

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Saluda County
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case Number: 2013-001199

FRANK TOLEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX -- VOLUME I of II

Stephen D. Geoly
Geoly Law Firm
1225 S. Main Street
Greenwood, SC 29646
(864) 223-3352

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorneys for Petitioner

J. Walt Whitmire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorney for Respondent

INDEX

Volume I

Index	i
Trial Transcript (January 26-27, 1998)	
Batson Form.....	10
Voir Dire	11
Jury Impaneled.....	30
Oaton Dyson (in camera)	
Direct by Mr. Maye.....	37
Cross by Mr. Williams.....	40
Jury Sworn	62
Opening Statements	
By Mr. Maye.....	66
By Mr. Williams	70
Oaton Dyson	
Direct by Mr. Maye.....	76
In camera direct by Mr. Maye.....	87
In camera cross by Mr. Williams.....	88
Direct by Mr. Maye.....	91
Cross by Mr. Williams.....	94
Redirect by Mr. Maye	119

Robert Shorter

Direct by Mr. Maye.....121

Cross by Mr. Williams.....125

Joel Lindler

Direct by Mr. Maye.....127

Cross by Mr. Williams.....129

William Russell Lindler

Direct by Mr. Maye.....139

Cross by Mr. Williams.....141

Wade Lamar Brannon, III

Direct by Mr. Maye.....150

Cross by Mr. Williams.....165

Re-direct by Mr. Maye.....203

Frontis Smith

Direct by Mr. Maye.....204

Cross by Mr. Williams.....208

Tony Tolenn

Direct by Mr. Maye.....210

Cross by Mr. Williams.....214

Re-direct by Mr. Maye.....216

Re-cross by Mr. Williams.....217

Re-direct by Mr. Maye.....220

Re-cross by Mr. Williams.....221

Jeff Herlong

Direct by Mr. Maye.....223

Cross by Mr. Williams.....233

Anthony Mark Whisenant

Direct by Mr. Maye.....238

Cross by Mr. Williams.....244

Bobby Jones

Direct by Mr. Maye.....246

Cross by Mr. Williams.....252

Re-Dirrect by Mr. Maye 254

State Rests.....255

Janice B. Eargle

Direct by Mr. Williams.....258

Oaton Dyson

Direct by Mr. Williams.....261

Wade Lamar Brannon, III

Direct by Mr. Williams.....266

Defense Rests.....268

Closing Arguments

By Mr. Maye.....271

By Mr. Williams 274

By Mr. Maye.....282

Charge of the Court.....287

Verdict of the Jury	305
Sentencing.....	306
Application for Post-Conviction Relief (1998-CP-41-64).....	316
Motion to Make Amends to Original PCR	321
Return (1998-CP-41-64).....	326
Post Conviction Relief Hearing Transcript (1998-CP-41-68) (No Testimony Taken).....	330
Order Granting Belated Appeal	341
Notice of Appeal.....	342
Motion to Reconsider.....	344
Order Denying Motion to Reconsider.....	356
Order Dismissing Writ of Mandamus.....	358
Clerk of Court Records	359
South Carolina Department of Corrections Records	365
S.C.S.Ct. Memorandum Opinion No. 2002-MO-024.....	373
Application for Post Conviction Relief (2002-CP-41-85).....	375
Return (2002-CP-41-085)	390
Post Conviction Relief Hearing Transcript (April 17, 2003).....	396
Frank Tolen, Jr.	
Direct by Mr. Floyd	399

Vannie Williams

Direct by Mr. Bullard.....	419
Cross by Mr. Floyd	423
Re-direct by Mr. Bullard.....	429
Re-cross by Mr. Floyd	432
Order Granting Post Conviction Relief (2002-CP-41-85).....	435
S.C.S.Ct. Memorandum Opinion No. 2005-MO-061	444
Trial Transcript (Week of November 7, 2006	446
Voir Dire	451

Volume II

Voir Dire Continued	493
Impaneled Jury.....	498
Oaton Dyson (In Camera)	
Direct by Mr. Maye.....	511
Cross by Mr. Thompson	524
Mark Whisenant (In Camera)	
Direct by Mr. Maye.....	541
Cross by Mr. Thompson	542
Opening Statements	
By Mr. Maye.....	553
By Mr. Thompson.....	562
Oaton Dyson	
Direct by Mr. Maye.....	565

Cross by Mr. Thompson	577
Joel Linder	
Direct by Mr. Maye.....	606
Cross by Mr. Thompson	611
Bill Linder	
Direct by Mr. Maye.....	613
Cross by Mr. Thompson	615
Gayle Smith	
Direct by Mr. Maye.....	615
Wade Brannon	
Direct by Mr. Maye.....	617
Cross by Mr. Thompson	628
Re-direct by Mr. Maye.....	642
Tony Tolen	
Direct by Mr. Maye.....	642
Cross by Mr. Thompson	647
Re-direct by Mr. Maye.....	653
Re-cross by Mr. Thompson.....	655
Ben Tolen	
Direct by Mr. Maye.....	657
Cross by Mr. Thompson	667

Bobby Jones	
Direct by Mr. Maye.....	669
Cross by Mr. Thompson	677
Stipulation.....	683
State Rests.....	685
Bobby Jones	
Direct by Mr. Thompson.....	690
Defense Rests.....	695
Closing Arguments	
By Mr. Thompson.....	699
By Mr. Maye.....	703
Verdict.....	723
Sentence	726
Warrants.....	730
Order Appointing Counsel	734
Conflict Letter.....	735
Order Appointing Counsel.....	736
Notice of Intent to Seek Life without Parole	737
Verdict Forms	739
Sentencing Sheets	741
Court of Appeals Unpublished Opinion Number 2009-UP-220.....	743
Application for Post Conviction Relief.....	745
Return.....	754

Order Continuing Case to file Amended Application.....	760
Amended Application for Post Conviction Relief.....	761
Return to Amended Application	766
Post Conviction Relief Hearing Transcript (January 30, 2013).....	773
Katherine Hudgins	
Direct by Mr. Geoly.....	784
Cross by Ms. Wilson.....	795
Re-direct by Mr. Geoly.....	799
Re-cross by Ms. Wilson.....	802
Andrew Thompson	
Direct by Mr. Geoly.....	803
Cross by Ms. Wilson.....	845
Re-direct by Mr. Geoly.....	856
Re-cross by Ms. Wilson.....	860
Frank Tolen, Jr.	
Direct by Mr. Geoly.....	860
Cross by Ms. Wilson.....	876
Order Denying Post Conviction Relief.....	892
Rule 59(e) Motion.....	911
Return to Rule 59(e) Motion.....	915
Order Denying Rule 59(e) Motion.....	917

COURT OF GENERAL SESSIONS

COUNTY OF SALUDA

STATE

-VS-

TRANSCRIPT OF RECORD

FRANK TOLEN, JR.,

98-GS-41-165 & 166

DEFENDANT.

JANUARY 26 & 27, 1998
SALUDA, SOUTH CAROLINA

B E F O R E:

HONORABLE JAMES W. JOHNSON, JR., JUDGE; AND A JURY.

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

ERVIN J. MAYE, ASSIST. SOLICITOR
JULIUS H. BAGGETT, ASSIST SOLICITOR
ATTORNEYS FOR THE STATE

VANNIE WILLIAMS, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

L. COCONUT PANTSARI, R.P.R.
CIRCUIT COURT REPORTER

Appendix 2

Appendix 3

2

2

1	I N D E X	
2	<u>JANUARY 26, 1998</u>	
3	BATSON FORM	8
4	JURY IMPANELED	29
5	WITNESSES	
6	<u>FOR THE STATE:</u>	
7	OATON DYSON	
8	(IN CAMERA)	
9	DIRECT BY MR. MAYE	36
10	CROSS BY MR. WILLIAMS	40
11	JURY SWORN	61
12	OPENING STATEMENTS	
13	BY MR. MAYE	65
14	BY MR. WILLIAMS	69
15	WITNESSES	
16	<u>FOR THE STATE:</u>	
17	OATON DYSON	
18	DIRECT BY MR. MAYE	75
19	OATON DYSON	
20	(IN CAMERA)	
21	DIRECT BY MR. MAYE	86
22	CROSS BY MR. WILLIAMS	87
23	OATON DYSON	
24	DIRECT BY MR. MAYE	90
25	CROSS BY MR. WILLIAMS	93

Appendix 4

3

3

1	INDEX	
2	OATON DYSON	
3	REDIRECT BY MR. MAYE	118
4	ROBERT SHORTER	
5	DIRECT BY MR. MAYE	120
6	CROSS BY MR. WILLIAMS	124
7	JOEL LINDLER	
8	DIRECT BY MR. MAYE	126
9	CROSS BY MR. WILLIAMS	129
10	WILLIAM RUSSELL LINDLER	
11	DIRECT BY MR. MAYE	138
12	CROSS BY MR. WILLIAMS	140
13	<u>JANUARY 27, 1998</u>	
14	WADE LAMAR BRANNON, III	
15	DIRECT BY MR. MAYE	149
16	CROSS BY MR. WILLIAMS	164
17	REDIRECT BY MR. MAYE	202
18	FRONTIS SMITH	
19	DIRECT BY MR. MAYE	203
20	CROSS BY MR. WILLIAMS	207
21	TONY TOLEN	
22	DIRECT BY MR. MAYE	209
23	CROSS BY MR. WILLIAMS	213
24	REDIRECT BY MR. MAYE	215
25	RECROSS BY MR. WILLIAMS	216

Appendix 5

4

4

1	I N D E X	
2	TONY TOLEN	
3	REDIRECT BY MR. MAYE	219
4	RECROSS BY MR. WILLIAMS	220
5	JEFF HERLONG	
6	DIRECT BY MR. MAYE	222
7	CROSS BY MR. WILLIAMS	232
8	ANTHONY MARK WHISENANT	
9	DIRECT BY MR. MAYE	237
10	CROSS BY MR. WILLIAMS	243
11	BOBBY JONES	
12	DIRECT BY MR. MAYE	245
13	CROSS BY MR. WILLIAMS	251
14	REDIRECT BY MR. MAYE	253
15	STATE RESTS	254
16	WITNESSES	
17	<u>FOR THE DEFENDANT:</u>	
18	JANICE B. EARGLE	
19	DIRECT BY MR. WILLIAMS	257
20	OATON DYSON	
21	DIRECT BY MR. WILLIAMS	260
22	WADE LAMAR BRANNON, III	
23	DIRECT BY MR. WILLIAMS	265
24	DEFENSE RESTS	267
25	---	

I N D E X

1		
2	CLOSING ARGUMENTS	
3	BY MR. MAYE	270
4	BY MR. WILLIAMS	273
5	BY MR. MAYE	281
6	CHARGE OF THE COURT	286
7	VERDICT OF THE JURY	304
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Appendix 7

6

6

E X H I B I T S				
1	2	3	4	5
	NO.	DESCRIPTION	ID.	EV.
3	<u>FOR THE STATE:</u>			
4	S-1	.32 PISTOL	85	232
5	S-2	PHOTOGRAPH		121
6	S-3	PHOTOGRAPH		121
7	S-4	PHOTOGRAPH		121
8	S-5	PHOTOGRAPH		121
9	S-6	PHOTOGRAPH		121
10	S-7	PHOTOGRAPH		121
11	S-8	PHOTOGRAPH		121
12	S-9	PHOTOGRAPH		121
13	S-10	PHOTOGRAPH		121
14	S-11	PHOTOGRAPH		121
15	S-12	PHOTOGRAPH		121
16	S-13	PHOTOGRAPH		121
17	S-14	PHOTOGRAPH		121
18	S-15	PHOTOGRAPH		121
19	S-16	PHOTOGRAPH		121
20	S-17	PHOTOGRAPH		121
21	S-18	PHOTOGRAPH		121
22	S-19	PHOTOGRAPH		121
23	S-20	PHOTOGRAPH		121
24	S-21	PHOTOGRAPH		121
25	---			

Appendix 8

7

7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE DEFENDANT:</u>			
D-1	STATEMENT (BRANNON)	166	
D-2	STATEMENT (TOLEN)	216	
D-3	INCIDENT REPORT	234	
<u>COURT'S EXHIBITS:</u>			
C-1	STIPULATION		303
C-2	INDICTMENT (AIKEN COUNTY)		308
C-3	INDICTMENT (LEXINGTON COUNTY)		308

Appendix 9

8

Date: 1-26-98

County: Saluda

VOIR DIRE

Case No: 98-GS-41-165+166

Judge: Johnson

Pl./State: State

State/Pl's. Atty: Maye/Baggett

Defendant: Frank Tolen, Jr.

Defense Atty: Williams

Court Reporter: Pantsari

Page 2 of 2

Juror No.	Name	Sex	Race	Court	Strikes Plaintiff	Defense	Accept
79	Kathy E. Matthews	F	W			✓(7)	
69	Marquita Jones	F	B				✓(11)
28	Penny T. Crouch	F	W			✓(8)	
106	Jerry L. Smith, Jr.	M	W		✓(3)		
65	Wilhemina Jackson	F	B			✓(9)	
92	Donnie A. Parris	M	W		✓(4)		
51	Minnie L. Hartley	F	B		✓(5)		
76	Lavon Lybrand	M	W			✓(10)	
41	Worth D. Fulmer	M	W				✓(12)
Alternate							
7	James A. Bartlette, Jr	M	W			✓(1)	
23	Marvin Coleman	M	B				✓(13)

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

Appendix 10

Date: 1-26-98

County: Saluda

VOIR DIRE

Case No: 98-GS-41-1654166

Judge: Johnson

Pl./State: State

State/Pl's. Atty: Maye/Baggett

Defendant: Frank Tolen, Jr.

Defense Atty: Williams

Court Reporter: Pantzari

Page 1 of 2

Juror No.	Name	Sex	Race	Court	Strikes		
					Plaintiff	Defense	Accept
118	Thomas J. Webb	M	W			✓①	
82	Carolyn A. Dean	F	B		✓①		
25	Vance B. Coleman	M	B		✓②		
120	Cheryl P. Werts	F	W				✓①
96	Sheila B. Proctor	F	W				✓②
24	Matt A. Coleman	M	W			✓②	
34	Carroll E. Dwst	M	W			✓③	
27	Halette E. Crouch	F	W				✓③
72	James M. Lake	M	W			✓④	
86	Amanda T. Moss	F	W				✓④
49	J. D. Griffith, Jr.	M	W				✓⑤
35	Anna M. Eagler	F	W				✓⑥
73	James H. Lindler	M	W			✓⑤	
70	Wayne W. Josey	M	W			✓⑥	
71	Katherine A. Kinard	F	W				✓⑦
36	Crystal G. Edwards	F	W				✓⑧
75	Curtis Lorick	M	B				✓⑨
99	Patricia B. Richardson	F	B				✓⑩

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

Appendix 11

10

1 THE COURT: SOLICITOR, CALL YOUR FIRST CASE FOR
2 TRIAL, PLEASE.

3 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.
4 THE STATE CALLS FOR TRIAL INDICTMENT 98-GS-41-166, THE
5 STATE OF SOUTH CAROLINA VERSUS FRANK TOLEN, JR. IT'S AN
6 INDICTMENT FOR POSSESSION OF A PISTOL BY A PERSON CONVICTED
7 OF A CRIME OF VIOLENCE. IT HAS BEEN TRUE BILLED BY THE
8 SALUDA COUNTY GRAND JURY. HE IS REPRESENTED BY HIS
9 ATTORNEY, MR. VANNIE WILLIAMS.

10 ALSO INDICTMENT 98-GS-41-165, THE STATE VERSUS
11 FRANK TOLEN, JR., INDICTMENT FOR ARMED ROBBERY. THIS
12 CHARGE HAS ALSO BEEN INDICTED BY THE GRAND JURY OF SALUDA
13 COUNTY. THE STATE IS PREPARED TO PROCEED TO TRIAL ON BOTH
14 THESE CHARGES THIS MORNING, YOUR HONOR.

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY
16 PANEL, THE SOLICITOR HAS JUST ANNOUNCED AND CALLED THE
17 FIRST CASE THIS WEEK FOR TRIAL. IT'S TWO INDICTMENTS,
18 98-165 AND 166, BOTH ENTITLED THE STATE VERSUS FRANK
19 TOLEN, JR.

20 THE INDICTMENTS -- I FAILED TO EXPLAIN THIS TO
21 YOU EARLIER TODAY. THE WAY A CASE IS PROCESSED INTO COURT
22 IS THROUGH A PIECE OF PAPER CALLED AN INDICTMENT. THOSE
23 ARE THESE PIECES OF PAPER THAT I HOLD.

24 THEY CONTAIN THE ALLEGATIONS OF THE CHARGES
25 AGAINST AN INDIVIDUAL. THEY ARE NOT EVIDENCE. THEY CANNOT

Appendix 12

11

1 BE CONSIDERED BY THE JURY AS EVIDENCE. IT PUTS THE PERSON
2 ON NOTICE ON WHAT CHARGES HE OR SHE MAY BE CALLED UPON TO
3 FACE IN COURT.

4 THE DEFENDANT, MR. TOLEN, IS PRESENT. HE IS
5 REPRESENTED BY MR. WILLIAMS. IF YOU WILL INTRODUCE
6 YOURSELF AND YOUR CLIENT TO THE JURY PANEL, PLEASE, MR.
7 WILLIAMS.

8 MR. WILLIAMS: THANK YOU, YOUR HONOR. MAY IT
9 PLEASE THE COURT. I AM VANNIE WILLIAMS, JR. AND I HAVE THE
10 PRIVILEGE OF REPRESENTING MR. FRANK TOLEN, JR.

11 (THE DEFENDANT STANDS).

12 THE COURT: THANK YOU, SIR. THE STATE IS
13 REPRESENTED BY MR. ERVIN MAYE, ALONG WITH MR. BAGGETT. MR.
14 MAYE, IF YOU WILL INTRODUCE YOURSELF AND MR. BAGGETT AND
15 THE OTHER PERSON AT YOUR TABLE, PLEASE.

16 MR. MAYE: I'M ERVIN MAYE, ASSISTANT SOLICITOR
17 FOR THE ELEVENTH CIRCUIT. THIS IS OFFICER ED SHORTER. HE
18 IS AN INVESTIGATOR IN THIS. SEATED AT MY TABLE WITH ME IS
19 SPECIAL PROSECUTOR, JULIUS BAGGETT.

20 THE COURT: THANK YOU, SIR. THERE ARE A NUMBER
21 OF POTENTIAL WITNESSES IN THE CASE. I AM GOING TO READ A
22 LIST OF THESE PEOPLE TO YOU. IF THEY ARE PRESENT IN THE
23 COURTROOM, I WILL ASK THEM TO STAND AND FACE YOU SO YOU CAN
24 SEE WHO THEY ARE SO THAT YOU CAN RESPOND TO THE QUESTIONS I
25 WILL BE ASKING YOU IN JUST A FEW MINUTES.

Appendix 13

12

1 WE HAVE OATON DYSON, JOEL LINDLER, BILLY LINDLER,
2 WADE BRANNON, TONY TOLEN, BEN TOLEN, JEFFREY JENNINGS,
3 FRONTIS SMITH, GAYLE SMITH, JEFF HERLONG, BOBBY JONES, MARK
4 WHISENANT, SHIRLEY DAY, HAZEL PADGETT, EDDIE LEON NORRIS,
5 DANIEL FULMER, ROBERT SHORTER, ESSIE TOLEN, JOHN TOLEN,
6 RALPH KENNEDY, TERRY ANDERSON, URSULA BEST, AND DUDLEY
7 RUSHTON. THOSE ARE POTENTIAL WITNESSES IN THE CASE.

8 IT IS ALLEGED, THE INDICTMENTS ALLEGE TWO
9 CHARGES, ONE OF BEING IN POSSESSION OF A PISTOL BY A PERSON
10 CONVICTED OF A CRIME OF VIOLENCE; AND THE OTHER IS A CHARGE
11 OF ARMED ROBBERY.

12 IT IS ALLEGED IN THE INDICTMENT THAT THESE
13 OFFENSES OCCURRED IN SALUDA COUNTY, ON OR ABOUT OCTOBER 2,
14 1996. IT IS ALLEGED THAT THIS OCCURRED IN THE AREA OF THE
15 TRAFFIC CIRCLE, THE INTERSECTION OF U.S. 378 AND HIGHWAY
16 391 HERE IN SALUDA COUNTY.

17 IS THERE ANYONE HERE FOR JURY SERVICE WHO IS
18 RELATED BY BLOOD OR CONNECTED BY MARRIAGE, EITHER TO THE
19 DEFENDANT, MR. TOLEN, OR TO ANY OF THE POTENTIAL WITNESSES
20 IN THE CASE? IF YOU ARE RELATED BY BLOOD OR CONNECTED BY
21 MARRIAGE TO ANY OF THESE INDIVIDUALS, PLEASE STAND.

22 (JUROR STANDS).

23 THE COURT: YOUR NAME, PLEASE, MA'AM?

24 JUROR: PEGGY HUNTER.

25 CLERK: NUMBER 60.

Appendix 14

13

1 THE COURT: MRS. HUNTER, WHO IS IT YOU ARE
2 RELATED TO?

3 JUROR: MRS. ESSIE TOLEN.

4 THE COURT: WHAT IS THAT RELATIONSHIP?

5 JUROR: SECOND COUSIN.

6 THE COURT: SECOND COUSIN?

7 JUROR: YES.

8 THE COURT: COUNSEL, STEP UP AND LET ME TALK WITH
9 YOU ABOUT THAT.

10 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
11 RECORD IN THE PRESENCE OF THE JURY PANEL BUT OUT OF THE
12 HEARING OF THE JURY PANEL).

13 THE COURT: MRS. HUNTER, BECAUSE OF THAT
14 RELATIONSHIP, WE WILL EXCUSE YOU FROM THE TRIAL OF THIS
15 CASE. STAY WITH US PLEASE. YOU CAN GET THE INSTRUCTIONS
16 ON WHEN TO BE BACK.

17 IS THERE ANYONE ON THE JURY PANEL WHO HAS ANY
18 TYPE OF BUSINESS RELATIONSHIP OR SOCIAL RELATIONSHIP,
19 EITHER WITH THE DEFENDANT, MR. TOLEN, OR ANY OF THE
20 POTENTIAL WITNESSES IN THIS CASE? WHEN I SAY BUSINESS OR
21 SOCIAL RELATIONSHIP, WE ARE TALKING ABOUT BUSINESS BEING
22 SELF-EXPLANATORY; BUT BY SOCIAL RELATIONSHIP, ARE YOU
23 FRIENDS WITH, DO YOU ATTEND THE SAME CHURCH, BELONG TO ANY
24 OF THE SAME CIVIC CLUBS OR ANY TYPE RELATIONSHIP LIKE THAT?
25 IF SO, WOULD YOU PLEASE STAND.

Appendix 15

14

1 (JURORS STAND).

2 THE COURT: YOUR NAME, PLEASE, SIR?

3 JUROR: SHELTON GANTT.

4 THE COURT: YOUR LAST NAME?

5 JUROR: GANTT.

6 THE COURT: WHO IS IT YOU KNOW OR ARE FRIENDS
7 WITH OR WHATEVER, MR. GANTT?

8 JUROR: I AM FRIENDS WITH BOTH OF THEM. I KNOW
9 HIM (INDICATING).

10 THE COURT: WOULD THAT RELATIONSHIP AFFECT YOUR
11 ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

12 JUROR: YES, SIR.

13 THE COURT: BASED ON THAT I WILL EXCUSE YOU FROM
14 THE TRIAL OF THIS CASE. HAVE A SEAT WHERE YOU ARE. WHAT
15 IS HIS NUMBER?

16 CLERK: NUMBER 42.

17 THE COURT: NUMBER 42. YOUR NAME, PLEASE, MA'AM?

18 JUROR: MELISSA GILLILAND. I AM FRIENDS WITH MR.
19 SHORTER.

20 THE COURT: WOULD THAT RELATIONSHIP HAVE ANY
21 EFFECT ON YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN
22 THIS CASE?

23 JUROR: YES, SIR.

24 THE COURT: WHAT IS YOUR LAST NAME?

25 JUROR: GILLILAND.

Appendix 16

15

1 CLERK: NUMBER 43.

2 THE COURT: NUMBER 43. I WILL EXCUSE YOU FROM
3 THE TRIAL OF THIS CASE. HAVE A SEAT. YOUR NAME, PLEASE,
4 SIR?

5 JUROR: DWAYNE JOSEY.

6 CLERK: NUMBER 70.

7 THE COURT: MR. JOSEY, WHO IS IT YOU HAVE A
8 RELATIONSHIP WITH?

9 JUROR: ROBERT SHORTER.

10 THE COURT: WHAT IS THE NATURE OF THAT
11 RELATIONSHIP?

12 JUROR: FRIENDSHIP.

13 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO BE
14 A FAIR AND AN IMPARTIAL JUROR?

15 JUROR: NO.

16 THE COURT: THANK YOU, SIR. IF YOU WILL HAVE A
17 SEAT. THAT'S NUMBER 70, MR. JOSEY. IF THERE WAS SOMEONE
18 THAT STOOD AS FAR AS BEING RELATED BY BLOOD OR CONNECTED BY
19 MARRIAGE TO ANYONE, PLEASE STAND AGAIN.

20 (JUROR STANDS).

21 THE COURT: YES, SIR. YOUR NAME, PLEASE, SIR?

22 JUROR: EDWIN MCGEE.

23 THE COURT: MR. MCGEE, WHO IS IT THAT YOU ARE
24 RELATED TO?

25 JUROR: FRONTIS SMITH.

Appendix 17

16

1 THE COURT: PARDON ME?

2 JUROR: FRONTIS SMITH.

3 THE COURT: WHAT IS THE NATURE OF THAT
4 RELATIONSHIP?

5 JUROR: SECOND COUSIN.

6 THE COURT: AND THAT'S ONE OF THE POTENTIAL
7 WITNESSES IN THE CASE; IS THAT RIGHT?

8 JUROR: YES, SIR.

9 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
10 ABILITY TO BE A FAIR AND AN IMPARTIAL JUROR, THAT
11 RELATIONSHIP?

12 JUROR: NO, SIR.

13 THE COURT: HAVE A SEAT, PLEASE, SIR. THAT'S
14 NUMBER 83, MR. MCGEE.

15 (JUROR STANDS).

16 THE COURT: MR GRIFFITH, YES, SIR.

17 JUROR: ONE OF THE POTENTIAL WITNESSES I HAVE HAD
18 IN MY COURT AND BEFORE ME WHEN I WAS A FAMILY COURT JUDGE.
19 I WOULD RATHER NOT CALL THAT WITNESS'S NAME.

20 THE COURT: WOULD THE FACT THAT PERSON APPEARED
21 BEFORE YOU HAVE ANY EFFECT ON YOUR ABILITY TO BE FAIR AND
22 IMPARTIAL AS A JUROR?

23 JUROR: I FEEL LIKE I HAD HIM UP BEFORE ME FOR
24 CONTEMPT. NO, SIR, I DON'T THINK IT WOULD AFFECT ME.

25 THE COURT: THAT'S NUMBER 49, MR. GRIFFITH. IS

Appendix 18

17

1 THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS ANYTHING ABOUT
2 OR HAS READ OR HEARD ANYTHING ABOUT THIS CASE FROM ANY
3 SOURCE AT ALL? IF SO, WOULD YOU PLEASE STAND.

4 (THERE WAS NO RESPONSE).

5 THE COURT: IS THERE ANY MEMBER OF THE JURY
6 PANEL WHO HAS FORMED OR EXPRESSED AN OPINION AS TO THE
7 GUILT OR INNOCENCE OF THE DEFENDANT? IF SO, WOULD YOU
8 PLEASE STAND.

9 (THERE WAS NO RESPONSE).

10 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
11 WHO IS AWARE OF OR SENSITIVE TO ANY BIAS, ANY PREJUDICE
12 THAT YOU MIGHT HAVE THAT WOULD PREVENT YOU FROM BEING A
13 FAIR AND IMPARTIAL JUROR IF YOU ARE SELECTED AS A JUROR IN
14 THIS CASE? IF SO, WOULD YOU PLEASE STAND.

15 (THERE WAS NO RESPONSE).

16 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
17 WHO LIVES WITHIN FIVE MILES OF THE TRAFFIC CIRCLE? AGAIN,
18 I HAVE DESCRIBED IT TO YOU. YOU PROBABLY ALL KNOW WHAT I
19 AM TALKING ABOUT WHERE 378 AND 391 INTERSECT. IF YOU LIVE
20 WITHIN FIVE MILES OF THAT LOCALE, PLEASE STAND.

21 (JURORS STAND).

22 THE COURT: LET ME START -- I WILL JUST NEED TO
23 GET YOUR NAMES. FIRST OF ALL, ON THE FRONT ROW, YOUR NAME
24 PLEASE, SIR?

25 JUROR: LAVON LYBRAND.

Appendix 19

18

1 THE COURT: MR. LYBRAND, HOW FAR AWAY FROM THE
2 TRAFFIC CIRCLE DO YOU LIVE?

3 JUROR: I STAY DOWN ACROSS FROM CORLEY'S
4 CROSSROAD. IT'S ACROSS THE ROAD, DOUBLE BRIDGES ROAD. I
5 STAY RIGHT PAST TAYLOR'S GIFT SHOP DOWN THERE.

6 THE COURT: ALL RIGHT, SIR. THE FACT THAT YOU
7 LIVE THERE AND THIS OFFENSE IS ALLEGED TO HAVE OCCURRED AT
8 THAT PARTICULAR LOCATION, WOULD THAT HAVE ANY EFFECT ON
9 YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR?

10 JUROR: NO, SIR.

11 THE COURT: THAT'S NUMBER 76, MR. LYBRAND. YES,
12 SIR, ON THE SECOND ROW, YOUR NAME, PLEASE?

13 JUROR: JAMES LAKE.

14 CLERK: NUMBER 72.

15 THE COURT: MR. LAKE, HOW FAR AWAY FROM THE
16 TRAFFIC CIRCLE DO YOU LIVE?

17 JUROR: IT'S ABOUT EXACTLY FIVE MILES.

18 THE COURT: THE SAME QUESTION FOR YOU. WOULD THE
19 FACT THAT YOU LIVE THERE, BEING IN THE SAME GENERAL
20 LOCATION, HAVE ANY EFFECT ON YOUR ABILITY TO BE FAIR AND
21 IMPARTIAL AS A JUROR?

22 JUROR: I DON'T BELIEVE SO.

23 THE COURT: HAVE A SEAT. THAT'S MR. LAKE, NUMBER
24 72. YOUR NAME, PLEASE, MA'AM?

25 JUROR: AMANDA MOSS.

Appendix 20

19

1 CLERK: NUMBER 86.

2 THE COURT: NUMBER 86. YES, MA'AM.

3 JUROR: I LIVE TWO HOUSES DOWN FROM THE TRAFFIC
4 CIRCLE BUT AT THE TIME I WAS IN HORRY COUNTY IN MYRTLE
5 BEACH.

6 THE COURT: BACK IN '96?

7 JUROR: YES, SIR.

8 THE COURT: WOULD THE FACT THAT YOU ARE LIVING
9 THERE NOW HAVE ANY EFFECT ON YOUR ABILITY TO BE FAIR AND
10 IMPARTIAL?

11 JUROR: NO, SIR.

12 THE COURT: THANK YOU, MRS. MOSS, NUMBER 86.
13 YOUR NAME, PLEASE, SIR?

14 JUROR: CARROLL DURST.

15 THE COURT: YOUR LAST NAME?

16 JUROR: DURST.

17 THE COURT: HOW FAR AWAY DO YOU LIVE, MR. DURST?

18 JUROR: FIVE MILES.

19 CLERK: NUMBER 34.

20 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
21 ABILITY TO BE FAIR AND IMPARTIAL?

22 JUROR: NO.

23 THE COURT: THANK YOU, SIR. THAT'S MR. DURST,
24 34. YES, MA'AM, YOUR NAME?

25 JUROR: PATTY SWYGERT. I LIVE TWO MILES FROM THE

Appendix 21

20

1 TRAFFIC CIRCLE.

2 CLERK: NUMBER 110.

3 THE COURT: MRS. SWYGERT, WOULD THAT HAVE ANY
4 IMPACT OR EFFECT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL
5 AS A JUROR?

6 JUROR: NO, SIR.

7 THE COURT: THANK YOU, MA'AM. YOUR NAME, PLEASE,
8 SIR?

9 JUROR: JAMES H. LINDLER.

10 THE COURT: MR. LINDLER, LET ME FIND YOU ON THE
11 LIST.

12 CLERK: NUMBER 73.

13 THE COURT: NUMBER 73. HOW FAR AWAY, MR.
14 LINDLER?

15 JUROR: ABOUT THREE MILES.

16 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
17 ABILITY TO BE FAIR AND IMPARTIAL?

18 JUROR: NO, SIR.

19 THE COURT: THANK YOU, SIR. THAT'S NUMBER 73,
20 MR. LINDLER. IS THERE ANY MEMBER OF THE JURY PANEL WHO
21 EITHER PRESENTLY OR IN THE PAST HAS WORKED AT ANY BUSINESS
22 THAT IS LOCATED ON THE TRAFFIC CIRCLE OR IN THAT IMMEDIATE
23 AREA? IF SO, WOULD YOU PLEASE STAND.

24 (THERE WAS NO RESPONSE).

25 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL

Appendix 22

21

1 OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO IS EMPLOYED AS A
2 TRUCK DRIVER? IF SO, WOULD YOU PLEASE STAND.

3 (JURORS STAND).

4 THE COURT: LET ME START ON THE FRONT ROW. YOUR
5 NAME, PLEASE, SIR?

6 JUROR: CHRISTOPHER BARNES.

7 THE COURT: MR. BARNES, IS IT YOU OR A MEMBER OF
8 YOUR FAMILY?

9 JUROR: MY DAD.

10 THE COURT: YOUR DADDY.

11 CLERK: NUMBER 6.

12 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
13 ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR IN THIS
14 CASE?

15 JUROR: NO, SIR.

16 THE COURT: THANK YOU, SIR. THAT'S NUMBER 6,
17 MR. BARNES. YOUR NAME AGAIN, PLEASE?

18 JUROR: JAMES LAKE.

19 THE COURT: MR. LAKE, I THINK YOU HAD INDICATED
20 THAT YOU OWN AND OPERATED A TRUCKING FIRM; IS THAT
21 CORRECT?

22 JUROR: THAT'S CORRECT.

23 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
24 ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR?

25 JUROR: I DON'T KNOW WHERE IT WOULD BE A

Appendix 23

22

1 CONFLICT.

2 THE COURT: THANK YOU. IF YOU WILL HAVE A SEAT,
3 MR. LAKE. YOUR NAME, PLEASE, MA'AM?

4 JUROR: CRYSTAL EDWARDS.

5 THE COURT: NUMBER 36. IS IT YOU OR A MEMBER OF
6 YOUR FAMILY, MRS. EDWARDS?

7 JUROR: MY BROTHER.

8 THE COURT: AND WOULD THAT HAVE ANY EFFECT ON
9 YOUR ABILITY TO BE FAIR AND IMPARTIAL?

10 JUROR: NO.

11 THE COURT: THANK YOU, SIR. YES, MA'AM.

12 JUROR: DEBORAH MCCORMICK.

13 THE COURT: MRS. MCCORMICK.

14 JUROR: IT'S MY HUSBAND.

15 THE COURT: YOUR HUSBAND?

16 JUROR: YES, SIR.

17 CLERK: NUMBER 81.

18 THE COURT: NUMBER 81. WOULD THAT HAVE ANY
19 EFFECT ON YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN
20 THIS CASE?

21 JUROR: NO, SIR.

22 THE COURT: THANK YOU. IF YOU WILL HAVE A SEAT.
23 THERE ARE TWO QUESTIONS THAT I AM GOING TO COMBINE INTO
24 ONE. IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAS ANY
25 CHARGES CURRENTLY PENDING IN SALUDA COUNTY OR IF YOU OR ANY

Appendix 24

23

1 MEMBER OF YOUR IMMEDIATE FAMILY HAS EVER BEEN CHARGED IN
2 SALUDA COUNTY BUT LATER THE CHARGES WERE EITHER DROPPED OR
3 THAT PERSON WAS FOUND NOT GUILTY, IF ANYONE FINDS
4 THEMSELVES OR ANY MEMBER OF THEIR IMMEDIATE FAMILY IN THAT
5 SITUATION, PLEASE STAND. AGAIN, IF YOU HAVE ANY PENDING
6 CHARGES OR IF YOU HAVE HAD CHARGES THAT HAVE EITHER BEEN
7 DROPPED OR THE PERSON WAS FOUND NOT GUILTY, I WOULD ASK YOU
8 TO STAND.

9 (JUROR STANDS).

10 THE COURT: LET ME GET YOUR NAME, PLEASE, MA'AM.

11 JUROR: KATIE ABNEY.

12 CLERK: NUMBER 2.

13 THE COURT: MRS. ABNEY, WAS IT YOU OR A MEMBER OF
14 YOUR FAMILY?

15 JUROR: MY BROTHER.

16 THE COURT: I NEED TO ASK YOU WHETHER THEY ARE
17 PENDING CHARGES OR WHETHER THE CHARGES HAVE EITHER BEEN
18 DROPPED OR HE WAS FOUND NOT GUILTY.

19 JUROR: PENDING CHARGES.

20 THE COURT: DO YOU KNOW WHICH LAW ENFORCEMENT
21 AGENCY IT IS THAT HAS BROUGHT THOSE CHARGES?

22 JUROR: NO, SIR.

23 THE COURT: THEY ARE CURRENTLY CHARGES IN SALUDA
24 COUNTY; IS THAT RIGHT?

25 JUROR: YES, SIR.

Appendix 25

24

1 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO
2 BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

3 JUROR: YES, SIR.

4 THE COURT: I WILL EXCUSE YOU FROM THE TRIAL OF
5 THIS CASE. THANK YOU FOR STANDING UP. ANYONE ELSE?

6 (JUROR STANDS).

7 THE COURT: YES, SIR, YOUR NAME?

8 JUROR: COULD YOU REPEAT THE QUESTION.

9 THE COURT: IF YOU OR A MEMBER OF YOUR IMMEDIATE
10 FAMILY EITHER HAS PENDING CHARGES IN SALUDA COUNTY OR HAS
11 HAD CHARGES BROUGHT AGAINST YOU OR THAT MEMBER OF THE
12 FAMILY AND THEY HAVE EITHER BEEN DISMISSED OR THE PERSON
13 WAS FOUND NOT GUILTY.

14 JUROR: IS THERE A TIME FRAME ON THIS?

15 THE COURT: I HAVEN'T RESTRICTED IT TO TIME.

16 JUROR: I WAS CHARGED AND I WENT THROUGH P.T.I.

17 THE COURT: HOW LONG AGO WAS THAT?

18 JUROR: TWO, THREE YEARS.

19 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
20 ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR IN THIS
21 CASE?

22 JUROR: HONESTLY, YES, SIR, IT WOULD.

23 THE COURT: THEN I WILL EXCUSE YOU. I NEED YOUR
24 NAME, PLEASE, SIR.

25 JUROR: MORRIS DAVENPORT.

Appendix 26

25

1 CLERK: NUMBER 29.

2 THE COURT: NUMBER 29. YOU WILL BE EXCUSED FROM
3 THE TRIAL OF THIS CASE. THANK YOU, SIR.

4 (JUROR STANDS).

5 THE COURT: YES, MA'AM, YOUR NAME?

6 JUROR: CATHERINE KINARD.

7 THE COURT: YOUR LAST NAME?

8 JUROR: KINARD.

9 THE COURT: CATHERINE KINARD; IS THAT RIGHT?

10 CLERK: NUMBER 71.

11 THE COURT: WERE THE CHARGES BROUGHT AND DROPPED
12 OR ARE THEY PENDING?

13 JUROR: THEY WERE BROUGHT AND DROPPED.

14 THE COURT: HOW LONG AGO HAS THAT BEEN?

15 JUROR: ABOUT A YEAR AGO.

16 THE COURT: WAS THAT WITH YOU OR A MEMBER OF YOUR
17 FAMILY?

18 JUROR: A MEMBER OF MY FAMILY.

19 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
20 ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

21 JUROR: NO, SIR.

22 THE COURT: THAT IS MRS. KINARD, NUMBER 71.
23 ANYONE ELSE?

24 (THERE WAS NO RESPONSE).

25 MR. WILLIAMS: YOUR HONOR, MAY IT PLEASE THE

1 COURT. THE YOUNG LADY SEATED RIGHT HERE---

2 THE COURT: COME UP HERE AND TALK TO ME.

3 COUNSEL, COME UP.

4 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
5 RECORD IN THE PRESENCE OF THE JURY PANEL BUT OUT OF THE
6 HEARING OF THE JURY PANEL).

7 THE COURT: ONE OR TWO FINAL QUESTIONS. IS THERE
8 ANYONE ON THE JURY PANEL WHO HAS BEEN APPROACHED BY ANYONE
9 AND HAD THIS CASE DISCUSSED WITH THEM? IF SO, WOULD YOU
10 PLEASE STAND.

11 (THERE WAS NO RESPONSE).

12 THE COURT: I WILL REPEAT A QUESTION -- WELL, LET
13 ME ASK ONE OTHER. IS THERE ANYONE ON THE JURY PANEL WHO
14 EITHER PRESENTLY OR IN THE PAST HAS BEEN REPRESENTED BY ANY
15 OF THE ATTORNEYS INVOLVED IN THIS CASE? IF SO, WOULD YOU
16 PLEASE STAND.

17 (JUROR STANDS).

18 THE COURT: YOUR NAME, PLEASE, SIR?

19 JUROR: JERRY SMITH. I WAS REPRESENTED BY
20 VANNIE WILLIAMS.

21 THE COURT: HOW LONG AGO HAS THAT BEEN, MR.
22 SMITH?

23 JUROR: A MONTH AGO.

24 THE COURT: IS IT AN ONGOING RELATIONSHIP OR
25 IN THE PAST? IS THE CASE STILL GOING ON OR IS IT OVER

Appendix 28

27

1 WITH?

2 JUROR: NO, SIR, IT'S IN THE PAST.

3 THE COURT: THAT'S JERRY SMITH; IS THAT RIGHT?

4 CLERK: NUMBER 106.

5 THE COURT: WOULD THAT HAVE ANY EFFECT ON YOUR
6 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

7 JUROR: NO, SIR.

8 THE COURT: ANYONE ELSE?

9 (JURORS STAND).

10 THE COURT: YES, MA'AM, ON THE FRONT ROW.

11 JUROR: CAROLYN DEAN. I WAS REPRESENTED BY
12 ATTORNEY VANNIE WILLIAMS.

13 THE COURT: IN THE PAST OR PRESENTLY?

14 JUROR: IN THE PAST.

15 THE COURT: WOULD THAT HAVE ANY EFFECT, MRS.
16 DEAN, ON YOUR ABILITY TO BE FAIR AND IMPARTIAL?

17 JUROR: NO.

18 THE COURT: THAT'S NUMBER?

19 CLERK: NUMBER 82.

20 THE COURT: YES, MA'AM, YOUR NAME, PLEASE?

21 JUROR: PEGGY HUNTER, MR. VANNIE WILLIAMS.

22 THE COURT: PRESENTLY OR IN THE PAST?

23 JUROR: PAST.

24 THE COURT: WOULD THAT HAVE ANY EFFECT, MRS.

25 HUNTER, ON YOUR ABILITY TO BE FAIR AND IMPARTIAL?

Appendix 29

28

1 JUROR: YES.

2 THE COURT: IF YOU FEEL LIKE IT WOULD, I WILL
3 EXCUSE YOU FROM THE TRIAL OF THIS CASE THEN. THANK YOU.
4 THAT'S NUMBER 60. I HAD ALREADY ASKED YOU THIS QUESTION
5 ONCE EARLIER. LET ME REPEAT IT. DOES ANY MEMBER OF THIS
6 JURY PANEL KNOW OF ANY REASON THAT I EITHER HAVE OR MAY NOT
7 HAVE COVERED THAT WOULD PREVENT YOU FROM BEING A FAIR AND
8 AN IMPARTIAL JUROR, BOTH FAIR TO THE DEFENDANT AND TO THE
9 STATE IF YOU ARE SELECTED IN THIS CASE? IF SO, WOULD YOU
10 PLEASE STAND.

11 (THERE WAS NO RESPONSE).

12 THE COURT: ANYTHING FURTHER FROM THE STATE?

13 MR. MAYE: NOTHING FROM THE STATE, YOUR HONOR.

14 THE COURT: FROM THE DEFENSE?

15 MR. WILLIAMS: NOTHING, YOUR HONOR.

16 THE COURT: WE ARE GOING TO GO THROUGH THE
17 PROCESS THAT I DESCRIBED TO YOU EARLIER. AS YOUR NAME IS
18 CALLED, IF YOU WILL BRING WHATEVER PERSONAL BELONGINGS YOU
19 HAVE WITH YOU AND JUST COME AND STAND HERE AT THE FRONT OF
20 THE COURTROOM. TURN AND FACE THE ATTORNEYS.

21 THEY ARE GOING TO BE ASKED WHETHER THEY WOULD
22 LIKE FOR YOU TO SEATED OR WHETHER THEY WOULD LIKE FOR YOU
23 TO BE EXCUSED FROM THIS PARTICULAR TRIAL. THE STRIKES ARE
24 FIVE AND TEN.

25 (DURING THE JURY SELECTION PROCESS, THE JURORS

1 WERE CALLED FORWARD AND PEREMPTORY STRIKES WERE EXERCISED
2 AS REFLECTED BY THE ATTACHED VOIR DIRE SHEET MADE A PART OF
3 THIS RECORD AT PAGE 8).

4 (THE JURY IS IMPANELED AT 12:05 P.M.).

5 THE COURT: ANY MATTERS OF LAW CONCERNING JURY
6 SELECTION TO BE TAKEN UP AT THIS TIME? ANYTHING FROM THE
7 STATE?

8 MR. MAYE: NOTHING FROM THE STATE, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. WILLIAMS: NOTHING FROM THE DEFENSE, YOUR
11 HONOR.

12 THE COURT: THOSE OF YOU WHO HAVE BEEN SELECTED
13 IN THE CASE, I AM GOING TO GET YOU TO DO ONE THING FOR ME,
14 AND THEN I WILL LET YOU GO FOR LUNCH. WE HAVE RUN A
15 LITTLE BIT LONGER THAN I THOUGHT IN GETTING THE JURY
16 SELECTED.

17 THERE ARE SOME PRETRIAL MATTERS I HAVE AGREED TO
18 TAKE UP BEFORE THE TRIAL STARTS. I DO THAT OUTSIDE THE
19 JURY'S PRESENCE. SO RATHER THAN HAVING YOU SIT IN THE JURY
20 ROOM WHILE I AM DOING THAT, I WILL LET YOU GO TO LUNCH IN A
21 FEW MINUTES.

22 I AM GOING TO LET YOU SELECT A PERSON THAT YOU
23 WANT TO SERVE AS YOUR FOREPERSON. ALL 12 OF YOU ARE
24 ELIGIBLE FOR IT. THE ALTERNATE IS NOT ELIGIBLE TO SERVE AS
25 THE FOREPERSON.

Appendix 31

30

1 IF YOU, WHEN I LET YOU GO IN JUST A SECOND, WILL
2 STEP BACK IN THE JURY ROOM, DISCUSS THAT, MAKE A DECISION
3 ON WHO YOU WANT YOUR FOREPERSON TO BE. TELL THE BAILIFF
4 WHO THAT IS AND THEN I WILL APPOINT THAT PERSON WHEN WE
5 COME BACK AFTER LUNCH.

6 THE FOREPERSON IS GOING TO SIT IN THIS FRONT ROW
7 SEATED ON THE FRONT ON THE END HERE AND KEEP THAT SEAT
8 THROUGHOUT THE TRIAL. THIS PERSON, WHOEVER IT IS, THEIR
9 VOTE DOES NOT COUNT ANYMORE THAN ANYBODY ELSE'S DOES; BUT
10 THIS PERSON WILL PRESIDE IN THE JURY ROOM.

11 IF YOU HAVE QUESTIONS OR PROBLEMS DURING THE
12 TRIAL, COMMUNICATE THAT TO THE FOREPERSON AND THEY CAN
13 COMMUNICATE IT TO THE COURT. ONCE YOU HAVE GOTTEN THAT
14 DONE AND LET THE BAILIFF KNOW WHO IT IS, I WILL LET YOU GO
15 FOR LUNCH.

16 WHEN YOU COME BACK AFTER LUNCH, WE SHOULD BE IN A
17 POSITION TO GO AHEAD AND START THE TRIAL. I WILL NEED MY
18 ALTERNATE, IF YOU WILL KEEP THAT SEAT THROUGHOUT THE TRIAL.
19 MY ALTERNATIVE AND MY FOREPERSON NEED TO KEEP THE SAME SEAT
20 THROUGHOUT THE TRIAL. THE REST OF YOU CAN SIT ANYWHERE IN
21 THE JURY BOX THAT YOU WOULD LIKE TO.

22 THE ONLY INSTRUCTIONS I AM GOING TO GIVE YOU
23 RIGHT NOW ARE WHAT I HAVE ALREADY SAID. YOU ARE NOT
24 PERMITTED TO DISCUSS THIS CASE WITH ANYONE, INSIDE THE
25 COURTHOUSE, OUTSIDE THE COURTHOUSE, NOT WITH ANYONE, NOT

1 EVEN AMONG YOURSELVES. SO DON'T DISCUSS THE CASE OR ANY
2 ASPECT OF IT WITH ANYONE.

3 I WILL GIVE YOU SOME MORE INSTRUCTIONS WHEN WE
4 START BACK. I WILL ASK YOU TO BE BACK IN THE JURY ROOM AT
5 TWO O'CLOCK. WE WILL START THE TRIAL AT TWO O'CLOCK.
6 AGAIN, DON'T DISCUSS IT WITH ANYONE. STEP BACK, MAKE YOUR
7 DECISION ON THE FOREPERSON AND TELL THE BAILIFF WHO IT IS.
8 THEN YOU ARE FREE TO GO UNTIL TWO O'CLOCK. EVERYONE ELSE
9 STAY SEATED, PLEASE. YOU ARE EXCUSED TO YOUR JURY ROOM.

10 (THE JURY RETIRES TO THE JURY ROOM).

11 THE COURT: MR. BAILIFF, TELL THEM 2:30. I HAVE
12 GOT SOME MOTIONS IN ANOTHER CASE I SET AT TWO O'CLOCK.
13 TELL THEM 2:30 INSTEAD OF TWO O'CLOCK.

14 BAILIFF: YES, SIR.

15 (THE JURY IS EXCUSED FOR LUNCH AT 12:10 P.M.).

16 THE COURT: LET'S TAKE UP ANY PRETRIAL MATTERS AT
17 THIS TIME AND GET AS MUCH DONE AS WE CAN.

18 MR. MAYE: MAY IT PLEASE THE COURT. YOUR HONOR,
19 MAY I HAVE A 30-SECOND RECESS? I NEED TO RETRIEVE SOME OF
20 MY LAW BOOKS OUT OF CHAMBERS.

21 THE COURT: SURE.

22 (PAUSE).

23 THE COURT: COUNSEL HAD INDICATED IN CHAMBERS
24 SEVERAL PRETRIAL MATTERS THAT NEEDED TO BE TAKEN UP. ONE
25 IS A MOTION TO SEQUESTER THE WITNESSES, WHICH I INDICATED

1 WOULD BE GRANTED UNLESS THERE WAS SOME COMPELLING REASON
2 NOT TO. I HAVEN'T BEEN PRESENTED WITH ANYTHING. SO THE
3 WITNESSES WILL BE SEQUESTERED.

4 ANY WITNESSES IN THE COURTROOM, BY SEQUESTERING
5 YOU THAT WOULD PROHIBIT YOU FROM DISCUSSING YOUR TESTIMONY
6 WITH ANY OTHER WITNESS, WHETHER BEFORE OR AFTER YOU
7 TESTIFY. THE CHIEF INVESTIGATING OFFICER, WHO I ASSUME IS
8 THIS OFFICER, WILL BE ALLOWED TO REMAIN IN.

9 MR. MAYE: YOUR HONOR, OFFICER SHORTER WORKS WITH
10 ME. HE IS MY INVESTIGATOR. THE ACTUAL INVESTIGATOR IN
11 THIS CASE WAS BOBBY JONES FROM THE SHERIFF'S DEPARTMENT. I
12 WOULD ASK THAT HE BE ALLOWED TO REMAIN IN, ALONG WITH
13 OFFICER SHORTER. IT'S MY UNDERSTANDING WHERE TWO OFFICERS
14 HAVE SUBSTANTIAL RESPONSIBILITY IN THE CASE AND THEY ARE
15 FROM DIFFERENT AGENCIES THAT I CAN KEEP BOTH OF THEM.

16 THE COURT: I WOULD BE GLAD TO HEAR YOU ON THAT
17 IF YOU DISAGREE WITH THAT, MR. WILLIAMS.

18 MR. WILLIAMS: YES, SIR, YOUR HONOR. AT THIS
19 POINT I WOULD CERTAINLY BE CURIOUS TO KNOW WHAT OFFICER
20 SHORTER'S ROLE WAS IN THE INVESTIGATION OF THIS MATTER.
21 CERTAINLY IF HE HAD A VERY PERIPHERAL ROLE AND WAS NOT
22 ACTIVELY INVOLVED IN THE CASE, WE DON'T HAVE ANY OBJECTION
23 TO HIS STAYING IN. HOWEVER IF HE IS ACTIVELY AND
24 INTIMATELY INVOLVED WITH THE CASE, CERTAINLY WE THINK IT
25 WOULD BE PROPER FOR HIM TO BE SEQUESTERED AS WELL.

1 MR. MAYE: YOUR HONOR.

2 THE COURT: SOLICITOR.

3 MR. MAYE: FROM THE STATE, OFFICER SHORTER WORKS
4 WITH ME AS AN INVESTIGATOR. HIS RESPONSIBILITIES WERE
5 HELPING US SECURE WITNESSES IN THIS CASE AND HELPING US
6 WITH EXHIBITS IN THIS TRIAL AND THE ORGANIZATION OF THE
7 TRIAL.

8 HE IS NOT A WITNESS FOR SUBSTANTIVE MATTERS
9 DURING THE COURSE OF TIME. HE WAS NOT INVOLVED IN ANY
10 MANHUNT, NOT INVOLVED IN THE CRIME. BASICALLY HE IS AN
11 INVESTIGATOR FOR THE PURPOSES OF HELPING US SECURE
12 WITNESSES AND EXHIBITS IN THIS CASE.

13 THE COURT: BASED ON THAT I WILL ALLOW BOTH OF
14 THEM TO BE IN. IF ANYTHING OTHER THAN THAT COMES UP, YOU
15 CAN MAKE WHATEVER MOTIONS, MR. WILLIAMS, YOU FEEL WOULD BE
16 APPROPRIATE. I WILL DEAL WITH IT AT THAT TIME.

17 I THINK THE VICTIM IS ENTITLED ALSO TO BE IN THE
18 COURTROOM THROUGHOUT THE TRIAL UNDER THE VICTIM'S BILL OF
19 RIGHTS OR THAT RELATED LEGALIZATION, SO IF HE WOULD LIKE TO
20 BE IN.

21 THE WAY I DEAL WITH SEQUESTRATION IS WITNESSES
22 ARE NOT PERMITTED IN HERE UNTIL THEY ARE CALLED TO TESTIFY.
23 ONCE THEY HAVE TESTIFIED, IF THEY WANT TO REMAIN IN OR
24 COUNSEL WANTS THEM TO REMAIN IN, THAT'S UP TO COUNSEL; BUT
25 IF THERE IS ANY POTENTIAL FOR THEM BEING CALLED IN REPLY,

1 THEY WOULD NOT BE PERMITTED TO DO SO IF THEY WERE IN THE
2 COURTROOM DURING THE REST OF THE TRIAL. I WILL LET COUNSEL
3 DEAL WITH THAT.

4 I DON'T KNOW VERY MANY OF THE NAMES ON THE LIST.
5 I DON'T MANY PEOPLE OVER HERE, SO YOU WILL HAVE TO KEEP UP
6 WITH YOUR OWN WITNESSES. I WILL RELY ON COUNSEL TO KEEP
7 THEIR WITNESSES ADVISED AND OUT OF THE COURTROOM. DO YOU
8 WANT THEM SEQUESTERED FOR PURPOSES OF THE PRETRIAL MATTERS,
9 MR. WILLIAMS?

10 MR. WILLIAMS: I THINK WE SHOULD, YOUR HONOR.
11 ADDITIONALLY WHILE WE ARE ON THE SEQUESTRATION ISSUE, AT
12 THIS POINT I WOULD RATHER THE COURT JUST MAKE A RULING ONCE
13 THE WITNESS TESTIFIES AFTER HAVING BEEN CALLED FOR THE
14 STATE, IF THEY WILL BE EXCLUDED FROM THE COURTROOM.

15 THE COURT: THE ONLY WAY -- I MEAN, THIS IS A
16 PUBLIC TRIAL. THE ONLY WAY I WOULD PROHIBIT SOMEBODY FROM
17 BEING IN HERE IS IF THEY ARE GOING TO TESTIFY OR THE
18 POTENTIAL FOR THEM TESTIFYING LATER ON.

19 I CAN'T THINK OF ANY REASON TO PROHIBIT SOMEONE
20 ONCE THEY TESTIFIED FROM SITTING IN THE COURTROOM. IF THAT
21 IS A MOTION, THAT MOTION IS DENIED. AGAIN, I THINK I AM
22 CLEAR ON HOW I DEAL WITH SEQUESTRATION.

23 WITNESSES WILL BE SEQUESTERED FOR PURPOSES OF
24 THESE PRETRIAL MATTERS, SO THAT MR. JONES AND MR. SHORTER
25 AND MR. DYSON ARE ALLOWED TO REMAIN IN THE COURTROOM. ANY

1 OTHER WITNESSES WOULD NEED TO EXCUSE THEMSELVES AT THIS
2 TIME.

3 (PAUSE).

4 MR. MAYE: I HAVE SOME WITNESSES REMAINING. MR.
5 TOLEN, MR. JENNINGS, Y'ALL NEED TO LEAVE THE COURTROOM.
6 ANYBODY THAT HAS BEEN SUBPOENAED TO BE A WITNESS IN THIS
7 CASE, Y'ALL NEED TO LEAVE THE COURTROOM AT THIS TIME.
8 ESSIE TOLEN, JOHN TOLEN, BEN TOLEN, JEFFREY JENNINGS.

9 (PAUSE).

10 THE COURT: I HAVE NO IDEA WHAT FACILITIES YOU
11 HAVE AVAILABLE UP HERE FOR THE WITNESSES TO STAY IN. THE
12 STATE'S ROOM IS WHAT THEY SAY. ARE THERE ANY OTHER
13 POTENTIAL WITNESSES WHOSE NAMES WERE READ OFF EARLIER:
14 JOEL OR BILLY LINDLER, TONY TOLEN, BEN TOLEN. Y'ALL KNOW
15 THE OTHERS. HAVE YOU GOT ALL OF YOURS OUT?

16 MR. MAYE: I WILL MAKE SURE.

17 THE COURT: MR. WILLIAMS, HAVE YOU GOT ALL OF
18 YOURS OUT AS FAR AS YOU KNOW?

19 MR. WILLIAMS: YOUR HONOR, I BELIEVE SO.

20 (PAUSE).

21 THE COURT: THAT TAKES CARE OF THE SEQUESTRATION.
22 I THINK THE FIRST MOTION I NEED TO DEAL WITH, MR. WILLIAMS,
23 YOU INDICATED YOU WOULD BE MAKING A MOTION TO SUPPRESS ANY
24 IN-COURT IDENTIFICATION BY THE VICTIM. I BELIEVE THE
25 VICTIM IS MR. DYSON; IS THAT CORRECT?

OATON DYSON - IN CAMERA DIRECT - BY MR. MAYE

1 MR. WILLIAMS: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: ALL RIGHT. SOLICITOR, I THINK WE
3 WILL LET YOU MAKE A PROFFER THROUGH YOUR WITNESS OR HOWEVER
4 YOU WANT TO DO IT ON WHAT THE TESTIMONY WOULD BE. THEN I
5 WILL HEAR ARGUMENTS.

6 MR. MAYE: THE STATE CALLS OATON DYSON TO THE
7 STAND.

8 OATON DYSON, BEING FIRST DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 (THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA).

11 DIRECT EXAMINATION

12 BY MR. MAYE:

13 Q MR. DYSON, IF YOU WOULD INTRODUCE YOURSELF FOR THE
14 RECORD.

15 A MY NAME IS OATON DYSON.

16 Q WHERE ARE YOU FROM?

17 A NEW ORLEANS, LOUISIANA.

18 Q MR. DYSON, LET ME DIRECT YOUR ATTENTION TO THE LATE
19 EVENING HOURS OF OCTOBER 1ST, 1996, INTO THE EARLY MORNING
20 HOURS OF OCTOBER 2ND, 1996. DID YOU HAVE OCCASION TO BE IN
21 SALUDA COUNTY AT THAT TIME?

22 A YES.

23 Q WHAT BROUGHT YOU TO SALUDA COUNTY?

24 A I WAS PASSING THROUGH TO GO PICK UP A LOAD AT FUJI
25 FILMS OVER IN UNION.

OATON DYSON - IN CAMERA DIRECT - BY MR. MAYE

1 Q WERE YOU STOPPED SOMEWHERE IN THE COUNTY AT THAT
2 TIME?

3 A YEAH, I STOPPED AND TOOK ME A NAP.

4 Q YOU STOPPED AND TOOK A NAP?

5 A YEAH.

6 Q MR. DYSON, WHAT HAPPENED AT THAT TIME?

7 A WELL, AS I WAS SITTING THERE NAPPING, THAT GUY RIGHT
8 THERE (INDICATING), HE KNOCKED ON THE WINDOW WITH A GUN IN
9 HIS HAND, THIS GUY RIGHT HERE (INDICATING).

10 Q MR. TOLEN, THE DEFENDANT IN THIS CASE?

11 A YES.

12 Q KNOCKED ON THE WINDOW?

13 A RIGHT.

14 Q WHAT WERE THE CONDITIONS AT THAT TIME? WAS IT
15 NIGHTTIME?

16 A YES, IT WAS.

17 Q WHAT WAS THE LIGHTING LIKE THERE AT THE TRAFFIC
18 CIRCLE?

19 A WELL, IT WAS LIT UP PRETTY GOOD. THAT'S THE REASON
20 WHY I STOPPED THERE BECAUSE I FIGURE I WOULD BE PRETTY SAFE
21 RIGHT THERE.

22 Q DID YOU PARK UNDER A STREET LIGHT?

23 A UNDER A BIG STREET LIGHT.

24 Q IS THAT WHY YOU SELECTED THAT LOCATION TO STOP?

25 A THE ONLY REASON WHY BECAUSE IT LOOKED PRETTY SAFE.

Appendix 39

30

OATON DYSON - IN CAMERA DIRECT - BY MR. MAYE

1 Q HOW GOOD OF A LOOK DID YOU GET AT THE DEFENDANT, MR.
2 TOLEN, AT THAT TIME?

3 A HE WAS FROM LIKE ME AND THE JUDGE SITTING HERE, THAT
4 CLOSE.

5 Q WHEN HE ENTERED THE CAB OF YOUR VEHICLE, WERE THERE
6 ANY INTERIOR LIGHTS IN YOUR VEHICLE?

7 A YES.

8 Q WERE THOSE LIGHTS, WERE THEY ACTIVATED? WERE THEY ON
9 WHEN HE WAS IN THE VEHICLE?

10 A THEY WERE ON.

11 Q HOW LONG WOULD YOU SAY HE WAS IN YOUR VEHICLE DURING
12 THE TIME WHEN HE ROBBED YOU?

13 A FIFTEEN, 20 MINUTES.

14 Q DURING THAT TIME DID YOU CONTINUOUSLY HAVE A GOOD
15 VIEW OF HIM?

16 A YES, I DID.

17 Q WAS HE WEARING ANYTHING TO CONCEAL HIS FEATURES, ANY
18 KIND OF MASK OR ANYTHING?

19 A NO, HE WASN'T.

20 Q SINCE THAT TIME HAVE YOU SEEN THE DEFENDANT IN THIS
21 CASE? SINCE THE TIME OF THAT ROBBERY, WHEN IS THE FIRST
22 TIME YOU SAW HIM AFTER THE ROBBERY?

23 A I BELIEVE I SAW HIM HERE IN THE COURTHOUSE.

24 Q IN THE COURTHOUSE?

25 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

OATON DYSON - IN CAMERA DIRECT - BY MR. MAYE

1 Q WAS HE IDENTIFIED TO YOU AS THE DEFENDANT IN-THIS
2 CASE?

3 A NO, HE WASN'T.

4 Q AT THE TIME THAT YOU SAW HIM, DID YOU HAVE ANY IDEA
5 WHO HE WAS?

6 A YES, I DID.

7 Q WHO WAS HE?

8 A FRANK TOLEN.

9 Q FRANK TOLEN, THE INDIVIDUAL THAT ROBBED YOU?

10 A THAT GUY THERE THAT ROBBED ME.

11 Q AFTER THE TIME OF THE ROBBERY BUT UP UNTIL THE TIME
12 OF YOU SEEING HIM IN THE COURTROOM, DID ANYBODY SHOW YOU
13 ANY PICTURES OR GIVE YOU ANY DESCRIPTION OF MR. TOLEN?

14 A NO ONE.

15 Q SO YOUR IDENTIFICATION OF HIM HERE IN THIS COURTROOM
16 TODAY IS BASED SOLELY ON SEEING HIM DURING THE LATE EVENING
17 HOURS OF THE 1ST OF OCTOBER OF '96 INTO THE EARLY MORNING
18 HOURS?

19 A CORRECT.

20 Q DID YOU ALSO HAVE AN OPPORTUNITY TO SEE HIM WHEN HE
21 PURSUED YOU OUT OF YOUR VEHICLE ACROSS THE TRAFFIC CIRCLE?

22 A YES.

23 Q APPROXIMATELY HOW FAR DID HE CHASE YOU?

24 A FROM ONE END OF THE CIRCLE TO THE OTHER END.

25 Q DID YOU HAVE AN OPPORTUNITY TO SEE HIM AS YOU CLIMBED

Appendix 41

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

40

1 ON THE ROOF OF A BUILDING FOR YOUR ESCAPE?

2 A YES. HE WAS STANDING DOWN THERE HOLLERING UP TO ME
3 SOMETHING. I COULDN'T UNDERSTAND WHAT HE WAS SAYING.

4 Q SO IT'S MY UNDERSTANDING YOU HAD A CLEAR VIEW OF HIM
5 AND AMPLE LIGHT IN YOUR TRUCK?

6 A YES.

7 Q AND YOU CONTINUED TO SEE HIM AS HE PURSUED YOU ACROSS
8 THE CIRCLE?

9 A I DID.

10 Q NO QUESTION IN YOUR MIND THAT'S THE INDIVIDUAL THAT
11 ROBBED YOU?

12 A NO QUESTION IN MY MIND.

13 Q ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR YOU.

14 THE COURT: MR. WILLIAMS.

15 MR. WILLIAMS: MAY IT PLEASE THE COURT.

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q MR. DYSON, JUST PRIOR TO TAKING THE STAND, YOU TOOK
20 AN OATH. YOU PLACED YOUR HAND ON THE BIBLE.

21 A YES.

22 Q DO YOU UNDERSTAND THE SIGNIFICANCE OF THAT OATH?

23 A YES, I DO.

24 Q THE SIGNIFICANCE IS THAT YOU ARE SWORN TO TELL THE
25 TRUTH; IS THAT CORRECT?

Appendix 42

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

41

1 A THAT'S CORRECT.

2 Q YOUR TESTIMONY WAS WHEN MR. MAYE ASKED WERE YOU ABLE
3 TO IDENTIFY MR. TOLEN AFTER YOU HAD EXITED THE TRUCK AND
4 WAS RUNNING THE ACROSS THE PARKING LOT.

5 A RIGHT.

6 Q YOU SAID YES, YOU COULD IDENTIFY HIM.

7 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

8 Q IS THAT CORRECT?

9 A RIGHT.

10 Q WELL, WERE YOU RUNNING BACKWARDS?

11 A NO, I WASN'T.

12 Q SO MR. TOLEN WOULD HAVE BEEN BEHIND YOU; IS THAT
13 CORRECT?

14 A RIGHT.

15 Q OR THE PERSON YOU ARE ALLEGING TO BE MR. TOLEN.
16 WERE YOU RUNNING AND NOT LOOKING WHERE YOU WERE RUNNING?
17 WERE YOU RUNNING WITH YOUR HEAD TURNED ALL THE WAY
18 AROUND?

19 A YES. I WAS LOOKING AT HIM AND I WAS LOOKING FOR -- I
20 SAW A LIGHT ON AT A HOUSE AND I WENT RUNNING TOWARD THAT
21 HOUSE.

22 Q SO YOU EXITED THE VEHICLE?

23 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

24 Q AND YOU WERE RUNNING?

25 A RIGHT.

Appendix 43

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

42

1 Q FOR YOUR LIFE, I PRESUME?

2 A YES, I WAS.

3 Q NOW, DID YOU STOP AND TURN AROUND AND LOOK BACK AND
4 SEE WHO WAS CHASING YOU?

5 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

6 Q YOU STOPPED? AT WHAT POINT DID YOU STOP FROM THE
7 TIME YOU EXITED THE VEHICLE AND GOT TO THE BUILDING THAT
8 YOU CLIMBED UP ON?

9 A WHEN I EXITED THE VEHICLE, I STOPPED RIGHT THERE AND
10 LOOKED TO SEE WHAT THESE GUYS WERE GOING TO DO. AFTER THEY
11 GOT OUT THE TRUCK, THEN I BEGAN RUNNING. I BEGAN RUNNING
12 AND HOLLERING AND SCREAMING.

13 Q OKAY.

14 A I RAN BY THE CIRCLE AND STOPPED AND TOOK A LOOK.
15 THEY WERE STILL BEHIND ME AND I TOOK OFF AGAIN.

16 Q WHAT TIME OF DAY WAS THIS?

17 A IT WAS SOMETIME AFTER MIDNIGHT, I GUESS.

18 Q IT WAS DARK, WASN'T IT?

19 A YES, IT WAS.

20 Q YOU ARE SAYING IT WAS SUFFICIENT LIGHT AT THE TRAFFIC
21 CIRCLE TO SEE SOMEONE'S FACE?

22 A SUFFICIENT LIGHT AT THE TRAFFIC CIRCLE. ALSO THE
23 DOME LIGHT IN MY TRUCK CAME ON. WHEN THE OTHER GUY ENTERED
24 MY TRUCK, I ALSO TURNED MY CAB LIGHTS ON.

25 Q I AM ASKING YOU FROM THE TIME YOU WERE RUNNING FROM

Appendix 44

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

43

1 THE TRUCK TO THE BUILDING.

2 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

3 Q HOW MANY NIGHT LIGHTS DO YOU RECALL BEING ON ON THE
4 TRAFFIC CIRCLE?

5 A A COUPLE OF THEM.

6 Q A COUPLE OF THEM?

7 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

8 Q DO YOU RECALL GIVING A -- WOULD YOU CONSIDER MR.
9 TOLEN A MAN OR A BOY?

10 A SAY THAT AGAIN.

11 Q WOULD YOU CONSIDER MR. TOLEN TO BE A MAN OR A BOY?

12 A I FIGURED HE'S JUST THE GUY THAT ROBBED ME. THAT'S
13 ALL I KNOW.

14 Q I AM ASKING YOU A SIMPLE QUESTION RIGHT NOW. ALL
15 I'M ASKING YOU IS TO GIVE ME YOUR OBSERVATION OF THIS
16 GENTLEMAN RIGHT HERE. WOULD YOU CHARACTERIZE HIM AS A MAN
17 OR A BOY?

18 A HE'S A MAN.

19 Q HE'S A MAN. DO YOU RECALL THAT YOU GAVE A STATEMENT
20 TO THE POLICE ON OCTOBER 2ND, 1996?

21 A SAY THAT AGAIN.

22 Q DO YOU RECALL GIVING THE POLICE A STATEMENT ON
23 OCTOBER THE 2ND, 1996?

24 A YES, I GAVE A STATEMENT.

25 Q HAVE YOU HAD A CHANCE TO REVIEW THAT STATEMENT?

Appendix 45

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

44

1 A NO.

2 MR. WILLIAMS: YOUR HONOR, IF THE RECORD WOULD
3 REFLECT, I AM GIVING MR. DYSON AN OPPORTUNITY TO REVIEW HIS
4 STATEMENT DATED OCTOBER 2, 1996.

5 MR. MAYE: WOULD YOU LIKE TO PUT THAT INTO
6 EVIDENCE? I WILL CONSENT IF YOU WANT TO PUT IT IN AS A
7 DEFENDANT'S EXHIBIT.

8 THE WITNESS: SAY THAT AGAIN NOW.

9 MR. MAYE: JUST ANSWER MR. WILLIAMS' QUESTIONS.

10 Q I AM GIVING YOU THE OPPORTUNITY TO REVIEW THAT
11 STATEMENT. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHAT
12 YOU TOLD THE POLICE?

13 A GIVE ME A MINUTE.

14 Q YES, SIR.

15 (PAUSE).

16 A THAT'S ABOUT IT.

17 Q HAVING REVIEWED YOUR STATEMENT, THAT'S REFRESHES YOUR
18 RECOLLECTIONS AS TO WHAT YOU TOLD LAW ENFORCEMENT ON
19 OCTOBER 2, 1996; IS THAT CORRECT?

20 A THAT'S RIGHT.

21 Q NOW, WOULD YOU SAY YOUR MEMORY OF THE EVENTS WERE
22 BEST THEN OR BEST NOW?

23 A I WOULD SAY IT'S ABOUT THE SAME.

24 Q ABOUT THE SAME?

25 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

Appendix 46

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

45

1 Q SO SOME YEAR HAS NOT MADE A DIFFERENCE IN YOUR MEMORY
2 OF THESE EVENTS?

3 A SAY THAT AGAIN.

4 Q THE FACT THAT A YEAR HAS PASSED HAS NOT MADE A
5 DIFFERENCE IN YOUR MEMORY OF THESE EVENTS?

6 A I KNOW THAT'S THE GUY THAT ROBBED ME. I'LL NEVER
7 FORGOT THAT.

8 Q WHEN YOU WERE FIRST ASKED ABOUT WHO ROBBED YOU,
9 THE DESCRIPTION YOU GAVE WAS TWO BLACK MALES; IS THAT
10 CORRECT?

11 A YEAH.

12 Q AND YOU INDICATED ABOUT MEDIUM BUILD; IS THAT
13 CORRECT?

14 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

15 Q YOU NEVER INDICATED ANYTHING ABOUT ANY TYPE OF SCARS
16 OR ANYTHING LIKE THAT, DID YOU?

17 A WELL, NO ONE REALLY ASKED ME THAT.

18 Q NO ONE ASKED YOU?

19 A NO.

20 Q THE BEST DESCRIPTION YOU GAVE WAS THE FACT THAT ONE
21 OF THE BOYS HAD A GRAY SHIRT AND A GRAY RAG ON HIS HEAD,
22 "AND I CAN'T REMEMBER ABOUT THE OTHER." IS THAT CORRECT?
23 THAT'S WHAT YOUR STATEMENT SAYS.

24 A I DIDN'T REMEMBER EXACTLY WHAT TYPE OF CLOTHES HE HAD
25 ON.

Appendix 47

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

46

1 Q WELL, WHICH ONE OF THE BOYS HAD ON THE GRAY SHIRT AND
2 THE GRAY RAG?

3 A THAT WOULD BE THE OTHER GUY.

4 Q THE OTHER GUY?

5 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

6 Q BUT YOU DON'T RECALL WHAT HE LOOKS LIKE, DO YOU?

7 A THE OTHER GUY?

8 Q YES, SIR.

9 A HE IS NOT IN HERE. SO I CAN'T TELL UNLESS I SEE
10 HIM.

11 Q WHAT DO YOU RECALL? JUST FROM YOUR RECOLLECTION,
12 WHAT DOES THE OTHER GUY LOOK LIKE?

13 A AT THE TIME HE WAS AVERAGE HEIGHT, I GUESS, LIGHT
14 COMPLEXION.

15 Q DID HE WEAR ANY FACIAL HAIR?

16 A SAY THAT AGAIN.

17 Q DID HE WEAR ANY FACIAL HAIR?

18 A NOT DURING THE TIME THAT THIS HAPPENED, NO.

19 Q YOU DON'T RECALL THE OTHER GENTLEMAN WEARING FACIAL
20 HAIR?

21 A NO.

22 Q WHEN YOU DESCRIBED THESE TWO GENTLEMEN AS BOYS, YOU
23 STILL STAND BY THAT; DON'T YOU?

24 A WELL, AT THE TIME THEY WAS FAIRLY SMALL.

25 Q THEY WERE FAIRLY SMALL?

Appendix 48

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

47

1 A AT THE TIME.

2 Q AT THE TIME. ARE YOU SAYING MR. TOLEN HAS GAINED
3 WEIGHT NOW?

4 A YEAH, QUITE A BIT.

5 Q HE HAS GAINED QUITE A BIT OF WEIGHT?

6 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

7 Q SO WHAT YOU ARE SAYING THEN, WHAT YOU ARE
8 ACKNOWLEDGING TODAY, IS THE GENTLEMAN YOU SEE SITTING HERE
9 TODAY IS LARGER THAN THE GENTLEMAN THAT YOU SAW IN YOUR
10 TRUCK?

11 A YES, HE HAVE GAINED SOME WEIGHT.

12 Q BUT YOU ARE ACKNOWLEDGING AND YOU AGREE WITH ME THE
13 GENTLEMAN YOU SAW IN YOUR TRUCK WAS SMALLER THAN THE
14 GENTLEMEN SITTING AT MY TABLE?

15 A YEAH.

16 Q WHEN THE INDIVIDUALS ENTERED YOUR TRUCK, MR. DYSON,
17 APPROXIMATELY HOW LONG WERE THEY IN YOUR TRUCK?

18 A ANYWHERE FROM 15 TO 20 MINUTES.

19 Q FIFTEEN TO 20 MINUTES?

20 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

21 Q YOU WEREN'T ORDERED TO PUT YOUR HEAD DOWN?

22 A SAY THAT AGAIN.

23 Q YOU WEREN'T ORDERED TO PUT YOUR HEAD DOWN?

24 A NO.

25 Q SO YOU LOOKED AT THE INDIVIDUALS WHO ENTERED YOUR

Appendix 49

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

48

1 TRUCK FOR 15 TO 20 MINUTES?

2 A BOTH OF THEM, YES.

3 Q BOTH OF THEM?

4 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

5 Q AND NO ONE HAS EVER SHOWN YOU A PHOTOGRAPH OF MR.

6 TOLEN?

7 A NO ONE NEVER SHOWED ME A PHOTOGRAPH OF MR. TOLEN.

8 Q DID YOU EVER LOOK AT A PHOTOGRAPHIC LINEUP?

9 A YES, I DID.

10 Q WHERE AT?

11 A I THINK THAT WAS BATESVILLE (SIC).

12 Q BATESBURG?

13 A BATESBURG I THINK WAS THE NAME.

14 Q DID YOU IDENTIFY ANYBODY IN THAT PHOTOGRAPHIC LINEUP

15 AS LOOKING SIMILAR TO THE INDIVIDUALS THAT ENTERED YOUR

16 TRUCK?

17 A NO ONE.

18 Q NO ONE. HOW MANY PHOTOGRAPHS DID YOU SEE IN

19 BATESBURG?

20 A I THINK IT WAS SIX GUYS THEY SHOWED ME.

21 Q SIX GUYS?

22 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

23 (PAUSE).

24 THE COURT: ANYTHING FURTHER, MR. WILLIAMS?

25 MR. WILLIAMS: YOUR HONOR, I UNDERSTAND THE COURT

1 IS CONSCIOUS OF THE COURT'S TIME. I WOULD BEG THE COURT'S
2 INDULGENCE JUST BRIEFLY.

3 THE COURT: GO AHEAD.

4 (PAUSE).

5 MR. WILLIAMS: I DON'T HAVE ANYTHING FURTHER AT
6 THIS TIME, YOUR HONOR.

7 THE COURT: ANY REDIRECT?

8 MR. MAYE: NO, SIR, YOUR HONOR.

9 THE COURT: YOU CAN STEP DOWN, MR. DYSON.
10 ANYTHING FURTHER FROM THE STATE ON THIS POINT?

11 MR. MAYE: NO, SIR, YOUR HONOR.

12 THE COURT: MR. WILLIAMS?

13 MR. MAYE: WOULD YOU LIKE FOR US TO SUM UP OUR
14 PRESENTATION OR HEAR ARGUMENT?

15 THE COURT: I WILL HEAR ARGUMENT AT THIS TIME
16 UNLESS MR. WILLIAMS HAS ANY EVIDENCE HE WANTS TO PUT UP. I
17 DON'T THINK THERE WOULD BE ANY, BUT I WOULD GIVE HIM THAT
18 OPPORTUNITY AS FAR AS TESTIMONY. ANYTHING ON THIS
19 PARTICULAR POINT?

20 MR. WILLIAMS: YOUR HONOR, WE DON'T HAVE ANYTHING
21 FURTHER ON THIS.

22 THE COURT: I WOULD BE GLAD TO HEAR COUNSEL'S
23 ARGUMENT. MR. WILLIAMS, IT'S YOUR ARGUMENT SO LET ME HEAR
24 FROM YOU FIRST, PLEASE, SIR.

25 MR. WILLIAMS: YOUR HONOR, BASICALLY THE ONLY

1 POINT THAT WE CAN ARGUE, GIVEN THE WITNESS'S TESTIMONY
2 TODAY BY HIS OWN ACKNOWLEDGMENT, HE COMES IN TODAY TELLING
3 THIS COURT THAT THE INDIVIDUAL SEATED AT THIS TABLE TODAY
4 IS CERTAINLY NOT THE SAME SIZE AS THE INDIVIDUAL WHO
5 ENTERED HIS TRUCK THAT DAY.

6 YOUR HONOR, WE FURTHER ARGUE, GIVEN THE SETTING
7 AT THAT TIME, CERTAINLY MR. DYSON WOULD HAVE BEEN UNDER A
8 GREAT DEALT OF EMOTIONAL DISTRESS. CERTAINLY THAT WOULD
9 HAVE GIVEN HIM A LIMITED OPPORTUNITY TO VIEW THE
10 PERPETRATORS.

11 BASICALLY, YOUR HONOR, WE FEEL THAT HIS
12 RECOLLECTION, EVEN THOUGH HE IS SAYING HE DID IT, HIS
13 RECOLLECTION WOULD HAVE BEEN BEST AT THE TIME HE GAVE THE
14 STATEMENT ON OCTOBER 2, 1996.

15 IN THAT STATEMENT, YOUR HONOR, MR. DYSON
16 INDICATED IT WAS TWO BLACK MALES ABOUT MEDIUM BUILD WHO
17 APPROACHED HIS VEHICLE. HE DESCRIBED THESE INDIVIDUALS AS
18 BOYS. TODAY BY HIS OWN ADMISSION FROM THE STAND, HE SAID
19 OR HE WILL DESCRIBE MY CLIENT AS A MAN. IT'S ONLY BEEN
20 SOME YEAR THAT HAS GONE BY, YOUR HONOR.

21 AGAIN, GIVEN THE DESCRIPTION HE GAVE AT THE TIME
22 OF THIS OFFENSE AND THE BEST DESCRIPTION BEING ONE OF THE
23 BOYS HAD A GRAY SHIRT AND GRAY RAG ON HIS HEAD, WE FEEL HIS
24 TESTIMONY TODAY THAT HE CAN IDENTIFY MR. TOLEN AS ONE OF
25 THE PERPETRATORS IS NOT CREDIBLE. BASED UPON THAT WE WOULD

1 ASK THE COURT TO SUPPRESS ANY IN-COURT IDENTIFICATION OF
2 MR. TOLEN.

3 THE COURT: SOLICITOR.

4 MR. MAYE: YOUR HONOR, JUST VERY BRIEFLY. THE
5 STATE VERSUS STEWART IS DISPOSITIVE ON THIS ISSUE, 275 S.C.
6 447. LOOKING AT ALL THE FIVE PARTS OF THE TEST, THE
7 WITNESS CERTAINLY HAD AMPLE OPPORTUNITY TO SEE THE ACCUSED
8 IN THE CRIME. HE CERTAINLY HAD HIS RAPT ATTENTION DURING
9 THE TIME THAT THIS WAS PERPETRATED.

10 THE WITNESS TESTIFIED THAT HE WAS NOT ASKED TO
11 GIVE A DETAILED DESCRIPTION OF THE DEFENDANT AS TO HIS
12 PHYSICAL FEATURES. THERE IS ABSOLUTELY NO QUESTION FROM
13 THE TESTIMONY ON THE RECORD THAT THE DEFENDANT (SIC) IN
14 THIS CASE IS ABSOLUTELY CERTAINLY THAT THIS IS THE SAME
15 INDIVIDUAL THAT ROBBED HIM.

16 CERTAINLY WE ARE ONLY TALKING ABOUT A LITTLE BIT
17 OVER A YEAR AGO DURING THIS PERIOD OF TIME. WE DO NOT HAVE
18 THE LENGTH OF TIME THAT WOULD BRING HIS TESTIMONY INTO
19 QUESTION IN THIS CASE. I THINK IT'S CLEAR THAT HIS
20 IN-COURT IDENTIFICATION OF THIS DEFENDANT SHOULD BE
21 ALLOWED.

22 THE COURT: I THINK THE FACTORS -- THE TEST IS
23 CLEAR UNDER THE LAW ON WHAT MUST BE SHOWN. I THINK THE
24 FACTORS GO MORE TOWARD THE WEIGHT AND CERTAINLY NOT THE
25 ADMISSIBILITY. BUT BASED ON WHAT I HAVE HEARD, SUFFICIENT

1 EVIDENCE HAS BEEN SHOWN TO ALLOW THE TESTIMONY. THE MOTION
2 TO SUPPRESS IS DENIED.

3 OBVIOUSLY, MR. WILLIAMS, YOU CAN GO INTO THOSE
4 MATTERS FOR PURPOSES OF IMPEACHMENT OR ATTACKING THE
5 CREDIBILITY OF THE IDENTIFICATION; BUT IT WILL BE ALLOWED
6 TO COME IN. I WOULD BE GLAD TO HEAR ANY OTHER ARGUMENTS.
7 I THINK YOU HAVE ALSO MOVED TO SUPPRESS A STATEMENT OF MR.
8 BRANNON; IS THAT RIGHT?.

9 MR. WILLIAMS: YES, SIR, YOUR HONOR. IF IT
10 PLEASE THE COURT. YOUR HONOR, WE MOVE TO SUPPRESS THE
11 CONFESSION TAKEN FROM MR. TOLEN'S CO-DEFENDANT. YOUR
12 HONOR, WE WILL ARGUE THAT THAT CONFESSION WAS TAKEN IN
13 VIOLATION OF MR. BRANNON'S CONSTITUTIONAL RIGHT TO HAVE AN
14 ATTORNEY.

15 WE CERTAINLY MAINTAIN THAT HIS GIVING OF THAT
16 CONFESSION WAS NOT VOLUNTARY, AND HE CERTAINLY DIDN'T
17 KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO HAVE A
18 LAWYER PRESENT AT THE TIME HE MADE THAT CONFESSION.
19 OBVIOUSLY, YOUR HONOR, THERE IS A QUESTION OF WHETHER OR
20 NOT WE HAVE STANDING TO RAISE THIS ISSUE TO SUPPRESS MR.
21 TOLEN'S CO-DEFENDANT'S CONFESSION.

22 WE MAINTAIN, YOUR HONOR, THAT WE WOULD HAVE
23 STANDING BASED UPON THE FACT THAT IT'S MY UNDERSTANDING OF
24 THE LAW, YOUR HONOR, AND GOING BACK TO MIRANDA VERSUS
25 ARIZONA AND THE PROGENY OF THE CASES THAT FOLLOW THAT IS

1 THAT ANY TIME A CONFESSION IS TAKEN IN VIOLATION OF A
2 CITIZEN'S RIGHTS, THEN THAT CONFESSION IS GOING TO BE
3 SUPPRESSED.

4 AS IT RELATES TO MR. BRANNON, CERTAINLY -- I'M
5 SORRY, MR. TOLEN -- AS IT RELATES TO MR. TOLEN, CERTAINLY
6 HE HAS RIGHT TO A TRIAL WHEREBY THE EVIDENCE THAT IS
7 OFFERED AGAINST HIM IN COURT HAS NOT BEEN OBTAINED
8 ILLEGALLY.

9 WE WOULD SUBMIT THAT HE HAS A DUE PROCESS RIGHT
10 TO HAVE A TRIAL WHEREIN THERE IS NO ILLEGALLY OBTAINED
11 EVIDENCE AGAINST HIM. AS IT RELATES TO STANDING, I CAN'T
12 IMAGINE ANYBODY ELSE WHO WOULD HAVE GREATER STANDING AT
13 THIS POINT TO RAISE THIS ISSUE, YOUR HONOR.

14 THE COURT: MR. BRANNON MIGHT HAVE SOME PRETTY
15 GOOD STANDING TO RAISE IT.

16 MR. WILLIAMS: WELL, I WOULD SUBMIT, YOUR HONOR,
17 THAT THEY WOULD HAVE EQUAL STANDING BASED UPON THE FACT
18 THAT -- I BELIEVE IT'S STATE VERSUS CHAVIS THAT IS ONE OF
19 THE CASES. I DON'T KNOW IF IT ESTABLISHES BUT CERTAINLY IS
20 SUPPORTING THE CONCEPT OF THE HAND OF ONE IS THE HAND OF
21 ALL.

22 IT SEEMS TO ME IF YOU CAN TAKE THE CONDUCT OF A
23 CO-DEFENDANT AND USE THAT SAME CONDUCT TO HELP CONVICT AN
24 INDIVIDUAL ON TRIAL, THEY ARE ESSENTIALLY STANDING IN THE
25 SAME SHOES. BASED UPON THAT IF THE STATE IS GOING TO BE

1 ABLE TO USE THE CONFESSION TAKEN OF THE CO-DEFENDANT,
2 CERTAINLY I THINK WE WOULD HAVE A RIGHT TO CHALLENGE THAT
3 CONFESSION.

4 THE COURT: MY UNDERSTANDING IS THE STATE IS
5 INTENDING TO CALL THIS PERSON LIVE AND NOT TENDERING JUST A
6 WRITTEN OR ORAL STATEMENT.

7 MR. WILLIAMS: THAT'S MY UNDERSTANDING AS WELL,
8 YOUR HONOR. HOWEVER, WHILE WE ANTICIPATE THAT MR. BRANNON
9 IS GOING TO TESTIFY CONSISTENT WITH HIS STATEMENT AND HIS
10 CONFESSION, THERE IS THE PROBABILITY THAT MR. BRANNON MAY
11 TESTIFY OTHERWISE. IN THE EVENT HE WERE TO DO THAT,
12 OBVIOUSLY THE STATE WOULD THEN AT THAT TIME INTEND TO
13 IMPEACH HIM WITH HIS PREVIOUSLY WRITTEN CONFESSION.

14 NOW, IF THAT CONFESSION WAS TAKEN IN VIOLATION OF
15 MR. BRANNON'S RIGHTS, WE WOULD TAKE THE POSITION THAT THAT
16 STATEMENT SHOULD NOT BE OFFERED, EVEN AS IMPEACHMENT
17 EVIDENCE.

18 THE COURT: DO YOU HAVE ANY CASES THAT WOULD GIVE
19 YOU A STANDING TO RAISE THAT?

20 MR. WILLIAMS: YOUR HONOR, THE CASES THAT WE DO
21 HAVE I WILL PASS THEM UP TO YOUR HONOR.

22 THE COURT: MY GUESS IS ANY CASES WHERE THIS HAS
23 BEEN RAISED OBVIOUSLY---

24 MR. WILLIAMS: YOUR HONOR, WE HAVE STATE VERSUS
25 CURLEY.

1 THE COURT: IS THAT A CO-DEFENDANT'S STATEMENT?

2 MR. WILLIAMS: YES, SIR.

3 THE COURT: WHAT DOES THE CASE SAY?

4 MR. WILLIAMS: THE CITATION IS 171 S.E.2D 699.

5 YOUR HONOR, THIS WAS A CASE WHEREIN TWO INDIVIDUALS HAD
6 BEEN ARRESTED AND CHARGED AND WERE PROSECUTED FOR
7 SAFECRACKING. THE STATE OFFERED THE CONFESSION OF ONE
8 CO-DEFENDANT AGAINST THE OTHER CO-DEFENDANT.

9 THE COURT: THROUGH LIVE TESTIMONY OR THROUGH THE
10 STATEMENT GIVEN TO THE POLICE?

11 MR. WILLIAMS: YOUR HONOR, THIS WOULD HAVE BEEN
12 THROUGH...

13 THE COURT: HAND IT UP. I WILL TAKE A LOOK AT
14 IT.

15 MR. WILLIAMS: YOUR HONOR, THIS WOULD HAVE BEEN
16 THROUGH LIVE TESTIMONY. THE SUPREME COURT ULTIMATELY
17 CONCLUDED THAT THE DEFENDANT ON TRIAL AT THAT TIME DID NOT
18 HAVE STANDING. HOWEVER, A CLOSE READING OF THAT CASE, YOUR
19 HONOR, WOULD INDICATE THAT THAT STATEMENT APPEARS TO BE
20 DICTA BECAUSE IT WASN'T NECESSARILY NEEDED FOR A
21 DETERMINATION OF THE CASE.

22 THE COURT: LET ME HEAR FROM THE STATE.

23 MR. MAYE: YOUR HONOR, IT'S PRETTY CLEAR IN SOUTH
24 CAROLINA, AND I BELIEVE ELSEWHERE, THAT HE DOESN'T HAVE ANY
25 STANDING TO RAISE THIS. MR. RALPH KENNEDY REPRESENTS THE

1 CO-DEFENDANT IN THIS CASE, MR. BRANNON.

2 MR. BRANNON HAS ALREADY HERE WITHIN THE GENERAL
3 SESSIONS COURT IN SALUDA COUNTY, HE WAIVED ALL HIS RIGHTS.
4 HE VOLUNTARILY GIVEN A STATEMENT. HE SIGNED A WRITTEN
5 WAIVER.

6 MR. WILLIAMS NOT ONLY DOES NOT HAVE ANY STANDING
7 TO RAISE THIS, THIS IS MR. BRANNON'S -- YES, SIR. HE HAS
8 ALREADY PLED GUILTY IN THIS COURT AND HAS AGREED TO TESTIFY
9 AND WILL TESTIFY FOR THE STATE IN THIS CASE, YOUR HONOR.

10 IT'S CLEAR IN THIS CASE THAT MR. WILLIAMS
11 COULDN'T REPRESENT BOTH OF THESE DEFENDANTS. IT WAS
12 CLEARLY A CONFLICT IN THEIR INTERESTS WHICH ARE DIVERGENT
13 IN THIS CASE. HE HAS WAIVED ALL OF HIS RIGHTS. MR.
14 WILLIAMS DOESN'T HAVE ANY STANDING TO RAISE THIS ISSUE AND
15 WE ARE PREPARED TO GO FORWARD.

16 THE COURT: ANYTHING FURTHER, MR. WILLIAMS?

17 MR. WILLIAMS: YOUR HONOR, WE WOULD ONLY RELY
18 UPON AND MAKE A ARGUMENT BASED ON THE CASE OF TOWNSEND
19 VERSUS TOWNSEND THAT DEALT WITH THE ISSUE OF STANDING.
20 AGAIN THE CITATION IS 474 S.E.2D 424.

21 YOUR HONOR, THAT WAS ACTUALLY A FAMILY COURT CASE
22 WHEREIN THE FAMILY COURT JUDGE DETERMINED THAT AN ATTORNEY
23 LACKED STANDING TO CHALLENGE A PARTICULAR ORDER RELATING TO
24 A CONTINUANCE IN THAT CASE, AS WELL AS AN ORDER DENYING THE
25 FATHER'S ACTION, HIS CLAIM FOR REDUCTION IN CHILD SUPPORT

1 AND THE MOTHER'S CLAIM IN AWARDING -- THE MOTHER'S CLAIM
2 FOR ATTORNEY FEES.

3 THE ATTORNEY ACTUALLY BROUGHT THE APPEAL IN THIS
4 CASE, AND THE COURT HELD THAT THE ATTORNEY DIDN'T HAVE
5 STANDING IN THIS MATTER TO HAVE THIS CASE CONTINUED -- I
6 MEAN, TO DENY THE MOTION FOR A CONTINUANCE.

7 THE COURT: YES, BUT THAT'S TOTALLY DIFFERENT
8 FROM A CONFESSION TO A CRIME, I BELIEVE, THE FAMILY COURT.
9 I DON'T SEE WHERE THAT IS GOING TO GIVE YOU ANY SUPPORT. I
10 AM GOING TO DENY THE MOTION.

11 YOU CAN SUBMIT WHATEVER CASES YOU WANT TO, BUT
12 STATE VERSUS CURLEY IS CLEAR. YOU HAVE HANDED IT UP, THAT
13 A CO-DEFENDANT WOULD NOT HAVE STANDING TO CHALLENGE THE
14 VOLUNTARINESS OF A CO-DEFENDANT'S STATEMENT, PARTICULARLY
15 WHEN A CO-DEFENDANT IS GOING TO TESTIFY IN PERSON. IF HE
16 DOES NOT, THEN THERE ARE ALL SORT OF OTHER ISSUES THAT COME
17 UP THAT WE WILL DEAL WITH AT THAT TIME.

18 IT SEEMS LIKE THERE WAS ONE OTHER MATTER THAT I
19 THOUGHT AND I HAD INDICATED I COULD DEAL WITH BEST IF AND
20 WHEN IT CAME UP HAVING TO DO WITH SOMETHING ABOUT VICTIM
21 IMPACT STATEMENT INFORMATION.

22 I DON'T KNOW WHAT THE STATE IS GOING TO BE ASKING
23 THE VICTIM IN THE CASE. LET'S JUST LEAVE IT. YOU WERE
24 CONCERNED ABOUT WHAT HE MIGHT SAY ABOUT WHAT HE WAS
25 THINKING OR SOMETHING LIKE THAT---

1 MR. WILLIAMS: YES, SIR.

2 THE COURT: ----AT THE TIME OF THE ROBBERY. LET'S
3 JUST WAIT AND SEE WHAT THE TESTIMONY IS. IF YOU THINK
4 THERE IS A QUESTION THAT IS OBJECTIONABLE, BRING IT UP,
5 COME UP HERE AND I WILL TALK TO YOU. IF I NEED TO GET THE
6 JURY OUT, WE WILL DO THAT AT THAT TIME. IT MAY BE
7 SOMETHING THAT DOES NOT COME UP.

8 MR. WILLIAMS: YOUR HONOR, LASTLY THERE IS A
9 MATTER I WOULD LIKE TO PUT ON THE RECORD. CERTAINLY I
10 WOULD ASK THE COURT -- SOME GUIDANCE FROM THE COURT ON
11 THIS.

12 THE COURT: ALL RIGHT, SIR.

13 MR. WILLIAMS: I HAVE HAD CERTAIN DISCUSSIONS
14 WITH MY CLIENT AND CERTAINLY MADE RECOMMENDATIONS TO
15 MY CLIENT AS HIS ATTORNEY DURING THE COURSE OF MY
16 REPRESENTATION OF HIM WHICH HE HAS OBJECTED TO. I AM A
17 LITTLE CONCERNED ABOUT THIS, YOUR HONOR, BECAUSE I DON'T
18 BELIEVE HIS POSITION HE TOOK WAS IN HIS BEST INTEREST.

19 I JUST WANT IN SOME WAY FOR THE RECORD TO REFLECT
20 THAT HE HAS BEEN ADVISED AS SO CERTAIN MATTERS IN THIS CASE
21 AND THAT I HAVE MADE CERTAIN RECOMMENDATIONS TO HIM. SO IF
22 IT COMES BACK UP AGAIN, I WON'T BE IN A POSITION OF HAVING
23 TO ESTABLISH THAT I, IN FACT, DID ADVISE MY CLIENT OF
24 CERTAIN THINGS.

25 THE COURT: ALL RIGHT, SIR. YOU HAVE MADE THAT

1 STATEMENT. I CAN SURMISE SOME OF WHAT YOU MIGHT BE TALKING
2 ABOUT. I DON'T THINK IT WOULD BE APPROPRIATE TO PUT ON THE
3 RECORD THE ADVICE THAT YOU HAVE GIVEN HIM. THAT MAY WELL
4 VIOLATE ATTORNEY/CLIENT PRIVILEGE.

5 THE BEST THING A LAWYER CAN DO IS EXERCISE HIS
6 BEST JUDGMENT AND MAKE RECOMMENDATIONS TO HIS CLIENT. THE
7 ULTIMATE DECISION IS UP TO THE CLIENT. THE CLIENT MAKES
8 THOSE DECISIONS AND THE LAWYER, IF HE HAS EXERCISED HIS
9 BEST JUDGMENT AND HAS GIVEN THE CLIENT THAT OPPORTUNITY
10 AND THE BENEFIT OF THAT KNOWLEDGE OF THE LEGAL SYSTEM AND
11 THE REPERCUSSIONS AND ALL OF THAT, THAT IS THE BEST YOU CAN
12 DO.

13 ONCE YOU HAVE DONE THAT, I THINK THAT'S WHAT YOU
14 JUST TOLD THE COURT. IF THERE IS A DISAGREEMENT AND THE
15 CLIENT MAKES THE DECISION AND DOWN THE ROAD SOMEWHERE IT
16 TURNS OUT TO HAVE BEEN A WRONG DECISION, OF COURSE, IT'S
17 TOO LATE TO CHANGE IT.

18 IF YOU HAVE GIVEN HIM YOUR BEST ADVICE AND THAT
19 IS WHAT YOU HAVE JUST TOLD THE COURT AND YOUR CLIENT MAKES
20 THE ULTIMATE DECISION, EVERYBODY LIVES WITH IT. SO YOU
21 HAVE PUT THAT ON THE RECORD. I THINK THAT IS PROBABLY AS
22 FAR AS YOU CAN GO AS FAR AS ANYTHING ALONG THOSE LINES.

23 MR. WILLIAMS: YOUR HONOR, I WOULD QUERY AS TO
24 WHETHER OR NOT AN OFFER MADE BY THE STATE---

25 THE COURT: IF Y'ALL ARE GOING TO TALK ABOUT

1 OFFERS, YOU DON'T NEED ME. I DON'T GET INVOLVED IN THAT.

2 MR. WILLIAMS: YES, SIR.

3 THE COURT: YOU CAN TALK TO THEM AND DISCUSS WITH
4 THEM WHATEVER YOU WANT TO. I DON'T THINK IT'S APPROPRIATE
5 FOR THAT TO BE TALKED ABOUT HERE ON THE RECORD IN OPEN
6 COURT.

7 I DON'T WANT TO CUT YOU OFF BUT I DON'T GET
8 INVOLVED IN ANY NEGOTIATIONS OR ANY RECOMMENDATIONS OR ANY
9 OFFERS OR ANYTHING LIKE THAT. YOU CAN TALK WITH THE
10 SOLICITOR'S OFFICE. IF I CAN HELP Y'ALL OUT, I WILL TALK
11 WITH YOU. THEN WE WOULD PUT ANYTHING ON THE RECORD. RIGHT
12 NOW I DON'T EVEN WANT TO KNOW, WHAT, IF ANY, NEGOTIATIONS
13 HAVE GONE ON.

14 MR. WILLIAMS: THANK YOU, YOUR HONOR.

15 THE COURT: ANYTHING ELSE? I THINK THAT COVERS
16 EVERYTHING I HAD ON MY LIST.

17 MR. WILLIAMS: IT DOES.

18 THE COURT: WE WILL START BACK -- I HAD SCHEDULED
19 SOME FAIRLY SHORT MOTIONS AT TWO O'CLOCK. WE WILL START
20 THIS TRIAL AT 2:30. WE WILL STAND ADJOURNED UNTIL THAT
21 TIME.

22 (WHEREUPON THERE WAS A LUNCHEON RECESS).

23 THE COURT: IS THE STATE READY TO PROCEED?

24 MR. MAYE: THE STATE IS READY, YOUR HONOR.

25 THE COURT: IS THE DEFENSE READY, MR. WILLIAMS?

1 MR. WILLIAMS: YES, SIR, YOUR HONOR.

2 THE COURT: LET'S BRING THE JURY OUT, PLEASE.

3 (THE JURY RETURNS TO THE COURTROOM AT 2:40 P.M.).

4 THE COURT: LADIES AND GENTLEMEN, I WAS ADVISED
5 THAT YOU HAD SELECTED MRS. MOSS AS YOUR FOREPERSON. I
6 WILL APPOINT HER AS THE FOREPERSON AND AGAIN REMIND YOU
7 THAT HER VOTE DOES NOT COUNT ANYMORE THEN ANYONE ELSE'S
8 DOES. SHE WILL PRESIDE IN THE JURY ROOM. IF ANY OF YOU
9 HAVE PROBLEMS OR QUESTIONS, JUST BRING THOSE TO HER
10 ATTENTION AND SHE CAN COMMUNICATE THOSE PROBLEMS OR
11 QUESTIONS TO THE COURT.

12 NOW THAT I HAVE LET YOU ALL GET COMFORTABLY
13 SETTLED IN, I NEED YOU TO STAND AND RAISE YOUR RIGHT HAND.
14 THE CLERK OF COURT WILL GIVE YOU YOUR OATH AS JURORS IN
15 THIS CASE. IF WILL STAND AND RAISE YOUR RIGHT HAND,
16 PLEASE.

17 (THE JURY IS DULY SWORN).

18 THE COURT: LET ME TAKE JUST A MINUTE TO EXPLAIN
19 PROCEDURALLY WHAT IS GOING TO OCCUR DURING THIS TRIAL.
20 THEN I WILL RECOGNIZE THE ATTORNEYS. IN JUST A COUPLE OF
21 MINUTES, I WILL RECOGNIZE THE ATTORNEYS TO MAKE OPENING
22 STATEMENTS TO YOU. WHEN THE ATTORNEYS ARE MAKING THEIR
23 OPENING STATEMENTS, THEY ARE NOT TESTIFYING. IN OTHER
24 WORDS, WHAT THEY SAY IS NOT TESTIMONY; BUT THEY WILL BE
25 EXPLAINING AND MAKING THEIR POSITIONS CLEAR IN THE CASE.

1 THE STATE HAS THE BURDEN OF PROOF. I HAVE
2 INDICATED TO YOU THAT THIS IS A CRIMINAL CASE. IT HAS BEEN
3 COMMENCED BY THE STATE. IT IS BASED ON THE INDICTMENTS
4 THAT I HELD UP AND SHOWED YOU THIS MORNING. THE
5 INDICTMENTS ARE NOT EVIDENCE AND CANNOT BE CONSIDERED AS
6 EVIDENCE OF THE CHARGES, BUT THEY ARE ALLEGATIONS AND THEY
7 HAVE THE CHARGES IN THIS CASE. THEY WILL EXPLAINED TO YOU
8 IN JUST A MOMENT.

9 THE STATE HAS THE BURDEN OF PROOF THAT I WILL
10 EXPLAIN TO YOU AT THE END OF THE CASE. BUT FOR THAT REASON
11 THE ASSISTANT SOLICITOR WILL HAVE THE OPPORTUNITY TO MAKE
12 THE FIRST STATEMENT TO YOU, AND THEN THE DEFENSE COUNSEL IS
13 GIVEN THAT SAME OPPORTUNITY.

14 AFTER THE ATTORNEYS HAVE MADE THEIR OPENING
15 STATEMENTS, THEN WE WILL PROCEED WITH THE PRESENTATION OF
16 TESTIMONY AND THE OTHER EVIDENCE THAT WILL BE PRESENTED IN
17 THE CASE.

18 WHEN ALL OF THE EVIDENCE HAS BEEN PRESENTED, THE
19 ATTORNEYS WILL BE GIVEN AN OPPORTUNITY TO COME BACK BEFORE
20 YOU AND MAKE CLOSING ARGUMENTS. THEN I AM GOING TO
21 INSTRUCT YOU OR CHARGE YOU WITH WHAT THE LAW IS. THEN
22 YOU ARE GOING TO BE SENT OUT TO DELIBERATE AND REACH A
23 VERDICT.

24 AS I HAVE INDICATED SEVERAL TIMES PREVIOUSLY, YOU
25 ARE NOT PERMITTED TO TALK ABOUT THIS CASE WITH ANYBODY

1 INSIDE OR OUTSIDE THE COURTHOUSE, NOT EVEN WITH YOUR FELLOW
2 JURORS UNTIL I INSTRUCT YOU TO. THAT'S AT THE END OF THE
3 CASE.

4 YOUR PURPOSE AS JURORS IN THIS CASE IS TO
5 DETERMINE WHAT THE FACTS ARE. FOR THAT PURPOSE YOU MAKE
6 THAT DETERMINATION BY LISTENING TO THE TESTIMONY AND
7 OBSERVING THE EVIDENCE.

8 THE EVIDENCE MAY TAKE ONE OF SEVERAL FORMS. IT
9 MAY BE SWORN TESTIMONY. IT MAY BE EXHIBITS THAT ARE
10 ADMITTED INTO EVIDENCE. THERE MAY BE A POINT DURING THE
11 TRIAL WHERE THE ATTORNEYS MAY ASK TO PUBLISH CERTAIN
12 EXHIBITS TO YOU AND THAT IS APPROPRIATE.

13 ALL THAT MEANS IS IF THERE IS A PICTURE OR SOME
14 OTHER DOCUMENTARY EVIDENCE AND AN ATTORNEY WANTS TO PUBLISH
15 THAT TO YOU, THAT SIMPLY MEANS THE ATTORNEY IS GOING TO
16 HAND IT TO YOU AND ASK YOU TO PASS IT AROUND. THERE IS
17 NOTHING WRONG WITH THAT. I WOULD ASK YOU TO CONTINUE TO
18 LISTEN TO THE TESTIMONY THAT IS GOING ON WHILE YOU MIGHT BE
19 PASSING THE EXHIBIT AROUND.

20 ANY EXHIBITS THAT ARE ADMITTED INTO EVIDENCE, YOU
21 WILL HAVE THOSE WITH YOU IN THE JURY ROOM WHEN YOU ARE
22 DELIBERATING SO YOU CAN GIVE THEM CLOSE EXAMINATION AT THAT
23 POINT IN TIME.

24 FROM TIME TO TIME THE ATTORNEYS MAY OBJECT TO
25 CERTAIN QUESTIONS. THEY MAY OBJECT TO CERTAIN EXHIBITS

1 THAT ARE OFFERED INTO EVIDENCE. DON'T HOLD THAT AGAINST A
2 LAWYER. DON'T HOLD THAT AGAINST THE LAWYER'S CLIENT. THAT
3 IS SIMPLY THE LAWYER'S WAY OF LETTING ME KNOW THAT THERE IS
4 A RULE OF EVIDENCE THAT COMES INTO PLAY. I WILL HAVE TO
5 MAKE A RULING.

6 IF I SUSTAIN THAT OBJECTION, YOU CANNOT TRY TO
7 GUESS AT WHAT THE ANSWER WOULD HAVE BEEN OR IF THERE IS AN
8 EXHIBIT THAT IS OFFERED IF IT IS OBJECTED TO IF I SUSTAIN
9 THE OBJECTION, YOU CANNOT TRY TO GUESS AT WHAT THAT EXHIBIT
10 WAS. YOU CAN ONLY RELY ON THE TESTIMONY AND EVIDENCE THAT
11 IS ADMITTED IN THE RECORD OF THIS CASE.

12 HAVING SAID THAT, WE WILL PROCEED WITH THE
13 TESTIMONY. I TOLD YOU EARLIER I TRY TO TAKE A BREAK ABOUT
14 EVERY HOUR OR HOUR AND 15 MINUTES TO KEEP YOU FRESH. WE
15 WILL PLAN TO DO THAT. IF YOU FEEL LIKE YOU JUST CAN'T WAIT
16 UNTIL THAT POINT IN TIME, JUST GET MY ATTENTION AND WE WILL
17 TAKE A RECESS AT THAT TIME.

18 ALSO ANY WITNESS WHO TESTIFIES OR ANY EXHIBITS
19 THAT ARE SHOWN TO YOU, BE SURE THAT YOU CAN SEE AND HEAR
20 EVERYTHING THAT IS PRESENTED TO YOU. IF YOU CAN'T, IF YOU
21 WILL PLEASE GET MY ATTENTION, I WILL BE SURE THAT EITHER
22 THE WITNESSES SPEAK UP OR THAT THE EXHIBIT IS MOVED SO THAT
23 YOU CAN SEE IT WHILE THE TESTIMONY IS GOING ON ABOUT THAT
24 PARTICULAR EXHIBIT. SOLICITOR.

25 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.

1 THE COURT: YES, SIR.

2 MR. MAYE: I BELIEVE WE HAVE WITNESSES WHO ARE IN
3 THE COURTROOM AT THIS TIME.

4 THE COURT: THERE IS A SEQUESTRATION ORDER IN
5 EFFECT. ANY WITNESS IN THE CASE NEEDS TO EXCUSE THEMSELVES
6 FROM THE COURTROOM, ANY AND ALL WITNESSES IN THE CASE.

7 (PAUSE).

8 THE COURT: MR. MAYE.

9 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.

10 THE COURT: ALL RIGHT, SIR.

11 MR. MAYE: LADIES AND GENTLEMEN OF THE JURY,
12 MR. WILLIAMS, AND MEMBERS OF THE BAR, MY NAME IS ERVIN
13 MAYE. I AM AN ASSISTANT SOLICITOR FOR THE ELEVENTH
14 CIRCUIT. I WORK FOR MR. DONNIE MYERS OUT OF LEXINGTON.
15 IT'S MY PRIVILEGE TO BE HERE PROSECUTING THIS CASE ON
16 BEHALF OF THE PEOPLE OF SALUDA COUNTY.

17 OUT OF ALL THE PEOPLE THAT ARE HERE IN THE
18 COURTROOM TODAY, THE JUDGE, THE LAWYERS, ALL OF THE PEOPLE
19 THAT ARE PRESENT, ALL OF YOU HAVE THE MOST INCONVENIENCE IN
20 THE CASE OR HAVE BEEN INCONVENIENCED THE MOST. YOU HAVE
21 BEEN TAKEN AWAY FROM YOUR DAILY ROUTINE, FROM YOUR JOBS OR
22 WHATEVER YOU WOULD NORMALLY BE DOING TODAY AND BROUGHT IN
23 HERE TO SERVE AS JURORS.

24 I SUBMIT TO YOU THAT YOU 12 PEOPLE AND THE
25 ALTERNATE HAVE THE MOST IMPORTANT JOB IN THIS COURTROOM

1 BECAUSE EACH OF YOU SIT AS THE JUDGES OF THE FACTS IN THIS
2 CASE. THE FACTS IN THIS CASE ARE GOING TO COME TO YOU FROM
3 THE WITNESS STAND.

4 EACH OF YOU BRING INTO THIS COURTROOM THE SUM
5 TOTAL OF YOUR LIFE EXPERIENCES. I SUBMIT TO YOU
6 INDIVIDUALLY AND COLLECTIVELY YOU 12 PEOPLE ARE BETTER
7 JUDGES OF THE FACTS BRINGING ALL OF YOUR LIFE EXPERIENCES
8 IN HERE THAN ANY ONE SINGLE PERSON ANYWHERE IN THE WORLD.

9 I ONLY ASK OF EACH OF YOU THAT YOU LISTEN TO THE
10 FACTS AS THEY COME FROM THE WITNESS STAND, THINK ABOUT THE
11 CREDIBILITY, THE BELIEVABILITY, THE TESTIMONY THAT YOU ARE
12 HEARING AND APPLY IT TO THE LAW AS THE JUDGE GIVES IT TO
13 YOU AT THE CONCLUSION OF THIS CASE AND COME BACK WITH A
14 VERDICT THAT SPEAKS THE TRUTH. IF YOU HAVE DONE THAT, YOU
15 WILL HAVE FULFILLED YOUR OBLIGATION AS JURORS; AND THERE IS
16 NOTHING ELSE WE COULD ASK OF YOU.

17 LADIES AND GENTLEMEN, SEATED AT THIS TABLE OVER
18 HERE WITH HIS ATTORNEY, MR. VANNIE WILLIAMS, IS THE
19 DEFENDANT IN THIS CASE, MR. FRANK TOLEN. MR. TOLEN IS
20 CHARGED WITH THE CRIME OF ARMED ROBBERY.

21 ARMED ROBBERY IS EXACTLY WHAT IT SOUNDS LIKE.
22 IT'S TAKING UP A WEAPON AND IT'S ROBBING SOMEBODY THROUGH
23 THE USE OF THAT WEAPON. IN THIS CASE THE WEAPON THAT THE
24 STATE IS GOING TO PROVE TO YOU THAT MR. TOLEN USED IN THIS
25 CASE WAS A PISTOL.

1 THE OTHER CRIME FOR WHICH HE STANDS ACCUSED IS
2 POSSESSION OF A WEAPON BY A PERSON CONVICTED OF CRIME OF
3 VIOLENCE. THROUGH TESTIMONY AND EVIDENCE THAT YOU ARE
4 GOING TO HEAR AND ALSO THROUGH STIPULATION OR AGREEMENT ON
5 THE DEFENSE'S PART IN THIS CASE, WE ARE GOING TO PROVE TO
6 YOU THAT ON LATE EVENING HOURS OF OCTOBER 1ST AND THE EARLY
7 MORNING HOURS OF OCTOBER 2ND, 1996, MR. TOLEN COMMITTED THE
8 CRIME OF ARMED ROBBERY AND HE COMMITTED THE CRIME OF
9 POSSESSION OF A WEAPON AFTER HE HAD BEEN CONVICTED OF A
10 CRIME OF VIOLENCE HERE IN THE COURTS OF THE STATE OF SOUTH
11 CAROLINA.

12 OUT OF ALL THE WITNESSES IN THE CASE THAT YOU ARE
13 GOING TO HEAR FROM, ONE OF THE MOST IMPORTANT IS SEATED
14 HERE BEHIND THE STATE'S TABLE. THAT'S THE VICTIM IN THE
15 CASE, MR. OATON DYSON. YOU ARE GOING TO LEARN THROUGH
16 TESTIMONY IN THIS CASE THAT HE IS AN OVER-THE-ROAD TRUCK
17 DRIVER. HE CAME TO SALUDA COUNTY ON A RUN AND THAT
18 SOMETIME IN THE VERY LATE HOURS OF OCTOBER THE 1ST, 1996,
19 HE WAS ROBBED AT GUNPOINT BY THE DEFENDANT IN THIS CASE,
20 MR. FRANK TOLEN.

21 YOU ARE ALSO GOING TO HEAR FROM OFFICERS. YOU
22 ARE GOING TO HEAR FROM PEOPLE THAT WERE WITNESSES TO THE
23 EVENTS OF THAT NIGHT. MOST IMPORTANTLY YOU ARE GOING TO
24 HEAR FROM THE CO-DEFENDANT IN THIS CASE.

25 MR. TOLEN IN THIS CASE WHEN HE COMMITTED THESE

1 CRIMES, HE DIDN'T ACT ALONE. HE HAD A CO-DEFENDANT, A
2 YOUNG MAN NAMED WADE BRANNON WHO HAS ALREADY PLED GUILTY TO
3 A LESSER CRIME INVOLVED IN THIS CASE. HE IS TESTIFYING FOR
4 THE STATE.

5 I SUBMIT TO YOU THAT YOU WILL LEARN FROM THE
6 WITNESS STAND THAT HE HAS ALREADY PLED GUILTY IN THIS
7 COURTROOM TO A CRIME OF STRONG ARMED ROBBERY, AND HE HAS
8 AGREED TO TESTIFY FOR THE STATE IN THIS CASE.

9 LADIES AND GENTLEMEN, THE ONE THING I WANT TO
10 STRESS TO YOU FIRST AND FOREMOST IS THE CRIME IN THIS CASE
11 IS AGAINST ALL OF THE PEOPLE OF THE STATE OF SOUTH
12 CAROLINA.

13 IN THIS CASE YOU ARE GOING TO LEARN THAT IT'S NO
14 MORE CLEARLY ILLUSTRATED THAN IN THIS CASE BECAUSE THE
15 VICTIM IN THIS CASE YOU ARE GOING TO LEARN, MR. DYSON, WHO
16 IS AN OVER-THE-ROAD TRUCK DRIVER, AFTER VERY LENGTHY AND
17 INVOLVED SEARCHES ON THE PART OF LAW ENFORCEMENT WAS
18 BROUGHT BACK HERE AND DETAINED IN THE SALUDA COUNTY LAW
19 ENFORCEMENT CENTER AS A MATERIAL WITNESS. HE HAS BEEN HERE
20 IN SALUDA COUNTY RIGHT UP HERE IN THE SALUDA COUNTY
21 DETENTION CENTER SINCE THE 5TH OF JANUARY.

22 THE CRIME IN THIS CASE, LADIES AND GENTLEMEN, IS
23 AGAINST ALL OF THE PEOPLE OF THIS STATE AND IN PARTICULAR
24 THE PEOPLE OF SALUDA COUNTY. I ONLY ASK THAT YOU GIVE YOUR
25 FULL ATTENTION TO EACH OF THE WITNESSES, APPLY THE FACTS OF

Appendix 70

69

1 THIS CASE TO THE LAW THAT THE JUDGE GIVES TO YOU AND COME
2 BACK WITH A VERDICT THAT SPEAKS THE TRUTH.

3 I SUBMIT TO YOU THAT THE STATE IS CONFIDENT THAT
4 WE WILL PROVE THIS CASE BEYOND A REASONABLE DOUBT. WE WILL
5 PROVE THIS CASE BEYOND ALL DOUBT. I APPRECIATE YOUR
6 ATTENTION THIS AFTERNOON.

7 THE COURT: MR. WILLIAMS.

8 MR. WILLIAMS: THANK YOU, YOUR HONOR. IF IT
9 PLEASES THE COURT.

10 THE COURT: ALL RIGHT, SIR.

11 MR. WILLIAMS: THE FIRST THING I WOULD LIKE TO
12 DO IS TAKE AN OPPORTUNITY TO INTRODUCE MYSELF TO YOU ALL.
13 SOME FACES I RECOGNIZE. SOME I DON'T. OBVIOUSLY I AM
14 VANNIE WILLIAMS, JR. AND I REPRESENT MR. FRANK TOLEN. I
15 WAS BORN AND RAISED HERE IN SALUDA, ATTENDED ALL THE
16 SCHOOLS HERE.

17 AFTER HAVING GRADUATED FROM SALUDA HIGH SCHOOL, I
18 WENT ON TO ANDERSON COLLEGE. UPON GRADUATION FROM THERE, I
19 WENT TO FURMAN UNIVERSITY AND I WENT THROUGH THE UNIVERSITY
20 OF SOUTH CAROLINA SCHOOL OF LAW. FOR THE BETTER PART OF MY
21 CAREER, I HAVE BEEN PRACTICING LAW HERE IN MY HOME TOWN OF
22 SALUDA.

23 NOW, I HAVE THE PRIVILEGE OF REPRESENTING MR.
24 FRANK TOLEN, WHO YOU HAVE ALREADY HEARD ABOUT, THE
25 GENTLEMAN SEATED WITH ME AT MY TABLE. BUT LET ME TELL YOU

1 A FEW OTHER THINGS ABOUT MR. TOLEN, OTHER THAN THE FACT
2 THAT I AM REPRESENTING HIM.

3 MR. TOLEN WAS BORN OCTOBER 5, 1971, MAKING HIM 26
4 YEARS OF AGE. HE IS YOUNG MAN WITH HIS WHOLE LIFE AHEAD OF
5 HIM TO BE CONCERNED ABOUT. HE IS ORIGINALLY FROM THE
6 BATESBURG LEESVILLE AREA. HE IS MARRIED, HAS THREE
7 CHILDREN, HAS TWO BROTHERS AND FIVE SISTERS. BOTH OF HIS
8 MATERNAL GRANDPARENTS ARE LIVING AND BOTH OF HIS PATERNAL
9 GRANDPARENTS ARE STILL LIVING.

10 LET ME TELL YOU EVEN FURTHER ABOUT MR. TOLEN.
11 MR. TOLEN HAS A LIMITED EDUCATIONAL BACKGROUND. HE ONLY
12 WENT THROUGH THE NINTH GRADE. HE HAS NO MONEY. I WAS
13 APPOINTED TO REPRESENT HIM BY THE STATE OF SOUTH CAROLINA.
14 HE COULDN'T AFFORD AN ATTORNEY.

15 HE HOLDS NO MEMBERSHIPS IN ANY CLUBS OR
16 ORGANIZATIONS OF NOTE. HE IS NOT A MEMBER OF ROTARY. HE
17 IS NOT A MEMBER OF KIWANIS. HE IS NOT A MAYOR. IN SHORT,
18 MR. TOLEN DOES NOT ENJOY A HERO'S REPUTATION IN OUR
19 COMMUNITY. IN FACT, DEPENDING UPON WHO YOU TALK TO, HE
20 MIGHT EVEN HAVE A POOR REPRESENTATION OR POOR REPUTATION.

21 BUT, YOU KNOW, THE TRUTH OF THE MATTER IS MR.
22 TOLEN IS THE TYPE OF INDIVIDUAL THAT GIVES US ALL AN
23 OPPORTUNITY TO MAKE REAL THE PROMISES THAT WE SAY OUR
24 CONSTITUTION AFFORDS US.

25 IRRESPECTIVE OF OUR AGE, IRRESPECTIVE OF OUR

1 GENDER, IRRESPECTIVE OF OUR RACE, IRRESPECTIVE OF OUR
2 SOCIOECONOMIC STATUS AND EVEN IRRESPECTIVE OF THE FACT THAT
3 A PERSON MAY BE HATED AND DESPISED IN HIS COMMUNITY, OUR
4 CONSTITUTION PROTECTS US ALL.

5 YOU KNOW, THE TRUEST MEASURE OF A SOCIETY AND IT
6 REALLY IS NOT HOW WE TREAT THE FOLKS WHO HAVE GOT MONEY,
7 BUT HOW WE TREAT FOLKS WHO CAN BARELY DEFEND THEMSELVES.
8 THAT'S THE TRUEST MEASURE.

9 SO WHY ARE WE HERE TODAY? OBVIOUSLY MR. TOLEN
10 HAS BEEN ACCUSED OF COMMITTING A CRIME, BUT THAT'S NOT THE
11 ONLY REASON. YOU DIDN'T HAVE TO BE HERE SIMPLY BECAUSE OF
12 THAT. WE ARE ALSO HERE BECAUSE MR. TOLEN PLED NOT GUILTY.
13 THAT'S RIGHT.

14 AND THERE IS ANOTHER REASON THAT WE ARE ALL HERE
15 AND PRIMARILY WHY YOU ARE HERE. ANY TIME A CITIZEN OF
16 THESE UNITED STATES REACHES AN IMPASSE WITH ITS GOVERNMENT,
17 BOTH HAVE A RIGHT TO LOOK TO YOU FOR A RESOLUTION OF THE
18 DISPUTE. THAT'S WHAT WE HAVE. WE HAVE A DISPUTE. THEY
19 SAY MR. TOLEN DID SOMETHING. WE SAY HE DIDN'T. THAT'S A
20 DISPUTE.

21 NOW, WE ANTICIPATE IN THIS CASE AND I WILL BE
22 HONEST ABOUT IT, I WILL BE HONEST ABOUT IT, WE ANTICIPATE
23 IN THIS CASE THAT THE FACTS ARE GOING TO RAISE A SUSPICION
24 OF GUILT. YEAH, WE ANTICIPATE THAT. WE ANTICIPATE THAT
25 THE FACTS IN THIS CASE WILL RAISE A SUSPICION OF GUILT

1 AGAINST MY CLIENT.

2 WE ANTICIPATE THAT THEY WILL SHOW THAT MR. OATON
3 DYSON, THE GENTLEMAN SEATED HERE, ON OCTOBER 2ND, 1996,
4 PULLED HIS TRACTOR TRAILER OVER AT A STORE LOCATED AT THE
5 TRAFFIC CIRCLE AS YOU HAVE ALREADY HEARD. HE WAS ON THE
6 WAY TO MAKE A PICK-UP UP AT FUJI, IF I'M NOT MISTAKEN, OVER
7 IN GREENWOOD.

8 HE INDICATED HE WAS TIRED, SO HE PULLED OVER TO
9 GET SOME REST. WHILE HE WAS THERE RESTING IN HIS TRUCK,
10 TWO INDIVIDUALS APPROACHED THE VEHICLE. FROM MY
11 UNDERSTANDING THEY KNOCKED ON THE WINDOW AT SOME TIME IN
12 THE MORNING AND MR. DYSON OPENS THE DOOR. MR. DYSON WILL
13 TELL YOU AFTER HE GAVE THE INDIVIDUALS ENTRANCE TO HIS
14 VEHICLE, HE WAS THEREAFTER ROBBED. THAT'S THE GIST OF THE
15 CASE.

16 NOW, WE ANTICIPATE FURTHER THAT IF MR. DYSON IS
17 HONEST AND IF HE TELLS YOU THE TRUTH, HE IS GOING TO TELL
18 YOU THAT HE CANNOT IDENTIFY WHO THOSE TWO INDIVIDUALS WERE,
19 IF HE TELLS YOU THE TRUTH.

20 NOW, WE ALSO ANTICIPATE THAT THEY ARE GOING TO
21 CALL A WADE LAMAR BRANNON WHO IS SUPPOSEDLY THE
22 CO-DEFENDANT TO MR. TOLEN, IF THAT IS MR. BRANNON'S REAL
23 NAME AND WE WILL GET INTO THAT.

24 WE ANTICIPATE THE EVIDENCE WILL SHOW THAT FOR THE
25 BETTER PART OF MR. BRANNON'S ADULT LIFE, HE HAS BEEN A

1 CRIMINAL. WE ANTICIPATE THAT THE EVIDENCE WILL SHOW THAT
2 ON THIS DAY IN QUESTION, MR. BRANNON HAD BEEN SMOKING CRACK
3 COCAINE.

4 WE ANTICIPATE THAT THE EVIDENCE WILL SHOW THAT
5 MR. BRANNON, ACTING WITH AN ACCOMPLICE OTHER THAN MR. TOLEN
6 WHO WAS NOT THERE, DID, IN FACT, ASSIST IN A ROBBERY, THAT
7 OF MR. DYSON. WE WILL ESTABLISH THAT.

8 ALSO WE ANTICIPATE THAT THE EVIDENCE WILL SHOW
9 AND THE SOLICITOR ALLUDED TO IT THAT MR. BRANNON AT THIS
10 POINT IS LOOKING TO GET SOME HELP FROM THE STATE. WE WILL
11 DEMONSTRATE TO YOU THAT HE IS PREPARED TO SAY AND DO
12 WHATEVER IT TAKES TO TRY TO GET SOME TIME OFF HIMSELF.

13 THE LAST THING AS IT RELATES TO MR. BRANNON THAT
14 WE WILL DEMONSTRATE IN TOTALITY IS THAT HE IS A LIAR, HE IS
15 A DRUG ABUSER. HE IS NOT TO BE BELIEVED AND HE IS
16 CERTAINLY NOT TO BE TRUSTED.

17 SO WHY ARE WE HERE? AGAIN, MY CLIENT HAS BEEN
18 ACCUSED OF COMMITTING A CRIME; BUT, YOU KNOW, THAT DOES NOT
19 CARRY THE DAY. AN ACCUSATION DOES NOT CARRY THE DAY. A
20 SUSPICION OF GUILT DOES NOT CARRY THE DAY. MY CLIENT IS
21 ENTITLED TO WHAT IS KNOWN AS THE PRESUMPTION OF INNOCENCE.
22 THAT'S RIGHT.

23 IF YOU WOULD IMAGINE WITH ME THAT THERE IS A COAT
24 RACK STANDING RIGHT HERE AND ON THIS COAT RACK IS A ROBE.
25 IF YOU WILL REMOVE THIS ROBE WITH ME AND THIS IS THE ROBE

1 OF THE PRESUMPTION OF INNOCENCE.

2 WHAT WE ARE GOING TO DO IS WE ARE GOING TO PLACE
3 THIS ROBE AROUND MR. TOLEN. THAT ROBE IS GOING TO REMAIN
4 ON HIM THROUGH THE REST OF MY OPENING STATEMENT, THROUGH
5 THE COURSE OF THEIR CASE AND THROUGH THE COURSE OF OUR
6 CASE.

7 THE ONLY TIME THAT THAT ROBE CAN BE REMOVED
8 FROM MR. TOLEN IS IF AND WHEN THE STATE PROVES MR. TOLEN'S
9 GUILT BEYOND A REASONABLE DOUBT. AFTER ALL THE EVIDENCE IS
10 IN AND AFTER YOU ALL HAVE DELIBERATED ON THE ISSUES, WE
11 DON'T BELIEVE THAT THEY ARE GOING TO BE ABLE TO MEET THAT
12 BURDEN.

13 AS I GET READY TO COME TO A CLOSE, LET ME TELL
14 YOU ABOUT THE PRESUMPTION OF INNOCENCE. I HAVE TO
15 APOLOGIZE BECAUSE, SEE, I CAN'T BE -- I HAVE GOT A CLIENT
16 WHO HAS HIS WHOLE FUTURE TO THINK ABOUT. I CAN'T QUITE BE
17 AS TENDER AS THE SOLICITOR.

18 I HAVE TO TELL YOU THAT THE PRESUMPTION OF
19 INNOCENCE IS NOT SOME NICETY THAT WE ARE ASKING YOU FOR.
20 IT'S NOT SOME COURTESY THAT WE ARE LOOKING FOR YOU TO GIVE
21 US. IT'S NOT SOME GRATUITY THAT YOU FEEL KIND ENOUGH TO
22 GRANT US. IT'S HIS RIGHT TO HAVE THAT PRESUMPTION OF
23 INNOCENCE, WHICH MEANS IT'S YOUR DUTY TO GIVE IT TO HIM.
24 IT'S YOUR DUTY TO GIVE IT TO HIM.

25 YOU KNOW NOTHING ABOUT THIS CASE RIGHT NOW, OTHER

OATON DYSON - DIRECT - BY MR. MAYE

1 THAN THE STATE HAS ACCUSED THAT MAN, NOTHING. HE HAS A
2 RIGHT TO THE PRESUMPTION OF INNOCENCE, WHICH IN SHORT MEANS
3 THAT AS YOU ARE SITTING THERE, YOUR THOUGHT SHOULD BE MR.
4 TOLEN IS INNOCENT. YEAH, DESPITE THE FACT HE IS IN HERE,
5 YOUR THOUGHT SHOULD BE THAT MR. TOLEN IS INNOCENT.

6 FINALLY, ONCE EVERYTHING IS IN, I WILL SUBMIT TO
7 YOU WHAT WE ARE GOING TO ESTABLISH TODAY IS THAT THE
8 MISTAKE MR. TOLEN MADE ON OCTOBER THE 2ND, 1996, WAS STILL
9 HAVING A CRACK HEAD AS A FRIEND. THANK YOU.

10 THE COURT: SOLICITOR, CALL YOUR FIRST WITNESS,
11 PLEASE.

12 MR. MAYE: THE STATE CALLS OATON DYSON TO THE
13 STAND.

14 OATON DYSON, BEING FIRST DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 Q MR. DYSON, THE FIRST THING LET ME ASK YOU IS THAT YOU
19 SPEAK UP LOUD. IT'S HARD TO HEAR ANYTHING IN THIS
20 COURTROOM. TALK TO THE LADIES AND GENTLEMEN OF THE JURY
21 AND SPEAK UP WHERE EVERYBODY CAN HEAR. INTRODUCE YOURSELF
22 FULLY TO THE LADIES AND GENTLEMEN.

23 A MY NAME IS OATON DYSON.

24 Q MR. DYSON, WHERE WERE YOU BORN?

25 A IN NEW ORLEANS, LOUISIANA.

Appendix 77

76

OATON DYSON - DIRECT - BY MR. MAYE

1 Q HOW LONG DID YOU LIVE IN NEW ORLEANS?

2 A PRACTICALLY ALL MY LIFE.

3 Q DID YOU GO TO SCHOOL THERE?

4 A YEAH.

5 Q IS THAT WHERE YOUR FAMILY IS FROM?

6 A YEAH.

7 Q AFTER YOU LEFT NEW ORLEANS, WHAT KIND OF CAREER PATHS
8 HAVE YOU TAKEN?

9 A BASICALLY DRIVING TRUCKS.

10 Q DRIVING A TRUCK. HOW LONG HAVE YOU BEEN A TRUCK
11 DRIVER?

12 A ABOUT 20-SOMETHING YEARS.

13 Q TWENTY YEARS?

14 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

15 Q DO YOU REMEMBER WHAT YEAR YOU STARTED DRIVING?

16 A I THINK IT WAS ABOUT '75, I THINK.

17 Q YOU HAVE BEEN DRIVING CONTINUOUSLY SINCE THEN?

18 A YES.

19 Q HOW MANY MILES DO YOU THINK YOU HAVE LOGGED AS A
20 TRUCK DRIVER?

21 A A MILLION PLUS.

22 Q HOW MANY DAYS A YEAR DO YOU TYPICALLY STAY ON THE
23 ROAD WORKING IN YOUR JOB?

24 A ABOUT 365.

25 Q YOU BASICALLY LIVE OUT OF YOUR TRUCK?

Appendix 78

77

OATON DYSON - DIRECT - BY MR. MAYE

- 1 A I LIVE OUT OF MY TRUCK.
- 2 Q IN OCTOBER OF 1996 WHO WERE YOU WORKING FOR?
- 3 A POLAR EXPRESS.
- 4 Q POLAR EXPRESS?
- 5 A POLAR EXPRESS.
- 6 Q WHAT KIND OF COMPANY IS THAT?
- 7 A A REEFER COMPANY. WE HAUL FROZEN PRODUCTS, MOSTLY
- 8 CHICKEN.
- 9 Q WHERE DID YOU TRAVEL?
- 10 A ALL 48 STATES.
- 11 Q ALL OVER THE UNITED STATES?
- 12 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).
- 13 Q IN OCTOBER OF 1996 DID YOU HAVE AN OCCASION TO COME
- 14 TO SALUDA COUNTY?
- 15 A YES, I DID. I WAS ON MY WAY TO FUJI FILMS TO PICK UP
- 16 A LOAD.
- 17 Q FUJI FILMS?
- 18 A YES.
- 19 Q WHERE WERE YOU COMING FROM?
- 20 A OUT OF NORTH CAROLINA.
- 21 Q NORTH CAROLINA?
- 22 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).
- 23 Q MR. DYSON, I WILL SHOW YOU THIS MAP RIGHT HERE.
- 24 A OKAY.
- 25 Q YOU WERE COMING OUT OF NORTH CAROLINA?

Appendix 79

78

OATON DYSON - DIRECT - BY MR. MAYE

1 A YES.

2 Q GOING ON UP TO GREENWOOD, YOU SAY?

3 A RIGHT.

4 Q TO FUJI?

5 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

6 Q WHICH WAY DID YOU COME IN ON THE TRAFFIC CIRCLE?

7 A I CAME IN OFF OF 85, WHICH WOULD PUT ME RIGHT THROUGH
8 HERE (INDICATING).

9 Q YOU CAME IN FROM COLUMBIA, 85 AND 77 INTO COLUMBIA?

10 A THAT'S RIGHT.

11 Q YOU WERE ON YOUR WAY TO GREENWOOD?

12 A RIGHT.

13 Q MR. DYSON, DID YOU HAVE OCCASION TO STOP?

14 A YEAH. I WAS SORT OF TIRED AND I SAID WELL, I WILL
15 PULL OVER. IT SEEMED LIKE A LITTLE SAFE PLACE THERE. IT
16 WAS A WELL-LIGHTED AREA. SO I PULL OVER THERE TO GET ME
17 ABOUT A 15 TO 20 MINUTE NAP.

18 Q IS THAT SOMETHING YOU TYPICALLY DO WHEN YOU ARE
19 DRIVING?

20 A YEAH. MOST OF THE TIME, YEAH.

21 Q DO YOU GET IN THE SLEEPER ON YOUR TRUCK WHEN YOU DO
22 THAT OR WHAT DID YOU DO?

23 A YEAH, I USUALLY DID. BUT AT THAT TIME I SAID I WAS
24 GOING TO GET 15 OR 20 MINUTES AND THEN I WOULD PROCEED ON
25 TO FUJI FILMS.

OATON DYSON - DIRECT - BY MR. MAYE

1 Q TELL THE JURY WHAT HAPPENED WHILE YOU WERE SITTING
2 THERE STOPPED AT THE CIRCLE.

3 A I STOPPED THERE BECAUSE IT WAS A WELL-LIGHTED PLACE.
4 I FIGURED IT WOULD BE SAFE THERE. I PUT MY HEAD ON THE
5 STEERING WHEEL, YOU KNOW, AND I FELL ASLEEP FOR A FEW
6 MINUTES. THE NEXT THING I KNOW THIS GUY TOLEN KNOCKED ON
7 THE DOOR WITH A PISTOL IN HIS HAND AND TOLD ME TO OPEN THE
8 DOOR, WHICH I DID. HE PROCEEDED TO GET IN. THEN HE CALL
9 HIS BUDDY THAT WAS WITH HIM AND TOLD HIM TO COME ON AND GET
10 IN THE TRUCK, TOO. SO THE GUY THAT WAS WITH HIM GOT IN THE
11 BACK OF THE TRUCK. HE CLOSED THE DOOR AND HE SAY, "I NEED
12 SOME MONEY."

13 Q WHO TOLD YOU THAT?

14 A FRANK TOLEN.

15 Q THE MAN SEATED OVER HERE?

16 A THIS GUY RIGHT HERE, YES

17 Q THE DEFENDANT IN THIS CASE?

18 A YEAH. SO I GAVE HIM THE \$60. IN THE MEANTIME HIS
19 FRIEND WAS IN THE BACK OF THE TRUCK, AND I REACHED BACK
20 THERE AND TURNED THE LIGHT ON. HE WAS GOING THROUGH BACK
21 THERE. HE TOOK SOME CHANGE I HAD IN A CROWN ROYAL BAG.
22 THEN HE TELLS ME, "I WANT YOU TO DRIVE OFF," YOU KNOW, JUST
23 IN A WOODED AREA, SOMEWHERE LIKE THAT.

24 Q LET ME STOP YOU FOR A SECOND. MR. TOLEN DEMANDED
25 MONEY FROM YOU. HOW MUCH MONEY DID HE TAKE FROM YOU?

Appendix 81

80

OATON DYSON - DIRECT - BY MR. MAYE

1 A SIXTY DOLLARS.

2 Q SIXTY DOLLARS?

3 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

4 Q GO ON TELL AND THE JURY WHAT HAPPENED THEN.

5 A I REACHED IN MY POCKET AND GIVE HIM THE \$60. IN THE
6 MEANTIME HIS FRIEND WAS BACK THERE RANSACKING THE BACK OF
7 MY TRUCK, MY BUNK BACK THERE. HE FOUND SOME MONEY I HAD IN
8 A CROWN ROYAL BAG, SOME SMALL CHANGE. THEN HE SAYS, "WELL,
9 WE WANT YOU TO DRIVE OFF IN THIS DIRECTION." I'M LOOKING
10 AT HIM AND HE HAD THE GUN IN HIS HAND AND HE WAS FUMBLING,
11 DOING SOMETHING WITH THE PISTOL. I SAID WELL, THIS IS MY
12 TIME TO BAIL OUT OF HERE. SO I OPENED UP THE DOOR AND I
13 BAILED OUT.

14 Q WHERE DID YOU GO?

15 A I RUN AROUND THE CIRCLE THERE AND I LOOKED BACK AND
16 SEE WERE THEY STILL BEHIND ME. THEY STOPPED BEHIND THE
17 BACK OF MY TRAILER AND I AM WATCHING THEM. THEY WATCHING
18 ME. THEY TAKES AFTER ME. SO I PROCEEDED ON AROUND THE
19 CIRCLE UNTIL I CAME UP TO THIS HOUSE THAT HAD A LIGHT ON.
20 SO I BANGED ON THIS GUY'S DOOR. HE NEVER -- I'M HOLLERING
21 AND SCREAMING AND HE NEVER ANSWERED. SO I SEE A LADDER
22 LEADING TO THE ROOF OF THIS GUY'S HOUSE.

23 Q LET ME STOP YOU FOR A SECOND. LET'S GET ORIENTED.
24 COME DOWN HERE.

25 A (WITNESS LEAVES THE WITNESS STAND).

OATON DYSON - DIRECT - BY MR. MAYE

1 Q IF THIS (INDICATING) IS THE TRAFFIC CIRCLE, TELL THE
2 JURY WHERE YOU WENT.

3 A THIS IS MY TRUCK HERE (INDICATING). I RUNS AROUND
4 THIS WAY---

5 THE COURT: YOU ARE BLOCKING THE VIEW OF SOME OF
6 THESE FOLKS BACK HERE.

7 A I RUN OUT MY TRUCK. I RUN AROUND HERE (INDICATING).
8 THEY STANDING HERE (INDICATING).. THEY LOOKS AT ME. I LOOK
9 AT THEM. I CONTINUE TO RUN AND THEY PROCEED TO COME ACROSS
10 THE WAY AND CUT ME OFF. SO I RAN OVER TO THIS HOUSE HERE
11 (INDICATING).

12 Q WHY WERE YOU GOING TO THAT HOUSE?

13 A THAT'S THE ONLY HOUSE LIGHT I SEEN, THE ONLY HOUSE
14 LIT UP AT THE TIME. I BANGED, YOU KNOW, HOLLERING AND
15 SCREAMING, I BANGED ON THIS GUY'S DOOR. HE NEVER CAME OUT.
16 SO I RAN OVER HERE (INDICATING) AND CLIMBED UP THIS LADDER
17 AND GOT ON THE ROOF OF THE HOUSE, AND I THROW THE LADDER
18 DOWN BEHIND ME.

19 Q WHY DID YOU DO THAT?

20 A BECAUSE THEY WAS STILL BEHIND ME. I SAY IF I THREW
21 THIS LADDER DOWN, THEY WOULDN'T BE ABLE TO GET UP HERE.
22 THE GUY FRANK TOLEN, HE WAS STANDING RIGHT HERE
23 (INDICATING). HE WAS MUMBLING SOMETHING TO ME WHILE I WAS
24 ON THE ROOF OF THE HOUSE. I'M STILL HOLLERING AND
25 SCREAMING. I HAD NO SHOES ON. ANOTHER GUY FROM THIS AREA

OATON DYSON - DIRECT - BY MR. MAYE

1 (INDICATING), THIS GUY'S BROTHER I UNDERSTAND, HE DROVE
2 AROUND; AND THAT'S WHEN THE OTHER GUY -- I DON'T KNOW THE
3 OTHER GUY NAME WITH TOLEN SAID, "LET'S GET OUT OF HERE."

4 Q THE GUY WHO WAS WITH TOLEN SAID, "LET'S GET OUT OF
5 HERE"?

6 A HE SAID, "LET'S GO."

7 Q YOU CAN TAKE THE STAND AGAIN.

8 A (WITNESS RESUMES THE WITNESS STAND).

9 Q DID YOU GET A GOOD LOOK AT MR. TOLEN?

10 A YES, I DID.

11 Q ANY DOUBT IN YOUR MIND THAT'S WHO ROBBED YOU?

12 A NO DOUBT AT ALL.

13 Q WHAT HAPPENED AFTER YOU CLIMBED UP ON THE ROOF AND
14 MR. TOLEN AND THE CO-DEFENDANT FLED? WHAT HAPPENED THEN?

15 A I WAS HOLLERING AND SCREAMING, HOLLERING AND
16 SCREAMING. THE GUY BROTHER CAME AROUND IN A WHITE
17 MERCEDES. I WAS HOLLERING AT HIM, "I'M UP HERE. I'M UP
18 HERE. I BEEN ROBBED. I BEEN ROBBED." SO HE DIDN'T KNOW
19 WHO I WAS ON HIS ROOF THAT TIME OF NIGHT. HE PULLS A GUN
20 OUT ON ME AND SAID, "DON'T MOVE. DON'T MOVE." I SAID,
21 "I'VE BEEN ROBBED. I GOT NO SHOES ON. MY TRUCK IS AROUND
22 THE CORNER. MY DOOR IS WIDE OPEN." HIS BROTHER CAME OUT
23 AND WENT AROUND THERE AND VERIFIED WHAT I SAID, AND THEN
24 THE GUY PUT THE LADDER UP AND LET ME DOWN.

25 Q WHAT DID Y'ALL DO THEN?

OATON DYSON - DIRECT - BY MR. MAYE

1 A WE WAITED UNTIL THEY CALLED THE POLICE, AND THEN THEY
2 WALKED ME BACK OVER TO THE TRUCK SO I CAN PUT SOME SHOES
3 ON.

4 Q DID THE POLICE EVENTUALLY ARRIVE OUT THERE AT THE
5 SCENE?

6 A YEAH, THEY EVENTUALLY CAME.

7 Q WHAT DID YOU DO THEN?

8 A I GAVE THEM A STATEMENT, YOU KNOW, WHAT HAD HAPPENED.

9 Q YOU GAVE THEM A STATEMENT AT THE TIME?

10 A YEAH.

11 Q DID YOU COME UP HERE TO SALUDA OR WHERE DID YOU GO
12 WITH THE POLICE?

13 A THEY ASKED ME TO GO TO BATESVILLE (SIC). I THINK
14 THAT'S THE NAME OF THE TOWN. THEY SHOWED ME SOME PICTURES
15 OF SOME GUYS AND ASKED ME, "WAS THAT THE GUY THERE?" I
16 TOLD THEM NO, I COULDN'T PICK HIM OUT OF THAT, OUT OF THOSE
17 PICTURES THEY SHOWED ME.

18 Q MR. TOLEN (SIC), AFTER THAT TIME YOU LEFT, WHERE DID
19 YOU GO?

20 A I WENT ON TO FUJI FILMS.

21 Q YOU WENT TO FUJI FILMS?

22 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

23 Q AFTER THAT POINT IN TIME, HOW LONG DID YOU CONTINUE
24 WORKING FOR POLAR EXPRESS?

25 A OH, I THINK THEY WENT OUT OF BUSINESS -- I THINK THEY

OATON DYSON - DIRECT - BY MR. MAYE

1 WENT OUT OF BUSINESS IN APRIL OF THAT SAME YEAR.

2 Q IN THAT SAME YEAR?

3 A YEAH.

4 Q WHO DID YOU GO TO WORK FOR NEXT?

5 A WELL, I TOOK ABOUT FOUR MONTHS OFF. THEN I LEFT AND
6 APPLIED AT ROCOR (PH.) TRANSPORT OUT OF OKLAHOMA CITY. I
7 WENT TO WORK FOR THEM.

8 Q MR. DYSON, LET ME STOP YOU FOR A SECOND.

9 MR. WILLIAMS: YOUR HONOR, I HAVE A MATTER WE
10 NEED TO TAKE UP WITH THE COURT.

11 THE COURT: MADAME FORELADY, AND LADIES AND
12 GENTLEMEN, STEP BACK TO YOUR JURY ROOM. PLEASE DON'T TALK
13 ABOUT THE CASE. I NEED TO TAKE SOMETHING UP OUTSIDE YOUR
14 PRESENCE. EVERYONE ELSE STAY SEATED, PLEASE.

15 (THE JURY RETIRES TO THE JURY ROOM).

16 THE COURT: MR. WILLIAMS.

17 MR. WILLIAMS: THANK YOU, YOUR HONOR. IT APPEARS
18 THE SOLICITOR MAY BE GETTING READY TO ATTEMPT TO INTRODUCE
19 A WEAPON. FRANKLY, I DON'T KNOW THAT THERE IS A PROPER
20 FOUNDATION LAID FOR THE INTRODUCTION OF THAT WEAPON AT THIS
21 TIME.

22 CERTAINLY THERE HAS BEEN NO QUESTIONS ASKED OF
23 MR. DYSON ABOUT THE IDENTITY OF THE WEAPON OR ANY SORT OF
24 DESCRIPTION ABOUT IT, AND I THINK CERTAINLY HE NEEDS TO LAY
25 SOME FOUNDATION BEFORE HE HANDS IT TO MR. DYSON AND SAYS,

1 "ISN'T THIS THE WEAPON?"

2 THE COURT: ASK YOUR QUESTIONS. I DON'T KNOW
3 WHAT HE IS GOING TO ASK.

4 MR. MAYE: YOUR HONOR, WE WOULD MARK THIS FOR
5 I.D. PURPOSES AT THIS TIME.

6 THE COURT: SURE, FOR I.D. ONLY.

7 (STATE'S EXHIBIT NUMBER 1, .32 PISTOL, IS MARKED
8 FOR IDENTIFICATION).

9 MR. WILLIAMS: BEFORE ANY QUESTIONS ARE ASKED AND
10 BEFORE HE GETS TO HANDLE THE WEAPON---

11 MR. MAYE: I WANT TO SHOW IT TO HIM, YOUR HONOR.
12 I WILL HAND HIM THIS ITEM MARKED FOR IDENTIFICATION AND ASK
13 HIM A QUESTION.

14 THE COURT: I DON'T KNOW HOW ELSE TO DO IT. I
15 MEAN, WHAT DO YOU WANT TO KNOW?

16 MR. WILLIAMS: BASICALLY, YOUR HONOR, OBVIOUSLY
17 ONCE HE HANDLES IT AND LOOKS AT IT, HE WILL CERTAINLY BE
18 ABLE TO SAY, "YES, THIS IS THE WEAPON." WE WOULD MUCH
19 PREFER HIM AND THE SOLICITOR MAYBE COULD ASK HIM, "DO YOU
20 RECALL THE WEAPON? WHAT COLOR WAS IT? WHAT TYPE OF WEAPON
21 WAS IT? WAS IT A REVOLVER? DID IT HAVE A CLIP? WHAT SIZE
22 WAS IT? CAN YOU GIVE US ANY KIND OF INDICATION IN THE
23 DIMENSIONS, ABOUT THE LENGTH OF THE BARREL? WHAT TYPE OF
24 HANDLE DID IT HAVE?"

25 I CERTAINLY THINK ALL THOSE WOULD BE FUNDAMENTAL

OATON DYSON - IN CAMERA DIRECT - BY MR. MAYE

1 FOUNDATION TYPE QUESTIONS THAT NEED TO BE ASKED AND LAID
2 PRIOR TO THE SOLICITOR BEING ABLE TO HAND HIM THE GUN AND
3 SAY, "ISN'T THIS IT?"

4 THE COURT: GO AHEAD WITH YOUR QUESTIONS AND I
5 WILL RULE ON THE OBJECTIONS AS THEY ARE MADE.

6 (THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA).

7 DIRECT EXAMINATION

8 BY MR. MAYE

9 Q I HAND YOU A ITEM MARKED STATE'S EXHIBIT 1 FOR
10 IDENTIFICATION PURPOSES, MR. DYSON. I ASK YOU IF YOU
11 RECOGNIZE THAT.

12 A THIS APPEARS TO BE THE WEAPON.

13 Q THAT MR. TOLEN POINTED AT YOU THAT NIGHT?

14 A YES, SIR.

15 Q HOW CAN YOU TELL? WHAT IS DISTINCTIVE ABOUT THAT
16 WEAPON?

17 A THE SILVER CHROME OF THE BARREL.

18 Q THE CONDITION OF THE FINISH?

19 A YEAH.

20 Q HOW ABOUT THE HANDLE?

21 A HE HAD HIS HAND OVER THE HANDLE.

22 Q IS THAT THE WEAPON MR. TOLEN POINTED AT YOU ON THAT
23 NIGHT?

24 A IT APPEARS TO BE THE WEAPON.

25 MR. MAYE: ANY OBJECTION, MR. WILLIAMS?

Appendix 88

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

87

1 THE COURT: YOU CAN QUESTION HIM OR YOU CAN MAKE
2 YOUR ARGUMENT, WHATEVER YOU WANT TO DO.

3 MR. WILLIAMS: YES, SIR. WE HAVE SOME QUESTIONS.
4 I WOULD NOTE ALSO, YOUR HONOR, IT WAS MY UNDERSTANDING THAT
5 WADE BRANNON IN ACTUALITY HANDLED THE WEAPON. I THOUGHT
6 THEY WERE GOING TO TRY THE GET WEAPON IN THROUGH---

7 THE COURT: IT HAS NOT BEEN OFFERED INTO
8 EVIDENCE, AT LEAST AT THIS POINT IN TIME. HE HAS
9 IDENTIFIED IT AS LOOKING LIKE THE WEAPON THAT WAS PUT IN
10 HIS FACE AS I UNDERSTAND WHAT HE JUST TESTIFIED TO.

11 MR. MAYE: THAT'S RIGHT.

12 CROSS EXAMINATION

13 BY MR. WILLIAMS:

14 Q MR. DYSON, DO YOU HAVE ANY FAMILIARITY WITH WEAPONS?

15 A SAY THAT AGAIN.

16 Q DO YOU HAVE ANY FAMILIARITY WITH WEAPONS?

17 A I AM NOT AN EXPERT AT WEAPONS, NO.

18 Q DO YOU OWN A WEAPON?

19 A I HAVE OWNED WEAPONS IN THE PAST.

20 Q IN THE PAST?

21 A YES.

22 Q WHEN IS THE LAST TIME YOU OWNED ONE?

23 A A COUPLE OF MONTHS PRIOR TO THIS INCIDENT.

24 Q DO YOU KNOW THE DIFFERENCE BETWEEN A SEMIAUTOMATIC
25 AND A REVOLVER?

Appendix 89

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

88

1 A YES, I DO.

2 Q DO YOU KNOW THE DIFFERENCE BETWEEN BLUE STEEL AND
3 STAINLESS STEEL?

4 A CAN YOU REPEAT THAT.

5 Q DO YOU KNOW THE DIFFERENCE BETWEEN BLUE STEEL AND
6 STAINLESS STEEL?

7 A YEAH.

8 Q NOW, WHEN YOU SAY -- AS I RECALL YOUR TESTIMONY, YOU
9 SAID THE INDIVIDUAL WHO HAD ENTERED THE TRUCK WAS FUMBLING
10 WITH THE WEAPON?

11 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

12 Q AS THOUGH HE WAS TRYING TO DO SOMETHING TO IT?

13 A RIGHT.

14 Q AND WAS HOLDING IT DOWN; IS THAT CORRECT?

15 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

16 Q MY UNDERSTANDING YOU WERE ASLEEP AND SOMEONE TAPPED
17 ON THE WINDOW; IS THAT CORRECT?

18 A RIGHT.

19 Q SO FROM THE TIME THE PERSON TAPPED ON THE WINDOW AND
20 ENTERED INTO THE TRUCK, WHEN DID YOU SEE THE WEAPON AGAIN?

21 A THE GUY WHAT HE DID IS HE TAPPED ON THE WINDOW WITH
22 THE WEAPON. THEN FOR SOME REASON HE SHOWED ME THE WEAPON.
23 HE POINTED IT OUT LIKE THIS, LOOK (INDICATING).

24 Q SO YOU MAINTAIN -- YOU MAINTAIN YOU GOT A GOOD LOOK
25 AT THE WEAPON?

Appendix 90

OATON DYSON - IN CAMERA CROSS - BY MR. WILLIAMS

89

1 A OH, YEAH.

2 Q AND THAT WEAPON IS SIMILAR TO THE WEAPON?

3 A THAT APPEARS TO BE THE WEAPON RIGHT THERE.

4 Q BUT YOU CAN'T SAY HONESTLY -- OBVIOUSLY WE ARE NOT
5 GOING TO GET INTO A DISPUTE OVER THIS -- BUT YOU CAN'T SAY
6 DEFINITELY THAT THAT IS THE WEAPON?

7 A THAT APPEARS TO BE THE WEAPON.

8 Q THAT'S NOT WHAT I ASKED YOU. YOU CAN'T SAY
9 DEFINITELY THAT THAT'S THE WEAPON, CAN YOU?

10 A NO, I CAN'T.

11 Q ALL RIGHT.

12 THE COURT: ARE YOU GOING TO ATTEMPT TO INTRODUCE
13 IT THROUGH THIS WITNESS?

14 MR. MAYE: NO, SIR.

15 THE COURT: IT'S JUST BEING IDENTIFIED?

16 MR. MAYE: I'M JUST GOING TO IDENTIFY IT. I'M
17 NOT TRYING TO PUT IT IN.

18 THE COURT: ANY FURTHER ARGUMENT AT THIS POINT IN
19 TIME?

20 MR. WILLIAMS: I GUESS WE DO HAVE A PROBLEM AT
21 THIS POINT THAT HE MIGHT IDENTIFY A WEAPON THAT MAY
22 ULTIMATELY NOT GET ADMITTED INTO EVIDENCE. I KIND OF HAVE
23 A PROBLEM WITH THAT.

24 THE COURT: THERE MAY BE A PROBLEM IF HE DOESN'T
25 IDENTIFY IT AT THIS POINT IN TIME IN EITHER CHAIN OF

Appendix 91

30

OATON DYSON - DIRECT - BY MR. MAYE

1 EVIDENCE OR SOME IDENTIFICATION DOWN THE ROAD. I AM GOING
2 TO ALLOW HIM TO IDENTIFY IT. IT'S NOT COMING INTO
3 EVIDENCE. IF IT IS NOT INTRODUCED INTO EVIDENCE, I WILL
4 TAKE THAT UP AT THE APPROPRIATE TIME. IF IT IS NOT
5 ULTIMATELY ACCEPTED INTO EVIDENCE, I WILL DEAL WITH
6 WHATEVER MOTIONS YOU MAKE AT THE APPROPRIATE TIME.

7 MR. WILLIAMS: THANK YOU, YOUR HONOR.

8 THE COURT: LET'S GET THE JURY BACK OUT, PLEASE.

9 (THE JURY RETURNS TO THE COURTROOM).

10 THE COURT: GO AHEAD, MR. MAYE.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. MAYE:

13 Q MR. DYSON, I SHOW YOU STATE'S EXHIBIT 1 FOR
14 IDENTIFICATION PURPOSES. I WANT YOU TO TAKE A LOOK AT
15 THAT. WHAT CAN YOU TELL ME ABOUT THAT ITEM?

16 MR. WILLIAMS: YOUR HONOR, MAY I APPROACH THE
17 BENCH?

18 THE COURT: ALL RIGHT.

19 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
20 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
21 OF THE JURY).

22 Q STATE'S 1 FOR I.D., MR. DYSON, WHAT IS THAT?

23 A IT SEEMED LIKE THE WEAPON THAT THIS GUY HAD WHEN HE
24 TAPPED ON THE WINDOW.

25 Q IT LOOKS LIKE THE WEAPON HE HAD WHEN HE TAPPED ON THE

OATON DYSON - DIRECT - BY MR. MAYE

1 WINDOW AT YOU?

2 A YEAH.

3 Q HOW CAN YOU TELL?

4 A WELL, IT WAS ANTIQUE LOOKING TO ME BY THE RUST ON THE
5 BARREL HERE.

6 Q DID YOU GET A GOOD LOOK AT THE WEAPON THAT NIGHT?

7 A OH, YEAH. THAT'S THE FIRST THING I SAW WAS THE
8 WEAPON.

9 Q HOW DID YOU GET A GOOD LOOK AT IT?

10 A HE WAS LIKE THAT (INDICATING) AND OPEN THE DOOR AND
11 MY EYES WAS ON THE WEAPON.

12 Q MR. DYSON, LET ME ASK YOU THIS. YOU LEFT SOUTH
13 CAROLINA THAT NIGHT. WHEN WAS THE NEXT TIME YOU HEARD FROM
14 ANYBODY IN THIS CASE?

15 A NOVEMBER.

16 Q IN NOVEMBER?

17 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

18 Q WHAT HAPPENED?

19 A WELL, SOMEONE FROM MY JOB INFORMED ME THAT SOUTH
20 CAROLINA HAS BEEN LOOKING FOR ME CONCERNING THIS CASE.

21 Q TO COME BACK FOR THIS CASE?

22 A RIGHT.

23 Q MR. DYSON, YOU DIDN'T MAKE YOUR ARRANGEMENTS QUICK
24 ENOUGH, DID YOU, TO COME BACK?

25 A NO, I THINK I DIDN'T.

OATON DYSON - DIRECT - BY MR. MAYE

1 Q WHEN DID YOU COME BACK TO SOUTH CAROLINA?

2 A WHEN I WAS ARRESTED.

3 Q YOU WERE BROUGHT BACK HERE TO SOUTH CAROLINA?

4 A YES, I WAS.

5 Q FROM WHERE?

6 A FROM SPARTANBURG.

7 Q YOU WERE BROUGHT FROM SPARTANBURG?

8 A RIGHT.

9 Q WHERE HAVE YOU BEEN SINCE THE 5TH OF JANUARY?

10 A IN JAIL.

11 Q WHERE?

12 A HERE IN SALUDA.

13 Q DID YOU UNDERSTAND YOU HAD BEEN DETAINED AS A
14 MATERIAL WITNESS IN THIS CASE?

15 A YES.

16 Q MR. DYSON, IS THERE ANY REASON THAT YOU DIDN'T WANT
17 TO COME BACK HERE?

18 A WELL, I DIDN'T THINK THAT THEY WAS GOING TO PURSUE
19 THE CASE THE WAY THEY DID. I THOUGHT IT WAS GOING TO BE,
20 YOU KNOW, I GOT ROBBED AND THAT WAS IT. I HAD NO IDEA THAT
21 ANYONE WAS GOING TO TRY TO GO FIND THESE GUYS.

22 Q WHY NOT?

23 MR. WILLIAMS: OBJECTION, YOUR HONOR.

24 THE COURT: WAIT JUST A MINUTE. WHAT IS THE

25 BASIS?

Appendix 94

OATON DYSON - CROSS - BY MR. WILLIAMS

93

1 MR. WILLIAMS: RELEVANCY. IT DOESN'T GO TO ANY
2 OF THE ELEMENTS OF THE CRIME THAT THEY ARE ATTEMPTING TO
3 PROVE.

4 THE COURT: NO, BUT IT GOES TO EXPLAINING THE
5 BEHAVIOR. I OVERRULE THE OBJECTION. GO AHEAD AND ANSWER
6 THAT QUESTION IF YOU WOULD, PLEASE.

7 A I HONESTLY DIDN'T THINK NOBODY WOULD PURSUE THE CRIME
8 AND TRY TO FIND THESE GUYS.

9 Q DID YOU KNOW THEY WERE UNDER ARREST?

10 A NO, I DIDN'T KNOW THEY WAS UNDER ARREST.

11 Q UNTIL YOU GOT BACK HERE?

12 A UNTIL I GOT BACK HERE.

13 Q MR. DYSON, ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR
14 YOU.

15 MR. MAYE: YOUR HONOR, I WOULD RESERVE THE RIGHT
16 TO RECALL THIS WITNESS AT A LATER TIME.

17 THE COURT: GET YOUR EXHIBIT THAT IS ONLY FOR
18 IDENTIFICATION, PLEASE. MR. WILLIAMS.

19 MR. WILLIAMS: THANK YOU, YOUR HONOR.

20 CROSS EXAMINATION

21 BY MR. WILLIAMS:

22 Q MR. DYSON, DO YOU KNOW ME?

23 A I DON'T KNOW YOU PERSONALLY, NO.

24 Q HAVE YOU EVER MET ME A DAY IN YOUR LIFE BEFORE ONE
25 TIME WHEN I ATTEMPTED TO SPEAK WITH YOU DOWN AT THE SALUDA

Appendix 95

OATON DYSON - CROSS - BY MR. WILLIAMS

94

1 COUNTY JAIL?

2 A NO.

3 Q SO IT FOLLOWS THAT I HAVE NEVER DONE ANYTHING TO YOU;
4 HAVE I?

5 A YOU HAVEN'T.

6 Q YOU HAVE NO REASON TO BE HOSTILE TO ME, DO YOU?

7 A THAT'S RIGHT.

8 Q BUT YOU REFUSED TO TALK TO ME ABOUT THIS CASE, DIDN'T
9 YOU?

10 A RIGHT.

11 Q AND THE ONLY PERSON AND PEOPLE YOU HAVE SPOKEN WITH
12 ABOUT THIS CASE HAS BEEN THE SOLICITOR'S OFFICE; ISN'T THAT
13 CORRECT?

14 A RIGHT.

15 Q BUT YOU ARE HERE TO TELL THE TRUTH TODAY; IS THAT
16 CORRECT?

17 A RIGHT.

18 Q WOULD TALKING TO ME HAVE CHANGED ANYTHING YOU WERE
19 GOING TO TESTIFY TO?

20 A NO.

21 Q BUT YOU REFUSED TO TALK TO ME?

22 A RIGHT.

23 Q DID I THREATEN YOU?

24 A NO.

25 Q WAS I RUDE TO YOU?

Appendix 96

OATON DYSON - CROSS - BY MR. WILLIAMS

95

1 A NO.

2 Q NOW, YOU WERE HANDED WHAT HAS BEEN LABELED AS STATE'S
3 EXHIBIT NUMBER 1, WHICH IS AN OLD RUSTY GUN?

4 A YEAH.

5 Q I WILL HAND IT BACK TO YOU.

6 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

7 Q YOU SAY THAT APPEARS TO BE THE WEAPON THE GENTLEMAN
8 THAT ENTERED YOUR TRUCK HAD; IS THAT CORRECT?

9 A RIGHT.

10 Q BUT YOU DON'T KNOW ONE WAY OR ANOTHER WHETHER OR NOT
11 THAT IS THE WEAPON, DO YOU?

12 A THIS APPEARS TO BE THE WEAPON THAT THIS GUY HAD.

13 Q ALL RIGHT. LET'S TALK ABOUT THAT. IT APPEARS TO BE
14 THE WEAPON?

15 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

16 Q BECAUSE IT'S SILVER?

17 A NO, BECAUSE IT WAS -- THAT NIGHT THE LIGHT WAS
18 SHINING ON IT AND I NOTICED WHEN HE WAS MOVING IT AROUND, I
19 COULD SEE IT WAS KIND OF REFLECTING FROM THIS RUSTY PART
20 HERE (INDICATING).

21 Q WHAT ELSE? COULD YOU SEE THE HANDLE?

22 A HE HAD IT IN THE PALM OF HIS HAND WHEN HE WAS SITTING
23 IN THE TRUCK. HE WENT TO DO SOMETHING WITH THIS WEAPON AND
24 AFTER I SEEN HIM AND HE DISTRACTED HIMSELF FOR A MOMENT
25 WITH THIS WEAPON, THEN I SEE MY OPPORTUNITY TO FLEE OUT THE

Appendix 97

OATON DYSON - CROSS - BY MR. WILLIAMS

96

1 TRUCK.

2 Q DID HE EVER JUST SHOW YOU THE GUN?

3 A HE INDICATED TO ME THAT HE HAD A GUN IN HIS HAND.

4 Q DID HE HOLD IT UP FOR YOU TO INSPECT?

5 A HE DID JUST LIKE THIS (INDICATING).

6 Q HE DID JUST LIKE THAT?

7 A RIGHT.

8 Q LET ME DO YOU LIKE THAT. LET'S MAKE SURE IT'S NOT
9 LOADED.

10 A THAT'S A GOOD IDEA.

11 Q IT'S ALL RIGHT. SO THE INDIVIDUAL APPROACHED THE
12 TRUCK AND HE DOES SOMETHING LIKE THIS (INDICATING)? BUT
13 WHEN YOU SAW THE GUN, IT WAS POINTED AT YOU LIKE THIS
14 (INDICATING)?

15 A RIGHT, RIGHT UP AGAINST THE WINDOW.

16 Q AGAINST THE WINDOW?

17 A YEAH.

18 Q WHEN THE INDIVIDUAL GOT IN THE TRUCK, YOU SAY HE JUST
19 DID THE GUN LIKE THIS (INDICATING) IN FRONT OF YOU?

20 A HE WAS DOING SOMETHING WITH THE GUN. I HAD MY EYES
21 ON HIM BY THEN, HIM AND THAT OTHER GUY.

22 Q ALL RIGHT. YOU HAD YOUR EYES ON HIM?

23 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

24 Q YOU SAW THE GUN WHEN IT WAS POINTED AT THE WINDOW?

25 A THAT'S THE REASON I OPENED THE DOOR BECAUSE I SAW THE

Appendix 98

OATON DYSON - CROSS - BY MR. WILLIAMS

97

1 GUN.

2 Q THEN WHEN HE WAS IN THE TRUCK DOING SOMETHING TO IT,
3 YOU HAD YOUR EYES ON WHOEVER WAS IN THE TRUCK AT THAT
4 POINT?

5 A TRIED TO WATCH BOTH OF THEM.

6 Q TRYING TO WATCH BOTH OF THEM?

7 A RIGHT.

8 Q YOU PROBABLY DIDN'T GET A GOOD LOOK AT ANYONE LIKE
9 THAT, RIGHT?

10 A OH, I GOT A GOOD LOOK AT BOTH OF THEM.

11 Q ALL RIGHT, SIR. LET'S GO BACK. YOU SAW THE GUN
12 OUTSIDE THROUGH THE WINDOW, THROUGH THE GLASS?

13 A RIGHT. HE HAD IT UP AGAINST THE WINDOW OF MY TRUCK.

14 Q GLASS REFLECTS LIGHT, DOESN'T IT?

15 A YEAH.

16 Q SO THE GLASS WOULD HAVE DISTORTED WHAT THE WEAPON
17 LOOKED LIKE SOMEWHAT, WOULDN'T IT?

18 A I DON'T KNOW.

19 Q HOW MANY MILES HAD YOU BEEN RIDING?

20 A FROM NORTH CAROLINA.

21 Q DID YOU JUST WASH YOUR TRUCK?

22 A I CAN'T TELL. I DON'T REMEMBER.

23 Q IS IT FAIR TO SAY YOU MAY HAVE A LITTLE DIRT ON YOUR
24 GLASS ON THE WINDOW?

25 A I CAN'T TELL. I DON'T REMEMBER THAT.

Appendix 99

OATON DYSON - CROSS - BY MR. WILLIAMS

98

1 Q BUT YOU COULD HAVE?

2 A IT'S POSSIBLE, I GUESS.

3 Q SO YOU COULD HAVE BEEN LOOKING THROUGH A DIRTY GLASS
4 AT A SILVER GUN POINTED AT YOU; IS THAT CORRECT?

5 A RIGHT.

6 Q THEN WHEN THE INDIVIDUAL ENTERED THE TRUCK, YOU WERE
7 KEEPING YOUR EYES ON HIM THEN; RIGHT?

8 A RIGHT.

9 Q SO LET'S GO BACK TO OUR INITIAL QUESTION. YOU CANNOT
10 SAY DEFINITELY THAT THIS IS THE WEAPON WHOEVER ENTERED
11 YOUR TRUCK HAD; ISN'T THAT CORRECT?

12 A THE GUY THAT ENTERED MY TRUCK HAD THAT WEAPON. THAT
13 APPEARS TO BE THE WEAPON HE HAD WHEN HE GOT INTO MY TRUCK.

14 Q HONESTLY, I WILL NOT ASK YOU ANY TRICKY QUESTIONS.
15 ALL OF MY QUESTIONS ARE GOING TO BE STRAIGHTFORWARD AND
16 RELATIVELY SIMPLE. I AM ASKING YOU A SIMPLE,
17 STRAIGHTFORWARD QUESTION. YOUR TESTIMONY IS THAT THIS
18 WEAPON RIGHT HERE, STATE'S EXHIBIT NUMBER 1, APPEARS TO BE
19 THE WEAPON YOU SAW THAT NIGHT; IS THAT CORRECT?

20 A YES.

21 Q IF IT APPEARS TO BE THAT WEAPON THAT NIGHT, THEN IT
22 FOLLOWS THAT YOU CANNOT CONCLUSIVELY SAY THIS IS THE
23 WEAPON; CAN YOU?

24 A IT APPEARS TO BE THE WEAPON IS ALL I CAN TELL YOU
25 ABOUT THAT.

Appendix 00

OATON DYSON - CROSS - BY MR. WILLIAMS

99

1 Q MR. DYSON, I AM TRULY ASKING YOU A SIMPLE QUESTION.
2 YOU CANNOT SAY DEFINITELY THAT THIS IS THE WEAPON, CAN
3 YOU?

4 A WELL, I GUESS NOT.

5 Q THANK YOU. NOW, DO YOU FEEL SOMEWHAT INTIMIDATED BY
6 THE STATE?

7 A NOT AT ALL.

8 Q BUT YOU HAVE BEEN LOCKED UP NOW SINCE JANUARY THE
9 5TH?

10 A YES.

11 Q AND DID YOU VIOLATE A SUBPOENA?

12 A NOT THAT I'M AWARE OF.

13 Q DID YOU EVER GET A SUBPOENA?

14 A THERE COULD BE AT MY MAILING ADDRESS. I DON'T KNOW.

15 Q MR. DYSON, DID YOU EVER---

16 A I NEVER HAD A SUBPOENA PUT IN MY HAND.

17 Q THANK YOU. HAVE YOU VIOLATED A LAW HERE IN SOUTH
18 CAROLINA FOR WHICH YOU SHOULD HAVE BEEN ARRESTED?

19 A NO, I HAVEN'T.

20 Q HAVE YOU VIOLATED AN ORDER OF THE COURT FOR WHICH YOU
21 SHOULD HAVE BEEN ARRESTED?

22 A NO, I HAVEN'T.

23 Q SO, IN FACT, THE STATE ARRESTED YOU AND YOU HAVE DONE
24 NOTHING WRONG; IS THAT CORRECT?

25 A WELL, IT COULD HAVE BEEN AVOIDED IF I HAD GOT IN

Appendix 101

OATON DYSON - CROSS - BY MR. WILLIAMS

100

1 TOUCH WITH THEM LIKE I SUPPOSED TO HAVE.

2 Q WHAT DID YOU DO WRONG?

3 A NOT GETTING IN TOUCH WITH THEM.

4 Q IS THERE A LAW SAYING THAT YOU HAD TO GET IN TOUCH
5 WITH THEM?

6 A NOT THAT I'M AWARE OF.

7 Q SO WHAT DID YOU DO WRONG?

8 A I DIDN'T DO ANYTHING WRONG.

9 Q SO WE HAVE ESTABLISHED NOW THAT YOU HAVE BEEN IN JAIL
10 SINCE THE 5TH OF JANUARY, 1997 -- I'M SORRY -- 1998; AND
11 YOU DIDN'T DO ANYTHING WRONG AND YOU ARE NOT INTIMIDATED BY
12 THE STATE?

13 A NO, I'M NOT.

14 Q BUT THEY ARE THE ONLY PEOPLE YOU WOULD TALK TO; IS
15 THAT CORRECT?

16 A RIGHT.

17 Q IF YOU WOULD, PLEASE, SIR, GIVE ME -- DESCRIBE THE
18 TWO INDIVIDUALS THAT APPROACHED YOUR VEHICLE THAT EVENING.

19 A DESCRIBE THEM?

20 Q YES, SIR.

21 A THERE IS ONE SITTING RIGHT THERE.

22 Q NO, I WANT YOU TO DESCRIBE THEM.

23 A TWO BLACK MALES.

24 Q TWO BLACK MALES. HOW TALL?

25 A ABOUT MY HEIGHT.

Appendix 102

OATON DYSON - CROSS - BY MR. WILLIAMS

101

1 Q ABOUT YOUR HEIGHT?

2 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

3 Q HOW TALL ARE YOU?

4 A ABOUT FIVE-NINE, FIVE-TEN.

5 Q AND HOW MUCH DID THEY WEIGH?

6 A SAY THAT AGAIN.

7 Q HOW MUCH DID THEY WEIGH?

8 A I DON'T RECALL THE WEIGHT. I DON'T RECALL WHAT THEY
9 WAS WEARING.

10 Q WHAT WERE THEIR COMPLEXIONS?

11 A ONE WAS LIGHT COMPLEXION AND ONE WAS A DARK
12 COMPLEXION.

13 Q DID EITHER HAVE ANY NOTICEABLE SCARS OR TATTOOS?

14 A WELL, FRANK TOLD ME HE HAD SOMETHING LIKE SOMETHING
15 WAS WRONG WITH HIS MOUTH. I NOTICED THAT.

16 Q YOU NOTICED THAT?

17 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

18 Q WHEN DID YOU NOTICE THAT, TODAY?

19 A THAT NIGHT WHEN I LOOKED IN HIS FACE.

20 Q WHAT KIND OF HAIR STYLES WERE THEY WEARING?

21 A ONE GUY HAD A HAT ON. I WASN'T PARTICULARLY -- I
22 DON'T REMEMBER WHAT HIS HAIR LOOKED LIKE THAT NIGHT.

23 Q ONE GUY HAD ON A HAT?

24 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

25 Q WHICH ONE?

Appendix 103

OATON DYSON - CROSS - BY MR. WILLIAMS

102

1 A THE OTHER GUY. HE IS NOT IN HERE. I DON'T SEE HIM
2 IN HERE.

3 Q WOULD THAT BE THE LIGHTER-SKINNED COMPLEXION?

4 A RIGHT.

5 Q WHAT TYPE OF HAT DID HE HAVE ON?

6 A HE HAD A GRAY HAT ON.

7 Q A GRAY HAT?

8 A YES, A GRAY PULLOVER HAT TYPE.

9 Q A GRAY PULLOVER HAT?

10 A YEAH.

11 Q WHAT TYPE OF HAT IS THAT?

12 A LIKE ONE OF THEM FOOTBALL HATS WHERE THEY WEAR IN THE
13 WINTERTIME.

14 Q A KNIT CAP?

15 A YEAH, I GUESS LIKE A KNIT CAP.

16 Q A GRAY KNIT CAP?

17 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

18 Q WHAT TYPE OF SHIRTS DID THEY HAVE ON?

19 A THIS OTHER GUY HAD A GRAY JACKET ON. I DON'T RECALL
20 WHAT TOLEN HAD ON THAT NIGHT.

21 Q THE OTHER GUY HAD A GRAY JACKET?

22 A YES.

23 Q WHAT TYPE OF PANTS DID THEY HAVE ON?

24 A I DON'T RECALL THE PANTS.

25 Q YOU DON'T RECALL. WOULD YOU CONSIDER MR. TOLEN --

1 YOU CONSIDER MR. TOLEN A MAN; ISN'T THAT CORRECT?

2 A YEAH.

3 Q YOU GAVE A STATEMENT TO LAW ENFORCEMENT ON OCTOBER
4 THE 2ND, 1996; ISN'T THAT CORRECT?

5 A RIGHT.

6 Q YOU HAVE HAD AN OPPORTUNITY TO REVIEW THAT STATEMENT
7 EARLIER; ISN'T THAT CORRECT?

8 A YES.

9 Q AND IN THAT STATEMENT YOU DESCRIBED THE PERPETRATORS
10 AS BOYS, DIDN'T YOU?

11 A WELL, YEAH.

12 Q AS BOYS?

13 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

14 Q NOT MEN, BOYS?

15 A BOYS.

16 Q ALSO IN THAT STATEMENT YOU INDICATED THAT ONE OF THE
17 BOYS HAD A GRAY RAG ON HIS HEAD?

18 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

19 Q ISN'T THAT CORRECT?

20 A RIGHT.

21 Q BUT NOW YOUR TESTIMONY A MOMENT AGO WAS HE HAD ON A
22 GRAY KNIT CAP; IS THAT CORRECT?

23 A GRAY CAP. DID I SAY RAG OR CAP? WHAT DOES THE
24 STATEMENT SAY?

25 Q LET ME GIVE YOU YOUR STATEMENT. (HANDS TO WITNESS).

Appendix 105

OATON DYSON - CROSS - BY MR. WILLIAMS

104

1 A YEAH, IT SAY RAG.

2 MR. WILLIAMS: LET THE RECORD REFLECT MR. DYSON
3 JUST REVIEWED THE STATEMENT OF OCTOBER 2, 1996.

4 Q SO IN YOUR STATEMENT YOU SAID RAG?

5 A YEAH, RAG.

6 Q YOUR TESTIMONY WAS A KNIT CAP; IS THAT CORRECT?
7 WHICH ONE? DO YOU WANT TO PICK ONE?

8 A IT WAS A GRAY RAG OR A CAP, WHATEVER, YOU KNOW. IT
9 LOOKED THE SAME AS FAR AS I AM CONCERNED.

10 Q IT LOOKED THE SAME AS FAR AS YOU ARE CONCERNED?

11 A IT WAS A GRAY CAP OR RAG, WHATEVER YOU WANT TO CALL
12 IT. IT WAS COVERING HIS HEAD. IT WAS ON HIS HEAD.

13 Q WELL, IT'S FAIR TO SAY THAT ON SOME OF THE DETAILS OF
14 THAT EVENING, YOU ARE NOT EXACTLY CERTAIN; ISN'T THAT
15 CORRECT?

16 A I AM CERTAIN ABOUT WHO ROBBED ME AND WHAT HIS FACE
17 LOOKED LIKE, THE BOTH OF THEM. I AM DEFINITELY CERTAIN
18 ABOUT THAT. THE CLOTHES AND ALL THAT, NO, I CAN'T BE
19 CERTAIN ABOUT THAT.

20 Q SO YOU AGREE WITH ME THAT SOME OF THE ISSUES OF THAT
21 EVENING YOU ARE UNCERTAIN ABOUT THE FACTS, RIGHT?

22 A OKAY.

23 Q DOES MR. TOLEN APPEAR TO BE THE SAME SIZE AS THE MEN
24 WHO APPROACHED YOUR VEHICLE THAT EVENING?

25 A NO, HE'S NOT THE SAME SIZE.

1 Q WHAT IS THE DIFFERENCE?

2 A HE GOT BIGGER, FATTER.

3 Q SO MR. TOLEN IS LARGER THAN THE BOTH OF THE MEN WHO
4 APPROACHED THE WINDOW THAT EVENING?

5 A RIGHT.

6 Q AFTER THIS EVENT HAPPENED TO YOU AND YOU RAN ACROSS
7 THE STREET AND CLIMBED ON TOP OF THE BUILDING AND YOU
8 EVENTUALLY SPOKE WITH LAW ENFORCEMENT, I PRESUME YOU WENT
9 BACK TO YOUR TRUCK. WHAT HAPPENED AFTER YOU SPOKE WITH LAW
10 ENFORCEMENT?

11 A WE PROCEEDED ON TO BATESVILLE (SIC), I THINK IS THE
12 NAME OF THAT TOWN; AND THEY HAD ME LOOK AT SOME PHOTOS.

13 Q SO YOU EVENTUALLY GOT BACK TO YOUR TRUCK AND LEFT?

14 A YEAH.

15 Q DID YOU OWN YOUR TRUCK?

16 A NO, IT WAS A COMPANY TRUCK.

17 Q DO YOU STILL HAVE THAT TRUCK?

18 A IT'S A DIFFERENT COMPANY NOW.

19 Q A DIFFERENT COMPANY. DO YOU RECALL WHEN YOU TURNED
20 THE TRUCK IN?

21 A SAY THAT AGAIN.

22 Q DO YOU RECALL WHEN YOU TURNED THE TRUCK IN?

23 A NO, I DON'T REMEMBER.

24 Q LET'S GET TO THE MONEY. THE INDIVIDUALS CAME TO THE
25 TRUCK, TAPPED ON THE WINDOW AND YOU INDICATED YOU GAVE ONE

1 SOME MONEY?

2 A RIGHT.

3 Q I BELIEVE YOUR TESTIMONY WAS THE GENTLEMAN ASKED FOR
4 SOME MONEY AND YOU GAVE IT TO HIM?

5 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

6 Q YOU MADE AN ALLEGATION THAT THE SECOND YOUNG MAN WENT
7 INTO THE BACK OF YOUR TRUCK?

8 A RIGHT.

9 Q YOUR TRUCK HAD A SLEEPER?

10 A RIGHT.

11 Q HE CLOSED SOME KIND OF WINDOW TO YOUR SLEEPER OR YOUR
12 DOOR TO YOUR SLEEPER?

13 A NO, IT DON'T HAVE ANY DOORS TO THE SLEEPER.

14 Q YOU INDICATED HE CLOSED SOMETHING. WHAT DID HE
15 CLOSE?

16 A I DON'T REMEMBER SAYING HE CLOSED ANYTHING.

17 Q YOU DON'T REMEMBER SAYING HE CLOSED ANYTHING?

18 A (WITNESS SHAKES HEAD). (INDICATING NEGATIVE
19 RESPONSE).

20 Q SO YOUR SLEEPER PART THEN IS OPEN?

21 A YEAH. IT'S A WALK-IN SLEEPER, YEAH.

22 Q SO THERE IS NOT A CURTAIN THERE?

23 A YEAH, THERE IS A CURTAIN THERE.

24 Q ALL RIGHT. SO THE CURTAIN WAS OPENED?

25 A THE CURTAIN WAS OPENED AND I REACHED BACK THERE AND

Appendix 108

OATON DYSON - CROSS - BY MR. WILLIAMS

107

1 TURNED THE LIGHT ON.

2 Q THAT CURTAIN WAS NEVER CLOSED?

3 A IT WAS NEVER CLOSED.

4 Q HAVE YOU EVER MET MR. TOLEN BEFORE THAT EVENING?

5 A NEVER MET HIM.

6 Q NEVER MET HIM IN YOUR LIFE?

7 A (WITNESS SHAKES HEAD). (INDICATING NEGATIVE
8 RESPONSE).

9 Q APPROXIMATELY HOW LONG DID THIS EVENT TAKE?

10 A FIFTEEN MINUTES, I GUESS.

11 Q FIFTEEN MINUTES?

12 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

13 Q YOU MAINTAIN THAT MR. TOLEN WAS THE ONE WITH THE
14 PISTOL?

15 A YES, HE WAS.

16 Q AND SO YOUR TESTIMONY WAS THAT YOU WERE WATCHING WHAT
17 HE WAS DOING WITH THE PISTOL, RIGHT?

18 A YEAH. AT THAT MOMENT WHEN HE HAD THE PISTOL IN HIS
19 HAND, HE WAS DOING SOMETHING WITH THE PISTOL; AND THAT'S
20 WHEN I SEEN THE OPPORTUNITY TO GET OUT THE TRUCK.

21 Q YOU JUMPED OUT THE TRUCK AND YOU RAN; IS THAT
22 CORRECT?

23 A RIGHT.

24 Q WERE YOUR EMOTIONS RUNNING PRETTY HIGH?

25 A SAY THAT AGAIN.

1 Q WERE YOUR EMOTIONS RUNNING HIGH?

2 A I GUESS YOU COULD SAY THAT.

3 Q YOU DON'T RECALL THAT MR. TOLEN HAD ON ANY TYPE OF
4 HEADGEAR; IS THAT CORRECT?

5 A NOT TO MY -- I DON'T RECALL HIM HAVING ANYTHING ON
6 HIS HEAD.

7 Q YOU DON'T RECALL HIM HAVING ANYTHING ON. AS A MATTER
8 OF FACT, YOU CAN'T EVEN RECALL WHAT TYPE OF SHIRT HE HAD;
9 CAN YOU?

10 A I DIDN'T PAY ANY ATTENTION TO THE SHIRT. I WAS JUST
11 FOCUSING ON HIS FACE ALL THE TIME.

12 Q SO LET'S SET THE SCENE THEN. YOU RECALL THAT THE
13 OTHER INDIVIDUAL HAD ON A GRAY SHIRT AND A GRAY RAG ON HIS
14 HEAD?

15 A RIGHT.

16 Q WHO ENTERED THE TRUCK FIRST?

17 A MR. TOLEN TO THE TRUCK FIRST.

18 Q AND THEY ARE ABOUT THE SAME SIZE?

19 A SAY THAT AGAIN.

20 Q THEY ARE ABOUT THE SAME SIZE?

21 A I CAN'T RECALL.

22 Q YOU CAN'T RECALL THE SIZE?

23 A WELL, ONE WAS TALLER THAN THE OTHER ONE.

24 Q IS IT FAIR TO SAY THE ONLY DISTINCTION YOU COULD MAKE
25 THEN WAS THAT ONE HAD A LITTLE LIGHTER COMPLEXION THAN THE

Appendix 110

OATON DYSON - CROSS - BY MR. WILLIAMS

109

1 OTHER AND HAPPENED TO HAVE ON A GRAY -- SOME TYPE OF GRAY
2 CAP?

3 A REPEAT THAT AGAIN.

4 Q IS THE ONLY DISTINCTION YOU CAN MAKE BETWEEN THE TWO
5 MEN IS ONE WAS OF A LIGHTER COMPLEXION AND HAD ON A GRAY
6 CAP OF SOME SORT?

7 A ONE HAD A GUN AND THE OTHER ONE DIDN'T HAVE A GUN.

8 Q WHAT DID THE ONE WITH THE GUN DO?

9 A HE OPENED THE DOOR AND TOLD THE OTHER GUY TO, "COME
10 ON. GET IN."

11 Q BUT YOU DIDN'T RECALL ANYTHING ABOUT WHAT THE
12 INDIVIDUAL WITH THE GUN WAS WEARING?

13 A LIKE I SAY, I WAS FOCUSING ON HIS FACE.

14 Q JUST FOCUSING ON HIS FACE?

15 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

16 Q AT SOME POINT YOU DID FOCUS ON THE GUN?

17 A THAT'S RIGHT. THAT'S THE REASON I OPENED THE DOOR
18 BECAUSE I SAW THE GUN.

19 Q AFTER YOU HANDED MR. TOLEN OR WHO YOU PRESUMED TO BE
20 MR. TOLEN \$60, YOU SAW AN OPPORTUNITY TO JUMP OUT THE TRUCK
21 AND RUN?

22 A NO. AT THAT TIME WHEN I SEEN THE OPPORTUNITY TO JUMP
23 OUT THE TRUCK IS WHEN HE WAS DOING SOMETHING WITH THE
24 PISTOL. HE HAD THE PISTOL IN THIS HAND (INDICATING) DOING
25 SOMETHING WITH IT, AND IT DISTRACTED HIM FROM ME TO THE

1 PISTOL. HE WAS LOOKING AT THE PISTOL. THAT'S WHEN I SEEN
2 THE OPPORTUNITY TO JUMP OUT AND RUN.

3 Q AND THAT'S THE LAST TIME YOU SAW THE \$60?

4 A RIGHT.

5 Q YOU DON'T KNOW WHAT THE GENTLEMAN IN THE BACKGROUND
6 DID; IS THAT CORRECT?

7 A WELL, WHAT I NOTICED HE WAS DOING WAS LOOKING AROUND;
8 AND WHAT I NOTICED WAS MISSING I HAD A CROWN ROYAL BAG FULL
9 OF CHANGE. THAT'S THE ONLY THING I NOTICED THAT HE HAD
10 TAKEN FROM THE BACK OF THE TRUCK.

11 Q HE WAS IN THE BACK MESSING AROUND WHEN YOU JUMPED OUT
12 THE TRUCK; IS THAT CORRECT?

13 A YEAH, I LEFT HIM IN THE BACK THERE.

14 Q SO ISN'T IT FAIR TO SAY YOU DIDN'T SEE HIM TAKING
15 NOTHING?

16 A I DON'T KNOW WHAT HE LEFT OUT OF MY TRUCK WITH
17 BECAUSE I LEFT HIM IN THE TRUCK.

18 Q RIGHT. THAT'S MY POINT. SO ISN'T IT FAIR TO SAY YOU
19 DIDN'T SEE HIM TAKING ANYTHING OUT YOUR TRUCK?

20 A NO. BECAUSE WHEN HE GOT IN THE TRUCK, I WAS ALREADY
21 OUT OF IT. I COULDN'T SEE WHAT HE TOOK OUT OF THE TRUCK,
22 NO.

23 Q NOW, IN YOUR STATEMENT THOUGH YOU ALLEGE THOSE TWO
24 INDIVIDUALS TOOK \$60 IN CASH IN \$20 BILLS AND A CROWN ROYAL
25 BAG OF CHANGE? THAT'S WHAT YOU SAID IN THIS STATEMENT?

1 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

2 Q ISN'T THAT CORRECT?

3 A YEAH.

4 Q SO YOUR STATEMENT IS NOT TRUE, IS IT?

5 A HE HAD THE CROWN ROYAL -- THE OTHER GUY HAD THE CROWN
6 ROYAL BAG IN HIS HAND WHEN HE APPROACHED ME BY THE LADDER
7 WHEN I WAS TOP OF THE ROOF OF THE HOUSE. HE HAD THE CROWN
8 ROYAL BAG IN HIS HAND. SO I SEEN THE CROWN ROYAL BAG IN
9 HIS HAND.

10 Q LET ME ASK YOU THIS. DO YOU SEE THAT BAG IN HERE AS
11 EVIDENCE TODAY?

12 A NO, I DON'T SEE IT.

13 Q SO YOU ARE SAYING THAT THE OTHER INDIVIDUAL HAD SOME
14 TYPE OF BAG IN HIS HAND; IS THAT CORRECT?

15 A IT WAS THE CROWN ROYAL BAG FULL OF CHANGE THAT I HAD,
16 YES.

17 Q FULL OF CHANGE?

18 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

19 Q NOW, YOU ARE UP ON THE ROOF OF A BUILDING?

20 A RIGHT.

21 Q AND THE GENTLEMAN WHO YOU MAINTAIN IS MR. TOLEN WAS
22 AT THE HOUSE FIRST; IS THAT CORRECT?

23 A THEY BOTH ARRIVED AT THE SAME TIME.

24 Q THEY BOTH ARRIVED AT THE SAME TIME?

25 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

1 Q SO THEY WERE SIDE BY SIDE?

2 A NO, THEY WAS APART. THEY WASN'T SIDE BY SIDE. TOLEN
3 WAS -- MR. TOLEN WAS TALKING TO ME AND THE OTHER GUY WAS
4 LIKE STANDING BEHIND HIM A FEW FEET AWAY.

5 Q A FEW FEET BEHIND HIM, A FEW FEET AWAY?

6 A NOT DIRECTLY BEHIND HIM BUT TO THE RIGHT SIDE.

7 Q AND HE APPEARED TO HAVE SOMETHING IN HIS HAND?

8 A HE HAD A CROWN ROYAL BAG IN HIS HAND FULL OF CHANGE.

9 Q DID YOU TAKE THE BAG FROM HIM AND INSPECT IT?

10 A I WAS ON TOP OF THE ROOF OF THE HOUSE.

11 Q SO YOUR ANSWER TO MY QUESTION?

12 A I DIDN'T TAKE THE BAG FROM HIM AND INSPECT IT, NO, I
13 DIDN'T.

14 Q SO DOES CROWN ROYAL ONLY MAKE ONE BAG?

15 A NOT THAT I KNOW OF.

16 Q DID YOU SEE THE GENTLEMAN TAKE THE BAG FROM YOUR
17 TRUCK?

18 A NO, I DIDN'T.

19 Q AND YOU NEVER GOT AN OPPORTUNITY TO INSPECT THE BAG
20 THAT THE GENTLEMAN HAD; IS THAT CORRECT?

21 A THAT'S RIGHT.

22 Q YOU SAY IT HAD SOME CHANGE IN THE BAG?

23 A RIGHT.

24 Q DO YOU KNOW IF EITHER ONE OF THOSE GENTLEMEN HAD SOME
25 CHANGE IN THEIR POCKETS?

Appendix 114

OATON DYSON - CROSS - BY MR. WILLIAMS

113

1 A SAY THAT AGAIN.

2 Q DO YOU KNOW IF EITHER ONE OF THOSE YOUNG MEN HAD SOME
3 CHANGE IN THEIR POCKETS ALREADY?

4 A I HAVE NO WAY OF KNOWING THAT.

5 Q HOW DID YOU KNOW IT WAS SOME CHANGE IN THE BAG?

6 A BECAUSE IT WAS MY BAG AND MY CHANGE.

7 Q DID HE OPEN THE BAG AND LOOK INTO THE BAG?

8 A NO, HE DIDN'T DO THAT.

9 Q HOW DO YOU KNOW IT WAS SOME CHANGE IN THAT BAG?

10 A I ASSUME IT WAS MY BAG AND MY CHANGE IN THE BAG.

11 Q ALL RIGHT. NOW WE ARE TALKING. NOW WE ARE TALKING.
12 YOU JUST ASSUMED THAT; IS THAT CORRECT?

13 A RIGHT. WHEN I GOT BACK TO MY TRUCK, THE BAG WAS GONE
14 AND HE WAS THE LAST PERSON I SEEN WITH IT.

15 Q NOW, WHEN YOU GOT BACK IN YOUR TRUCK, BY THIS TIME
16 HAD THE POLICE COME?

17 A SAY THAT AGAIN.

18 Q WHEN YOU GOT BACK INTO YOUR TRUCK, HAD THE POLICE
19 COME?

20 A NO, THEY HADN'T GOT THERE YET.

21 Q SO YOU WERE ON THE ROOF. I PRESUME YOU HAD TO JUMP
22 OFF THE ROOF?

23 A NO, THE GUY PUT THE LADDER UP THERE SO I COULD GET
24 DOWN.

25 Q YOU CAME DOWN ON THE LADDER AND WENT BACK TO YOUR

1 TRUCK?

2 A THEY HELD ME THERE FOR A WHILE UNTIL THEY VERIFIED MY
3 STORY, AND THEN THEY WALKED ME BACK TO MY TRUCK SO I COULD
4 PUT MY SHOES ON.

5 Q YOU PUT YOUR SHOES ON?

6 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

7 Q THEN WHAT DID YOU DO NEXT?

8 A THEN WE WAIT UNTIL THE POLICE GOT THERE.

9 Q WHEN THE POLICE GOT THERE, WHAT DID YOU DO NEXT?

10 A I JUST ANSWERED THEIR ROUTINE QUESTIONS THEY NORMALLY
11 ASK, I GUESS, IN SITUATIONS LIKE THAT.

12 Q YOU ANSWERED THE POLICE'S QUESTIONS. THEN WHAT DID
13 YOU DO NEXT?

14 A WAITED THERE UNTIL THEY FINISHED THEIR REPORT, AND
15 THEN THEY ASKED ME TO FOLLOW THEM OVER TO BATESVILLE (SIC)
16 TO LOOK AT SOME PHOTOS.

17 Q SO YOU DROVE TO BATESBURG?

18 A YEAH.

19 Q YOU LOOKED AT SOME PHOTOS?

20 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

21 Q WAS ANYTHING ELSE TAKEN FROM YOUR TRUCK?

22 A THE POLICE TOOK A FLASHLIGHT OUT OF THERE. THAT'S
23 ALL I KNOW THAT WAS MISSING.

24 Q THE POLICE TOOK A FLASHLIGHT OUT?

25 A YES.

Appendix 116

OATON DYSON - CROSS - BY MR. WILLIAMS

115

1 Q DO YOU KNOW IF ANYTHING ELSE WAS MISSING?

2 A NOT THAT I RECALL.

3 Q NOT THAT YOU RECALL?

4 A HUH-UH. (INDICATING NEGATIVE RESPONSE).

5 Q DID YOU DO AN INVENTORY OF YOUR TRUCK?

6 A NO, I DIDN'T.

7 Q YOU DIDN'T?

8 A (WITNESS SHAKES HEAD). (INDICATING NEGATIVE
9 RESPONSE).

10 Q SO WHEN DID YOU TURN YOUR TRUCK IN?

11 A A FEW MONTHS LATER, I GUESS.

12 Q A FEW MONTHS LATER. YOU NEVER INVENTORIED YOUR TRUCK
13 BEFORE YOU TURNED IT IN?

14 A NO, I DIDN'T.

15 Q WHERE DID YOU KEEP YOUR BAG AT?

16 A IT WAS HANGING UP ON A HANGER IN THE BACK OF MY
17 TRUCK.

18 Q IT WAS HANGING IN THE BACK OF THE TRUCK. DO YOU KNOW
19 IF IT FELL DOWN?

20 A NO.

21 Q YOU DON'T KNOW. DID YOU EVER LOOK UNDER THE SEATS
22 FOR THE BAG?

23 A NO.

24 Q BUT THE ONE THING WE CAN ESTABLISH THOUGH IS THAT
25 YOU DID NOT SEE THE OTHER GENTLEMAN REMOVE THAT BAG FROM

1 YOUR TRUCK?

2 A THE LAST TIME I SEEN THAT BAG WAS IN THAT GUY'S
3 HAND.

4 Q YOU DID NOT SEE HIM REMOVE IT?

5 A I DIDN'T SEE HIM REMOVE IT FROM THE TRUCK.

6 Q AND DID YOU SEE WHO YOU SAY IS MR. TOLEN REMOVE
7 ANYTHING FROM THE TRUCK?

8 A YEAH, MY \$60.

9 Q YOU SAW HIM REMOVE THAT FROM YOUR TRUCK?

10 A YEAH.

11 Q ALL RIGHT. YOU JUMPED OUT OF THE TRUCK AND RAN; IS
12 THAT CORRECT?

13 A THAT'S RIGHT.

14 Q AND AT SOME POINT YOU SAY THE GENTLEMEN CAME BEHIND
15 YOU; IS THAT CORRECT?

16 A YEAH.

17 Q DO YOU KNOW WHAT HAPPENED TO THE \$60 AFTER YOU JUMPED
18 OUT THE TRUCK AND RAN?

19 A YOU GOT TO ASK MR. TOLEN THAT.

20 Q YOU SAY HE TOOK IT FROM THE TRUCK?

21 A I GAVE IT TO HIM.

22 Q OKAY. DID YOU SEE THE MONEY LEAVE THE TRUCK?

23 A SAY THAT AGAIN.

24 Q DID YOU SEE THE MONEY LEAVE YOUR TRUCK?

25 A HE PUT IT IN HIS POCKET.

Appendix 118

OATON DYSON - CROSS - BY MR. WILLIAMS

117

1 Q DID YOU SEE HIM LEAVE THE TRUCK WITH THE MONEY?

2 A HE LEFT THE TRUCK WITH THE MONEY IN HIS POCKET.

3 Q MR. DYSON, YOU EXITED THE TRUCK; RIGHT?

4 A YEAH.

5 Q YOU WERE RUNNING; IS THAT CORRECT?

6 A RIGHT.

7 Q THEN AT SOME POINT MR. TOLEN OR WHO YOU CLAIM TO BE
8 THE INDIVIDUAL YOU CLAIM TO BE MR. TOLEN, EXITED THE TRUCK;
9 IS THAT CORRECT?

10 A RIGHT.

11 Q DID HE EXIT OUT THE SAME DOOR?

12 A HE EXITED THE SAME DOOR HE ENTERED IN.

13 Q THE OTHER SIDE?

14 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

15 Q SO THAT'S AN 18-WHEELER, ISN'T IT?

16 A YES, IT IS.

17 Q ONCE YOU GET DOWN YOU CAN'T SEE WHAT IS HAPPENING UP
18 THERE, CAN YOU?

19 A SAY THAT AGAIN.

20 Q ONCE YOU GET DOWN OUT OF YOUR TRUCK, YOU CANNOT SEE
21 WHAT IS GOING ON UP IN YOUR TRUCK; CAN YOU?

22 A NO.

23 Q NOW, DID YOU SEE THE INDIVIDUAL YOU CLAIM TO BE MR.
24 TOLEN TAKE ANY MONEY FROM YOUR TRUCK?

25 A NO.

OATON DYSON - REDIRECT - BY MR. MAYE

1 Q AND YOU DIDN'T SEE THE OTHER INDIVIDUAL REMOVE A BAG
2 FROM YOUR TRUCK EITHER, DID YOU?

3 A NO, I DIDN'T.

4 MR. WILLIAMS: I DON'T HAVE ANY FURTHER
5 QUESTIONS.

6 THE COURT: REDIRECT?

7 MR. MAYE: VERY BRIEFLY.

8 REDIRECT EXAMINATION

9 BY MR. MAYE:

10 Q MR. DYSON, YOU SAW FRANK TOLEN TAKE YOUR \$60 AT
11 GUNPOINT; DIDN'T YOU?

12 A THAT'S FOR SURE.

13 Q THERE IS NO DOUBT IN YOUR MIND THAT'S WHO TOOK YOUR
14 MONEY?

15 A NO DOUBT AT ALL.

16 MR. MAYE: NO OTHER QUESTIONS.

17 THE COURT: YOU CAN STEP DOWN. WAS THAT ALL?

18 MR. MAYE: YOUR HONOR, WE HAVE HAD MR. DYSON AS A
19 MATERIAL WITNESS SINCE JANUARY 5TH. HE NEEDS TO GET BACK
20 TO WORK. IF THERE IS NO OBJECTION FROM MR. WILLIAMS IN
21 THIS CASE, WE ARE GOING TO RELEASE MR. DYSON AT THIS TIME
22 UNLESS HE NEEDS HIM. HE IS UNDER MR. WILLIAMS' SUBPOENA AS
23 WELL.

24 MR. WILLIAMS: YOUR HONOR, WE OBJECT AT THIS
25 TIME.

1 THE COURT: HE IS STILL UNDER SUBPOENA. HE WILL
2 HAVE TO REMAIN HERE UNTIL THE TRIAL HAS BEEN CONCLUDED.
3 YOU CAN STEP DOWN, MR. DYSON. WE WILL TAKE A TEN-MINUTE
4 RECESS.

5 MADAME FORELADY, LADIES AND GENTLEMEN, YOU CANNOT
6 DISCUSS THE CASE. USE THE REST ROOM AND STRETCH YOUR LEGS
7 A LITTLE BIT. WE WILL START BACK IN TEN MINUTES. EVERYONE
8 ELSE STAY SEATED, PLEASE. THE JURY IS EXCUSED TO THE JURY
9 ROOM.

10 (THE JURY RETIRES TO THE JURY ROOM).

11 THE COURT: WE WILL TAKE TEN MINUTES.

12 (WHEREUPON THERE WAS A RECESS).

13 THE COURT: IS THE STATE READY TO PROCEED?

14 MR. MAYE: YES, SIR, THE STATE IS READY.

15 THE COURT: MR. WILLIAMS, ARE YOU READY?

16 MR. WILLIAMS: YES, SIR.

17 THE COURT: LET'S GET THE JURY BACK IN, PLEASE.

18 (THE JURY RETURNS TO THE COURTROOM).

19 THE COURT: CALL YOUR NEXT WITNESS, SOLICITOR.

20 FOREMAN: YOUR HONOR, EVERYBODY IS HAVING TROUBLE
21 HEARING, I THINK IT'S MR. WILLIAMS.

22 THE COURT: IF YOU WILL SPEAK UP, PLEASE. HE IS
23 KIND OF LIKE I AM. IF I DIDN'T HAVE THIS, YOU WOULD
24 PROBABLY HAVE A HARD TIME HEARING ME. JUST SPEAK UP A
25 LITTLE BIT PLEASE, MR. WILLIAMS. IF YOU CANNOT HEAR, GET

ROBERT SHORTER - DIRECT - BY MR. MAYE

1 MY ATTENTION. I WILL BE SURE THAT THE QUESTIONS THAT ARE
2 ASKED, AS WELL AS THE ANSWERS, ARE SO THAT YOU CAN HEAR
3 THEM.

4 MR. MAYE: THE STATE CALLS INVESTIGATOR ROBERT
5 SHORTER TO THE STAND.

6 ROBERT SHORTER, BEING FIRST
7 DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. MAYE:

10 Q INVESTIGATOR SHORTER, BRIEFLY INTRODUCE YOURSELF TO
11 THE JURY.

12 A MY NAME IS ROBERT SHORTER.

13 Q WHAT DO YOU DO?

14 A I WORK FOR EDGEFIELD, SALUDA AND MCCORMICK IN THE
15 NARCOTICS AND VIOLENT CRIME TASK FORCE.

16 Q WHAT DO YOU DO FOR THE TASK FORCE?

17 A I'M AN INVESTIGATOR.

18 Q OFFICER SHORTER, PURSUANT TO YOUR DUTIES AS AN
19 INVESTIGATOR, HAVE YOU WORKED ON THIS CASE?

20 A BRIEFLY, YES.

21 (ATTORNEYS CONFER).

22 Q OFFICER SHORTER, I HAND YOU THESE ITEMS. PURSUANT TO
23 YOUR WORK AS AN INVESTIGATOR IN THIS CASE, DID YOU TAKE
24 CERTAIN PHOTOGRAPHS OF THE AREA COMMONLY KNOWN AS THE
25 TRAFFIC CIRCLE IN THIS CASE?

ROBERT SHORTER - DIRECT - BY MR. MAYE

1 A YES, SIR, I DID.

2 Q DID YOU SUBSEQUENTLY HAVE THOSE PHOTOGRAPHS
3 DEVELOPED?

4 A YES, SIR.

5 Q DID YOU SUBSEQUENTLY HAVE ENLARGEMENTS MADE OF THOSE
6 PHOTOGRAPHS?

7 A YES, SIR.

8 Q HAVE YOU HAD THEM IN YOUR CUSTODY SINCE THAT TIME?

9 A YES, SIR.

10 Q DO THEY FAIRLY AND ACCURATELY DEPICT THE SCENE
11 COMMONLY KNOWN AS THE TRAFFIC CIRCLE AT THE INTERSECTION OF
12 391 AND 378 IN SALUDA COUNTY?

13 A YES, SIR, THEY DO.

14 MR. MAYE: YOUR HONOR, UNLESS THERE IS OBJECTION
15 FROM DEFENSE IN THIS CASE, I MOVE TO ADMIT THESE INTO
16 EVIDENCE AS STATE'S EXHIBITS.

17 THE COURT: ANY OBJECTION TO THESE?

18 MR. WILLIAMS: NO OBJECTION.

19 THE COURT: WITHOUT OBJECTION THEY WILL BE MARKED
20 AND ADMITTED AS STATE'S EXHIBITS.

21 (STATE'S EXHIBITS NUMBERS 2 THROUGH 21,
22 PHOTOGRAPHS, ARE RECEIVED INTO EVIDENCE).

23 Q OFFICER SHORTER, I ONLY HAVE ONE QUESTION. IN THESE
24 PHOTOGRAPHS THAT YOU MADE, THERE IS A TRUCK DEPICTED IN
25 THERE. WHAT NUMBER IS THAT?

ROBERT SHORTER - DIRECT - BY MR. MAYE

1 A TWENTY.

2 Q WHERE DID THAT TRUCK COME FROM?

3 A IT WAS JUST A TRUCK PASSING DOWN THE HIGHWAY THAT DAY
4 WE WERE TAKING PICTURES, AND WE FLAGGED IT DOWN AND ASKED
5 IT TO PARK IN THE GENERAL LOCATION JUST TO DEPICT THE
6 18-WHEELER PARKED IN THAT LOCATION.

7 Q THAT'S ACTUALLY A TRUCK THAT BELONGS TO THE STATE OF
8 SOUTH CAROLINA?

9 A THAT'S CORRECT, YES, SIR.

10 Q OFFICER SHORTER, IN YOUR INVOLVEMENT IN THIS CASE AS
11 AN INVESTIGATOR, DID YOU TAKE EFFORTS ON BEHALF OF THE
12 STATE TO SECURE MR. DYSON'S, THE VICTIM IN THIS CASE,
13 ATTENDANCE AT TRIAL?

14 A YES, SIR, I DID.

15 Q WHAT DID YOU DO?

16 A I MADE NUMEROUS CALLS TO THE I.R.S. AND THE LOUISIANA
17 STATE DEPARTMENT OF REVENUE IN AN ATTEMPT TO LOCATE HIS
18 EMPLOYER TO THEREFORE FIND HIM TO SERVE A SUBPOENA ON HIM.
19 I NOTIFIED HIS PARENTS AT THE PHONE NUMBER HE LEFT ON THE
20 INCIDENT REPORT WITH NO LUCK.

21 EVENTUALLY I WAS ABLE TO GET A HOLD TO A GENTLEMAN IN
22 THE PROSECUTOR'S OFFICE THERE IN NEW ORLEANS. HE HAD A
23 GENTLEMAN THERE. HE REFERRED US TO A GENTLEMAN WHO WAS A
24 FORMER POLICE OFFICER THAT WORKED WITH A TRUCKING COMPANY,
25 A MR. KING I BELIEVE IT WAS.

ROBERT SHORTER - DIRECT - BY MR. MAYE

1 TRUCK DRIVERS HAVE WHAT THEY CALL D.A.C., DRIVER
2 APPLICATION SOMETHING. I'M NOT SURE BUT THE ACRONYM IS
3 D.A.C. IT'S A COMPUTER BANK WHERE ALL TRUCK DRIVERS'
4 INFORMATION IS STORED. SO IF A TRUCK DRIVER GOES TO APPLY
5 FOR A JOB, THE PROSPECTIVE EMPLOYER CAN LOOK AT THEIR
6 DRIVER HISTORY AND THEIR WORK RECORD TO SEE IF THEY ARE A
7 FAVORABLE CANDIDATE FOR EMPLOYMENT. HE RAN A CHECK ON MR.
8 DYSON USING HIS NAME, DATE OF BIRTH AND SOCIAL SECURITY
9 NUMBER AND THROUGH THAT SYSTEM---

10 MR. WILLIAMS: YOUR HONOR---

11 A ---WE WERE ABLE TO---

12 THE COURT: WAIT A MINUTE. THERE IS AN
13 OBJECTION.

14 MR. WILLIAMS: YOUR HONOR, ON THE GROUNDS OF
15 RELEVANCY I DON'T SEE THE CONNECTION BETWEEN THIS TESTIMONY
16 AND THIS CASE. AGAIN, MR. DYSON HAS ALREADY TESTIFIED AS
17 TO HOW HE GOT HERE. THAT HAS BEEN ADDRESSED. I DON'T SEE
18 THE RELEVANCE AS TO THIS.

19 THE COURT: WELL, YOU SOLICITED TESTIMONY ABOUT
20 HE HAD NOT BEEN SUBPOENAED AND WHATNOT. THAT MAKES IT
21 RELEVANT. I OVERRULE YOUR OBJECTION. GO AHEAD.

22 A THROUGH THAT CHECK WE WERE ABLE TO LOCATE MR. DYSON'S
23 EMPLOYER. I MADE CONTACT WITH HIS EMPLOYER. HE WAS STILL
24 AN OVER-THE-ROAD TRUCK DRIVER. HE WENT FROM LOAD TO LOAD.
25 HE WAS NEVER IN ONE PLACE AT ANY TIME.

1 THROUGH CORRESPONDENCE WITH HIS EMPLOYER, WE WERE
2 ABLE TO GET WORD TO HIM THAT HE NEEDED TO BE HERE. THE
3 CORRESPONDENCE BACK WAS THAT HE WAS NOT COMING. SO
4 THEREFORE I SECURED AN ORDER FOR HIS DETAINMENT FROM A
5 CIRCUIT COURT JUDGE HERE IN THE STATE OF SOUTH CAROLINA.

6 MR. DYSON'S EMPLOYER AT THAT TIME SCHEDULED HIM A
7 LOAD IN SPARTANBURG, SOUTH CAROLINA. WHEN HE ARRIVED IN
8 SPARTANBURG, HE WAS DETAINED BY THE SPARTANBURG COUNTY
9 SHERIFF'S DEPARTMENT. I TRAVELED UP THERE AND TRANSPORTED
10 HIM BACK TO SALUDA ON JANUARY 5TH, AND HE HAS BEEN HERE
11 EVER SINCE.

12 Q MR. SHORTER, ANSWER ANY QUESTIONS MR. WILLIAMS HAS
13 FOR YOU.

14 THE COURT: MR. WILLIAMS.

15 MR. WILLIAMS: THANK YOU, YOUR HONOR.

16 CROSS EXAMINATION

17 BY MR. WILLIAMS:

18 Q MR. SHORTER, I UNDERSTOOD YOU TO SAY THAT YOU SECURED
19 AN ORDER?

20 A YES, SIR.

21 Q FROM A CIRCUIT COURT JUDGE?

22 A YES, SIR.

23 Q WHEN WERE YOU ADMITTED TO THE SOUTH CAROLINA BAR?

24 A TO THE WHAT?

25 Q TO THE SOUTH CAROLINA BAR.

Appendix 126

ROBERT SHORTER - CROSS - BY MR. WILLIAMS

125

1 A THE SOUTH CAROLINA BAR? I AM NOT A MEMBER.

2 Q YOU ARE NOT A MEMBER?

3 A NO, SIR.

4 Q BUT YOU GOT AN ORDER FROM A CIRCUIT COURT JUDGE?

5 A WELL, INDIRECTLY. I WENT THROUGH THE SOLICITOR'S
6 OFFICE, YES, SIR.

7 Q TELL ME HOW THAT WORKS THEN. ONE MINUTE YOU
8 TESTIFIED THAT YOU GOT THE ORDER.

9 A RIGHT. WHENEVER I AM INVESTIGATING A CASE AND I NEED
10 SOMETHING THAT REQUIRES AN ORDER FROM A CIRCUIT COURT
11 JUDGE, I CONTACT THE SOLICITOR'S OFFICE AND TELL THEM WHAT
12 I NEED; AND THEY PREPARE AN ORDER IN THEIR NAME, IF THAT
13 CLARIFIES IT, AND THE ORDER IS EXECUTED.

14 Q SO THEN IT'S FAIR TO SAY YOUR TESTIMONY ABOUT YOU GOT
15 AN ORDER WAS INCORRECT?

16 A WELL, I REQUESTED AN ORDER THROUGH THE SOLICITOR'S
17 OFFICE. YES, SIR, THEY ACTUALLY OBTAINED THE ORDER.

18 Q OKAY. DID MR. DYSON EVER TELL YOU THAT HE WOULD
19 ABSOLUTELY NOT COME BACK?

20 A I HAVE NEVER TALKED TO MR. DYSON UNTIL I PICKED HIM
21 UP IN SPARTANBURG.

22 Q SO PRIOR TO YOU GETTING THE ORDER OR ADVISING THE
23 SOLICITOR YOU NEEDED AN ORDER TO LOCK HIM UP, YOU HAD NEVER
24 EVEN SPOKEN TO HIM?

25 A NEVER COULD FIND HIM TO SPEAK TO HIM.

JOEL LINDLER - DIRECT - BY MR. MAYE

1 Q THANK YOU.

2 THE COURT: ANYTHING FURTHER?

3 MR. MAYE: NOTHING FURTHER.

4 THE COURT: YOU CAN STEP DOWN.

5 THE WITNESS: THANK YOU, SIR.

6 THE COURT: ALL RIGHT, SIR.

7 MR. MAYE: THE STATE WOULD CALL JOEL LINDLER TO

8 THE STAND.

9 JOEL LINDLER, BEING FIRST

10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. MAYE:

13 Q MR. LINDLER, THANK YOU FOR COMING. IF YOU WILL SPEAK

14 UP. SPEAK VERY LOUDLY AND TALK TO THE JURY IF YOU WILL.

15 A OKAY.

16 Q INTRODUCE YOURSELF TO THE JURY AND TELL THEM WHERE

17 YOU ARE FROM.

18 A I'M JOEL LINDLER FROM THE TRAFFIC CIRCLE. THAT'S

19 BETWEEN SALUDA AND LEXINGTON, THE CIRCLE THERE. EVERYBODY

20 IS PROBABLY FAMILIAR WITH IT. I LIVE ON THE BATESBURG

21 HIGHWAY, THE LAST HOUSE ON THE RIGHT ENTERING THE CIRCLE.

22 THAT'S WHERE I LIVE. THE GARAGE IS RIGHT BEHIND IT WHERE I

23 STORE STUFF WHERE THIS HAPPENED AT.

24 Q TELL THE JURY HOW YOU BECAME INVOLVED IN THIS CASE.

25 A WELL, ABOUT ONE O'CLOCK I HEARD A REAL LOUD, MORE OR

JOEL LINDLER - DIRECT - BY MR. MAYE

1 LESS, HOLLERING, SCREAMING, BEATING ON THE METAL GARAGE
2 DOOR. THERE IS A METAL GARAGE DOOR THERE. SO IT WAKED ME
3 UP. SO I WENT TO THE BLIND AND PULLED THE BLIND. I COULD
4 SEE HIM KNOCKING ON THE DOOR, HOLLERING AND SCREAMING,
5 BEATING ON THE METAL GARAGE DOOR.

6 I IMMEDIATELY WENT BACK IN THE HOUSE AND WAS VERY
7 FRIGHTENED, YOU KNOW, DIDN'T KNOW WHAT WAS GOING ON. SO I
8 WENT BACK AND CALLED MY BROTHER. I TOLD HIM HE MIGHT
9 BETTER COME OVER IF HE COULD BECAUSE THERE WAS SOME
10 ACTIVITY HERE AND I DON'T KNOW WHAT WAS GOING ON.

11 SO I WENT BACK TO THE BLIND. THERE IS A LADDER THAT
12 GOES UP ON THE BUILDING. IT'S ALWAYS STANDING THERE, AN
13 ALUMINUM LADDER. HE HAD CLIMBED UP ON THE LADDER AND GOT
14 ON TOP OF THE BUILDING AND THEN THREW THE LADDER DOWN. I
15 STOOD AT THE BLIND UNTIL MY BROTHER GOT THERE BECAUSE I
16 ACTUALLY DIDN'T WANT TO GO OUT UNTIL I HAD SOME HELP, YOU
17 KNOW.

18 Q MR. LINDLER, I WILL SHOW YOU SOME PHOTOGRAPHS,
19 STATE'S 16, 18 AND 19. I WOULD LIKE FOR YOU TO WALK DOWN
20 HERE AND SHOW THE LADIES AND GENTLEMEN OF THE JURY WHAT IS
21 IN THESE PHOTOGRAPHS.

22 A (WITNESS LEAVES THE WITNESS STAND). THIS
23 (INDICATING) IS THE GARAGE LIKE I USED FOR STORAGE. THIS
24 (INDICATING) IS THE LADDER THAT I LEANED UP AGAINST THE
25 BUILDING. HE WAS IMMEDIATELY BEATING ON THIS DOOR

JOEL LINDLER - DIRECT - BY MR. MAYE

1 (INDICATING) IF I RECALL RIGHT. HE WAS BEATING WITH HIS
2 FIST AND SCREAMING AND HOLLERING, YOU KNOW. WHEN I MADE
3 THE PHONE CALL AND I COME BACK, HE WENT UP THIS LADDER AND
4 GOT ON -- IT'S LIKE A LEAN-TO, A SHED -- AND THREW THIS
5 LADDER DOWN. THEN I WAITED FOR HIM TO COME.

6 THIS (INDICATING) IS THE SAME PHOTO. THIS IS THE
7 SAME GARAGE WHERE MY TRUCK IS AND THAT'S (INDICATING) THE
8 LADDER. THIS (INDICATING) IS MY SHOP AND THIS IS WHERE I
9 LIVE. IF YOU COME FROM BATESBURG, IT WOULD BE THE LAST
10 HOUSE ON THE RIGHT AS YOU ENTER THE TRAFFIC CIRCLE.

11 Q THANK YOU. RETAKE THE STAND.

12 A (WITNESS RESUMES THE WITNESS STAND).

13 Q WHEN YOU ARE TALKING ABOUT THE FELLOW WHO WAS BEATING
14 ON THE DOOR AND CLIMBING ON THE ROOF, WHO ARE YOU TALKING
15 ABOUT?

16 A THE TRUCK DRIVER.

17 Q MR. DYSON?

18 A THAT'S RIGHT, MR. DYSON.

19 Q WHAT DID YOU DO AFTER YOUR BROTHER ARRIVED ON THE
20 SCENE?

21 A I WENT OUT WITH A GUN. I AIN'T GOING TO TELL NO
22 STORY. I HAD A PISTOL BECAUSE I DIDN'T KNOW WHAT WAS GOING
23 ON. I WAS FRIGHTENED TO DEATH, YOU KNOW. SO MY BROTHER
24 GOT OUT FIRST BEFORE I COME OUT THE DOOR. THE TWO OF US
25 CAME OUT TOGETHER. THAT'S BASICALLY IT.

1 HE COME UP AND HE EXPLAINED TO US IN DETAIL WHAT HAD
2 HAPPENED AND HE COME DOWN. WE GOT THE LADDER AND TOLD HIM
3 TO COME DOWN. HE COME DOWN. HE TOLD US HE HAD BEEN
4 ROBBED. YOU KNOW, HE SAID, "IF YOU DON'T BELIEVE ME, YOU
5 GO AND SEE MY TRUCK PARKED OVER AT THE FRONTIS SMITH
6 STORE." IT'S A STORE OVER THERE. "AND YOU WILL SEE THE
7 DOOR OPEN."

8 I WENT OVER THERE. HE WAS CORRECT. THE DOOR WAS
9 OPENED AND THE TRUCK WAS THERE. SO MY BROTHER WALKED WITH
10 HIM. I WENT BACK TO THE HOUSE WHERE I LIVE WITH MY MOTHER,
11 87 YEARS OLD. SO I WENT BACK TO THE HOUSE AND MY BROTHER
12 WALKED WITH HIM BACK TO THE TRUCK.

13 Q DID YOU ALSO CALL THE POLICE?

14 A BILLY, MY BROTHER, CALLED THE POLICE, RIGHT.

15 Q YOU WERE THERE WHEN THE POLICE ARRIVED AND ALL?

16 A WELL, IF I AM NOT CORRECT, THE POLICE ARRIVED AT THE
17 TRUCK. I WAS AT THE HOUSE.

18 Q THANK YOU FOR COMING. ANSWER ANY QUESTIONS MR.
19 WILLIAMS HAS FOR YOU.

20 THE COURT: MR. WILLIAMS.

21 MR. WILLIAMS: MAY IT PLEASE THE COURT.

22 CROSS EXAMINATION

23 BY MR. WILLIAMS:

24 Q MR. LINDLER, YOU HAVE IDENTIFIED STATE'S EXHIBIT 16
25 AS THE SHOP TO YOUR HOUSE; IS THAT CORRECT?

Appendix 131

JOEL LINDLER - CROSS - BY MR. WILLIAMS

130

1 A IT'S A GARAGE. IT'S WHAT I STORE STUFF IN. MY
2 GARAGE IS ACROSS THE STREET. YES, SIR, THIS IS A STORAGE
3 BUILDING, YOU KNOW. LIKE I SAY, HE WAS BEATING WITH HIS
4 FIST ON THIS DOOR RIGHT HERE (INDICATING).

5 Q NOW, IN THIS PHOTOGRAPH I NOTICE THERE IS A NIGHT
6 LIGHT IN THIS PHOTOGRAPH RIGHT HERE (INDICATING)?

7 A YES, SIR.

8 Q HOW LONG HAS THAT NIGHT LIGHT BEEN UP?

9 A IT'S BEEN THERE MANY YEARS. IT WAS BURNING THAT
10 NIGHT. IT WAS ON THE NIGHT THAT HE COME THERE.

11 Q WHERE DOES THAT LIGHT CAST THE ILLUMINATION TO?

12 A BASICALLY IN FRONT OF THIS BUILDING. IT SHINES
13 BASICALLY IN FRONT OF THE BUILDING AND TOWARDS THE HOUSE,
14 YES, SIR.

15 Q CAN YOU GIVE US AN APPROXIMATE DISTANCE AS TO HOW FAR
16 IT SHINES?

17 A WELL, IT PROBABLY REACHES OUT THERE, I WOULD SAY, TO
18 THE HIGHWAY. PROBABLY IT'S 200, 250 FEET OUT FRONT AND TO
19 THE SIDE. IT ILLUMINATES THAT PART OF THE YARD, YES, SIR.

20 Q NOW, I AM GOING TO SHOW YOU STATE'S EXHIBIT NUMBER
21 18.

22 A YES, SIR.

23 Q IS THAT THE APPROXIMATE LOCATION OF WHERE THE LADDER
24 WAS ON THAT EVENING?

25 A THIS LADDER CAN BE MOVABLE, YOU FOLLOW ME? IT'S JUST

Appendix 132

JOEL LINDLER - CROSS - BY MR. WILLIAMS

131

1 A PROP LADDER. IT MIGHT BE A LITTLE BIT FARTHER DOWN OR A
2 LITTLE BIT FARTHER UP. I ALWAYS JUST LEAN IT AGAINST THE
3 BUILDING.

4 Q THAT PARTICULAR EXHIBIT, IS THAT THE GENERAL LOCATION
5 OF WHERE THE LADDER WAS?

6 A YES, SIR. THAT'S ABOUT THE GENERAL LOCATION, YES,
7 SIR.

8 Q NOW, IF YOU WILL LET'S TALK ABOUT THE NIGHT LIGHT
9 THAT IS ON THAT PHOTOGRAPH.

10 A YES, SIR.

11 Q IT'S HANGING RIGHT THERE OFF OF THE HOUSE; IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q AND IT'S FAIR TO SAY THAT THE ILLUMINATION CERTAINLY
15 CAN'T PENETRATE THE HOUSE; ISN'T THAT CORRECT?

16 A IT PENETRATES THE HOUSE A GOOD BIT BECAUSE IT'S NOT
17 THAT FAR FROM THE HOUSE. IT'S VERY CLOSE TO THE HOUSE.
18 THE HOUSE IS ON THE SIDE IT'S ON RIGHT HERE (INDICATING).

19 Q LET ME TALK ABOUT THE GARAGE. THE GARAGE IS MADE OF
20 WHAT?

21 A THE GARAGE IS MADE OF -- IT'S LIKE AN ASBESTOS
22 SIDING, HARD BOARD SIDING, I CALL IT. THEN THE GARAGE DOOR
23 IS ALUMINUM OR A STEEL GARAGE DOOR.

24 Q BUT YOU WOULD AGREE WITH ME THAT LIGHT FROM --
25 ILLUMINATION FROM THAT PARTICULAR LIGHT CAN'T PENETRATE

1 THAT MATERIAL?

2 A IT CAN'T SHINE THROUGH IT, NO. IT ILLUMINATES THE
3 YARD IS WHAT I'M TALKING ABOUT. I WILL NOT SAY IT LIGHTS
4 INSIDE THE BUILDING. IT ILLUMINATES THE YARD.

5 Q SO THAT LIGHT ILLUMINATES EVERYTHING IN FRONT OF IT
6 BUT NOT BEHIND IT?

7 A NO, SIR. IT DON'T GET TOO FAR BEHIND IT BECAUSE THE
8 BUILDING BLOCKS IT.

9 Q THAT LADDER IS LOCATED BEHIND THE LIGHT?

10 A BESIDE THE LIGHT.

11 Q IT'S BESIDE THE LIGHT?

12 A YES, SIR, IT'S BESIDE THE LIGHT. IF YOU WILL LOOK,
13 THIS BUILDING (INDICATING) COMES STRAIGHT. SEE, THIS
14 (INDICATING) IS AN ADD-ON HERE. IT'S COMES STRAIGHT DOWN
15 THE SIDE.

16 Q OKAY.

17 A IT'S NOT OFFSET. IT'S DIRECT, ALL IN LINE. I BUILT
18 IT THAT WAY. THE LIGHT HANGS PROBABLY ABOUT THREE FEET OFF
19 OF THIS BUILDING (INDICATING). SO IT ILLUMINATES THIS REAL
20 WELL.

21 Q WHEN YOU SAW THE GENTLEMAN YOU HAVE IDENTIFIED AS
22 BEING MR. DYSON ON THE HOUSE, WHERE WAS HE AT IN
23 RELATIONSHIP TO THIS PHOTOGRAPH?

24 A MR. DYSON WAS PROBABLY IN THIS AREA HERE (INDICATING)
25 TOWARD THE END OF THE BUILDING. I SEEN HIM, YOU KNOW.

Appendix 134

JOEL LINDLER - CROSS - BY MR. WILLIAMS

133

1 WHEN I SEEN HIM HE WAS DOWN BELOW THE LIGHT.

2 Q IF YOU WILL STEP DOWN WITH ME, MR. LINDLER.

3 A YES, SIR. (WITNESS LEAVES THE WITNESS STAND).

4 Q LET'S MAKE SURE EVERYONE CAN SEE THIS. THIS
5 PHOTOGRAPH IS SOMEWHAT SMALL. SO THIS IS THE NIGHT LIGHT
6 RIGHT HERE (INDICATING)?

7 A THAT'S THE NIGHT LIGHT, THAT'S RIGHT.

8 Q YOU INDICATED TO ME THAT THE ILLUMINATION GOES OUT IN
9 FRONT OF THE BUILDING?

10 A THAT'S RIGHT, AND DOWN THE SIDE. SEE, THIS BUILDING
11 IS JUST LIKE THIS WALL RIGHT HERE. IT'S A STRAIGHT
12 BUILDING. WHEN YOU HANG THAT LIGHT THREE FEET, IT
13 ILLUMINATES THAT SIDE (INDICATING). THE ONLY THING IT
14 DON'T ILLUMINATE MIGHT BE BEHIND IT, THIS WALL BEHIND IT
15 (INDICATING). YOU KNOW, DOWN THE SIDE IT ILLUMINATES.
16 THAT'S THE REASON I PUT IT UP THERE.

17 Q HOW MUCH SHRUBBERY DO YOU HAVE IN YOUR YARD?

18 A I HAVE SHRUBBERY PROBABLY TWO FEET HIGH AROUND IT.
19 IF YOU NOTICE THAT NIGHT THERE WAS A PORCH LIGHT THAT STAYS
20 ON THAT HOUSE ALL NIGHT LONG. MR. DYSON REMEMBERED THAT
21 THERE WAS A PORCH LIGHT ALSO.

22 Q LET'S TALK ABOUT WHAT YOU REMEMBER.

23 A THAT'S RIGHT.

24 Q NOW, HAVE ANY BUSHES BEEN CUT SINCE THAT NIGHT?

25 A YES. WHENEVER WE CUT THEM DOWN AND TRIMMING IN THE

Appendix 135

JOEL LINDLER - CROSS - BY MR. WILLIAMS

134

1 SPRING OF THE YEAR, WE CUT THE SHRUBBERY BACK.

2 Q SO THIS PHOTOGRAPH IS NOT A FAIR REPRESENTATION OF
3 THE CONDITION THAT THE HOUSE WAS IN?

4 A THIS SHRUBBERY NEVER BEEN CUT. ONLY AROUND THE HOUSE
5 IT'S BEEN TRIMMED. THIS (INDICATING) IS CAMELLIAS THAT HAS
6 NOT BEEN CUT.

7 Q THIS PHOTOGRAPH YOU ARE SAYING THERE IS NO SHRUBBERY
8 CUT OR TRIMMED?

9 A NO, SIR.

10 Q NOW, YOU ALSO TESTIFIED THAT THIS MAY OR MAY NOT BE
11 THE EXACT LOCATION THAT THE LADDER WAS IN?

12 A I SAID THE LADDER COULD BE A COUPLE FEET EITHER WAY.
13 I AM NOT SAYING -- THE LADDER IS MOVABLE. IT ALWAYS STAY
14 IN BETWEEN THE TWO DOORS. THIS (INDICATING) IS A WALK-IN
15 DOOR AND THIS (INDICATING) IS THE DOOR. THE LADDER STAYS
16 IN BETWEEN WHERE I CAN OPEN THE DOORS.

17 Q ALL RIGHT. THANK YOU, SIR.

18 A (WITNESS RESUMES THE WITNESS STAND).

19 Q LET'S LOOK AT STATE'S EXHIBIT NUMBER 16. I SEE SOME
20 SHRUBBERY ON THE LEFT-HAND SIDE.

21 A THAT IS THE SAME SHRUBBERY YOU ARE LOOKING AT. THIS
22 SHRUBBERY HERE IS PART OF THE CAMELLIAS THAT HANGS OVER.
23 IT'S PART OF WHERE THE SHOT IS TAKEN FROM. IT'S PART OF
24 THE CAMELLIAS OUT THERE.

25 Q SO YOU HAVE GOT SOME SHRUBBERY ON THE SAME SIDE WITH

Appendix 136

JOEL LINDLER - CROSS - BY MR. WILLIAMS

135

1 THE LIGHT; IS THAT CORRECT?

2 A YES, SIR.

3 Q DOES THAT SHRUBBERY CAUSE A SHADOW TO BE CAST WHEN
4 THE LIGHT IS ON?

5 A WELL, IT SHINES ABOVE IT. IF YOU WILL LOOK AT IT,
6 YOU WILL SEE WHERE THE NIGHT LIGHT IS UP HERE (INDICATING).
7 IT COMES OVER THE SHRUBBERY. THE SHRUBBERY IS NOT THAT
8 HIGH. IT LOOKS HIGH ON THAT BUT IT'S NOT THAT HIGH.

9 Q I AM TALKING ABOUT THIS PHOTOGRAPH RIGHT HERE. THIS
10 SHRUBBERY (INDICATING) LOOKS AS THOUGH IT'S ALMOST THE
11 HEIGHT OF THE BUILDING.

12 A YEAH. LIKE YOU SAID, I DON'T KNOW HOW THE SHOT WAS
13 TAKEN. I DON'T KNOW HOW IT WAS TAKEN. THE SHRUBBERY IS
14 NOT THAT HIGH. THIS (INDICATING) IS A CAMELLIA. IF YOU
15 TAKE AND ANGLE THE CAMELLIA, THIS IS A CAMELLIA THAT SITS
16 RIGHT HERE (INDICATING). YOU FOLLOW ME? IF YOU SHOOT THAT
17 ANGLE THERE, IT WOULD PROBABLY BE THAT HIGH. WHERE I AM
18 LOOKING FROM MY WINDOW IS STRAIGHT FROM THIS ANGLE RIGHT
19 HERE (INDICATING). WHEN I COME OUT THAT WINDOW, THE DOOR
20 IS A SHOT STRAIGHT THROUGH HERE (INDICATING), A CLEAR VIEW.

21 Q LET'S TALK ABOUT STATE'S EXHIBIT NUMBER 16. SO YOU
22 ARE SAYING THIS PLANT RIGHT HERE (INDICATING), THIS
23 PHOTOGRAPH IS NOT A TRUE REPRESENTATION OF THE SIZE OF THAT
24 PLANT?

25 A NO, SIR. I SAID THIS PLANT (INDICATING) IS THIS

1 PLANT RIGHT HERE (INDICATING). IT'S THE WAY THE SHADOW IS
2 TAKEN. YOU SEE THAT THE CARPORT IS NOT SHORT. THIS SHOT
3 IS TAKEN FROM ANOTHER ANGLE.

4 Q MY QUESTION IS THOUGH IS THAT THIS PLANT (INDICATING)
5 IS ABOUT THE HEIGHT OF THE BUILDING?

6 A THIS BUILDING -- THIS PLANT HERE (INDICATING) IS
7 PROBABLY AS HIGH AS THIS CARPORT IF YOU LOOK AT IT. IT'S
8 NOT AS HIGH AS THE BUILDING. IT'S AS HIGH AS THE CARPORT.
9 THIS CAMELLIA (INDICATING) SITS OVER TO THE RIGHT OF THIS
10 CARPORT. THERE IS NOT WHERE I SEEN THE VIEW FROM. WHEN I
11 LOOKED OUT THIS DOOR WINDOW, I HAD A STRAIGHT VIEW RIGHT
12 HERE (INDICATING).

13 Q YES, SIR.

14 A THAT'S WHAT I WANT TO MAKE PRETTY CLEAR.

15 Q OKAY. BUT YOU DO HAVE SHRUBBERY IN YOUR YARD; IS
16 THAT CORRECT?

17 A THAT'S RIGHT.

18 Q AND WE AGREE AT LEAST SOME OF THE SHRUBBERY IS ABOUT
19 THE HEIGHT OF THE BUILDING OR THE CARPORT?

20 A WELL, THE CAMELLIA, LIKE I EXPLAINED TO YOU, THE ONE
21 ON THE CARPORT, TO THE RIGHT OF THE CARPORT, IS PRETTY
22 HIGH. THE ONE, I WOULD SAY, AS YOU DRIVE INTO THE DRIVEWAY
23 TO THE LEFT IS SMALLER. WE DON'T LET IT GROW THAT HIGH.
24 THAT'S THE ONLY ONE.

25 Q WHEN YOU CAME OUT OF THE HOUSE THAT EVENING, DID YOU

Appendix 138

JOEL LINDLER - CROSS - BY MR. WILLIAMS

137

1 SEE ANYONE ELSE?

2 A NO, SIR.

3 Q YOU DIDN'T SEE ANYBODY?

4 A NO, SIR.

5 Q DID YOU SEE ANYBODY RUNNING ACROSS THE YARD?

6 A NO, SIR.

7 Q DID YOU HEAR ANYONE ELSE TALKING?

8 A NO, SIR.

9 Q DID YOU HEAR ANYBODY SHOUTING AT ANYBODY?

10 A NO, SIR.

11 Q I DON'T HAVE ANY FURTHER QUESTIONS. THANK YOU, SIR.

12 THE COURT: ANY REDIRECT?

13 MR. MAYE: NONE.

14 THE COURT: YOU MAY STEP DONE. WATCH YOUR STEP,
15 PLEASE.

16 MR. MAYE: THANK YOU, MR. LINDLER. WITHOUT ANY
17 OBJECTION CAN THIS WITNESS BE EXCUSED?

18 THE COURT: ANY OBJECTION, MR. WILLIAMS?

19 MR. WILLIAMS: NONE, YOUR HONOR.

20 THE COURT: YOU ARE EXCUSED, SIR.

21 THE WITNESS: THANK YOU, SIR.

22 MR. MAYE: THE STATE CALLS MR. BILLY LINDLER TO
23 THE STAND.

24 WILLIAM RUSSELL LINDLER,
25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

WILLIAM LINDLER - DIRECT - BY MR. MAYE

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q MR. LINDLER, IF YOU WOULD SPEAK LOUD AND TALK TO THE
4 JURY. INTRODUCE YOURSELF. TELL THE JURY WHO YOU ARE.

5 A WILLIAM RUSSELL LINDLER.

6 Q MR. LINDLER, WHERE ARE YOU FROM?

7 A I LIVE DOWN AT THE TRAFFIC CIRCLE.

8 Q HOW LONG HAVE YOU LIVED IN SALUDA COUNTY?

9 A I HAVE LIVED THERE ABOUT THREE YEARS, THREE AND A
10 HALF YEARS NOW.

11 Q HAVE YOU LIVED IN THIS AREA MOST OF YOUR LIFE?

12 A WELL, I WAS BORN HERE. I MOVED TO FLORIDA AND SPENT
13 MY WORKING LIFE IN FLORIDA AND RETURNED HOME THREE YEARS
14 AGO.

15 Q TELL THE JURY WHAT YOUR INVOLVEMENT IN THIS CASE IS.

16 A I GOT A CALL ABOUT MIDNIGHT FROM MY BROTHER TELLING
17 ME SOMEONE HAD RAN THROUGH HIS YARD---

18 MR. WILLIAMS: OBJECTION, YOUR HONOR, HEARSAY.

19 MR. MAYE: DON'T TALK ABOUT WHAT YOUR BROTHER

20 SAID.

21 THE COURT: GO AHEAD, SOLICITOR.

22 Q JUST SAY WHAT YOU KNOW. DON'T SAY WHAT OTHER PEOPLE

23 SAID.

24 A CAN I SAY I GOT A CALL?

25 Q WHAT DID YOU DO WHEN YOU GOT TO YOUR BROTHER'S HOUSE?

WILLIAM LINDLER - DIRECT - BY MR. MAYE

1 A I GOT TO MY BROTHER'S HOUSE AND I OBSERVED A PERSON
2 ON TOP OF A BUILDING IN A SORT OF HYSTERICAL STATE.

3 Q DO YOU RECOGNIZE THAT PERSON IN THE COURTROOM HERE
4 TODAY?

5 A I HAVE SEEN HIM. YES, SIR, I SEE HIM NOW.

6 Q MR. DYSON OVER HERE, THE VICTIM?

7 A THAT'S HIM.

8 Q WHAT WAS HAPPENING WHEN YOU GOT THERE?

9 A HE WAS RATHER EXCITED AND I GUESS I WAS EXCITED WHEN
10 I SAW HIM UP THERE, WANTING TO KNOW WHAT BUSINESS HE HAD
11 THERE. AFTER AN EXCHANGE FOR A FEW MINUTES, ME, I GUESS
12 HOLLERING AT HIM, AND HIM TRYING TO EXPLAIN TO ME THAT HE
13 HAD BEEN ROBBED.

14 Q IS THAT WHAT HE TOLD YOU?

15 A THAT'S WHAT HE TOLD ME.

16 MR. WILLIAMS: OBJECTION.

17 MR. MAYE: EXCITED UTTERANCE, YOUR HONOR.

18 THE COURT: HE HAS ALREADY TESTIFIED AND BEEN
19 SUBJECT TO CROSS EXAMINATION. IT'S NOT HEARSAY. GO AHEAD.
20 HE CAN TESTIFY TO IT.

21 Q TELL US WHAT HE SAID TO YOU AT THE SCENE.

22 A HE SAID, "I HAVE BEEN ROBBED." AND I SAID, "BY
23 WHOM?" HE SAID, "BY TWO BLACK PERSONS." I SAID, "WHERE
24 WERE YOU ROBBED?" HE SAID, "I WAS IN MY TRUCK ACROSS THE
25 WAY SLEEPING." HE POINTED. HE SAID, "I WAS IN THE TRUCK

Appendix 141

WILLIAM LINDLER - CROSS - BY MR. WILLIAMS

140

1 THAT WAY SLEEPING." MY BROTHER WAS OUTSIDE AT THAT TIME.
2 I ASKED MY BROTHER TO GO TO THE FRONT OF HIS HOUSE TO SEE
3 IF THERE WAS A TRUCK WHERE HE HAD POINTED, AND MY BROTHER
4 CAME BACK AND TOLD ME THERE WAS A TRUCK THERE AND THAT THE
5 DOORS WERE OPEN.

6 Q WHAT DID YOU DO NEXT?

7 A AT THAT TIME I TOLD HIM HE COULD COME DOWN, AND I
8 ASKED MY BROTHER -- HE CAME DOWN AND HE WAS BAREFOOTED. HE
9 HAD ON SOCKS. HE ASKED ME IF HE COULD GO GET HIS SHOES
10 FROM HIS TRUCK. IT WAS MISTING RAIN. I ASKED MY BROTHER
11 TO GO INSIDE AND CALL THE SHERIFF, CALL 911 AND REPORT THE
12 INCIDENT; AND I WALKED WITH HIM TO HIS TRUCK.

13 Q WHEN YOU GOT OUT OF YOUR CAR, WHAT DID YOU HAVE WITH
14 YOU?

15 A I HAD A .357 MAGNUM.

16 Q WHAT HAPPENED NEXT?

17 A I STAYED WITH HIM UNTIL THE SHERIFF ARRIVED. AFTER
18 THAT I WENT HOME.

19 Q ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR YOU.

20 THE COURT: MR. WILLIAMS.

21 MR. WILLIAMS: THANK YOU, YOUR HONOR.

22 CROSS EXAMINATION

23 BY MR. WILLIAMS:

24 Q MR. LINDLER, DID YOU SEE ANY OTHER PEOPLE OUT AT YOUR
25 BROTHER'S HOUSE THAT EVENING?

WILLIAM LINDLER - CROSS - BY MR. WILLIAMS

141

1 A NO, I DID NOT SEE ANY OTHER PERSON.

2 Q THANK YOU, SIR.

3 THE COURT: ANYTHING FURTHER?

4 MR. MAYE: NOTHING FURTHER.

5 THE COURT: YOU MAY STEP DOWN. ANY OBJECTION TO
6 THIS WITNESS BEING EXCUSED?

7 MR. WILLIAMS: NONE, YOUR HONOR.

8 THE COURT: YOU ARE EXCUSED, SIR.

9 MR. MAYE: YOUR HONOR, THE NEXT WITNESS WE HAVE
10 I ANTICIPATE WOULD BE THE MOST LENGTHY OF THE TRIAL. I
11 DON'T KNOW IF YOU WANT TO BREAK THIS UP OR HOW YOU WANT
12 TO DO IT.

13 THE COURT: Y'ALL COME UP HERE AND LET ME TALK
14 WITH YOU.

15 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
16 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
17 OF THE JURY).

18 THE COURT: MADAME FORELADY, AND LADIES AND
19 GENTLEMEN, BASED ON WHAT THE ATTORNEYS HAVE TOLD ME, WE
20 WILL GO AHEAD AND BREAK. IT'S A LITTLE BIT EARLY. YOU
21 HAVE HAD A LONG DAY. YOU STARTED OUT UP HERE THIS MORNING
22 WITH JURY QUALIFICATION AND WHATNOT.

23 WE WILL START TOMORROW MORNING. I HAVE GOT
24 SOMETHING I SET AT 9:30. IT WILL VERY BRIEF. SO WE SHOULD
25 BE ABLE TO START BACK IN THE TRIAL SHORTLY AFTER 9:30.

1 YOU NEED TO BE BACK IN YOUR JURY ROOM AT 9:30 IN THE
2 MORNING.

3 I HAVE TOLD YOU SEVERAL TIMES TODAY THAT YOU
4 CAN'T TALK ABOUT THE CASE WITH ANYBODY. WHEN YOU GO HOME,
5 THOSE OF YOU WITH SPOUSES OR CHILDREN OR FRIENDS WHO KNOW
6 YOU HAVE GOT JURY SERVICE, WHEN YOU WALK IN THAT DOOR,
7 THAT'S THE FIRST QUESTION THEY WILL ASK YOU.

8 "ARE YOU ON THE JURY? WHAT KIND OF CASE IS IT?
9 TELL ME ABOUT IT." YOU CAN'T TALK TO THEM ABOUT IT. I
10 WILL BE THE BAD GUY. YOU BLAME IT ON ME BUT DON'T DISCUSS
11 WITH THE CASE WITH ANYONE.

12 I NEVER KNOW WHAT CASES MIGHT GENERATE ANY
13 PUBLICITY AS FAR AS NEWSPAPER OR RADIO ARE CONCERNED, BUT
14 YOU CAN'T READ ANYTHING OR LISTEN TO ANYTHING ABOUT THE
15 CASE EITHER.

16 YOU ARE THE ONLY 12 PEOPLE WHO WILL MAKE THE
17 DECISION IN THIS CASE. IT HAS TO BE BASED ONLY ON THE
18 EVIDENCE THAT IS PRESENTED HERE IN THE COURTROOM. SO DON'T
19 TALK TO ANYBODY ABOUT THE CASE.

20 WHEN YOU GET HERE IN THE MORNING, COME STRAIGHT
21 ON UP TO YOUR JURY ROOM. WE WILL START AT 9:30 OR VERY
22 SHORTLY AFTER THAT. PLEASE BE HERE AT 9:30. EVERYONE ALSO
23 STAY SEATED.

24 MR. LORICK, I NEED FOR YOU TO COME UP HERE TO SEE
25 THE CLERK BEFORE YOU GET GONE, PLEASE, SIR. THE REST OF

1 YOU ARE EXCUSED. EVERYONE ELSE STAY SEATED. WE WILL SEE
2 YOU FOLKS IN THE MORNING.

3 (THE JURY IS EXCUSED FOR THE DAY AT 4:50 P.M.).

4 THE COURT: LET ME TALK TO COUNSEL UP HERE. WE
5 WILL START BACK AT 9:30 IN THE MORNING.

6 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED FOR
7 JANUARY 26, 1998).

8 (THE FOLLOWING PROCEEDINGS WERE REPORTED ON
9 JANUARY 27, 1998).

10 THE COURT: COUNSEL, YOU MIGHT WANT TO TAKE
11 ANOTHER LOOK AROUND AND MAKE SURE YOU DON'T HAVE ANY
12 WITNESSES IN THE COURTROOM.

13 MR. WILLIAMS: YOUR HONOR?

14 THE COURT: YES, SIR.

15 MR. WILLIAMS: WE HAVE A POINT ON THEIR
16 SEQUESTRATION ORDER. IT WAS MY UNDERSTANDING THAT THE
17 SEQUESTRATION ORDER WENT TO EVERYONE EXCEPT FOR THE VICTIM,
18 MR. DYSON, AND THE INVESTIGATING OFFICER.

19 THE COURT: I HAD PERMITTED THE VICTIM TO REMAIN
20 IN THE COURTROOM. HE HAS GOT THAT RIGHT UNDER THE VICTIM'S
21 BILL OF RIGHTS.

22 MR. WILLIAMS: AND OFFICER SHORTER BECAUSE HE
23 INDICATED TO THE COURT THAT HE WAS JUST AN INVESTIGATOR IN
24 THAT MATTER.

25 THE COURT: I BELIEVE OFFICER SHORTER AND BOBBY

1 JONES AND THE VICTIM WERE EXCLUDED FROM THE SEQUESTRATION.
2 THEN DURING THE COURSE OF THE TRIAL, MR. KENNEDY WAS ALSO
3 EXCLUDED FROM IT AS AN ATTORNEY FOR ONE OF THE WITNESSES IN
4 THE CASE.

5 MR. WILLIAMS: YOUR HONOR, AT THIS POINT THEN I
6 WOULD LIKE TO MAKE A MOTION.

7 THE COURT: YOU ARE GOING TO NEED TO SPEAK UP. I
8 AM HAVING TROUBLE HEARING.

9 MR. WILLIAMS: THANK YOU, JUDGE. AT THIS POINT I
10 WOULD LIKE TO MAKE A MOTION, EVEN IN LIGHT OF THE FACT THAT
11 YOUR HONOR HAS RULED ON THIS ISSUE, TO STILL HAVE BOBBY
12 JONES EXCLUDED DURING THE COURSE OF THE TESTIMONY.

13 THE COURT: FOR WHAT PURPOSE?

14 MR. WILLIAMS: YOUR HONOR, IT'S MY UNDERSTANDING
15 HE IS GOING TO BE A WITNESS IN THIS CASE. CERTAINLY HE
16 OUGHT TO BE ABLE TO TESTIFY BASED UPON HIS OWN KNOWLEDGE OF
17 THE FACTS AND INVESTIGATION INTO THIS CASE.

18 THE PURPOSE OF THIS SEQUESTRATION ORDER, AS I
19 UNDERSTAND IT, IS GENERALLY TO ENSURE THAT EACH WITNESS
20 DOES TESTIFY FROM THE KNOWLEDGE THAT THEY HOLD THEMSELVES
21 AND NOT NECESSARILY FROM ANYTHING THAT THEY HEAR SOMEONE
22 ELSE TESTIFY TO.

23 THE COURT: WELL, I HAVE RULED. I AM NOT GOING
24 TO CHANGE MY RULING. I HAVE ALWAYS, WHEN I HAVE GRANTED A
25 SEQUESTRATION ORDER, PERMITTED THE CHIEF INVESTIGATING

1 OFFICER. MY UNDERSTANDING FROM COUNSEL YESTERDAY IS THAT
2 THAT IS THE ROLE THAT MR. JONES PLAYED. I ALLOW THEM TO
3 REMAIN IN THE COURTROOM TO ASSIST COUNSEL IN THE
4 PRESENTATION OF THE CASE. SO THAT IS NOTED AND THE
5 MOTION TO HAVE HIM EXCLUDED OR SEQUESTERED AT THIS TIME
6 IS DENIED.

7 MR. BAGGETT: MAY IT PLEASE THE COURT.

8 THE COURT: ALL RIGHT.

9 MR. BAGGETT: AT THIS TIME FOR THE RECORD I WOULD
10 LIKE TO MAKE A MOTION TO QUASH THE SUBPOENA ISSUED AGAINST
11 MR. OATON DYSON. HE WAS SUBPOENAED AND REQUIRED TO BE HELD
12 IN CUSTODY BY ORDER OF THIS COURT. HE HAS BEEN IN CUSTODY
13 IN JAIL, TO WIT, SINCE JANUARY THE 5TH.

14 HE HAS BEEN VERY COOPERATIVE. HE TESTIFIED AND
15 TOLD THE TRUTH YESTERDAY. HE TESTIFIED AND HE WAS RELEASED
16 AFTER HIS TESTIMONY BY THE SOLICITOR'S OFFICE. AT THAT
17 TIME IT APPEARED THAT MR. WILLIAMS, THE DEFENSE ATTORNEY,
18 HAD ISSUED A SUBPOENA ALSO; AND HE REFUSED TO RELEASE MR.
19 DYSON.

20 MR. DYSON HAS BEEN AWAY FROM HOME, NEARLY A
21 THOUSAND MILES FROM HOME. HE HAS BEEN DEPRIVED OF THE
22 RIGHT TO WORK SINCE JANUARY 5TH. WE WOULD SUGGEST, YOUR
23 HONOR, THAT HE IS BEING HELD UNDER THE POWER OF SUBPOENA.
24 WE THINK IT IS AN ABUSE OF PROCESS, OTHER THAN FOR REASONS
25 THAT WOULD BE COMMENDABLE.

1 WE SUGGEST THEY ARE PERSONAL REASONS FOR THIS
2 BEING DONE. WE SUGGEST THAT IT OUGHT TO BE QUASHED AND LET
3 THIS MAN GO HOME TO HIS FAMILY AND GET BACK ON HIS JOB.
4 FAILING THAT, YOUR HONOR, WE WOULD ASK THAT IF THE SUBPOENA
5 IS NOT AGREED TO BE LIFTED BY MR. WILLIAMS THAT HE BE
6 REQUIRED TO PAY FOR EXPENSES AND LOSS OF INCOME OF MR.
7 DYSON SINCE YESTERDAY. THANK YOU, YOUR HONOR.

8 THE COURT: MR. WILLIAMS, I WOULD BE GLAD TO HEAR
9 FROM YOU ON THAT.

10 MR. WILLIAMS: THANK YOU, YOUR HONOR. MAY IT
11 PLEASE THE COURT. FIRST OF ALL, MR. DYSON WAS SERVED WITH
12 A SUBPOENA FROM MY OFFICE. IT WAS PROPERLY SERVED BY THE
13 SHERIFF'S DEPARTMENT. WE ANTICIPATE CALLING MR. DYSON IN
14 OUR CASE.

15 OBVIOUSLY, YOUR HONOR, YOU ARE AWARE THAT ANY
16 TIME DURING A TRIAL STRATEGIC DECISIONS MAY CHANGE. AS OF
17 RIGHT NOW WE ANTICIPATE CALLING MR. DYSON. WE ARE NOT
18 RESPONSIBLE FOR MR. DYSON HAVING BEEN PUT IN JAIL FROM
19 JANUARY THE 5TH UP THROUGH YESTERDAY.

20 IT'S MY FURTHER UNDERSTANDING, YOUR HONOR, THAT
21 AS OF RIGHT NOW, MR. DYSON DOES NOT HAVE TO BE IN JAIL AND
22 CERTAINLY HE CAN BE WORKING. THE ONLY THING IS HE HAS TO
23 MAKE SURE THAT HE PRESENTS HIMSELF IN COURT WHEN WE CALL
24 HIM.

25 WE HAVE NOT ASKED THIS COURT TO INCARCERATE MR.

1 DYSON. IN FACT, AS I RECALL YESTERDAY, I BELIEVE IT WAS
2 YOUR HONOR'S ORDER INDICATING TO MR. DYSON FOR HIM NOT TO
3 GO ANYWHERE. I NEVER MOVED BEFORE THIS COURT ASKING THAT
4 HE BE DETAINED IN JAIL.

5 THE COURT: HE IS NOT IN JAIL IS MY UNDERSTANDING
6 BASED ON WHAT COUNSEL JUST INDICATED. ALL I DID WAS TELL
7 HIM HE WAS UNDER SUBPOENA, WHICH IS THE EQUIVALENT OF A
8 COURT ORDER TO BE PRESENT. HE HAS GOT TO BE PRESENT.

9 MR. WILLIAMS: YES, SIR. IT'S MY UNDERSTANDING
10 THAT HE HAS TO BE PRESENT WHEN WE CALL HIM FOR TRIAL. HE
11 DOESN'T NECESSARILY HAVE TO BE PRESENT TODAY OR ANY OTHER
12 TIME. HE ONLY HAS TO PRESENT HIMSELF WHEN WE CALL HIM AS A
13 WITNESS.

14 I AM HARD PRESSED TO UNDERSTAND HOW THE STATE
15 COULD ASK THAT THERE BE SANCTIONS IMPOSED AGAINST ME SIMPLY
16 BECAUSE WE HAVE A WITNESS SUBPOENAED. AND EVEN TO TRY TO
17 SUGGEST SOMEHOW THAT THE TWO DAYS THAT IT MAY TAKE FOR US
18 TO GET TO HIM, SOMEHOW IS GOING TO BE EQUIVALENT TO THE
19 MONTH THEY HAVE HELD HIM. FRANKLY I AM A LITTLE SURPRISED
20 AT THE POSITION THEY ARE TAKING.

21 THE COURT: THAT'S NOT THE WAY I INTERPRET WHAT
22 THE MOTION WAS. MY UNDERSTANDING IS THAT ESSENTIALLY THE
23 STATE'S POSITION IS THAT THE WITNESS WAS KEPT IN JAIL AS A
24 MATERIAL WITNESS, AND HE HAS NOW TESTIFIED AND HE SHOULD BE
25 RELEASED. HE HAS BEEN RELEASED. HE IS STILL UNDER

1 SUBPOENA.

2 MY UNDERSTANDING OF THE STATE'S MOTION IS THAT
3 THE WITNESS WAS HERE YESTERDAY. HE TESTIFIED. HE WAS
4 SUBJECT TO CROSS EXAMINATION AND ANY TESTIMONY FROM THAT
5 WITNESS COULD HAVE BEEN GOTTEN YESTERDAY. I AM NOT GOING
6 TO QUASH YOUR SUBPOENA. YOU HAVE GOT THE RIGHT TO SUBPOENA
7 THE WITNESSES THAT YOU WANT TO SUBPOENA, AND THEY HAVE GOT
8 TO COMPLY WITH THOSE SUBPOENAS.

9 IT'S PREMATURE ON ANY ISSUE OF SANCTIONS. I
10 WOULD NOT IMPOSE SANCTIONS AT THIS TIME, BUT EITHER SIDE IS
11 FREE TO MAKE WHATEVER MOTIONS AT THE APPROPRIATE TIME BASED
12 ON WHAT DOES OR DOES NOT OCCURRING DURING THE TRIAL. THAT
13 MOTION IS DENIED. ANYTHING FURTHER BEFORE WE GET STARTED?

14 MR. MAYE: NO, SIR.

15 THE COURT: LET'S BRING THE JURY IN, PLEASE.

16 (THE JURY RETURNS TO THE COURTROOM AT 9:50 A.M.).

17 THE COURT: I APPRECIATE YOU FOLKS MAKING THE
18 EFFORT TO GET IN WITH THE WEATHER LIKE IT IS. WE WERE HALF
19 JOKING BACK IN MY OFFICE BEFORE WE STARTED THAT I GUESS WE
20 ALL HAD TO PADDLE IN THIS MORNING BECAUSE IT'S AWFULLY WET
21 AND MESSY. I APPRECIATE YOU JURORS MAKING THE EFFORT TO BE
22 HERE. WE WILL CONTINUE WITH THE TESTIMONY. SOLICITOR,
23 CALL YOUR NEXT WITNESS.

24 MR. MAYE: THE STATE CALLS WADE BRANNON TO THE
25 STAND.

WADE BRANNON - DIRECT - BY MR. MAYE

1 WADE LAMAR BRANNON, III,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. MAYE:

5 Q MR. BRANNON?

6 A YES.

7 Q I NEED FOR YOU TO SPEAK UP AS MUCH AS YOU CAN AND
8 TALK TO THE JURY OVER HERE. IT'S KIND OF HARD TO HEAR IN
9 HERE.

10 A OKAY.

11 Q INTRODUCE YOURSELF TO THE JURY. TELL THE JURY WHAT
12 YOUR NAME IS.

13 A MY NAME IS WADE LAMAR BRANNON, III.

14 Q WADE, WHERE ARE YOU FROM?

15 A ORIGINALLY NEW YORK.

16 Q ORIGINALLY NEW YORK?

17 A YES, SIR.

18 Q HAVE YOU LIVED IN THE SALUDA AREA FROM TIME TO TIME?

19 A YES, SIR.

20 Q TELL THE JURY ABOUT THAT.

21 A ON THE NIGHT OF OCTOBER THE 1ST, ME AND FRANK WAS
22 TOGETHER---

23 Q WAIT A SECOND. LET'S BACK UP JUST A SECOND. YOU
24 LIVED IN SALUDA COUNTY. WHAT PERIODS OF TIME HAVE YOU
25 LIVED IN SALUDA COUNTY?

WADE BRANNON - DIRECT - BY MR. MAYE

1 A SINCE ABOUT TEN TO TWELVE YEARS.

2 Q TEN TO TWELVE YEARS AGO?

3 A YES, SIR.

4 Q YOU HAVE BEEN IN SOME TROUBLE DURING THAT TIME, TOO,
5 AND BEFORE; HAVEN'T YOU?

6 A YES, SIR.

7 Q YOU GOT IN TROUBLE BACK IN '89 FOR POSSESSION OF A
8 STOLEN VEHICLE, DIDN'T YOU?

9 A YES, SIR.

10 Q WENT THROUGH P.T.I. FOR THAT, DIDN'T YOU?

11 A YES, SIR.

12 Q IN '90 YOU GOT IN TROUBLE FOR DISORDERLY CONDUCT,
13 SOME OTHER MAGISTRATE COURT OFFENSES, MALICIOUS INJURY TO
14 PERSONAL PROPERTY. YOU GOT CONVICTED IN '94 FOR CONSPIRACY
15 TO DISTRIBUTE CRACK COCAINE; ISN'T THAT RIGHT?

16 A YES, SIR.

17 Q YOU DID SOME TIME ON THAT, DIDN'T YOU?

18 A YES, SIR.

19 Q HOW LONG WERE YOU IN JAIL?

20 A I DID A YEAR.

21 Q YOU DID A YEAR ON THAT?

22 A YES, SIR.

23 Q HAVE YOU GOT ANY OUT-OF-STATE CONVICTIONS, TOO?

24 A YES, SIR.

25 Q FOR WHAT?

WADE BRANNON - DIRECT - BY MR. MAYE

1 A POSSESSION OF CONTROLLED SUBSTANCE.

2 Q IN NEW YORK?

3 A YES, SIR.

4 Q DID YOU DO ANY TIME ON THAT UP THERE?

5 A YES, SIR.

6 Q HOW LONG DID YOU DO?

7 A A YEAR.

8 Q YOU DID A YEAR THERE?

9 A YES, SIR.

10 Q HOW LONG HAVE YOU AND THE DEFENDANT IN THIS CASE,
11 FRANK TOLEN, BEEN FRIENDS?

12 A SINCE I WAS ABOUT 15.

13 Q SINCE YOU WERE ABOUT 15 YEARS OLD?

14 A YES, SIR.

15 Q DURING THE COURSE OF TIME, DID YOU USUALLY HANG OUT
16 WHEN YOU WERE OUT OF JAIL WITH FRANK?

17 A SOMETIMES.

18 Q SOMETIMES YOU DID?

19 A YES, SIR.

20 Q ALL RIGHT. SOMETIME IN OCTOBER OF 1996 AND IN THE
21 MONTHS JUST BEFORE THEN, DID YOU BEGIN TO HANG OUT WITH
22 FRANK TOLEN ON A REGULAR BASIS?

23 A YES, SIR.

24 Q TELL THE JURY ABOUT THAT.

25 A WELL, WE WAS DOWN IN BATESBURG AT ONE OF MY FRIEND

WADE BRANNON - DIRECT - BY MR. MAYE

1 HOUSE. YOU KNOW, HE JUST COME BACK. WE JUST SIT AROUND
2 AND PLAY CARDS AND STUFF AND DRANK, DRANK A LITTLE BEER.
3 LATER ON THAT NIGHT WE LEFT AND WENT TO HIS UNCLE HOUSE,
4 TONY.

5 Q IS THIS ON OCTOBER THE 1ST?

6 A YES, SIR.

7 Q Y'ALL HAD BEEN OVER AT BATESBURG?

8 A YES, SIR.

9 Q WHERE?

10 A IN RAMBLEWOOD APARTMENTS.

11 Q IN BATESBURG?

12 A YES, SIR.

13 Q WHAT DID Y'ALL DO NEXT?

14 A WE CAUGHT A RIDE TO THE TRAFFIC CIRCLE AT HIS UNCLE
15 HOUSE.

16 Q WHERE WAS FRANK STAYING AT THE TIME?

17 A AT THE TRAFFIC CIRCLE.

18 Q DOWN FROM THE TRAFFIC CIRCLE?

19 A YES, SIR.

20 Q WHAT HAPPENED WHEN YOU GOT BACK TO HIS HOUSE?

21 A WELL, WE WENT IN HIS ROOM LOOKING AT T.V., YOU KNOW,
22 AND LAYING AROUND, LOOKING AT T.V. SO AFTER THAT, YOU
23 KNOW, WE WAS GETTING HIGH. AFTER THAT THERE HE ASKED ME,
24 "DO YOU WANT TO GO BREAK IN THE STORE," YOU KNOW.

25 Q YOU WERE DOING WHAT?

WADE BRANNON - DIRECT - BY MR. MAYE

- 1 A HE ASKED ME DID WE WANT TO GO BREAK IN THE STORE.
- 2 Q WHAT WERE Y'ALL DOING BEFORE THEN?
- 3 A JUST SITTING AROUND DRINKING BEER AND LOOKING AT T.V.
- 4 Q YOU SAID Y'ALL WERE GETTING HIGH?
- 5 A YES, SIR.
- 6 Q WHAT WERE YOU DOING?
- 7 A SMOKING CRACK.
- 8 Q WHAT HAPPENED NEXT?
- 9 A SO AFTER THAT HE ASKED ME, "DO YOU WANT TO GO BREAK
- 10 INTO SOMETHING?" SO I SAID, "IT DON'T MATTER." AFTER THAT
- 11 WE WALKED UP THE STREET AND THE STORE WAS CLOSED. SO HE
- 12 SEEN THE TRUCK.
- 13 Q THERE ARE A COUPLE OF STORES AT THE TRAFFIC CIRCLE.
- 14 WHICH ONE ARE YOU TALKING ABOUT?
- 15 A THE ONE ON THE RIGHT.
- 16 Q THIS (INDICATING) IS THE TRAFFIC CIRCLE GOING BACK TO
- 17 SALUDA AND GOING TO LEXINGTON. WHICH STORE ARE YOU TALKING
- 18 ABOUT, IF FRANK LIVES THIS WAY (INDICATING)?
- 19 A THE STORE SHOULD BE RIGHT HERE (INDICATING).
- 20 Q MR. SMITH'S STORE, IS THAT WHAT YOU ARE TALKING
- 21 ABOUT?
- 22 A RIGHT HERE (INDICATING).
- 23 Q IS THAT WHAT YOU ARE TALKING ABOUT?
- 24 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).
- 25 THE COURT: YOU NEED TO SPEAK UP.

WADE BRANNON - DIRECT - BY MR. MAYE

1 A YES, SIR.

2 Q THE STORE THAT MR. FRONTIS SMITH RUNS?

3 A YES, SIR.

4 Q WHAT DID YOU DO WHEN YOU GOT THERE?

5 A I WAITED BEHIND THE STORE ON THE OTHER SIDE. FRANK,
6 HE SPOTTED THE TRUCK. SO, YOU KNOW, HE TOLD ME TO STAY BY
7 THE STORE. HE WENT UP TO THE TRUCK AND KNOCKED ON THE
8 PASSENGER SIDE DOOR WITH THE GUN. I GUESS, YOU KNOW, THE
9 DRIVER, HE SEEN THE GUN AND THEN HE UNLOCKED THE DOOR.
10 FRANK TOLD ME TO COME ON. I CAME ON, GOT UP IN THE TRUCK,
11 WENT STRAIGHT TO THE BACK, YOU KNOW, WENT LOOKING FOR STUFF
12 WHILE FRANK---

13 Q WHAT PART OF THE TRUCK DID YOU GET IN?

14 A I GOT IN ON THE PASSENGER SIDE AND I WENT STRAIGHT TO
15 THE BACK.

16 Q THE PART THAT YOU SLEEP IN IN THE BACK OF THE TRUCK?

17 A YEAH, WHERE YOU SLEEP AT.

18 Q WHAT DID Y'ALL DO WHEN YOU GOT IN THE TRUCK?

19 A WELL, I WENT STRAIGHT TO THE BACK. FRANK JUST STOOD
20 IN THE FRONT OF THE TRUCK SITTING IN THE SEAT, YOU KNOW,
21 WITH THE GUN TELLING THE DEFENDANT (SIC) THAT HE WASN'T
22 GOING TO HURT HIM, YOU KNOW.

23 Q YOU MEAN THE VICTIM?

24 A YEAH, THE VICTIM.

25 Q DO YOU SEE THE VICTIM HERE IN THE COURTROOM?

WADE BRANNON - DIRECT - BY MR. MAYE

- 1 A YES.
- 2 Q WHERE IS HE?
- 3 A (INDICATING).
- 4 Q MR. DYSON OVER THERE ON THE BACK CORNER?
- 5 A YES, SIR.
- 6 Q WHAT DID FRANK DO TO THE VICTIM?
- 7 A HE JUST HAD THE GUN ON HIM TELLING HIM WE WASN'T
- 8 GOING TO HURT HIM. AFTER THAT THERE WHILE I WAS IN THE
- 9 BACK, THINGS GOT QUIET AND I LOOKED OUT, YOU KNOW.
- 10 Q WAIT JUST A SECOND. DID YOU SEE FRANK ROB HIM OF \$60
- 11 IN THE CAB OF THAT TRUCK?
- 12 A MR. DYSON GAVE HIM \$60. HE SAID THAT'S ALL HE HAD.
- 13 Q OKAY. WHILE HE WAS HOLDING THE GUN ON HIM?
- 14 A YES.
- 15 Q WHAT HAPPENED NEXT?
- 16 A THEN WHILE I WAS IN THE BACK, EVERYTHING GOT QUIET.
- 17 SO I LOOKED OUT AND BOTH THE DOORS WAS OPEN, AND FRANK WAS
- 18 RUNNING BEHIND HIM IN THE MIDDLE OF THE CIRCLE. MR. DYSON
- 19 WAS JUST YELLING AND I WAS RUNNING BEHIND HIM TELLING HIM
- 20 TO, "COME ON, LET HIM GO, LET'S GO." HE RAN UP IN
- 21 SOMEBODY'S YARD AND RAN UP A LADDER AND WAS HOLLERING. I
- 22 WAS STEADY TRYING TO TELL FRANK LET'S GO. AFTER THAT
- 23 THERE, A CAR PULLED UP AND THAT'S WHEN WE FLED FROM THE
- 24 SCENE.
- 25 Q WHERE DID YOU LEAVE MR. DYSON WHEN Y'ALL RAN? WHERE

WADE BRANNON - DIRECT - BY MR. MAYE

1 WAS HE?

2 A HE WAS STILL ON TOP OF THE SMOKE HOUSE.

3 Q WHERE DID Y'ALL GO FROM THERE?

4 A WE WENT BACK TO BATESBURG.

5 Q WHAT DID YOU DO?

6 A WE WAS RUNNING AND DODGING, DUCKING, YOU KNOW, ALL
7 THE CARS AND STUFF LIKE THAT.

8 Q DID YOU EVER SEE MR. DYSON'S TRUCK AGAIN THAT NIGHT
9 OR EITHER POLICE CARS?

10 A YES.

11 Q WHERE DID YOU SEE THEM AT?

12 A THEY WAS ESCORTING HIM TOWARDS BATESBURG.

13 Q WHERE DID YOU GO WHEN YOU GOT TO BATESBURG?

14 A FIRST WENT TO UNITED, GOT TO BATESBURG ABOUT 5:45
15 THAT MORNING AND WENT TO UNITED AND BOUGHT SOME CHICKEN AND
16 SOMETHING TO EAT, SOME CIGARETTES AND WENT TO THIS GUY
17 HOUSE AND SLEPT OVER HIS HOUSE FOR THAT NIGHT.

18 Q WHAT DID YOU USE FOR MONEY?

19 A WE USED SOME OF THE MONEY BAG WITH THE CROWN ROYAL
20 BAG, THE CHANGE.

21 Q DID YOU TAKE THAT OUT OF MR. DYSON'S TRUCK OUT OF THE
22 BACK?

23 A YES.

24 Q THE REST OF THE MONEY WAS PART OF THE \$60 YOU GOT
25 FROM MR. DYSON?

WADE BRANNON - DIRECT - BY MR. MAYE

1 A YES.

2 Q WHAT DID YOU DO THEN?

3 A SO AFTER WE BOUGHT THE CHICKEN AND STUFF, WE WENT TO
4 THIS GUY HOUSE AND WE STAYED THERE FOR ABOUT -- WE SLEPT
5 THERE ABOUT THREE TO FOUR HOURS AND WOKE BACK UP ABOUT 12
6 AND WENT TO LEESVILLE.

7 Q WHAT DID YOU DO THERE?

8 A BOUGHT TWO QUARTS OF BEER, SOME MORE CIGARETTES, PAID
9 THIS GUY FIVE DOLLARS TO TAKE US BACK OUT TO THE TRAFFIC
10 CIRCLE.

11 Q WHAT HAPPENED WHEN YOU GOT BACK TO THE TRAFFIC
12 CIRCLE?

13 A WE WAS IN THE HOUSE LISTENING TO MUSIC AND WE WERE
14 SMOKING. WE HEARD A CAR PULL UP AND IT WAS THE SHERIFF'S
15 CAR, SALUDA. SO WE TURN DOWN THE T.V. OR THE RADIO. AFTER
16 WE DID THAT, THE CAR LEFT. SO AFTER THAT THERE WE WENT TO
17 THE BACK OF THE WOODS BEHIND HIS HOUSE AND THEN WAITED
18 UNTIL HIS UNCLE CAME HOME, TONY. WHEN TONY GOT THERE, HE
19 WAS OUT THERE RAKING YARD. FRANK ASKED HIM WHAT DID THE
20 POLICE WANT. HE SAID---

21 MR. WILLIAMS: YOUR HONOR, OBJECTION.

22 THE COURT: SUSTAINED.

23 Q DON'T SAY WHAT HE SAID.

24 A OKAY.

25 Q JUST SAY WHAT YOU DID AND WHAT Y'ALL DID TOGETHER.

WADE BRANNON - DIRECT - BY MR. MAYE

1 A WE ASKED HIM WHAT DID THE POLICE WANT. SO HE SAID
2 THAT---

3 THE COURT: YOU CAN'T GO INTO WHAT HE SAID.

4 Q DON'T TALK ABOUT WHAT OTHER PEOPLE SAID.

5 A ALL RIGHT. SO AFTER THAT THERE, HE ASKED HIM LIKE,
6 "WELL, WHY DID YOU ROB THE MAN?" AND I SAY, "I DON'T KNOW
7 WHAT YOU ARE TALKING ABOUT." HE SAID THE POLICE WAS COMING
8 BACK.

9 Q WHAT DID Y'ALL DO?

10 A WENT IN THE WOODS AND START RUNNING BEFORE THE POLICE
11 CAME BACK. THEY WAS COMING BACK WITH A SEARCH WARRANT.

12 Q SO Y'ALL LEFT. WHERE WAS THAT, THE RESIDENCE THAT
13 FRANK WAS STAYING IN AT THE TRACK CIRCLE?

14 A YES.

15 Q AND YOU WENT IN THE WOODS?

16 A YES, SIR.

17 Q WHAT DID Y'ALL DO?

18 A WE JUST STARTED RUNNING, WALKING, RUNNING, WALKING,
19 RUNNING ALL DAY THAT DAY UNTIL FROM ABOUT TWO O'CLOCK THAT
20 AFTERNOON UNTIL ABOUT 11:30 THAT NIGHT.

21 Q YOU STAYED ON THE RUN IN THE WOODS FROM TWO TO ABOUT
22 11:30 THAT NIGHT?

23 A YES, SIR.

24 Q AND THAT WAS THE DAY AFTER THE ROBBERY?

25 A YES, SIR.

WADE BRANNON - DIRECT - BY MR. MAYE

- 1 Q DID YOU SEE THE POLICE LOOKING FOR YOU?
- 2 A YES, SIR.
- 3 Q COULD YOU HEAR THE HELICOPTER?
- 4 A YES, SIR.
- 5 Q WHERE DID Y'ALL END UP ABOUT 11:30?
- 6 A IT'S HARD TO SAY. I THINK WE WAS ALMOST LIKE IN
- 7 GILBERT OR LEXINGTON SOMEWHERE, ON THAT END.
- 8 Q YOU WERE GOING DOWN 378?
- 9 A YES, SIR.
- 10 Q WERE Y'ALL WALKING DOWN THE ROAD?
- 11 A YES.
- 12 Q WHAT HAPPENED THEN?
- 13 A THEN WE SEEN THE CAR. WE GOT TIRED OF RUNNING ALL
- 14 DAY IN THE WOODS. SO THE WOODS RAN OUT AND WE START
- 15 WALKING ON THE SIDE OF THE ROAD. WE SEEN THIS CAR GO BY
- 16 AND TURNED AROUND AND JUMPED OUT AND SAID, "FREEZE." SO WE
- 17 STARTED RUNNING.
- 18 Q IT WAS THE POLICE?
- 19 A YES, SIR.
- 20 Q COULD YOU SEE THE BLUE LIGHTS AND ALL?
- 21 A NO, NOT AT FIRST. IT WAS AN UNMARKED CAR.
- 22 Q WHAT HAPPENED WHEN THE POLICE CAME UP?
- 23 A HE JUMPED OUT AND SAID, "FREEZE," AND WE STARTED
- 24 RUNNING.
- 25 Q WHAT HAPPENED THEN?

Appendix 161

100

WADE BRANNON - DIRECT - BY MR. MAYE

- 1 A THEN THREW THE GUN.
- 2 Q YOU HAD THE GUN AT THAT TIME?
- 3 A YES, SIR.
- 4 Q WHO HAD THE GUN DURING THE ROBBERY?
- 5 A MR. FRANK.
- 6 Q WHEN DID FRANK GIVE YOU THE GUN BACK?
- 7 A AFTER WE CAME OUT THE WOODS.
- 8 Q JUST BEFORE THE POLICE SHOWED UP?
- 9 A YES, SIR.
- 10 Q SO YOU THREW THE GUN DOWN AND RAN IN THE WOODS?
- 11 A YES, SIR, IN A POND.
- 12 Q YOU RAN INTO A POND?
- 13 A YES, SIR.
- 14 Q YOU THOUGHT YOU WERE RUNNING THROUGH THE WOODS AND
- 15 RAN OFF IN A POND?
- 16 A YES, SIR.
- 17 Q WHAT HAPPENED THEN?
- 18 A WE BOTH COULDN'T SWIM AND I GUESS GOD JUST BROUGHT ME
- 19 BACK UP, AND I STARTED HOLDING ON TO SOME BRANCHES ON THE
- 20 SIDE.
- 21 Q WHAT DID THE POLICE DO AFTER Y'ALL HAD RUN INTO THE
- 22 POND?
- 23 A THEY WAS TRYING TO GET US BOTH OUT. THEY COULDN'T
- 24 SEE ME BUT ONE OF THEM WAS FIGHTING WITH FRANK. ONCE THEY
- 25 GOT HIM THAT'S WHEN I SAID, "OVER HERE, CAN'T SWIM," AND

WADE BRANNON - DIRECT - BY MR. MAYE

1 THEY GOT ME OUT THE WATER ALSO.

2 Q THE POLICE PULLED YOU OUT OF THE WATER?

3 A YES, SIR.

4 Q WHAT HAPPENED THEN?

5 A THEY HAD FRANK IN THE CAR. THEY HAD ME SITTING DOWN
6 INDIAN STYLE IN THE COLD ASKING ME WHERE THE GUN AT.

7 Q DID YOU TELL THEM THEN?

8 A NO, SIR.

9 Q WHERE DID THEY TAKE YOU THEN?

10 A PUT ME IN THE CAR AND BROUGHT ME TO SALUDA COUNTY
11 JAIL.

12 Q SOMETIME LATER DID YOU CONFESS, WRITE A STATEMENT?

13 A YES, SIR.

14 Q SHORTLY AFTER THE TIME YOU GOT CAUGHT, YOU GAVE A
15 STATEMENT AND ADMITTED YOUR GUILT?

16 A YES, SIR.

17 Q YOU HAVE BEEN COOPERATING WITH LAW ENFORCEMENT EVER
18 SINCE, HAVEN'T YOU?

19 A YES, SIR.

20 Q DID YOU TELL THE POLICE WHERE THE GUN WAS?

21 A NO, SIR.

22 Q YOU DID NOT?

23 A NO, SIR. THEY WENT AND FOUND IT.

24 Q THEY WENT BACK TO THE SCENE AND FOUND IT?

25 A YES, SIR.

WADE BRANNON - DIRECT - BY MR. MAYE

1 MR. WILLIAMS: YOUR HONOR, IF IT PLEASE THE
2 COURT. MAY WE APPROACH THE BENCH?

3 THE COURT: ALL RIGHT.

4 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
5 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
6 OF THE JURY).

7 Q I SHOW YOU THIS MARKED STATE'S EXHIBIT 1 FOR I.D.

8 MR. WILLIAMS: OBJECTION, YOUR HONOR.

9 THE COURT: ON WHAT GROUND?

10 MR. WILLIAMS: IT'S MY UNDERSTANDING THE
11 SOLICITOR, I ANTICIPATE, IS GOING TO ASK MR. BRANNON TO
12 IDENTIFY THE STATE'S EXHIBIT WHICH IS A WEAPON OR AS THE
13 WEAPON INVOLVED IN THIS INCIDENT. WE DON'T FEEL THAT A
14 PROPER FOUNDATION HAS BEEN LAID FOR MR. BRANNON TO IDENTIFY
15 THAT WEAPON AT THIS TIME.

16 THE COURT: AT THIS POINT IN TIME THERE HASN'T
17 BEEN ANY QUESTION. HE HAS JUST HANDED HIM AN EXHIBIT
18 MARKED FOR IDENTIFICATION. YOUR OBJECTION IS OVERRULED.
19 GO AHEAD, SOLICITOR.

20 Q MR. BRANNON, HAVE YOU GOT STATE'S EXHIBIT 1 FOR I.D.
21 THERE?

22 A YES, SIR.

23 Q WHAT IS THAT?

24 A A GUN.

25 Q WHOSE GUN WAS IT?

WADE BRANNON - DIRECT - BY MR. MAYE

1 A SOMEBODY HAD GAVE IT TO ME AND I GAVE IT TO FRANK.

2 Q THAT WAS THE GUN USED IN THE ROBBERY?

3 A YES, SIR.

4 Q NO DOUBT IN YOUR MIND THAT'S THE ONE YOU WERE
5 CARRYING?

6 A YES, SIR.

7 Q IS THAT THE ONE THAT YOU THREW DOWN BEFORE YOU RAN
8 INTO THE POND?

9 A YES, SIR.

10 Q MR. BRANNON, YOU HAVE COOPERATED WITH THE POLICE
11 SINCE YOU GOT CAUGHT; HAVEN'T YOU?

12 A YES, SIR.

13 Q YOU CAME UP AT THE NEXT TERM OF COURT AND PLED GUILTY
14 TO STRONG ARMED ROBBERY?

15 A YES, SIR, BECAUSE I KNEW I WAS WRONG, YOU KNOW. I
16 JUST LIKE TO APOLOGIZE TO MR. DYSON THAT I'M SORRY, YOU
17 KNOW, AND JUST READY TO GET THIS OVER WITH AND GO BACK TO
18 MY FAMILY.

19 Q IN EXCHANGE FOR YOUR COOPERATION WITH THE STATE,
20 YOU WERE INITIALLY CHARGED WITH ARMED ROBBERY; IS THAT
21 RIGHT?

22 A YES, SIR.

23 Q YOU WERE ALLOWED TO ENTER A PLEA TO STRONG ARMED
24 ROBBERY IN THIS COURTROOM?

25 A YES, SIR.

Appendix 165

WADE BRANNON - CROSS - BY MR. WILLIAMS

164

1 Q YOU HAVEN'T BEEN SENTENCED YET BUT YOU HAVE ALREADY
2 PLED GUILTY; IS THAT RIGHT?

3 A YES, SIR.

4 Q AND YOU KNOW THAT YOU ARE GOING TO BE SENTENCED AFTER
5 THIS TRIAL?

6 A YES, SIR.

7 Q OTHER THAN REDUCING THE CHARGE FROM ARMED ROBBERY TO
8 STRONG ARMED ROBBERY, HAS ANYBODY MADE YOU ANY PROMISES?

9 A NO, SIR.

10 MR. MAYE: WE RESERVE THE RIGHT TO RECALL MR.
11 BRANNON, YOUR HONOR, BUT I DON'T HAVE ANYMORE QUESTIONS AT
12 THIS TIME.

13 THE COURT: MR. WILLIAMS, CROSS EXAMINE, PLEASE.

14 MR. WILLIAMS: THANK YOU, YOUR HONOR. IF IT
15 PLEASES THE COURT.

16 CROSS EXAMINATION

17 BY MR. WILLIAMS:

18 Q MR. BRANNON?

19 A YES, SIR.

20 Q HOW OLD ARE YOU?

21 A TWENTY-EIGHT.

22 Q YOU ARE OLDER THAN MR. TOLEN, AREN'T YOU?

23 A YES, SIR.

24 Q THROUGHOUT THE COURSE OF YOUR TESTIMONY, MR. TOLEN
25 DIRECTED EVERYTHING; ISN'T THAT CORRECT?

Appendix 166

WADE BRANNON - CROSS - BY MR. WILLIAMS

165

1 A YES, SIR.

2 Q HE TOLD YOU WHAT TO DO AND WHERE TO GO, DIDN'T HE?

3 A YES, SIR.

4 Q YOU WERE BASICALLY JUST A PUPPET BEING USED AT HIS
5 DISCRETION?

6 A YES, SIR.

7 Q YOU TESTIFIED YOU GAVE A STATEMENT TO LAW
8 ENFORCEMENT; IS THAT CORRECT?

9 A YES, SIR.

10 Q I WANT YOU TO TAKE A LOOK AT THIS STATEMENT AND TELL
11 ME WHETHER OR NOT THAT IS YOUR STATEMENT.

12 A (PAUSE). I'M FINISHED.

13 MR. WILLIAMS: YOUR HONOR, WE WOULD MOVE TO HAVE
14 THIS MARKED AS DEFENDANT'S EXHIBIT NUMBER 1.

15 MR. MAYE: I CONSENT.

16 THE COURT: ARE YOU MOVING IT INTO EVIDENCE, YOU
17 SAID, OR MARKED FOR IDENTIFICATION? YOU ARE MOVING IT INTO
18 EVIDENCE?

19 MR. WILLIAMS: AS IDENTIFICATION.

20 MR. MAYE: YOUR HONOR, HE MOVED IT INTO EVIDENCE
21 AND I CONSENTED TO IT COMING IN.

22 THE COURT: HE MOVED THAT IT BE MARKED AS
23 DEFENDANT'S EXHIBIT 1. THAT WAS WHAT HE SAID.

24 MR. MAYE: OKAY.

25 THE COURT: THAT'S WHY I ASKED THE QUESTION. I

Appendix 167

WADE BRANNON - CROSS - BY MR. WILLIAMS

166

1 WANTED TO BE SURE. HE IS SAYING AT THIS TIME FOR
2 IDENTIFICATION ONLY.

3 (DEFENDANT'S EXHIBIT NUMBER 1, STATEMENT OF
4 BRANNON, IS MARKED FOR IDENTIFICATION).

5 Q MR. BRANNON, WHAT IS YOUR NICKNAME?

6 A KILLER.

7 Q KILLER?

8 A YES, SIR.

9 Q NOW, LET'S SEE IF WE CAN DETERMINE WHAT YOUR REAL
10 NAME IS ALSO. WHO IS WADE CHRISTY?

11 A THAT'S ONE OF MY MAIDEN (SIC) NAMES.

12 Q THAT CHRISTY IS SPELLED C-H-R-I-S-T-Y. YOU HAVE USED
13 THAT NAME BEFORE?

14 A YES, SIR.

15 Q HAVE YOU USED THE NAME WADE CHRISTIE,
16 C-H-R-I-S-T-I-E?

17 A YES, SIR.

18 Q YOU HAVE USED THE NAME WADE LAMAR BRANNON?

19 A YES, SIR.

20 Q AND YOU HAVE USED THE NAME WADE LAMAR BRANNO?

21 A NO, SIR.

22 Q YOU HAVEN'T?

23 A NO, SIR.

24 Q YOU HAVE USED THE NAME LAMAR WADE CHRISTIE,
25 C-H-R-I-S-T-I-E?

Appendix 168

WADE BRANNON - CROSS - BY MR. WILLIAMS

167

- 1 A NO, SIR.
- 2 Q HAVE YOU USED THE NAME LAMAR BRANNON WADE?
- 3 A NO, SIR.
- 4 Q HAVE YOU USED THE NAME LAMAR W. BRANNON?
- 5 A NO, SIR.
- 6 Q WHAT ABOUT WADE L. BRANNON?
- 7 A NO, SIR.
- 8 Q AND LAMAR BRANNON?
- 9 A NO, SIR.
- 10 Q ARE YOU AWARE ALL THESE NAMES ARE REFLECTED AS
- 11 ALIASES ON YOUR CRIMINAL RECORD?
- 12 A NO, SIR, I DIDN'T KNOW.
- 13 Q SO YOU HAVE NEVER HAD AN OCCASION TO TELL LAW
- 14 ENFORCEMENT AUTHORITIES THAT THESE WERE YOUR NAMES?
- 15 A NO, SIR.
- 16 Q YOU HAVE A CRIMINAL RECORD IN GEORGIA?
- 17 A D.U.I.
- 18 Q A CRIMINAL RECORD IN NEW YORK?
- 19 A YES, SIR.
- 20 Q AND IN SOUTH CAROLINA?
- 21 A YES, SIR.
- 22 Q DO YOU HAVE A LAWYER CURRENTLY?
- 23 A YES, SIR.
- 24 Q WHO IS YOUR LAWYER?
- 25 A MR. RALPH KENNEDY.

Appendix 169

WADE BRANNON - CROSS - BY MR. WILLIAMS

168

1 Q IS HE IN HERE TODAY?

2 A YES, SIR.

3 Q WHERE IS HE SEATED?

4 A RIGHT THERE (INDICATING).

5 Q THE GENTLEMAN IN THE GRAY SUIT?

6 A YES, SIR.

7 Q IS HE SEATED AT THE DEFENSE'S TABLE OR THE STATE'S
8 TABLE?

9 A SIR?

10 Q HE IS SEATED WITH THE DEFENSE OR WITH THE STATE?

11 A DEFENSE, I GUESS.

12 Q NO, HE IS SEATED WITH THE STATE. HE IS SEATED WITH
13 THE PROSECUTION TEAM, ISN'T HE?

14 A YES, SIR.

15 Q DO YOU KNOW WHO YOUR LAWYER'S PARTNER IS AT HIS LAW
16 OFFICE?

17 A SIR?

18 Q DO YOU KNOW WHO YOUR LAWYER'S PARTNER IS AT HIS LAW
19 OFFICE?

20 A NO, SIR.

21 Q YOU DON'T KNOW THIS GENTLEMAN IN THE GRAY SUIT, MR.
22 BAGGETT, IS YOUR LAWYER'S PARTNER?

23 A NO, SIR.

24 Q NOW, LOOK AT YOUR STATEMENT WITH ME IF YOU WILL. THE
25 FIRST THING YOU INDICATED WAS THAT THIS OFFENSE OCCURRED ON

Appendix 170

WADE BRANNON - CROSS - BY MR. WILLIAMS

169

1 A TUESDAY NIGHT; IS THAT CORRECT?

2 A YES, SIR.

3 Q THE STATEMENT HAS THAT IT OCCURRED ON A WEDNESDAY.
4 WHO IS WRONG?

5 A IT HAPPENED ON A WEDNESDAY MORNING AFTER 12 O'CLOCK.

6 Q SO IT HAPPENED ON WEDNESDAY?

7 A YES, SIR.

8 Q SO YOUR STATEMENT THAT IT HAPPENED ON TUESDAY IS
9 WRONG, ISN'T IT?

10 A YES, SIR.

11 Q IS THERE ANY PARTICULAR REASON YOU TOLD A LIE ABOUT
12 WHEN IT HAPPENED?

13 A IT WASN'T NO LIE.

14 Q WHEN DID IT HAPPEN?

15 A IT HAPPENED OCTOBER THE 1ST. WE GOT CAUGHT OCTOBER
16 THE 2ND.

17 Q SO IT HAPPENED ON OCTOBER THE 1ST?

18 A THAT'S RIGHT.

19 Q NOW, THE STATE ALLEGES THIS HAPPENED ON OCTOBER THE
20 2ND. AGAIN, WHO IS WRONG?

21 A SIR?

22 Q THE STATE ALLEGES THIS HAPPENED ON OCTOBER THE 2ND,
23 1996. YOU ARE SAYING IT HAPPENED ON OCTOBER THE 1ST, 1996.

24 THE STATE IS WRONG?

25 A THAT'S THE NIGHT WHEN IT HAPPENED. WE GOT CAUGHT THE

Appendix 171

WADE BRANNON - CROSS - BY MR. WILLIAMS

170

1 SECOND DAY.

2 Q THE STATE ALLEGES THIS EVENT HAPPENED ON OCTOBER THE
3 2ND. YOU SAY IT HAPPENED ON OCTOBER THE 1ST; IS THAT
4 CORRECT?

5 A THAT'S RIGHT.

6 Q SO THE STATE IS WRONG?

7 A I GUESS SO.

8 Q YOU INDICATED YOU HAD BEEN SMOKING CRACK COCAINE; IS
9 THAT CORRECT?

10 A YES, SIR.

11 Q WHEN DID YOU FIRST START SMOKING CRACK COCAINE IN
12 YOUR LIFE?

13 A SINCE ABOUT '86, '87.

14 Q SO YOU HAVE BEEN SMOKING CRACK COCAINE SINCE 1986?

15 A YES, SIR, OFF AND ON.

16 Q ON THIS PARTICULAR EVENING, HOW MUCH CRACK COCAINE
17 HAD YOU SMOKED?

18 A MAYBE ABOUT \$40 WORTH.

19 Q TWENTY DOLLARS WORTH?

20 A FORTY.

21 Q FORTY?

22 A YES, SIR.

23 Q AND DO YOU RECALL THE TIME THAT YOU LAST SMOKED CRACK
24 COCAINE BEFORE YOU APPROACHED MR. DYSON?

25 A PROBABLY ABOUT AN HOUR BEFORE THAT MAYBE. YEAH, AN

Appendix 172

WADE BRANNON - CROSS - BY MR. WILLIAMS

171

1 HOUR.

2 Q WAS IT FAIR TO SAY THAT YOU WERE STILL HIGH ON CRACK?

3 A YOU TALKING ABOUT NOW?

4 Q NO, WHEN YOU APPROACHED MR. DYSON.

5 A NO.

6 Q SO YOU HAD LOST YOUR HIGH FROM THE CRACK COCAINE?

7 A YES. IT DON'T LAST THAT LONG.

8 Q HOW FAR OF A WALK IS IT FROM WHERE YOU WERE PRIOR TO
9 GOING TO THE STORE AT THE TRAFFIC CIRCLE OR DID YOU GET A
10 RIDE UP TO THE TRAFFIC CIRCLE WHERE MR. DYSON WAS?

11 A WE WALKED.

12 Q HOW FAR OF A WALK IS IT?

13 A I WOULD SAY ABOUT TWO MILES.

14 Q TWO MILES?

15 A YES.

16 Q AND DID YOU LEAVE HOME AS SOON AS YOU FINISHED
17 SMOKING THE CRACK COCAINE?

18 A YES.

19 Q BECAUSE I THINK YOUR STATEMENT INDICATED YOU WANTED
20 SOME MORE CRACK; ISN'T THAT CORRECT?

21 A WE WANTED SOME MORE.

22 Q WE IMPLIES YOU ALSO THOUGH, DOESN'T IT?

23 A YEAH, IT DOES.

24 Q ANY QUESTION YOU WANTED SOME MORE CRACK COCAINE?
25 ISN'T THAT CORRECT?

Appendix 173

WADE BRANNON - CROSS - BY MR. WILLIAMS

172

1 A YES.

2 Q SO YOU WERE PREPARED TO WALK TWO MILES TO FIND A WAY
3 TO GET SOME MORE CRACK COCAINE; IS THAT CORRECT?

4 A YES, SIR.

5 Q THAT'S QUITE A HOLD ON YOU, ISN'T IT?

6 A YES, SIR.

7 Q IN YOUR STATEMENT YOU INDICATE, IF YOU WILL, WHEN YOU
8 GOT TO THE TRACK CIRCLE YOU SAW A TRUCKER ASLEEP; IS THAT
9 CORRECT?

10 A YES, SIR.

11 Q NOW, YOU COULD SEE THIS WAS A 18-WHEELER; WASN'T IT?

12 A YES, SIR.

13 Q YOU COULD SEE UP IN THE TRUCK?

14 A YES, SIR.

15 Q YOU COULD SEE UP IN THE TRUCK FROM THE GROUND?

16 A COULD YOU SEE UP IN THE TRUNK FROM THE GROUND?

17 Q YES, SIR.

18 A I WASN'T UP ON THE TRUCK LIKE THAT.

19 Q I'M SORRY?

20 A I WASN'T UP ON THE TRUCK LIKE THAT.

21 Q NOW, YOUR STATEMENT SAYS, IF YOU WILL LOOK AT THE
22 SECOND LINE, "SO WE WALKED TO THE CIRCLE WHERE WE SAW THE
23 TRUCKER ASLEEP IN THE TRUCK." SO WHEN YOU FIRST GOT TO THE
24 CIRCLE, YOU WERE UNABLE TO SEE THE TRUCKER ASLEEP IN THE
25 TRUCK; WEREN'T YOU?

Appendix 174

WADE BRANNON - CROSS - BY MR. WILLIAMS

173

1 A NOT AT THAT MOMENT.

2 Q THEN YOU SAY FRANK CLIMBED UP ON THE PASSENGER SIDE?

3 A YES.

4 Q SO YOU HADN'T CLIMBED UP ON THE VEHICLE; IS THAT
5 CORRECT?

6 A NO.

7 Q SO YOU WOULDN'T KNOW, FIRST OF ALL, IF ANYONE WAS
8 EVEN IN THE TRUCK; WOULD YOU?

9 A NOT AT FIRST.

10 Q AND YOU CERTAINLY WOULDN'T HAVE KNOWN IF ANYONE WAS
11 IN THERE ASLEEP, WOULD YOU?

12 A NO.

13 Q BUT IN THE SEQUENCE OF EVENTS WHAT YOU PUT DOWN IN
14 YOUR STATEMENT IS YOU SAW A TRUCKER ASLEEP. YOU PUT THAT
15 DOWN AS THE FIRST THING YOU SAW; ISN'T THAT CORRECT?

16 A YES.

17 Q THAT'S NOT CORRECT THOUGH, IS IT? THAT WASN'T THE
18 FIRST THING THAT HAPPENED.

19 A THAT WASN'T THE FIRST THING THAT HAPPENED?

20 Q NO, SIR, THAT WASN'T THE FIRST THING THAT HAPPENED;
21 WAS IT?

22 A WHAT ARE YOU SAYING?

23 Q WELL, AGAIN, WHEN YOU APPROACHED THE TRUCK---

24 A I DID NOT APPROACH THE TRUCK.

25 Q FINE. YOU DIDN'T APPROACH THE TRUCK, SO YOU COULDN'T

Appendix 175

WADE BRANNON - CROSS - BY MR. WILLIAMS

174

1 HAVE SEEN ANYONE IN THE TRUCK; ISN'T THAT CORRECT?

2 A THAT'S RIGHT.

3 Q BUT YOUR STATEMENT SAYS THAT YOU DID SEE SOMEBODY IN
4 THE TRUCK ASLEEP, DOESN'T IT?

5 A YES.

6 Q SO YOUR STATEMENT IS WRONG, ISN'T IT?

7 A NO, IT'S NOT.

8 Q MR. BRANNON, HOW FAR DID YOU GO IN SCHOOL?

9 A TO THE 12TH GRADE.

10 Q YOU CAN READ AND WRITE AND UNDERSTAND THE ENGLISH
11 LANGUAGE, CAN'T YOU?

12 A YES.

13 Q NOW, YOUR STATEMENT ON THE THIRD LINE SAYS, "WE SAW
14 THE TRUCKER ASLEEP IN THE TRUCK," DOESN'T IT?

15 A YES.

16 Q THEN THE VERY NEXT LINE SAYS, "FRANK CLIMBED ON THE
17 PASSENGER SIDE," DOESN'T IT?

18 A YES.

19 Q WHAT I AM ASKING YOU IS DID YOU WRITE THIS STATEMENT
20 IN THE SEQUENCE OF PUTTING THE EVENTS IN THE SEQUENCE IN
21 WHICH THEY HAPPENED?

22 A YES, I DID.

23 Q YOU DID. SO YOU SAID IN YOUR OWN TESTIMONY THAT YOU
24 NEVER APPROACHED THE TRUCK WHEN YOU FIRST GOT TO THE TRACK
25 CIRCLE; IS THAT CORRECT?

Appendix 176

WADE BRANNON - CROSS - BY MR. WILLIAMS

175

1 A YES, I DID.

2 Q SO YOU COULD NOT HAVE SEEN ANYONE IN THE TRUCK WHEN
3 YOU FIRST APPROACHED THE TRAFFIC CIRCLE; ISN'T THAT
4 CORRECT?

5 A CORRECT.

6 Q HUH?

7 A CORRECT.

8 Q BUT YOUR STATEMENT SAYS THAT YOU DID, DOESN'T IT?

9 A YES.

10 Q SO YOUR STATEMENT IS WRONG?

11 A NO, IT'S NOT.

12 Q YOU WROTE THE STATEMENT YOU TESTIFIED A MOMENT AGO?

13 A I SEEN HIM AFTER HE KNOCKED ON THE DOOR WITH THE GUN.
14 THAT'S WHEN HIS HEAD RAISED UP FROM THE SEAT.

15 Q ALL RIGHT. THEN SO LET ME ASK YOU THIS. YOUR
16 STATEMENT IS NOT WRITTEN DIRECTLY IN SEQUENCE WITH THE WAY
17 THINGS HAPPENED THEN, IS IT?

18 A NO, IT'S NOT.

19 Q SO YOUR STATEMENT IS OUT OF ORDER?

20 A WELL, IT'S BEEN A WHILE. IT BEEN 15 MONTHS, YOU
21 KNOW.

22 Q SO YOU ARE HAVING DIFFICULTY REMEMBERING ALL THE
23 FACTS OF THAT NIGHT?

24 A NO, I'M NOT.

25 Q WHAT?

Appendix 177

WADE BRANNON - CROSS - BY MR. WILLIAMS

176

1 A THE STATEMENT IS IN THAT MOMENT. THAT'S WHAT I AM
2 TRYING TO TELL YOU NOW.

3 Q ALL RIGHT. SO YOU ARE SAYING YOUR STATEMENT IS
4 UNRELIABLE?

5 A NO, I'M NOT.

6 Q WHAT DOES 15 MONTHS HAVE TO DO WITH ANYTHING?

7 A THAT'S WHAT I AM TRYING TO REMEMBER. I AM TELLING
8 YOU ABOUT THE STATEMENT. THAT'S HOW IT HAPPENED WHEN IT
9 FIRST HAPPENED. THAT'S HOW IT HAPPENED.

10 Q YOU ARE SAYING NOW THAT YOUR MEMORY IS A LITTLE
11 CLOUDY ON SOME OF THE FACTS OF THIS CASE?

12 A NO, I'M NOT SAYING THAT.

13 Q SO THE 15 MONTHS THAT HAS ELAPSED DOESN'T MATTER
14 WHATSOEVER IN TERMS OF YOUR RECOLLECTION; IS THAT
15 CORRECT?

16 A CORRECT.

17 Q AND YOUR STATEMENT IS OUT OF ORDER IN TERMS OF THE
18 SEQUENCE OF EVENTS; IS THAT CORRECT?

19 A NOT CORRECT.

20 Q YOU ARE SAYING IT'S IN ORDER?

21 A YES.

22 Q SO WHEN YOU APPROACHED THE TRUCK -- YOU SAY YOU
23 NEVER APPROACHED THE TRUCK WHEN YOU CAME TO THE TRAFFIC
24 CIRCLE?

25 A NO, I DIDN'T.

Appendix 178

WADE BRANNON - CROSS - BY MR. WILLIAMS

177

1 Q SO IT FOLLOWS THEN THAT YOU COULD NOT HAVE SEEN
2 INSIDE THE TRUCK, DOESN'T IT?

3 A NO.

4 Q WELL, YOU WERE UNABLE TO SEE INSIDE THE TRUCK;
5 WEREN'T YOU?

6 A NO.

7 Q AND YOU WEREN'T ABLE TO SEE IF ANYONE WAS INSIDE THE
8 TRUCK ASLEEP; ISN'T THAT CORRECT?

9 A NO, I COULDN'T.

10 Q NOW, AFTER YOU ARRIVED AT THE CIRCLE, YOU ALLEGE THAT
11 FRANK CLIMBED UP ON THE PASSENGER SIDE?

12 A YES.

13 Q AND HE CLIMBED UP ON THE PASSENGER SIDE AFTER YOU HAD
14 ARRIVED AT THE TRAFFIC CIRCLE; IS THAT CORRECT?

15 A YES.

16 Q AND PRIOR TO THAT YOU HAD SAID YOU HAD SEEN THE
17 TRUCKER ASLEEP IN THE TRUCK, BUT THAT'S NOT THE CASE
18 THOUGH. YOU MAY HAVE SEEN THE TRUCKER LATER; IS THAT
19 CORRECT?

20 A CORRECT.

21 Q SO YOU WOULD AGREE WITH ME THEN THAT CERTAINLY THAT
22 LINE IS OUT OF ORDER IN YOUR STATEMENT, IS NOT IN SEQUENCE;
23 ISN'T THAT CORRECT?

24 A I CAN'T SAY THAT.

25 Q DO YOU UNDERSTAND WHAT IN SEQUENCE MEANS?

Appendix 179

WADE BRANNON - CROSS - BY MR. WILLIAMS

178

1 A YES, I DO.

2 Q IF SOMETHING HAPPENS AT TEN OR ONE, SOMETHING
3 HAPPENS AT TWO OR ONE, SOMETHING HAPPENS AT THREE OR ONE;
4 AND YOU RECORD THOSE EVENTS IN THE ORDER THAT THEY
5 HAPPENED, THAT'S WHAT BEING IN SEQUENCE MEANS. DO YOU
6 UNDERSTAND THAT?

7 A YES, I DO.

8 Q I AM REALLY NOT MAKING THIS DIFFICULT. ALL WE ARE
9 TRYING TO DO IS GET AN UNDERSTANDING OF WHAT THE FACTS ARE
10 IN THIS CASE. NOW, YOU INDICATE ONCE AND FOR ALL YOUR
11 STATEMENT YOU ALLEGE IS IN SEQUENCE, IT'S IN ORDER; IS THAT
12 YOUR POSITION?

13 A YES.

14 Q WELL, YOUR STATEMENT THAT YOU SAW THE TRUCKER ASLEEP
15 IN THE TRUCK PRIOR TO FRANK CLIMBING ON THE TRUCK CAN'T BE
16 TRUE THEN; IS IT?

17 A I CAN'T REALLY SAY THAT. THAT'S HOW I REMEMBER AT
18 THAT TIME.

19 Q BUT WE DO KNOW YOU COULDN'T SEE IN THE TRUCK, RIGHT,
20 BECAUSE YOU ALREADY TESTIFIED TO THAT?

21 A NO, I COULDN'T SEE IN THE TRUCK AT THAT MOMENT.

22 Q YOU INDICATED FRANK TAPPED ON THE WINDOW WITH THE
23 GUN; IS THAT CORRECT?

24 A CORRECT.

25 Q LET ME ASK YOU. WERE EITHER ONE OF Y'ALL WEARING

Appendix 180

WADE BRANNON - CROSS - BY MR. WILLIAMS

179

1 GLOVES THAT NIGHT?

2 A NO, SIR.

3 Q YOU HAVE TESTIFIED THAT MR. DYSON HANDED OVER SOME
4 MONEY TO MR. TOLEN; IS THAT CORRECT?

5 A CORRECT.

6 Q YOU TESTIFIED AND YOU EVEN HAVE IN YOUR STATEMENT HE
7 HANDED HIM \$60; IS THAT CORRECT?

8 A CORRECT.

9 Q DID MR. DYSON COUNT THE MONEY OUT LIKE, "HERE YOU GO
10 SIR, 20, 40"?

11 A NO. HE SAID THAT'S ALL HE HAD WAS \$60.

12 Q DID HE TELL YOU -- DID YOU SEE THE MONEY WHEN MR.
13 DYSON WAS HANDING IT TO HIM?

14 A YES, I DID.

15 Q WAS IT FOLDED UP OR STRAIGHT?

16 A FOLDED UP.

17 Q WAS IT FOLDED IN HALF?

18 A YES, IT WAS.

19 Q AND COULD YOU MAKE OUT THE NUMBER OF BILLS?

20 A THREE 20S.

21 Q YOU COULD TELL THAT FROM LOOKING AT THE MONEY THAT
22 WAS HANDED?

23 A YES.

24 Q SO YOU KNEW IT WAS THREE 20S?

25 A YES.

Appendix 181

WADE BRANNON - CROSS - BY MR. WILLIAMS

180

1 Q SO IF I HAD THREE BILLS AND IF I FOLDED THEM IN HALF,
2 YOU CAN TELL WHAT THE DENOMINATION OF THE INSIDE BILLS ARE?
3 YOU CAN DO THAT?

4 A EXCUSE ME?

5 Q IF I HAVE THREE BILLS AND IF I FOLD THEM IN HALF, YOU
6 CAN TELL ME WHAT THE DENOMINATION OF THE BILLS ARE ON THE
7 INSIDE?

8 A THEM THREE \$100 BILLS RIGHT THERE.

9 Q NO, SIR, I JUST HELD THEM UP. I'M SAYING THAT YOU
10 CAN'T TELL WHAT THE DENOMINATION OF THE BILLS ARE ON THE
11 INSIDE.

12 A I AM NOT GOING BY WHAT YOU SAYING. THAT'S WHAT HE
13 SAID HE HAD WAS \$60. I AM GOING BY WHAT I HEARD.

14 Q THAT'S FINE. I DON'T HAVE A PROBLEM WITH THAT. BUT
15 IN YOUR STATEMENT YOU SAID MR. DYSON HANDED HIM 20S. WHEN
16 HE FOLDED THE MONEY UP, IT COULD HAVE BEEN -- YOU WERE
17 UNABLE TO TELL WHAT THE DENOMINATION OF THE BILLS WERE ON
18 THE INSIDE, WERE YOU?

19 A NO, NOT AT THAT MOMENT.

20 Q DID YOU KNOW IF MR. TOLEN HAD A JOB?

21 A NO, I DIDN'T.

22 Q DO YOU KNOW IF HE HAD ANY MONEY WITH HIM THAT
23 EVENING?

24 A NO, I DIDN'T.

25 Q NOW, WHEN YOU SAY AT THAT MOMENT YOU DIDN'T KNOW WHAT

Appendix 182

WADE BRANNON - CROSS - BY MR. WILLIAMS

181

1 THE AMOUNT OF MONEY WAS, WHEN DID YOU KNOW?

2 A WHEN WE GOT WHERE WE WAS GOING.

3 Q OKAY.

4 A THAT IT WAS \$60.

5 Q DO YOU KNOW IF MR. TOLEN ALREADY HAD SOME MONEY?

6 A NO, I DIDN'T KNOW.

7 Q SO YOU WOULDN'T HAVE KNOWN IF HE HAD HAD SOME \$20
8 BILLS HIMSELF, DO YOU?

9 A NO, I WOULDN'T HAVE KNOWN.

10 Q LET'S GO BACK. SO WHEN THE MONEY WAS HANDED YOU
11 ALLEGE FROM MR. DYSON TO MR. TOLEN, YOU DON'T KNOW
12 SPECIFICALLY WHAT THE DENOMINATIONS WERE? YOU JUST SAID
13 YOU HEARD SOMEBODY SAY \$60?

14 A I HEARD MR. DYSON SAY \$60.

15 Q YOU HEARD MR. DYSON SAY \$60?

16 A YES, I DID.

17 Q YOU DON'T KNOW WHAT THE DENOMINATION OF THE MONEY
18 WAS, DO YOU?

19 A YES, I SEEN IT.

20 Q YOU SEEN SOME MONEY FOLDED; IS THAT CORRECT?

21 A YES.

22 Q BUT YOU DIDN'T SEE THE BILLS IN THE CENTER, DID YOU?

23 A YOU TALKING ABOUT WHEN MR. DYSON HAND THE \$60 TO
24 FRANK?

25 Q RIGHT.

Appendix 183

WADE BRANNON - CROSS - BY MR. WILLIAMS

182

1 A DID I SEE IT?

2 Q RIGHT.

3 A YEAH, AFTER WE LEFT THE SCENE.

4 Q DID YOU SEE THE NUMBERS OF BILLS THAT WERE FOLDED
5 INSIDE OF THE TOP BILL?

6 A IT WAS TWO 20S.

7 Q YOU WERE ABLE TO SEE THAT IT WAS TWO 20S?

8 A IT WAS THREE BUT I DIDN'T SEE BUT ONE 20 JUST ON TOP.

9 Q ALL RIGHT. THAT'S WHAT I'M ASKING YOU. YOU DIDN'T
10 SEE THE DENOMINATION OF THE BILLS FOLDED ON THE INSIDE?

11 A NO, NOT AT THAT MOMENT.

12 Q AND YOU DON'T KNOW IF MR. TOLEN HAD ANY OTHER MONEY
13 WITH HIM; IS THAT CORRECT?

14 A NO, I DIDN'T KNOW.

15 Q SO YOUR STATEMENT THAT MR. DYSON HANDED MR. TOLEN
16 \$60 IN 20S IS BASED UPON A GUESS MADE BY YOU; IS THAT
17 CORRECT?

18 A NO, IT'S NOT. NO, IT'S NOT A GUESS.

19 Q YOU DIDN'T SEE THE DENOMINATION OF THE MONEY ON THE
20 INSIDE OF THE TOP BILL; IS THAT CORRECT?

21 A EXCUSE ME?

22 Q YOU DIDN'T SEE THE DENOMINATIONS OF THE MONEY THAT
23 WERE INSIDE OF THE TOP BILL WHICH WERE FOLDED AND HANDED TO
24 MR. TOLEN; IS THAT CORRECT?

25 A NOT AT THAT MOMENT.

Appendix 184

WADE BRANNON - CROSS - BY MR. WILLIAMS

183

1 Q LATER I THINK YOUR TESTIMONY IS YOU SAW MR. TOLEN
2 WITH SOME 20S; IS THAT CORRECT?

3 A YES, SIR.

4 Q BUT YOU DON'T KNOW IF HE HAS A JOB OR HAD A JOB AT
5 THAT TIME; IS THAT CORRECT?

6 A I KNEW.

7 Q OH, YOU KNEW?

8 A YES.

9 Q YOU KNEW WHAT?

10 A HE DIDN'T HAVE NO JOB.

11 Q A MOMENT AGO YOU TESTIFIED YOU DIDN'T KNOW WHETHER OR
12 NOT HE HAD A JOB. DO YOU REMEMBER WHEN YOU TESTIFIED TO
13 THAT?

14 A NO, I DIDN'T.

15 Q SO YOU ARE SAYING YOU DIDN'T TESTIFY A MOMENT AGO
16 THAT YOU DIDN'T KNOW WHETHER OR NOT MR. TOLEN HAD A
17 JOB?

18 A WELL, THE DAYS HE WITH ME HE DIDN'T HAVE NO JOB.

19 Q LET ME ASK YOU THIS. WERE YOU WITH HIM EVERY DAY?

20 A NO, I WASN'T.

21 Q SO IT'S QUITE CONCEIVABLE HE COULD HAVE HAD SOME WORK
22 WHEN HE WAS NOT WITH YOU; IS THAT CORRECT?

23 A COULD HAVE BEEN.

24 Q YOU DON'T KNOW WHETHER HE HAD A JOB, DO YOU?

25 A THAT'S RIGHT.

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 Q NOW, YOU DON'T KNOW WHETHER OR NOT HE HAD ANY MONEY
2 WITH HIM; DO YOU?

3 A I DO NOT KNOW THAT.

4 Q SO WHEN YOU SAW MR. TOLEN I THINK YOUR TESTIMONY WAS
5 WITH SOME 20S; IS THAT CORRECT?

6 A CORRECT.

7 Q THAT VERY WELL COULD HAVE BEEN MR. TOLEN'S MONEY;
8 ISN'T THAT CORRECT?

9 A WELL, NOT AT THAT MOMENT.

10 Q WELL NOW, YOUR TESTIMONY IS FIRST YOU CAN'T SAY
11 WHETHER OR NOT MR. TOLEN HAD A JOB AND WAS EARNING MONEY.
12 THEN YOUR TESTIMONY SECONDLY IS YOU DON'T KNOW IF HE HAD
13 ANY MONEY WITH HIM ANYWAY.

14 A WELL, HE DIDN'T HAVE NO MONEY WHEN WE ROBBED MR.
15 DYSON.

16 Q DID YOU SEARCH HIS POCKETS?

17 A NO, I DIDN'T. I KNOW.

18 Q DID YOU SEARCH HIS POCKETS?

19 A NO, I DIDN'T.

20 Q ALL RIGHT. SO YOU DON'T KNOW WHAT HE HAD THEN, DO
21 YOU?

22 A HE AIN'T HAD NONE THAT DAY.

23 Q WELL, DID YOU SEARCH HIM TO SEE IF HE HAD ANY MONEY

24 A NO, I DID NOT SEARCH HIM.

25 Q ALL RIGHT. THEN YOU CAN'T SAY WHAT HE HAD OR DIDN

1 HAVE, CAN YOU?

2 A NO, I CANNOT SAY THAT.

3 Q THANK YOU. SO GOING BACK TO THE 20S THAT YOU SAW MR.
4 TOLEN HAVE, THAT COULD VERY WELL HAVE BEEN HIS OWN MONEY;
5 ISN'T THAT CORRECT?

6 A NO.

7 Q YOUR TESTIMONY IS, MR. BRANNON, THAT YOU DON'T KNOW
8 IF MR. TOLEN HAD ANY MONEY ALREADY OR NOT; DO YOU?

9 A AT THAT MOMENT I KNEW HE DIDN'T HAVE NONE WHEN HE WAS
10 WITH ME.

11 Q ALL RIGHT. DID YOU SEARCH HIM?

12 A NO, I DID NOT SEARCH HIM.

13 Q HOW DO YOU KNOW WHAT HE HAD OR DIDN'T HAVE? YOU
14 DON'T KNOW, DO YOU?

15 A I AM GOING BY WHAT HE TOLD ME.

16 Q SO DID YOU SEARCH HIM?

17 MR. MAYE: YOUR HONOR, I OBJECT.

18 THE COURT: SUSTAINED.

19 MR. MAYE: THAT'S ABOUT THE FOURTH TIME HE HAS
20 ASKED HIM THAT.

21 THE COURT: SUSTAINED. GO AHEAD, MR. WILLIAMS.
22 Q WELL, IS MR. TOLEN UNDER AN OBLIGATION TO TELL YOU
23 WHEN HE HAS MONEY?

24 A SOMETIMES.

25 Q HE IS UNDER AN OBLIGATION TO TELL YOU?

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 A NO, HE IS NOT.

2 Q IS HE UNDER AN OBLIGATION TO TELL YOU EXACTLY HOW
3 MUCH MONEY HE HAS?

4 A NO.

5 Q HAVE YOU ON OCCASIONS WHEN PEOPLE ASKED YOU TO
6 BORROW SOME MONEY AND YOU HAD THE MONEY SAID, "I DON'T
7 HAVE THE MONEY," OR, "I DON'T HAVE THAT MUCH MONEY TO LOAN
8 YOU"?

9 A NO.

10 Q NEVER?

11 A NO.

12 Q IN YOUR LIFE?

13 A YES.

14 Q BUT YOU HAVE NO WAY OF KNOWING IF MR. TOLEN
15 BASICALLY MISINFORMED YOU ABOUT WHETHER OR NOT HE HAD ANY
16 MONEY TO KEEP YOU FROM ASKING FOR SOME MONEY; ISN'T THAT
17 CORRECT?

18 A NO, IT'S NOT CORRECT.

19 Q SO YOU DON'T KNOW IF MR. TOLEN MISINFORMED YOU ABOUT
20 THE MONEY HE HAD OR DIDN'T HAVE?

21 A I DIDN'T ASK HIM FOR ANYTHING.

22 Q OKAY. BUT YOUR TESTIMONY IS THAT MR. TOLEN TOLD YOU
23 HE DIDN'T HAVE ANY MONEY? IS THAT YOUR TESTIMONY?

24 A YES.

25 Q YOU DON'T KNOW WHETHER OR NOT THAT WAS IN FACT TRUE

Appendix 188

WADE BRANNON - CROSS - BY MR. WILLIAMS

187

1 OR NOT? HE COULD HAVE HAD SOME MONEY?

2 A IT COULD HAVE BEEN. I DON'T KNOW.

3 Q THANK YOU. NOW, AT SOME POINT YOU ENTERED THE TRUCK;
4 IS THAT CORRECT?

5 A YES, I DID.

6 Q AND ONCE YOU ENTERED THE TRUCK, WHAT DID YOU OBSERVE?

7 A I WENT TO THE BACK WHERE THE BED IS AT.

8 Q SO WHEN YOU GOT IN THE TRUCK AND YOU WENT STRAIGHT TO
9 THE BACK; IS THAT CORRECT?

10 A CORRECT.

11 Q WHEN YOU GOT IN THE TRUCK, YOU WENT STRAIGHT TO THE
12 BACK TO WHERE THE BED WAS?

13 A I STAYED IN THE FRONT FOR MAYBE ABOUT A COUPLE OF
14 SECONDS. THEN I WENT ON TO THE BACK.

15 Q WHAT DID YOU DO IN THE BACK?

16 A I WENT LOOKING AROUND FOR STUFF. I GRABBED A CROWN
17 ROYAL BAG.

18 Q AND THEN I THINK YOUR TESTIMONY WAS WHEN YOU CAME
19 OUT, BOTH DOORS WERE OPEN; IS THAT CORRECT?

20 A CORRECT.

21 Q SO WHEN YOU ENTERED IN THE TRUCK, YOU WERE IN THE
22 FRONT FOR A COUPLE OF SECONDS?

23 A CORRECT.

24 Q AND THEN YOU WENT IMMEDIATELY TO THE BED; IS THAT
25 CORRECT?

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 A CORRECT.

2 Q A COUPLE OF SECONDS -- ONE, TWO, THREE -- THAT VERY
3 BRIEF PERIOD OF TIME; ISN'T IT?

4 A CORRECT.

5 Q SO ESSENTIALLY WHAT YOU WOULD HAVE DONE, AS I
6 UNDERSTAND YOUR TESTIMONY, IS YOU ENTERED THE TRUCK,
7 POSSIBLY LOOKED AT MR. DYSON AND GOT ON INTO THE BED; IS
8 THAT CORRECT?

9 A CORRECT.

10 Q SO YOUR OBSERVATIONS OF WHAT HAPPENED IN THE BODY OF
11 THE TRUCK AND IN THE CAB OF THE TRUCK IS VERY LIMITED,
12 ISN'T IT?

13 A CORRECT.

14 Q YOU WOULDN'T HAVE HAD A CHANCE TO SEE MUCH, WOULD
15 YOU?

16 A NOT THAT MUCH.

17 Q WAS THE LIGHT ON IN THE CAB OF THE TRUCK?

18 A YES.

19 Q DO YOU RECALL WHICH HAND MR. DYSON WOULD HAVE PASSED
20 MONEY TO MR. TOLEN WITH?

21 A NO, I CANNOT RECALL.

22 Q DO YOU RECALL WHICH HAND MR. TOLEN WOULD HAVE
23 RECEIVED THE MONEY IN?

24 A NO, I CAN'T.

25 Q SO ESSENTIALLY IN THAT COUPLE OF SECONDS ALL YOU S

Appendix 190

WADE BRANNON - CROSS - BY MR. WILLIAMS

189

1 OF MR. DYSON WAS HAND SOME AMOUNT OF MONEY TO MR. TOLEN; IS
2 THAT CORRECT?

3 A YES.

4 Q THEN IMMEDIATELY YOU WENT INTO THE BED?
5 A YES.

6 Q AND YOU PULLED THE FLAP DOWN; IS THAT CORRECT?
7 A WHAT IS THAT?

8 Q YOU GOT INTO THE BED. DID IT HAVE A CURTAIN?
9 A YES, IT HAD A CURTAIN.

10 Q WAS THE CURTAIN DOWN?

11 A I CAN'T REMEMBER.

12 Q YOU CAN'T REMEMBER. NOW, IN YOUR STATEMENT IT SAYS
13 THE CURTAIN WAS DOWN, DOESN'T IT?

14 A YES.

15 Q DOES THAT REFRESH YOUR RECOLLECTION ABOUT WHETHER OR
16 NOT IT WAS UP OR DOWN?

17 A YES.

18 Q SO YOU WOULD AGREE WITH ME YOUR TESTIMONY HERE TODAY
19 IS SOMEWHAT LIMITED BY YOUR RECOLLECTION. YOU DON'T RECALL
20 ALL OF THE FACTS, DO YOU?

21 A AT THAT MOMENT THAT'S THE ONLY THING I COULD REMEMBER
22 THAT HAPPENED AT THE TIME.

23 Q BUT YOUR RECOLLECTION WAS JUST AIDED BY YOUR REVIEW
24 OF THIS STATEMENT, WASN'T IT?

25 A NO, IT WASN'T.

Appendix 191

190

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 Q NOW, YOU TESTIFIED YOU COULDN'T REMEMBER IF THE FLAP
2 WAS DOWN. THEN I POINTED YOU BACK TO YOUR STATEMENT AS TO
3 WHAT YOU SAID ABOUT THAT, DIDN'T I?

4 A I REMEMBER THAT IT WAS DOWN.
5 Q AFTER YOU READ YOUR STATEMENT; IS THAT CORRECT?
6 A CORRECT.

7 Q PRIOR TO THEN YOU DIDN'T REMEMBER, DID YOU?
8 A BACK THEN?

9 Q NO, RIGHT NOW YOU DIDN'T REMEMBER.
10 A NOW?

11 Q YOU DIDN'T REMEMBER IF THE FLAP WAS UP OR DOWN, DID
12 YOU?

13 A TO BE HONEST WITH YOU, I AIN'T KNOW WHAT YOU WAS
14 TALKING ABOUT. I JUST CALL IT A CURTAIN.

15 Q IN YOUR STATEMENT YOU CALL IT A FLAP; ISN'T THAT
16 CORRECT?

17 A YES.

18 Q NOW, THE FLAP WAS DOWN AFTER YOU GOT INTO THE BED;
19 ISN'T THAT CORRECT?

20 A CORRECT.

21 Q AND AFTER THAT POINT YOU DIDN'T SEE ANYTHING ELSE
22 GOING ON, DID YOU?

23 A JUST LISTENING.

24 Q IN THE TRUCK YOU DIDN'T SEE ANYTHING ELSE THOUGH, I
25 YOU?

Appendix 192

WADE BRANNON - CROSS - BY MR. WILLIAMS

191

1 A NO, I DIDN'T SEE NOTHING.

2 Q THE GUN THAT WAS INVOLVED, YOU HAD THE WEAPON; IS
3 THAT CORRECT?

4 A CORRECT.

5 Q AND YOU GOT IT FROM WHOM?

6 A SOME DUDE NAMED ANDRE.

7 Q WHAT IS ANDRE'S LAST NAME?

8 A JOHNSON.

9 Q WHERE IS HE FROM?

10 A I THINK HE IS FROM FLORIDA SOMEWHERE.

11 Q DID YOU BUY THE GUN FROM HIM?

12 A NO, I DIDN'T.

13 Q HOW DID YOU GET IT FROM HIM?

14 A HE JUST GAVE IT TO ME.

15 Q YOU JUST GAVE IT TO YOU?

16 A YES.

17 Q YOU ALL ARE FRIENDS?

18 A NO, I DIDN'T KNOW HIM. I JUST MET HIM.

19 Q AND HE JUST GAVE YOU A GUN?

20 A YES.

21 Q AND YOU TOOK IT?

22 A YES.

23 Q YOU JUST MET HIM?

24 A YES.

25 Q WAS THE GUN LOADED?

Appendix 193

192

WADE BRANNON - CROSS - BY MR. WILLIAMS

- 1 A NO.
- 2 Q DO YOU KNOW IF THE GUN WAS OPERABLE? WAS IT WORKING
- 3 OR WAS IT BROKE?
- 4 A IT WAS BROKE.
- 5 Q WAS IT A SEMIAUTOMATIC?
- 6 A NO.
- 7 Q DO YOU RECALL WHAT CALIBER THE GUN WAS?
- 8 A THE GUN YOU GOT OVER THERE ON THE DESK.
- 9 Q I AM ASKING YOU DO YOU KNOW WHAT CALIBER THE GUN IS?
- 10 A NO, I DON'T.
- 11 Q WHEN DID YOU GET THE GUN? HOW MANY DAYS HAD YOU HAD
- 12 THE GUN PRIOR TO THIS EVENT, OCTOBER THE 2ND, 1996?
- 13 A PROBABLY ABOUT TWO DAYS.
- 14 Q TWO DAYS?
- 15 A YES.
- 16 Q DO YOU RECALL WHAT KIND OF HANDLE THE GUN HAD ON IT?
- 17 A NO, NOT REALLY, NOT AT THAT MOMENT. I JUST REMEMBER
- 18 IT WAS BLACK.
- 19 Q WAS IT WOOD?
- 20 A NO.
- 21 Q DO YOU RECALL?
- 22 A NO.
- 23 Q YOU DON'T REMEMBER, DO YOU?
- 24 A NO.
- 25 Q DID YOU GET ANY SERIAL NUMBERS OFF THE WEAPON THAT

1 YOU HAD?

2 A NO.

3 Q DO YOU KNOW WHO THE MANUFACTURER OF THE WEAPON IS?

4 A NO.

5 Q DO YOU KNOW WHAT MODEL THE GUN IS?

6 A NOT REALLY, NO, SIR.

7 Q IS THERE ANYTHING PARTICULAR ABOUT THE GUN THAT WOULD
8 CAUSE YOU TO REMEMBER IT?

9 A IT WAS BROKE.

10 Q IT WAS BROKE AND WHAT ELSE?

11 A IT DIDN'T HAVE NO BULLETS.

12 Q WHAT ELSE?

13 A BASICALLY THAT'S IT.

14 Q BASICALLY THAT IT'S BROKE AND HAD NO BULLETS?

15 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

16 Q IF SOMEONE WERE TO JUST THROW A GUN AWAY, THE REASON
17 THEY WOULD PROBABLY THROW IT AWAY IS BECAUSE IT WOULD BE
18 BROKE; ISN'T IT?

19 A YES.

20 Q IF IT WAS BROKE, IT PROBABLY WOULDN'T HAVE ANY
21 BULLETS IN IT; ISN'T THAT CORRECT?

22 A CORRECT.

23 Q WHEN YOU HAD THE WEAPON FOR THAT TWO DAYS PRIOR TO
24 YOU GIVING IT TO MR. TOLEN, DID YOU KEEP THE WEAPON IN YOUR
25 POCKET OR DID YOU PUT IT SOMEWHERE AT HOME? WHAT DID YOU

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 DO WITH IT AFTER YOU GOT IT?

2 A WHEN I GOT IT?

3 Q YES, SIR.

4 A I GAVE IT TO MR. FRANK.

5 Q WELL, HOW LONG DID YOU ACTUALLY HAVE THE GUN IN YOUR
6 POSSESSION?

7 A PROBABLY ABOUT TWO DAYS, ABOUT TWO DAYS.

8 Q WHAT DID YOU DO WITH THE GUN FOR THOSE TWO DAYS?

9 A I KEPT IT THEN AT THAT MOMENT I HAD IT THEN.

10 Q DID YOU KEEP IT LIKE TUCKED IN YOUR WAISTBAND OR KEEP
11 IT AT HOME? WHERE DID YOU KEEP IT AT?

12 A I HAD IT HID.

13 Q WHERE DID YOU HAVE IT HID?

14 A IN THE WOODS.

15 Q WHERE AT IN THE WOODS?

16 A UP UNDER A TREE.

17 Q I'M SORRY, WHERE?

18 A UP UNDER A TREE.

19 Q UP UNDER A TREE?

20 A YES.

21 Q WAS IT BURIED IN THE DIRT?

22 A NO.

23 Q WHAT DID YOU HAVE IT IN, A CONTAINER?

24 A NO, JUST HAD IT UP UNDER SOME BRANCHES.

25 Q UNDER SOME BRANCHES?

1 A YES.

2 Q YOU GOT A GUN FROM AN INDIVIDUAL YOU JUST MET AND YOU
3 IMMEDIATELY TOOK THE GUN AND HID IT BY A TREE UNDER SOME
4 BRANCHES; IS THAT CORRECT?

5 A YES.

6 Q WHY DID YOU DO THAT?

7 A BECAUSE I WASN'T GOING TO KEEP IT AT MY HOUSE BECAUSE
8 I DIDN'T KNOW WHAT IT WAS, WHETHER SOMEBODY GOT KILLED WITH
9 IT OR WHATEVER, YOU KNOW, SO I JUST HID IT.

10 Q YOU JUST HID IT?

11 A YES.

12 Q AT SOME POINT YOU WENT BACK TO RETRIEVE IT; IS THAT
13 CORRECT?

14 A EXCUSE ME?

15 Q AT SOME POINT YOU WENT BACK TO GET THE GUN; IS THAT
16 CORRECT?

17 A YES.

18 Q BUT FROM THE MOMENT YOU GOT IT FROM THIS INDIVIDUAL
19 YOU JUST MET, DID YOU TAKE IT AND IMMEDIATELY GO HIDE IT?

20 A NO, I DIDN'T.

21 Q WHAT DID YOU DO WITH IT BEFORE YOU HID IT?

22 A I OBSERVED IT, LOOKED AT IT.

23 Q DID YOU KEEP IT ONE DAY OR DID YOU JUST KEEP IT FOR A
24 COUPLE OF HOURS BEFORE YOU HID IT?

25 A I HAD IT FOR A COUPLE OF HOURS. THEN I WENT AND PUT

WADE BRANNON - CROSS - BY MR. WILLIAMS

1 IT UP.

2 Q AFTER YOU HAD IT FOR A COUPLE OF HOURS?

3 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

4 Q WHEN YOU SAY YOU PUT IT UP, YOU ARE TALKING ABOUT
5 HIDING IT UNDER THE TREE?

6 A YES.

7 THE COURT: LET'S TAKE A RECESS AT THIS TIME.
8 THE JURY NEEDS A BREAK. MADAME FOREMAN, AND LADIES AND
9 GENTLEMEN, YOU CANNOT DISCUSS THE CASE. WE WILL TAKE
10 ABOUT A TEN OR FIFTEEN-MINUTE BREAK. YOU ARE EXCUSED TO
11 GO TO THE JURY ROOM. EVERYONE ELSE STAY SEATED,
12 PLEASE.

(THE JURY RETIRES TO THE JURY ROOM).

13 THE COURT: YOU CAN STEP DOWN. YOU CANNOT
14 DISCUSS YOUR TESTIMONY WITH ANYONE DURING THE BREAK. LEAVE
15 THAT DOCUMENT UP HERE ON THE BENCH. THANK YOU. WE WILL
16 TAKE ABOUT TEN OR FIFTEEN MINUTES IN THE TRIAL. IF YOU CAN
17 GET THE PROBATION THING READY, AS SOON AS THE REPORTER IS
18 READY, WE WILL DO THAT.

(WHEREUPON THERE WAS A RECESS).

19 THE COURT: MR. BRANNON, COME BACK UP, PLEASE.

20 WADE LAMAR BRANNON, III, HAVIN
21 BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND AND
22 TESTIFIED AS FOLLOWS:

23 THE COURT: MR. WILLIAMS, ARE YOU READY TO
24
25

Appendix 198

WADE BRANNON - CROSS - BY MR. WILLIAMS

197

1 PROCEED?

2 MR. WILLIAMS: YES, SIR, YOUR HONOR.

3 THE COURT: IS THE STATE READY?

4 MR. MAYE: YES, SIR, THE STATE IS READY.

5 THE COURT: BRING THE JURY IN, PLEASE.

6 (THE JURY RETURNS TO THE COURTROOM).

7 FOREMAN: YOUR HONOR, THEY ARE STILL HAVING
8 TROUBLE HEARING MR. WILLIAMS.

9 THE COURT: MR. WILLIAMS, KEEP YOUR VOICE UP IF
10 YOU WILL, PLEASE. IF YOU CAN'T HEAR, AGAIN JUST RAISE YOUR
11 HAND OR DO SOMETHING ALONG THOSE LINES. YOU MAY CONTINUE
12 YOUR EXAMINATION, MR. WILLIAMS.

13 MR. WILLIAMS: THANK YOU, YOUR HONOR.

14 CROSS EXAMINATION CONTINUED

15 BY MR. WILLIAMS:

16 Q MR. BRANNON, IF YOU WILL, TURN YOUR ATTENTION BACK TO
17 YOUR STATEMENT, PLEASE, SIR.

18 A YES.

19 Q YOU INDICATED THAT YOU AND MR. TOLEN APPROACHED THE
20 TRUCK. WHAT TYPE OF TRUCK WAS IT?

21 A SOME KIND OF WHITE -- I THINK IT WAS A WHITE AND BLUE
22 18-WHEELER.

23 Q DO YOU KNOW WHAT SIZE TRAILER IT HAD ON IT?

24 A NO, I DON'T.

25 Q WAS IT A LONG TRAILER OR A SHORT TRAILER?

Appendix 199

WADE BRANNON - CROSS - BY MR. WILLIAMS

198

- 1 A IT WAS KIND OF LONG.
- 2 Q AND YOU TOOK A BAG OF MONEY OUT OF THE BACK?
- 3 A YES, COINS. YES, CHANGE.
- 4 Q AND WHAT TYPE OF BAG WAS IT?
- 5 A CROWN ROYAL.
- 6 Q AND AFTER YOU EXITED THE VEHICLE, WHAT DID YOU DO?
- 7 A START RUNNING BEHIND FRANK AND MR. DYSON.
- 8 Q FRANK RAN ACROSS THE CIRCLE BEHIND MR. DYSON; IS THAT
- 9 CORRECT?
- 10 A CORRECT.
- 11 Q YOU CONTINUED TO CHASE HIM; IS THAT CORRECT?
- 12 A YES.
- 13 Q AND WHERE DID YOU STOP AT?
- 14 A UNTIL WE GOT UP IN THE YARD.
- 15 Q ALL THE WAY TO THE YARD?
- 16 A YES.
- 17 Q WHO HAD THE CROWN ROYAL BAG?
- 18 A I DID.
- 19 Q YOU HAD IT?
- 20 A YES.
- 21 Q WHAT DID YOU EVENTUALLY DO WITH THE BAG?
- 22 A I KEPT IT UNTIL THE NEXT DAY.
- 23 Q YOU KEPT IT UNTIL THE NEXT DAY?
- 24 A YES.
- 25 Q THE GUN THAT HAS BEEN PRESENTED AS THE WEAPON, HAVE

Appendix 200

WADE BRANNON - CROSS - BY MR. WILLIAMS

199

1 YOU SEEN THAT? HAS THE POLICE EVER SHOWED YOU THAT GUN?

2 A YES.

3 Q WHEN DID THEY SHOW YOU THAT WEAPON?

4 A THE SECOND DAY.

5 Q THE SECOND DAY?

6 A YES, AFTER THEY FOUND IT.

7 Q AFTER THEY FOUND IT?

8 A YES.

9 Q SO YOU HAVE SEEN THAT GUN PRIOR TO COMING IN HERE
10 TODAY; IS THAT CORRECT?

11 A YES.

12 Q DESCRIBE FOR ME IF YOU WILL WHAT YOU WERE WEARING
13 THAT NIGHT.

14 A I WAS WEARING SOME BLACK -- SOME REGULAR BLUE JEANS
15 AND A BLACK SHIRT.

16 Q DID YOU HAVE ON A SWEAT JACKET?

17 A NO, I DIDN'T.

18 Q DID YOU HAVE ON A HAT?

19 A NO.

20 Q DO YOU RECALL WHAT MR. TOLEN HAD ON?

21 A BLACK PANTS, BLACK SHIRT. THAT'S IT THAT I RECALL.

22 Q DO YOU RECALL IF HE HAD ON A HAT?

23 A NO, HE DIDN'T.

24 Q SO NEITHER OF YOU HAD ON A HAT; IS THAT CORRECT?

25 A NO, WE DIDN'T.

Appendix 201

WADE BRANNON - CROSS - BY MR. WILLIAMS

200

1 Q AND NEITHER ONE OF YOU WERE WEARING ANY TYPE OF GRAY
2 SWEATSHIRT; IS THAT CORRECT?

3 A NO.

4 Q YOU WEREN'T WEARING A HAT, RIGHT?

5 A RIGHT.

6 Q AND IT GOES WITHOUT SAYING YOU WANT SOME HELP FROM
7 THE STATE ON YOUR CHARGES?

8 A NO, I DON'T.

9 Q YOU DON'T WANT ANY HELP?

10 A NO, I DON'T. I JUST ADMIT I KNOW I DID WRONG AT THAT
11 TIME.

12 Q SO YOU ARE NOT GOING TO ASK FOR SOME CONSIDERATION IN
13 EXCHANGE FOR YOUR TESTIMONY?

14 A NO, SIR.

15 Q YOU HAVE PLED TO WHAT CHARGES?

16 A ARMED ROBBERY AND CARJACKING.

17 Q DO YOU KNOW HOW MUCH TIME EACH ONE IS CARRYING?

18 A NOT AT THIS MOMENT.

19 Q DOES 15 YEARS SOUND FAMILIAR TO YOU?

20 A NO, IT DON'T.

21 Q BUT YOU GAVE YOUR CONFESSION IN EXCHANGE FOR A
22 REDUCTION IN CHARGE, DIDN'T YOU?

23 A NO, I DIDN'T.

24 Q YOU DIDN'T?

25 A I JUST TOLD THE TRUTH.

Appendix 202

WADE BRANNON - CROSS - BY MR. WILLIAMS

201

1 Q AND THE SOLICITORS VOLUNTARILY REDUCED YOUR CHARGE?

2 A NO, THEY DIDN'T.

3 Q THEY DIDN'T?

4 A NO.

5 Q WHAT WERE YOU CHARGED WITH ORIGINALLY?

6 A ARMED ROBBERY.

7 Q WHAT DID YOU PLEAD TO?

8 A I THINK IT WAS STRONG ARMED ROBBERY, ONE OF THEM, TEN
9 YEARS.

10 Q SO NOW STRONG ARMED ROBBERY IS A LESSER OFFENSE THAN
11 ARMED ROBBERY, ISN'T IT?

12 A I DON'T KNOW.

13 Q WHICH ONE SEEMS WORSE TO YOU, STRONG ARMED ROBBERY OR
14 ARMED ROBBERY?

15 A ALL OF THEM, JUST BEING IN TROUBLE.

16 Q BUT OF THOSE TWO OFFENSES, WHICH ONE SEEMS WORSE TO
17 YOU?

18 A ARMED ROBBERY.

19 Q OKAY. YOU PLED TO STRONG ARMED ROBBERY; IS THAT
20 RIGHT?

21 A I THINK I REMEMBER IT WAS STRONG ARMED, ONE OF THEM.

22 MR. WILLIAMS: I DON'T HAVE ANY FURTHER QUESTIONS
23 OF THIS WITNESS.

24 THE COURT: REDIRECT?

25 MR. MAYE: JUST A COUPLE.

WADE BRANNON - REDIRECT - BY MR. MAYE

1 REDIRECT EXAMINATION

2 BY MR. MAYE:

3 Q MR. WILLIAMS TALKED TO YOU ABOUT THE GUN NOT BEING
4 LOADED. WHAT DID FRANK TELL YOU ABOUT THE GUN NOT BEING
5 LOADED IN REFERENCE TO MR. DYSON?

6 A IT WAS LIKE IF IT WAS LOADED THAT HE WOULD HAVE SHOT
7 HIM.

8 Q THAT HE WOULD HAVE SHOT MR. DYSON IF THE GUN WAS
9 FUNCTIONING?

10 A YES---

11 MR. WILLIAMS: OBJECTION, YOUR HONOR. THAT CALLS
12 FOR SPECULATION. HE HAS NO WAY OF TESTIFYING TO THAT.

13 THE COURT: HE IS TESTIFYING, ACCORDING TO HIS
14 TESTIMONY, A STATEMENT MADE BY THE DEFENDANT. I OVERRULE
15 THE OBJECTION.

16 Q YOU HAVE ALREADY PLED GUILTY IN THIS CASE AND YOU ARE
17 COOPERATING WITH THE POLICE; IS THAT CORRECT?

18 A CORRECT.

19 Q IN THE EARLY MORNING HOURS, THE LATE EVENING HOURS OF
20 OCTOBER THE 1ST, ON INTO THE EARLY MORNING HOURS OF OCTOBER
21 THE 2ND, YOU AND FRANK TOLAN, THE MAN SEATED RIGHT THERE,
22 ROBBED MR. OATON DYSON; IS THAT RIGHT?

23 A THAT'S RIGHT.

24 MR. MAYE: NO OTHER QUESTIONS.

25 THE COURT: ANYTHING FURTHER?

FRONTIS SMITH - DIRECT - BY MR. MAYE

1 MR. WILLIAMS: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: YOU MAY STEP DOWN.

3 MR. MAYE: THE STATE CALLS MR. FRONTIS SMITH.

4 FRONTIS SMITH, BEING FIRST

5 DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. MAYE:

8 Q MR. SMITH, PLEASE SPEAK UP AS MUCH AS YOU CAN AND
9 TALK TO THE JURY. INTRODUCE YOURSELF TO THE LADIES AND
10 GENTLEMEN OF THE JURY. FOR THE ONES THAT DON'T KNOW YOU,
11 TELL THEM WHAT YOU DO.

12 A MY NAME IS FRONTIS SMITH. I OWN THE CIRCLE STOP AND
13 SHOP AT THE TRAFFIC CIRCLE, A MERCHANDISE STORE THERE.

14 Q MR. SMITH, I WILL REFER TO THIS ONE MORE TIME.
15 THERE IS A COUPLE OF STORES OUT THERE AT THE CIRCLE.
16 WHICH ONE IS YOURS? BACK HERE (INDICATING) IS GOING TO
17 SALUDA.

18 A IT'S OVER HERE (INDICATING).

19 Q THIS IS YOUR STORE RIGHT HERE (INDICATING)?

20 A RIGHT.

21 THE COURT: PULL THAT MICROPHONE A LITTLE CLOSER
22 TO YOUR MOUTH AND SPEAK INTO IT, PLEASE.

23 Q MR. SMITH, HOW LONG HAVE YOU BEEN RUNNING A STORE UP
24 THERE?

25 A TWENTY-FIVE YEARS.

FRONTIS SMITH - DIRECT - BY MR. MAYE

- 1 Q TWENTY-FIVE YEARS. RIGHT THERE AT THE SAME LOCATION?
- 2 A SAME LOCATION, YES, SIR.
- 3 Q DURING THAT TIME PERIOD HAVE YOU HAD OCCASION TO KNOW
- 4 THE DEFENDANT IN THIS CASE, FRANK TOLEN?
- 5 A YES.
- 6 Q WHO ELSE?
- 7 A WHO ELSE?
- 8 Q WHO ELSE COMES UP THERE AROUND THE STORE?
- 9 A OH, ANY NUMBER OF PEOPLE. I KNOW JUST ABOUT
- 10 EVERYBODY IN THE WHOLE COMMUNITY, I GUESS YOU COULD SAY.
- 11 Q YOU KNOW EVERYBODY AROUND THERE, DON'T YOU?
- 12 A YES, I DO.
- 13 Q DO YOU KNOW WHERE MR. TOLEN WAS LIVING AT THE TIME?
- 14 A I DIDN'T REALIZE IT -- I SUSPECTED IT -- BUT I DIDN'T
- 15 REALIZE IT UNTIL AFTER THIS HAPPENED, AFTER THE FACT.
- 16 Q DO YOU KNOW BEN TOLEN?
- 17 A YES, SIR.
- 18 Q DO YOU KNOW JEFFREY JENNINGS?
- 19 A YES, SIR.
- 20 Q AND YOU KNOW TONY TOLEN, TOO; DON'T YOU?
- 21 A YES, SIR.
- 22 Q YOU KNEW BASICALLY MR. TOLEN AND MOST OF HIS FAMILY
- 23 THAT LIVED IN AND AROUND THE CIRCLE, DIDN'T YOU?
- 24 A OH, YES.
- 25 Q AT THE TIME OF THE ROBBERY, OCTOBER THE 1ST AND THE

FRONTIS SMITH - DIRECT - BY MR. MAYE

1 2ND, WERE YOU RUNNING THE STORE AS USUAL THEN?

2 A THAT'S CORRECT.

3 Q TELL THE JURY WHAT YOUR INVOLVEMENT IS.

4 A OF COURSE, THAT NIGHT BEFORE THAT MY WIFE -- THEY HAD
5 CALLED, YOU KNOW, AND SAID THERE WAS SOME DISTURBANCE UP
6 THERE AND WE WERE CONCERNED ABOUT IT. SO I OPENED THE
7 STORE AND THE WAY I GOT INVOLVED IN IT ABOUT SIX O'CLOCK
8 THAT MORNING, THE MORNING AFTER THE INCIDENT, IT WAS AROUND
9 SIX OR 6:15 WHEN I GOT IN THERE. SHORTLY AFTER THAT BEN
10 TOLEN CAME TO THE STORE THE WAY HE DID EVERY MORNING OR
11 JUST ABOUT EVERY DAY.

12 Q ABOUT WHAT TIME THIS WAS?

13 A I'M NOT SURE. IT WAS 6:30 OR SOMEWHERE IN THERE.

14 Q IN THE EARLY MORNING HOURS OF THE 2ND?

15 A IT WAS EARLY. HE SAID, "MR. FRONTIS, WHAT HAPPENED
16 UP HERE LAST NIGHT?"

17 MR. WILLIAMS: OBJECTION.

18 Q DON'T TALK ABOUT WHAT HE SAID. JUST TALK ABOUT WHAT
19 YOU DID AS A RESULT OF HIM COMING IN THERE.

20 A HE GAVE ME SOME INFORMATION ABOUT WHERE THESE PEOPLE
21 WERE AND SAID HE WAS SCARED OF THEM AND WANTED TO GET THEM
22 OUT OF HIS HOUSE---

23 MR. WILLIAMS: YOUR HONOR.

24 THE COURT: WAIT A MINUTE. YOU CANNOT TALK
25 ABOUT WHAT SOMEONE SAID TO YOU. YOU CAN TALK ABOUT ACTIONS

FRONTIS SMITH - DIRECT - BY MR. MAYE

1 THAT YOU TOOK. I SUSTAIN THE OBJECTION. ASK THE QUESTION,
2 SOLICITOR.

3 Q WHAT DID YOU DO AFTER BEN TOLEN CAME IN WITH JEFFREY
4 JENNINGS?

5 A I CALLED THE SALUDA COUNTY LAW ENFORCEMENT.

6 Q WHAT DID YOU TELL THEM?

7 A I TOLD THEM THAT I HAD INFORMATION WHERE THE PEOPLE
8 THAT ROBBED THE MAN, WHERE THEY WERE AT. I DIRECTED THEM
9 TO THE HOUSE AND COME ON DOWN AND THEY CAME.

10 Q WHO CAME FIRST, DO YOU REMEMBER? SOME DEPUTIES CAME
11 FIRST?

12 A TWO DEPUTIES, YES, SIR.

13 Q WHO CAME IN THE STORE LATER THAT DAY?

14 A BOBBY JONES.

15 Q WHAT DID YOU TELL MR. JONES?

16 A I TOLD HIM THAT WHEN THE FIRST DEPUTIES CAME DOWN,

17 THEY WENT TO THE HOUSE I DIRECTED THEM TO. THEY SAID

18 WASN'T ANYBODY HOME. [THEY CAME BACK BY THE STORE.] THAT'S

19 ALL THEY SAID, BUT THEN---

20 MR. WILLIAMS: YOUR HONOR.

21 THE COURT: WAIT A MINUTE. I SUSTAIN IT.

22 Q DON'T GO INTO WHAT THE DEPUTIES SAID. MR. SMITH,

23 THIS IS THE AREA AROUND THE TRAFFIC CIRCLE HERE

24 (INDICATING) AND THIS (INDICATING) IS THE ROAD GOING BACK
25 TO SALUDA. WHAT RESIDENCE DID YOU DIRECT THE POLICE TO?

FRONTIS SMITH - CROSS - BY MR. WILLIAMS

207

1 A THIS ONE DOWN HERE, THE TOLEN ONE RIGHT HERE
2 (INDICATING).

3 Q FRANK TOLEN'S RESIDENCE?

4 A RIGHT.

5 Q WHAT DID YOU TELL BOBBY JONES WHEN HE CAME? DON'T
6 TELL US WHAT ANYBODY ELSE SAID EXCEPT WHAT YOU SAID TO MR.
7 JONES.

8 A I TOLD HIM THE BOYS HAD BEEN BACK UP THERE AND THEY
9 SAID THE BOYS WERE STILL DOWN AT THAT HOUSE. AND IF THEY
10 GO DOWN THERE, THEY COULD FIND THEM THERE. HE SAID, "I
11 THINK I CAN TAKE CARE OF IT."

12 MR. WILLIAMS: OBJECTION.

13 THE COURT: GO AHEAD. LET'S MOVE ALONG. GO
14 AHEAD.

15 MR. MAYE: YOUR HONOR, I DON'T HAVE ANY FURTHER
16 QUESTIONS FOR MR. SMITH.

17 Q THANK YOU FOR COMING. ANSWER ANY QUESTIONS MR.
18 WILLIAMS HAS FOR YOU.

19 THE COURT: MR. WILLIAMS, CROSS EXAMINATION.

20 MR. WILLIAMS: MAY IT PLEASE THE COURT.

21 CROSS EXAMINATION

22 BY MR. WILLIAMS:

23 Q I'M SORRY. MAY I HAVE YOUR FULL NAME, PLEASE, SIR?
24 A FRONTIS O. SMITH.

25 Q MR. SMITH, YOU AND I CAN AGREE THAT YOU WERE NOT AN

FRONTIS SMITH - CROSS - BY MR. WILLIAMS

1 EYEWITNESS TO THIS EVENT; WERE YOU?

2 A NO, SIR.

3 Q AND IT FOLLOWS THEN SINCE YOU WERE NOT AN EYEWITNESS
4 THAT YOU DO NOT KNOW WHO WAS THERE ROBBING MR. DYSON, DO
5 YOU?

6 A THAT'S TRUE.

7 Q IS THERE ANY REASON WHY YOU ARE ABLE TO RECALL THE
8 DATE?

9 A I'M SORRY?

10 Q YOU INDICATED THIS HAPPENED BACK SOMETIME IN 1996; IS
11 THAT CORRECT?

12 A THAT'S CORRECT.

13 Q DO YOU RECALL THE EXACT DATE?

14 A IT WAS THE 2ND, I BELIEVE IT WAS, THE 1ST OR 2ND.
15 I'M NOT COMPLETELY POSITIVE.

16 Q YOU ARE NOT COMPLETELY POSITIVE?

17 A I THINK THE INCIDENT HAPPENED ON THE 1ST, THE NIGHT
18 OF THE 1ST AND THEN THE 2ND. I BELIEVE THAT'S RIGHT.

19 Q ALL RIGHT. THANK YOU, SIR.

THE COURT: ANYTHING FURTHER FROM THE STATE?

20 MR. MAYE: NO, SIR. ANY OBJECTION TO MR. SMITH
21 BEING RELEASED?

22 MR. WILLIAMS: NONE, YOUR HONOR.

23 THE COURT: YOU ARE EXCUSED, SIR.

24 MR. MAYE: THANK YOU FOR COMING, MR. SMITH. TH
25

TONY TOLEN - DIRECT - BY MR. MAYE

1 STATE CALLS TONY TOLEN TO THE STAND.
2

3 TONY TOLEN, BEING FIRST DULY
4 SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 Q MR. TOLEN?

8 A YES, SIR.

9 Q SPEAK UP AND TALK TO THE JURY HERE.

10 THE COURT: PULL THIS MICROPHONE TO YOU AND SPEAK
11 INTO THE MICROPHONE.

12 Q INTRODUCE YOURSELF. TELL THE JURY WHO YOU ARE.

13 A I'M TONY TOLEN. I AM FROM THE TRAFFIC CIRCLE AREA OF
14 LEESVILLE.

15 Q YOU LIVE OUT FROM THE TRAFFIC CIRCLE, DOWN 391?
16 A 391.

17 Q WHO WERE YOU LIVING WITH IN OCTOBER OF '96? WHO WAS
18 LIVING AT THE HOUSE WHERE YOU WERE?

19 A MY NEPHEW JEFFREY JENNINGS AND MY NEPHEW FRANK. HE
20 WAS STAYING WITH ME. LIKE I SAY, I DON'T KNOW THE EXACT
21 MONTH; BUT I KNOW HE WAS STAYING WITH ME.

22 Q SO FRANK TOLEN IS YOUR NEPHEW AND HE WAS STAYING AT
23 THE HOUSE?

24 A RIGHT.

25 Q WHAT HAPPENED IN AND AROUND OCTOBER THE 1ST AND 2ND?
WHAT WERE YOU DOING DURING THAT TIME?

TONY TOLEN - DIRECT - BY MR. MAYE

1 A WELL, LIKE I SAY, I WORK ALL THE TIME, YOU KNOW.

2 Q WHERE DO YOU WORK?

3 A I WORK AT VERNE'S RESTAURANT IN LEESVILLE. I WORK
4 THERE AND I GO DIFFERENT HOURS, WORK DAY AND NIGHT, YOU
5 KNOW. I WENT TO WORK. LIKE I SAY, I DON'T KNOW WHAT DAY
6 IT WAS, MONDAY OR TUESDAY. IT BEEN A WHILE NOW. ANYWAY I
7 GOT HOME THAT AFTERNOON.

8 Q ON THE 2ND?

9 A YEAH. I DON'T KNOW THE EXACT DATE. IT'S BEEN SO
10 LONG. I CAN'T REMEMBER THAT.

11 Q BUT IT WAS THE DAY AFTER THE ROBBERY?

12 A I GUESS. LIKE I SAY, I WENT TO WORK THREE O'CLOCK
13 THAT MORNING. I DON'T KNOW EXACTLY WHAT TIME THE ROBBERY
14 HAPPENED. ANYWAY I CAME HOME IN THE AFTERNOON AND I WAS
15 RAKING THE YARD. I WASN'T IN THE HOUSE. I WAS RAKING THE
16 YARD AND EVERYTHING. I DIDN'T KNOW ANYTHING AT THE TIME.
17 SO MY NEPHEW AND THIS YOUNG MAN HERE, THEY CAME UP IN THE
18 HOUSE.

19 Q WADE BRANNON AND FRANK TOLEN?

20 A I DON'T KNOW THEIR REAL NAMES. I GO BY THE
21 NICKNAMES.

22 Q WHAT ARE THEIR NICKNAMES?

23 A I CALL MY NEPHEW POT MAN AND I CALL HIM KILLER.

24 Q KILLER AND POT MAN?

25 A YEAH, THAT'S WHAT I CALL THEM.

TONY TOLEN - DIRECT - BY MR. MAYE

211

1 Q GO AHEAD.

2 A I WAS WORKING IN THE YARD AND THEY COME IN THE HOUSE
3 AND MY NEPHEW POT MAN HE SAID SOMETHING. I FORGOT WHAT IT
4 WAS. I SAID, "WHERE IN THE WORLD Y'ALL BEEN?" I FORGOT
5 WHAT HE SAID. I SAID, "Y'ALL KNOW THE SHERIFF LOOKING FOR
6 Y'ALL?" THEY REPLIED, "FOR US?"

7 MR. WILLIAMS: OBJECTION, YOUR HONOR.

8 THE COURT: WAIT A MINUTE. STOP.

9 MR. WILLIAMS: AS OPPOSED TO HIM SAYING "THEY,"
10 IF HE COULD BE MORE SPECIFIC AS TO WHO SAID WHAT.

11 THE COURT: THAT STATEMENT I BELIEVE HE WAS
12 ATTRIBUTING TO HIMSELF.

13 THE WITNESS: RIGHT.

14 THE COURT: IS THAT CORRECT?

15 THE WITNESS: THAT'S CORRECT.

16 MR. WILLIAMS: I'M SORRY. I WAS UNDER THE
17 IMPRESSION HE SAID, "THEY SAID."

18 THE COURT: LET'S GET IT STRAIGHT. ASK YOUR
19 QUESTION, SOLICITOR, AND RESPOND TO THAT QUESTION. PULL
20 THAT MICROPHONE TO YOU. YOU ARE NOT SPEAKING INTO THE END
21 OF IT, THE END OF IT, NOT THE MIDDLE, THE END OF IT. GO
22 AHEAD, SOLICITOR.

23 Q WHAT DID FRANK TOLEN SAY TO YOU WHEN HE GOT THERE?

24 A LIKE I SAID, I ASKED OR I JUST REPLIED, I SAID, "THE
25 SHERIFF IS LOOKING FOR YOU ALL." FRANK SAID, "FOR US?"

TONY TOLEN - DIRECT - BY MR. MAYE

1 AND I SAID YES AND HE SAID, "WHAT FOR?" I SAID, "YOU KNOW,
2 DIDN'T Y'ALL ROB THE MAN TO THE STORE?" AND MY NEPHEW POT
3 MAN SAY, "NO, I DON'T KNOW WHAT YOU ARE TALKING ABOUT." I
4 SAID, "IF Y'ALL DID ROB THE MAN TO THE STORE," I SAID,
5 "Y'ALL KNOW IT'S VERY WRONG." THAT'S WHEN -- I DON'T
6 KNOW -- THEY SAID, "IF THE SHERIFF COMING BACK LOOKING FOR
7 US---

MR. WILLIAMS: YOUR HONOR?

THE COURT: WAIT A MINUTE.

MR. WILLIAMS: AGAIN, SAME OBJECTION. HE IS

10 USING THE TERM, "THEY SAID," AGAIN.

11 Q WHAT DID FRANK SAY ABOUT THE SHERIFF?

12 A MY NEPHEW FRANK SAID, "IF THE SHERIFF COME LOOKING
13 FOR US, JUST SAY YOU HAVEN'T SEEN US." THAT'S WHAT WAS
14 REPLIED. I SAID OR THEY SAY, "WE ARE ON OUR WAY BACK TO
15 BATESBURG." LIKE I SAY, AFTER THEN THEY LEFT WALKING AND
16 I DIDN'T SEE THEM EVER SINCE, YOU KNOW, THEY LEFT MY
17 HOUSE.

18 Q YOU GAVE A STATEMENT 10/2/96, A WRITTEN STATEMENT TO
19 THE POLICE; DIDN'T YOU?

20 A RIGHT, CORRECT.

21 Q YOU TOLD THE POLICE AT THAT TIME, "I TOLD MY NEPHEW
22 WHAT THEY HAD DONE WAS VERY WRONG?"

23 A CORRECT.

24 Q ISN'T THAT WHAT YOU SAID?

25

TONY TOLEN - CROSS - BY MR. WILLIAMS

213

1 A CORRECT.

2 Q HE, FRANK, REPLIED, "I KNOW IT WAS WRONG"?
3 A RIGHT.

4 Q THAT'S RIGHT. HE SAID, "WHAT ARE YOU TALKING ABOUT?"
5 YOU SAID, "ABOUT THAT MAN YOU ROBBED?" THEN HE SAID NO,
6 RIGHT?

7 A CORRECT.

8 Q THEN HE SAID, "IF THE SHERIFF IS LOOKING FOR ME,
9 DON'T TELL THEM WHERE WE ARE BECAUSE WE ARE ON OUR WAY TO
10 BATESBURG"?

11 A CORRECT.

12 Q ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR YOU.
13 THE COURT: MR. WILLIAMS.

14 CROSS EXAMINATION

15 BY MR. WILLIAMS:

16 Q MR. TOLEN?

17 A YES, SIR.

18 Q IN YOUR TESTIMONY AND IN YOUR STATEMENT YOU INDICATED
19 THAT WHEN YOU ASKED YOUR NEPHEW OR SAID TO YOUR NEPHEW THAT
20 WHAT YOU HAD DONE WAS VERY WRONG, HIS REPLY WAS, "WHAT ARE
21 YOU TALKING ABOUT," WASN'T IT?

22 A THAT'S CORRECT. LIKE I SAY, I ASKED HIM AND HE LIKE,
23 YOU KNOW, HE SAID, "I DON'T KNOW WHAT YOU ARE TALKING
24 ABOUT," YOU KNOW. THE WAY HE APPROACHED AND SAID THE WORDS
25 OUT, YOU KNOW, THAT HE DIDN'T DO IT BUT HE JUST SAY, LIKE I

TONY TOLEN - CROSS - BY MR. WILLIAMS

1 SAID, "I DON'T KNOW WHAT YOU ARE TALKING ABOUT."

2 Q RIGHT. HE SAID HE DIDN'T KNOW WHAT YOU WERE TALKING
3 ABOUT?

4 A WHAT I WAS TALKING ABOUT WHEN I ASKED HIM, RIGHT,
5 THAT'S CORRECT.

6 Q HE NEVER TOLD YOU HE HAD DONE ANYTHING; ISN'T THAT
7 CORRECT?

8 A PARDON ME?

9 Q HE REPLIED THAT HE HAD NO IDEA WHAT YOU WERE TALKING
10 ABOUT?

11 A THAT'S CORRECT. THAT'S WHAT HE REPLIED, LIKE I SAY.

12 Q AND YOU INDICATED AFTER SPEAKING WITH MR. BRANNON AND
13 MR. TOLEN THEY LEFT YOUR HOUSE WALKING; IS THAT CORRECT?

14 A THEY LEFT WALKING. I THINK, IF I AM NOT MISTAKEN, I
15 THINK THEY WENT OUT MY BACK DOOR, IF I'M NOT MISTAKEN.
16 I'M PRETTY SURE THEY DID. THEY DID NOT COME OUT THE FRONT
17 DOOR WHERE I WAS RAKING AT THE TIME.

18 Q THEY LEFT THERE WALKING?

19 A AS FAR AS I REMEMBER.

20 Q THEY DIDN'T LEAVE RUNNING, THEY LEFT WALKING?

21 A THEY WENT OUT MY BACK DOOR. I HAVE TWO WAYS OUT MY
22 BACK DOOR.

23 Q IT'S NOT INFREQUENT FOR PEOPLE TO GO IN AND OUT YOUR
24 BACK DOOR?

25 A NO. LIKE I SAY, I WAS RAKING IN THE FRONT YARD.

TONY TOLEN - REDIRECT - BY MR. MAYE

1 THEY WALK OUT THE HOUSE OUT THE BACK DOOR.

2 Q AND YOU ARE NOT AN EYEWITNESS TO THIS EVENT, WERE
3 YOU?

4 A NO, I SURE WASN'T. I WAS WORKING AT THE TIME.

5 Q AS A MATTER OF FACT, YOU ARE UNCERTAIN ABOUT EVEN THE
6 DATE AND TIME WHEN ALL THAT OCCURRED?

7 A IT'S BEEN SO LONG, YOU KNOW. ANYBODY MEMORY IS NOT
8 FULLY DEVELOPED AND IT BEEN A WHILE. IT BEEN THAT LONG.

9 Q SO IT FOLLOWS THEN THAT YOU ARE LESS CERTAIN ON THE
10 DATE THAT YOU WOULD HAVE SPOKEN WITH YOUR NEPHEW, ISN'T
11 IT?

12 A LIKE I SAY, I DON'T REMEMBER THE DATE, WHAT DAY IT
13 WAS, BECAUSE, LIKE I SAY, I WORK DIFFERENT HOURS OR
14 WHATEVER. BUT, YOU KNOW, I TALKED TO HIM THAT DAY BEFORE.
15 LIKE I SAY, HE WAS STAYING WITH HE AND WE TALKED A LOT. I
16 SEE HIM WHEN I SEE HIM.

17 Q ALL RIGHT.

18 MR. WILLIAMS: I DON'T HAVE ANY FURTHER
19 QUESTIONS.

20 THE COURT: REDIRECT?

21 MR. MAYE: ONE QUESTION.

22 REDIRECT EXAMINATION

23 BY MR. MAYE:

24 Q LET'S GET THIS STRAIGHT, TONY. YOUR STATEMENT ON THE
25 2ND, "I, TONY, TOLD MY NEPHEW WHAT THEY HAD DONE WAS VERY

TONY TOLEN - RECROSS - BY MR. WILLIAMS

1 WRONG. HE REPLIED, 'I KNOW IT WAS WRONG.' " THAT IS WHAT
2 HE SAID; ISN'T THAT RIGHT?

3 A THAT'S CORRECT.

4 Q THEN HE BACKED OFF AND SAID, "I DON'T KNOW WHAT YOU
5 ARE TALKING ABOUT"?

6 A "I DON'T KNOW WHAT YOU ARE TALKING ABOUT." CORRECT.
7 Q IN THE SAME CONVERSATION?

8 A CORRECT.

9 MR. MAYE: NO FURTHER QUESTIONS.

10 THE COURT: ANYTHING FURTHER, MR. WILLIAMS?

11 MR. WILLIAMS: YES, SIR, YOUR HONOR.

12 RECROSS EXAMINATION

13 BY MR. WILLIAMS:

14 Q MR. TOLEN, LET ME HAND YOU YOUR STATEMENT SINCE WE
15 ARE TALKING ABOUT THAT. (HANDS TO WITNESS). IS THAT THE
16 STATEMENT YOU WROTE, SIR?

17 A YES, THAT IS IT.

18 MR. WILLIAMS: LET'S MARK IT FOR IDENTIFICATION
19 PURPOSES ONLY, YOUR HONOR, AS DEFENDANT'S EXHIBIT NUMBER 2.

20 (DEFENDANT'S EXHIBIT NUMBER 2, STATEMENT OF
21 TOLEN, IS MARKED FOR IDENTIFICATION).

22 Q MR. TOLEN, IS YOUR STATEMENT AN ACCURATE REFLECTION
23 OF YOUR CONVERSATION WITH YOUR NEPHEW THAT DAY?

24 A PARDON ME?

25 Q IS YOUR STATEMENT AN ACCURATE REFLECTION OF YOUR

TONY TOLEN - RECROSS - BY MR. WILLIAMS

217

1 CONVERSATION WITH YOUR NEPHEW THAT DAY?

2 A WELL, I DIDN'T -- I TALKED TO MY NEPHEW THAT
3 AFTERNOON, LIKE I SAY. THIS HERE IT'S A STATEMENT I WROTE
4 WHEN THE DEPUTIES CAME TO MY HOUSE AND I TALKED TO THEM.

5 THE COURT: YOU NEED TO SPEAK UP.

6 A LIKE I SAY, THIS HERE IS A STATEMENT THAT I READ WHEN
7 THE OFFICER CAME AND TALKED TO ME.

8 Q DID, IN FACT, HANDWRITE OUT YOUR STATEMENT YOURSELF?

9 A CORRECT. I DID IT ON THE BACK OF THE OFFICER'S CAR
10 IF I AM NOT MISTAKEN.

11 Q DOES THAT STATEMENT CAPTURE THE CONVERSATION YOU HAD
12 WITH YOUR NEPHEW VERBATIM?

13 A NO, LIKE I SAY, I TALKED TO MY NEPHEW FIRST. THEN I
14 WRITE THIS STATEMENT. AFTER THEY LEFT MY HOUSE IS WHEN I
15 WRITE THIS THING. THAT'S ALL THAT I KNOW ABOUT THIS.

16 Q WHAT I AM ASKING YOU NOW IS DOES YOUR STATEMENT
17 CAPTURE WITH YOUR NEPHEW VERBATIM EVERYTHING YOU DISCUSSED
18 WITH YOUR NEPHEW? IS IT WRITTEN DOWN IN YOUR STATEMENT?

19 A EVERYTHING I ASKED HIM AND EVERYTHING WRITTEN ON
20 HERE.

21 Q AND THERE IS NO DOUBT IN YOUR MIND THAT YOUR NEPHEW
22 SAID ON THE ISSUE OF THE POLICE COMING TO GET HIM, HE ASKED
23 YOU, "WHAT ARE YOU TALKING ABOUT?" ISN'T THAT CORRECT?

24 A CORRECT. LIKE I SAID, I TOLD HIM THE SHERIFF WAS
25 LOOKING FOR HIM, AND HE SAID, "I DON'T KNOW WHAT YOU ARE

TONY TOLEN - RECROSS - BY MR. WILLIAMS

1 TALKING ABOUT." THAT WAS IN THE SAME CONVERSATION WHEN I
2 ASKED HIM, "WHAT YOU DID WAS VERY WRONG." THAT WAS ON THE
3 SAME LINE.

4 Q AND HE ASKED YOU, "WHAT ARE YOU TALKING ABOUT?"

5 A CORRECT.

6 Q NO DOUBT IN YOUR MIND ABOUT THAT, RIGHT?

7 A CORRECT.

8 Q YOUR NEPHEW NEVER ADMITTED TO YOU DOING ANYTHING, DID
9 HE?

10 A HE DIDN'T TELL ME, "UNCLE TONY, I DID DO IT." HE
11 DIDN'T TELL ME, "UNCLE TONY, I DIDN'T DO IT." THE ONLY
12 THING HE SAID, "I DON'T KNOW WHAT YOU ARE TALKING ABOUT."

13 Q THANK YOU.

14 MR. MAYE: ONE MORE MATTER.

15 THE COURT: ALL RIGHT, SIR.

16 MR. MAYE: ANY OBJECTION TO THIS COMING INTO

17 EVIDENCE AS A STATE'S EXHIBIT?

18 MR. WILLIAMS: OBJECTION.

19 MR. MAYE: YOU OBJECT TO IT COMING IN?

20 MR. WILLIAMS: YES.

21 MR. MAYE: YOUR HONOR, I MOVE TO ADMIT THIS INTO

22 EVIDENCE, WHAT IS MARKED AS DEFENDANT'S EXHIBIT 2.

23 THE COURT: THE BASIS OF YOUR OBJECTION, MR.

24 WILLIAMS?

25 MR. WILLIAMS: YOUR HONOR, THE WITNESS HAS

TONY TOLEN - REDIRECT - BY MR. MAYE

1 ALREADY TESTIFIED. IT SEEMS TO ME CUMULATIVE. WE HAD THIS
2 LINE OF TESTIMONY AS TO THE ISSUES AND QUESTIONS.

3 THE COURT: SUSTAINED. I WOULD BE GLAD TO HEAR
4 FROM YOU IF YOU HAVE GOT SOME AUTHORITY YOU WANT TO CITE.

5 MR. MAYE: YOUR HONOR, HE OPENED THE DOOR WITH
6 THIS. HE MARKED THIS FOR I.D. AND WENT THROUGH IT. HE
7 WANTS TO GO ALL THROUGH THE ITEMS IN THE STATEMENT, BUT HE
8 DOESN'T WANT IT INTO EVIDENCE. I DON'T UNDERSTAND THE
9 BASIS OF HIS OBJECTION. HE MARKED THIS AS A DEFENSE
10 EXHIBIT AND JUST WANTS TO TAKE EXCERPTS OUT OF IT.

11 THE COURT: YOU CAN USE IT. IT HAS JUST BEEN
12 MARKED FOR IDENTIFICATION. YOU CAN ASK QUESTIONS ABOUT
13 IT.

14 REDIRECT EXAMINATION

15 BY MR. MAYE:

16 Q I SHOW YOU DEFENDANT'S EXHIBIT 2 FOR I.D. READ IT.
17 A IT SAYS, "I, TONY, TOLD MY NEPHEW THAT WHAT---

18 Q WAIT A SECOND. SECOND UP LOUD. READ IT OUT LOUD
19 SO THAT I CAN HEAR YOU BACK HERE.

20 A IT SAYS, "I, TONY, TOLD MY NEPHEW THAT WHAT THEY DID
21 WAS VERY WRONG. HE REPLIED, 'IT WAS WRONG'. HE SAID,
22 'WHAT ARE YOU TALKING ABOUT?'

23 'THAT MAN YOU ROBBED.' AND THEN HE SAID, 'ARE THE
24 SHERIFF LOOKING FOR US?' I SAID YES. THEY SAID, 'DON'T
25 TELL THEM THAT YOU SEEN US BECAUSE WE ARE ON OUR WAY TO

TONY TOLEN - RECROSS - BY MR. WILLIAMS

1 BATESBURG.'

2 AFTER I TOLD HIM TO GET HIS CLOTHES AND GET OUT, HE
3 SAID -- THAT WAS FRANK -- 'I WILL COME BACK LATER AND GET
4 THEM TONIGHT.' THEN THEY LEFT AND WENT WALKING."

5 Q YOU TOLD HIM TO GET HIS STUFF AND GET OUT. THAT'S
6 WHAT YOU TOLD HIM IN YOUR STATEMENT, ISN'T IT?

7 A RIGHT. LIKE I SAY, YOU KNOW, AFTER THE SITUATION,
8 YOU KNOW, ABOUT THE ROBBERY, I WAS AFRAID, YOU KNOW, TO
9 HAVE THEM THERE ANYMORE. THAT'S WHY I WANT HIM TO GET HIS
10 CLOTHES AND GO.

11 Q YOU THREW HIM OUT?

12 A I TOLD HIM TO GET HIS CLOTHES.

13 MR. MAYE: NO FURTHER QUESTIONS.

14 RECROSS EXAMINATION

15 BY MR. WILLIAMS:

16 Q MR. TOLEN?

17 A YES, SIR.

18 Q WHEN YOU READ THAT STATEMENT, IT SEEMS TO ME YOU
19 OMITTED THE PART ABOUT YOUR NEPHEW SAYING, "I DON'T KNOW
20 WHAT YOU ARE TALKING ABOUT." DID YOU READ THAT PART?

21 A I MOST CERTAINLY DID. LIKE I SAY, THIS PART HERE
22 WHERE IT SAYS, "I DON'T KNOW WHAT YOU ARE TALKING ABOUT."
23 AND THIS OTHER PART WHERE I SAY, "IF YOU DID IT, YOU KNOW
24 IT WRONG." HE SAID, "I KNOW THAT IT WAS WRONG." THAT'S
25 THE SAME LINE WHERE THAT, "WHAT ARE YOU TALKING ABOUT,"]

TONY TOLEN - RE CROSS - BY MR. WILLIAMS

221

1 AND, "IT WAS WRONG," WAS ON THE SAME LINE.

2 Q OKAY. TO YOUR UNDERSTANDING MR. TOLEN AND MR.
3 BRANNON HAVE BEEN FRIENDS AND THEY SPEND TIME TOGETHER; IS
4 THAT CORRECT?

5 A I REALLY DON'T KNOW. I JUST KNOW HIM AS KILLER
6 BECAUSE THEY SHOT BASKETBALL. I DIDN'T KNOW THAT HIM AND
7 MY NEPHEWS WAS FRIENDS, WHATEVER.

8 Q SO YOU ARE NOT EVEN AWARE THAT THERE WAS A
9 RELATIONSHIP BETWEEN THOSE TWO GENTLEMEN?

10 A NO, BECAUSE, LIKE I SAY, I DIDN'T KNOW HIM. WHEN I
11 SEEN HIM TO MY HOUSE, I ASKED MY OTHER NEPHEW, "WHAT IS HE
12 DOING HERE?" BECAUSE I COMPLAINED TO MY NEPHEW THAT WE
13 DON'T WANT NOBODY ELSE TO OUR HOUSE. I ASKED MY NEPHEW
14 WHAT HE WAS DOING TO MY HOUSE BECAUSE I DID NOT KNOW THEY
15 WAS FRIENDS WHATSOEVER.

16 Q DO YOU KNOW ALL THE AFFAIRS AND INCIDENTS AND THINGS
17 THAT YOUR NEPHEW IS INVOLVED WITH?

18 A I MOST CERTAINLY DON'T. I NEVER DISCUSSED THAT.

19 Q DO YOU KNOW IF HE HAD RECENTLY BEEN IN A FIGHT WITH
20 SOMEBODY?

21 A I HAD A SLIGHT IDEA. I REALLY DON'T KNOW.

22 Q NOW, AS RELATES TO THE ISSUE OF THE ROBBERY, YOUR
23 NEPHEW SAID HE DIDN'T KNOW WHAT YOU WERE TALKING ABOUT; IS
24 THAT CORRECT?

25 A THAT'S WHAT HE REPLIED.

JEFF HERLONG - DIRECT - BY MR. MAYE

1 Q ALL RIGHT. BUT AGAIN YOU DON'T KNOW IF THERE WAS
2 SOME OTHER MATTER HE HAD BEEN INVOLVED WITH, DO YOU?

3 A AS FAR AS I KNOW, I JUST WENT BY, YOU KNOW, WHAT I
4 HAD SAID AND WHAT HE TOLD ME.

5 Q THANK YOU, SIR.

6 MR. WILLIAMS: YOUR HONOR, I DON'T HAVE ANY
7 FURTHER QUESTIONS.

8 THE COURT: ANYTHING FURTHER?

9 MR. MAYE: NOTHING.

10 THE COURT: YOU CAN STEP DOWN, SIR.

11 MR. MAYE: THE STATE CALLS JEFF HERLONG TO THE
12 STAND.

13 THE COURT: ANY OBJECTION TO MR. TOLEN BEING
14 RELEASED?

15 MR. MAYE: NONE FROM THE STATE.

16 MR. WILLIAMS: NO, SIR.

17 THE COURT: HE IS EXCUSED.

18 JEFF HERLONG, BEING FIRST

19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. MAYE:

22 Q

23 JEFF, I KNOW YOU CAN TALK LOUD. TALK LOUD ENOUGH SC
24 THE JURY CAN HEAR YOU.

25 A ALL RIGHT, SIR.

Q INTRODUCE YOURSELF TO THE JURY.

JEFF HERLONG - DIRECT - BY MR. MAYE

1 A MY NAME IS JEFF HERLONG. I WORK FOR THE SALUDA
2 POLICE DEPARTMENT. AT THE TIME OF THE INCIDENT, I WORKED
3 FOR THE SALUDA COUNTY SHERIFF'S OFFICE.

4 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

5 A IT WILL BE FOUR YEARS JULY THE 17TH.

6 Q SO YOU WERE WORKING IN OCTOBER OF '96 FOR THE
7 SHERIFF'S OFFICE?

8 A THAT'S CORRECT.

9 Q WHAT HAPPENED IN AND AROUND THAT TIME? HOW DID YOU
10 GET INVOLVED IN THIS CASE?

11 A WELL, I SIGNED OFF. AT THAT TIME WE SIGNED OFF AT
12 MIDNIGHT AND WENT HOME. AT THAT TIME I SIGNED OFF AND WAS
13 WOKE UP WITH A PHONE CALL THAT I NEEDED TO GO TO THE
14 CIRCLE.

15 Q EXPLAIN TO THEM HOW THAT WORKS. YOU WORK A SHIFT AND
16 THEN YOU ARE ON CALL FOR THE REST OF THE NIGHT IF THEY NEED
17 YOU TO COME BACK OUT?

18 A RIGHT, UNTIL 4 A.M. THEN FIRST SHIFT TAKES CALL FROM
19 4 A.M. UNTIL 8 A.M.

20 Q THAT WAY YOU HAVE GOT COVERAGE ALL THE TIME?

21 A RIGHT.

22 Q IF THEY DON'T NEED YOU, YOU CAN SLEEP DURING THAT
23 TIME?

24 A THAT'S CORRECT.

25 Q SO YOU WERE HOME SLEEPING AND YOU GOT A CALL TO COME

JEFF HERLONG - DIRECT - BY MR. MAYE

1 BACK OUT?

2 A THAT'S CORRECT.

3 Q WHAT DID YOU DO?

4 A I WENT STRAIGHT TO THE TRAFFIC CIRCLE, CALLED
5 DISPATCH BACK WHEN I GOT TO THE CIRCLE TO FIND OUT MORE
6 DETAILS. I REALIZED I NEEDED TO MEET WITH THE TRUCK DRIVER
7 OF THE TRUCK PARKED AT THE CIRCLE.

8 Q DID YOU GO OUT THERE AND SEE A TRUCK AT THE SCENE?

9 A I DID, YES, SIR.

10 Q OKAY.

11 A I TALKED TO THE TRUCK DRIVER AND HE TOLD ME THAT HE
12 HAD BEEN ROBBED WITH A FIREARM.

13 MR. WILLIAMS: OBJECTION, YOUR HONOR.

14 MR. MAYE: IT'S NOT HEARSAY, YOUR HONOR. HE HAS

15 ALREADY TESTIFIED.

16 THE COURT: OVERRULED.

17 Q GO AHEAD.

18 A I TALKED TO THE TRUCK DRIVER WHO TOLD ME THAT HE HAD
19 BEEN ROBBED AT GUNPOINT. I ASKED HIM DID HE KNOW OR COULD
20 HE IDENTIFY THE TWO PEOPLE THAT HE DID IT. HE TOLD ME IT
21 WAS TWO BLACK MALES AND THEY LEFT RUNNING FROM THE
22 RESIDENCE ACROSS THE CIRCLE. THEY LEFT RUNNING DOWN
23 TOWARDS BATESBURG.

24 Q WHAT DID HE TELL YOU HAD HAPPENED THERE AT THE SCENE?

25 A HE TOLD ME THEY TAPPED ON THE WINDOW, PUT THE GUN A

JEFF HERLONG - DIRECT - BY MR. MAYE

1 THE WINDOW, ORDERED HIM TO OPEN THE TRUCK, TOOK HIS MONEY.
2 THERE WAS A SMALL CHANGE BAG, I BELIEVE IT WAS A CROWN
3 ROYAL BAG OR SOME TYPE OF BAG WITH SOME LOOSE CHANGE IN IT.
4 THEY TRIED TO GET HIM TO CRANK THE TRUCK UP AND TAKE THEM
5 TO BATESBURG, BUT I BELIEVE HE TOLD ME THAT HE FOUND A
6 CHANCE TO RUN, AND HE RAN TO THE RESIDENCE ACROSS THE WAY.

7 Q TO THE LINDLERS?

8 A I THINK THAT IS CORRECT.

9 Q OKAY.

10 A THAT'S WHERE I BELIEVE HE CLIMBED UP ON THE ROOF OF A
11 BUILDING OR SOMETHING OR HE GOT THEIR ATTENTION. THEY
12 TURNED THE LIGHTS ON. THAT'S WHEN HE SAID THE TWO
13 GENTLEMEN THAT HE SAID HAD ROBBED HIM RUN DOWN TOWARD
14 BATESBURG.

15 Q WHAT DID YOU DO NEXT?

16 A IN THE CONVERSATION HE TOLD ME THEY WERE ARMED. I
17 WAS THE ONLY OFFICER OUT IN THE WHOLE COUNTY AT THE TIME.
18 I WAS COMPLETELY BY MYSELF. I IMMEDIATELY CALLED DISPATCH
19 AND ASKED FOR SOME BACKUP. AT THAT TIME THAT'S WHEN THEY
20 CALLED MY SERGEANT, SERGEANT WHISENANT.

21 Q MARK WHISENANT?

22 A MARK WHISENANT. HE CAME TO THE SCENE.

23 Q HE WAS THE SERGEANT AT THAT TIME?

24 A RIGHT.

25 Q WHAT DID Y'ALL DO THEN?

JEFF HERLONG - DIRECT - BY MR. MAYE

1 A AT THAT TIME HE, OFFICER WHISENANT, AND MYSELF, WE
2 DUSTED THE TRUCK AND TRIED TO GET SOME FINGERPRINTS. I
3 BELIEVE WE WERE UNSUCCESSFUL OR IF WE DID GET SOME, THEY
4 WERE UNABLE TO BE READ.

5 Q WAS MOISTURE A FACTOR IN THIS?

6 A I BELIEVE IT WAS DRIZZLING RAIN. I CAN'T REMEMBER
7 FOR SURE BECAUSE IT'S BEEN A YEAR AND A HALF AGO, BUT I
8 THINK IT WAS RAINING AT THE TIME.

9 Q OKAY.

10 A OR HAD BEEN RAINING. WE TRIED TO DO THAT AND THEN
11 MARK SAID, "WELL, I TELL YOU WHAT. WE'LL GO TO BATESBURG.
12 I WILL ESCORT YOU TO BATESBURG AND SEE CAN WE TALK TO
13 SOMEBODY OVER THERE ABOUT LOOKING THROUGH SOME BOOKS OR
14 MAGAZINES ON SOME POSSIBLE PICTURES FOR SOME TYPE OF
15 IDENTIFICATION PURPOSES." AT THAT TIME I LEFT AND WENT
16 BACK TO THE LAW ENFORCEMENT CENTER.

17 Q AND OFFICER WHISENANT WENT WITH HIM TO BATESBURG?

18 A RIGHT. HE FOLLOWED HIM ON. HE WENT WITH HIM TO
19 BATESBURG. I BELIEVE IF I REMEMBER CORRECTLY I FOLLOWED
20 THEM TO THE COUNTY LINE. AT THAT TIME I TURNED AROUND AND
21 I WENT BACK TO SALUDA.

22 Q SO THERE WERE TWO CARS AND MR. DYSON WAS DRIVING HIS
23 TRUCK GOING OUT TOWARDS BATESBURG?

24 A THAT'S CORRECT.

25 Q YOU TURNED AROUND AND CAME BACK TO THE L.E.C.?

JEFF HERLONG - DIRECT - BY MR. MAYE

1 A I TURNED AROUND AND CAME BACK. I DID THE INITIAL
2 REPORT AND MARK WENT ON OVER TO BATESBURG WITH MR. DYSON.
3 Q WHAT WAS YOUR NEXT INVOLVEMENT IN THIS CASE?

4 A AFTER I COMPLETED THE REPORT, I WENT HOME. THAT
5 AFTERNOON I CAME BACK ON SHIFT, AND I THINK OFFICER
6 WHISENANT WAS WORKING FIRST SHIFT THAT DAY. MYSELF AND
7 OFFICER JONES, WHO WAS A LIEUTENANT AT THE TIME, HE WAS
8 WORKING SECOND SHIFT. HE HAD BEEN TALKING TO SOME PEOPLE
9 IN THE AREA DURING THE DAY WHEN HE HEARD ABOUT THE CASE
10 THAT IT HAPPENED IN THAT AREA. HE LIVED IN THE AREA OF THE
11 CIRCLE.

12 WE WENT DOWN AND STARTED INVESTIGATING AND TRYING TO
13 GET ON A TRAIL. WE KNEW THEY WERE STILL IN THE AREA OR
14 SUPPOSED TO BE IN THE AREA AND WE CALLED S.L.E.D. WE WENT
15 TO A RESIDENCE WE HEARD THEY WERE AT. WE WERE TOLD THEY
16 WENT OUT THE BACK AS SOON AS WE PULLED UP IN THE DRIVEWAY.
17 AT THAT TIME WE CALLED S.L.E.D. WITH THE DOGS.

18 Q YOU CALLED THE DOGS AND HELICOPTER?

19 A RIGHT.

20 Q DID YOU KEEP WORKING ON THE MANHUNT?

21 A I WAS WITH THE DOGS. WE WENT ALL THROUGH THE WOODS.
22 Q TRAILING THE INDIVIDUALS?

23 A SIR?

24 Q DID THE DOGS PICK UP TRAILS?

25 A THEY PICKED UP TRAILS. THEY WOULD PICK THEM UP AND

JEFF HERLONG - DIRECT - BY MR. MAYE

1 THEN THEY WOULD RUN BACK AND LOSE IT AND THEN THEY WOULD
2 PICK THEM UP AGAIN, BUT FROM THE RESIDENCE WE WERE HEADING
3 IN A GENERAL DIRECTION THAT WOULD HAVE PUT THEM WHERE WE
4 FINALLY DID CATCH THEM.

5 Q WHAT WAS YOUR NEXT INVOLVEMENT IN THE CASE?

6 A WELL, I ASSISTED IN THE ARREST AT THE POND.

7 Q TELL THEM ABOUT THAT.

8 A OFFICER WHISENANT AND OFFICER JONES WERE TOLD BY A
9 PASSERBY THAT THEY HAD SEEN -- WELL, THEY HAD BEEN
10 LISTENING TO THE SCANNER AND KNEW WE WERE LOOKING FOR TWO
11 BLACK MALES AND A POSSIBLE DESCRIPTION OF SOME CLOTHING, I
12 BELIEVE. THEY WERE TOLD THERE WAS TWO BLACK MALES THAT MET
13 THE DESCRIPTION HEADED TOWARD LEXINGTON COUNTY ON 378 IN
14 SALUDA COUNTY. THEY WENT OVER THERE WITH A COUPLE OF
15 S.L.E.D. CARS, I THINK AT THAT TIME. I WAS STILL IN THE
16 WOODS. WE WERE TRYING TO MAKE OUR WAY OUT OF THE WOODS TO
17 GO AND ASSIST.

18 Q THAT WAS THE DIRECTION Y'ALL WERE HEADING?

19 A RIGHT.

20 Q OKAY.

21 A ANYWAY I GOT BACK TO MY CAR AND I LEFT S.L.E.D.
22 LOADING THE DOGS UP. I IMMEDIATELY WENT OVER THAT WAY.
23 I GOT TO THE CIRCLE, THEY HAD JUST SPOTTED THEM AND BEGAN
24 FOOT CHASE DOWN THE HIGHWAY.

25 Q WHAT DID YOU DO?

JEFF HERLONG - DIRECT - BY MR. MAYE

1 A I DROVE ON DOWN AS CLOSE AS I COULD ON THE HIGHWAY
2 AND JUMPED OUT AND STARTED CALLING FOR HIM AND MARK BECAUSE
3 THEY HAD LEFT THE HIGHWAY AND WENT INTO THE WOODS. THAT'S
4 WHEN I HEARD THE WATER SPLASH AND THE TWO DEFENDANTS OR TWO
5 SUBJECTS RATHER HAD FELL INTO A POND, DIDN'T KNOW IT WAS A
6 POND.

7 Q THEY HAD RUN OFF INTO A POND?

8 A THEY RUN OFF INTO A POND.

9 Q WHAT DID YOU DO?

10 A I BELIEVE I PULLED MR. TOLEN OUT OF THE WATER. I
11 BELIEVE HE WAS THE ONE.

12 Q YOU PULLED FRANK TOLEN OUT OF THE WATER?

13 A I PULLED HIM OUT, MYSELF AND A S.L.E.D. OFFICER.

14 Q THEN WHAT DID YOU DO NEXT?

15 A PLACED HIM IN THE BACK OF ONE OF THE PATROL CARS AND
16 WENT TO THE JAIL. I WAS THE OFFICER THAT READ HIM HIS
17 RIGHTS AT THE SCENE WHEN I WAS WALKING HIM TO THE CAR.
18 THEN WE WENT UP TO THE LAW ENFORCEMENT CENTER WHERE OFFICER
19 JONES CONDUCTED THE REST OF THE INVESTIGATION.

20 Q BOBBY JONES TOOK OVER AT THAT POINT?

21 A OFFICER JONES AND WHISENANT.

22 Q DID YOU DO BACK OUT TO THE SCENE OF THE POND?

23 A I THINK THE NEXT DAY AS I CAME BACK ON THE NEXT
24 SHIFT.

25 Q OKAY.

JEFF HERLONG - DIRECT - BY MR. MAYE

1 A I BELIEVE MR. BRANNON TOLD US THAT THE PISTOL WAS OUT
2 THERE, THAT THEY HAD THROWN THE PISTOL DOWN WHENEVER THEY
3 SAW THE LAW ENFORCEMENT CARS. AS WE GOT BACK TO THE SCENE,
4 WE JUST STEPPED RIGHT OFF -- I WAS OVER, HAD WALKED UP
5 TOWARD THE POND. OFFICER JONES WAS STILL STANDING ON THE
6 SHOULDER OF THE ROADWAY. HE LOOKED OVER AND SAID, "THERE
7 IS THE PISTOL."

8 Q DID YOU TAKE CUSTODY OF IT AT THAT TIME?

9 A I TOOK CUSTODY OF THE PISTOL, PUT IT IN SOME TYPE OF
10 CONTAINER. I DON'T KNOW IF IT WAS A MANILA ENVELOPE OR A
11 BROWN BAG. I DON'T REMEMBER. I TOOK IT BACK. I KNEW IT
12 WAS KIND OF AN ODD GUN. I HAD NEVER SEEN A BREAK-DOWN GUN
13 BEFORE. OFFICER CHAPMAN TOLD ME IT WAS CALLED---

14 MR. WILLIAMS: OBJECTION.

15 THE COURT: SUSTAINED.

16 Q DON'T WORRY ABOUT WHAT THE OFFICER TOLD YOU. DID YOU
17 PUT THIS INTO EVIDENCE AT THE SHERIFF'S DEPARTMENT?

18 A YES, SIR, I DID.

19 MR. WILLIAMS: YOUR HONOR, MAY WE APPROACH FOR A
20 MOMENT?

21 THE COURT: ALL RIGHT.

22 (WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE
23 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
24 OF THE JURY).

25 Q THE WEAPON YOU FOUND AT THE SCENE, YOU TOOK IT INTO

JEFF HERLONG - DIRECT - BY MR. MAYE

1 CUSTODY AND PUT IT INTO EVIDENCE AT THE SHERIFF'S
2 DEPARTMENT?

3 A YES, SIR, I DID.

4 Q DID YOU FILL OUT AN EVIDENCE TAG?

5 A I DID.

6 Q HAVE YOU MAINTAINED CUSTODY OF THAT OR THE SHERIFF'S
7 DEPARTMENT HAS MAINTAINED CUSTODY OF THIS CONTINUOUSLY IN
8 EVIDENCE, CORRECT?

9 A THAT IS CORRECT.

10 Q YOU TOOK CUSTODY OF THIS BACK OUT OF EVIDENCE AND HAD
11 IT WITH YOU EVER SINCE; IS THAT CORRECT?

12 A THAT'S CORRECT, UNTIL IT WAS ENTERED INTO EVIDENCE.

13 Q UNTIL IT WAS ENTERED IN AS STATE'S EXHIBIT 1?

14 A YES.

15 Q STATE'S 1 FOR I.D., CAN YOU IDENTIFY IT?

16 A YES, SIR. THIS IS THE PISTOL THAT I PICKED UP OFF
17 THE GROUND AT THE SCENE.

18 Q HOW CAN YOU TELL?

19 A I CAN TELL BECAUSE I REMEMBER THE GUN. THIS IS MY
20 TAG I PUT ON IT. IT'S GOT MY NAME TO THE SHERIFF LOCKER,
21 WHERE THE SHERIFF SIGNED IT BACK OVER TO ME FROM THE
22 LOCKER.

23 MR. MAYE: YOUR HONOR, I MOVE TO ADMIT IT INTO
24 EVIDENCE. THAT'S A COMPLETE CHAIN.

25 THE COURT: ANY OBJECTION, MR. WILLIAMS?

JEFF HERLONG - CROSS - BY MR. WILLIAMS

MR. WILLIAMS: NONE, YOUR HONOR.

THE COURT: WITHOUT OBJECTION STATE'S EXHIBIT 1
IS NOW ADMITTED INTO EVIDENCE.

(STATE'S EXHIBIT NUMBER 1, .32 PISTOL, IS
RECEIVED INTO EVIDENCE).

Q THAT WEAPON WAS RIGHT WHERE MR. BRANNON TOLD YOU IT
WAS?

A YES, SIR. HE TOLD US HE HAD THREW IT DOWN IN THE
DITCH AS THEY RAN ACROSS THE DITCH.

Q ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR YOU.

THE COURT: MR. WILLIAMS.

MR. WILLIAMS: THANK YOU, YOUR HONOR. MAY IT

PLEASE THE COURT, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

CROSS EXAMINATION

BY MR. WILLIAMS:

Q MR. HERLONG, IN THE COURSE OF YOUR DUTIES AS A DEPUTY
SHERIFF WITH SALUDA COUNTY, YOU HAVE TO COMPLETE REPORTS
AND INCIDENT REPORTS AND SUPPLEMENTAL REPORTS; IS THAT
CORRECT?

A YES, SIR, I DO.

Q YOU COMPLETED ONE IN THIS CASE, DIDN'T YOU?

A I DID THE INITIAL INCIDENT REPORT, YES, SIR.

Q AND THERE IS A SUPPLEMENTAL REPORT TO THAT, ISN'T

THERE?

Appendix 234

JEFF HERLONG - CROSS - BY MR. WILLIAMS

233

1 A I BELIEVE IT MAY BE. I THINK OFFICER WHISENANT MAY
2 HAVE DONE THAT.

3 Q YOU ARE ACCREDITED WITH PROVIDING INFORMATION TO
4 ASSIST WITH THE PREPARATION OF THIS REPORT; IS THAT
5 CORRECT?

6 A YES, SIR.

7 Q LET ME GO AHEAD AND SHOW YOU THIS AND SEE IF YOU CAN
8 IDENTIFY IT FOR ME, PLEASE, SIR.

9 A THIS FIRST PAGE IS THE INITIAL INCIDENT REPORT THAT
10 I COMPLETED DURING THE A.M. HOURS, DURING THE DARKNESS OF
11 THE A.M. HOURS AT THE TIME THE INCIDENT OCCURRED. THE
12 SUPPLEMENTAL WAS DONE BY OFFICER WHISENANT DURING HIS
13 SHIFT. IT WAS THE SAME DAY. IT WAS JUST DURING HIS
14 SHIFT.

15 Q WHERE IT HAS REPORTING OFFICERS DOWN AT THE BOTTOM,
16 IT HAS B. J. HERLONG. ARE THOSE YOUR INITIALS?

17 A THAT'S MY INITIALS, YES, SIR.

18 Q SO ARE WE TO ASSUME THAT YOU ASSISTED IN THE
19 PREPARATION OF THIS REPORT? YOU PROVIDED INFORMATION FOR
20 THE COMPLETION OF THIS REPORT?

21 A I WAS ONE OF THE OFFICERS THAT INITIALLY RESPONDED TO
22 THE SCENE. WE ALWAYS OR NORMALLY WE ALWAYS PUT EVERY
23 OFFICER THAT STARTED ON THE CASE THROUGHOUT THE CASE UNTIL
24 IT'S FINISHED. YOU WILL NOTICE ON MINE, OFFICER WHISENANT
25 DIDN'T HAVE ANYTHING TO DO WITH WRITING MY INITIAL REPORT,

JEFF HERLONG - CROSS - BY MR. WILLIAMS

1 BUT HIS NAME WENT ABOVE MINE BECAUSE HE WAS MY SUPERVISING
2 OFFICER ON THE SCENE.

3 Q SO THE ONLY REPORT YOU STAND RESPONSIBLE FOR THE
4 CONTENTS OF WOULD BE THE FIRST PAGE?

5 A YES, SIR. THAT'S THE ONLY ONE I WROTE.

6 Q THANK YOU.

7 MR. WILLIAMS: LET'S TEAR THE FIRST PAGE OFF AND
8 MARK THIS FOR IDENTIFICATION.

9 (DEFENDANT'S EXHIBIT NUMBER 3, INCIDENT REPORT,
10 IS MARKED FOR IDENTIFICATION).

11 Q NOW, THE REASON YOU ALL USE INCIDENT REPORTS IS TO
12 HELP YOU WRITE DOWN ALL OF THE INFORMATION THAT MAY BE
13 CRITICAL TO A CASE?

14 A ON AN INITIAL REPORT, WHEN I DID MY INITIAL REPORT, I
15 ONLY PUT DOWN A BRIEF SUMMARY OF WHAT THE COMPLAINANT OR
16 VICTIM TELLS ME HAPPENS. THEN THERE IS A FOLLOW-UP
17 INVESTIGATION IN WHICH A MORE IN-DETAILED REPORT WOULD BE
18 DONE AT A LATER TIME BY WHOEVER FOLLOWS UP ON THE CASE.

19 Q BUT NOW THE REASON YOU HAVE THE INCIDENT REPORT IS TO
20 REPORT CERTAIN FACTS; ISN'T THAT CORRECT?

21 A THAT IS CORRECT, YES, SIR.

22 Q TO THE EXTENT THAT YOU CAN, YOU TRY TO GO BY THE
23 INCIDENT REPORT; DON'T YOU?

24 A YES, SIR.

25 Q YOU TRY TO RESPOND TO THE QUESTIONS ON THE INCIDENT

JEFF HERLONG - CROSS - BY MR. WILLIAMS

235

1 REPORT; ISN'T THAT CORRECT?

2 A YES, SIR.

3 Q YOU HAD AN OPPORTUNITY TO SPEAK WITH MR. DYSON; ISN'T
4 THAT CORRECT?

5 A YES, SIR, I SPOKE TO HIM ON THE SCENE.

6 Q MR. DYSON TOLD YOU ABOUT THE FACTS OF THIS CASE;
7 ISN'T THAT CORRECT?

8 A YES, SIR. HE TOLD ME WHAT HAD HAPPENED.

9 Q NOW, IN THE AREA FOR SUBJECTS, GIVE ME THE
10 DESCRIPTIONS OF THE INDIVIDUALS WHOM MR. DYSON IDENTIFIED
11 AS BEING THE PERPETRATORS IN THIS CASE.

12 A YOU WANT WHERE THE NAME IS OR DO WANT ME TO READ WHAT
13 I HAVE ON THE REPORT?

14 Q I WANT YOU TO PUT -- THE INFORMATION CONTAINED IN
15 THIS REPORT IS WHAT MR. DYSON TOLD YOU, ISN'T IT?

16 A RIGHT.

17 Q OKAY.

18 A HE TOLD ME HE WASN'T FROM THE AREA. HE DIDN'T KNOW
19 THE PEOPLE, THE TWO PEOPLE PERSONALLY. HE ONLY COULD TELL
20 ME THEY WERE TWO BLACK MALES, SOMEWHERE BETWEEN THE AGES OF
21 MAYBE LATE TEENS TO MID TO LATE 20S. I PUT 17 TO 25. HE
22 SAID THAT SOUNDED ABOUT RIGHT.

23 Q SEVENTEEN TO 25, ONE BEING 17 AND THE OTHER BEING 25?

24 A NO. WHEN THERE IS A SLASH IN THE LINE, THAT MEANS
25 IT'S ANYWHERE FROM 17 TO POSSIBLY 25.

JEFF HERLONG - CROSS - BY MR. WILLIAMS

1 Q SO EACH OF THE INDIVIDUALS WERE BETWEEN 17 AND 25 IN
2 APPEARANCE?

3 A RIGHT.

4 Q NOW, WHAT ABOUT THE DESCRIPTION OF THE GENTLEMEN?
5 WHAT DO YOU HAVE DOWN?

6 A ALL HE COULD TELL ME WAS THE TALLEST OF THE TWO
7 GENTLEMEN WORE A GRAY SHIRT WITH A GRAY DO-RAG TIED ON HIS
8 HEAD.

9 Q IN THAT BOX IT ASKS ABOUT FACIAL HAIRS, SCARS,
10 TATTOOS, GLASSES, CLOTHING AND PHYSICAL FEATURES; DOESN'T
11 IT?

12 A IT DOES. IT SAYS YOU CAN USE THAT.

13 Q ALL MR. DYSON TOLD YOU THAT EVENING WAS TWO TALL
14 INDIVIDUALS, ONE WORE A GRAY SHIRT AND A GRAY DO-RAG?

15 A RIGHT. OTHER THAN HE SAID -- I SAID, "SO YOU DIDN'T
16 KNOW THE GUYS?" HE SAID, "NO, I'M NOT FROM AROUND HERE. I
17 DON'T KNOW THEM." HE SAID, "IF I EVER SAW THEM AGAIN, I
18 COULD IDENTIFY THEM." HE DID MAKE THAT COMMENT.

19 Q BUT ON THAT EVENING RIGHT AFTER IT HAPPENED, THE BEST
20 DESCRIPTION HE GAVE YOU WAS THE TALLEST OF THE TWO WORE A
21 GRAY SHIRT AND A GRAY DO-RAG?

22 A YES, SIR.

23 Q THAT'S IN YOUR REPORT; ISN'T THAT CORRECT?

24 A YES, SIR. THAT'S WHAT HE TOLD ME ON THE SCENE. I
25 TALKED TO MR. DYSON FOR APPROXIMATELY 30 MINUTES AS I WAS

MARK WHISENANT - DIRECT - BY MR. MAYE

1 HELPING FINGERPRINT THE TRUCK AND GETTING MY INITIAL
2 STATEMENT FOR THE REPORT.

3 Q HE NEVER TOLD YOU ANYTHING ABOUT A SCAR OR ANY KIND
4 OF DISTINGUISHING FEATURES ABOUT EITHER OF THE SUSPECTS,
5 DID HE?

6 A NOT WHEN I TALKED TO HIM, NOT THAT I CAN REMEMBER.

7 Q I IMAGINE IF HE HAD, YOU WOULD HAVE PUT IN YOUR
8 REPORT?

9 A I BELIEVE I WOULD HAVE.

10 Q THANK YOU, SIR.

11 MR. MAYE: NOTHING FURTHER FROM THE STATE. ANY
12 OBJECTION TO THIS WITNESS BEING RELEASED?

13 MR. WILLIAMS: NONE, YOUR HONOR.

14 THE COURT: YOU ARE EXCUSED.

15 MR. MAYE: THE STATE CALLS MARK WHISENANT TO THE
16 STAND.

17 ANTHONY MARK WHISENANT, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. MAYE:

21 Q OFFICER WHISENANT, I AM NOT EVEN GOING TO ASK. YOU
22 JUST SPEAK NORMALLY AND THE JURY WILL BE ABLE TO HEAR
23 YOU.

24 A YES, SIR.

25 Q INTRODUCE YOURSELF TO THE JURY AND TELL THEM WHERE

MARK WHISENANT - DIRECT - BY MR. MAYE

1 YOU WERE WORKING BACK IN '96 AND TELL THEM WHERE YOU ARE
2 WORKING NOW.

3 A MY NAME IS ANTHONY MARK WHISENANT. I USED TO WORK
4 FOR THE SALUDA COUNTY SHERIFF'S OFFICE. I WAS EMPLOYED FOR
5 THEM FOR APPROXIMATELY FIVE YEARS TOTAL. I AM PRESENTLY
6 WORKING FOR THE CHARLESTON COUNTY SHERIFF'S OFFICE.

7 Q YOU WERE IN LAW ENFORCEMENT BEFORE YOU CAME TO
8 SALUDA, WEREN'T YOU?

9 A YES, SIR. THIS IS MY EIGHTH YEAR FULL-TIME IN LAW
10 ENFORCEMENT.

11 Q YOU ARE DOWN IN THE LOW COUNTRY IN CHARLESTON?

12 A YES, SIR.

13 Q TELL THE JURY WHAT YOUR INVOLVEMENT IN THIS CASE WAS
14 IN OCTOBER OF '96.

15 A I WAS DISPATCHED FROM MY RESIDENCE CONCERNING AN
16 ARMED ROBBERY THAT OCCURRED AT THE TRAFFIC CIRCLE. DURING
17 THE ARRIVAL TIME, DEPUTY HERLONG ARRIVED AT THE SCENE. I
18 WAS A SUPERVISOR DURING THAT TIME, SERGEANT. WE SPOKE TO
19 MR. DYSON WHO WAS A TRUCK DRIVER THAT WAS PARKED AT THE
20 TRAFFIC CIRCLE, THE STOP AND SHOP. HE HAD A LONG DAY THAT
21 DAY AND DECIDED TO PULL OVER AND GET A NAP.

22 HE STATED TO ME THAT TWO GENTLEMEN -- WELL, TWO BLACK
23 MALES APPROACHED HIS VEHICLE. HE WAS SLEEPING IN THE BACK
24 OF THE CAB. HE HEARD A NOISE, SOMEONE TAPPING ON THE
25 WINDOW. HE CAME TO THE DOOR AND WAS MET BY TWO BLACK

MARK WHISENANT - DIRECT - BY MR. MAYE

1 MALES, ONE OF WHICH HAD A SMALL CALIBER PISTOL POINTED AT
2 MR. DYSON AND DEMANDED THAT HE TAKE THEM FOR A RIDE.

3 THEY OBTAINED SOME CASH FROM HIM. MR. DYSON WAS ABLE
4 TO EXIT THE VEHICLE AND BEGAN RUNNING ACROSS THE TRAFFIC
5 CIRCLE, WHICH IS A CIRCLE AND THERE IS GRASS IN THE MEDIAN.
6 HE WAS RUNNING ACROSS THE GRASS TO A NEARBY RESIDENCE WHICH
7 WAS A WHITE HOUSE.

8 HE STATED ALSO THAT HE JUMPED ON TOP OF A SHED AND
9 BEGAN SCREAMING. HE WAS IN FEAR FOR HIS LIFE. AT THAT
10 TIME THE GENTLEMAN THAT LIVED IN THE WHITE HOUSE CAME TO
11 HIS AID. THE SUSPECTS FLED ON 391 IN THE GENERAL DIRECTION
12 OF BATESBURG.

13 ALSO DURING THIS NIGHT IT HAD BEEN RAINING REAL BAD.
14 I MADE THE DECISION NOT TO CALL OUT S.L.E.D.'S DOGS DUE TO
15 THE FACT THAT IT HAD BEEN RAINING, AND WE COULDN'T PINPOINT
16 AN EXACT DIRECTION TO OBTAIN A SCENT.

17 Q NORMALLY IF YOU HAD SUSPECTS ON FOOT, YOU WOULD CALL
18 OUT THE BLOODHOUNDS?

19 A YES, SIR. I ELECTED TO MAKE THE DECISION NOT TO CALL
20 THEM OUT THAT DAY DUE TO THE RAIN.

21 Q THEY CAN'T TRACK VERY WELL WHEN IT'S DAMP?

22 A THEY HAVE PROBLEMS.

23 Q OKAY.

24 A WE HAD A GENERAL LOCATION. WE DIDN'T HAVE A SPECIFIC
25 LOCATION WHERE THEY COULD START FROM THE SCENT.

MARK WHISENANT - DIRECT - BY MR. MAYE

1 Q OKAY.

2 A DURING THAT TIME I SPOKE TO A MR. LINDLER, I BELIEVE,
3 THAT LIVED AT THAT RESIDENCE. DURING THE TIME THE PHONE
4 RANG AND I SPOKE TO A MRS. SMITH WHO WORKS---

5 Q DON'T SAY WHAT SHE SAID. I TELL YOU WHAT. YOU WENT
6 TO BATESBURG IS MY UNDERSTANDING?

7 A YES, SIR, I WENT TO BATESBURG.

8 Q WITH MR. DYSON?

9 A YES, SIR, WITH MR. DYSON. HE LOOKED THROUGH A COUPLE
10 OF MUG SHOT BOOKS, TRIED TO PERFORM A PHOTO LINEUP. WE HAD
11 A GENERAL IDEA ON THE SUSPECT DURING THAT TIME. I ALSO WAS
12 EMPLOYED WITH BATESBURG LEESVILLE DURING '89 AND '90 WHERE
13 I HAD ACQUAINTANCE WITH MR. FRANK TOLEN.

14 Q GOING TO THE NEXT DAY, MR. DYSON LEFT. WHAT DID YOU
15 DO TO WORK ON THIS INVESTIGATION THE NEXT DAY?

16 A I WAS NOTIFIED BY PHONE AND CALLED BY MY SUPERIOR,
17 WHICH AT THAT TIME WAS LIEUTENANT JONES, WHO OBTAINED
18 VALUABLE INFORMATION DURING THAT TIME; AND HE SENT ME BACK
19 TO THE TRAFFIC CIRCLE.

20 Q WHAT DID Y'ALL DO WENT YOU GOT BACK UP THERE?

21 A WELL, BASICALLY LIEUTENANT JONES WAS IN CHARGE. AT
22 THAT TIME I WAS CARRYING OUT ORDERS. HE WANTED US TO GO
23 OUT TO A TOLEN'S RESIDENCE AROUND CAUGHMAN ACRES. I AM NOT
24 SURE OF THE GENERAL LOCATION BUT IT WAS OFF A DIRT ROAD.

25 Q OUT 391 TO THE RIGHT?

MARK WHISENANT - DIRECT - BY MR. MAYE

1 A YES, SIR, OFF 391.

2 Q WHAT DID Y'ALL DO THEN?

3 A THERE WE MET WITH A BEN TOLEN. BEN TOLEN STATED---

4 MR. WILLIAMS: OBJECTION, YOUR HONOR.

5 THE COURT: SUSTAINED. YOU CAN'T GO INTO THAT.

6 Q DON'T SAY WHAT BEN SAID. WHAT DID Y'ALL DO WHEN YOU
7 WENT BACK UP TO THE RESIDENCE? DID YOU PARTICIPATE IN THE
8 MANHUNT?

9 A YES, SIR.

10 Q WHAT DID YOU DO?

11 A WE HAD A GENERAL LOCATION WHERE THE SUSPECTS
12 SUPPOSEDLY FLED FROM THE RESIDENCE.

13 Q FROM THE TOLEN RESIDENCE?

14 A YES, SIR.

15 Q WHERE FRANK TOLEN WAS STAYING?

16 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE).

17 LIEUTENANT JONES MADE AN EXCELLENT DECISION BY CALLING OUT
18 S.L.E.D. DOGS DURING THAT TIME. HE CALLED OUT THE
19 HELICOPTER AND MORE MAN SUPPORT TO TRY TO LOCATE THESE
20 INDIVIDUALS.

21 Q DID S.L.E.D. RESPOND WITH MANPOWER AND THE DOG TEAM?
22 A YES, SIR.

23 Q AND HELICOPTER?

24 A THEY SENT A GOOD LOAD TO HELP US OUT.

25 Q WHAT DID YOU DO?

MARK WHISENANT - DIRECT - BY MR. MAYE

1 A BASICALLY DURING THAT TIME I PARKED MY PATROL CAR AT
2 THE RESIDENCE AND GOT IN THE VEHICLE WITH LIEUTENANT JONES.
3 JUST FOR SAFETY PURPOSE, IT'S BETTER TO HAVE TWO OFFICERS
4 COMPARED TO ONE IN A SQUAD CAR. HE WAS MAKING DECISIONS
5 AND WE WERE KIND OF WORKING TOGETHER. WE SEARCHED FOR
6 SEVERAL HOURS, HELICOPTER, BLOODHOUNDS, CALLED MORE SUPPORT
7 FROM THE SHERIFF'S OFFICE. WE WERE AT THE TRAFFIC CIRCLE
8 SEVERAL HOURS LATER NEAR THE PEDDLER. IT'S AT THE TRAFFIC
9 CIRCLE CLOSE TO THE STOP AND SHOP WHERE THE INCIDENT
10 OCCURRED.

11 Q DON'T GO INTO WHAT THE LADY TOLD YOU. TELL ME WHEN
12 YOU ENCOUNTERED THE DEFENDANT FRANK TOLEN AND WADE BRANNON.
13 TELL ME ABOUT WHEN YOU FOUND THEM.

14 A WE OBSERVED FRANK TOLEN AND BRANNON WALKING DOWN 378
15 IN THE DIRECTION OF LEXINGTON DRESSED IN BLACK. BOBBY
16 JONES PULLED UP THE VEHICLE IN THE CLOSE PROXIMITY OF THE
17 SUSPECTS. WE YELLED STOP. THE SUSPECTS BEGAN RUNNING.
18 I WAS ABLE TO EXIT OUT THE VEHICLE SINCE I WAS ON THE
19 PASSENGER SIDE, AND LIEUTENANT JONES WAS SECURING HIS
20 VEHICLE. I PURSUED AFTER THE INDIVIDUALS. DEPUTY JONES
21 WAS BEHIND ME IN CLOSE PROXIMITY. I HEARD SOME SPLASHING
22 NOISES, DIDN'T REALIZE AT THE TIME THAT THERE WAS A POND
23 THAT THE SUSPECTS FELL INTO.

24 I WAS ABLE TO SEE FRANK TOLEN AND GOT INTO A LITTLE
25 TUSSLE. WE WERE ON THE DEEP SIDE OF THE WATER. I WAS

MARK WHISENANT - CROSS - BY MR. WILLIAMS

243

1 AFRAID WE WERE GOING TO FALL IN. I DIDN'T KNOW IF HE COULD
2 SWIM OR WHAT WAS GOING TO HAPPEN BUT I WAS CONCERNED.

3 Q WERE YOU TRYING TO DRAG HIM OUT OF THE WATER AT THAT
4 POINT?

5 A YES, SIR.

6 Q OKAY. DID HE FIGHT WITH YOU?

7 A IT WAS A LITTLE TUSSLE. HE WASN'T TRYING TO HURT ME,
8 I BELIEVE, BUT I THINK HE WAS TRYING TO GET AWAY.

9 Q DID YOU PEPPER SPRAY HIM?

10 A YES, SIR, I DID.

11 Q AND YOU BROUGHT HIM ON OUT?

12 A YES, SIR.

13 Q WHAT ELSE DID YOU DO?

14 A I HANDCUFFED HIM AND PLACED HIM IN DEPUTY JONES'
15 CRUISER, WHICH I BELIEVE THEY WERE TRANSPORTED IN ANOTHER
16 CRUISER LATER THAT NIGHT.

17 Q OFFICER WHISENANT, ANSWER ANY QUESTIONS MR. WILLIAMS
18 HAS FOR YOU, PLEASE.

19 MR. WILLIAMS: MAY IT PLEASE THE COURT, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT.

22 CROSS EXAMINATION

23 BY MR. WILLIAMS:

24 Q OFFICER WHISENANT, AFTER YOU SPOKE WITH MR. DYSON
25 THAT EVENING, YOU ALL WENT OVER TO BATESBURG; IS THAT

MARK WHISENANT - CROSS - BY MR. WILLIAMS

1 CORRECT?

2 A YES, SIR.

3 Q AND YOU LOOKED AT SOME MUG SHOTS; IS THAT CORRECT?

4 A WELL, MR. DYSON LOOKED AT SOME MUG SHOTS.

5 Q HE LOOKED AT SOME MUG SHOTS. THAT WAS DONE WITH THE
6 PURPOSE OF TRYING TO IDENTIFY AND GET THE FEATURES OF THE
7 INDIVIDUALS WHO HAD ROBBED HIM; IS THAT CORRECT?

8 A YES, SIR.

9 Q NOW, I PRESUME HE IDENTIFIED MALES; IS THAT CORRECT?

10 A YES, SIR. TWO BLACK MALES IS WHAT HE DESCRIBED.

11 Q AND IN REVIEWING THE MUG SHOTS, DID HE REPORT TO YOU
12 THAT SOME OF THE INDIVIDUALS HAD SIMILAR FEATURES TO THE
13 SUSPECTS?

14 A HE STATED THE INDIVIDUAL HAD DREADLOCKS THAT I CAN
15 RECALL DURING THAT TIME.

16 Q OKAY. AND THAT WAS THE INDIVIDUAL ON THE MUG SHOT?

17 A THE INDIVIDUAL HE GAVE THE DESCRIPTION DURING THAT
18 TIME OF WHAT WAS SEEN FROM THE MUG SHOTS, HE WAS UNABLE TO
19 PICK OUT ANYONE FROM THE MUG SHOTS. I BELIEVE HE WAS UPSET
20 THAT NIGHT AND APPARENTLY I WOULD BE UPSET.

21 Q SO DID YOU SEE THE PHOTOGRAPHS THAT HE SAW THAT WAS
22 OFFERED FOR HIM TO LOOK AT?

23 A THERE WAS A STACK OF BOOKS. I WAS OBTAINING OTHER
24 INFORMATION TRYING TO FILL OUT MY FIELD REPORT DURING THAT
25 TIME. OFFICER HERLONG WROTE THE REPORT BASICALLY. I KNOW

BOBBY JONES - DIRECT - BY MR. MAYE

1 IT WAS A BIG BOOK. IT WAS A BIG VOLUME BOOK WITH A LOT OF
2 PICTURES IN IT.

3 Q AND AS MR. DYSON WAS GOING THROUGH THOSE BOOKS, DID
4 HE EVER ASK YOU TO COME OVER TO LOOK AT ANY PARTICULAR
5 PICTURE?

6 A NO, SIR. HE DIDN'T PICK ANYBODY OUT THAT NIGHT.

7 Q THANK YOU, SIR.

8 MR. WILLIAMS: THAT'S ALL I HAVE.

9 MR. MAYE: NO FURTHER QUESTIONS. WITHOUT ANY
10 OBJECTION CAN WE RELEASE OFFICER WHISENANT?

11 THE COURT: ANY OBJECTION, MR. WILLIAMS?

12 MR. WILLIAMS: NONE, YOUR HONOR.

13 THE COURT: YOU ARE EXCUSED.

14 MR. MAYE: THANK YOU FOR COMING FROM CHARLESTON.
15 THE STATE CALL BOBBY JONES TO THE STAND.

16
17 BOBBY JONES, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. MAYE:

21 Q OFFICER JONES, I KNOW YOU HAVE BEEN IN HERE. TALK AS
22 LOUD AS YOU CAN SO THE JURY CAN HEAR YOU.

23 A I TALK VERY LOW SO I HAVE TO HAVE A MICROPHONE.

24 Q TALK INTO THAT MIKE AND SPEAK AS LOUDLY AS YOU CAN.
25 INTRODUCE YOURSELF TO THE JURY.

A I'M BOBBY JONES. I PREVIOUSLY WORKED WITH THE SALUDA

BOBBY JONES - DIRECT - BY MR. MAYE

1 COUNTY SHERIFF'S DEPARTMENT. I AM NOW A RETIRED STATE
2 CONSTABLE.

3 Q YOU ARE STILL A STATE CONSTABLE NOW AND YOU ARE
4 RETIRED FROM THE SHERIFF'S DEPARTMENT?

5 A YES, SIR.

6 Q YOU WERE WORKING FOR THE SHERIFF'S DEPARTMENT IN
7 OCTOBER OF '96, WEREN'T YOU?

8 A YES, SIR, I WAS.

9 Q TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT YOUR
10 INVOLVEMENT IN THIS CASE WAS.

11 A I HAD JUST CAME BACK FROM GEORGIA ON A COMMUNITY
12 POLICING SEMINAR THE NIGHT BEFORE. I FOUND OUT ABOUT WHAT
13 HAD HAPPENED ABOUT THE ARMED ROBBERY THE NEXT DAY AROUND, I
14 THINK IT WAS, TWO O'CLOCK IN THE AFTERNOON, 2:30. FROM
15 WHAT INFORMATION I RECEIVED---

16 Q WHO DID YOU TALK TO ABOUT THE ROBBERY?

17 A ONE OF THE EMPLOYEES AT THE STOP AND SHOP.

18 Q MR. SMITH, FRONTIS SMITH?

19 A NO, I THINK IT WAS MRS. SMITH.

20 Q YOU TALKED TO MRS. SMITH AT THE TIME?

21 A RIGHT.

22 Q OKAY.

23 A SHE ADVISED ME OF THE INFORMATION SHE HAD---

24 MR. WILLIAMS: OBJECTION.

25 THE COURT: SUSTAINED.

BOBBY JONES - DIRECT - BY MR. MAYE

1 Q DON'T SAY WHAT SHE SAID. SAY WHAT YOU DID.

2 A AFTER RECEIVING INFORMATION WHERE THE SUSPECTS WERE
3 OR WERE SUPPOSED TO BE, I WENT AHEAD AND CALLED DISPATCH TO
4 GO AHEAD AND CALL MARK WHISENANT OUT, SERGEANT WHISENANT,
5 TO MEET ME AT THE TRAFFIC CIRCLE. AT THAT POINT I WENT TO
6 JEFFREY JENNINGS' RESIDENCE.

7 Q HE LIVED AT THE SAME PLACE AS FRANK TOLEN? JEFFREY
8 JENNINGS AND FRANK TOLEN---

9 A THAT'S WHERE HE WAS SUPPOSED TO BE.

10 Q THAT'S WHERE THEY WERE STAYING AT THE TIME. OKAY.

11 A THERE WAS NO ONE AT HOME AT THE TIME. SO I MET WITH
12 SERGEANT WHISENANT. WE WENT TO MR. TOLEN'S RESIDENCE ON
13 CAUGHMAN ACRES ROAD.

14 Q WENT DOWN TO BEN TOLEN'S RESIDENCE?

15 A BEN TOLEN'S RESIDENCE, RIGHT. AT THAT POINT WE
16 RECEIVED INFORMATION THAT THE SUSPECTS, IF I RECALL
17 CORRECTLY, WE RECEIVED INFORMATION THE SUSPECTS WERE IN THE
18 RESIDENCE AT THE TIME.

19 Q AT THE JENNINGS RESIDENCE?

20 A RIGHT.

21 Q OKAY.

22 A BEN TOLEN SAID TO US THAT HE WOULD GO---

23 Q DON'T TALK ABOUT WHAT BEN TOLEN SAID. DID YOU SEND
24 BEN TOLEN BACK UP TO THE JENNINGS RESIDENCE?

25 A RIGHT. HE WENT BACK TO THE JENNINGS RESIDENCE. WE

BOBBY JONES - DIRECT - BY MR. MAYE

1 WERE TRYING TO GET THE SUSPECTS BACK DOWN TO CAUGHMAN ACRES
2 WITHOUT THEM KNOWING WE WERE THERE.

3 Q SO YOU SENT BEN TOLEN UP THERE TO GET THEM?

4 A RIGHT.

5 Q WAS HE SUCCESSFUL?

6 A NO, HE WASN'T.

7 Q SO WHAT DID Y'ALL DO THEN?

8 A SHORTLY AFTER HE LEFT, MR. AND MRS. TOLEN THAT LIVED
9 AT THE RESIDENCE---

10 Q ON CAUGHMAN ROAD?

11 A RIGHT.

12 Q NOT THE ONE WHERE FRANK LIVED?

13 A RIGHT, THE GRANDPARENTS. THEY CAME AND TOLD US---

14 Q DON'T TALK ABOUT WHAT THEY TOLD YOU.

15 A WELL, WE RECEIVED INFORMATION THAT THE TWO SUSPECTS
16 WERE RUNNING OUT OF THE RESIDENCE INTO THE WOODED AREA
17 BEHIND THE HOUSE.

18 Q OKAY.

19 A AT THAT POINT WE LEFT THE CAUGHMAN ACRES AND HEADED
20 UP TOWARD THE JENNINGS RESIDENCE WHERE WE MET A SUBJECT.
21 HE SAID THAT THE TWO SUSPECTS HAD ALSO FLED THE
22 RESIDENCE.

23 Q OKAY.

24 A AT THAT POINT WE WENT TO THE RESIDENCE. AS FAR AS I
25 CAN RECALL -- IT'S BEEN QUITE A WHILE -- WENT TO THE

BOBBY JONES - DIRECT - BY MR. MAYE

1 RESIDENCE AND WE SAW THROUGH FRESH EVIDENCE WHERE THE
2 SUSPECTS HAD WENT OUT THROUGH SOME BUSHES.

3 Q YOU COULD SEE A TRAIL WHERE THEY HAD GONE OUT THE
4 BACK DOOR?

5 A A TRAIL. YOU COULD TELL IT HAD BEEN BEAT DOWN.

6 Q WHAT DID YOU DO AT THAT TIME?

7 A AT THAT POINT WE CALLED S.L.E.D. FOR THE DOGS AND THE
8 HELICOPTER. WE CALLED WILDLIFE. I THINK WE CALLED HIGHWAY
9 PATROL, ALL THE HELP WE COULD TO SURROUND THE AREA AND TRY
10 TO KEEP THEM IN THE AREA WHERE THEY COULD BE CAPTURED.

11 Q YOU WERE THE RANKING OFFICER AT THE SHERIFF'S
12 DEPARTMENT AT THAT TIME, WEREN'T YOU, OTHER THAN THE
13 SHERIFF? I MEAN, CONTROLLING THAT SCENE THAT WOULD HAVE
14 BEEN YOU AT THAT TIME?

15 A AT THAT TIME, RIGHT.

16 Q AT THAT TIME. WHAT DID YOU DO WITH YOUR SEARCH?

17 A WE SEARCHED UP UNTIL LATE THAT NIGHT WHEN WE RECEIVED
18 INFORMATION, I THINK IT WAS AROUND MAYBE 11:15 OR
19 SOMETHING, 11:30. WE KEPT -- MYSELF AND SERGEANT WHISENANT
20 KEPT GOING BACK TO THE STORES AT THE TRAFFIC CIRCLE AND
21 MAKING SURE THAT NO ONE HAD MAYBE -- A CAR HAD BEEN
22 HIJACAKED OR SOMEBODY TRIED TO HIJACK A CAR OR MAYBE TAKE A
23 CAR OR ANYTHING LIKE THAT NATURE WHEN A SUBJECT CAME UP AND
24 GIVE US INFORMATION TWO BLACK MALES FITTING THE DESCRIPTION
25 THAT THEY HAD HEARD OVER THE SCANNER WERE WALKING TOWARDS

BOBBY JONES - DIRECT - BY MR. MAYE

1 THE LEXINGTON COUNTY LINE. IF I RECALL CORRECTLY IT WAS
2 PAST THE CHURCH.

3 Q OKAY.

4 A THE NEW CHURCH. I CAN'T RECALL THE CHURCH RIGHT NOW.
5 WE PROCEEDED THAT WAY. MARK WHISENANT GOT ON THE RADIO AND
6 TOLD EVERYBODY ELSE, ALL THE OTHER OFFICERS, WHAT
7 INFORMATION WE HAD. WE WENT JUST PAST THE CHURCH AND THERE
8 IS A LITTLE HILL THAT DROPS OFF. AS WE CAME OVER THE HILL,
9 THE SUSPECTS WERE WALKING ON THE LEFT SIDE OF THE ROAD
10 TOWARDS THE COUNTY LINE.

11 Q WHAT DID YOU DO?

12 A I PULLED OVER ON THE SIDE OF THE ROAD AND IF I
13 REMEMBER CORRECTLY, WE BOTH EXITED THE VEHICLE, STEPPED OUT
14 THE DOOR. MARK CAME OUT. I CAME OUT. WE HOLLERED,
15 "FREEZE." BOTH SUSPECTS RAN. MARK TOOK OFF AFTER ONE AND
16 I SECURED THE VEHICLE, CUT THE BLUE LIGHTS ON AND LOCKED
17 THE CAR UP. I TOOK OUT AFTER THE OTHER SUBJECT. ONE
18 SUBJECT RAN DOWN THE SIDE OF THE ROAD, RAN INTO WHAT I CALL
19 A BRIER THICKET, A DEEP DITCH. THE OTHER ONE CUT THROUGH A
20 KIND OF DRIVEWAY AND THEN UP KIND OF TO A POND AND WENT
21 INTO A POND. I HEARD BOTH OF THEM HIT THE WATER.

22 Q THEY RAN OFF INTO THE POND TRYING TO FLEE.

23 A I FEEL SURE THEY DIDN'T KNOW THE POND WAS THERE.

24 Q GOING TOWARDS LEXINGTON WHERE IS THE POND IN RELATION
25 TO THE TRAFFIC CIRCLE?

1 A THE POND WOULD BE RIGHT IN HERE (INDICATING)--

2 Q ON THE LEFT-HAND SIDE OF THE ROAD GOING TOWARDS
3 LEXINGTON?

4 A RIGHT.

5 Q RIGHT DOWN FROM THE CHURCH?

6 A IT'S A SMALL POND. THE POND IS HIDDEN BY SMALL
7 THICKETS THAT RUNS ALONG THE HIGHWAY EXCEPT FOR THE
8 DRIVEWAY.

9 Q SO YOU REALLY CAN'T SEE THAT YOU ARE RUNNING OF INTO
10 A POND?

11 A YOU HAVE TO LOOK CLOSE IN THE DAYTIME TO SEE IT.

12 Q BUT YOU SURE CAN'T SEE IT AT NIGHT?

13 A NO, SIR.

14 Q THANK YOU. ANSWER ANY QUESTIONS MR. WILLIAMS HAS.

15 THE COURT: MR. WILLIAMS.

16 MR. WILLIAMS: THANK YOU, YOUR HONOR.

17 CROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q JUST OUT OF CURIOSITY IF YOU WERE STILL EMPLOYED WITH
20 THE SHERIFF'S DEPARTMENT, I WOULD KNOW HOW TO REFER TO YOU;
21 BUT AS A STATE CONSTABLE HOW ARE YOU ADDRESSED? DO YOU
22 HAVE A HANDLE?

23 A JUST CALL ME BOBBY, MR. WILLIAMS. THAT WOULD BE
24 FINE.

25 Q THANK YOU, SIR. MR. JONES, IN YOUR YEARS OF LAW

BOBBY JONES - CROSS - BY MR. WILLIAMS

1 ENFORCEMENT, I PRESUME YOU HAVE HAD AN OCCASION TO SEE A
2 LOT OF DIFFERENT HAIRSTYLES BEING WORN BY AFRICAN-AMERICAN
3 MEN; IS THAT CORRECT?

4 A YES, SIR.

5 Q AN AFRO WHERE THERE IS A LOT OF HAIR ON THE HEAD; IS
6 THAT CORRECT?

7 A RIGHT.

8 Q AND DOWN TO A BALD HEAD?

9 A RIGHT.

10 Q AND/OR CLOSE CUT?

11 A RIGHT.

12 Q AND CORN ROLLS. DO YOU KNOW WHAT THOSE ARE?

13 A I BELIEVE SO.

14 Q A TYPE OF PLAT, ISN'T IT?

15 A RIGHT.

16 Q AND DREADLOCKS?

17 A RIGHT.

18 Q AND DREADLOCKS ARE THE TYPE OF HAIRSTYLE THAT FLOWS A
19 LITTLE FREELY AND DROPS DOWN, DOESN'T IT?

20 A RIGHT.

21 Q WHILE CORN ROLLS OR PLATS ARE CLOSER TO THE HEAD;
22 ISN'T THAT CORRECT?

23 A RIGHT.

24 Q NOW, DO YOU RECALL WHAT HAIRSTYLE MR. TOLAN HAD THE
25 NIGHT HE WAS TAKEN INTO CUSTODY?

BOBBY JONES - REDIRECT - BY MR. MAYE

1 A MR. WILLIAMS, BOTH OF THOSE GUYS WERE SO WET-I...
2 COULDN'T TELL YOU WHAT KIND OF HAIRSTYLE THAT HAD THAT
3 NIGHT.

4 Q YOU COULDN'T?

5 A NO, SIR.

6 Q YOU COULDN'T TELL?

7 A THEY WERE SOAKED FROM HEAD TO TOE AND IT'S BEEN QUITE
8 A WHILE BACK.

9 Q SO YOU CAN'T RECALL WHAT TYPE OF HAIRSTYLE THEY HAD?

10 A RIGHT NOW I COULDN'T.

11 Q THANK YOU, SIR.

12 MR. MAYE: ONLY ONE QUICK QUESTION.

13 RE DIRECT EXAMINATION

14 BY MR. MAYE:

15 Q THE TRAFFIC CIRCLE AND THE SCENE OF THIS CRIME IS IN
16 SALUDA COUNTY, ISN'T IT?

17 A BEG YOUR PARDON?

18 Q IT'S IN SALUDA COUNTY. THE SCENE OF THE CRIME AND
19 THE TRAFFIC CIRCLE, THAT'S WITHIN THE COUNTY OF SALUDA;
20 ISN'T IT?

21 A CORRECT.

22 MR. MAYE: NOTHING FURTHER.

23 THE COURT: YOU CAN STEP DOWN.

24 THE WITNESS: THANK YOU, SIR.

25 MR. MAYE: MR. WILLIAMS, ANY OBJECTION TO THIS

1 OFFICER BEING EXCUSED?

2 MR. WILLIAMS: NONE.

3 THE COURT: YOU ARE EXCUSED, SIR.

4 MR. MAYE: YOUR HONOR, WITH THAT THE STATE

5 RESTS.

6 THE COURT: MADAME FORELADY, LADIES AND
7 GENTLEMEN, THE STATE HAS RESTED, MEANING THAT THEY HAVE
8 INTRODUCED THE TESTIMONY AND EXHIBITS THAT THEY WILL BE
9 INTRODUCING IN THEIR CASE IN CHIEF.

10 AT THIS POINT IN THE TRIAL, THERE ARE SOME
11 MATTERS OF LAW I WILL BE TAKING UP WITH THE ATTORNEYS.
12 RATHER THAN HAVE YOU OUT AND COME BACK IN AND THEN BREAK
13 FOR LUNCH, WE WILL GO AHEAD AND LET YOU GO TO LUNCH WHILE
14 DEAL WITH THESE OTHER MATTERS HERE IN THE COURTROOM.

15 YOU ARE NOT PERMITTED TO DISCUSS THE CASE WITH
16 ANYONE. SO DON'T TALK WITH ANYONE ABOUT THE CASE. IF
17 YOU WILL BE BACK IN YOUR JURY ROOM PLEASE AT TWO O'CLOCK,
18 WE WILL CONTINUE AT THAT TIME. AGAIN, DON'T DISCUSS THE
19 CASE. HAVE A GOOD LUNCH AND WE WILL SEE YOU BACK AT TWO
20 O'CLOCK. EVERYONE ELSE STAY SEATED PLEASE WHILE THE JUR
21 IS EXCUSED.

22 (THE JURY IS EXCUSED FOR LUNCH AT 12:30 P.M.)

23 THE COURT: BEFORE I TAKE ANY MOTIONS THAT MI
24 BE MADE AT THIS TIME, THERE HAS BEEN A WRITTEN STIPULAT
25 THAT WAS GIVEN TO THE COURT PRIOR TO THE CASE STARTING,

1 STIPULATION THAT THE DEFENDANT FRANK TOLEN STIPULATES FOR
2 THE PURPOSES OF PROSECUTION UNDER 16-23-30, WHICH IS ONE OF
3 THE CHARGES AND ONE OF THE INDICTMENTS, THAT HE HAS A PRIOR
4 CONVICTION IN THE SOUTH CAROLINA COURT SYSTEM FOR A CRIME
5 OF VIOLENCE. THAT HAS BEEN STIPULATED TO.

6 I HAD INDICATED I WOULD PUBLISH THAT TO THE JURY
7 PRIOR TO THE STATE RESTING. EVERYONE UNDERSTOOD THAT. I
8 WANTED TO GET THAT ON THE RECORD. IT WILL BE PUBLISHED TO
9 THEM PRIOR TO CONTINUING, BUT I NEEDED TO GET THAT IN THE
10 RECORD AT THIS TIME. I WOULD BE GLAD TO HEAR ANY MOTIONS,
11 MR. WILLIAMS, THAT YOU MIGHT HAVE AT THIS TIME.

12 MR. WILLIAMS: YOUR HONOR, WE HAVE NO MOTIONS AT
13 THIS TIME. WHILE WE DID HAVE -- WELL, WHILE WE DID HAVE A
14 MOTION TO STRIKE CERTAIN TESTIMONY, I THINK IT WAS DURING
15 THE TESTIMONY OF OFFICER HERLONG; WAS IT?

16 MR. MAYE: I COULDN'T TELL YOU. I DON'T KNOW
17 WHAT YOU ARE TALKING ABOUT.

18 THE COURT: AT THE BENCH CONFERENCE THERE WAS
19 SOME TESTIMONY THAT HAD BEEN MADE AND ESSENTIALLY MR.
20 WILLIAMS, I BELIEVE, INDICATED THAT HE MEANT TO OBJECT. HE
21 WAS TAKING NOTES AND MEANT TO OBJECT TO CERTAIN TESTIMONY
22 GIVEN BY THE OFFICER. I DON'T REMEMBER IF IT WAS HERLONG
23 OR WHISENANT, BUT THE TESTIMONY GIVEN BY ONE OF THOSE
24 OFFICERS CONCERNING SOMETHING THAT I BELIEVE MR. BRANNON
25 HAD TOLD HIM.

1 MR. WILLIAMS: YES, SIR.

2 THE COURT: CONCERNING THE THROWING DOWN OF THE
3 PISTOL, I BELIEVE.

4 MR. WILLIAMS: THAT'S CORRECT. IT WAS OFFICER
5 WHISENANT. WHAT HAPPENED WAS LATER IN THE TESTIMONY,
6 OFFICER WHISENANT CLEARED UP MY CONCERN. HE HAD SAID
7 BRANNON. I THOUGHT HE HAD SAID BROWN. SO THAT'S WHAT IT
8 WAS.

9 THE COURT: THAT'S FINE. NO MOTIONS. WE WILL
10 START BACK AT TWO O'CLOCK.

11 MR. MAYE: THANK YOU, YOUR HONOR.

12 (WHEREUPON THERE WAS A LUNCHEON RECESS).

13 THE COURT: ANYTHING BEFORE WE START BACK, MR.

14 WILLIAMS?

15 MR. WILLIAMS: NOTHING FROM US, YOUR HONOR.

16 THE COURT: ANYTHING FROM THE STATE?

17 MR. MAYE: NOTHING FROM THE STATE, YOUR HONOR.

18 THE COURT: LET'S BRING THE JURY IN, PLEASE.

19 AM GOING TO PUBLISH THE STIPULATION BEFORE WE GET START
20 ON THE DEFENSE.

21 (THE JURY RETURNS TO THE COURTROOM AT 2 P.M.)

22 THE COURT: LADIES AND GENTLEMEN, BEFORE WE

23 CONTINUE WITH THE TESTIMONY, I HAD MEANT TO TELL YOU
24 EARLIER TODAY AND I FAILED TO DO THAT; BUT THERE HAS
25 STIPULATION THAT HAS BEEN ENTERED INTO BY THE STATE A

JANICE EARGLE - DIRECT - BY MR. WILLIAMS

257

1 DEFENDANT AND COUNSEL. A STIPULATION BEING AN AGREEMENT
2 FOR PURPOSES OF THIS TRIAL THAT YOU CAN ACCEPT THE
3 STIPULATION AS A FACT WITHOUT THE REQUIREMENT OF ADDITIONAL
4 PROOF.

5 I AM SIMPLY GOING TO READ TO YOU THE STIPULATION
6 THAT HAS BEEN SIGNED BY THE DEFENDANT AND HIS COUNSEL AND
7 THE ASSISTANT SOLICITOR. THE DEFENDANT FRANK TOLEN HEREBY
8 STIPULATES THAT FOR PURPOSES OF PROSECUTION UNDER SECTION
9 16-23-30 OF THE SOUTH CAROLINA CODE OF LAWS, HE HAS A PRIOR
10 CONVICTION IN THE SOUTH CAROLINA COURT SYSTEM FOR A CRIME
11 OF VIOLENCE. THAT IS A STIPULATION MADE BY THE PARTIES.

12 MR. WILLIAMS, YOU MAY CALL YOUR FIRST WITNESS.

13 MR. WILLIAMS: THANK YOU, YOUR HONOR. IF IT
14 PLEASES THE COURT. WE CALL MR. WADE LAMAR BRANNON.

15 OFFICER: YOUR HONOR, I DON'T THINK WE BROUGHT
16 HIM BACK OVER YET.

17 THE COURT: GO AHEAD AND GET HIM UP HERE AND IF
18 YOU WILL CALL ANOTHER WITNESS, PLEASE.

19 MR. WILLIAMS: YES, SIR, YOUR HONOR. MAY IT
20 PLEASE THE COURT. WE CALL MRS. JANICE EARGLE.

21 JANICE B. EARGLE, BEING FIRST
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. WILLIAMS:

25 Q MRS. EARGLE, STATE YOUR FULL NAME FOR THE RECORD,

JANICE EARGLE - DIRECT - BY MR. WILLIAMS

1 PLEASE.

2 A JANICE B. EARGLE.

3 Q WHERE ARE YOU EMPLOYED AT?

4 A AT THE SALUDA SHERIFF'S OFFICE.

5 Q WHAT IS YOUR POSITION THERE?

6 A JAILER ADMINISTRATOR.

7 Q YOU HAVE BEEN IN THAT POSITION HOW LONG NOW?

8 A FOR ALMOST A YEAR.

9 Q NOW, AS THE JAIL ADMINISTRATOR, DO YOU ALL HAVE AN
10 OPPORTUNITY TO BOOK INCOMING SUSPECTS; IS THAT CORRECT?

11 A YES, SIR.

12 Q CAN YOU EXPLAIN THAT PROCESS TO ME.

13 A WHEN THEY CAME IN AND ARE PLACED UNDER ARREST, THEY
14 ARE BROUGHT TO THE LAW ENFORCEMENT CENTER BY THE OFFICER.
15 THEY TAKE THE CUFFS OFF. THEY USUALLY HAVE A FRISK DOWN
16 SEARCH ON THE TIME OF ARREST. THEN WE USUALLY SEARCH THEM
17 OR PAT THEM DOWN AGAIN IN THE BOOKING AREA. THEN WE TAKE
18 INFORMATION FROM THEM AND THEY LET US KNOW WHAT THEY ARE
19 CHARGED WITH AND WE FILL OUT THE NECESSARY INFORMATION.

20 Q DO YOU DO LIKE A PROPERTY INVENTORY?

21 A YES, SIR.

22 Q DO YOU TAKE FINGERPRINTS?

23 A YES, SIR.

24 Q AND DO YOU EVENTUALLY TAKE A MUG SHOT?

25 A YES, SIR.

Appendix 260

JANICE EARGLE - DIRECT - BY MR. WILLIAMS

259

1 Q THESE ARE THE RECORDS YOU KEEP IN THE ORDINARY COURSE
2 OF RUNNING THE JAIL; IS THAT CORRECT?

3 A SIR?

4 Q THESE ARE RECORDS THAT YOU KEEP IN THE ORDINARY
5 COURSE OF RUNNING THE JAIL?

6 A YES, SIR, WE DO KEEP THEM.

7 Q DO YOU HAVE A BOOKING FILE ON MR. FRANK TOLEN?

8 A YES, SIR, I DO.

9 Q CAN YOU TELL ME WHAT DATE MR. TOLEN CAME TO THE
10 SALUDA COUNTY JAIL?

11 A HE CAME IN ON 10/2/96.

12 Q DID YOU ALL HAVE AN OCCASION TO TAKE HIS PHOTOGRAPH?

13 A YES, SIR, THEY DID.

14 Q WHAT TYPE OF HAIRSTYLE WAS HE HEARING?

15 A HE HAD IT PLATED DOWN THE SIDE AND TO THE BACK.

16 Q THANK YOU.

17 MR. WILLIAMS: I HAVE NO FURTHER QUESTIONS.

18 THE COURT: CROSS EXAMINE?

19 MR. MAYE: NO QUESTIONS.

20 THE COURT: YOU MAY STEP DOWN. UNLESS THERE IS
21 SOME OBJECTION MADE WHEN A WITNESS IS STEPPING DOWN, I AM
22 GOING TO GO AHEAD AND EXCUSE THEM. IF Y'ALL WANT THEM TO
23 STAY HERE, LET THE COURT KNOW. YOU WILL BE EXCUSED UNLESS
24 THERE IS AN OBJECTION. YOU ARE EXCUSED.

25 MR. WILLIAMS: WE NEXT CALL MR. OATON DYSON.

Appendix 261

OATON DYSON - DIRECT - BY MR. WILLIAMS

260

1 OATON DYSON, HAVING BEEN--
2 PREVIOUSLY DULY SWORN, RESUMES THE WITNESS STAND AND
3 TESTIFIED AS FOLLOWS:

4 THE COURT: MR. DYSON, YOU WERE PLACED UNDER OATH
5 YESTERDAY. YOU ARE STILL UNDER OATH. WE WON'T RESWEAR YOU
6 BUT I WILL REMIND YOU THAT YOU ARE STILL UNDER OATH. HAVE
7 A SEAT, PLEASE.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q MR. DYSON, YOU PREVIOUSLY GAVE SOME TESTIMONY RELATED
11 TO A CROWN ROYAL BAG. WHAT I WOULD LIKE FOR YOU TO DO FOR
12 ME AND THIS JURY IS DESCRIBE WHAT A CROWN ROYAL BAG LOOKS
13 LIKE.

14 A IT'S PURPLE WITH GOLD WRITING AND GOLD STRAPS.

15 Q WHAT IS WRITTEN ON THE BAG?

16 A CROWN ROYAL.

17 Q NOW, YOU INDICATED THAT YOU HAD A CROWN ROYAL BAG IN
18 YOUR TRUCK; IS THAT CORRECT?

19 A RIGHT.

20 Q WHAT SIZE WAS THE BAG?

21 A I DON'T KNOW EXACTLY WHAT SIZE IT WAS. THEY COME IN
22 THREE OR FOUR DIFFERENT SIZES.

23 THE COURT: PULL THAT MICROPHONE OVER, PLEASE.

24 A THEY COME IN THREE OR FOUR DIFFERENT SIZES. I DON'T
25 KNOW EXACTLY WHAT SIZE THE ONE I HAD WAS.

Appendix 262

OATON DYSON - DIRECT - BY MR. WILLIAMS

261

1 Q DO YOU THINK THIS WOULD HAVE BEEN THE SMALLEST SIZE
2 OR THE LARGEST?

3 A SOMEWHERE IN BETWEEN.

4 Q SOMEWHERE IN BETWEEN?

5 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

6 Q CAN YOU DEMONSTRATE WITH YOUR HANDS FOR US, PLEASE,
7 ABOUT THE SIZE THE BAG WOULD HAVE BEEN. WOULD IT HAVE BEEN
8 ABOUT THIS SIZE (INDICATING) VERY SMALL OR THIS SIZE
9 (INDICATING)?

10 A I WOULD SAY THAT (INDICATING).

11 Q A RELATIVELY LARGE BAG IS WHAT YOU ARE SAYING?

12 A YES.

13 Q IF THAT'S SOMEWHERE IN BETWEEN, WHAT IS THE BIGGEST
14 CROWN ROYAL BAG YOU HAVE EVER SEEN?

15 A ABOUT LIKE THAT (INDICATING).

16 Q ABOUT LIKE THAT?

17 A A BIG ONE.

18 Q THAT'S ABOUT TWO FEET?

19 A IT'S A BIG BAG.

20 Q ABOUT TWO FEET?

21 A I DON'T KNOW EXACTLY.

22 Q NOW, ON THE EVENING IN QUESTION, YOU INDICATED YOU
23 RAN UP ON THE TOP OF GARAGE; IS THAT CORRECT?

24 A RIGHT.

25 Q YOU LOOKED DOWN AND SAW MR. TOLEN WITH THE BAG IN HIS

Appendix 263

OATON DYSON - DIRECT - BY MR. WILLIAMS

262

1 HAND?

2 A MR. TOLEN? NO, I DIDN'T SAY MR. TOLEN HAD THE BAG.

3 Q YOUR TESTIMONY EARLIER WASN'T THAT MR. TOLEN HAD THE
4 BAG?

5 A NO. THE OTHER GUY HAD THE BAG. THAT'S WHAT I STATED
6 TO YOU.

7 Q NOW YOU ARE SAYING THE OTHER GUY HAD THE BAG?

8 A RIGHT.

9 MR. MAYE: YOUR HONOR, I WILL OBJECT TO THE
10 LEADING FORM OF HIS QUESTION. THIS IS HIS WITNESS.

11 THE COURT: I SUSTAIN AS TO THE LAST QUESTION.
12 COUNSEL, REPHRASE PLEASE.

13 Q HOW FAR AWAY FROM YOU WAS THE PERSON THAT HAD THE
14 BAG, HOW MANY FEET?

15 A I WAS ON THE ROOF. I DON'T KNOW HOW TALL THE
16 BUILDING WAS.

17 Q WHAT IS YOUR BEST ESTIMATE?

18 A I WOULD SAY FROM ME TO YOU.

19 Q FROM ME TO YOU?

20 A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE). LOOKING
21 DOWN.

22 Q LOOKING DOWN. HOW WAS THE PERSON CARRYING THE BAG IN
23 THEIR HAND? WAS THE BAG FOLDED UP?

24 A LIKE HE HAD IT, IT WAS FULL OF COINS. SO I GUESS HE
25 MUST HAVE HAD THE TOP OF THE BAG.

Appendix 264

OATON DYSON - DIRECT - BY MR. WILLIAMS

263

1 Q HE HAD THE TOP OF IT?

2 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

3 Q THE BACK SIDE OF HIS HAND OR THE FRONT SIDE?

4 A OH, I DON'T KNOW. I JUST SEEN THE BAG IN HIS HAND.

5 Q YOU COULDN'T TELL IF IT WAS THE BACK SIDE OR THE
6 FRONT SIDE OF HIS HAND?

7 MR. MAYE: AGAIN, I WILL OBJECT TO LEADING. THIS
8 IS HIS WITNESS. HE HAD AMPLE OPPORTUNITY TO CROSS THIS
9 WITNESS. ALL THESE QUESTIONS ARE LEADING QUESTIONS.

10 THE COURT: GO AHEAD WITH THE QUESTION, MR.
11 WILLIAMS. DON'T ASK LEADING QUESTIONS.

12 MR. WILLIAMS: YOUR HONOR, I REQUEST PERMISSION
13 OF THE COURT TO TREAT MR. DYSON AS A HOSTILE WITNESS.

14 THE COURT: WELL, HE HAS GOT TO -- MY
15 UNDERSTANDING OF THE RULES IS HE HAS GOT TO DEMONSTRATE
16 SOME HOSTILITY OR THERE BE SOME SURPRISE OR SOMETHING ALONG
17 THOSE LINES. YOU CAN STILL, THE RULES ARE CLEAR, IT USED
18 TO BE THAT A PERSON VOUCHERED FOR A WITNESS'S VERACITY. NOW
19 ANYBODY CAN PUT ANY WITNESS UP AND IMPEACH THEM OR
20 WHATEVER.

21 I DON'T BELIEVE THERE HAS BEEN ANY SHOWING OF ANY
22 HOSTILITY. SO AS FAR AS HAVING HIM DECLARED HOSTILE, I AM
23 NOT GOING TO DO THAT; BUT I DON'T THINK IT WILL RESTRICT
24 ANY QUESTIONS YOU MIGHT ASK HIM. GO AHEAD.

25 MR. WILLIAMS: THANK YOU, JUDGE.

OATON DYSON - DIRECT - BY MR. WILLIAMS

- 1 Q WHICH HAND DID THE INDIVIDUAL HAVE THE BAG IN?
- 2 A I DON'T RECALL WHAT HAND IT WAS.
- 3 Q WHERE WAS THE INDIVIDUAL HOLDING THE BAG AT? WAS HE
- 4 HOLDING IT DOWN TO HIS SIDE, BEHIND HIM OR IN FRONT OF HIM?
- 5 A DOWN TO HIS SIDE.
- 6 Q WAS IT COMPLETELY TO HIS SIDE OR WAS IT SLIGHTLY IN
- 7 FRONT OR SLIGHTLY BEHIND?
- 8 A DOWN TO HIS SIDE.
- 9 Q SO DIRECTLY TO HIS SIDE?
- 10 A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).
- 11 Q DIRECTLY TO THE SIDE?
- 12 A YEAH, I WOULD SAY SO.

MR. WILLIAMS: I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS EXAMINE?

MR. MAYE: NOTHING.

THE COURT: YOU MAY STEP DOWN.

MR. BAGGETT: IS THIS WITNESS EXCUSED?

THE COURT: HE IS EXCUSED UNLESS THERE IS SOME

OBJECTION. SINCE HE HAS BEEN CALLED BY MR. WILLIAMS UNLES

THE STATE OBJECTS, HE IS EXCUSED.

MR. BAGGETT: NO OBJECTION.

THE COURT: YOU ARE EXCUSED, SIR.

MR. MAYE: NO OBJECTION.

THE COURT: HAVE THEY GOT MR. BRANNON OVER HERE?

WOULD YOU LIKE TO CALL HIM OR SOMEONE ELSE?

1 MR. WILLIAMS: YES, SIR, YOUR HONOR, MR. BRANNON.
2

3 WADE LAMAR BRANNON, III,
4 HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS
5 STAND AND TESTIFIED AS FOLLOWS:.

6 THE COURT: MR. BRANNON, YOU HAVE ALREADY BEEN
7 SWORN IN. WE ARE NOT GOING TO RESWEAR YOU. YOU ARE STILL
8 UNDER OATH. HAVE A SEAT BACK IN THE WITNESS CHAIR. MR.
9 WILLIAMS.

10 MR. WILLIAMS: THANK YOU, JUDGE.
11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q MR. BRANNON, ON THE EVENING THAT YOU PARTICIPATED IN
14 THE ROBBERY OF MR. DYSON, AT WHAT POINT DID YOU GET---

15 MR. MAYE: YOUR HONOR, I WILL OBJECT TO LEADING
16 QUESTIONS. THIS IS HIS WITNESS. HE CAN ASK HIM QUESTIONS
17 BUT ALL OF THE QUESTIONS HE IS ASKING ARE LEADING.

18 THE COURT: THE QUESTION THAT WAS JUST BEING
19 ASKED, "AT WHAT POINT," THAT IS NOT A LEADING QUESTION.
20 OVERRULED. GO AHEAD, MR. WILLIAMS.

21 MR. WILLIAMS: THANK YOU, JUDGE.

22 Q AT WHAT POINT DID YOU GET WITH MR. FRANK TOLEN?

23 A HE CAME TO MY HOUSE. I THINK IT WAS OCTOBER THE 1ST
24 OR COULD HAVE BEEN AUGUST 31ST, YOU KNOW, FROM AUGUST 31ST
25 TO LIKE AUGUST (SIC) 1ST TO THE 2ND.

Q AUGUST 31ST?

WADE BRANNON - DIRECT - BY MR. WILLIAMS

1 A YEAH.

2 Q NOW, FROM THE TIME THE ROBBERY WAS COMMITTED, DID YOU
3 STAY WITH MR. TOLEN THE ENTIRE TIME UNTIL YOU ALL WERE
4 ARRESTED?

5 A YES.

6 Q WHAT HAIRSTYLE WAS MR. TOLEN WEARING?

7 A HE HAD BRAIDS.

8 Q WERE THEY CLOSE TO HIS HEAD?

9 A WERE THEY CLOSE TO HIS HEAD?

10 Q LIKE PLATS.

11 A YES.

12 Q IT WAS NOT DREADLOCKS THOUGH, RIGHT?

13 A NO.

14 Q THANK YOU, SIR.

MR. WILLIAMS: I HAVE NO FURTHER QUESTIONS.

THE COURT: ANY CROSS EXAMINATION?

MR. MAYE: NOTHING.

THE COURT: YOU MAY STEP DOWN.

(PAUSE).

THE COURT: MR. WILLIAMS.

MR. WILLIAMS: MAY IT PLEASE THE COURT, YOUR

HONOR.

THE COURT: ALL RIGHT, SIR.

MR. WILLIAMS: LADIES AND GENTLEMEN, WE ARE AT

THE POINT IN THE TRIAL---

1 THE COURT: WAIT. WHAT ARE YOU DOING? ———
2

3 MR. WILLIAMS: JUDGE, WE REST.
4

5 THE COURT: OKAY. WE ARE NOT TO CLOSING YET.
6

7 MR. WILLIAMS: I GOT A LITTLE AHEAD OF MYSELF.
8

9 THE COURT: THE DEFENSE IS RESTING AT THIS TIME;
10 IS THAT RIGHT?
11

12 MR. WILLIAMS: YES, SIR.
13

14 THE COURT: ANY REPLY OR REBUTTAL FROM THE STATE?
15

16 MR. MAYE: NONE FROM THE STATE, YOUR HONOR.
17

18 THE COURT: MADAME FORELADY, AND LADIES AND
19 GENTLEMEN, THAT IS ALL THE TESTIMONY AND EVIDENCE THAT WILL
20 BE ENTERED IN THIS CASE. I NEED TO HAVE A BRIEF CONFERENCE
21 WITH THE ATTORNEYS TO DISCUSS WITH THEM WHAT I AM GOING TO
22 BE INSTRUCTING YOU. THAT IS PART OF OUR RULES AND
23 PROCEDURE. THIS SHOULD NOT TAKE VERY LONG.
24

25 AT THIS POINT YOU ARE STILL NOT PERMITTED TO
DISCUSS THE CASE, BUT I WILL ASK YOU TO STEP BACK IN THE
JURY ROOM FOR JUST A FEW MINUTES WHILE I HAVE THIS
CONFERENCE.

THEN WE WILL HAVE YOU BACK. YOU WILL HEAR THE
CLOSING ARGUMENTS FROM THE ATTORNEYS. THEN I WILL EXPLAIN
THE LAW TO YOU. PLEASE DON'T TALK ABOUT THE CASE. STEP
BACK TO YOUR JURY ROOM. EVERYONE ELSE STAY SEATED.

(THE JURY RETIRES TO THE JURY ROOM).

THE COURT: LET ME TALK TO COUNSEL IN CHAMBERS

1 ABOUT CHARGES AND THEN WE WILL HAVE CLOSING ARGUMENTS.
2 (WHEREUPON THERE WAS RECESS).

3 THE COURT: BEFORE WE START BACK, I WANT THE
4 RECORD TO REFLECT THAT I HAVE HAD A CONFERENCE WITH THE
5 ATTORNEYS AS FAR AS CHARGES ARE CONCERNED. COUNSEL KNOWS
6 GENERALLY WHAT THE CHARGE WILL BE.

7 BEFORE I GET THE JURY BACK, I KNOW I AM REQUIRED
8 IF A DEFENDANT WAIVES HIS RIGHT TO REMAIN SILENT, I AM
9 REQUIRED TO GO OVER THAT RIGHT WITH HIM. I DON'T THINK
10 THERE IS ANY REQUIREMENT THAT I GO OVER THAT RIGHT WITH THE
11 DEFENDANT WHO IS EXERCISING THAT RIGHT, BUT OUT OF AN
12 ABUNDANCE OF CAUTION I WILL DO THAT.

13 MR. TOLEN, I AM SURE THAT YOU HAVE HAD
14 CONVERSATIONS WITH MR. WILLIAMS ABOUT YOUR RIGHT TO REMAIN
15 SILENT AND THE FACT THAT IT CANNOT BE USED AGAINST YOU. I
16 INTEND AT THIS TIME -- YOU HAVE NOT BEEN CALLED AS A
17 WITNESS -- I WILL BE INSTRUCTING THE JURY THAT THEY CANNOT
18 HOLD THAT AGAINST YOU IN ANY WAY. THEY CAN'T EVEN DISCUSS
19 THAT IN THE JURY ROOM. DO YOU UNDERSTAND THAT?

20 DEFENDANT TOLEN: YES, SIR.

21 THE COURT: AND YOU HAVE MADE A CHOICE TO
22 EXERCISE YOUR RIGHT TO REMAIN SILENT; IS THAT CORRECT?

23 DEFENDANT TOLEN: YES, SIR.

24 THE COURT: HAVE YOU HAD A FULL OPPORTUNITY TO
25 DISCUSS THAT WITH YOUR ATTORNEY?

1 DEFENDANT TOLEN: YES, SIR.

2 THE COURT: ARE YOU SATISFIED WITH HIS ADVICE
3 CONCERNING THAT; IS THAT CORRECT?

4 DEFENDANT TOLEN: YES, SIR.

5 THE COURT: ANYTHING ELSE TO PUT ON THE RECORD AS
6 FAR AS THAT IS CONCERNED, MR. WILLIAMS?

7 MR. WILLIAMS: NO, SIR, YOUR HONOR.

8 THE COURT: THE STATE WILL BE OPENING ON THE LAW,
9 I BELIEVE; IS THAT RIGHT?

10 MR. MAYE: YES, SIR, BRIEFLY.

11 THE COURT: LET'S BRING THE JURY IN, PLEASE.
12 (THE JURY RETURNS TO THE COURTROOM).

13 THE COURT: LADIES AND GENTLEMEN, AT THIS STAGE
14 OF THE TRIAL, YOU ARE GOING TO HEAR THE CLOSING ARGUMENTS
15 FROM THE ATTORNEYS. I WILL AGAIN ADVISE YOU THAT THE
16 ATTORNEYS ARE NOT TESTIFYING. THEY WILL BE, I'M SURE,
17 CITING PORTIONS OF TESTIMONY THAT YOU HAVE HEARD. THEY
18 HAVE A RIGHT TO DO THAT.

19 I WOULD SIMPLY POINT OUT TO YOU THAT IF YOUR
20 MEMORY DIFFERS WITH THE ATTORNEYS' MEMORY ON WHAT THE
21 TESTIMONY HAS BEEN, YOU RELY ON YOUR MEMORY. WE DO HAVE
22 ALL THE TESTIMONY RESERVED AND PRESERVED IF IT BECOMES
23 NECESSARY FOR YOU TO LISTEN TO ANY OF IT AGAIN.

24 AS FAR AS THE PROCEDURE IS CONCERNED, THE STATE
25 WILL MAKE THE FIRST ARGUMENT. THAT WILL BE FOLLOWED BY

1 DEFENSE COUNSEL'S ARGUMENT, AND THE STATE HAS THE RIGHT TO
2 MAKE THE FINAL ARGUMENT.

3 ONCE THE ATTORNEYS HAVE COMPLETED THEIR CLOSING
4 ARGUMENTS, I AM GOING TO INSTRUCT YOU IN THE LAW. AT THAT
5 POINT YOU WILL BE SENT BACK TO DELIBERATE AND TO REACH A
6 VERDICT. PLEASE GIVE BOTH ATTORNEYS YOUR ATTENTION WHILE
7 THEY ARE MAKING THEIR ARGUMENTS TO YOU. MR. MAYE.

8 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.

9 THE COURT: ALL RIGHT, SIR.

10 MR. MAYE: LADIES AND GENTLEMEN, AT THIS TIME
11 MR. WILLIAMS HAS ASKED ME TO OPEN ON THE LAW IN THIS CASE.
12 I WILL TALK TO YOU VERY BRIEFLY ON THE LAW IN THIS CASE,
13 AND THEN I WILL COME BACK AND GIVE YOU MY CLOSING ARGUMENT
14 IN FULL.

15 LADIES AND GENTLEMEN, LET ME TELL YOU THE FIRST
16 THING IN THIS CASE IS THAT JUDGE HERE IN THIS CASE, JUDGE
17 JOHNSON, IT'S HIS RESPONSIBILITY TO CHARGE YOU WITH THE LAW
18 IN THIS CASE. YOU LISTEN TO THE LAW AS JUDGE JOHNSON GIVES
19 IT TO YOU, AS HE CHARGES IT TO YOU, AND YOU APPLY IT TO THE
20 FACTS AS YOU HEARD IT FROM THE WITNESS STAND. THEN YOU GO
21 BACK THERE AND YOU REACH A VERDICT.

22 I WILL TALK TO YOU ONLY BRIEFLY. WHEN I GOT UP
23 HERE TO BEGIN WITH, I TOLD YOU THE DEFENDANT IN THIS CASE
24 MR. FRANK TOLEN, IS CHARGED WITH ARMED ROBBERY. ARMED
25 ROBBERY IN SOUTH CAROLINA COMES OUT OF THE CRIMINAL CODE

1 16-11-330.

2 BASICALLY AN ARMED ROBBERY IS EXACTLY USING YOUR
3 COMMON SENSE WHAT YOU THINK IT IS. IT'S A ROBBERY BY
4 SOMEONE ARMED WITH A DEADLY WEAPON. ROBBERY, THAT'S
5 LARCENY, THAT'S STEALING, THAT'S TAKING AWAY THE GOODS OF
6 ANOTHER WITH THE INTENT TO KEEP IT FROM HIM, TO PERMANENTLY
7 DEPRIVE HIM OF IT. IT'S JUST STEALING. THAT'S ALL IT IS.
8 ARMED ROBBERY IS NOTHING FANCY. IT'S JUST STEALING AND YOU
9 USE A WEAPON.

10 I SUBMIT TO YOU AN ARMED ROBBERY DOESN'T HAVE TO
11 BE A FUNCTIONING WEAPON. THE GUN DOESN'T HAVE TO BE
12 LOADED. IF THAT PERSON THOUGHT IT WAS A DEADLY WEAPON OR
13 HAD A REASONABLE BELIEF THAT IT WAS A DEADLY WEAPON, IT'S
14 ARMED ROBBERY.

15 THE JUDGE IS GOING TO CHARGE YOU THAT. IT'S ALL
16 IT IS. I SUBMIT TO YOU THAT IT'S A LARCENY OR A ROBBERY,
17 IT'S STEALING. THE STATE HAS CERTAINLY SHOWN YOU THAT. IT
18 HAS CERTAINLY SHOWN THAT HE TOOK \$60 FROM MR. DYSON.

19 THE OTHER THING I HAVE GOT TO SHOW YOU IS IT
20 HAPPENED IN SALUDA COUNTY. THERE'S NO QUESTION ABOUT THAT.
21 ALL OF THESE EVENTS HAPPENED IN SALUDA COUNTY. THE OTHER
22 THING IS HE WAS ARMED WITH A WEAPON. CERTAINLY THE
23 TESTIMONY IS UNCONTROVERTED, IT'S CLEAR. HE HAD A WEAPON
24 WHEN HE WENT UP TO THAT VEHICLE. I SUBMIT TO YOU THAT'S
25 ALL THERE IS TO CONVICT HIM OF ARMED ROBBERY.

1 THE NEXT ONE IS POSSESSION OF A WEAPON BY A
2 PERSON CONVICTED OF A CRIME OF VIOLENCE. I TOLD YOU
3 INITIALLY THERE IS CERTAIN THINGS THAT THE DEFENSE IS GOING
4 TO STIPULATE TO IN THIS CASE. ONE OF THE THINGS THAT MR.
5 TOLEN HAS STIPULATED TO IN THIS CASE IS HE DOES HAVE A
6 CONVICTION FOR A CRIME OF VIOLENCE. THE STATE DOESN'T HAVE
7 TO PROVE THAT. HE ADMITS THAT. HE STIPULATES HE HAS GOT A
8 CONVICTION FOR A CRIME OF VIOLENCE.

9 BASICALLY THE LAW IS IF YOU HAVE A PRIOR
10 CONVICTION FOR A CRIME OF VIOLENCE, YOU CAN'T POSSESS A
11 WEAPON. YOU CAN'T POSSESS A PISTOL, A FIREARM. YOU GIVE
12 UP YOUR RIGHT TO DO THAT WHEN YOU ARE CONVICTED OF A CRIME
13 OF VIOLENCE.

14 THE DEFENDANT IN THIS CASE, MR. TOLEN, HE HAS
15 ADMITTED HE HAS A PRIOR CONVICTION FOR A CRIME OF VIOLENCE.
16 YOU DON'T EVEN HAVE TO CONSIDER IT. BASICALLY THAT IT
17 HAPPENED IN SALUDA COUNTY AND HE DID HAVE A PISTOL IN HIS
18 POSSESSION. IF HE DOES, HE IS GUILTY OF IT.

19 I WILL NOT STAND UP HERE AND TALK ABOUT THE LAW
20 IN ANY GREAT DETAIL. THE JUDGE IN THIS CASE IS GOING TO
21 GIVE YOU A DETAILED CHARGE ON THE LAW. I APPRECIATE YOUR
22 ATTENTION IN THE CASE. I APPRECIATE YOU GIVING MR.
23 WILLIAMS YOUR ATTENTION AS HE MAKES HIS CLOSING ARGUMENTS
24 AND I THANK YOU.

25 THE COURT: MR. WILLIAMS.

1 MR. WILLIAMS: THANK YOU, YOUR HO
2 PLEASE THE COURT.

3 THE COURT: ALL RIGHT, SIR.

4 MR. WILLIAMS: YOU KNOW, LADIES AND GENTLEMEN
5 OF THE JURY, MR. TOLEN IS STILL INNOCENT. HE IS STILL
6 INNOCENT, EVEN THOUGH YOU HEARD THE STATE'S CASE AND EVEN
7 THOUGH YOU HAVE HEARD OUR CASE AND YOU HAVE EVEN HEARD FROM
8 THE SOLICITOR ON HIS OPENING STATEMENT OR RATHER HIS
9 CLOSING STATEMENT, HIS OPENING ON THE LAW.

10 NEVERTHELESS I REMIND YOU OF WHAT I TOLD YOU IN
11 THE BEGINNING, THAT EVERYTHING THAT YOU WERE GOING TO HEAR
12 TODAY WOULD, IN FACT, RAISE A SUSPICION OF GUILT. I WILL
13 SUBMIT TO YOU THAT'S WHAT IT HAS DONE REALLY. IT HAS
14 RAISED A SUSPICION OF GUILT. IF I HAD NOT BEEN INTIMATELY
15 INVOLVED WITH THIS CASE, I WOULD HAVE A SUSPICION OF GUILT
16 MYSELF.

17 THE PRESUMPTION OF INNOCENCE OUTWEIGHS A.
18 SUSPICION OF GUILT IN THE MORNING, IN THE AFTERNOON, IN THE
19 EVENING AND TODAY AT THIS HOUR IT STILL DOES. A
20 PRESUMPTION OF INNOCENCE OUTWEIGHS A SUSPICION OF GUILT.
21 THAT'S WHAT THEY HAVE. THEY HAVE A SUSPICION OF GUILT.
22 THE BURDEN OF PROOF IS ON THE STATE. THEY HAVE THE BURDEN
23 OF PROVING MY CLIENT'S GUILT BEYOND A REASONABLE DOUBT,
24 BEYOND A REASONABLE DOUBT, NOT SEVERAL DOUBTS, A REASONABLE
25 DOUBT.

1 YOU HAVE THE OPPORTUNITY AS THE JURORS IN THIS
2 CASE TO CONSIDER THE DEMEANOR OF THE WITNESSES. CONSIDER
3 HOW THEY TESTIFIED AND WEIGH THEIR CREDIBILITY AND
4 DETERMINE IF SOME OF WHAT THEY ARE SAYING IS WORTH
5 BELIEVING, IF ALL OF WHAT THEY SAID IS WORTH BELIEVING
6 OR IF, IN FACT, NONE OF WHAT THEY SAID IS WORTH
7 BELIEVING.

8 I WOULD SUBMIT TO YOU THAT IF YOU FOUND DECEPTION
9 IN ANY WITNESS, THEY ARE NOT WORTHY OF BELIEF. IF YOU
10 FOUND DECEPTION IN ANY WITNESS, I WOULD SUBMIT TO YOU THAT
11 NOTHING THEY HAD TO SAY IS WORTHY OF BELIEF. YOU CAN DO
12 THAT. THAT'S WITHIN YOUR DISCRETION.

13 THE SOLICITOR IS RIGHT. MY CLIENT HAS BEEN
14 CHARGED WITH ARMED ROBBERY AND POSSESSION OF A WEAPON BY
15 SOMEONE WHO IS NOT SUPPOSED TO HAVE ONE. BUT REMEMBER
16 THAT'S STILL AN ACCUSATION. THE FACT THEY HAVE PUT ON A
17 CASE HAS NOT MADE THAT TRUE. NO, IT HAS NOT MADE THAT
18 TRUE.

19 SO EVEN AS YOU SIT THERE RIGHT NOW, YOU SHOULD
20 STILL BE THINKING THAT MR. TOLEN IS INNOCENT. HE IS
21 ENTITLED TO HAVE YOU TO THINK THAT AND TO BELIEVE THAT AND
22 TO KNOW THIS AND THE CONSTITUTION DEMANDS IT. YOU HAVE GOT
23 TO SET ASIDE SUSPICIONS. YOU HAVE NOT DELIBERATED ON THIS
24 CASE. YOU HAVE NOT DISCUSSED IT. RIGHT NOW HE IS STILL
25 ENTITLED TO THAT PRESUMPTION OF INNOCENCE.

1 YOU HEARD FROM MR. OATON DYSON. REMEMBER HE TOLD
2 YOU HIMSELF THAT WHEN I TRIED TO TALK TO HIM ABOUT THE
3 FACTS OF THIS CASE, HE WOULDN'T TALK TO ME. ALL I WANTED
4 WAS TO FIND OUT WHAT HAPPENED, WHAT THE FACTS WERE, WHAT
5 THE TRUTH WAS. WOULD THE TRUTH CHANGE SIMPLY BECAUSE I
6 KNEW IT?

7 HE TOLD YOU I NEVER HARASSED HIM. I NEVER
8 THREATENED HIM. I WAS NEVER RUDE TO HIM. HE DIDN'T KNOW
9 ME. THERE WAS NO REASON FOR HIM NOT TO TALK TO ME. HE
10 TOLD YOU THE ONLY PEOPLE HE WOULD TALK TO WAS THE
11 SOLICITOR'S OFFICE. THESE WERE THE ONLY PEOPLE HE WOULD
12 TALK TO.

13 WOULD THE FACTS CHANGE IF HE TALKED TO ME? THEY
14 MAY HAVE. I DON'T KNOW. I DON'T KNOW. IT GOES BACK TO
15 CREDIBILITY. MR. DYSON TELLS YOU THAT WHEN HE WAS ON THE
16 BUILDING, THE DEFENDANT, MR. TOLEN, HAD THE CROWN ROYAL
17 BAG. WHEN I RECALLED HIM, HE WAS ADAMANT ABOUT THAT.
18 "YES, HE HAD THE BAG. I KNOW HE DID."

19 BUT REMEMBER WHAT MR. BRANNON SAID. MR. BRANNON
20 SAID HE GOT THE BAG OUT OF THE TRUCK AND HE KEPT IT IN HIS
21 POSSESSION ALL OF THAT EVENING. REMEMBER? THAT'S WHAT MR.
22 BRANNON TOLD YOU. SO IS MR. DYSON CREDIBLE? I WOULD
23 SUBMIT TO YOU HE IS NOT.

24 THE BEST DESCRIPTION MR. DYSON GAVE OF THE
25 INDIVIDUALS WHO APPROACHED HIS TRUCK THAT EVENING WERE TWO

1 BLACK MALES BETWEEN THE AGES OF 17 TO 25, AND HE DESCRIBED
2 THEM AS BEING BOYS. WHEN I ASKED HIM ON THE STAND WOULD HE
3 CONSIDER MR. TOLEN A BOY OR A MAN, HE SAID A MAN.

4 DOES A YEAR MAKE THAT MUCH DIFFERENCE IN
5 SOMEONE'S APPEARANCE? THEN HE WENT ON TO TELL YOU THAT MR.
6 TOLEN WAS NOT EVEN THE SAME SIZE AS THE INDIVIDUALS WHO
7 APPROACHED HIS TRUCK THAT EVENING. THAT'S RIGHT.

8 YOU HEARD FROM OFFICER JEFF HERLONG, WHO WAS A
9 PAST DEPUTY IN SALUDA COUNTY. HE INDICATED HE INTERVIEWED
10 MR. DYSON SHORTLY AFTER THIS EVENT. AND HE USED THE
11 INCIDENT REPORT AND THE REASON HE USED THE INCIDENT REPORT
12 IS SO THEY CAN BE SURE TO WRITE DOWN EVERYTHING.

13 THEY HAVE A SECTION ON THE INCIDENT REPORT FOR A
14 DESCRIPTION OF SUSPECTS. WELL, LET'S SEE. WHAT DID MR.
15 DYSON SAY ABOUT THE SUSPECTS? "TWO BLACK MALES, MEDIUM
16 BUILD, ONE HAD ON A GRAY SWEATSHIRT, ONE HAD ON A GRAY
17 DO-RAG."

18 BUT WHAT IS SIGNIFICANT ABOUT THAT, A COUPLE OF
19 SIGNIFICANT POINTS. ONE OF THE SIGNIFICANT POINTS IS THAT
20 IN THE BLOCK WHERE IT ASKS FOR TATTOOS, SCARS, ANY
21 DISTINGUISHING FEATURES, THERE WAS NO ENTRY ABOUT THAT,
22 NONE, NONE WHATSOEVER.

23 I ASKED MR. HERLONG, "IF HE HAD TOLD YOU ABOUT
24 ANY IT WOULD HAVE BEEN AS THOUGH YOU WOULD HAVE WRITTEN IT
25 DOWN?" HE SAID, "I'M AM SURE I WOULD HAVE." BUT TODAY IN

1 COURT MR. DYSON CONVENIENTLY REMEMBERS THAT MR. TOLEN HAD A
2 SCAR AFTER HE WATCHED HIM THE LAST TWO DAYS IN COURT. HOW
3 CONVENIENT. I DON'T THINK MR. DYSON WAS A VERY CREDIBLE
4 WITNESS.

5 YOU HEARD ALSO FROM OFFICER WHISENANT. MR.
6 WHISENANT TOLD YOU THAT MR. DYSON HAD DESCRIBED MR. TOLEN
7 AS WEARING DREADLOCKS THAT EVENING. NOW, YOU HAVE HEARD
8 FROM OUR JAIL ADMINISTRATOR, MRS. JANICE EARGLE, WHO HAD
9 THE BOOKING REPORTS AND RECORDS AND THE PHOTOGRAPH. SHE
10 SAID, "NO, NO, NO. MR. TOLEN DIDN'T WEAR DREADLOCKS AT
11 THAT TIME. HE HAD BRAIDS."

12 YOU HEARD FROM WADE LAMAR BRANNON WHO SAID, "NO,
13 MR. TOLEN DIDN'T WEAR DREADLOCKS. HE WORE BRAIDS." AND
14 SINCE WE ARE TALKING ABOUT MR. BRANNON, I AM SO HAPPY THAT
15 YOU GOT TO SEE HIM FOR YOURSELF. HE'S DECEPTIVE. AS MUCH
16 AS I HATE TO SAY THIS, HE'S A LIAR. YOU HEARD HIS
17 TESTIMONY.

18 IN MY INITIAL CROSS EXAMINATION OF MR. BRANNON,
19 HE WAS VACILLATING ON EVERY QUESTION. EVERY QUESTION HE
20 WAS VACILLATING, WOULDN'T TAKE A POSITION. HE WAS AFRAID
21 TO BECAUSE HE WAS PROBABLY WONDERING, "HOW I AM GOING TO
22 COVER UP THE NEXT LIE AFTER I RESPOND TO THIS QUESTION?"
23 YOU SAW HIM FOR YOURSELF. YOU SAW HIS DEMEANOR.

24 I MADE SOME PRETTY STRONG ACCUSATIONS ABOUT MR.
25 BRANNON IN MY OPENING STATEMENT. I TOLD YOU THAT I WAS

1 GOING TO SHOW TO YOU THAT HE WAS A LIAR. I TOLD YOU THAT I
2 WAS GOING TO SHOW TO YOU THAT FOR THE BETTER PART OF HIS
3 ADULT LIFE, HE HAD BEEN A CRIMINAL.

4 I TOLD YOU I WAS GOING TO SHOW TO YOU HE HAD
5 ABUSED DRUGS FOR YEARS AND THAT ON THIS EVENING IN QUESTION
6 HE WAS UNDER THE INFLUENCE OF CRACK COCAINE. I WILL SUBMIT
7 TO YOU I HAVE NOT MISREPRESENTED EVEN ONE THING ABOUT THAT
8 GENTLEMAN. EVERYTHING I HAVE TOLD YOU ABOUT HIM WE HAVE
9 PROVED. WE EVEN DISCOVERED THAT HE HAD USED ALIASES IN THE
10 PAST.

11 NOW, WHAT DO THESE GENTLEMEN HAVE ON THAT EVENING
12 THAT THEY ROBBED MR. DYSON? AND WE CONCEDE THIS POINT. WE
13 CONCEDE THAT MR. DYSON GOT ROBBED. WE CONCEDE THAT AND WE
14 CONCEDE THAT WADE LAMAR BRANNON WAS ONE OF THE
15 PERPETRATORS. WE CONCEDE IT. HE HAS PLED GUILTY TO IT.
16 WE CONCEDE THAT. IF THE STATE WANTS SOMEBODY TO PROSECUTE,
17 THEY GOT HIM. THEY GOT HIM. THEY GOT WADE LAMAR BRANNON
18 FOR THIS CRIME.

19 BUT WADE LAMAR BRANNON IN AN ATTEMPT TO TRY TO
20 SAVE HIMSELF AT THIS POINT IS PREPARED TO SAY AND DO
21 ANYTHING, EVEN LIE ON AN ASSOCIATE. WADE LAMAR BRANNON IS
22 NOT TO BE BELIEVED. HE IS NOT CREDIBLE. THE STATE HAS THE
23 BURDEN OF PROVING MR. TOLEN'S GUILT BEYOND A REASONABLE
24 DOUBT. I THINK THAT IS IMPOSSIBLE IF YOU ARE DEALING WITH
25 WITNESSES WHO ARE NOT CREDIBLE, WHOSE VERY TESTIMONY IS

1 SUSPECT.

2 YOU HEARD FROM MR. ROBERT SHORTER. HE REALLY
3 DIDN'T ADD ANYTHING TO THE CASE. YOU HEARD FROM MR. JOEL
4 LINDLER WHO WAS THE OWNER OF THE GARAGE WHERE MR. DYSON RAN
5 ON TOP OF. THE ONLY THING HE ADDED TO THE CASE IS THAT
6 WHEN HE CAME OUT OF HIS HOUSE, HE SAW NO OTHER PEOPLE OUT
7 IN HIS YARD. HE JUST SAW THE INDIVIDUAL ON THE ROOF.

8 YOU HEARD FROM MR. BILLY LINDLER, THE BROTHER OF
9 THE OWNER OF THE GARAGE. NOW, I THINK HIS TESTIMONY IS
10 SIGNIFICANT FOR THIS REASON. ONE, HE SAYS HE DIDN'T SEE
11 ANYONE ELSE OUT THERE EITHER.

12 BUT WHAT DID HE SAY? HE SAID MR. DYSON WAS
13 HYSTERICAL. HE WAS HYSTERICAL. SO YOU SEE, I CAN
14 UNDERSTAND IF MR. DYSON WAS A LITTLE BIT CONFUSED ABOUT THE
15 EVENTS AND WHAT HE SAW. I CAN UNDERSTAND THAT AND I CAN
16 APPRECIATE THAT. I WOULD IMAGINE THE WHOLE EVENT WAS VERY
17 TRAUMATIZING.

18 MR. LINDLER TOLD YOU THAT NOT ONLY WAS HE
19 HYSTERICAL BUT HE WAS VERY EXCITED. SO I CAN UNDERSTAND
20 HOW IT IS THAT MR. DYSON COULD HAVE BEEN MISTAKEN AND WAS,
21 IN FACT, MISTAKEN.

22 YOU HEARD FROM MR. FRONTIS SMITH WHO HAS BEEN A
23 BUSINESS OWNER AT THE CIRCLE STOP AND SHOP FOR SEVERAL
24 YEARS NOW. HE REALLY DIDN'T ADD ANYTHING TO THE CASE. YOU
25 HEARD FROM MR. TONY TOLEN, MR. TOLEN'S UNCLE.

1 WHAT HE TOLD YOU WAS THAT AND THE STATE TRIED TO
2 MAKE A LOT OF HIS TESTIMONY, BUT WHAT HE SAID IN THE FINAL
3 ANALYSIS WAS, "NO, MY NEPHEW NEVER ADMITTED TO BEING A
4 PARTICIPANT IN THAT CRIME." IN THE FINAL ANALYSIS THAT'S
5 WHAT HE TOLD YOU. YOU HEARD FROM MR. BOBBY JONES, THE
6 GENTLEMAN STILL SEATED RIGHT HERE. TRUTHFULLY HE REALLY
7 DIDN'T ADD ANYTHING TO THE CASE.

8 AS I COME TO THE CONCLUSION OF MY CLOSING
9 STATEMENT, THE JUDGE IS GOING TO INSTRUCT YOU ON THE LAW.
10 IT HAS BEEN MY EXPERIENCE THAT HE WILL TELL YOU THAT YOU
11 DON'T TAKE LEAVE OF YOUR COMMON SENSE AS YOU CONSIDER THE
12 LAW THAT IS GOING TO BE CHARGED TO YOU.

13 CERTAINLY CONSIDER THE EVIDENCE THAT CAME IN AND
14 CONSIDER THE DEMEANOR OF THE WITNESSES. CONSIDER THE
15 CONTRADICTIONS IN THE TESTIMONY. ONCE YOU DO THAT, I WOULD
16 SUBMIT TO YOU THAT YOU WOULD AGREE, AS I DO, THAT THREE
17 PEOPLE WHO KNOW WHAT HAPPENED: MR. DYSON, WADE LAMAR
18 BRANNON AND THE OTHER PERSON.

19 THE TESTIMONY OF MR. DYSON IS NOT CREDIBLE. IT'S
20 NOT CREDIBLE. THE TESTIMONY OF MR. BRANNON IS NOT
21 CREDIBLE. I IMPORE YOU TO NOT ALLOW A SUSPICION OF GUILT
22 AND THAT'S ALL YOU HAVE WITH TESTIMONY THAT IS NOT CREDIBLE
23 IS A SUSPICION OF GUILT. I IMPORE YOU THIS EVENING NOT TO
24 ALLOW A SUSPICION OF GUILT TO OUTWEIGH THE PRESUMPTION OF
25 INNOCENCE. THAT'S ALL I ASK.

1 THE COURT: SOLICITOR.

2 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.
3 LADIES AND GENTLEMEN OF THE JURY, AGAIN I WANT TO THANK
4 YOU. YOU HAVE SPENT THE LAST TWO DAYS IN HERE GIVING UP
5 YOUR LIVES TO SIT AS THE JUDGES OF THE FACTS IN A CASE FOR
6 THE COMMUNITY, THE PEOPLE OF SALUDA COUNTY. IT'S
7 APPRECIATED. WINSTON CHURCHILL ONCE SAID THE HIGHEST DUTY
8 THAT A CITIZEN CAN PERFORM IN PEACETIME IS TO SIT ON A
9 JURY. I SUBMIT EACH ONE OF YOU HAVE FULFILLED THAT DUTY
10 THIS WEEK.

11 LADIES AND GENTLEMEN, LET'S CUT TO THE QUICK.
12 WHAT DO WE HAVE HERE? I'LL TELL YOU EXACTLY WHAT WE HAVE
13 GOT. THE DEFENDANT IN THIS CASE, FRANK TOLEN, HE AND WADE
14 BRANNON -- WHO IS NOT A NICE GUY. I WILL CONCEDE THAT TO
15 BEGIN WITH. HE IS A CONVICTED FELON. WE WILL CONCEDE THAT
16 TO BEGIN WITH.

17 FRANK TOLEN AND WADE BRANNON HAD BEEN SMOKING
18 CRACK COCAINE, GAMBLING AND DRINKING OUT OF FRANK TOLEN'S
19 HOUSE AT THE TRAFFIC CIRCLE THE NIGHT OF OCTOBER THE 1ST.
20 IT CARRIED ON LIKE THIS ALL EVENING UNTIL THEY RAN OUT OF
21 CRACK COCAINE.

22 WHAT HAPPENS NEXT? WHAT DID WADE BRANNON TELL
23 YOU? FRANK TOLEN, "LET'S GO ROB SOMETHING." WHAT DO THEY
24 DO? BEAT A TRAIL UP TO MR. SMITH'S STORE TO GO BREAK IN TO
25 GET SOME MONEY TO GO BUY CRACK. THAT ALL THIS CASE IS

1 ABOUT.

2 THEY CASE THE STORE OUT AND WHAT DO THEY SEE? BY
3 ALL CHANCES OATON DYSON, A MAN WHO IS NOT FROM HERE, A MAN
4 WHO RUNS UP AND DOWN THE ROAD TRYING TO MAKE A LIVING EVERY
5 DAY DRIVING A TRUCK, BEEN ON THE ROAD ALL DAY AND WHAT DOES
6 HE NEED TO DO? HE NEEDS TO TAKE A NAP SO HE CAN GET ON
7 BACK DOWN THE ROAD. IT'S A VICTIM FOR THEM. THAT'S ALL
8 YOU HAVE GOT, A RANDOM VICTIM.

9 WHAT DO THEY DO? FRANK TOLEN TAKES THIS GUN AND
10 BEATS ON THE WINDOW OF MR. DYSON'S TRUCK, GETS IN AND ROBS
11 HIM OF 60 BUCKS AND TRIES TO MAKE HIM DRIVE OFF. WHAT DOES
12 MR. DYSON DO? HE BOLTS AND HE RUNS. HE GOES TO MR.
13 LINDLER'S HOUSE. HE SAYS, "I SAW A LIGHT ON."

14 THAT'S ALL HE COULD DO. HE DIDN'T KNOW WHERE HE
15 WAS AND HE DIDN'T KNOW ANYBODY IN SALUDA. HE WAS LOOKING
16 FOR HELP. THANK GOODNESS HE FOUND IT. THANK GOODNESS HE
17 FOUND IT. HE WENT TO MR. LINDLER'S HOUSE WITH FRANK TOLEN
18 AND WADE BRANNON HOT ON HIS TRAIL.

19 FRANK TOLEN WAS WAVING THIS GUN AT HIM, SAYING,
20 "COME BACK HERE." THEY PURSUED HIM ALL THE WAY OVER INTO
21 THAT FELLOW'S YARD. HE CLIMBED ON THE ROOF OF THAT GUY'S
22 BUILDING AND THROWS DOWN THE LADDER TO TRY AND GET AWAY
23 FROM THEM, SCREAMING AND YELLING THE WHOLE TIME.

24 WAS HE HYSTERICAL? ABSOLUTELY. WHAT HAPPENS
25 WHEN SOMEBODY STICKS A GUN IN YOUR FACE AND ROBS YOU? HOW

1 ELSE WOULD HE BE UP THERE ON THE ROOF OF THAT BUILDING? HE
2 FINALLY MAKES ENOUGH RACKET THAT MR. LINDLER COMES OUT.
3 MR. LINDLER'S BROTHER COMES DOWN THERE. THEY GET HIM DOWN
4 OFF OF THERE. THEY CALL THE POLICE. EVERYTHING IN THIS
5 STORY ALL FITS TOGETHER.

6 EVERY WITNESS THAT YOU HEARD FROM THE STAND IN
7 THIS CASE HAD A CONSISTENT AND BELIEVABLE STORY TO TELL
8 YOU. EVERYBODY TOLD YOU THAT. WHAT HAPPENS NEXT? WADE
9 BRANNON AND FRANK TOLEN HIGHTAIL IT TO BATESBURG, SPENDING
10 THE MONEY THEY JUST STOLE, GETTING MORE CRACK COCAINE SO
11 THEY CAN GO BACK TO SMOKING. THAT'S ALL THIS CASE IS
12 ABOUT.

13 THEY GO BACK AND HIDE OUT AT FRANK'S HOUSE DOWN
14 FROM THE TRAFFIC CIRCLE UNTIL THE POLICE COME. WHAT DID HE
15 SAY TO TONY TOLEN? YOU BETTER BELIEVE HE KNEW HE WAS IN
16 TROUBLE. "ARE THE POLICE LOOKING FOR ME? DON'T TELL THEM
17 WHERE I AM. WE ARE GOING TO BACK TO BATESBURG." THEY WERE
18 ON THE ROAD BECAUSE THEY KNEW THE POLICE WERE LOOKING FOR
19 THEM, AND THEY KNEW WHAT THEY HAD DONE.

20 WHAT DID TONY TOLEN TELL YOU, HIS UNCLE, "GET
21 YOUR STUFF AND GET OUT OF THIS HOUSE." HE KNEW GOOD AND
22 WELL THEY HAD ROBBED THAT TRUCKER OUT THERE. HE KNEW GOOD
23 AND WELL HE DIDN'T WANT THEM THERE AT HIS HOUSE. THE
24 FELLOW HE WAS LIVING WITH, HIS UNCLE, SAID, "PACK YOUR BAGS
25 AND GET OUT."

1 WHAT DO THEY DO? HIT THE ROAD AND STAY ON THE
2 RUN, RUNNING FROM THE DOGS, RUNNING FROM THE HELICOPTER
3 UNTIL THEY RUN OFF INTO A POND; AND THE POLICE HAVE TO GO
4 IN THERE AND DRAG THEM OUT. THAT'S ALL THIS CASE IS
5 ABOUT.

6 THAT'S WHAT THE FACTS TELL YOU. THAT'S WHAT EACH
7 AND EVERY WITNESS HAS COVERED UP HERE ON THE STAND. THERE
8 IS NO PROBLEM WITH ANY CREDIBILITY OR BELIEVABILITY. MR.
9 OATON DYSON, HE DOESN'T HAVE ANY CONNECTION WITH SALUDA
10 COUNTY, OTHER THAN THE FACT THAT HE HAD THE MISFORTUNE OF
11 COMING THROUGH HERE AND GETTING PREYED ON BY FRANK TOLEN, A
12 CRACK HEAD.

13 THAT'S ALL WE HAVE GOT IN THIS CASE. I AM
14 TELLING YOU, LADIES AND GENTLEMEN, YOU ARE SITTING 30 FEET
15 FROM A THIEF AND AN ARMED ROBBER. THAT'S THE LONG AND
16 SHORT OF THIS CASE. WITH EVERY WITNESS UP HERE, DID ANYONE
17 SEEM LIKE THEY WERE HESITANT TO YOU?

18 MR. WILLIAMS MADE A BIG DEAL WHEN HE GOT UP HERE
19 AT THE START OF THIS CASE THAT FRANK TOLEN IS CLOAKED IN
20 THE ROBE OF INNOCENCE. I AGREE WITH THAT. THAT'S EXACTLY
21 WHAT OUR COURT SYSTEM SAYS. BUT I WILL TELL YOU THIS, THAT
22 CLOAK WAS DOWN AROUND HIS ANKLES WITH THE FIRST WITNESS
23 THAT TOOK THE STAND.

24 MR. DYSON, DID HE ACT LIKE HE HAD ANY PROBLEM
25 TELLING YOU WHO HAD ROBBED HIM? HE DID ACT HESITANT UP

1 HERE? WHAT DID HE SAY TO EVERY QUESTION? "THAT MAN RIGHT
2 THERE STUCK A GUN IN MY FACE AND TOOK \$60 FROM ME. HE WAS
3 SITTING AS CLOSE AS FROM ME TO THE JUDGE. THE LIGHTS WERE
4 ON IN MY TRUCK. I SAW HIM. THAT'S HIM. THAT'S THE MAN
5 THAT ROBBED ME."

6 THAT'S WHAT WE HAVE GOT IN THIS CASE. EVERY
7 WITNESS TELLS YOU A CONSISTENT STORY. WADE BRANNON GOES
8 BACK THROUGH AND GIVES YOU THE COMPLETE CHRONOLOGY OF
9 EVERYTHING THAT WENT ON THAT DAY. THE SIMPLE EQUATION IS
10 BOTH OF THEM ARE ADDICTED TO CRACK. THEY WERE SMOKING
11 CRACK AND RAN OUT AND NEEDED SOME MONEY. MR. DYSON
12 HAPPENED TO BE AT THE WRONG PLACE AT THE WRONG TIME.

13 YOU HAVE GOT THE FACTS IN THIS CASE, LADIES AND
14 GENTLEMEN. I TOLD YOU IN THE BEGINNING OF THIS THAT YOU
15 ARE THE JUDGES OF THE FACTS IN THIS CASE, THE 12 OF. YOU,
16 I SUBMIT TO YOU, EACH ONE OF YOU SIT AS THE CONSCIOUS OF
17 SALUDA COUNTY IN THIS CASE.

18 AS MUCH AS I LIKE PROSECUTING UP HERE, I DON'T
19 LIVE IN SALUDA COUNTY. AT THE CONCLUSION OF THIS CASE, I
20 WILL GET IN MY CAR AND GO BACK TO LEXINGTON COUNTY. EACH
21 ONE OF YOU LIVE HERE IN SALUDA COUNTY. IT'S UP TO YOU TO
22 DECIDE WHAT GOES ON HERE. YOU ARE THE CONSCIENCE OF THIS
23 COMMUNITY. IT'S UP TO YOU.

24 IF FRANK TOLEN CAN GO OUT ROBBING PEOPLE AND
25 STICKING GUNS IN THEIR FACE TO FEED HIS CRACK COCAINE

1 HABIT, THAT'S UP TO YOU RIGHT HERE, RIGHT NOW, TODAY. YOU
2 SIT AS THE JUDGES OF THE FACTS IN THIS CASE.

3 I AM GETTING READY TO SIT DOWN, LADIES AND
4 GENTLEMEN. YOU HAVE GOT THE FACTS IN THIS CASE. ALL I ASK
5 YOU TO DO IS SIT AS THE CONSCIOUS OF THE COMMUNITY IN THIS
6 CASE. APPLY THE FACTS TO THE LAW AS THE JUDGE GIVES IT TO
7 YOU AND GO BACK THERE AND DO THE RIGHT THING IN THIS CASE.
8 IF YOU DO THAT, YOU WILL HAVE FULFILLED EVER RESPONSIBILITY
9 THAT ANYBODY HAS ASKED OF YOU. I APPRECIATE YOUR TIME HERE
10 AND I THANK YOU.

11 (WHEREUPON THE COURT CHARGED THE JURY AS
12 FOLLOWS).

13 THE COURT: LADIES AND GENTLEMEN, AT THIS STAGE
14 OF THE TRIAL, IT DOES BECOME THE DUTY UNDER OUR
15 CONSTITUTION FOR ME TO CHARGE YOU. THAT SIMPLY MEANS TO
16 INSTRUCT YOU IN THE LAW THAT APPLIES IN THIS CASE. IT IS
17 YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS THIS
18 COURT IS NOW GOING TO STATE IT TO YOU.

19 AS JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL
20 THE ISSUES OF FACT IN THIS CASE AND FOR THAT PURPOSE TO
21 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH
22 OF THE EVIDENCE THAT HAS BEEN PRESENTED DURING THE TRIAL.

23 BOTH THE STATE OF SOUTH CAROLINA AND THE
24 DEFENDANT, MR. TOLEN, HAVE A RIGHT TO EXPECT THAT YOU WILL
25 INDIVIDUALLY AND COLLECTIVELY CONSCIENTIOUSLY CONSIDER AND

1 EVALUATE THE EVIDENCE IN THIS CASE AND APPLY THE LAW OF THE
2 CASE THERETO SO THAT BOTH THE STATE AND THE DEFENDANT WILL
3 RECEIVE AND OBTAIN A FAIR AND AN IMPARTIAL TRIAL IN THIS
4 CASE.

5 I AM GOING TO REVIEW OR READ IN PART TO YOU THE
6 CHARGES THAT ARE MADE IN THE INDICTMENTS. AGAIN THERE ARE
7 TWO INDICTMENTS IN THE CASE. YOU WILL HAVE THESE WITH YOU
8 IN THE JURY ROOM WHEN YOU RETIRE TO CONSIDER YOUR VERDICT.
9 YOU CAN GIVE THE INDICTMENTS SUCH READING AND EXAMINATION
10 AS YOU WISH.

11 I WILL AGAIN POINT OUT AND EMPHASIZE TO YOU THAT
12 THE INDICTMENTS ARE NOT EVIDENCE AND CANNOT BE CONSIDERED
13 BY THE JURY AS EVIDENCE. THEY ARE THE FORMAL DOCUMENTS
14 THAT PROCESS THE CASE INTO THIS COURT. THEY ARE ALSO THE
15 DOCUMENTS UPON WHICH THE JURY IS GOING TO WRITE ITS
16 VERDICT. I WILL GO OVER THAT WITH YOU AT THE END OF THE
17 INSTRUCTIONS.

18 THE FIRST INDICTMENT IS 98-GS-41-165, THE STATE
19 VERSUS FRANK TOLEN, JR. IT READS IN PART AS FOLLOWS: THAT
20 FRANK TOLEN, JR., DID IN SALUDA COUNTY, ON OR ABOUT
21 OCTOBER 2ND, 1996, WHILE ARMED WITH A DEADLY WEAPON, TO
22 WIT, A PISTOL, FELONIOUSLY TAKEN FROM THE PERSON OR
23 PRESENCE OF OATON DYSON BY MEANS OF FORCE OR INTIMIDATION
24 GOODS OR MONIES OF OATON DYSON, SUCH GOOD OR MONIES BEING
25 DESCRIBED AS FOLLOWS: \$60 IN U.S. CURRENCY WITH THE INTENT

1 TO DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY.— THAT'S
2 THE INDICTMENT ON THE CHARGE OF ARMED ROBBERY.

3 THE OTHER INDICTMENT IS 98-GS-41-166. THE CHARGE
4 IN THIS INDICTMENT IS FOR POSSESSION OF A PISTOL BY A
5 PERSON CONVICTED OF A CRIME OF VIOLENCE. THIS INDICTMENT
6 READ IN PART AS FOLLOWS: THAT FRANK TOLEN, JR., DID IN
7 SALUDA COUNTY, ON OR ABOUT OCTOBER 2ND, 1996, UNLAWFULLY
8 POSSESS A PISTOL IN VIOLATION OF SECTION 16-23-30 OF THE
9 CODE OF LAWS OF THE STATE OF SOUTH CAROLINA IN THAT HE DID
10 POSSESS A PISTOL WITHIN THIS STATE AFTER HAVING BEEN
11 PREVIOUSLY CONVICTED IN THE COURTS OF THE STATE OF SOUTH
12 CAROLINA OF A CRIME OF VIOLENCE. THAT'S THE OTHER CHARGE
13 IN THIS PARTICULAR CASE. AGAIN, THESE ARE THE ALLEGATIONS
14 THAT ARE MADE IN THE INDICTMENTS.

15 OF COURSE, THROUGHOUT THESE INSTRUCTIONS WHEN I
16 USE THE WORD DEFENDANT, I AM REFERRING TO MR. TOLEN. TO
17 THE CHARGES IN THIS THESE TWO INDICTMENTS, THE DEFENDANT
18 HAS ENTERED A PLEA OF NOT GUILTY. THIS PLEA OF NOT GUILTY
19 BY THE DEFENDANT PLACES THE BURDEN OF PROOF ON THE STATE OF
20 SOUTH CAROLINA TO PROVE THE GUILT OF THE DEFENDANT BEYOND
21 REASONABLE DOUBT BEFORE YOU THE JURY CAN FIND THE DEFENDANT
22 GUILTY.

23 THE DEFENDANT IS PRESUMED IN LAW INNOCENT OF TH
24 OFFENSES THAT ARE CHARGED IN THESE INDICTMENTS. IT IS A
25 CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF THE EVIDENCE

1 THIS STATE THAT A DEFENDANT, REGARDLESS OF WHAT CHARGES ARE
2 BROUGHT AGAINST HIM, WILL ALWAYS BE PRESUMED INNOCENT OF
3 THE OFFENSES FOR WHICH HE HAS BEEN INDICTED, UNLESS AND
4 UNTIL THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BY
5 EVIDENCE THAT SATISFIES YOU THE JURY OF HIS GUILT BEYOND A
6 REASONABLE DOUBT.

7 ✓THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
8 THEORY. IT'S NOT JUST A LEGAL PHRASE. BUT THE PRESUMPTION
9 OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY
10 DEFENDANT, INCLUDING MR. TOLEN, IS ENTITLED. THE
11 PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE
12 TIME OF HIS ARRAIGNMENT, FROM THE TIME OF HIS APPEARANCE IN
13 THIS COURT AND THROUGHOUT EVERY STAGE OF THIS TRIAL AND
14 CONTINUES WITH THE DEFENDANT EVEN AFTER YOU RETIRE INTO THE
15 JURY ROOM TO CONSIDER YOUR VERDICT IN THIS CASE.

16 THE PRESUMPTION OF INNOCENCE CONTINUES IN
17 EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL YOU THE
18 JURY REACH THE CONCLUSION THAT THE STATE HAS PROVEN THE
19 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

20 ✓THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF
21 THE DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT
22 BEYOND A REASONABLE DOUBT. WHEN WE SAY A REASONABLE DOUBT,
23 THE JURY SHOULD GIVE THOSE WORDS THEIR PLAIN AND ORDINARY
24 MEANING.

25 A REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE

1 PRESENTED IN THE CASE OR THE LACK OF EVIDENCE IN THE CASE.
2 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
3 REASONABLE PERSON TO HESITATE TO ACT. WHETHER OR NOT
4 REASONABLE DOUBT EXISTS IN THIS CASE IS A MATTER FOR YOU
5 THE JURY TO DETERMINE.

6 I WOULD FURTHER CHARGE YOU, LADIES AND GENTLEMEN,
7 THAT A DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE;
8 BUT THE STATE IS REQUIRED IN LAW TO PROVE EVERY ESSENTIAL
9 ELEMENT OF THE OFFENSES CHARGED AGAINST HIM BY EVIDENCE
10 THAT SATISFIES YOU THE JURY OF THE GUILT OF THE DEFENDANT
11 BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT THE
12 DEFENDANT AND FIND HIM GUILTY.

13 IF UPON THE WHOLE CASE YOU HAVE A REASONABLE
14 DOUBT AS TO THE GUILT OR THE INNOCENCE OF THIS DEFENDANT,
15 HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE
16 ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY.

17 ON THE OTHER HAND, IF UPON THE WHOLE CASE YOU
18 FIND THAT THE STATE HAS PROVEN BY EVIDENCE THAT SATISFIES
19 YOU OF THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE
20 DOUBT, IN THAT CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY
21 TO CONVICT THE DEFENDANT AND FIND HIM GUILTY.

22 I WOULD INSTRUCT YOU THAT AGAIN THE INDICTMENTS
23 IN THIS CASE THAT YOU WILL HAVE IN A FEW MINUTES ARE NOT
24 EVIDENCE AND CANNOT BE CONSIDERED AS EVIDENCE IN THIS CASE.
25 AGAIN, THE INDICTMENTS PROCESS THIS CASE THROUGH THIS COURT

1 AND ARE NOT CONSIDERED AS EVIDENCE OF ANY FORM.

2 DURING THIS TRIAL, MADAME FORELADY, AND LADIES
3 AND GENTLEMEN, YOU AND I DO HAVE CERTAIN DUTIES THAT WE ARE
4 TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO
5 PRESIDE OVER THE TRIAL OF THE CASE. I ALSO HAVE THE DUTY
6 TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE
7 THAT IS OFFERED DURING THE TRIAL.

8 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE
9 THAT IS BEFORE YOU. YOU ARE TO DISREGARD AND DISABUSE FROM
10 YOUR MIND ANY TESTIMONY THAT WAS ORDERED STRICKEN FROM THE
11 RECORD IN THIS CASE DURING THE PROGRESS OF THE TRIAL, IF
12 THERE WAS ANY.

13 YOU ARE TO CONSIDER ONLY THE TESTIMONY AND
14 EVIDENCE THAT HAS BEEN PRESENTED FROM THE WITNESS STAND,
15 TOGETHER WITH ANY EXHIBITS THAT HAVE BEEN MADE A PART OF
16 THE RECORD AND ANY STIPULATIONS OF COUNSEL THAT WERE MADE
17 INTO THE RECORD.

18 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
19 THAT IS APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I
20 AM THE SOLE JUDGE OF THE LAW OF THIS CASE. UNDER THE OATH
21 THAT YOU TOOK WHEN THIS CASE BEGAN, YOU AGREED TO ACCEPT
22 THE LAW PRECISELY AS IT IS NOW INSTRUCTED TO YOU.

23 EVEN IF YOU WERE TO HAVE A PRECONCEIVED IDEA AS
24 TO WHAT THE LAW IS OR WHAT YOU THOUGHT THE LAW OUT TO BE,
25 IF YOUR PRECONCEPTION DIFFERS WITH WHAT I AM NOW TELLING

1 YOU THE LAW IS, UNDER YOUR OATH YOU HAVE AGREED TO ACCEPT
2 THE LAW AND TO APPLY IT PRECISELY AS IT IS NOW STATED AND
3 EXPLAINED TO YOU.

4 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE
5 A JURY, THE JURY DOES BECOME THE SOLE AND THE EXCLUSIVE
6 JUDGE OF THE FACTS IN A CASE. YOU THE JURY ARE THE JUDGE
7 OF THE FACTS IN THIS CASE. THE COURT IS THE JUDGE OF THE
8 LAW OF THE CASE.

9 THE CONSTITUTION OF THIS STATE HAS DECLARED THAT
10 A TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR
11 MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A
12 CASE.

13 SINCE YOU THE JURY ARE THE SOLE JUDGE OF THE
14 FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM ANYTHING THAT
15 I HAVE SAID DURING THE PROGRESS OF THE TRIAL, IN RULING
16 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING
17 THAT I SAY NOW DURING THE COURSE OF THESE INSTRUCTIONS TO
18 YOU THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE.
19 THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE
20 FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU THE
21 JURY TO DETERMINE.

22 AS JURORS THEN IT IS YOUR DUTY, AS I HAVE
23 INSTRUCTED YOU, TO DETERMINE THE EFFECT, THE VALUE, THE
24 WEIGHT AND THE TRUTH OF THE EVIDENCE THAT HAS BEEN
25 PRESENTED DURING THIS TRIAL.

1 BY NECESSITY YOU MUST ASSESS THE CREDIBILITY.
2 THAT SIMPLY MEANS THE BELIEVABILITY OF THE WITNESSES WHO
3 HAVE TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A
4 LEGALISTIC TERM THAT MEANS BELIEVABILITY. IT BECOMES
5 YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE
6 EVIDENCE AND DETERMINE THAT EVIDENCE THAT CONVINCES YOU
7 OF ITS TRUTH.

8 I WOULD INSTRUCT YOU THAT IN DETERMINING THE
9 QUESTION OF THE CREDIBILITY OR THE BELIEVABILITY OF THE
10 WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE
11 ONE WITNESS AS AGAINST SEVERAL WITNESSES OR SEVERAL AS
12 AGAINST ONE.

13 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
14 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
15 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
16 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A
17 WITNESS IN IT ENTIRETY.

18 YOU MAY CONSIDER WHETHER ANY WITNESS HAS
19 EXHIBITED TO YOU ANY INTEREST OR BIAS OR PREJUDICE IN THIS
20 CASE. YOU MAY CONSIDER THE DEMEANOR OF A WITNESS, THAT IS,
21 THE APPEARANCE OF A WITNESS FROM THE WITNESS STAND.

22 YOU MAY, OF COURSE, CONSIDER THE OPPORTUNITY FOR
23 KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A WITNESS
24 TESTIFIED. YOUR OBJECTIVE, LADIES AND GENTLEMEN, IS TO
25 SEEK THE TRUTH, WHETHER IT COMES FROM A WITNESS OR

1 WITNESSES FOR THE STATE OR FOR A WITNESS OR WITNESSES FROM
2 THE DEFENDANT.

3 IN DOING SO, IN EXERCISING YOUR MENTAL PROCESSES
4 AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE, THE LAW
5 SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT, YOUR
6 COMMON SENSE AND YOUR SENSE OF LOGIC AND REASON AND YOUR
7 EXPERIENCES IN LIFE.

8 YOU APPLY THESE ATTRIBUTES OF ABILITY TO THE
9 EVIDENCE AND DETERMINE WHAT YOU THE JURY CONSIDER TO BE
10 THE TRUTHFUL EVIDENCE. TO THIS TRUE STATE OF FACTS AS
11 DETERMINED BY THE JURY, YOU THEN TAKE AND APPLY THE LAW
12 AS IT IS NOW EXPLAINED TO YOU AND THUS ARRIVE AT A TRUE
13 VERDICT IN THIS CASE.

14 I WOULD FURTHER INSTRUCT YOU THAT THE FAILURE
15 OF A DEFENDANT IN THE TRIAL OF A CRIMINAL CASE TO TESTIFY
16 IN HIS OWN BEHALF IS NOT A FACTOR TO BE CONSIDERED BY YOU
17 IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION
18 ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE
19 ACCUSED. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
20 AGAINST THE DEFENDANT OR MITIGATE AGAINST HIM IN ANY
21 RESPECT.

22 A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
23 SILENT AND THE ASSERTION OF THAT CONSTITUTIONAL RIGHT
24 CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR
25 DELIBERATIONS. SO UNDER YOUR OATH YOU ARE TO REACH NO

1 INFERENCE AND DRAW NO CONCLUSION FROM THE FACT THAT THE
2 DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.

3 THE FAILURE OF THE DEFENDANT TO TESTIFY SHOULD
4 NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF
5 PROOF, AS I HAVE STATED TO YOU, IS UPON THE STATE. IT IS
6 NOT INCUMBENT UPON THE ACCUSED TO PROVE HIS INNOCENCE.
7 THE BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE GUILT
8 BEYOND A REASONABLE DOUBT. THE FAILURE OF A DEFENDANT
9 TO TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN
10 DETERMINING THE GUILT OR THE INNOCENCE OF THE DEFENDANT.

11 I WOULD FURTHER CHARGE YOU THAT IN APPRAISING THE
12 IDENTIFICATION TESTIMONY OF A WITNESS, YOU SHOULD CONSIDER
13 THE FOLLOWING: ARE YOU CONVINCED THAT THE WITNESS HAD THE
14 CAPACITY AND AN ADEQUATE OPPORTUNITY TO OBSERVE THE
15 DEFENDANT?

16 WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY
17 TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE WILL BE
18 AFFECTED BY SUCH MATTERS AS HOW LONG OR SHORT A TIME WAS
19 AVAILABLE, HOW FAR OR CLOSE THE WITNESS WAS, HOW GOOD THE
20 LIGHTING CONDITIONS WERE, WHETHER THE WITNESS HAD AN
21 OCCASION TO SEE OR KNOW THE PERSON IN THE PAST. WHAT WAS
22 THE STRENGTH OF THE IDENTIFICATION? WHAT WAS THE LENGTH OF
23 TIME BETWEEN WHEN THE CRIME WAS COMMITTED AND ANY LATER
24 IDENTIFICATION? WERE THERE ANY TIMES WHEN A WITNESS FAILED
25 TO MAKE AN IDENTIFICATION OR WAS IT INCONSISTENT?

1 I WOULD AGAIN EMPHASIZE THAT THE BURDEN OF PROOF
2 IS ON THE STATE TO PROVE EVERY ELEMENT OF THE OFFENSES
3 CHARGED. THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING
4 BEYOND A REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS
5 THE PERPETRATOR OF THE OFFENSES FOR WHICH HE STANDS
6 CHARGED. IF AFTER EXAMINING THE TESTIMONY YOU HAVE A
7 REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION,
8 YOU MUST FIND THE DEFENDANT NOT GUILTY.

9 I WOULD FURTHER CHARGE YOU THAT THERE WAS
10 ADMITTED INTO THE RECORD OF THIS CASE EVIDENCE OF AN
11 ALLEGED PRIOR RECORD OF A WITNESS OR WITNESSES. THIS
12 EVIDENCE WAS ADMITTED FOR A LIMITED PURPOSE. THE EVIDENCE
13 WAS ADMITTED AND MAY BE CONSIDERED BY YOU THE JURY, IF YOU
14 CONCLUDE IT TRUE, ONLY FOR THE PURPOSE OF EVALUATING THE
15 CREDIBILITY OR THE BELIEVABILITY OF THAT WITNESS.

16 YOU MAY GIVE TO THIS EVIDENCE SUCH WEIGH AND
17 SUCH VALUE, IF ANY, TO WHICH YOU FIND IT IS ENTITLED ON
18 THE SOLE ISSUE OF THE CREDIBILITY OR THE BELIEVABILITY
19 OF THE TESTIMONY OFFERED BY THAT WITNESS HIMSELF OR
20 HERSELF.

21 I AM NOW GOING TO INSTRUCT YOU OR CHARGE YOU ON
22 THE LAW THAT PERTAINS TO THE TWO CHARGES THAT ARE IN THE
23 TWO INDICTMENTS. AGAIN, THERE ARE TWO SEPARATE
24 INDICTMENTS. I HAVE READ THEM TO YOU IN PART. EACH ONE
25 CHARGES A SEPARATE AND DISTINCT OFFENSE, AND YOU MUST

1 DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE
2 LAW THAT IS APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION
3 AS TO THE OTHER CHARGE.

4 THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON
5 EITHER OR BOTH OF THE CHARGES. YOU WILL BE ASKED TO WRITE
6 A SEPARATE VERDICT OF GUILTY OR NOT GUILTY AS TO EACH
7 CHARGE IN THESE TWO INDICTMENTS.

8 THE CHARGE OF ARMED ROBBERY THAT IS ONE OF THE
9 CHARGES IN THE INDICTMENT IS FOUND IN SECTION 16-11-330 OF
10 THE CODE OF LAWS OF THIS STATE. I AM GOING TO READ TO YOU
11 A PART OF THAT CODE SECTION.

12 A PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A
13 PISTOL, DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR OR OTHER
14 DEADLY WEAPON OR WHILE ALLEGING EITHER BY ACTION OR WORDS
15 HE WAS ARMED WHILE USING A REPRESENTATION OF A DEADLY
16 WEAPON OR ANY OBJECT WHICH A PERSON PRESENT DURING THE
17 COMMISSION OF THE ROBBERY REASONABLY BELIEVED TO BE A
18 DEADLY WEAPON IS GUILTY OF ARMED ROBBERY.

19 I AM NOW GOING TO DEFINE FOR YOU THE OFFENSE
20 OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON. I AM GOING
21 TO, FOR CONVENIENCE IN THIS INSTRUCTION, CALL IT ARMED
22 ROBBERY. IN ORDER THAT YOU MAY UNDERSTAND WHAT IS MEANT
23 BY ARMED ROBBERY, I WILL FIRST DEFINE FOR YOU THE OFFENSE
24 OF LARCENY AND THEN ROBBERY AND THEN WHAT CONSTITUTES
25 ARMED ROBBERY BECAUSE LARCENY IS EMBRACED WITHIN ROBBERY

1 AND ARMED ROBBERY IS THE AGGRAVATION OF THE CRIME OF
2 ROBBERY.

3 WHAT IS LARCENY? LARCENY IS THE FELONIOUS TAKING
4 AND CARRYