q And what did Mr. Ware say?

4 A He said, "I have balls."

5 Q Okay. And was that talking about this lady
6 that had driven up to her house?

7 A Sir?

8 Q Was that talking about this lady that you all
9 were going to rob, this lady driving up to her
10 house?

11 A Yes, sir.

12 Q Did you see her drive up and pull her car in
13 her driveway?

14 A Yes, sir.

15 Q Where did she park?

16 A Up under the shed.

17 Q Okay. And did she stay in the car a little
18 while after she parked?

19 A Like as soon as she parked, that is when all
20 three of us, we got out of the Jeep and ran to her.

21 Q Did she get out as soon as she parked, cut
22 the car off and get out?

23 A Yes, sir.

24 Q And the three of you all were running toward
25 her?

1 A Yes.

2 Q Had Mr. Bland gotten out in front of you?

3 A I can't remember. I just know that all three

4 of us went up there at the same time.

5 Q Okay. When Mr. Bland, is he the one that

6 told her give it up?

7 A Yes, sir.

8 Q Where was he standing in relation to her when

9 he said that?

10 A He was beside her.

11 Q Did he have the gun in his hand?

12 A Yes, sir.

13 Q Was he pointing it at her?

14 A Yes, sir.

15 Q Where was he pointing.

16 A He had it to her face.

17 Q What was he wearing?

18 A Like some old jeans, he had on a ski mask.

19 Q Ski mask with holes for eyes, that type

20 thing? Did he have gloves on?

21 A No, sir.

22 Q When he got the pocketbook what happened

23 then, what did you all do?

24 A The three of us fled the scene.

25 Q What happened to the pocketbook?

1 A I'm not sure.

2 Q Okay. Did you ever know what had happened to
3 it?

4 A No, sir.

5 Q Do you recall telling the police when you
6 gave them a written statement that, "We ran, he
7 took and threw the pocketbook down in the woods
8 behind Tony's house"?

9 A That was a figure of speech.

10 Q That is a figure of speech? Is that a figure
11 of speech, he threw the pocketbook in the woods?
12 Is that a figure of speech used in conversation?

13 A No. I heard it.

14 Q Who did you hear it from?

15 A It was talk in the neighborhood.

16 Q Somebody in the neighborhood said the
17 pocketbook was in the woods behind Tony's house?

18 A Uh-huh (Affirmative).

19 Q But it wasn't Mr. Bland who said that, was
20 it?

21 A Huh-uh (negative).

22 Q You have to say yes or no so this guy can
23 take down your answers.

24 A No, sir.

25 Q Who else in the neighborhood was saying they

1 knew where this pocketbook was?

2 A They knew about the armed robbery.

3 Q How many people knew where the stolen
4 pocketbook was?

5 A Say what?

6 Q How many people knew where the stolen
7 pocketbook was?

8 A I'm not sure.

9 Q Well, you talked to the police on the 25th,
10 right?

11 A Yes, sir.

12 Q Did you tell them where you understood the
13 pocketbook to be?

14 A Sir?

15 Q Did you tell them where you had heard the
16 pocketbook was?

17 A Yes, sir.

18 Q When you wrote your statement out why didn't
19 you write that was what you heard in the
20 neighborhood?

21 A I was nervous at the time. I should have put
22 it in but I didn't.

23 Q Did the police say, "Take us to where this
24 woods is behind Tony's house so we can look for the
25 pocketbook"?

1 A Do what?

2 Q Did the police want you to take them to this
3 area so they could look for the pocketbook?

4 A No, sir.

5 Q After the first house did you all run down to
6 the woods after that house?

7 A No, sir.

8 Q Okay. You're sure about that? You didn't
9 go, after Miss Hughes' house, and run down into the
10 woods?

11 A No, sir.

12 Q You would remember that if you had?

13 A Sir?

14 Q You would remember that if you had, wouldn't
15 you?

16 A Yes.

17 Q Okay.

18 MR. SHEEK: Beg the Court's indulgence one
19 moment.

20 THE COURT: Yes, sir.

21 MR. SHEEK: I have no further questions of
22 this witness.

23 THE COURT: Any redirect?

24 MS. BOLEN: Just very quick, Your Honor.

25 MR. SHEEK: Could I have the Court's

1 permission to move this out of my way?

2 THE COURT: Yes.

3 MR. SHEEK: Thank you.

4 MS. BOLEN: Your Honor, no redirect.

5 THE COURT: All right, thank you. You may
6 step down.

7 (Witness excused).

8 THE COURT: Call your next witness.

9 MS. BOLEN: Thank you, Your Honor. The State
10 calls deputy Mitch Mathis.

11 MS. BOLEN: Your Honor, may we approach just
12 a moment?

13 THE COURT: You may.

14 (Unrecorded bench conference).

15 THE COURT: All right, you may call your next
16 witness.

17 MS. BOLEN: Thank you, Your Honor.

18 MITCHELL MATHIS,
19 after being first duly sworn, testified as follows:

20 THE COURT: Good afternoon. You may proceed.

21 MS. BOLEN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. BOLEN:

24 Q Good afternoon, Deputy Mathis. Can you
25 please state your full name for the record?

1 A Mitchell Mathis.

2 Q And, Deputy Mathis, how are you employed?

3 A With the Greenwood County Sheriff's office.

4 Q How long have you been with the Sheriff's
5 office?

6 A Ten years.

7 Q And what is your job with the Sheriff's
8 office?

9 A At this time I'm with the community service
10 division.

11 Q How long have you been with that division?

12 A About four months now.

13 Q What did you do prior to that?

14 A I was a road deputy that patrolled on the
15 road.

16 Q Did you have any type of duties as a road
17 deputy?

18 A Just patrol the areas.

19 Q Were you working in your capacity as a
20 sheriff's deputy on February 23rd, 2009?

21 A Yes, ma'am..

22 Q Do you recall what you were doing that
23 evening?

24 A Yes, ma'am. On that certain evening we were
25 turned out with the bloodhound team to assist on an

1 incident that happened in Country Homes and when
2 they turned us out I went to that area to assist.

3 Q What was your role in the incident?

4 A I was on the perimeter, set up on the
5 perimeter. When the bloodhounds are turned out we
6 have guys set up on the outskirts of the areas
7 where the incident location happens, so when the
8 bloodhound members, they are out, we can assist if
9 the people are trying to get away from the
10 bloodhound team.

11 Q What was your particular duty as part of the
12 perimeter?

13 A Just to stop and identify people or see who
14 was coming in and out, make sure the suspect didn't
15 get away.

16 Q Would you stop, would that include stopping
17 people on foot as well as by car?

18 A Yes, ma'am.

19 Q Deputy Mathis, just for demonstrative
20 purposes I'm going to show you this map. If you
21 would, just step down from the witness stand.

22 Do you recognize this area?

23 A Yes, ma'am.

24 Q You may need a microphone so the court
25 reporter can hear you. What is this neighborhood?

1 A This is the Country Homes area.

2 Q Is this in Greenwood County?

3 A Yes, ma'am.

4 Q And using this, can you just find where you
5 were on the perimeter?

6 A Right there at the intersection of Possum
7 Hollow and Sleepy Hollow Road.

8 Q And were you there in a patrol car?

9 A Yes, ma'am.

10 Q Okay. You can return to the stand.

11 You said that your job was stopping people
12 coming in and out?

13 A Yes, ma'am, just ID'ing people, see if they
14 lived there, what their daily task was coming in
15 and out of there.

16 Q Do you recall what day of the week this was?

17 A I want to say it was a Monday.

18 Q Was there a lot of foot traffic?

19 A No, ma'am.

20 Q Do you recall stopping any individuals on
21 foot?

22 A Yes, ma'am.

23 Q Do you recall how many?

24 A Two.

25 Q And do you recall the names?

1 A The last names were Bland and Ware.

2 Q Were Mr. Bland and Mr. Ware together?

3 A Yes, ma'am.

4 Q When you stopped those two were you parked?

5 A Yes, ma'am.

6 Q At the intersection of Possum Hollow and
7 Sleepy Hollow?

8 A Yes, ma'am.

9 MS. BOLEN: Deputy Mathis, I don't have any
10 further questions for you at this time. Please
11 answer any questions Mr. Sheek may have.

12 THE COURT: Mr. Sheek.

13 MR. SHEEK: No questions of the witness, Your
14 Honor.

15 THE COURT: All right, thank you. You may
16 step down.

17 (Witness excused)).

18 MS. BOLEN: Your Honor, if we could approach
19 about some timing issues very briefly.

20 THE COURT: Yes.

21 (Unrecorded bench conference).

22 THE COURT: You all may stretch, stand up if
23 you would like to. Is the temperature right in
24 here for you all? I see some people have put some
25 jackets on.

1 MS. BOLEN: Your Honor, our next witness is
2 present, we're waiting on the tech person. I can
3 start with limited questions. I believe that
4 person should be here shortly.

5 THE COURT: It's up to you, if you would like
6 to go ahead and start with your witness.

7 MS. BOLEN: I think we can go ahead and do
8 that now.

9 THE COURT: Very well.

10 MS. BOLEN: The State calls Detective Chris
11 Haden.

12 CHRISTOPHER MICHAEL HADEN,
13 after being first duly sworn, testified as follows:

14 THE COURT: All right, you may proceed.

15 MS. BOLEN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. BOLEN:

18 Q Good afternoon, Detective Haden. Could you
19 please state your full name for the record?

20 A Christopher Michael Haden.

21 Q How do you spell your last name?

22 A H-a-d-e-n.

23 Q And, Detective Haden, how are you currently
24 employed?

25 A I'm with the Lander University Police

1 Department at the present time.

2 Q How long have been with Lander?

3 A Since September of 2009.

4 Q Prior to that how were you employed?

5 A With the Greenwood County Sheriff's office

6 Criminal Investigation Division.

7 Q How long were you with the Sheriff's office?

8 A Roughly four years.

9 Q And prior to that?

10 A With the city of Greenwood Police Department.

11 Q And how long were you with them?

12 A Roughly six.

13 Q About how long have you worked in law

14 enforcement?

15 A Almost eleven years.

16 Q Do you have any special training or education

17 in law enforcement?

18 A Yes, ma'am.

19 Q And what is that?

20 A College, which I'm currently finishing up my

21 Bachelor's Degree in criminal justice. Criminal

22 Justice Academy in Columbia, crime scene classes

23 that I have attended in Lexington, South Carolina,

24 interviews, interrogation, which was down in

25 Florida, several other classes.

1 Q When you worked with the Sheriff's office
2 what was your title and job duties?

3 A Criminal investigator, general investigator,
4 basically anything and everything that needed to be
5 investigated, burglaries, armed robberies,
6 shootings, stabbings. Normally the pretty heavy
7 stuff we got I was part of.

8 Q And in your how many years of experience were
9 you trained in taking statements from individuals
10 or suspects?

11 A Yes, ma'am.

12 Q I would like to direct your attention to
13 February 24th, 2009. Were you working on a case at
14 that time?

15 A Yes, ma'am.

16 Q Did you meet with a gentleman named Otis
17 Bland?

18 A Yes, ma'am.

19 Q Do you recall where you met with him?

20 A The night of the incident, as standard
21 operating procedures, when something of that nature
22 happens, being an armed robbery and two in this
23 instance, we all come out as a unit together to
24 collaboratively work together to try and find out
25 the person or persons involved with this, with

1 these incidents. We all came out as a group, those
2 of us able to respond from the investigations
3 division, at which time we assisted with the
4 perimeter as well as speaking to neighbors,
5 canvassing the area, is what we call it, speaking
6 to neighbors to see if they may have seen or heard
7 anything related to the incident which we were
8 investigating.

9 On the evening of the 23rd I spoke to Deputy
10 Mathis and several neighbors in the area who stated
11 they had seen Mr. Bland as well as two other
12 individuals, being Mr. Ware and Mr. Martin, in the
13 area previously but on the evening we responded
14 Deputy Mathis stated he had made contact with Mr.
15 Ware and Mr. Bland on the 23rd.

16 Q Did you then meet with Mr. Bland on the 24th?

17 A On the 24th we did.

18 Q And where did that meeting take place?

19 A I was actually, I handed out my business
20 cards, I was lead investigator on the case, at
21 which time any of the neighbors that had additional
22 information they wanted to provide in reference to
23 this case, I asked them to give me a call on my
24 cell phone if need be. The next day, as a matter
25 of fact we were at lunch discussing these two

1 incidences and my phone rang, cell phone rang and
2 it was a concerned citizen who wishes to remain
3 anonymous stating that Mr. Bland was walking in the
4 area of Parkland Place Road at the time.

5 MR. SHEEK: Objection to hearsay, Your Honor.

6 THE COURT: Sustained.

7 Q I will move on.

8 THE COURT: Strike the last answer.

9 Q Did you have occasion to speak to Mr. Bland
10 that day?

11 A We did.

12 Q Do you recall approximately what time you met
13 with him?

14 A It may have been around lunch time, lunch
15 time being 12:30, somewhere along in there.

16 Q Did the meeting take place at the Sheriff's
17 office?

18 A I met Mr. Bland in Parkland Place, at which
19 time he agreed to come to the Sheriff's office to
20 speak further.

21 Q When he came to the Sheriff's office was he
22 under arrest?

23 A No.

24 Q Was there anyone else present with you and
25 Mr. Bland?

1 A Major John Murray.

2 Q Before speaking with Mr. Bland did you have
3 opportunity to observe his demeanor?

4 A Yes, ma'am.

5 Q Was there anything that made you think he
6 might have been under the effects of any sort of
7 substance that would have affected his ability to
8 understand?

9 A No, ma'am.

10 Q Did he appear to have any sort of physical or
11 mental disability that would affect his ability to
12 understand?

13 A No, ma'am.

14 Q Did you read Mr. Bland his Miranda rights?

15 A Yes.

16 Q And when you read these rights to him how did
17 you do that?

18 A There is a form that we use at the Sheriff's
19 office with a waiver of rights form for Miranda,
20 which is used in every criminal investigation, that
21 we ask the alleged person the questions, to sign it
22 and state they understand what the Miranda warnings
23 are.

24 MS. BOLEN: Your Honor, permission to
25 approach the witness?

1 THE COURT: Yes.

2 Q Detective Haden, I'm passing up what has been
3 previously marked for identification purposes as
4 State's Exhibit 1. Do you recognize that form?

5 A Yes, ma'am.

6 Q What is it?

7 A That's the waiver of rights form that we used
8 at the Sheriff's office.

9 Q Can you read the form?

10 A Yes, I can. At the top it states advisement
11 of rights, your rights, the place is Greenwood
12 County Sheriff's office, the date was February 24,
13 2009, the time was at 1:27 p.m., and it states,
14 "Before we ask you any questions you must
15 understand your rights. Number one, you have the
16 right to remain silent.

17 Number two, anything you say can be used for
18 or against you in court.

19 Number three, you have the right to talk to a
20 lawyer for advice before we ask you any questions
21 and have him or her with you on any questioning.

22 Number four, if you cannot afford an lawyer
23 one will be appointed for you before any questions.

24 Number five, if you decide to answer any
25 questions without a lawyer present you have the

1 right to stop answering at any time. You also have
2 the right to stop answering at any time until
3 talking to a lawyer."

4 Then the waiver of rights form at the bottom
5 states, "I have read the statement of my rights and
6 understand what my rights are. I am willing to
7 make a statement and answer any questions. I do
8 not want a lawyer at this time. I understand and
9 know what I'm doing. No promises or threats have
10 been made and no pressure or coercion of any kind
11 have been used against me." And it is signed by
12 Otis Bland twice and dated February 24, 2009.

13 Q And why is it signed twice?

14 A Mr. Bland was spoke to the first time
15 initially at approximately 1:27 when we got to the
16 Sheriff's office and there was a brief intermission
17 between the first set of questions after Miranda,
18 after this form was read, until the second time.
19 He talked to us a second time on the same day.

20 Q And did you see Mr. Bland sign that?

21 A I did.

22 Q Did you read those rights to him?

23 A I did.

24 Q Did he also have occasion to read the paper
25 himself?

1 A He did.

2 MS. BOLEN: Your Honor, at this time the
3 State would move State's 1.

4 THE COURT: Any objection?

5 MR. SHEEK: No objection.

6 THE COURT: Without objection State's Exhibit
7 Number 1 is admitted without objection.

8 (Advisement of rights formed marked and
9 received in evidence as State's Exhibit
10 Number 1).

11 BY MS. BOLEN:

12 Q At any point when you read -- did you read
13 him his Miranda rights twice?

14 A Yes, ma'am.

15 Q At any point did he indicate that he was
16 unable to either read or understand what you were
17 saying?

18 A No, ma'am. I actually asked him his level of
19 education and which he told me it was tenth grade.

20 Q And was Mr. Bland under arrest at either of
21 the times?

22 A No, ma'am.

23 Q Did you make any threats or promises to Mr.
24 Bland?

25 A No, ma'am.

1 Q At any point did Mr. Bland ask for an
2 attorney?

3 A No, ma'am.

4 Q Can you describe the room at the Sheriff's
5 office where you questioned Mr. Bland?

6 A It's a conference room that is used for
7 meetings and interviews and interrogations. There
8 is a recording device which is equipped for that
9 room. It is a DVR, a hard drive that is used for
10 the camera and audio and video in that room. There
11 is a camera in the ceiling of that room which
12 projects outward to get a picture of people that
13 we're talking to as well as us.

14 Q Does this room have chairs?

15 A Yes, ma'am.

16 Q Is it comfortably heated or cooled?

17 A Yes, ma'am.

18 Q If Mr. Bland needed to get a glass of water
19 or go to the bathroom could he do so?

20 A Yes, ma'am.

21 Q Did you get a witness statement from Mr.
22 Bland?

23 A Yes, ma'am, I did.

24 Q Did you also get an oral statement from him?

25 A Yes, ma'am.

1 Q And was that oral statement recorded?

2 A No. The oral statement that I got
3 previously, we were talking in general. After he
4 was Mirandized verbally we began speaking about my
5 feeling of him being untruthful with his answers
6 that he had given before, at which time he
7 verbally, after being Mirandized verbally he did
8 proceed to tell me a little bit about the incident,
9 the two incidents in question, at which time we had
10 made it back to the Sheriff's office where I again
11 read this form, which is the second signature on
12 this form, and he proceeded to tell me again what
13 his role was involved with this case.

14 Q And at that time did you tape record it?

15 A Yes, ma'am.

16 Q Is that in accordance with Sheriff's office
17 procedures and policies?

18 A Yes, ma'am.

19 Q Do you have access to that recording? Who
20 uses that recorder?

21 A The supervisors over the investigation
22 division as well as the investigators and narcotics
23 agents, we often interview people for criminal
24 acts, as well as narcotics does for drug activity.

25 Q Detective Haden, did you also have occasion

1 to take statements from any other individuals in
2 this case?

3 A Yes, ma'am.

4 Q And who were they?

5 A James Ware and Kiersten Martin?

6 Q Was that the same day as the statement of Mr.
7 Bland?

8 A The day after.

9 MS. BOLEN: Permission to approach, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 Q Detective Haden, I'm handing up to you what
13 has been marked for identification purposes as
14 State's 2. Do you recognize that?

15 A Yes, ma'am.

16 Q And what is it?

17 A It's a Greenwood County Sheriff's office
18 written statement record form.

19 Q And who is it written by?

20 A Otis Lamar Bland.

21 Q Do you recall the time you wrote that?

22 A The time stamped on this statement is 7:04
23 p.m.

24 Q Was that after you Mirandized him?

25 A Yes, ma'am.

1 Q Did you see him sign that statement?

2 A Yes, ma'am.

3 MS. BOLEN: Your Honor, at this time the
4 State moves to admit State's Exhibit 2 and publish
5 it to the jury.

6 THE COURT: Any objection?

7 MR. SHEEK: No, sir.

8 THE COURT: State's Exhibit Number 2 is
9 admitted without objection.

10 (Witness' statement marked and received in
11 evidence as State's Exhibit Number 2).

12 BY MS. BOLEN:

13 Q Detective Haden, I'm going to put that
14 statement on this machine here. If you can see
15 that far I will ask you to read it so the jurors
16 can follow along.

17 A Okay.

18 Q Are you able to read it from that distance or
19 would you like me hand you a copy?

20 A If you don't mind, I would like a copy as
21 well. I can see that better.

22 Q You say that's better?

23 A Yes, ma'am.

24 Q Okay. If you could, just read the statement
25 given by Mr. Bland.

1 A Okay. At the top the location is the
2 Greenwood County Sheriff's office which I filled
3 out. The person making the statement is Otis Lamar
4 Bland, his signature. The address is 1315 Evans
5 Pond Road, which is where he was at the time.
6 Waiver of rights attached? Circled yes. It states
7 that, "I, on 2/23/2009 me and Yoggi," I kind of
8 started the statement before, I should have put his
9 name in there but the statement actually started at
10 that point. It says, "want to make the following
11 statement under oath." It says, "James went to her
12 house but stayed in the back yard. They told me to
13 watch out, so James went and knocked on her door
14 and she came and James asked her if she needed her
15 yard cut. Then she asked him was he me. That's
16 when he tried to push in the house, rush in the
17 house but she slammed the door in his face. So
18 they started," I can't see that very last one,
19 "running. We went to the woods by Possum Hollow
20 Road. They said that they are going to," I don't
21 know what that word is, "another one. I told them,
22 I told them go ahead, I'm not going. They said
23 they are going to wait in the Jeep and wait on
24 somebody to come up so they can rob them. The
25 first house we went to was on Parkland Place Road

1 and James had the .38 in his hand when she said,
2 when she came to the door. On the second one I
3 didn't go but they were going to wait in the white
4 Ford on Sleepy Hollow Road."

5 Q Detective Haden, you said you actually met
6 with all three people involved in the case?

7 A Yes, ma'am.

8 Q Do you recall what, having met them in
9 person, what their builds are?

10 A Yes, 'ma'am.

11 Q Could you just give a very general
12 description?

13 A Mr. Bland is tall, medium complexion, thin.
14 Mr. Martin is short and darker skinned, pretty
15 stocky, stocky build. And Mr. Ware is shorter,
16 medium complexion, with a medium build.

17 Q Detective Haden, going back to the oral
18 statement that was videotaped, did you Mirandize
19 Mr. Bland prior to that statement?

20 A Yes, ma'am.

21 Q And that's the second signature on the
22 Miranda form?

23 A Yes, ma'am.

24 MS. BOLEN: Your Honor, permission to
25 approach?

1 THE COURT: Yes, ma'am.

2 Q Detective Haden, I'm passing up what has been
3 marked for identification purposes as State's 3.
4 Do you recognize that?

5 A Yes, ma'am.

6 Q What is it?

7 A It's a DVR which is used to input into the
8 recorder at the Sheriff's office to transfer the
9 data, the audio and video from the hard drive into
10 a media form on the disc.

11 Q And what specific data is that?

12 A The interview of Otis Bland.

13 Q Have you had a chance to review that disc?

14 A Yes, ma'am.

15 Q And does it accurately represent the
16 interview that took place?

17 A Yes, ma'am.

18 Q Has it been altered or changed in any way?

19 A No, ma'am.

20 MS. BOLEN: Your Honor, at this time the
21 State moves to admit State's 3 and offer to publish
22 it to the jury.

23 THE COURT: Any objection?

24 MR. SHEEK: No, sir.

25 THE COURT: All right. State's Exhibit

1 Number 3 is admitted without objection and shall be
2 published to the jury.

3 MS. BOLEN: Your Honor, we would like to play
4 it for the jury.

5 THE COURT: Yes, ma'am. That would be
6 published.

7 (Recorded statement of the witness was marked
8 and received in evidence as State's Exhibit
9 Number 3 and was played to the jury).

10 BY MS. BOLEN:

11 Q Detective Haden, can you described what
12 happens after that?

13 A Every time I get a handwritten statement from
14 an individual I give them time to think clearly and
15 what to write without any distractions around and
16 normally I will come back in and read their
17 statement once they are done.

18 Q Just a few more questions for you, Detective
19 Haden. You stated briefly that you responded that
20 night?

21 A Yes, ma'am.

22 Q Did you personally look for a pocketbook?

23 A That night when we all -- the dog team was on
24 the ground as Deputy Mathis stated previously.
25 They didn't observe one. I didn't look that

1 evening, however on the 25th, the day I spoke to
2 Mr. Martin and Mr. Ware, after speaking to both of
3 those young men, they told me an area, the wooded
4 area, that is what they described, near Sleepy
5 Hollow is where they said Mr. Bland, Kiersten
6 Martin said Mr. Bland had disposed of the
7 pocketbook and which myself and two other
8 investigators went to that area which Mr. Martin
9 had spoke of to try and locate it without Mr.
10 Martin's assistance.

11 Q Did you find it that evening?

12 A No, ma'am.

13 MS. BOLEN: Detective Haden, I don't have any
14 further questions for you at this time. Please
15 answer any questions Mr. Sheek may have for you.

16 THE COURT: Mr. Sheek.

17 MR. SHEEK: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. SHEEK:

20 Q Detective Haden, the date this video was made
21 Mr. Bland came to the police department or the law
22 enforcement center about 11:00 o'clock that
23 morning, right?

24 A That's pretty accurate to say.

25 Q And he actually initially met with not only

1 you, but also detective John Murray?

2 A Yes, sir.

3 Q Detective John Murray was actually the first
4 one I think went over his rights with him?

5 A Right.

6 Q And he also talked with Detective Ray Watson?

7 A Yes.

8 Q And what other detectives did he talk with
9 that day?

10 A There was Investigator Findley was with me at
11 the time we encountered Mr. Bland on Parkland Place
12 Road. That may have been it as far as I know.

13 Q And is there a recording of any of those
14 interviews?

15 A We didn't conduct an interview in that room,
16 per se. We spoke to, while in the presence, an
17 informal interview was recorded. Speaking out of
18 context, just in general where are you living,
19 where are you staying, that sort of stuff. Nothing
20 pertaining to this case.

21 Q Okay. He came up there to talk to you all
22 about this case, right?

23 A Right.

24 Q My question is, since you have got the
25 recording capability in that room why not go ahead

1 and record all of it?

2 A Because some of the conversations he had with
3 other deputies was not as far as context but just
4 in general conversation where are you living now,
5 that sort of things, there was nothing pertinent to
6 the case.

7 Q So, all those conversations he had with
8 different investigators had nothing to do with why
9 he was there that day?

10 A I was the lead investigator, I was the one
11 primarily in charge of this investigation.

12 Q But is it true, before we see this video, he
13 has gone over his statement, what he says happened
14 with you, right?

15 A Right.

16 Q Okay. And he had gone over it with some
17 other people?

18 A Just with me as far as -- Investigator Murray
19 spoke to him with myself first when his Miranda was
20 read and after that I spoke to him again, myself
21 and Investigator Findley, which I verbally
22 Mirandized him prior to speaking to him verbally.

23 Q But there are no tape recordings, audio or
24 video of any of those contacts?

25 A No, sir.

1 Q Wouldn't it be good -- you're investigating a
2 crime. At this point do you believe he is a
3 suspect?

4 A He's a person of interest.

5 Q Well, considering that you may ultimately
6 come to a charge and ultimately come to a courtroom
7 why wouldn't you go ahead and record those?

8 A We were inside our vehicle the second time of
9 a conversation with Investigator Findley we had, we
10 had conversation in the presence of Mr. Findley, we
11 were in a vehicle, so the audio equipment was not
12 available.

13 Q When he talked to you and gave the written
14 statement, it never says at the time he goes to
15 this house with these other two people he was under
16 the impression or knew they were going to try to
17 commit a robbery, does he?

18 A No, sir.

19 Q And after all your talks with him and his
20 talking with you all, being advised of his rights,
21 never anywhere is it documented he ever says that,
22 does it?

23 A As far as --

24 Q That he knew, "When we went to that house I
25 knew they were going to try to rob this lady"?

1 A No, Mr. Bland's statement does not say that.

2 Q Okay. What he says is obviously as he is
3 talking to you in the police department the next
4 day he knows then that it was going to be a
5 robbery, he witnessed it, didn't he?

6 A Yes.

7 Q Okay. Now, when Miss Hughes says that one of
8 these individuals was pushing on the door trying to
9 get in why wouldn't you check for fingerprints?

10 A I personally just didn't do that.

11 Q Okay. It would be important to know who was
12 trying to get in that house, right?

13 A I agree.

14 Q Were you able to determine whether or not
15 that person ever actually entered the house in any
16 manner, hand, foot, anything else?

17 A After speaking with Mrs. Hughes she stated
18 she was able to successfully shut the door, at
19 which time, the short period of time between the
20 incident at Miss Hughes' house and the second
21 location, so it was kind of a simultaneous thing
22 that happened, at the same time.

23 Q I understand but would you agree with me that
24 after your investigation there is no evidence that
25 you can bring to this jury and say someone actually

1 ever entered that house with a hand, foot, arm,
2 anything else?

3 A No.

4 Q Okay. Now, you as a lead investigator, how
5 many criminal cases do you think you made in your
6 time at the Greenwood County Sheriff's Department,
7 General Sessions type cases?

8 A Roughly 400 to 500 of them.

9 Q Okay. A lot of those I'm sure got disposed
10 of by the way of guilty plea?

11 A Possibly. I was never informed, I didn't
12 inquire as to their disposition.

13 Q In your time as an investigator how many of
14 your cases are you aware of where somebody pled
15 guilty, say in November of one year, and in May of
16 the following year still hadn't been sentenced?

17 A I don't follow the cases unless it goes to a
18 jury trial. I leave that to the Solicitor's office
19 to handle.

20 Q I will ask you this question, you may not be
21 aware of any. Can you ever recall one single case
22 where that has happened?

23 A Again, on the General Sessions cases I leave
24 it up to the Solicitor's office.

25 Q Would you agree from your knowledge that is

1 extremely unusual and rare?

2 A I wouldn't say that is unusual. I can't say
3 that I have personally been aware of any or
4 informed of that from the Solicitor's office. I
5 have never asked.

6 Q Do you have any idea in this case why the
7 Solicitor's office is waiting to do sentencing?

8 A I know there are some conditions but again
9 I'm not fully aware of what those are.

10 Q Okay. So, from your investigation, as a lead
11 investigator did you ever go serve a search warrant
12 on Mr. Bland's residence?

13 A No.

14 Q Did you ever attempt to locate this ski mask
15 the two co-defendants who testified today both say
16 he was wearing?

17 A We attempted to look for evidence out there
18 in the area, around, i.e., the pocketbook, handgun
19 or anything else that could be dropped, that could
20 be found, some credentials out of a pocketbook or
21 anything like that.

22 Q Did you believe Mr. Bland was the mastermind
23 or the one that committed this robbery of the lady
24 in her home and took her pocketbook, do you think
25 there is a possibility he might have taken the ski

1 mask, the gloves, the handgun, the pocketbook to
2 his house there?

3 A It is a possibility. He was staying in
4 different locations, he had some clothes here and
5 there, was my understanding.

6 Q Where was his primary residence?

7 A He listed [REDACTED], I believe.

8 Q Did you ever request a search warrant for
9 that residence?

10 A No.

11 Q Did you ever ask Mr. Bland, "Do we have your
12 permission, your consent to go search your
13 bedroom?"

14 A No.

15 Q Don't you think if you had searched it, it
16 would have been at least worth the time to look and
17 see if any of that was there?

18 A Based on talking to Mr. Ware and Mr. Martin I
19 was under the impression that the evidence we were
20 looking for wouldn't be there.

21 Q Anywhere in Mr. Ware's and Mr. Martin's
22 statement did they say -- they both say this man
23 had the gun, right?

24 A Yes, sir.

25 Q Anywhere in their statement did they say they

1 saw him dispose of that gun or throw it anywhere?

2 A No, sir.

3 Q As a matter of fact they say they don't know

4 what happened to the pocketbook, don't they?

5 A Right.

6 Q When you bring these type charges they are

7 serious criminal charges, correct?

8 A Correct.

9 Q Some extremely serious ramifications if

10 convicted, obviously?

11 A Correct.

12 Q So wouldn't it have been worth the effort to

13 at least ask for permission to search the house or

14 to try to get a search warrant?

15 A It wouldn't have hurt anything, absolutely

16 not.

17 Q And it would have been worth the effort to

18 take the time to check the prints on that door to

19 see who was pushing on that door?

20 A It wouldn't hurt anything, no, sir.

21 Q And can you tell the jury why that wasn't

22 done?

23 A It wasn't done because the two incidences,

24 again, were really close in nature as far as time

25 goes, to where all of our manpower was out trying

1 to locate the suspect and not fully, I guess,
2 focused on meticulously going through fingerprinting
3 the door and things of that nature.

4 Q When you decide that your investigation has
5 come to the point where you're going to request
6 someone to be arrested you go seek a warrant,
7 correct?

8 A Yes, sir.

9 MR. SHEEK: Beg the Court's indulgence just
10 one moment, Your Honor.

11 THE COURT: Yes, sir.

12 Q As part of that process you do an affidavit
13 and present that to a summary court judge, a
14 magistrate or city court judge, right?

15 A Correct.

16 Q In this case I believe you sought three
17 warrants, number M075193, M075192 and M075194. Is
18 that correct? I hand you those, I'm sure you don't
19 memorize your numbers.

20 A Yes, sir, they have my signature on them.

21 Q Okay. And are those in fact copies of the
22 warrants you sought in this case?

23 A Yes, sir.

24 Q And when you signed that affidavit you're
25 signing it to be true and accurate to the best of

1 your knowledge?

2 A Correct.

3 Q And it was the facts you understood it would
4 be from your investigation?

5 A Yes.

6 Q Who does that affidavit say upon information
7 and belief you thought possessed a gun on the night
8 that lady was robbed?

9 A It states here Mr. Ware, in the affidavit.

10 Q And in the affidavit where there was an
11 arrest on the robbery of Miss Martin, her
12 pocketbook, who does the information say had that
13 gun?

14 A It states that Mr. Ware did.

15 Q Now, has there been some investigation after
16 that fact that somehow changes your opinion, with
17 the exception of the testimony of those two
18 gentlemen who came in here and said it's all him
19 while they're awaiting sentencing?

20 A Can you re-ask the question?

21 Q Has there been any other investigation after
22 you got those warrants, other than the statement of
23 those two co-defendants that came in here and
24 testified, that somehow made you change your
25 opinion?

1 A Except based on the victims' accounts.

2 Q You had already talked to them at the time
3 you went and sought the warrants, hadn't you?

4 A Correct.

5 Q Okay.

6 A On the date, on the 24th I had the privilege
7 of speaking to Mr. Bland only. The following day I
8 spoke to Mr. Ware and Mr. Martin, to which I had to
9 go off what Mr. Bland had stated to be true and
10 accurate at the present time. That is why the
11 warrants read as they do.

12 Q Now, at some point somebody from Greenwood
13 County Sheriff's Department called Miss Hughes, met
14 her and showed her a photo line-up. Who did that?

15 A I have no idea.

16 Q As lead investigator wouldn't it be anybody's
17 duty to report to you anything they did in your
18 investigation?

19 A It should have been handled that way, yes,
20 sir.

21 Q I know you're not there anymore, you have
22 moved on to another law enforcement job, different
23 agency, but has anybody since that time ever
24 reported to you, Detective Haden, "Chris, we did
25 this in your case, we called Miss Hughes, we showed

1 her a photo line-up"?

2 A No, sir.

3 Q When identity of a defendant is in question,
4 who did what, who had the gun, who stuck the gun in
5 whose face a photo line-up is crucial, isn't it?

6 A It's done.

7 Q Because if that person identifies Mr. Bland
8 that would be an important piece of evidence in
9 your investigation, wouldn't it?

10 A Correct.

11 Q And if the person has a photo line-up with
12 Mr. Bland's picture and does not identify him that
13 would be something that actually would be
14 beneficial to Mr. Bland, wouldn't it?

15 A Possibly.

16 Q Okay. But in this case do we even have a
17 copy of that photo line-up to look at in your case
18 file?

19 A Not I'm aware, no, sir.

20 Q And I say your case file. When you left the
21 Sheriff's Department your case file remained with
22 the Sheriff's Department, correct?

23 A Correct.

24 Q What you have access to is what is there when
25 you came back to this trial?

1 A Correct.

2 Q When you looked, were you surprised when you
3 heard there had been a photo line-up?

4 A Somewhat.

5 Q And did you then go look through the case
6 file to try to determine if there is any record in
7 there from that?

8 A I didn't. I viewed the case file initially,
9 I haven't viewed it since I left the Sheriff's
10 office, no, sir.

11 Q To your knowledge are there any records that
12 exist today at the Greenwood County Sheriff's
13 Department that we can get that photo line-up,
14 whose pictures were included, what this lady was
15 shown, in there?

16 A And again at the time the incident occurred
17 I would have documented everything inside the
18 supplemental reports as to what was done on the
19 case and if it is not there I have no knowledge of
20 it.

21 Q Okay. So it's safe to say that wasn't
22 something you did?

23 A No, sir.

24 Q So there was somebody else conducting some
25 investigation in this case and they had to do a

1 photo line-up but we don't know who it was, is that
2 correct?

3 A Well, at times we investigators try to assist
4 other investigators. With these two crimes
5 combined, there were other investigators trying to
6 be of assistance. With the photo line-up being
7 said, someone could have possibly done that and
8 just not informed me.

9 Q That's what we're assuming was done in this
10 case, we don't know who did it?

11 A Correct.

12 Q We don't know what pictures they used?

13 A No, sir.

14 Q We don't know what the result of viewing the
15 line-up would have been?

16 A I have no knowledge of that.

17 Q You would agree with me, Investigator, all
18 those questions are important questions that should
19 have been documented in the case file?

20 A If it was conducted during the investigation
21 it absolutely should have been documented.

22 MR. SHEEK: Thank you, Detective Haden.
23 That's all I have.

24 THE COURT: Any redirect?

25 MS. BOLEN: Yes, Your Honor, redirect.

REDIRECT EXAMINATION

1
2 BY MS. BOLEN:

3 Q Detective Haden, of the four or five hundred
4 cases you handled that go to General Sessions do
5 all of them involve co-defendants?

6 A Not all.

7 Q The warrants Mr. Sheek showed you, when did
8 you obtain those?

9 A I don't remember the exact date on the
10 warrants.

11 Q Would it refresh your memory if I handed them
12 up?

13 A Absolutely.

14 Q And what was the date?

15 A The date was on the 24th.

16 Q Was that before you spoke with Mr. Martin and
17 Mr. Ware?

18 A Yes, ma'am.

19 Q You had stated you were present the night of
20 the incidences?

21 A Yes, ma'am.

22 Q To your knowledge did Miss Hughes state that
23 she was able to identify the person with the gun?

24 A No, ma'am, she just gave a brief description
25 as to the physical characteristic of the person or

1 persons involved.

2 Q She didn't at any time say she could identify
3 them?

4 A No, ma'am.

5 Q And regarding the line-up, do you know which
6 of the three co-defendants might have been in that
7 line-up?

8 A No, ma'am, it could have been any one of the
9 three.

10 MS. BOLEN: No further questions, Detective
11 Haden.

12 THE COURT: Any recross based only on her
13 redirect?

14 MR. SHEEK: If I may Your Honor.

15 THE COURT: Yes, sir.

16 RECROSS EXAMINATION

17 BY MR. SHEEK:

18 Q Let me just ask you, the Solicitor just asked
19 you how many of those cases involve co-defendants.
20 I believe you told me you don't keep up with that,
21 the Solicitor's office does, is that right?

22 A As far as co-defendants, we keep up with it.

23 Q Statistics on your case, who pleads and
24 everything, who keeps up with that?

25 A The Solicitor's office.

1 Q The question of how many have been disposed
2 of in this manner where they delayed sentences,
3 they could answer that?

4 A Better than I could.

5 Q The only statements you took after the 24th
6 were the statements from the co-defendants, right?

7 A Right.

8 Q Are you saying based on what they told you,
9 you changed your position on who had the gun?

10 A Based on talking to the victims after the
11 fact, after securing these warrants, after speaking
12 to all three defendants, those two co-defendants'
13 statements as well as the victims' statements to me
14 via telephone I really believe that Otis Bland was
15 the one who brandished the firearm.

16 Q You had already talked to the witnesses when
17 you got this warrant, correct?

18 A I talked to them briefly.

19 MR. SHEEK: Thank you.

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

21 Any objection to this witness being excused?

22 MS. BOLEN: No, sir Your Honor.

23 MR. SHEEK: No, sir.

24 THE COURT: You are excused, then.

25 (Witness excused).

1 THE COURT: Do you have any more witnesses
2 for this afternoon?

3 MS. BOLEN: Your Honor, at this time the
4 State rests.

5 THE COURT: All right, That's an appropriate
6 time. Ladies and gentlemen, I'm going to dismiss
7 you for the evening with the continued instructions
8 you are not to speak to anyone about the case. We
9 will start back tomorrow morning at 9:30, so if you
10 all can be here just a little bit before that. I
11 appreciate your promptness you have already shown
12 today but we'll see you in the morning. You all
13 have a nice evening.

14 (The jury was excused from the courtroom).

15 THE COURT: Are there any motions to be made
16 or do you want to make them in the morning?

17 MR. SHEEK: I will make them now if you want
18 to, Your Honor. My client really needs to go to
19 the restroom. Can he go right there real quick?

20 THE COURT: Sure, okay.

21 (Brief recess).

22 THE COURT: Let's go ahead and do the
23 motions.

24 MR. SHEEK: And if I may, would you also
25 discuss with him his right not to testify?

1 THE COURT: And I will let you talk with him
2 overnight.

3 MS. BOLEN: Your Honor, I need to pick up my
4 daughter from daycare by 5:30.

5 THE COURT: How long does it take?

6 MS. BOLEN: It's about three minutes away.

7 MR. SHEEK: I won't make any foolish motions
8 right now.

9 Your Honor, your position on my client
10 staying out on bond, where is he going to stay
11 tonight?

12 THE COURT: Does the State have any objection
13 to him staying out on bond?

14 MS. BOLEN: We usually just leave it up to
15 the judge, Your Honor, so whatever.

16 THE COURT: He has been out on bond all this
17 time. He's reminded if he doesn't show up it will
18 probably be real bad for him.

19 MR. SHEEK: Yes, sir.

20 THE COURT: All right, Mr. Sheek, would you
21 like to make some motions at this time?

22 MR. SHEEK: Your Honor, thank you. If it
23 please the Court, concerning the first charge,
24 burglary in the first degree, I would ask the court
25 to consider a directed verdict of not guilty.

1 THE COURT: This is attempted burglary?

2 MR. SHEEK: I'm sorry, attempted burglary in
3 the first degree. I think they would have, the
4 State would have to put together some testimony of
5 an agreement to go commit a burglary. There is
6 testimony about a lick, he thought a lick was going
7 to be a robbery, taking the evidence in a light
8 most favorable to the State, then the parties
9 agreed to go attempt to rob somebody. There was
10 never any testimony about attempt to enter a
11 residence of any type. In fact there was no
12 evidence of an entry into a residence.

13 THE COURT: That is why it's an attempt.

14 MR. SHEEK: Yes, sir. I believe to get there
15 the jury would have to make certain suppositions,
16 certain assumptions. They simply have not
17 supported it with evidence.

18 The main charge of armed robbery and
19 possession of a weapon during commission of a
20 violent crime, while I don't believe the evidence
21 is substantial, I believe there is some evidence
22 and that is really your standard, so I don't make a
23 motion as to those two charges.

24 THE COURT: Thank you.

25 MS. BOLEN: If I could respond, Your Honor?

1 THE COURT: Yes, ma'am.

2 MS. BOLEN: Regarding Mr. Sheek's argument
3 about the attempted burglary, I believe there was
4 testimony from Mr. Martin that the plan was to
5 rush, for all three of them to rush into the house.
6 There is also ample testimony from the victim Miss
7 Hughes as well as both Mr. Martin and Mr. Ware
8 that -- well, Miss Hughes stated at least one
9 person had either a foot or hand trying to get in,
10 which I believe is enough to be an attempt. Mr.
11 Ware and Mr. Martin also stated that the defendant
12 did try to rush into the house and I think that,
13 coupled with Mr. Martin's testimony about the plan
14 being to all rush in, is enough to support the
15 charge of the attempted burglary to go to the jury.

16 THE COURT: All right. Mr. Sheek, I think
17 the State presented sufficient evidence at least to
18 take it to the jury at this point in time. You're
19 welcome to renew your motion after all the
20 testimony. So, your motion is hereby denied.

21 MR. SHEEK: Thank you, Your Honor. My second
22 motion would be for actually a judgment of
23 dismissal of the charges and the reason would be
24 the testimony was there was a photo line-up done.
25 That identity is an issue in this case. The photo

1 line-up was obviously done by law enforcement and
2 that law enforcement for reasons they cannot
3 explain have failed to maintain and in fact I guess
4 have destroyed or lost that evidence.

5 I looked last night specifically, I have
6 never faced this exact question before, I turned to
7 the case of State versus Jackson, which is
8 ~~~~~302 South Carolina 13, a 1990 South
9 Carolina Supreme Court case, and in that case it is
10 actually the Supreme Court talks about California
11 versus Trabetta. ~~~~~ I will be happy to pass a
12 copy of that case to Your Honor. It refers to
13 steps taken when evidence is lost or destroyed.
14 What it says is before the Court entertains a
15 dismissal you've got to make a determination of
16 whether or not the evidence was material, whether
17 or not its exculpatory value would have been known
18 to the State before destruction, whether the
19 defendant through other means can obtain comparable
20 evidence. In this case there is no question it is
21 material when it comes to identity.

22 What happened is the State presented a photo
23 line-up which didn't include my client because they
24 felt someone else was doing it or more likely at
25 that time they presented a photo line-up that

1 included my client and this person who is
2 testifying my client was there was unable to make
3 an identity. Since my client has denied --

4 THE COURT: He hasn't denied being there, he
5 gave a statement he was there at least on the
6 first.

7 MR. SHEEK: He denied the rushing of the
8 house. That is what they are saying, he's the one
9 that had the gun, he rushed the house, he had the
10 gun in both of them. They failed to maintain that
11 evidence. I don't think the State can
12 realistically claim it is not material.

13 THE COURT: They had masks on at the time,
14 wasn't that the testimony, they had masks on?

15 MR. SHEEK: Not by the co-defendants, Your
16 Honor. They testified in that first house, the
17 victim testified and the co-defendant testified
18 there was nothing, no masks. The masks happened at
19 the second, where the co-defendants said it was a
20 ski mask and the victim said bandanna. The first
21 house, that is the lady shown the line-up, there is
22 no testimony about masks. They failed to maintain
23 it. I don't think there is any way they can say,
24 "We didn't know we should have." It is not novel
25 you need to maintain that type evidence. There is

1 certainly no way we're going to obtain comparable
2 evidence. They say, "Whoops, we don't know where
3 it is, we didn't keep it." I think that has done
4 irreparable harm to my client who is facing life in
5 prison. I think based on failure to preserve that
6 evidence and their willful destruction of it these
7 charges should be dismissed.

8 THE COURT: Yes, ma'am, Miss Bolen.

9 MS. BOLEN: Thank you, Your Honor. Several
10 things in response to Mr. Sheek's motion. First,
11 as described by both Miss Hughes and Detective
12 Haden, because the line-up was not present, we
13 don't know which of the three co-defendants it
14 could have contained. Miss Hughes was clear on the
15 stand that she was not able to identify the second
16 defendant. Mr. Haden, Detective Haden corroborated
17 that. She did say she got a good look at the first
18 defendant, the first person. It stands to reason
19 if the line-up was shown it likely would have
20 contained the first one rather than this defendant.

21 Also, Your Honor, the State believes
22 dismissal of the charges is the improper remedy,
23 citing, I haven't had a chance to look up the case
24 Mr. Sheek cites, but looking at State v. Breeze, I
25 don't have the WestLaw cite but it was submitted on

1 June 2nd, 3008, I think they mean June 2nd, 2008.

2 THE COURT: I would think so.

3 MS. BOLEN: Pardon?

4 THE COURT: I would think so.

5 MS. BOLEN: I would think so. This is a case
6 where, it was a drug trial, the defendant
7 apparently was stopped at a checkpoint, marijuana,
8 they found marijuana, field tested positive to be
9 marijuana, it was 394.34 grams of marijuana, so
10 close to a pound. In this case it says prior to
11 trial the State informed Breeze the marijuana had
12 been destroyed, so it was not present at trial.
13 Breeze had asked the trial judge to charge the jury
14 that there is an adverse inference that can be
15 drawn from lost or destroyed evidence. The trial
16 judge declined to give that instruction.

17 The State feels that if the Court does wish
18 to address the issue with you the jury in the jury
19 instructions the proper remedy would be some sort
20 of instruction rather than outright dismissal.
21 There has been no testimony at all that this
22 line-up, if lost, was lost or misplaced
23 intentionally. There has been no testimony or
24 allegation of any wrongdoing on the police
25 department's behalf. There has been no testimony

1 that this was done in any sort of malicious way and
2 to dismiss would unfairly prejudice the State but I
3 believe the charges should not be dismissed based
4 on that.

5 And I would like the chance to look at the
6 case --

7 THE COURT: Yes, ma'am.

8 MS. BOLEN: -- that Mr. Sheek cited.

9 MR. SHEEK: Your Honor, if I may, I believe
10 the case the Solicitor just cited, I'm pretty sure
11 it deals with the fact this marijuana was destroyed
12 after the person failed to appear in court and a
13 bench warrant was issued. The police department
14 records showed case disposed of because that is the
15 the way bench warrants show, disposed of because
16 the evidence was destroyed. What the Court
17 actually said, there was some discussion between
18 the State and defendant, the defendant wanted to
19 get the negative inference, the State said, "If
20 you're going to do that we'll explain why it was
21 destroyed, which it was because after bench warrant
22 for your client's failure to appear." Of course
23 the defense objected to that. What the Court said,
24 this evidence was disposed of not through bad faith
25 or negligence on the part of law enforcement but an

1 act of the defendant, to punish the State of that
2 would certainly be unfair. That is not the case we
3 have in this case.

4 THE COURT: Well, what you have a problem
5 with is you have your client saying he was there,
6 so I don't know the line-up is so crucial in this
7 case if your client was there. If your client was
8 saying he wasn't even there and that they
9 misidentified him that would be one thing. I don't
10 know how you would be prejudiced by the line-up
11 when he himself said he was there.

12 MR. SHEEK: Well, Your Honor, it turns on
13 credibility of the witness to believe he
14 participated in any preconceived notion there was
15 going to be a robbery at this house, you have to
16 believe the testimony on that.

17 THE COURT: That may be for the jury to
18 determine, whether or not it is a photo line-up and
19 whether it is gone, I don't think it makes a whole
20 lot difference when he says he was there.

21 MR. SHEEK: It could corroborate his
22 statement he gave to the police.

23 THE COURT: But that is why it is not as
24 material as it would be if you were saying, say in
25 a DUI tape where you have a videotape showing the

1 defendant is not intoxicated. In this case your
2 client has admitted and it came in without
3 objection after the hearing yesterday, that he says
4 he was present during these robberies and maybe
5 attempted burglary.

6 MR. SHEEK: Again, the determination the jury
7 has to make is who is telling the truth, this
8 gentleman or the other two. The photo line-up
9 bears on that credibility. It bears open it fairly
10 strong.

11 THE COURT: I think one witnesses, didn't she
12 say she couldn't tell from the line-up?

13 MS. BOLEN: Yes, sir.

14 MR. SHEEK: She said from the line-up she
15 couldn't tell.

16 THE COURT: So she's not basing her
17 identification based upon the line-up, so I don't
18 understand where the prejudice would be.

19 MR. SHEEK: Well, it would be that if that
20 photo of this young man who sits here today, in
21 that photo line-up she looks at them and says, "I
22 don't recognize any of them," so he is more likely
23 the one standing at the back just like he says.
24 However, if he was the one rushing the door she
25 more likely would be able to identify him. We

1 don't know. I think the State's argument is we
2 don't know, it could have been this, might have
3 been that. This defendant who is on trial for his
4 life, it wasn't his job to keep up with the
5 evidence.

6 THE COURT: I will give you overnight to do
7 some further research and reading, to read Mr.
8 Sheek's case. I will hold it until in the morning.

9 MR. SHEEK: Thank you, Your Honor. What time
10 did you say be here, Judge?

11 THE COURT: You all need to be here at 9:00
12 and we'll finish this up. The jury is coming in at
13 9:30.

14 MR. SHEEK: Would you like to talk to my
15 client about his right to testify?

16 THE COURT: Yes, let's go ahead and do it.
17 Please place the defendant under oath.

18 OTIS LAMAR BLAND,
19 after being first duly sworn, stated as follows:

20 THE COURT: All right, Mr. Bland, at this
21 time I'm going to explain to you certain of your
22 rights. If you don't understand anything that I
23 say please let me know and if you want me to
24 explain anything in deeper detail I will be happy
25 to do so.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now we have reached the stage of
4 this trial where you may present your defense. You
5 have the right to claim the protections given to
6 you by the 5th Amendment of the Constitution of the
7 United States which says in part that no person
8 shall be compelled in any criminal case to be a
9 witness against themselves. That means you cannot
10 be required to testify in this case. You have the
11 right to testify on your own behalf. However, no
12 one can make you testify. This is a personal right
13 and no one can waive this right except for you.

14 Now, if you decide to testify you will be
15 subjected to the same rules that governs other
16 witnesses and you may be examined and cross
17 examined on any relevant issue in this case.

18 In addition, if you have any convictions
19 involving dishonesty or false statements or for
20 crimes punishable by imprisonment for more than one
21 year and I determine that the probative value of
22 admitting the evidence outweighs the prejudicial
23 effect on you the Solicitor will be able to
24 introduce your record to attack your credibility.

25 Now, if you decide to testify the decision on

1 your part must be freely, voluntarily and
2 intelligently made with the full knowledge of the
3 protections given to you by the 5th Amendment and
4 the consequences of your decision to testify. If
5 you decide not to testify I will instruct the
6 jurors that they cannot give the fact that you did
7 not testify any consideration whatsoever and that
8 there is to be absolutely no prejudice to you
9 because you did not testify. It is left entirely
10 up to you whether or not to testify. You may talk
11 to your attorney, your family members or your
12 friends or anyone else but the final decision will
13 be left up to you.

14 Do you understand what I have explained to
15 you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about
18 what I have explained to you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you discussed it with your
21 attorney or do you want overnight to discuss with
22 your attorney as to whether or not you should
23 testify?

24 THE DEFENDANT: Overnight.

25 THE COURT: All right. I will finish this

1 tomorrow morning when I will then question you as
2 to whether or not you would like to testify.

3 MR. SHEEK: Thank you, Your Honor.

4 THE COURT: All right, court is adjourned
5 until 9:00 o'clock tomorrow morning.

6 Mr. Bland, I am not going to require that you
7 remain incarcerated at this time. However, I will
8 remind you that your failure to show tomorrow
9 morning at 9:00 o'clock will not stop the progress
10 of this case. The remainder of this trial will be
11 held in your absence. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right, thank you. Court is
14 adjourned until 9:00 o'clock tomorrow morning.

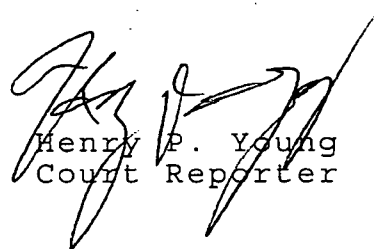
15 MS. BOLEN: Thank you, Your Honor.

16 (Recessed at 5:16 p.m.).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Greenwood County,
11 South Carolina, on the 18th day of May, 2009.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 July 6, 2010

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16
17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD

2009-GS-24-628

2009-GS-24-629

2009-GS-24-630

2009-GS-24-632

2010-GS-24-437

THE STATE,

-vs-

OTIS LAMAR BLAND, JR.,

Defendant.

May 18-19, 2010

B E F O R E:

HONORABLE WILLIAM JEFFREY YOUNG

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

PATRICIA BOLEN, Esquire
DEMETRIOS G. ANDREWS, Esquire
Attorneys for the State

CHRISTOPHER LANCE SHEEK, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME II of II

May 19, 2010

1 (Reconvened at 9:46 a.m., May 19, 2010).

2 THE COURT: Go ahead and bring the jury out
3 and then you can rest, and then I will send them
4 back, at least they're not sitting back there
5 wondering what is going on, because we're still
6 going to need some time.

7 MS. BOLEN: Thank you, Your Honor.

8 (The jury returned to the courtroom).

9 THE COURT: Is that all of them?

10 THE BAILIFF: Yes, sir.

11 THE COURT: Good morning, ladies and
12 gentlemen. I hope you had a nice evening. It was
13 a nice evening last night, I went to a little thing
14 out by a pond and it was very pleasant out there.

15 As you can see, it is nice and cool in here
16 this morning, in fact about an hour ago when I came
17 in here it was hot, so we at least know we have an
18 efficient air-conditioner system here in Greenwood.

19 All right, are we ready to proceed? The
20 State rests?

21 MS. BOLEN: Yes, sir, Your Honor.

22 THE COURT: The State has rested.

23 MR. SHEEK: Yes, sir. The defense likewise
24 rests, Your Honor.

25 THE COURT: All right, thank you.

1 Ladies and gentlemen, I'm going to keep you
2 busy this morning. I now have to send you back
3 into the jury room so we can take up a few matters
4 of law and it will probably be thirty minutes or
5 more before I bring you back out here, all right?

6 Thank you.

7 (The jury was excused from the courtroom).

8 THE COURT: The State doesn't anticipate
9 putting up rebuttal testimony? I guess we wouldn't
10 have any rebuttal.

11 MS. BOLEN: No, sir.

12 THE COURT: Yes, sir.

13 MR. SHEEK: Your Honor, the defendant would
14 renew the previously made motions, motion for
15 directed verdict, motion to dismiss on the grounds
16 we previously argued to the Court.

17 THE COURT: Yes, sir. Thank you. And on the
18 grounds that I gave before I will respectfully deny
19 your motion.

20 MR. SHEEK: Thank you.

21 THE COURT: Have you all had an opportunity
22 to look at the charge, or are you all doing that
23 now?

24 MS. BOLEN: Yes, sir.

25 MR. SHEEK: I have, Your Honor. I have no

1 objection to the charge.

2 THE COURT: All right. Let me tell you what
3 is going to be added into the final one my law
4 clerk is working on now. The fact the defendant
5 did not testify, I will explain to them they cannot
6 consider that, and the hand of one is the hand of
7 all charge.

8 MS. BOLEN: Yes, sir.

9 THE COURT: Other than that is it fine?

10 MS. BOLEN: Yes.

11 THE COURT: I think also, on the verdict
12 form, so it can be clear as to what the charges
13 are, that for each victim it will say as to the
14 charge of attempted burglary against I guess Miss
15 Howe?

16 MS. BOLEN: Hughes.

17 THE COURT: Hughes, so they know which charge
18 is which. I think it just makes it clearer and
19 then it will be guilty or not guilty on all five
20 charges.

21 All right?

22 MR. SHEEK: Yes, sir.

23 THE COURT: All right, we'll be in recess for
24 approximately thirty minutes while you all continue
25 to look at that and my law clerk sends up the final

1 version, then we'll be ready to do your closing
2 argument.

3 Thank you.

4 (Recessed at 9:50 a.m.).

5 (Reconvened at 10:10 a.m.).

6 THE COURT: All right, let's bring the jury
7 in.

8 (The jury returned to the courtroom).

9 THE COURT: All right, ladies and gentlemen,
10 we have reached that juncture in the trial where
11 all the testimony that you're going to hear in this
12 case has now been presented to you. As I told you
13 earlier, after the evidence has been presented the
14 State and the defendant will have an opportunity to
15 give their closing arguments and I will then charge
16 you on the law.

17 Is the State ready to proceed?

18 MS. BOLEN: Yes, sir, Your Honor.

19 THE COURT: Is the defense ready to proceed?

20 MR. SHEEK: The defense is ready.

21 THE COURT: All right, thank you.

22 Madam Solicitor, you may present your closing
23 argument.

24 MS. BOLEN: Thank you, Your Honor. May it
25 please the Court, Your Honor, the State is going to

1 give a very brief closing on the law.

2 Ladies and gentlemen of the jury, the judge
3 will instruct you on what the law is on this case.
4 I also have the opportunity to tell you what the
5 elements of the crimes charged are.

6 The defendant is charged with attempted
7 burglary in the first degree. The elements of that
8 crime are that the defendant entered or attempted
9 to enter a dwelling without consent with the intent
10 to commit a crime with any one of the following,
11 causes physical injury to another, armed with a
12 deadly weapon, used or threatened to use a
13 dangerous instrument, displays a deadly weapon, or
14 the exit or attempted entry is during the
15 nighttime.

16 He is also charged with armed robbery. The
17 elements of this crime are that the defendant takes
18 property from another while armed with a deadly
19 weapon or by alleging by his words or actions that
20 he does have a deadly weapon or this happened while
21 he is making a representation of having a deadly
22 weapon and a reasonable person would think that was
23 a deadly weapon.

24 He is also charged with attempted armed
25 robbery. The elements of that are essentially the

1 same as armed robbery except without the completion
2 of the taking.

3 He is also charged with two counts of
4 possession of a weapon during commission or
5 attempted commission of a violent crime. That is
6 exactly what it sounds like, while committing or
7 attempting to commit a violent crime he had in his
8 possession a weapon.

9 Thank you.

10 THE COURT: Mr. Sheek.

11 MR. SHEEK: Thank you.

12 Ladies and gentlemen, you have listened to
13 all the evidence that is going to be presented in
14 this case. I'm going to talk to you about what the
15 evidence is, what the reasonable inference from
16 that evidence is and the prosecutor is going to get
17 a chance to come back and respond to everything I
18 said. That will be it. I don't have a chance to
19 respond to what she says.

20 I want you to keep an open mind because that
21 is very important. In South Carolina when we do
22 criminal trials we have a limited form of what we
23 call discovery, and that is an exchange of
24 information between the State and the defense
25 regarding what we're going to come to trial with,

1 what evidence is going to be presented at trial.
2 So, what we saw today was not a surprise to me, or
3 we saw yesterday. It was the first time I had
4 heard it from the witnesses but I wanted you all to
5 hear it because I think it would have been and
6 should have been a surprise to you all.

7 When a defendant comes and sits in this
8 chair, as the judge will tell you, he is presumed
9 innocent. That presumption stays with him through
10 the trial. That presumption doesn't stop when you
11 go in that jury room, it stays with him, and that
12 presumption is only removed by you if you find
13 proof of the crime beyond a reasonable doubt.

14 Now, I told you at the beginning why that is
15 important, because how do you prove a negative, how
16 does the defendant come in and prove himself
17 innocent? He's pled not guilty, he has said
18 through his not guilty plea, "I did not do this."
19 He gave his statement to the police, you saw the
20 statement, you read it, and then the police comes
21 in with this charge, these charges and they tell
22 you the jury, "We think he's guilty of these and he
23 should be convicted of them." That's the process
24 that we find ourselves in and that is the reason I
25 talked to you about the way things are done,

1 because if you think about it, if you think about
2 this evidence I think you will see that had this
3 seat been filled by a star football player, an
4 actor, somebody of that profession, then we would
5 have had a different investigation, we would have
6 had a different prosecution. Every "i" would have
7 been dotted and every "t" would have been crossed.

8 As I thought last night about talking to you
9 all today and I thought about your job as you go
10 into that jury room, because you all have the
11 hardest job in the courtroom. I represent the
12 defendant, Miss Bolen represents the State, the
13 judge is the judge of the law, you all have the
14 hardest job and I thought what have you all got to
15 do, what are we going to ask you to do and what
16 have we given you to equip you to do that job?

17 You go back and you try to determine guilt
18 based on what this young man has been accused of.
19 What has he been accused of? The judge is going to
20 give you instructions on the law. You take the law
21 as he gives it to you. But they are going to say
22 that he should be found guilty of armed robbery of
23 Miss Hughes, I'm sorry, of Miss Martin. That's the
24 pocketbook, the second case as they talked about it
25 when they were testifying. And that he should be

1 found guilty of attempted armed robbery and
2 attempted burglary of Miss Hughes, that was the
3 first house. Okay?

4 Well, that's fine, as jurors what evidence do
5 you have to base that on? That's the question
6 you're going to have, that is the question that
7 hopefully Miss Bolen is going to answer for you to
8 your satisfaction. But what evidence do you have?

9 When you look at this case, and we talk about
10 reasonable doubt, the judge is going to give you a
11 definition, I think most of you all probably
12 understand what a reasonable doubt is, but the
13 definition we're using right now, our court says a
14 reasonable doubt is the kind of doubt that would
15 cause a reasonable person to hesitate to act. I
16 liken it sort of like going to a doctor and the
17 doctor tells you you need surgery, some very
18 important procedure, and the doctor tells you why
19 he thinks you need it. Well, if a doctor's reasons
20 for why you need that surgery are equivalent to the
21 evidence that the State has brought to you in this
22 case do you go ahead and get that surgery or do you
23 ask for a second opinion, because if you ask for a
24 second opinion you've got reasonable doubt. It
25 doesn't mean you initially think that first doctor

1 is wrong, it means you're not sure that he's right.
2 That's the situation you have here.

3 When you look at the evidence, and I thought
4 about it last night and tried to think about it
5 from a juror's perspective, if I came in knowing
6 nothing about this case, nothing about the
7 defendant, nothing about the investigation and I
8 listened to the evidence brought to me, what do I
9 know? Do I know whether or not he's guilty? He
10 may very well have done it based on what I and the
11 jury have heard in this courtroom in the last two
12 days. If that is your opinion what is your
13 verdict? It is not guilty. Because I may very
14 well think he did it, he probably did it doesn't
15 get you to a guilty verdict. That doesn't rise to
16 a level beyond a reasonable doubt.

17 So, when you think about it you think about,
18 well, if I've got to get to that level beyond a
19 reasonable doubt what kind of evidence do I have?
20 Well, I've got this young man's statement. He said
21 they went there, "I stood out back, Martin had the
22 gun, talked to the lady at the door, tried to rush
23 in, she slammed the door and we all ran out." What
24 he didn't say was, "We went there in order to do a
25 robbery." That is what the co-defendants want to

1 tell you they planned beforehand. Well, I take
2 that back, that is what one co-defendant wanted to
3 tell you. The other one said at the time he was
4 knocking on the door asking her if she wanted yard
5 work, he was interested in whether she wanted yard
6 work, he didn't formulate any plan to try to rush
7 in and do anything else until after he had knocked.
8 But he doesn't say that. That's interesting
9 because obviously as jurors you've got to determine
10 if that was the intent when he went up there.

11 The State is going to talk to you about a
12 conspiracy theory in the law that the hand of one
13 is the hand of all, If a group of people get
14 together to decide to commit a crime, what one
15 person does is the same as all of them doing it,
16 the hand of one is the hand of all. So, in order
17 for the State to get there they've got to prove to
18 you beyond a reasonable doubt that was the plan
19 when they went to that first house.

20 So, what evidence do they have of that?
21 Well, you heard the testimony from Officer Haden
22 who talked about the interview with this young man.
23 Now, they've got him up there in the Sheriff's
24 Department, the State says, "What kind of equipment
25 do you have?" "We've got this room with the camera

1 up there and it's hooked to this digital recorder
2 and we can transfer it to a DVR."

3 That's great, because there is nothing better
4 in a statement than to be able to sit and watch it
5 yourself, hear the defendant speak and see what
6 happened. That's wonderful. And if you've got
7 that capability and the man was there from 11:00
8 o'clock that morning and you're taking this
9 statement at 7:30, why don't we go ahead and record
10 all that other stuff? All the preliminary
11 discussions where you discussed with him what his
12 statement is going to be, do you think for a second
13 it didn't occur to the police to ask him, "Well,
14 did you have that planned before you went over
15 there, is that what you went for, is to rob them,
16 is that what you were going for?"

17 Look, that is not rocket science. When
18 you're police officers, police officer all know
19 that the hand of one is the hand of all. You know
20 that is conspiracy, you're going to find that out.
21 Why do you think it is not on there? Because he
22 never said it at any point at any of that time,
23 much less in that last few minute section, the only
24 part of the statement that the police decide to
25 record. Why? It's not his job to bring evidence

1 in this courtroom. As a matter of fact his ability
2 to do that is extremely limited. He doesn't have
3 the resources of the Sheriff's Department with
4 their investigators and their scientific equipment
5 and their video camera. He is just Otis, poor
6 little twenty year old guy living here in Greenwood
7 trying to get by.

8 So, why didn't we record it? I mean, come
9 on. It is not up to the police to decide whether
10 or not the jury wants to see it. Record it and
11 bring it to us, you all can decide what is good
12 evidence and what is not, you can decide what is
13 important and what is not. And you've got to
14 wonder why it wasn't done.

15 Okay. The State will also want to get up and
16 say, "Look, the defense always complains about what
17 the police did, we can't do everything to their
18 satisfaction." I understand that, I heard that
19 when I was a prosecutor at times. But come on, he
20 had rushed and was pushing at the door, right?
21 Somebody was pushing in that door. And when you
22 all go back to decide the guilt or innocence of
23 this young man you've got to decide the credibility
24 of those witnesses that talked to you because,
25 ladies and gentlemen, if these two co-defendants

1 are telling you the truth, when he says, "I'm not
2 guilty," he's lying. And if he says, "I'm not
3 guilty," and he's telling the truth, then they are
4 lying. So you've got to decide who's telling the
5 truth.

6 Look at the statement of this young man that
7 the police brought in when he said Kiersten Martin
8 is the one had the gun, Kiersten Martin is the one
9 tried to push the door in. So, who's telling you
10 the truth? Well, if somebody is trying to push the
11 door in and it's a metal door it is not hard to get
12 fingerprints off it. That is the reason I had
13 asked if the person pushing the door was wearing
14 gloves. "No." "Well, did you check for
15 fingerprints?" "No." "Why not?" "Just had other
16 things to do." Okay. You had other things to do
17 that were more important then, more important than
18 checking on evidence that not only protects this
19 defendant's rights but affects the rights of any
20 defendant that sits in this chair, but it was just
21 Otis, just Otis and, "We had other things to do."

22 But that would have been important because if
23 Otis rushed up and was pushing the door, then that
24 is his prints and it doesn't help me to have the
25 prints. But if Otis wasn't the one pushing the

1 door, then the other defendants are lying. But we
2 don't know, do we, because nobody bothered to
3 check.

4 Well, let's talk about the photo line-up
5 because the one thing I didn't hear until we came
6 to court this week was this identification by Miss
7 Hughes, "That's the one." Okay. "You identified
8 him after you come to court and he's sitting there
9 as a defendant because you couldn't identify him,
10 you say he was wearing a bandanna, both the
11 co-defendants say he was wearing a ski mask, then
12 why weren't you shown a photo line-up?" Apparently
13 the police know how to do it because they showed
14 one to the other lady but apparently they don't
15 know how to keep them. Of course I'm being
16 facetious, they know how to keep it. They
17 know how to put it in the case file and bring it to
18 court. Again that is not something new but they
19 didn't.

20 Well, if identity is an issue of who stuck
21 that gun in her face and robbed the lady and you're
22 going to prosecute this man for armed robbery do
23 the photo line-up. You did it with the other lady
24 and she's the one that said she didn't know if she
25 could identify him. Now, she did say she could

1 identify the man that was standing at the door, she
2 said that. But was that man in that photo line-up?
3 Well, we don't know because we not only don't have
4 the photo line-up, we don't know who took it to
5 her, we don't know who put it together, we don't
6 know what photographs were in it. But that is
7 okay, you all can just ignore that, don't worry
8 about it. That is what the State is going to tell
9 you, it doesn't matter, it doesn't matter, it's
10 just Otis. I mean, ladies and gentlemen, it's just
11 Otis. Do you really expect us, law enforcement, to
12 go to that trouble? Just Otis.

13 So, what do you have? What do you have?
14 You've got the statements of Otis. He says, "Look,
15 after that we ran off and I said I'm not in for
16 this and I left." The other two say, no, no, he
17 stayed. You start looking at the statements of
18 these other two. Now, first of all, someone that
19 did prosecution, and we all want good law
20 enforcement, we all want justice, I find it
21 bothersome that we allow somebody to plead to a
22 lesser charge and then we hold sentencing off, and
23 they told you from the stand, "So the only thing
24 you've got to do before you come back and be
25 sentenced you've got to come back and testify

1 against this guy?" "That's right, that's right,
2 that was the deal." "We'll let you plead, we're
3 not going to sentence you until after you testify.
4 We're going to see how you perform and then we'll
5 handle sentencing.

6 Now, why do you think the State does that?
7 If their performance and their testimony doesn't
8 play in that, in that sentence don't you think they
9 would have been sentenced a long time ago? Come
10 on, they pled in November, part of it was sixty day
11 evaluation, which one of them said was in February.
12 "There has been no sentencing because we had to
13 wait until we testified." So, what's problem?
14 Does the State not believe them, does the State not
15 trust them? They're the ones bringing you the
16 evidence.

17 The State said in their warrant, they signed
18 an affidavit and gave it to the summary court judge
19 that Kiersten Martin had a gun and they said,
20 "Well, we changed our mind now." "What happened in
21 your investigation that made you change your mind?
22 You had already talked to the victims, you had
23 already talked to these co-defendants." "No, we
24 talked to the co-defendants the next day," they
25 said. "Okay, so your talking to the co-defendants

1 is what made you change your mind, because you had
2 such trust in their credibility, because one wants
3 to tell you we didn't formulate a plan, went there,
4 asked for yard work," the other one said, "No, we
5 talked about it the whole time." One says, "We
6 went separate ways after the purse snatching," the
7 other one says, "We ran together to the house."
8 One says he changed clothes before, he changed
9 clothes after, the other one says, "No, I was with
10 him the whole time, he didn't, he changed clothes
11 once."

12 Let's think about that. If you rob somebody,
13 you've got a gun in your hand, you steal a
14 pocketbook,, probably going to take the money,
15 credit cards, debit card, those kind of things.
16 You want to know who got it, you want to know the
17 person who stuck the gun in their face, the person
18 that took it. The first thing you're going to do
19 is look and find that pocketbook, right? You find
20 the pocketbook, does it have fingerprints on it,
21 does it have forensics, a hair, does it have DNA,
22 does it have anything? We don't know because we
23 didn't bother to go look at it, supposedly because
24 we didn't want to mess up the scene, remember, we
25 didn't want to do anything that might mess up the

1 scene. The scene? You didn't even try to get
2 fingerprints. How were you concerned about the
3 scene? The problem was it was late, it was night,
4 we weren't going to look for the pocketbook, it was
5 just Otis.

6 "Well, that's fine. Do a search warrant on
7 Otis' house, find out if there is anything there, a
8 gun, stocking mask, pocketbook, any of these items.
9 Didn't you do that?" "No." "Why not?" "Just
10 Otis."

11 There comes a point when that doesn't work
12 anymore. You look at Lady Justice on the seal
13 sitting there over the judge's head, she has the
14 sword in one hand because she's got the power of
15 punishment. She's got the scales in the other hand
16 because we're supposed to treat everybody equally.
17 And she's got the blindfold on because we don't see
18 race, we don't see sex, we don't see
19 social-economic, we don't see where you live or
20 what you do. That's the way it's supposed to be.

21 The police saw those things and they made
22 their judgment but it's up to you the jury to sit
23 here today. I told you at the beginning what
24 standard are we willing to accept? Is that okay?
25 Is it good enough for government work? And do we

1 go out here and say that?

2 The real question you ask yourself when you
3 go back in that jury room is have they proven it,
4 is he guilty? Really that is what it's about. And
5 they brought you all the tools they intend to bring
6 you, not all the tools they could have because
7 trust me, ladies and gentlemen, none of these
8 things I'm asking for is outrageous, none of these
9 things are procedures that would have cost the
10 county a bunch of money to do, none of these things
11 would have made them bring in a crime lab from out
12 of state or forensic expert.

13 These are things they could have done, should
14 have done and it's things anybody sitting in that
15 defendant's chair would expect to be done. If I'm
16 sitting in that defendant's chair because somebody
17 makes an allegation about me it is something I
18 certainly hope would be done. Unfortunately,
19 unfortunately if I were sitting in that witness
20 chair and me being an attorney in town things
21 probably would have been different but Otis has no,
22 has no more value than me and I'm no more important
23 than him, I'm not. He comes in this courtroom with
24 the same rights, deserving the same treatment.

25 What the State has proven through the

1 evidence they have collected is there is a lot of
2 suspicion of what these guys went there doing,
3 whether Otis was part of it. The interesting thing
4 to me was Otis says what? "After we left I walked
5 away." The co-defendants, the one that testified
6 said, "We all three walked up to that lady," he was
7 adamant about it, all three of them jumped out of
8 the car and ran up.

9 But what did the victim say? "Two, I saw
10 two, one that approached me and one was back a
11 ways." If all three went up as the co-defendant
12 said something is wrong. If one walked away, this
13 young man was that one, there would then only be
14 two. The State says, "Well, but she said it was a
15 slim young man." It was dark, they were all slim,
16 none of them were fat like me. If he was wearing a
17 mask it's going to be difficult to identify anybody
18 at night wearing a mask, that you don't know. If
19 he was wearing a ski mask it would be, I submit,
20 impossible. But if she thought she could, then the
21 photo line-up would have very easily tied up that
22 for our satisfaction and it wouldn't have been a
23 situation where she comes into the courtroom after
24 the prosecution says this is the man that we think
25 robbed you, the police said this is the man we

1 think robbed you, and she goes, "Yes, I think
2 that's the man that robbed me right there." That
3 is the identification that you have.

4 What I'm going to ask you to do is to go back
5 and think carefully over the evidence. There is no
6 way this young lady is going to stand up and
7 explain to you it is okay that the police didn't do
8 those things. She will try to explain why you
9 should still convict in the absence of them, but
10 she's never going to say they shouldn't at least
11 try, because they should, everybody knows that.
12 What she will have to say is they didn't do it all
13 but they did enough, that's good enough for Otis.

14 There was a parable about a rich man that
15 gave a feast. The parable says if you bring in the
16 wealthy person you sit here in this place of honor
17 and you bring in a poor person you sit here. Don't
18 you distinguish among yourselves the value of these
19 people and of course the key was that whether
20 you're rich or poor doesn't differentiate between a
21 person's value. In this case that distinction was
22 made because things simply weren't done. As a
23 citizen of this community that bothers me, as a
24 lawyer it offends me, as a potential person who
25 could ever be accused of anything it scares me. If

1 I ever do find myself accused of something I hope
2 to goodness more is done. When they come to you
3 today proving a lot of suspicion and nothing else I
4 pray that you follow your oath, that you stand to
5 that protection of reasonable doubt and you find a
6 verdict of not guilty.

7 I told you at the beginning there should be
8 three choices. There should be guilty, not guilty
9 and not proven because in the case are you
10 convinced he didn't do it? Are you convinced he
11 did, or are you somewhere in the middle? Because
12 if I remove myself from it and look at it
13 objectively, you look at the evidence and you go,
14 "Very well might have, very well might have," and
15 that is where you're left. If that is where you're
16 left, ladies and gentlemen, then you return a
17 verdict of not guilty.

18 Thank you.

19 THE COURT: Thank you, Mr. Sheek.

20 Miss Bolen.

21 MS. BOLEN: Thank you, Your Honor, may it
22 please the Court.

23 THE COURT: Yes, ma'am.

24 MS. BOLEN: Your Honor, it will just take me
25 a moment.

1 THE COURT: Yes, ma'am.

2 MS. BOLEN: Ladies and gentlemen of the jury,
3 I will finish my closing from back here, I have a
4 Power Point.

5 THE COURT: Can all of you all see well
6 enough?

7 MS. BOLEN: What this case is about, what I
8 want you to consider is the evidence that was
9 presented during this case. There are a few things
10 after going over all the evidence you heard I want
11 to pay special attention to.

12 The first thing is consistency. There are a
13 couple different levels of consistencies involved
14 in this case, consistencies between the statements.
15 Also the judge will instruct you that you look at
16 the credibility of the witnesses, demeanor,
17 believability, motive, look at their motivation,
18 timing, and also the issue of identification.

19 I will briefly go through each witness the
20 State presented, some of their testimony. First is
21 Miss Joan Hughes. She testified she was at her
22 mother's house, Miss Smith's house, she heard a
23 knock on the side door, she answered the door, the
24 individual there says do you any yard work done,
25 she asked him are you Otis, and she sees someone

1 running with a gun. She knows Otis has done work,
2 Otis Bland has done work at her mother's house
3 before and his father had previously as well.

4 She describes the first individual at the
5 door as thin, short and little. She also says he
6 doesn't have a gun. When he comes to the door and
7 when they have this conversation, after she says
8 Otis, that is when she sees a taller thin
9 individual come from behind a parked car waving a
10 gun. That person tries to gain entry into the
11 house, she struggles and manages to shut the door.

12 A couple other things came out in her
13 testimony that will become important later on. The
14 first thing, her back yard is fenced. If you look
15 here on the map, the driveway goes right against
16 the house and there is a fence here all around the
17 back yard and also she has a dog. She's very clear
18 in her testimony that there are two individuals
19 involved. One at the door, no gun, one comes from
20 behind the car with a gun. She's not sure what
21 what kind of gun it is.

22 Then we next heard from Miss Isabel Martin.
23 Miss Martin says she parked in the carport which is
24 next to her house, her house is here at the end of
25 a cul-de-sac, she sees two individuals, one comes

1 right up to her. Remember, she testified that she
2 thought the individuals needed help or wanted to
3 ask her a question so she waited for them to
4 approach her. She said you don't think you're
5 going to get robbed in your own yard.

6 The one approached her was taller and thinner
7 than the one she says is a little bit back. He
8 holds a gun to her temple, tells her to give it up.
9 She asks give what up. He said give up her
10 pocketbook, wearing a bandanna over his face but
11 she says she got a very good look at his eyes, they
12 make eye contact, she is able to look into his
13 eyes, then he puts his eyes down. He's got a gun
14 to her head, she sees directly into his eyes.

15 She also gets a good look at his build and
16 stature. She made an in-court identification of
17 this defendant Otis Bland as the person who had the
18 gun to her head. She testified, "No one told me
19 that." When Mr. Sheek tried to say, "No one told
20 you that was him," she said, "No, no one told me it
21 was him, I saw his eyes, I recognized him, I
22 recognized him by his eyes and I recognized him by
23 his build."

24 Then we get to the co-defendants. Now, Mr.
25 Sheek has made a point about the fact the

1 co-defendants both pled guilty to the charges, have
2 not been sentenced yet, but both co-defendants
3 testified that they have no deal, no plea deal, no
4 negotiations from the State, they didn't when they
5 pled and they don't when they're sentenced, they
6 don't know what they're going to get, they have no
7 agreement with the State.

8 There is also consistency, Mr. Sheek
9 introduced Mr. Ware's written statement, you will
10 have that back with you in the evidence room, if
11 you look at the statement and what he testified to
12 on the stand, they are the same, both times he
13 says, "The three of us got together, Kiersten and I
14 were playing basketball, Otis calls, we come over,
15 go to the first house, go to the door, ask for yard
16 work, Otis tries to rush in with the gun." The
17 second, "Go and park the white Jeep, stay in the
18 white Jeep, Otis and Kiersten go up, I'm a little
19 farther behind, he holds the gun to her head and
20 takes the pocketbook."

21 Now, the important thing is the conversation
22 between Mr. Ware and Miss Hughes is completely
23 consistent. What Miss Hughes says transpired is
24 exactly what Mr. Ware says transpired. There is a
25 lot of consistency in the statements.

1 Now, he testified that Otis comes from behind
2 the car with the gun. He is not sure where Mr.
3 Martin is located but he knows Otis came back
4 waving the gun and that is important because that
5 is also what the witness said. In the second
6 incident Mr. Ware says he's in the yard, that he
7 sees Otis go up to the victim, holds a gun to her
8 head, tells her to give it up, talking about her
9 pocketbook.

10 Mr. Ware was consistent in both his written
11 statement and his testimony that in both instances
12 Otis has a gun. He's not even sure what kind of
13 gun it is. He also is not real sure of the
14 specific address, he says in Country Homes but I'm
15 not really sure where he is. You could observe he
16 is short and thin, he testified Mr. Bland is
17 taller.

18 Now, Mr. Sheek in cross examining Mr. Ware
19 pointed out some minor inconsistencies in his
20 statement. When he asked, when Mr. Ware first
21 testified, "Are you down with that," he said no.
22 The judge will tell you you don't leave your common
23 sense at the door when you come to serve as jurors.
24 This conversation occurred a year ago, you may not
25 remember everything but the statement and the

1 testimony given are essentially the same.

2 The statement is also consistent with
3 Kiersten Martin's statement. We'll get to that in
4 just a minute. But there is a lot of detail in
5 there that corroborates their two statements. For
6 example, they both say they are playing basketball
7 together, they both recall the conversation about
8 Otis telling James to grow some -- there are
9 consistencies between their statements.

10 Now get to Kiersten Martin. Motivation. He
11 pled guilty, he has not been sentenced, he had no
12 plea deal when he pled guilty, no plea deal at this
13 point. He doesn't know what he's getting. You
14 could observe his demeanor on the stand, and again
15 I ask you to think back to the witnesses' demeanor
16 when you weigh their credibility. You recall Mr.
17 Martin, he said he doesn't understand what he's
18 asking. At one point Mr. Sheek said, "You could
19 have written it that way?" Mr. Martin said, "I
20 could have, I guess, I didn't think of it."

21 He testified he is in the back of the
22 driveway, so Miss Martin's house is kind of back
23 here. That puts him at a point where he's back
24 here, he can see what is happening at the side
25 door. He testifies that he sees James go up and

1 knock on the door, asks for yard work, again the
2 same conversation the victim has already testified
3 to, the same conversation Mr. Ware has testified
4 to. He reports the exact same conversation and he
5 testifies he saw Otis rush from behind the parked
6 car waving a gun and trying to rush in the house.
7 He also stated that the plan was for all three to
8 rush in.

9 Regarding the second incident, from Mr.
10 Martin's testimony, he said he heard him say give
11 it up. Again this is consistent with what the
12 victim stated, the same conversation, the same
13 actions of people involved. Mr. Martin also
14 testified that in both instances Otis has a gun.
15 Kiersten is not sure what kind of gun it is. As
16 you can observe from the stand, Kiersten Martin is
17 short and stocky. He does testify that Otis is
18 taller than him, he's the only stocky one of the
19 bunch.

20 Now, look at the statements and testimony
21 together. These statements are consistent. Miss
22 Hughes described two individuals, the first one is
23 short, the second one is tall. It is consistent
24 with James and Otis being the two individuals,
25 James being the one at the door first and Otis

1 being the second one. That is completely
2 consistent with what Kiersten Martin and James Ware
3 state happened. Their statements match up with
4 what the victim says happened.

5 Likewise, Miss Martin, the second victim,
6 testifies there are two individuals, the one with
7 the gun is tall and thin, the one standing back a
8 little bit is short and stocky. Again this is
9 consistent with Otis being the one with the gun and
10 Kiersten being the one standing back a little bit.
11 It matches up with Kiersten's testimony, matches up
12 with James testimony.

13 Now let's look at Deputy Mathis. Deputy
14 Mathis testified that he was called out that night
15 after the dogs were called out to establish what he
16 called a perimeter. He explained what a perimeter
17 was, to stop people and ask what they are doing
18 there. He said the perimeter is on Sleepy Hollow
19 and Possum Hollow, he circled right here. He then
20 testified that he met with two individuals together
21 and that their names are James Ware and Otis Bland,
22 and remember James Ware testified to that, too,
23 that after the second incident both he and Mr.
24 Bland were stopped by an officer, gave their names
25 and were sent on their way.

1 Let's look at the map, the proximity of where
2 Deputy Mathis met these two people.

3 MR. SHEEK: Your Honor, could we approach, I
4 have an objection.

5 MS. BOLEN: I'm sorry?

6 THE COURT: He made an objection. Approach.
7 (Unrecorded bench conference).

8 THE COURT: The objection is overruled. You
9 may proceed, counsel.

10 MS. BOLEN: Thank you, Your Honor.

11 Just using this map for demonstrative
12 purposes, you can see the first one is down here,
13 the second one was here. Mr. Bland and Mr. Ware
14 were found together here after the second one. You
15 can see the distance between these two. That is
16 important, I will get to that in a minute.

17 Then we have the testimony of Detective
18 Haden, he is the lead investigator on this case.
19 He takes written and oral statements from Mr. Otis
20 Bland. Those are taken on February 24th, one day
21 after the incident. All the statements from the
22 co-defendants were taken on February 25th, two days
23 after this.

24 Now, Mr. Sheek in closing raised a number of
25 issues about things that should have been done.

1 You heard Detective Haden say, "We responded that
2 night, we had bloodhounds out there; we were trying
3 to find evidence." There was a lot going on.
4 Because Detective Haden met with all three
5 defendants he was able to observe the stature of
6 all of them. He testified of the three James Ware
7 is short and thin, Kiersten Martin was short and
8 stocky or heavy set and Otis Bland was tall and
9 thin.

10 Now let's look at Otis Bland's statement. He
11 gives two statements. He gives a written statement
12 and an oral statement, both have been introduced in
13 evidence, you will have them with you in the jury
14 room. And while you're looking at the statements I
15 want you to pay particular attention to the
16 consistency between the two statements and the
17 consistency between his statement and the
18 statements of everyone else who testified.

19 When you look at Otis Bland's statement, I've
20 got it right here, ask yourself does this make
21 sense? His first line, "James went to her house
22 and I stayed in the back yard." He says that also
23 in the oral statement. How does he get in the back
24 yard? It's fenced. She said there is a fence all
25 the way around there. She also says she has a dog.

1 He then said in his statement James knocked
2 on her door, James asked her if she needed her yard
3 cut. "She asked if it was me, that is when I tried
4 to rush in." If he is the back yard where he says
5 he is how is he able to hear this whole
6 conversation verbatim? She's inside the house, at
7 the door, and he is around at the back. How is he
8 taking all this in?

9 I also notice in his statement that Otis
10 Bland identified the gun as a black .38. He is the
11 only person who can identify this gun, the only
12 one. Kiersten doesn't know what kind of gun it is,
13 neither victim knows what kind of gun it is. He is
14 the only person that put that level of detail in
15 it, the only one that said it was a black .38.

16 All right, let's look through his written
17 statement. He says after Miss Hughes asked James,
18 "Are you Otis," he tried to rush in the house but
19 she slammed the door in his face. Then later, "The
20 first house we went to was on Parkland Place, James
21 has a black .38 in his hand when she came to the
22 door." Now, unlike James, he knows it's on
23 Parkland Place, he worked there before, he worked
24 for Miss Smith. Miss Hughes' mother's house.

25 If you look at the statement, look at the

1 testimony of Miss Hughes, they are completely
2 inconsistent. His statement is also completely
3 inconsistent with what Mr. Ware and Mr. Martin say
4 happened. There is a sequence of events Miss
5 Hughes testified to. That sequence of events was
6 corroborated by Miss Martin and corroborated by the
7 defendant. It was a short thin guy knocked on the
8 door, had the conversation about yard work,
9 everyone agreed, that conversation hasn't changed.
10 Then the tall guy comes from behind the car waving
11 a gun, trying to get in the house.

12 In Otis' statement he put only one person
13 there, he says only James is at the door, James
14 knocks, James has the conversation, then James
15 tries to rush in. There is never a mention of any
16 person coming from behind a car with a gun,
17 completely inconsistent with the testimony of the
18 victim, completely inconsistent with the testimony
19 of the co-defendant. Miss Hughes was clear there
20 were two people, one at the door, one behind the
21 car, the one behind the car has a gun.

22 He also says in his statement, toward the
23 end, James had a black .38 in his hand when he came
24 to the door. Now, Miss Hughes, again this is
25 inconsistent and completely contrary to what Miss

1 Hughes says, she says the first person does not
2 have a gun. Also Mr. Bland's statement regarding
3 that doesn't make sense. If James has a gun when
4 he goes to the door, she opens the door, is she
5 really going to have a conversation with him about
6 yard work, with a gun in his hand?

7 Now, in his statement he says that he is not
8 going to the second incident but they say, "We're
9 going to try another one. I told them to go ahead,
10 I'm not going." But yet he continues, after
11 saying, "I'm not going," he continues to give a
12 fair amount of detail about what happened in the
13 second incident. They are going to go to Sleepy
14 Hollow, they are going to wait in the Jeep; they
15 are going to wait for somebody to come out, to rob
16 them. A lot of detail for someone that says he's
17 not there.

18 He also knows the location. He says Sleepy
19 Hollow, not Parkland Place. He knows they are
20 going to wait in the white Ford Explorer. He also
21 states in his statement, "On the second one I
22 didn't go but they were going to wait in the white
23 Explorer on Sleepy Hollow Road and James had the
24 gun." If he wasn't there how did he know who had
25 the gun? How would he know that when he says he

1 was not there? And in his own statement he does
2 not say that either Kiersten or James came up
3 behind him.

4 Now let's look back at his oral statement.
5 There is some inconsistencies between his written
6 statement and his oral statement. There is also
7 inconsistencies between the oral statement and the
8 statement of the other witnesses, the two
9 co-defendants and the victims. In the oral
10 statement he says, "Yes, I did yard work for her
11 mom before." In his oral statement, again he says
12 he was in the back yard. Ask yourself how, how was
13 he in the back yard when it is completely fenced
14 in? Where is he in the back yard?

15 He also says in his oral statement James is
16 the one tried to rush in. Again, if he was in the
17 back yard how does he know what happened? Mr.
18 Sheek asked him did James have the gun out when he
19 came do the door, or pull it out? He hesitated
20 and he said he had it out. Again inconsistent with
21 what the victim said happened, the first person in
22 the door did not have a gun. And again in his oral
23 statement he mentions only one person at that
24 house. He says James was there, James knocked on
25 the door, James had the conversation, James tried

1 to rush in. No mention of him coming from behind
2 the car. And again in the oral statement, he also
3 said in the oral statement he doesn't know what
4 happened to them after they sat in the white Jeep,
5 the white Explorer, and yet he is found with James
6 Ware, after the second incident, by Deputy Mathis
7 at that intersection of Sleepy Hollow and Possum
8 Hollow, so he's saying, "I didn't see him, I left,
9 I was done," but yet he was found with the
10 co-defendant after the second incident, close to
11 the second incident.

12 Now look at the statement. They talked to
13 him on the 24th, the co-defendants the 25th. He
14 put himself in the least culpable position and his
15 statement actually goes to show the credibility of
16 the co-defendants' statements. He barely
17 implicates Kiersten Martin at all. He says at the
18 very beginning the three of them were together but
19 after that it was all James. That goes to Martin's
20 credibility, because Martin clearly implicates
21 himself. Why would he do that if the statement of
22 his given two days before is a self serving
23 statement? The statements don't match up with the
24 testimony evidence and testimony presented and
25 again everyone else is clear, there is no reason

1 for Miss Hughes to lie about there was two people
2 involved, no reason for her to say there were two
3 people when there was only one.

4 He also again is inconsistent about the gun.
5 And again there is the issue of whether she would
6 even talk to him if he had a gun in his hand. She
7 said the yard is completely fenced in. He is the
8 only person who identified what kind of gun it is.

9 Now, looking at credibility and motivation,
10 Otis' statements do not match up with the testimony
11 of the victims and they don't match up with the
12 statements, the testimony of the co-defendants.
13 This goes to credibility. Look at, as I pointed
14 out, the inconsistency between his statements, it
15 goes to motivation. He is the first one they
16 talked to

17 Now, the judge is going to instruct you there
18 is a doctrine of the hand of one is the hand of
19 all. What that means is if there are several
20 people involved in committing a crime and one
21 person is more involved, well, all the people
22 involved are guilty. A common example would be if
23 two people decide to rob a convenience store, one
24 person goes in and does it, the other person is the
25 getaway driver in a car parked outside running

1 ready to go, they are both equally guilty of that
2 robbery.

3 But even if you take Otis' statement at face
4 value he's still guilty under the principle of the
5 hand of one is the hand of all. He places himself
6 at Miss Hughes' house, he places himself in the
7 back yard. You can infer he was there from what he
8 said. He was in the back yard, what else is he
9 going to be doing?

10 Just to wrap up. Look at the testimony of
11 the victims and the testimony of the co-defendants
12 as well as the admitted statement of the
13 co-defendant James Ware. All of that testimony,
14 all of that, their statements match up. Then you
15 get Otis' two statements, the written and the oral,
16 and they don't match up. They don't fit into what
17 the victims said happened, they don't fit into what
18 the co-defendants said happen.

19 Look at the evidence of the physical
20 characteristics. Both victims say the one with the
21 gun was tall and thin, they are both consistent
22 about that. Chris Haden testified at trial Otis is
23 tall and thin, James is short and thin, Kiersten is
24 shorter and heavy set, and also you were able to
25 observe, yourself, the physical stature of each

1 one. The victims' physical description of the
2 person with the gun matches the description of
3 Otis, it doesn't match James, it doesn't match
4 Kiersten.

5 Miss Martin testified she got a good look at
6 the gunman's eyes, there was a light on in the back
7 yard and he was only about a foot away from her.
8 She can observe his eyes, she can observe his
9 stature, and based on that she makes an
10 identification.

11 We also presented evidence of actions. What
12 Miss Hughes says happened as to the sequence of
13 events is exactly the same as Mr. Martin and Mr.
14 Ware say happened, the two people involved, one at
15 the door, one behind the car. Otis is the only one
16 says only one person was involved.

17 When you look at all this evidence together,
18 all the evidence presented by the State, the State
19 believes it has shown beyond a reasonable doubt
20 that Otis Bland was involved in both incidences and
21 furthermore he was the one with the gun, that he is
22 guilty of all the offenses charged. Miss Martin
23 makes a positive identification of him as the one
24 with the gun, both victims give a physical
25 description that matches Mr. Bland, does not match

1 the co-defendants at all. The statements of the
2 victims and the statements of the co-defendants
3 match up. They are consistent with each other.
4 Otis' statements did not match up. It is
5 inconsistent with all the other statements, and
6 Otis is found with James Ware after the second
7 incident.

8 The State has presented all this evidence, I
9 tried to sum it up for you. I ask when you go back
10 to the jury room and deliberate that you carefully
11 consider all the evidence, all the testimony and
12 return a verdict of guilty.

13 MR. SHEEK: Your Honor, I apologize, I
14 object.

15 THE COURT: Come forward.

16 (Unrecorded bench conference).

17 THE COURT: Objection overruled.

18 MS. BOLEN: Just to conclude, ladies and
19 gentlemen, the State believes when you consider all
20 the evidence, the statements as well as testimony
21 given from the stand, you will find that the State
22 has proven beyond a reasonable doubt that Otis
23 Bland is guilty of all the charges.

24 Thank you.

25 THE COURT: Thank you, Madam Solicitor.

1 Please secure the courtroom.

2 All right, ladies and gentlemen, all the
3 testimony and the other evidence to be presented to
4 you in this case has been presented. The attorneys
5 have given their summations and now is the time
6 where I will charge you with the law to be applied
7 to this case.

8 Now, the indictments in this case, all five
9 offenses against the defendant Otis Lamar Bland,
10 Jr., indictment number 2009-GS-24-630 charges him
11 with armed robbery.

12 Indictment number 2009-GS-24-632 charges him
13 with attempted armed robbery.

14 Indictment 2010-GS-24-437 charges him with
15 attempted burglary in the first degree.

16 Indictment 2009-GS-24-629, charges him with
17 possession of a weapon during the commission of a
18 violent crime.

19 And indictment number 2009-GS-24-628 charges
20 him with possession of a weapon during an attempted
21 burglary and/or attempted armed robbery.

22 As I told you earlier and I remind you the
23 fact the defendant was arrested, charged and
24 indicted in this case is not evidence in this case
25 and cannot be considered by you as evidence of

1 guilt in this case nor does it create any
2 presumption or inference of guilt. The indictment
3 is simply the formal written instrument which
4 contains the charges made against the defendant and
5 the formal documents by which this case is brought
6 into this court.

7 The defendant has pled not guilty to the
8 indictment and that plea puts the burden on the
9 State to prove the defendant guilty. A person
10 charged with committing a criminal offense in South
11 Carolina is never required to prove their
12 innocence. I charge you that this is an important
13 rule of law that the defendant in a criminal trial
14 no matter how serious the charge will always be
15 presumed to be innocent of the crimes to which the
16 indictments were issued unless guilt has been
17 proven by evidence satisfying you of that guilt
18 beyond a reasonable doubt. This presumption of
19 innocence does not end when you begin your
20 deliberations, but it accompanies the defendant
21 throughout the trial until you reach a verdict of
22 guilt based upon evidence satisfying you of that
23 guilt beyond a reasonable doubt. The presumption
24 of innocence is like a robe of righteousness placed
25 about the shoulders of the defendant which remains

1 with the defendant until it has been stripped from
2 the defendant, again, by evidence satisfying you of
3 the defendant's guilt beyond a reasonable doubt.

4 Now, the presumption of innocence is not just
5 a legal phrase, it is not just a legal theory. It
6 is a substantial right to which every defendant is
7 entitled to unless you the jury are satisfied from
8 the evidence presented of the defendant's guilt
9 beyond a reasonable doubt.

10 Now, ladies and gentlemen, there are two
11 types of evidence which are generally presented
12 during a trial. There is direct evidence and there
13 is circumstantial evidence. Direct evidence is the
14 testimony of a person who claims to have actual
15 knowledge of a fact, such as an eyewitness. It is
16 evidence which immediately establishes the main
17 facts to be proved.

18 Circumstantial evidence is proof of a chain
19 of circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes
21 collateral facts from which the main facts may be
22 inferred. Circumstantial evidence is based upon
23 inference and not on personal knowledge or
24 observation.

25 The law makes absolutely no distinction

1 between the weight or value to be given to either
2 direct or circumstantial evidence nor is a greater
3 degree of certainty required of circumstantial
4 evidence than of direct evidence. You should weigh
5 all of the evidence in this case and after weighing
6 all the evidence if you are not convinced of the
7 guilt of the defendant beyond a reasonable doubt
8 you must find the defendant not guilty.

9 The question then poses itself what is
10 reasonable doubt? A reasonable doubt is the kind
11 of doubt that would cause a reasonable person to
12 hesitate to act. The State has the burden of
13 proving the defendant guilty beyond a reasonable
14 doubt.

15 Some of you may have served as jurors in
16 civil cases where you were told that it is only
17 necessary to prove a fact more likely true than not
18 true, such as by the greater weight or the
19 preponderance of the evidence. In criminal cases,
20 however, the State's proof must be more powerful
21 than that. It must be beyond a reasonable doubt.

22 Now, proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the defendant's
24 guilt. There are very few things in this world
25 that we know with absolute certainty and in

1 criminal cases the law does not require proof that
2 overcomes every possible doubt. If based on your
3 consideration of the evidence you are firmly
4 convinced that the defendant is guilty of the
5 crimes charged you must find the defendant guilty.
6 If on the other hand you think there is a real
7 possibility that the defendant is not guilty you
8 must give the defendant the benefit of the doubt
9 and find him not guilty.

10 Now, during this trial necessarily you must
11 determine the credibility of witnesses who have
12 testified in this case. Credibility simply means
13 believability. It becomes your duty as jurors to
14 analyze and to evaluate the evidence and determine
15 which evidence convinces you of its truth.

16 In determining the believability of witnesses
17 who have testified in this case you may believe one
18 witness over several witnesses or several witnesses
19 over one witness. You may believe a part of the
20 testimony of a witness and reject the remaining
21 parts of the testimony of that same witness. You
22 may believe the testimony of a witness in its
23 entirety or you may reject the testimony of a
24 witness in its entirety. You may consider whether
25 the witness has exhibited to you any interest,

1 bias, prejudice or other motive in this case. You
2 may also consider the appearance and manner of a
3 witness while on this witness stand.

4 I remind you, ladies and gentlemen, that
5 during this trial you and I have had certain duties
6 to perform. As the trial judge it is my
7 responsibility to preside over the trial of this
8 case and I also have the duty to rule on the
9 admissibility of evidence offered during this
10 trial. You are to consider only the competent
11 evidence before you, so if there was any testimony
12 that was ordered stricken from the record in this
13 case you must disregard that testimony. You are
14 only to consider the testimony which has been
15 presented from this witness stand, any exhibits
16 which have been made a part of the record or any
17 stipulations of counsel.

18 I have the additional duty to charge you the
19 law applicable to this case and as the presiding
20 judge I am the sole judge of the law in this case
21 and it is your duty, ladies and gentlemen, as
22 jurors to accept and apply the law as I now state
23 it. If you have any idea as to what the law is or
24 what the law ought to be and it does not agree with
25 with what I'm telling you now you must abandon that

1 idea because you have sworn to accept the law and
2 apply the law exactly as I state it to you.

3 Again, in every case tried before a jury the
4 jury becomes the sole and exclusive judge of the
5 facts in a case. As a trial judge I cannot
6 intimate, state, comment or in any way make a
7 statement to the trial jury about the facts in a
8 case since you the jury are the sole judges of the
9 facts of this case and you are not to infer from
10 what I have said during the progress of this trial
11 in ruling upon the admissibility of evidence or
12 otherwise or anything I may say now during the
13 course of the instructions that I have any opinion
14 about the fact of this case. The law simply does
15 not allow me to have an opinion about the facts of
16 this case. Again, this is solely for you the jury
17 to determine and as jurors it is your duty to
18 determine the effect, the value, the weight and the
19 truth of the evidence to be presented.

20 Now, ladies and gentlemen, I instruct you and
21 I emphasize the fact that the defendant did not
22 testify in this case is not a factor to be
23 considered by you in any way in your deliberation
24 and in your consideration on the question of guilt
25 or innocence of the defendant. It must not be

1 considered by you in any manner whatsoever. The
2 defendant has the constitutional right to remain
3 silent and the assertion of this right must not be
4 considered by you in your deliberations. I repeat,
5 under your oath you are to draw no conclusions
6 whatsoever from the fact that the defendant in this
7 case did not testify. The fact the defendant did
8 not testify should not even be discussed in the
9 jury room. The burden of proof, as I have stated
10 to you, is on the State. The defendant is not
11 required to prove his innocence. The burden of
12 proof remains on the State to prove guilt beyond a
13 reasonable doubt.

14 Ladies and gentlemen, if a crime is committed
15 by two or more people who are acting together in
16 committing a crime the act of one is the act of
17 all. A person who joins with another to accomplish
18 an illegal purpose is criminally responsible for
19 everything done by the other person which occurs as
20 a natural consequence of the acts done in carrying
21 out the common plan and the purpose. For example,
22 two people can be guilty of killing another person
23 when only one of the two had a gun, there is only
24 one bullet and only one of the two fired the shot
25 that caused the death. If two or more people are

1 together acting together, assisting each other in
2 committing the offense the act of one is the act of
3 all or as sometimes said, the hand of one is the
4 hand of all.

5 Prior knowledge that a crime is going to be
6 committed, without more, is not sufficient to make
7 a person guilty of that crime. Mere knowledge that
8 another person is going to commit a crime even if
9 the defendant is present when the crime is
10 committed is not sufficient to convict the
11 defendant as a principal. Guilt as a principal is
12 shown by actual or constructive presence at the
13 scene as a result of a prior arrangement.
14 Therefore, a finding of a prior arrangement, plan
15 or common scheme is necessary for a finding of
16 guilt as a principal. The State must prove beyond
17 a reasonable doubt by competent evidence the theory
18 of the hand of one is the hand of all.

19 A principal in a crime is one who either
20 actually commits the crime or who is present,
21 aiding and abetting or assisting in the committing
22 of the crime. When a person does an act in the
23 presence of another with the assistance of another
24 the act is done by both. Therefore, two or more
25 acting with a common plan or intent and are present

1 at the commission of a crime, it does not matter
2 who actually commits the crime, all are guilty.
3 The hand of one is the hand of all.

4 Being present at the commission of a crime
5 means to be sufficiently near to aid and abet and
6 assist in the commission of the crime. However,
7 mere presence at the scene of a crime is not
8 sufficient to convict one as a principal on the
9 theory of aiding and abetting. Intent is also a
10 necessary element, for there must have been a
11 common design or intent to commit the crime and the
12 crime must have been committed pursuant thereto
13 with the person aiding and abetting by some overt
14 act. Intent means intending the result which
15 actually occurs, not accidentally or involuntarily.
16 Intent may be shown by acts and conduct of the
17 defendant and other circumstances from which you
18 may naturally and reasonably infer intent. The
19 State must prove these elements beyond a reasonable
20 doubt.

21 The defendant in this case is charged with
22 armed robbery. In order to prove this offense the
23 State must first first prove beyond a reasonable
24 doubt that the defendant took personal property
25 from the person or presence of another person.

1 Property is in the presence of a person if it is
2 within the person's reach, inspection, observation
3 or control so that the person could, if not
4 overcome with violence or prevented by fear, keep
5 possession of the property.

6 The State must also prove beyond a reasonable
7 doubt that the defendant carried the property away
8 intending to permanently deprive the owner of the
9 property and to keep the property for the
10 defendant's own use. The slightest removal of the
11 property or the complete possession of the property
12 even for an instant by the defendant is sufficient
13 to show a taking and carrying away of the property.
14 The taking and carrying away of the property must
15 have been done with violence or by putting the
16 owner of the property in fear of violence.

17 Finally, the State must prove beyond a
18 reasonable doubt that the defendant was armed with
19 a deadly weapon during the robbery. A deadly
20 weapon is any article, instrument or substance
21 which is likely to cause death or great bodily
22 harm. Whether an instrument has been used as a
23 deadly weapon depends on the facts and the
24 circumstances of each case. A gun may be a deadly
25 weapon even if it is not operable.

1 The defendant has been charged in this case
2 with attempted armed robbery. In order to prove
3 this offense the State must first prove beyond a
4 reasonable doubt that the defendant attempted to
5 take personal property from the person or presence
6 of another person. Intent may be shown by acts and
7 conduct of the defendant and other circumstances
8 from which you may naturally and reasonably infer
9 intent to commit armed robbery.

10 Property is in the presence of a person if it
11 is within the person's reach, inspection,
12 observation or control so that the person could, if
13 not overcome with violence or prevented by fear,
14 keep possession of the property. The State must
15 also prove beyond a reasonable doubt the defendant
16 had the intent to carry the property away and to
17 permanently deprive the owner of the property and
18 to keep the property for the defendant's own use.
19 The attempt to take and carry away the property
20 must have been done by violence or by putting the
21 owner of the property in fear of violence.

22 Finally, the state must prove beyond a
23 reasonable doubt that the defendant was armed with
24 a deadly weapon during the attempted robbery. A
25 deadly weapon is any article, instrument or

1 substance which is likely to cause death or great
2 bodily harm. And again, whether an instrument has
3 been used as a deadly weapon depends upon the facts
4 and the circumstances of each case.

5 Now, the defendant is charged also with
6 attempted burglary in the first degree. The State
7 must first prove beyond a reasonable doubt that the
8 defendant attempted to enter a dwelling without
9 consent. Intent may be shown by acts and conduct
10 of the defendant and other circumstances from which
11 you may naturally and reasonably infer intent to
12 commit burglary. A dwelling is any building or
13 portion of a building in which a person ordinarily
14 sleeps. A building constructed as a dwelling that
15 has never been occupied cannot be considered a
16 dwelling for purposes, cannot be considered as a
17 dwelling for purposes of burglary but a building is
18 a dwelling even if the residents are temporarily
19 absent from the building.

20 Now, in order to prove the defendant
21 attempted to enter the dwelling the State does not
22 have to show that the defendant attempted to enter
23 his entire body into the dwelling. An attempt at
24 the smallest entry is sufficient. It may be an
25 attempt to enter any part of the body such as a

1 hand or foot or even an instrument such as a hook
2 or other instrument. In addition, the State does
3 not have to prove that force was used to attempt to
4 gain entry. If a person attempts to enter a
5 building by using deception, artifice, trick or
6 misrepresentation to get consent to enter this is
7 an attempt to enter without consent.

8 Next the State must prove beyond a reasonable
9 doubt the defendant intended to commit a crime,
10 either a felony or a misdemeanor, at the time of
11 the attempted entry. The mere attempt to enter
12 into a dwelling without consent is not burglary.
13 If the intent to commit a crime is formed after the
14 entry it is not burglary. On the other hand, if
15 the defendant intended to commit a crime at the
16 time of the attempted entry it is burglary. It
17 does not matter that the intended crime was not
18 completed.

19 Finally the State must prove beyond a
20 reasonable doubt that when attempting to enter or
21 when fleeing the defendant or an accomplice was
22 armed with a deadly weapon or explosive. A deadly
23 weapon is an article, instrument or substance which
24 is likely to cause death or great bodily harm. And
25 whether an instrument has been used as a deadly

1 weapon depends on the facts and the circumstances
2 of each case. And as I told you before, a gun may
3 be a deadly weapon even if it is not operable.

4 Now, ladies and gentlemen, the defendant has
5 also been charged with possession of a weapon
6 during the commission of a violent crime. The
7 State must first prove beyond a reasonable doubt
8 that the defendant was in possession of a firearm
9 or visibly displayed what appeared to be a firearm
10 during the commission of a violent crime. A
11 firearm means any machine gun, automatic rifle,
12 revolver, pistol or any weapon which is designed or
13 may be readily converted to expel a projectile. In
14 order to find the defendant guilty of possession of
15 a weapon during the commission of a violent crime
16 you must first find that the defendant is guilty of
17 committing a violent crime. Armed robbery is a
18 violent crime.

19 The defendant is charged with possession of a
20 weapon during the attempt to commit a violent
21 crime. The State must prove beyond a reasonable
22 doubt the defendant was in possession of a firearm
23 or visibly displayed what appeared to be a firearm
24 during the attempt to commit a violent crime. A
25 firearm means any machine gun, automatic rifle,

1 revolver, pistol or any weapon which is designed or
2 may readily be converted to expel a projectile. In
3 order to find the defendant guilty of possession of
4 a weapon during the attempt to commit a violent
5 crime you must first find the defendant guilty of
6 attempting to commit a violent crime. Attempted
7 armed robbery and attempted burglary are violent
8 crimes.

9 Now, ladies and gentlemen, there are two
10 possible verdicts which you may find in this case
11 on each of the five charges against the defendant
12 Otis Lamar Bland. They are not guilty and guilty.
13 There is no significance whatsoever in the order
14 which I state the possible verdict. It is simply
15 that one must be stated first.

16 Ladies and gentlemen, your verdict must be a
17 unanimous one. All twelve of you must agree on the
18 verdict. Your decision must not be based on
19 sympathy, passion, prejudice, emotion or any other
20 consideration not in evidence in this case.

21 Mr. Foreman, when the jury agrees on the
22 verdict you will then write each verdict that says
23 guilty or not guilty on each charge and then on the
24 second sheet you will sign your name as the
25 foreperson and date it. You will then knock on the

1 jury room door and inform the bailiff that you have
2 reached a verdict. At that time you will be
3 received back into this courtroom for the
4 publication of your verdict. I ask that you now
5 return to your jury room but please do not begin
6 your deliberations until you are told to do so by
7 the Clerk or the bailiff. There are some matters
8 which must be discussed with the attorneys before
9 you begin your deliberations.

10 Ladies and gentlemen, thank you.

11 BAILIFF: Do you want the alternates to go
12 with them?

13 THE COURT: Separate the alternates, put them
14 in a separate room.

15 BAILIFF: All right.

16 THE COURT: Thank you. Make them comfortable
17 as well.

18 (The jury was excused from the courtroom at
19 11:29 a.m.).

20 THE COURT: Are there any objections from the
21 State to the charge given to the jury?

22 MS. BOLEN: No, sir.

23 THE COURT: Are there any objections from the
24 defense to the charge given to the jury?

25 MR. SHEEK: None from the defense, Your

1 Honor.

2 THE COURT: Thank you. All right, if you
3 would gather the evidence, please, and inform the
4 jury three may begin their deliberations. You all
5 saw the verdict form?

6 MS. BOLEN: Yes, sir. I think there are four
7 exhibits, one Defense and three State.

8 THE COURT: All right, court will be at ease
9 until we hear from the jury.

10 MR. SHEEK: Your Honor, any disposition of
11 my client at this point?

12 THE COURT: He needs to stay here. I'm not
13 going to lock him up in lockup, he needs to stay
14 right there.

15 MS. BOLEN: Your Honor, I'm not sure --

16 THE COURT: That actually would go back in
17 the jury room and if they want to watch it again
18 they can watch it again.

19 MS. BOLEN: That is what I wanted to know.
20 Thank you, Your Honor.

21 (Recessed at 11:30 a.m.).

22 (Reconvened at 12:01 p.m.).

23 THE COURT: I have received a communication
24 from the jury. It says as to charge number five,
25 does the hand of is the hand of all apply, or must

1 the defendant be in possession of the weapon?

2 THE COURT: Do you all have the verdict form?

3 MR. SHEEK: The verdict form?

4 THE COURT: Yes, if you have a copy. Number
5 five says, "As to the charge of possession of a
6 weapon during the attempt to commit a violent crime
7 against Joan Hughes we the jury unanimously find,"
8 and the question is as to the charge number five,
9 "Does the hand of one the hand of all apply or must
10 the defendant be in possession of the weapon?"

11 How do you all want me to handle it? The
12 easy answer is no, or I could bring them back out
13 here and read them the charge, and then the third
14 sentence talked about the two people committing the
15 murder and they do not have to handle the weapon.
16 However you all want to handle it. You are welcome
17 to see this.

18 This Court's Exhibit 4. The easy answer
19 would be to say no.

20 MR. SHEEK: And that is fine with me.

21 THE COURT: And are you --

22 MS. BOLEN: Which one?

23 THE COURT: Does he have to have possession
24 of the weapon in his hand.

25 MS. BOLEN: I guess saying no as to does the

1 hand of one is the hand of all apply.

2 THE COURT: The hand of one is the hand of
3 all applies.

4 MR. SHEEK: That's fine, that's an accurate
5 statement of the law.

6 THE COURT: All right, here is what my
7 statement is going to be. "As to the charge number
8 five, the hand of one is the hand of all applies.
9 The defendant does not have to be in possession of
10 the weapon, signed W. Jeffrey Young, Judge, 12:08
11 p.m., 19 May, 2010."

12 MS. BOLEN: Yes.

13 THE COURT: I'm going to need that back.

14 BAILIFF: Yes, sir.

15 THE COURT: Actually Mr. Young is going to
16 need it back.

17 BAILIFF: Hold it with the exhibits or --

18 THE COURT: Yes, hold it with the exhibits.

19 (Recessed at 12:09 p.m.).

20 (Reconvened at 12:24 p.m.).

21 THE COURT: I have got a request from the
22 jury that says, "We would like Mr. Martin's
23 testimony and Mr. Kiersten's testimony. They would
24 like to hear it again. The only problem we have is
25 that Mr. Young has changed computers and has got it

1 on his disc on the other computer. I would suggest
2 that we tell them to suspend their deliberations
3 until lunch has been had. I will then bring them
4 back out here to hear that testimony.

5 MR. SHEEK: Yes, sir.

6 MS. BOLEN: Your Honor, Mr. Martin and
7 Kiersten are the same person.

8 MR. SHEEK: They probably mean Mr. Ware.

9 THE COURT: If you could, go back and tell
10 them Mr. Martin and Mr. Kiersten are the same
11 person.

12 Oh, Mrs. Martin.

13 MR. SHEEK: Mrs. Martin.

14 THE COURT: Mrs. Martin and Kiersten.

15 How long before their lunch is here?

16 (Off-the-record discussion).

17 THE COURT: I guess they can continue
18 deliberating on other things. We'll make it
19 available.

20 (Recessed at 12:28 p.m.).

21 (Reconvened at 12:33 p.m.).

22 THE COURT: The jury has also requested that
23 they would like to review Mr. Bland's interview, so
24 while they wait for Mr. Young to get the other
25 testimony of Miss Martin and Mr. Kiersten Martin

1 and they are waiting to have their lunch we can go
2 ahead and let them watch the interview. Is there
3 any way to sit that up in the jury room?

4 MS. BOLEN: Your Honor, he's ready to go
5 whenever the jury is.

6 THE COURT: All right, let's bring the jury
7 in.

8 (The jury returned to the courtroom at 12:35
9 p.m.).

10 THE COURT: The alternates will remain in
11 there.

12 BAILIFF: Yes, sir.

13 THE COURT: All right, ladies and gentlemen,
14 it is my understanding you all wanted to see the
15 videotape. The other testimony of Miss Martin and
16 Mr. Kiersten Martin is not here right now but it is
17 being brought here. What I imagine we'll do, we'll
18 see this, we'll go back and deliberate, lunch is on
19 its way and should be here in about twenty minutes
20 and after that I will bring you back into the
21 courtroom to listen to that testimony and then you
22 will resume your deliberations.

23 All right, thank you. Please start the show.

24 (Videotape marked State's Exhibit Number
25 3 was played to the jury).

1 THE COURT: All right. I will send you back
2 to the jury room. Your lunch should be here
3 shortly and then we will listen to the testimony
4 that you requested.

5 Thank you.

6 (The jury was excused from the courtroom at
7 12:52 p.m.).

8 THE COURT: Any smokers? If so, they can
9 have a smoke break.

10 All right, is at ease.

11 (Recessed at 12:53 p.m.).

12 (Reconvened at 1:56 p.m.).

13 THE COURT: All right, bring the jury in.

14 (The jury returned to the courtroom at 1:57
15 p.m.).

16 THE COURT: I hope you had a good lunch,
17 ladies and gentlemen. I tell you, being away from
18 home, I was going to work on getting cholesterol
19 down before I went to my doctor next week and had
20 my lab work but after throws burgers and fries I
21 just had for lunch, I think I just blew that.

22 We now have Mr. Henry Young the court
23 reporter who is going to read you the testimony
24 that you have requested, Mr. Kiersten Martin and
25 Miss Martin.

1 Mr. Young, are you ready?

2 (The prior testimony of Kiersten Martin and
3 Isabel Martin were read to the jury).

4 THE COURT: All right, ladies and gentlemen,
5 again I'm going to send you back to your jury room
6 now that you have heard the testimony and continue
7 your deliberations.

8 (The jury was excused from the courtroom at
9 2:30 p.m.).

10 THE COURT: All right, the court is at ease.

11 (Recessed at 2:30 p.m.).

12 (Reconvened at 2:58 p.m.).

13 58 p.m.).

14 THE COURT: All right, bring the jury out.

15 (The jury returned to the courtroom at 2:59
16 p.m.).

17 THE COURT: Mr. Foreman, it is my
18 understanding the jury has reached a verdict. Is
19 that correct?

20 JUROR: Yes, sir.

21 THE COURT: Is it unanimous?

22 JUROR: Yes, Sir.

23 THE COURT: All right. Please pass it to the
24 bailiff.

25 All right, Mr. Bailiff, please publish, or

1 you all do, please publish the verdict.

2 The defendant stands for the verdict to be
3 read.

4 THE CLERK: In the Court of General Sessions,
5 State of South Carolina, County of Greenwood, State
6 of South Carolina versus Otis Lamar Bland, Jr. As
7 to the charge of armed robbery of Isabel Martin we
8 the jury unanimously find the defendant not guilty.

9 As to the charge of attempted armed robbery
10 of Joan Hughes we the jury unanimously find the
11 defendant guilty.

12 As to the charge of attempted burlary of Joan
13 Hughes we the jury unanimously find the defendant
14 guilty.

15 As to the charge of possession of weapon
16 during commission of a violent crime against Isabel
17 Martin we the jury unanimously find the defendant
18 not guilty.

19 As to the charge of possession of weapon
20 during attempt to commit a violent crime against
21 Joan Hughes we the jury unanimously find the
22 defendant guilty.

23 Signed foreperson, Charles Hershey.

24 Ladies and gentlemen of the jury, if this is
25 still your verdict would you please raise your

1 right hand.

2 All jurors have raised their right hand.

3 Thank you.

4 THE COURT: Thank you. Does the defense
5 request polling of the jury? You may be seated at
6 this time.

7 MR. SHEEK: Yes, Your Honor, poll them.

8 THE COURT: Please poll the jury.

9 THE CLERK: Charles Hershey, is this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Anthony Ling.

15 JUROR: Yes.

16 THE CLERK: Is this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: John Haynes.

21 JUROR: Yes.

22 THE CLERK: Is this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Julie Goings. Is this your
2 verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Robert Taft.

7 JUROR: Yes.

8 THE CLERK: Is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: April Akers.

13 JUROR: Yes.

14 THE CLERK: Is this your verdict.

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Eugene Ouzts?

19 JUROR: Yes.

20 THE CLERK: Is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Claudette Carson.

25 JUROR: Yes.

1 THE CLERK: Is this your verdict?
2 JUROR: Yes.
3 THE CLERK: Is it still your verdict?
4 JUROR: Yes.
5 THE CLERK: Margarita Bylo. Is this your
6 verdict?
7 JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 JUROR: Yes.
10 THE CLERK: Barbara Jadick.
11 JUROR: Yes.
12 THE CLERK: Is this your verdict?
13 JUROR: Yes.
14 THE CLERK: Is it still your verdict?
15 JUROR: Yes.
16 THE CLERK: Terry Parks?
17 JUROR: Yes.
18 THE CLERK: Is this your verdict?
19 JUROR: Yes.
20 THE CLERK: Is it still your verdict?
21 JUROR: Yes.
22 THE CLERK: Leigh Broome.
23 JUROR: Yes.
24 THE CLERK: Is this your verdict?
25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE COURT: Thank you. Ladies and gentlemen
4 of the jury, the verdict stands.

5 Ladies and gentlemen of the jury, I would
6 like to take this opportunity to thank you for your
7 service to Greenwood County and the State of South
8 Carolina. You know, you see on TV how things go
9 but it's never easy sitting in judgment of your
10 fellow citizens and I want to thank you for taking
11 the time to deliberate and consider all the
12 evidence and reach a verdict. I would tell you
13 that if the verdict had been the other way because
14 what matters is that you took the time to consider
15 the evidence and came up with a unanimous decision.

16 Now, before I had told you you could not
17 discuss the case with anyone. That prohibition is
18 now lifted. You may discuss the case with anyone
19 you want to for as long as you want to. If someone
20 persists in talking to you when you don't want to
21 speak anymore, if you let one of the bailiffs know
22 they will in turn let me know and I assure you they
23 will not speak to you anymore about the case.

24 Now, I have told you in the qualifications of
25 jury service and your exemptions you have now

1 served on a jury, so you do not have to serve on a
2 jury in South Carolina for the next three years.
3 That would be your choice and you are disqualified
4 from doing it for the first year.

5 Ladies and gentlemen, again I know you all
6 had something else to do, this was a great impact
7 on your time but think if one of your family
8 members or you were ever involved you would want
9 somebody like you all who have other things to do
10 because those are the citizens that we're looking
11 for to come to this type of decision. The pay that
12 you get is in no way commensurate for the amount of
13 work that you have done for this county and for our
14 judicial system. Again, I would just like to thank
15 all of you. The alternates as well. I'm sorry
16 that you all didn't get to be a part of the
17 decision making process but to some extent you have
18 been relieved of a great burden that you don't have
19 to have.

20 But as you each leave you're done for the
21 week, the jury has been dismissed, so I would like
22 to thank each of you on your way out. Thank you
23 for your service. I will sentence the defendant at
24 3:30. You all have a right to be here if you would
25 like to see the sentencing, which will be at 3:30.

1 You may go home or to your jobs.

2 (The jury was excused from the courtroom).

3 THE COURT: Does the defense have any motions
4 at this time?

5 MR. SHEEK: I don't have any at this time. I
6 would like to have the normal time to file any post
7 trial motion.

8 THE COURT: You have ten days in which to any
9 motions.

10 MR. SHEEK: Thank you, sir. Are you ready to
11 sentence?

12 THE COURT: I said I would sentence him at
13 3:30. That will give you an opportunity to talk to
14 him and come up with what you want to tell me, or
15 any family member who would want to speak as well.

16 Court will be in recess until 3:30.).

17 (Recessed at 3:09 p.m.).

18 (Reconvened at 3:32 p.m.).

19 THE COURT: Otis Lamar Bland, Jr., you have
20 been tried by a jury of your peers who listened to
21 the evidence, deliberated and have found you guilty
22 on the charges of attempted burglary, attempted
23 armed robbery and possession of a weapon during the
24 attempted violent crime. The attempted burglary
25 will be treated as a primary, you are facing

1 fifteen years as a minimum, to life imprisonment.
2 On the armed robbery, attempted armed robbery, you
3 are looking at zero to twenty years, and on the
4 possession of a weapon during a violent crime the
5 sentence is not less than five years.

6 MR. SHEEK: Judge, is armed robbery up to
7 twenty?

8 MS. BOLEN: I thought it was ten to thirty.

9 THE COURT: I had written down ten to thirty.

10 MR. SHEEK: That is what I thought it was.

11 THE COURT: I have a sheet here.

12 MR. HODGES: There is a separate statute for
13 attempted armed robbery, it is zero to twenty.

14 MR. SHEEK: Thank you.

15 MS. BOLEN: I'm sorry about that.

16 THE COURT: The attempted burglary is the
17 principal.

18 Madam Solicitor, what is the defendant's
19 criminal history?

20 MS. BOLEN: Your Honor, the defendant is
21 quite young. He does have a juvenile record fairly
22 substantial but in terms of an adult record he just
23 has a simple assault and battery in '07 and some
24 other lower court charges which we don't show a
25 disposition on.

1 THE COURT: Mr. Sheek.

2 MR. SHEEK: Thank you, Your Honor, if it
3 please the Court. You heard the facts of the case.
4 Mr. Bland is a lifelong resident of this area, he
5 just turned twenty years old, he has the prior
6 simple assault after turning the age of seventeen,
7 he did have a juvenile record, off the top of my
8 head I couldn't tell you what it was. He has been
9 convicted of a serious crime with serious
10 ramifications. I know the Court is held to a
11 minimal sentence that no matter how much if you
12 wanted you couldn't go below and it is a
13 significant sentence and it is unfortunate to have
14 a young man like this be in this situation. It is
15 unfortunate to have victims who have been
16 victimized by crimes, I don't want to minimize what
17 has happened to these two ladies who are sitting in
18 the courtroom, by any means.

19 I do believe this is a young man that can
20 serve a sentence and come back and be useful to
21 society. I don't think this is a throw-away
22 defendant by any means. He is standing here with
23 his mother who has been behind him, who is now
24 going to watch her young son go away to prison. We
25 ask the Court, in light of the facts of the case

1 and the lack of serious criminal history, to
2 consider as much mercy as His Honor feels like you
3 can exercise in this case. That would be all I
4 would ask for, Judge.

5 THE COURT: Would the victims like to say
6 anything?

7 MS. BOLEN: No, sir. I have passed up the
8 victim impact statements.

9 THE COURT: Who is Joan Smith?

10 MS. BOLEN: That is the owner of the home for
11 the attempted burglary.

12 THE COURT: Okay.

13 MS. BOLEN: The mother of Miss Hughes.

14 THE COURT: Okay.

15 Mr. Sheek, would your client or any of his
16 family members like to say anything?

17 THE DEFENDANT: I just want to say I'm sorry
18 for what both victims have went through and, you
19 know, I'm sorry to my mother, what I put you
20 through.

21 That's it.

22 MR. SHEEK: Did you understand that, Judge?

23 THE COURT: Yes.

24 Would any of his family members like to say
25 anything?

1 DEFENDANT'S MOTHER: Mercy, have mercy.

2 THE COURT: Is there anything from the
3 probation office?

4 MATTHEW BELL: No, sir.

5 THE COURT: Anything further from the State?

6 MS. BOLEN: No, sir, Your Honor.

7 THE COURT: Anything further from the
8 defense?

9 MR. SHEEK: No, sir.

10 THE COURT: This is the tough part of being a
11 judge. This is the second week in a row that I
12 have had to sentence a young man because of armed
13 robbery with the use of a weapon. I don't know
14 what we're going to do in this country but there
15 just seems to be no lawfulness in the way that
16 people handle guns and treat their neighbors. But
17 the Legislature has set specific parameters but I'm
18 concerned about, you know, Mr. Bland, you obviously
19 don't know how to treat your neighbor. I'm not
20 going to give you the maximum sentence which would
21 be life in jail but you will not be a young man
22 when you get out of jail, and for that I'm sorry
23 for you but I'm more sorry for the victims who have
24 been involved in this. Miss Hughes was minding her
25 own business and in her own home which was invaded

1 or tried to be inviaded by you and your friends.

2 On the attempted armed robbery under
3 indictment 2009-GS-24-632 the sentence of the Court
4 is that you be committed to the state Department of
5 Corrections for a period of twenty years.

6 On the charge of attempted burglary under
7 indictment 2010-GS-24-437 it is the sentence of the
8 Court that you be committed to the state Department
9 of Corrections for a period of twenty years. These
10 sentences shall run concurrent.

11 As to the charge of possession of a weapon
12 during a violent crime it's the sentence of the
13 Court, this will be under indictment
14 2009-GS-24-628, it is the sentence of the Court you
15 be committed to the state Department of Corrections
16 for a period of five years. This five years will
17 run consecutive to the attempted armed robbery and
18 attempted burglary.

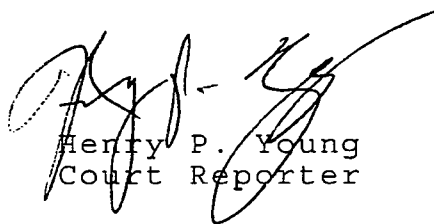
19 That's the sentence of the Court. Thank you.

20 (Hearing Concluded).
21
22
23
24
25

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Greenwood County,
11 South Carolina, on the 19th day of May, 2010.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 July 6, 2010

15
16
17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Green woodOtis Lamar Bland #340910
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

13CP2400116

APPLICATION FOR
POST-CONVICTION RELIEFFILED 001 PLEAS
8TH JUDGE CIRCUIT
GREENWOOD, S.C.
2013 FEB 28 PM 2:28INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C I
2. Name and location of Court which imposed sentence Greenwood county General sessions
3. Name(s) of co-defendant(s) (if any) Klersten Martin and James Ware
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1 attempted burglary 1 Arm robbery and 1 possession of
 - (b) a weapon 2010GS2400437
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 18, 2010 as I was sentence to 25 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty after a plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes I did
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina In the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismiss
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 18, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Na
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Y/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Violation of ~~the~~ Fourth Amendment to the United States Constitution
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The lack of exculpatory evidence favorable to my
- (b) behalf at trial
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? 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. no
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. no
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. no
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. na _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. na _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. The violation of my rights per the fourth Amendment to

ii. the united state constitution _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Direct appeal _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) na _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or 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:
- Mr. Lance Sheek out of Sheek law firm 422 Montague Ave Suite -
 - Greenwood, SC 29649 Wanda H Carter Division
 - of appellate defense 1330 Lady Street Suite 401 Columbia SC, 29201-3330
- (b) the proceedings at which each such attorney represented you:
- guilt y
 - dismiss
 -

19. State clearly the relief you seek in filing this application:

I would like if I could get my sentence on conviction ~~Reversed~~ an

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of)

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.

Otis Blant

SWORN to and subscribed before me this 14
day of NOV, 2012

Maverick Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2020

**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.

Otis Bland

Applicant

SWORN or affirmed to and subscribed before me this

14 day of MSV, 2012

Maverick Wilson

Notary Public

My Commission Expires:

3/7/2020

FILED ON 01/11/12
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2013 FEB 5 PM 2 38

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
	)	
Otis Lamar Bland, #340910,	)	2013-CP-24-0116
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 5, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Applicant was indicted at the June 2009 term of the Greenwood County Grand Jury for Attempted Armed Robbery (2009-GS-24-0632) and Possession of a weapon during the commission of a violent crime (2009-GS-24-0628). He was also indicted at the March 2010 term of the Greenwood County Grand Jury for Attempted Burglary, 1st degree (2010-GS-24-0437). The Applicant was represented by Lance Sheek, Esquire. On May 19, 2010, the Applicant underwent trial by jury and was convicted of the above charges as indicted. The Honorable W. Jeff Young sentenced the Applicant to imprisonment for twenty (20) years for Attempted Armed Robbery, twenty (20)

years, concurrent, for Attempted Burglary, 1st degree, and five (5) years, consecutive, for the weapons charge.

A Notice of Appeal was timely filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals by written opinion affirmed the Applicant's conviction and sentence. State v. Bland, Op. No. 5002 (Ct. App. filed on July 18, 2012). The Remittitur was sent on August 3, 2012.

Attached herewith and incorporated herein are the records of the Greenwood County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Violation of the Fourteenth Amendment to the United States Constitution"
 - a. "The lost(sic) of exculpatory evidence to my behalf at trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent interprets the Applicant's claim as one of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that,

but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

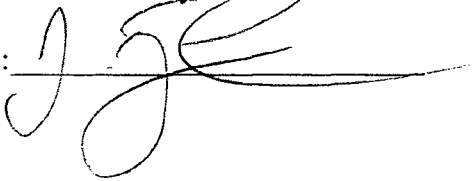
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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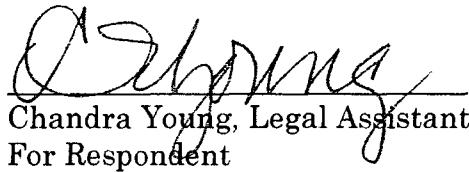
May 8, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2013-CP-24-0116
	)	
OTIS LAMAR BLAND, 340910	)	
	)	
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(s) by depositing same in the United States mail, postage prepaid:

Jason Lee Sturkie, Esquire
 1629 Bypass 72 NE
 Greenwood, South Carolina 29649

DATED this 8th day of May 2013.


 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina)	In the Court of Common Pleas
County of Greenwood)	Eighth Judicial Circuit
	2013-CP-24-0116

Otis Bland,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
	)	
	)	

October, 31, 2013
Greenwood, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Joshua S. Nasrollahi, Esquire
Attorney for Applicant

J. Rutledge Johnson, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:43 a.m.)

THE COURT: Yes, sir.

MR. JOHNSON: May it please the Court, Your Honor:

This is the case of *Otis Bland v. State of South Carolina*. It's Case No. 2013-CP-24-0116. Mr. Bland was indicted at the June 2009 term of the Greenwood County Grand Jury for two counts of attempted armed robbery and two counts of -- let's see -- excuse me -- attempted -- one count of attempted armed robbery, one count of possession of a weapon during the commission of a violent crime. He was also indicted at the March 2010 term of the Greenwood County Grand Jury for attempted burglary, first-degree. There were two other charges: one of attempted burglary, first-degree; and one attempted armed robbery. He was represented by Lance Sheek.

On May 19th, 2010, he underwent trial by jury, pursuant to which he was convicted of one count of attempted armed robbery; possession of a weapon during the commission of a violent crime; and attempted burglary, first-degree. He was acquitted on an armed robbery charge and, I think, another attempted burglary charge.

He was sentenced by the Honorable Jeff Young to imprisonment for 20 years for attempted armed robbery; 20 years concurrent for attempted burglary, first-degree; and

DIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND

5

1 5 years consecutive for the weapons charge.

2 A notice of appeal was filed on his behalf, and an
3 appeal was perfected. The South Carolina Court of Appeals,
4 by written opinion, affirmed his conviction and sentence.
5 The remittitur was issued on August 3rd, 2012.

6 He filed a timely PCR application on February 5th,
7 2013. And the state filed its return on May 8th, 2013.
8 And he is represented here today by Mr. Josh Nasrollahi.

9 THE COURT: All right. Yes, sir.

10 MR. NASROLLAHI: Thank you, Judge. At this time we'd
11 call Otis Bland to the stand.

12 THE COURT: All right. Mr. Bland, if you would please
13 come around and be placed under oath, sir.

14 (Whereupon, the witness came forward.)

15 OTIS BLAND, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. NASROLLAHI:

19 Q Mr. Bland, state your full name for the record.

20 A Otis Lamar Bland.

21 Q And where are you currently incarcerated?

22 A Lee County.

23 Q Okay. How long have you been there?

24 A Going on four -- four years.

25 Q Four years?

- 1 A (Nodded head up and down.)
- 2 Q Okay. And when were you convicted of these crimes?
- 3 A In -- in 2010.
- 4 Q 2010?
- 5 A In May.
- 6 Q Okay. Who was your attorney at ---
- 7 A Lance Sheek.
- 8 Q Okay. Were you convicted pursuant to a jury trial?
- 9 A Yes, sir.
- 10 Q Okay. And were you represented by Mr. Sheek during
- 11 the course of that jury trial?
- 12 A Yes, sir.
- 13 Q Okay. Now, was Mr. Sheek -- was he appointed to your
- 14 case?
- 15 A Yes, sir.
- 16 Q He was appointed to your case, or was he privately
- 17 retained?
- 18 A He was appointed.
- 19 Q Okay. Did you have any codefendants at your trial?
- 20 A Yes, sir.
- 21 Q Okay. Did these codefendants testify ---
- 22 A Yes ---
- 23 Q --- in the ---
- 24 A --- sir.
- 25 Q --- trial?

DIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND

7

1 Okay. And prior to trial were you incarcerated?

2 A Yes, sir.

3 Q Okay. And you were never released on bond?

4 A Yes. I was -- I was released.

5 Q Okay. Do you recall when you retained -- when Mr.
6 Sheek was appointed to your case?

7 A Now, I don't -- it was -- when I found out that he was
8 my lawyer -- it was, like, at the end of the case.

9 Q What do you mean by "at the end of your case"?

10 A That was when I found out that he was my lawyer. I --
11 I never knew who my lawyer was.

12 Q Okay.

13 A I was writing -- I was writing his office. I was
14 writing his office, and the -- the letters that was -- kept
15 coming back.

16 Q Okay.

17 A It turned out that his office had moved -- he moved
18 his office.

19 Q Okay. But when you say "the end of your case," what
20 do you mean by that?

21 A Well, when I first -- when I first met him, I had went
22 -- I was -- was in the courtroom. And that's when --
23 that's when they came at me with my first -- my first plea.

24 Q Uh-huh.

25 A That was -- that was, like -- I was in the county,

1 like, nine -- like, nine months -- nine months in.

2 Q Prior to the -- the attempted plea?

3 A Yeah.

4 Q Okay. Before going in front of the judge, did you
5 ever meet with Mr. Sheek?

6 A No, sir.

7 Q Okay. Did Mr. Sheek ever communicate with you about
8 your charges?

9 A No, sir.

10 Q Okay. Did he ever send you any discovery material?

11 A No.

12 Q Okay. Prior to trial, did you have the opportunity in
13 any other way to review the discovery material in your
14 case?

15 A No.

16 Q Okay. Did you ever read the incident report in this
17 case or ---

18 A No, sir.

19 Q Okay. Now, taking a step back, around the time that
20 you were arrested on these charges, did you give a
21 statement to law enforcement?

22 A Yes, sir.

23 Q Okay. Do you recall giving that statement to law
24 enforcement?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND

9

1 Q Okay. Who wrote that statement?

2 A Me.

3 Q Okay. Now, did you ever discuss that statement with
4 Mr. Sheek?

5 A No, sir.

6 Q Okay. Did Mr. Sheek ever explain to you the
7 ramifications of that written statement?

8 A You said -- would you repeat yourself?

9 Q Did he ever explain to you what the consequences of
10 your statement to law enforcement was?

11 A No, sir.

12 Q Okay. Did any of your codefendants in your case give
13 a -- a statement to law enforcement?

14 A Yes, sir.

15 Q Okay. Did they give a written statement?

16 A Yes, sir.

17 Q Who gave a statement?

18 A Both -- both my codefendants.

19 Q Okay. And tell the Court the names of your
20 codefendants.

21 A James Ware and Kiersten Martin.

22 Q Okay. And to your knowledge, were they convicted of
23 any charges arising out of this underlying event?

24 A Well, they had -- they made a -- a agreement with --
25 they made an agreement with the state that they was going

1 testify at trial and receive special time. And they got
2 evaluated for, like, 60 days' evaluation time. So they
3 went ---

4 Q Okay.

5 A --- down the road for 60 days and ---

6 Q Okay.

7 A --- came back.

8 Q And to your knowledge, did they -- did either one of
9 those defendants have a jury trial?

10 A No, sir.

11 Q To your knowledge, did either one of the codefendants
12 plead guilty to any charges?

13 MR. JOHNSON: Objection, Your Honor, to the relevance
14 of what the codefendants did, jury trial or guilty plea.

15 THE COURT: What relevance is this?

16 MR. NASROLLAHI: The relevance is the -- that it was
17 presented at trial that the codefendants had entered a
18 plea, but sentencing had been deferred until after the
19 trial.

20 THE COURT: Okay.

21 MR. NASROLLAHI: And so my understanding would be, you
22 know, getting into trial strategy and discussing that with
23 the client, that would be something relevant to his
24 knowledge and understanding proceeding to trial.

25 THE COURT: All right. Overruled.

DIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND 11

1 MR. NASROLLAHI: Okay.

2 Q Now, my question was: To your knowledge -- excuse me.
3 To your knowledge, did either of your codefendants plead
4 before your trial?

5 A Yes, sir.

6 Q Okay. To your knowledge, were either of your
7 codefendants sentenced prior to your trial?

8 A Yes, sir.

9 Q Okay. They were sentenced prior to your trial?

10 A Before -- before -- before trial.

11 Q Okay. Did you and Mr. Sheek ever discuss the
12 potential testimony of your codefendants?

13 A No, sir.

14 Q Okay. Did he ever explain to you what the
15 consequences of their testimony against you would be?

16 A No, sir.

17 Q Okay. Let me take another step back. How far did you
18 go in school?

19 A To the tenth grade.

20 Q Did you complete the tenth grade?

21 A No, sir.

22 Q Okay. While you were in school, what kind of classes
23 were you in?

24 A Learning disability.

25 Q Okay. Do you have a learning disability?

1 A Yes, sir.

2 Q Okay. What is your learning disability?

3 A I'm not sure.

4 Q Okay. How long were you in special education classes?

5 A All I can remember.

6 Q Okay. Did you ever discuss the fact that you were in
7 special education classes with Mr. Sheek?

8 A Yes, sir.

9 Q Okay. Did he ever advise you as to how that could
10 impact your case?

11 A No, sir.

12 Q Okay. Now, you didn't graduate from tenth grade?

13 A No, sir.

14 Q Okay. And prior to trial or at trial, did you ever
15 discuss with Mr. Sheek testifying on your own behalf?

16 A No, sir.

17 Q Okay. Going back just a little bit more, prior to
18 trial did you ever attempt to enter a plea in this case?

19 A Did I -- did I -- did I ever attempt?

20 Q Yes.

21 A No, sir.

22 Q You never attempted to go in front of a judge to
23 plead?

24 A Nah. Nah. They -- they had offered me some time.

25 They had offered me ten years. And ---

DIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND 13

1 Q Did you accept the offer?

2 A No, sir.

3 Q Okay. Now, did Mr. Sheek ever discuss the elements of
4 the charges that you faced?

5 A No, sir.

6 Q Did he ever explain to you the possible sentence that
7 you could face if you were convicted of those charges?

8 A Yes, sir.

9 Q Okay. Now, you're here on PCR. Do you understand
10 what "PCR" means?

11 A Yes, sir.

12 Q Okay. What is your understanding of -- of
13 postconviction relief?

14 A It's that basically what you -- what you told me
15 earlier -- earlier, that I can ---

16 Q Can't get into -- to ---

17 A Okay.

18 Q --- what I said, now. But that's fine.

19 Are there any other issues with -- but -- let --
20 strike that. Are you claiming today that Mr. Sheek was
21 ineffective in representing you at trial?

22 A Yes, sir.

23 Q Okay. And other than what we've just discussed, what
24 other ways was he ineffective in representing you at trial?

25 A By not letting me know that he -- he was my lawyer

1 until -- until way down the line in my case.

2 MR. NASROLLAHI: That's all I have for this witness,
3 Your Honor.

4 MR. JOHNSON: Just briefly, Your Honor.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q Mr. Bland, let's go over a little bit of the evidence
9 at trial. You gave a statement that came in pursuant to a
10 *Jackson v. Denno* hearing. It said that you made a
11 statement to law enforcement that was voluntarily given;
12 isn't that correct?

13 A Yes, sir.

14 Q And that statement claimed that you were acting as a
15 lookout and your codefendants were the ones that went up
16 and knocked on the door, asked to rake leaves or some yard
17 work, and then attempted to armed-rob one of the victims;
18 isn't that correct?

19 A Yes, sir.

20 Q Okay. But your codefendants gave -- both codefendants
21 gave other statements saying you were the gunman in the
22 case, correct?

23 A Yeah.

24 Q Okay. And witnesses identified you as being the
25 gunman as well, correct?

CROSS-EXAMINATION BY MR. JOHNSON - OTIS BLAND

15

1 A Yes, sir.

2 Q And they identified you in the courtroom at trial;
3 isn't that right?

4 A Who, the -- the -- the codefendant?

5 Q The victims: Ms. Martin and Ms. Hughes identified you
6 as the one possessing the gun in the case?

7 A One -- one victim did.

8 Q And they were saying that the tall, skinny guy ---

9 A The one -- the -- the one victim that -- that
10 identified me in court was the one that I got acquainted
11 [sic].

12 Q You got acquitted on?

13 A Yes, sir.

14 Q Okay. But the one that you were convicted of, Ms.
15 Hughes, said that the tall, thin guy had the gun; isn't
16 that correct?

17 A Yes, sir.

18 Q And that would've been you, correct?

19 A (No audible response.)

20 Q Because your codefendant was shorter and stockier than
21 you are, at least that's the testimony ---

22 A Yes.

23 Q --- at trial?

24 A One of them.

25 Q Okay. And he was the guy that knocked on the door,

1 asking for work?

2 A I wasn't -- see, I'm -- I'm not sure. See, I -- I
3 couldn't see the door.

4 Q But the evidence at trial was that you were the
5 gunman, correct? Your codefendants testified that you had
6 ---

7 A The ---

8 Q --- the gun?

9 A That's -- that's what they testified.

10 Q Both of them?

11 A Yes, sir.

12 Q Okay. And that it was your plan to make the -- the
13 robberies in this case, correct?

14 A That's what one of my codefendants testified.

15 Q Okay.

16 A That was the one of -- one of their testimony.

17 Q And that one of them tried to chicken out, as they
18 would say, and you were quoted as saying, "Grow some
19 balls"; isn't that the testimony that came out at trial?

20 A Yes, sir.

21 Q Okay. And at that point they decided to go along with
22 your plan, according to the testimony at trial?

23 A Yes, sir.

24 Q Okay. And there was a lineup that one of the victims
25 was supposedly shown that somehow law enforcement lost,

1 correct?

2 A Yes, sir.

3 Q And Mr. Sheek brought that to the Court's attention
4 and moved for a mistrial based on that evidence, correct?

5 A Yes, sir.

6 Q Okay. And that was the issue that was raised on
7 appeal in your case, correct?

8 A Yes, sir.

9 Q Okay. One of your claims is that, as I look at it, is
10 that Mr. Sheek should have looked into your education level
11 more; isn't that correct?

12 A Yes, sir.

13 Q Okay. That you didn't finish the tenth grade; that
14 you were in special education classes; and that may have
15 prevented your understanding of what was going on in the
16 case, correct?

17 A Yes, sir.

18 Q Have you been evaluated since then about any possible,
19 you know, mental illness or mental deficiencies?

20 A (No audible response.)

21 Q Have you been individually evaluated by any
22 psychologist or -- it'd be a psychologist -- to see where
23 you are, as far as learning scale?

24 A No. I -- I been talking to -- just been talking to
25 someone.

1 Q Okay. So you don't have any medical records that show
2 that you didn't understanding what was going on at the time
3 of your trial?

4 A (No audible response.)

5 Q So you haven't seen -- been seen by a doctor to
6 evaluate your -- your mental ability since the trial, have
7 you?

8 A No, sir.

9 Q Okay.

10 A Well, I been in -- I been incarcerated in -- ever
11 since the trial.

12 Q But you do admit that you know James Ware and Kiersten
13 Martin?

14 A Yes, sir.

15 Q Okay. And you were with them on the day of -- of the
16 events of these two incidents, correct?

17 A Yes, sir.

18 Q But you claim that you were the lookout?

19 A Yes, sir. And we -- we never -- I never met -- I -- I
20 meant, like, conversated [sic] with them about that
21 happening. I -- I didn't even know that that was fixing to
22 take place.

23 Q But you acted as lookout, didn't you?

24 A Yes, sir. And not -- not -- not knowing.

25 Q But that statement came out that you were acting as

1 lookout at trial, correct?

2 A Yes. That was after -- after the -- the fact that
3 that happened, because -- but I didn't even -- before that
4 happened, I didn't know that that -- that was fixing to
5 take place, sir.

6 Q Okay. You didn't know it was going to take place; yet
7 it happened to two different victims? There were two
8 different incidents. One, you were acquitted on; one, you
9 were convicted of.

10 A It's ---

11 Q Right?

12 A --- one incident I wasn't even around.

13 Q But that's not the testimony that was brought at
14 trial, was it?

15 A Yes, sir, it is testimony.

16 Q But the testimony is that both your codefendants put
17 you there at the scene with the gun ---

18 A Yes. That's ---

19 Q --- correct?

20 A --- that's they testimony. My testimony, I wasn't
21 even around at the second time. I didn't even know -- you
22 know . . .

23 Q You say that Mr. Sheek did not advise you on your
24 right to testify at your own trial; isn't that correct?

25 A Could you repeat yourself, sir?

1 Q One of your -- your claims on direct examination is
2 that Mr. Sheek did not advise you about testifying at
3 trial, correct?

4 A Yes, sir.

5 Q Okay. But the Court advised you during your trial on
6 your right to remain silent or your right to testify; isn't
7 that right?

8 A (No audible response.)

9 Q The Court asked you: "Do you want to testify?" And
10 you said: "No."

11 A Yes, sir.

12 Q Okay.

13 MR. JOHNSON: And, Judge, I would point you to page
14 207 through 212 in the transcript.

15 Q And just one more question, Mr. Bland: After the jury
16 came back with a verdict and the judge sentenced you, you
17 actually apologized for your actions in this case, didn't
18 you?

19 A I apologized to my mother and for what my codefendants
20 did to the victim.

21 Q But your exact quote on page 288 was: "I just want to
22 say I'm sorry for what both victims have went through.
23 And, you know, I'm sorry to my mother, what I put you
24 through."

25 A Yes. Yes ---

REDIRECT EXAMINATION BY MR. NASROLLAHI - OTIS BLAND 21

1 Q Okay.

2 A --- sir.

3 MR. JOHNSON: No further questions, Your Honor.

4 MR. NASROLLAHI: Briefly on redirect.

5 THE COURT: Anything on redirect?

6 REDIRECT EXAMINATION

7 BY MR. NASROLLAHI:

8 Q Mr. Bland, do you know what a *Jackson v. Denno* hearing
9 is?

10 A No, sir.

11 Q Did you ever discuss a *Jackson v. Denno* hearing with
12 Mr. Sheek?

13 A Not that I recall.

14 Q Okay. Did you ever discuss the voluntariness of your
15 written stimulation with Mr. Sheek?

16 A Yes, sir, I think so.

17 Q Okay. Did you ever discuss the statements of your
18 codefendants with Mr. Sheek?

19 A No, sir. Not with my codefendant.

20 Q Okay. Did Mr. Sheek represent you on appeal?

21 A No, sir.

22 Q Who represented you on appeal?

23 A Wanda Carter.

24 Q Okay. And towards the end of the trial, do you recall
25 the Court admonishing you on your right to remain silent

1 and your right to testify in your case?

2 A Sir?

3 Q Do you recall the trial judge informing you as to your
4 right to testify on your own behalf?

5 A Yes, sir.

6 Q Okay. Do you recall that trial judge explaining any
7 trial strategy with you regarding your testimony?

8 A No, sir.

9 Q Okay. Do you recall the trial judge asking you or
10 informing you as to any of the legal consequences of you
11 testifying on your own behalf?

12 A No, sir.

13 Q Okay. Do you recall discussing your potential
14 testimony with a trial judge?

15 A No, sir.

16 Q Okay. By the same token, do you recall having a
17 discussion about your potential testimony with Mr. Sheek?

18 A Say -- could you repeat that one more time, sir?

19 Q Do you recall talking to Mr. Sheek about testifying on
20 your own behalf?

21 A Yes, sir.

22 Q Okay. Do you recall him telling you about any legal
23 strategy regarding your choosing to -- to or choosing not
24 to testify?

25 A No, sir.

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1 Q Okay.

2 MR. NASROLLAHI: That's all I have.

3 THE COURT: Anything further?

4 MR. JOHNSON: No. No recross.

5 THE COURT: Thank you, sir. You may have a seat.

6 (Whereupon, the witness exited the witness stand.)

7 MR. NASROLLAHI: My next witness will be Deborah [sic]
8 Bland.

9 THE COURT: All right. Ms. Bland, if you'd please
10 come around to be sworn.

11 (Whereupon, the witness came forward.)

12 THE COURT: Come up here to be sworn, please.

13 DEIDRE BLAND, having been first duly sworn,
14 testified as follows:

15 MR. NASROLLAHI: May it please the Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. NASROLLAHI:

19 Q Ms. Bland, state your full name for the record.

20 A Deidre E. Bland.

21 Q And where do you live?

22 A In Greenwood.

23 Q Okay. And what is your relationship to the applicant?

24 A My son.

25 Q Okay. How many children do you have?

1 A Four.

2 Q And where does he fall within those four children?

3 A He was the second-youngest.

4 Q He's the second-youngest?

5 A Uh-huh.

6 Q Okay. And how far did your son, Otis, go in school?

7 A Probably tenth grade.

8 Q Tenth grade?

9 A Yeah.

10 Q At what -- at which school?

11 A At Greenwood High.

12 Q Greenwood High School?

13 A Uh-huh.

14 Q And do you know whether he dropped out?

15 A He did.

16 Q Okay. And what year was that? Do you remember?

17 A Unh-unh.

18 THE COURT REPORTER: (To the witness) Ma'am, I'm
19 going to need for you to speak up. I'm sorry. I can't
20 hear you.

21 THE COURT: Just -- if you'd speak up just a little
22 louder, please. Thank you.

23 Q She's just got to write down everything that you say
24 so we have a complete record ---

25 A Oh.

DIRECT EXAMINATION BY MR. NASROLLAHI - DEIDRE BLAND 25

1 Q --- okay?

2 Did your -- was your son in any particular kinds of
3 classes while he was in school?

4 A He was.

5 Q What kind of classes?

6 A Slow-learning classes, disability.

7 Q Okay. Did he have an individualized education plan
8 while he was in school?

9 A Yes.

10 Q Okay. And do you recall what that required?

11 A Well, what is that, IEP?

12 Q That's right.

13 A IEP.

14 Q Okay. Do you recall offhand what was -- what kind of
15 programs he was offered under his IEP?

16 A Well, the regular -- you know, being in a regular
17 class. But, you know -- but it was trying to wave him out
18 to be with others, you know, so other than that ---

19 Q Did he have difficulty learning?

20 A Oh, yeah. That's why I showed you his -- when I was
21 -- I'm sorry. Okay.

22 Q I'm going to repeat my question.

23 A Okay.

24 Q Did he have any difficulty learning while he was in
25 school?

1 A Yes.

2 Q Okay.. Did he have any difficulty with comprehension

3 ---

4 A Yes.

5 Q --- growing up?

6 A Yes.

7 Q Can you tell the Court about that?

8 A Well, I mean, it's like when I -- when we talk to him,
9 it's like it'll go in one ear and out the other. And I
10 don't know if he's really aware of what you're saying ---

11 Q Uh-huh.

12 A --- as you can see.

13 Q Right. Now, was he ever tested?

14 A Yes. At school?

15 Q Yes. Was he ever tested for any cognitive
16 impairments?

17 A Yes.

18 Q Okay. And do you recall ---

19 A Greenwood -- what is that? -- Montgomery Center,
20 before he had gotten in trouble.

21 Q Uh-huh.

22 A So they said that, you know, he was okay. But I don't
23 know what kind of tests they had gave him ---

24 Q Was he ---

25 A --- as far ---

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1 Q --- ever ---

2 A --- as mental, like, and -- and learning.

3 Q Okay. Was he ever diagnosed with a learning
4 disability?

5 A Well, yeah.

6 Q Okay. Do you recall meeting with your son prior to
7 his trial, at any point while he was incarcerated?

8 A No.

9 Q You don't recall meeting ---

10 A No.

11 Q --- with him? Okay.

12 A It was just a lot I was going through. And I wasn't
13 there for him, so -- and I apologize. And his brother, he
14 looked up to him. So that's why he gave him the advice
15 that he was -- he got. So that's -- I don't know. But
16 anyway ---

17 Q Okay.

18 A --- I'm a single parent. I'm trying to do the best I
19 can. I'm going back to school, so ---

20 Q I understand.

21 A --- it's rough on me. I'm barely making it myself.

22 Q I understand. Please answer any questions Mr. Johnson
23 may have for you.

24 MR. JOHNSON: No questions for the witness, Your
25 Honor.

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1 THE COURT: Thank you very much, Ms. Bland. You may
2 step down, ma'am.

3 (Whereupon, the witness exited the witness stand.)

4 MR. NASROLLAHI: You calling Lance?

5 MR. JOHNSON: Yeah.

6 MR. NASROLLAHI: All right.

7 MR. JOHNSON: If you want me to.

8 MR. NASROLLAHI: I -- the applicant rests in this
9 case.

10 THE COURT: All right. Mr. Johnson?

11 MR. JOHNSON: The state calls Mr. Lance Sheek to the
12 stand, Your Honor.

13 THE COURT: Mr. Sheek, if you'd come around to be
14 sworn, please.

15 (Whereupon, the witness came forward.)

16 LANCE SHEEK, having been first duly sworn,
17 testified as follows:

18 MR. JOHNSON: May it please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q Good morning, Mr. Sheek.

23 A Good morning.

24 Q How long have you been practicing criminal law?

25 A Twenty-two years.

DIRECT EXAMINATION BY MR. JOHNSON - LANCE SHEEK 29

1 Q And how many -- roughly how many cases have you taken
2 to trial?

3 A In general-sessions court, last time I counted, it was
4 around 75. If you include criminal magistrate court, it's,
5 you know, well over 200.

6 Q And have you handled burglary and armed robbery cases
7 before?

8 A I have.

9 Q Were you retained or appointed in this matter?

10 A I was appointed.

11 Q And what was your position at that point? What firm
12 were you working ---

13 A Oh.

14 Q --- for ---

15 A Oh.

16 Q --- or ---

17 A I was -- I was a solo practitioner at that point.

18 Q So court appointment?

19 A Yes.

20 Q And when was the first time you met with Mr. Bland?

21 A I could not give you the date. I got notice of the
22 appointment. I filed a Rule 5 and a *Brady* motion. I don't
23 believe I met with Mr. Bland until after I had gotten a
24 response to those motions, because I wanted to have some
25 idea of -- of the state's evidence before I went and talked

1 to him.

2 My first meeting with him was actually in the Court of
3 General Sessions. The -- the state had him brought over.
4 They called me and told me they were having him brought
5 over. So I came over and -- and met with him in the large
6 courtroom right across the hallway here.

7 Q Okay. And about how many times did you meet with Mr.
8 Bland?

9 A Met with him that day, and that was very brief because
10 there's no private place to really talk there. He
11 indicated to me at that time that, you know, he was not
12 interested in entertaining a plea. I told him at that
13 point I hadn't gotten the Rule 5 response and I couldn't
14 advise him one way or the other on whether or not to plea.
15 And then, it was some time after that I actually met with
16 him in the jail.

17 Q Okay. And that meeting at the jail, what all did
18 y'all discuss?

19 A Well, by that time I had gotten the state's initial
20 Rule 5 response. I discussed the codefendants. One of
21 them, I can remember, was represented by Carson Henderson.
22 I had spoken to Mr. Henderson. I don't think I had spoken
23 to the attorney for the other codefendant.

24 Carson had indicated they had worked out a plea. That
25 -- my question was, was his client going to testify against

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1 Mr. Bland. He told me that that was his understanding. He
2 told me what he thought he would testify to.

3 Mr. Bland discussed a -- met with him. And I talked
4 to him about this written statement that the state had
5 given me to get his take on that. You know, first obvious
6 question was: Did you give that statement? And -- and we
7 discussed that.

8 Q And he, in fact, gave a statement to law enforcement?

9 A He gave a written statement to law enforcement that
10 day. He had taken a polygraph, and we discussed the fact
11 that, you know, that's not admissible. We discussed the
12 written statement. And -- and I wanted to know, you know,
13 how accurate was it.

14 Q And did he give you his account of the facts in this
15 case?

16 A He did. And -- and it's very much like what he
17 testified to a minute ago. He told me he was there at the
18 first house, Ms. Hughes; that they had asked him to -- or
19 -- or told him, "Stand here and watch," while they
20 approached the house. He said he was not the one that
21 approached the house. And he said he was not the one that
22 had the gun.

23 Q And then, would he -- the -- the second incident which
24 he was acquitted on ---

25 A He said on that one that he actually did not go with

1 them to do that one; that after the first incident, they
2 said they had someone else they were going to go, I think,
3 hit a lick or -- I forget how they put it. He told them,
4 according to Mr. Bland, that he did not want to do that and
5 that he had waited in the car.

6 Q And, of course, the codefendants testified to
7 something differently ---

8 A They did.

9 Q --- at the trial?

10 And you just testified that you discussed that with
11 the codefendants' lawyers. And did -- did Mr. Henderson
12 give you an idea of what they were going to testify to at
13 trial?

14 A He did. He -- he gave me an indication that they were
15 going to testify that they were part of it; they were
16 pleading guilty; but that they were saying Mr. Bland had
17 the gun. And they were also saying Mr. Bland participated
18 in the second attempted robbery.

19 Q And did you discuss that with Mr. Bland?

20 A I told them what I anticipated they were going to
21 testify to. Yes.

22 Q And so he -- he understood that?

23 A He seemed to. Yes.

24 Q Okay. In any of your communications with Mr. Bland,
25 did he ever seem not to understand the charges against him?

1 your communications?

2 A No. Mr. Bland processes things more slowly. One,
3 because he's not a lawyer; he's not used to it like we are.
4 And two, you can tell, when it -- when it comes to complex
5 things, that it takes him awhile. Like when -- when you
6 were questioning him a little while ago, you see that he --
7 he thinks as he processes it. And -- and recognizing that
8 -- and I had been made aware that he had been in special
9 education classes -- you know, my first concern was: Did
10 he understand. But he always, in my opinion, understood
11 what he was facing and didn't lack criminal responsibility
12 as it's defined in the law.

13 Q Did you ever think about getting him evaluated in this
14 case?

15 A I thought about it. But based on my interaction with
16 him and simply the fact that he was on the IEP, I did not
17 feel like that was a need. Because again, he seemed to
18 understand his actions; understood the charges against him;
19 understood the difference between right and wrong and his
20 obligation to, you know, follow the law.

21 So he didn't lack the ability, I felt like, to be
22 criminally responsible, if he was found guilty. He didn't
23 lack the ability to assist me: tell me what his
24 participation was or -- and what did or didn't happen, in
25 -- in his -- in his words.

1 Q And have you had experience in having clients
2 evaluated?

3 A Yes.

4 Q And you're familiar with that process?

5 A Yes.

6 Q And if you think that that's necessary, would you take
7 those steps?

8 A Absolutely.

9 Q Okay. What was your trial strategy in this case?

10 A Well, after reviewing the evidence and -- and talking
11 with Mr. Bland, I encouraged him strongly to let me try and
12 work out a plea for him -- a plea agreement. I went to the
13 solicitor's office. What they had done is the other two
14 had pled guilty.

15 Now, the testimony was going to be that they weren't
16 offered a deal. But they withheld sentencing till after
17 the testimony. That was one thing that I definitely used
18 in trial. I argued that they were in there testifying to
19 get a better deal come sentencing. The only reason
20 sentencing was withheld was to force them to testify as the
21 state wanted.

22 So that was part of my strategy. But I got the state
23 to agree to feed all the defendants out of the same spoon,
24 as -- so to speak. We got a plea offer to a burglary-
25 second, which I explained to Mr. Bland would -- would

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1 reduce the amount of time that he was looking at; you know,
2 give him some parole options that weren't going to be there
3 on an armed robbery or a burglary-first.

4 We specifically discussed the mandatory minimums:
5 that if he were convicted, you know, he was facing some
6 serious mandatory minimums. I -- I told him that based on
7 my experience with this statement and two codefendants
8 testifying against him, we had a problem.

9 My concern was this: His statement indicated he was
10 there and it indicated he was there as a -- as a lookout.
11 Now, it doesn't say: "I was looking out because they were
12 going to do an armed robbery." But it also never said: "I
13 didn't know they were going to do an armed robbery."

14 And that concerned me. It -- he testified just now
15 that he couldn't see the door at the time. But in his
16 statement he talks about what was said at the door and he
17 talks about the other guy pushing his way in, which would
18 certainly indicate that -- that he could see. So I was
19 concerned about that.

20 At trial we -- we tried to discredit the statements
21 based on their not being sentenced yet, obviously; made a
22 big deal about that. The lost photo lineup, I felt like,
23 was an issue. One, I hadn't initially been told there was
24 a photo lineup. Then when I was told there was a photo
25 lineup, the prosecutor found out.

1 She called me and said, "I just found out from a
2 victim that she looked at a lineup." "Law enforcement
3 never told me about that," was what the prosecutor told me.

4 We moved for a dismissal based on a failure to comply
5 with Rule 5. Then I also argued that if the victim looked
6 at a lineup and did not identify him, which was my
7 understanding from the victim -- she didn't pick anybody
8 out -- if he was, in fact, in the lineup and wasn't
9 identified, that that was exculpatory and that the police
10 losing it was actually a loss of evidence that would be in
11 Mr. Bland's favor. And I felt like that warranted a
12 mistrial.

13 Mr. Bland and I actually discussed that with his
14 brother, Terrence Bland, in detail. Told him my concern
15 with that was that's an issue that's raised at trial. And
16 if we were unsuccessful on that issue, then we're facing,
17 again, an armed robbery and burglary-first; that I wouldn't
18 put all my eggs in that basket. But we argued it.

19 The -- the state, if I'm remembering correctly, said
20 they couldn't tell us whether Mr. Bland was or was not in
21 the photo lineup. I think the judge made the comment that
22 the -- losing the photo lineup would actually be in our
23 benefit. And I argued no; if he was in it and she couldn't
24 identify him, that's exculpatory.

25 But be that as it may, that was part of our trial

1 strategy.

2 Q Just one quick question.

3 A Yes.

4 Q In his statement is he not the only one who identifies
5 the make and model of the gun?

6 A Yeah.

7 Q And the ---

8 A Yeah.

9 Q --- 38 ---

10 A Yes. He -- he ---

11 Q --- was ---

12 A --- does identify that, which ---

13 Q His codefendants couldn't identify it?

14 A They said they couldn't.

15 Q Okay.

16 A And the lady in the house described the build of the
17 one that had the gun. And unfortunately, he is taller and
18 was slimmer than the others. And she was definite that it
19 was the tall, slim one. And he was the tallest and
20 slimmest of the three, so that was problematic.

21 We certainly had nothing on the part of the victims
22 that would give them a reason to want to make up a story
23 about him. Plus, we had a problem with him going to check
24 on yard work. Because that was their story: that they
25 knocked on the door and asked if they could do yard work.

1 If he wasn't there knowing they were going to do some kind
2 of robbery -- it was right at dark, according to the
3 victim. And I don't know how much leaves they were going
4 to rake, you know, in the dark.

5 MR. JOHNSON: Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 Q So you did, in fact, review discovery with Mr. Bland
8 before the trial?

9 A Oh, yeah. Yeah. We -- we discussed it, because I
10 think his mother testified he really looked up to his
11 brother. His brother was in on most of those
12 conversations. And he did look up to his brother.

13 As a matter of fact, at the last attempt at plea, we
14 were about two-thirds of the way through it. And his
15 brother leaned up and whispered to Mr. Bland right beside
16 me, "Tell him you want a trial." And Mr. Bland told the
17 judge, "I want a trial."

18 The judge handed the indictment down and said, "That's
19 fine. That's -- that's what we'll do."

20 Q And you did explain the consequences of his statement:
21 that it would be used against him in the trial?

22 A Yes, sir, I certainly did.

23 Q Did you advise him on his right to remain silent or
24 testify at his own trial?

25 A Yeah. We -- we had some at-length discussions about

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1 that. I was concerned. I had a great deal of respect for
2 this prosecutor and her ability in trial and was definitely
3 concerned about cross-examination on Mr. Bland.

4 As you can see when Mr. Bland testified, he's a very
5 polite young man -- always was -- and wants to be
6 cooperative. And I felt like it would be too easy for the
7 prosecutor to get him to say something detrimental.

8 Q Were you able to interview the codefendants before
9 trial?

10 A I did not. No.

11 Q Do you think their lawyers would've allowed that to
12 happen?

13 A Oh, no. No. They weren't interested in having me
14 interview their client. Now, Mr. Carson Henderson wasn't.
15 I don't remember specifically talking to the other
16 attorney. I -- I may have, but I don't -- have a specific
17 recollection of that happening.

18 Q But you feel you sufficiently cross-examined each
19 witness?

20 A Oh, yeah. And their testimony at trial was exactly
21 what I was told it was going to be.

22 Q So you were fully prepared for this trial?

23 A Oh. Oh, yes. Yes. I -- I really felt like I was
24 pushing Mr. Bland awful hard towards a plea. And it was as
25 hard as I wanted to push and not feel like I was coercing

1 him.

2 MR. JOHNSON: That's all I have at this time, Your
3 Honor.

4 MR. NASROLLAHI: May it please the Court?

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MR. NASROLLAHI:

8 Q Mr. Sheek, when you met with Mr. Bland -- I believe
9 you said it was the second time -- you had discovery in the
10 case?

11 A That is my recollection.

12 Q Okay.

13 A Yes.

14 Q And you -- other than the photo lineup that never
15 materialized, you had essentially full discovery?

16 A I did. As it turned out, they didn't have anything
17 additionally, other than the written statement; the
18 codefendants' testimony; and, of course, the incident
19 reports that told what the -- the victims said had
20 happened.

21 Q All right. So when you met with Mr. Bland the second
22 time, you had a copy of his statement?

23 A Yes.

24 Q And his statement is fairly incriminating?

25 A It -- it was. It -- it could've been a lot worse. I

CROSS-EXAMINATION BY MR. NASROLLAHI - LANCE SHEEK 41

1 mean, he didn't say they knew they were going to do a
2 robbery. He doesn't admit to having the gun. So it -- it
3 certainly could've been a lot worse, but it wasn't good.

4 Q Okay. And you also had the statements of his
5 codefendants?

6 A Did they give a written statement?

7 Q All right. Did you -- you -- okay. Let me back up a
8 little bit, then.

9 A I'm trying to remember, now.

10 Q At some point in your meeting with Mr. Bland, you had
11 spoken with the attorneys for his codefendants and had an
12 understanding of what they would be testifying to?

13 A I did.

14 Q And it was your understanding at that time that they
15 would be pointing the finger at Mr. Bland?

16 A That -- they were pointing the finger at him as being
17 the ringleader and the one with the gun. So it was under a
18 "hand of one, hand of all" type thing ---

19 Q Right.

20 A --- the Ms. Hughes incident. Yeah.

21 Q So -- and -- and you also had the incident report
22 detailing what the victims told law enforcement?

23 A Yes.

24 Q Okay. And that wasn't helpful either for Mr. Bland's
25 case?

1 A There -- there were some things that we were able to
2 use in court, but they weren't major inconsistencies that
3 was the -- the game winner.

4 Q Right.

5 A It -- the -- no, they weren't helpful. No.

6 Q But along with the statement that Mr. Bland gave and
7 your understanding of what the codefendants' testimony
8 would be, all in all, it was a pretty bad picture going ---

9 A I felt ---

10 Q --- to trial?

11 A --- that way. Yes. That's why I encouraged him so
12 strongly to -- to take ---

13 Q Okay.

14 A --- a plea.

15 Q And you testified that for most of the discussions
16 that you had with Mr. Bland, his brother, Terrence, was
17 there?

18 A I don't believe -- no. Terrence was not there at the
19 first one when we met in general sessions. I called
20 Terrence after the meeting in the jail. He wasn't allowed
21 to go back to the jail.

22 But the other times when we met here, preparing for
23 trial; Terrence several times came to office. Obviously,
24 Mr. Bland wasn't there. But he was there for those
25 conversations at that point. Yes.

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1 Q Okay. And in your -- your conversations pretrial with
2 Mr. Bland, his demeanor was roughly the same as it's been
3 today?

4 A Pretty much. Yes.

5 Q Okay. He -- I mean, his -- the -- his -- his reaction
6 time has been roughly the same ---

7 A Yes.

8 Q --- then as it was today?

9 A Yes.

10 Q Okay. And you testified that it takes him a while to
11 get things across his mind? Those are not your words
12 exactly, but roughly that's what you said?

13 A Yeah. He processes things more slowly than we would.
14 Yes.

15 Q Okay. And -- and when you met with him, sometimes his
16 brother was there?

17 A That's correct.

18 Q And he looks up to his brother?

19 A Absolutely.

20 Q Okay. And he listens to what his brother says?

21 A Apparently so. Yes.

22 Q Okay. And so you got a deal lined up with the
23 solicitor in this case?

24 A That's correct.

25 Q Okay. And it was for a significantly less portion of

1 time than he's looking at -- than he looked at if he went
2 to trial?

3 A That's correct.

4 Q And it's a significantly less portion of time than he
5 actually received after going to trial?

6 A Yes.

7 Q Okay. And you took him in front of that judge to put
8 him up for a plea for that deal?

9 A They ---

10 Q Let me -- I'll -- I'll strike that question. I'll ask
11 a better question.

12 A I'm trying to remember if we put him up for the plea
13 in front of Judge Young or if that was Judge Addy.

14 Q It was -- it -- it was Judge Addy, was ---

15 A Yes.

16 Q --- it not?

17 A I believe so.

18 Q Okay. And just for clarifications, Judge Young was
19 the trial-court judge?

20 A That's correct.

21 Q Okay. And that deal was a burglary-second?

22 A Correct.

23 Q Okay. And that would've been nonviolent?

24 A Correct.

25 Q Okay. He would've been parole-eligible?

1 A Yes.

2 Q And he was, again, looking at significantly less time
3 than he would've received if he would've gotten the full
4 sentence after going to trial?

5 A Correct.

6 Q Okay. And as he stood in front of that judge, you
7 said that his brother, Terrence, whispered in his ear,
8 "Take this to trial"?

9 A Yes.

10 Q And you also testified that prior to all this, you
11 informed him of the evidence that was against him?

12 A Yes.

13 Q And you informed him of how strong the evidence was
14 against him?

15 A Informed him, in my opinion, that we would most likely
16 lose the trial.

17 Q Right.

18 A Yes.

19 Q And you also testified that there were some issues
20 with cognitive delay in this case with Mr. Bland?

21 A I felt like there would be issues if he were to
22 testify for a couple of reasons. That would be one of
23 them.

24 Q Right. And so if he were put on the stand, it's your
25 understanding that the solicitor would've essentially eaten

1 him up?

2 A Pretty much.

3 Q Okay. So the -- the -- at the time that you took him
4 up for the plea, the likelihood of success on trial was
5 pretty grim?

6 A I believe so. Yes.

7 Q Okay. And you made all this clear to him?

8 A Yes.

9 Q You made it clear that this is a good deal and he
10 should take it?

11 A Absolutely.

12 Q And that was in his best interest?

13 A Yes.

14 Q And apparently, he listened to his brother over you?

15 A Yes.

16 Q And that didn't give you pause for concern that maybe
17 something's not clicking here?

18 A Okay. I didn't have any concern that he didn't
19 understand. I had concern that he trusted his brother more
20 than he trusted me. I was an appointed lawyer; you know,
21 he didn't pick me out. He wasn't paying me. It was
22 obvious that he trusted his brother more than he trusted
23 me.

24 Q Okay. So you sat down at the -- at the time of the
25 plea, you've sat down with him and shown him his statement

1 and he's looked over it?

2 A Yes.

3 Q And you explained to him that it's -- it's -- it's not
4 a great statement, but it's -- I mean, it's not a bad --
5 it's not the worst statement, but it's not a good
6 statement?

7 A Yes.

8 Q Okay. And you've also explained to him what your
9 understanding of the codefendants' testimony would be?

10 A Yes.

11 Q And you've explained to him what the victims are
12 likely to testify?

13 A Yes.

14 Q Okay. And you've explained to him that if he goes to
15 trial, he's more likely than not going to lose?

16 A Yes.

17 Q And at the same time you're explaining all of this,
18 there's a little bit of a delay in him understanding?

19 A Well, when you say "a little bit of delay," I mean if
20 -- if you were to ask him a complex question, he's not
21 going to answer as quickly as I do. But he didn't need an
22 extra day to think about it.

23 Q Uh-huh.

24 A When we talked, he understood what we were talking
25 about. I made sure of that.

1 Q Uh-huh.

2 A So the delay wouldn't have been, you know, hours. It
3 -- it was just not -- not quite as quickly as we would
4 process things.

5 Q Okay.

6 A And -- and you would break things down for him more.
7 He's not going to process a complex matter as easily. So
8 to make sure he understood, we would go over it more
9 slowly.

10 Q Okay. And in the end he still decided that he was
11 going to walk away from this deal and go to trial?

12 A That's what he told Judge Addy. Yes.

13 Q Okay. And as you stated, you said that there was
14 nothing in the course of your representation that made you
15 think, Maybe I need to get this guy evaluated?

16 A There was nothing that made me think he needed to be
17 evaluated. I've never felt like he was incompetent.

18 Q Okay. And you felt that he was able to assist you in

19 ---

20 A Oh, yeah.

21 Q --- his representation?

22 A He was able to tell me what had happened and where who
23 was and who had done what. He was never unclear on any of
24 that.

25 Q Okay. And so after explaining all the evidence that

REDIRECT EXAMINATION BY MR. JOHNSON - LANCE SHEEK 49

1 the state had against him, he still turns around and backs
2 out of this plea?

3 A He did.

4 Q Okay. And you still felt that at that time, he was
5 capable of assisting you?

6 A Yes.

7 Q Okay.

8 MR. NASROLLAHI: No further questions.

9 MR. JOHNSON: Just two brief questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Sheek, whose decision was it to back away from the
13 plea offer?

14 A That would be Mr. Bland.

15 Q Did you ever force him or coerce him to forgo a plea
16 offer and pursue a trial?

17 A No, sir. If anything, I felt like I was pushing him
18 awful hard to take the plea. And it -- it was as hard as I
19 -- I was willing to go and not feel like I was coercing him
20 to plea. But no, sir. I never did anything to get him to
21 back off.

22 MR. JOHNSON: No further questions, Your Honor.

23 MR. NASROLLAHI: Nothing further, Your Honor.

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

1 (Whereupon, the witness exited the witness stand.)

2 MR. JOHNSON: The state has no further witnesses.

3 THE COURT: All right. Yes, sir.

4 MR. NASROLLAHI: Judge, at -- at this time we would
5 request that the -- the state -- I mean, that the -- the
6 Court -- excuse me -- that the Court grant postconviction
7 relief in this case. I think the evidence that's been --
8 "that has been put forth today in this hearing has shown
9 that there are quite possibly significant competency issues
10 in this case. I mean, just from looking at the demeanor of
11 the applicant when he testified today, it's very clear that
12 there are issues in understanding, especially when legal
13 questions are -- are put to him.

14 The testimony presented by his attorney was that, you
15 know, he'd explained this very, very strong case against
16 the defendant; he explained to him that he'd gotten what
17 essentially was a sweetheart deal lined up for him; and
18 still, because of, you know, my client's, I guess,
19 cognitive disability, he -- he still caved to the pressure
20 or the -- the advice of other nonlawyers. And that
21 should've raised red flags.

22 And we believe that for that and the other reasons set
23 forth in the postconviction relief application, that it was
24 ineffective assistance of counsel not to have my client
25 evaluate for competency prior to this trial.

1 THE COURT: All right. Thank you, sir.

2 MR. JOHNSON: Just briefly, Your Honor.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: First, the only issue raised in the
5 application was concerning that photo lineup. That was an
6 issue that was raised on direct appeal and, therefore, is
7 not proper for this Court, as it has already been decided.

8 As far as the competency issue is concerned, Mr. Sheek
9 testified that he had no issues with Mr. Bland's
10 competency; that he was always able to assist in his own
11 defense. He may have been slower in comprehension;
12 however, he understood the ramifications, after Mr. Sheek
13 had explained, you know, all the evidence: all the
14 statements -- codefendants' statements to him; that it was
15 his idea and his decision to reject the plea offer and
16 pursue a trial.

17 Further -- and I don't have the case cites. But the
18 cases are *Jeter v. State* and *Wolf v. State*. (As read):
19 "Unless medical testimony is presented at the PCR hearing,
20 the applicant cannot show prejudice for counsel's failure
21 to have him evaluated for any mental-competence issues."
22 That was not presented here today. Therefore, the
23 applicant has failed to meet his burden of proof.

24 The state asks for this Court to find that Mr. Sheek
25 was, in fact, very effective in his representation of Mr.

1 Bland and that there is no resulting prejudice from any
2 deficiencies on Mr. Sheek's behalf. Thank you, Your Honor.

3 THE COURT: All right. The -- the -- first, we're
4 addressing the issue regarding the issue raised in the
5 application involving the lost evidence. I think that has
6 been ruled on by the Court of Appeals and is -- and that
7 decision's been made.

8 The -- the issue regarding the -- not having a
9 evaluation or evidence that there was concerns about that,
10 I -- I don't find that here at -- at all. Because --
11 because an individual may be slow in grasping concepts, be
12 in special education classes, there are any -- any number
13 of reasons why folks are in those situations. And -- and
14 so that -- that in and of itself is -- is not a reason to
15 have someone evaluated.

16 I -- I would venture to say that Mr. Bland is -- is
17 not the first, nor will he be the last person, to take the
18 advice of family members over a lawyer. It happens
19 constantly. It happens all the time.

20 Unfortunately, family members who give advice, they're
21 not the ones facing the time. And so it's easy to give
22 advice when you're not the one that has to do the time.
23 But unfortunately for -- and I'm -- for whatever reason,
24 it's fairly common for folks to have more faith and trust
25 in a family member than in an attorney.

1 And so the fact that Mr. Bland chose -- even in the
2 light of everything that was presented to him, chose to
3 turn down the state's plea offer and go to trial and
4 exercise his rights to a trial, I -- that -- that -- that
5 is certainly not -- not evidence of -- or concern that
6 someone needs evaluation.

7 The -- there -- there has been no medical testimony
8 presented to the Court here today to -- to -- to raise that
9 concern. I don't think there's anything in the record that
10 would -- would show that that is -- is something that --
11 that needed to be done.

12 Mr. Sheek testified extensively that he felt that
13 although he may have had to go over things several times
14 with Mr. Bland, that Mr. Bland did understand their
15 conversations; he was helpful in assisting Mr. Sheek in his
16 defense; and -- and that as a -- an attorney of 22 years,
17 he's tried dozens upon dozens of criminal cases in general
18 sessions, as well as hundreds of cases, all total. He
19 didn't have a concern with -- with regards to evaluations.
20 And -- and I'm not convinced that that was necessary in
21 this case.

22 Having said that, it -- it -- I -- I think that the
23 burden of proof being on Mr. Bland to show the ineffective
24 assistance in that light, that that has failed. And -- and
25 it -- it does appear that Mr. Sheek performed well above

1 the standard for attorneys. And -- and I -- and I'm going
2 to respectfully deny the application.

3 MR. NASROLLAHI: Thank you, Your Honor.

4 (Whereupon, the proceeding was concluded at 11:39 a.m.)

5 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR GREENWOOD COUNTY, SOUTH
CAROLINA, ON THE 31ST DAY OF OCTOBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 28, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Otis Lamar Bland, #340910,

2013-CP-24-0116

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 5, 2013. Respondent made its Return on May 8, 2013. An evidentiary hearing into the matter was convened on October 31, 2013, at the Greenwood County Courthouse. Josh Nasrollahi, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant and Deborah Bland testified on his own behalf. Lance Sheek, Esquire also testified. This Court had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the June 2009 term of the Greenwood County Grand Jury for Attempted Armed Robbery (2009-GS-24-0632) and Possession of a weapon during the commission of a violent crime (2009-GS-24-0628). He was also indicted at the March 2010 term of the Greenwood County Grand Jury for Attempted Burglary,

1st degree (2010-GS-24-0437). The Applicant was represented by Lance Sheek, Esquire. On May 19, 2010, the Applicant underwent trial by jury and was convicted. The Honorable W. Jeff Young sentenced Applicant to imprisonment for twenty (20) years for Attempted Armed Robbery, twenty (20) years, concurrent, for Attempted Burglary, 1st degree, and five (5) years, consecutive, for the weapons charge.

A Notice of Appeal was timely filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals by written opinion affirmed Applicant's conviction and sentence. State v. Bland, Op. No. 5002 (Ct. App. filed on July 18, 2012). The Remittitur was sent on August 3, 2012.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. "Violation of the Fourteenth Amendment to the United States Constitution"
 - a. "The lost(sic) of exculpatory evidence to my behalf at trial."

At the PCR hearing, Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

Applicant testified he was convicted in 2010 and was represented by Lance Sheek. He stated two co-defendants testified against him at trial. Applicant stated Counsel was appointed to his case late in the process and only met with Applicant once prior to his attempted guilty plea. Applicant testified Counsel did not discuss the discovery with him or the dangers of a trial before his attempted guilty plea. Applicant also stated Counsel did not review discovery, including the incident report, with him before his trial. He testified he gave a statement to law enforcement, but did not explain

this to Counsel. Applicant stated Counsel failed to explain the consequences to him of his giving a statement to law enforcement.

Applicant further testified that his co-defendants gave written statements to law enforcement and both had plea agreements with the State before they testified against Applicant at trial. Applicant claimed he did not discuss this testimony with Counsel before the trial.

Applicant testified he dropped out of school in the tenth grade and that he was enrolled in special education classes for children with learning disabilities. Applicant stated he told Counsel about these classes, but Counsel did not advise Applicant concerning their impact.

Applicant testified Counsel did not discuss with him his right to testify at trial. Applicant stated Counsel did, however, discuss the elements the State has to prove at trial and the potential sentence.

On cross-examination, Applicant admitted that both co-defendants testified Applicant was involved in the robbery and was the gunman in the case. He admitted that he did not have mental health records to present at the PCR hearing to show that he did not understand the trial proceedings or that he was unable to assist in his own defense. Applicant also testified he apologized to the victims and his mother for his actions in this case.

On re-direct, Applicant testified that while he did discuss his statement to law enforcement with Counsel, Counsel did not discuss co-defendants' statements with him.

Deborah Bland testified Applicant dropped out in the tenth grade and attended special education classes. She also testified Applicant had difficulty with comprehension and was tested for cognitive impairments.

Counsel testified he has been practicing criminal law for twenty-two years and has tried around seventy-five trials. He stated he was appointed to this case and was a solo practitioner at the time. Counsel testified he filed for Rule 5 and Brady discovery materials from the State. He stated he first met with Applicant briefly in General Sessions court, where Applicant informed Counsel he did not wish to plead guilty. Counsel testified he then met with Applicant in the county jail and informed Applicant that his co-defendants had struck a deal with the State and that they would testify against Applicant should he pursue a trial. According to Applicant's statement to law enforcement, he was only present during the first incident as a lookout and did not participate in the second attempted armed robbery (the one for which he was convicted). However, Counsel testified that Carson Henderson, attorney for one of the co-defendants, informed him that Mr. Henderson's client would testify that Applicant was present during both incidents and was the gunman in each scenario.

Counsel acknowledged Applicant processes information slower than most people and that he was aware Applicant was enrolled in special education classes. Counsel then stated, in his opinion, Applicant always knew and understood the charges against him and possessed the capacity for criminal responsibility. Counsel also testified Applicant was very involved in his own defense. Counsel further testified he has prior experience with having clients evaluated for mental capacity, but did not believe Applicant needed an evaluation.

Counsel then testified he attempted to obtain a favorable plea agreement with the State on Applicant's behalf and discussed this with Applicant. He stated Applicant's co-defendants had already pled guilty at the time of Applicant's trial but had not been sentenced, as they were going to testify at Applicant's trial. Counsel testified the State's plea offer was for Applicant to plead to

Burglary, 2nd degree, and Counsel discussed the mandatory minimum sentences the charges carried in this case. Counsel also testified there were troublesome issues with Applicant's statement to law enforcement, including the fact that Applicant was the only person who identified the model of the handgun used in the incidents. Counsel stated he objected to a photo lineup that law enforcement showed to one of the victims, but that victim was unable to identify anyone in the lineup as the perpetrator. Counsel also stated he moved for a dismissal based on this lineup as it was never presented to Counsel pursuant to Rule 5 and Brady, but the trial judge overruled his objection.

Additionally, Counsel testified he reviewed all of the discovery materials with Applicant, advised Applicant about his statement, and advised Applicant about the consequences of his statement. Counsel also stated he advised Applicant concerning his right to testify at trial or remain silent. Counsel further stated he was not allowed to interview Applicant's co-defendants, but did cross-examine both of them during the trial. Counsel stated their testimony was exactly what he expected it to be. Lastly, Counsel testified that he strongly urged Applicant to accept the State's plea offer, but Applicant chose not to.

On cross-examination, Counsel testified he met with Applicant after receiving discovery from the State, including a copy of Applicant's statement. In Counsel's opinion, this statement was fairly incriminating. Counsel testified he spoke with the attorneys of the co-defendants who stated their clients would testify that Applicant was the gunman. Counsel also stated that the victim's statement and identification of Applicant (that the gunman was the tall, thin man, when Applicant is taller and slimmer than his co-defendants) was not beneficial to Applicant's case.

Counsel testified he encouraged Applicant to accept the plea offer because of the evidence and testimony. Applicant appeared in General Sessions court to plead guilty, but at the last second,

his brother (who was not presented for the PCR hearing) told Applicant to pursue a trial, and Applicant took his brother's advice over Counsel's. Counsel also stated he explained to Applicant that the likelihood of success at trial was slim, and it was in Applicant's best interest to accept the plea offer, as the offer was for less time than he received after the jury's verdict of guilty.

Lastly, Counsel testified, in his professional opinion, that he did not think or believe that Applicant was incompetent or needed a mental evaluation as Applicant was always able to assist in his own defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced 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.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records and has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds Applicant's testimony, regarding Counsel's ineffectiveness, is not credible while also finding Counsel's testimony credible.

This Court finds Counsel was competent and diligent in his representation of Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial, including but not limited to both co-defendants' statements and testimony that Applicant was the gunman. Counsel satisfactorily investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to Applicant, however Applicant freely and voluntarily decided to forgo the plea agreement from the State and pursue a trial. This Court also finds Applicant was well informed by Counsel in this case. This Court is convinced that

all of Counsel's strategies were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, Applicant cannot show any resulting prejudice.

Failure to have Applicant mentally evaluated

Applicant alleges Counsel was ineffective for failing to have him mentally evaluated prior to trial.

Applicant testified that he dropped out of school during his tenth-grade year and was enrolled in special education classes. His mother testified to the same. Counsel, however, testified that while he was aware of Applicant's education level, he never thought Applicant did not understand the charges against or was not able to assist in his own defense. Counsel explained that while it may have taken Applicant longer to process information and that difficult concepts had to be explained in simpler terms, Applicant was fully engaged in his own defense and aided Counsel in the preparation of the case. Counsel further testified he has prior experience with having clients mentally evaluated, but found no reason to have Applicant evaluated.

Under Strickland, Applicant must prove both that counsel's performance was deficient and that this deficiency caused prejudice to the Applicant. To prove prejudice, Applicant must show that but-for counsel's errors, there exists a reasonable probability the outcome of the trial would have been different under Cherry and Strickland.

To prevail in a PCR action, Applicant must show by a preponderance of the evidence that he was incompetent when he stood trial. Jeter v. State, 308 at 232, 417 at 596. To demonstrate prejudice for failing to have a defendant evaluated, medical evidence needs to be presented at the PCR hearing to show the defendant was incompetent to stand trial or to participate in his own defense. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

This Court finds Counsel rendered effective assistance of counsel concerning Applicant's mental abilities and in his decision not to have Applicant evaluated. Further, Applicant failed to produce any medical testimony or documentation to show he was mentally incompetent at the time of his trial or that he was unable to assist in his own defense. Simply because Applicant dropped out of school in the tenth grade and was enrolled in special education classes, does not prove that he was incompetent to stand trial or that he could not assist in his own defense. Accordingly, the Applicant has failed to meet his burden of proof in this case.

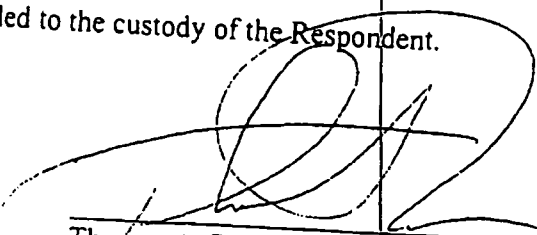
CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!
Thomas A. Russo
Presiding Circuit Court Judge
Eighth Judicial Circuit11/14, 2013Lexington, South Carolina

WITNESSES

Chris Haden
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WARRANT NUMBER

10-INFO-24-0027

COURT OF GENERAL SESSIONS

March Term, 2010

Indictment # 10GS24-0437

THE STATE

VS.

Otis Lamar Bland Jr.

Foreman of the Grand Jury

Chris Haden
Date: *3/16/10*

VERDICT

Truebill - Guilty

INDICTMENT FOR

**ATTEMPTED BURGLARY
FIRST DEGREE**

Foreman

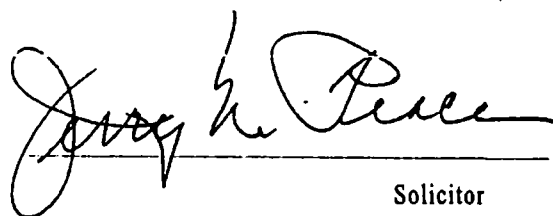
Chris Haden

ATTEST A TRUE COPY

Angela Woodhurst
**ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.**

That Otis Lamar Bland Jr., did in Greenwood County, state aforesaid, on or about the 23rd day of February, 2009 willfully and unlawfully enter or attempt to enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in the dwelling or in immediate flight there from, he or another participant in the crime: was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the attempted entry occurred in the nighttime, the said dwelling being owned and/or occupied by Joan Smith, in violation of the Common Law of South Carolina and Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended. 371

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor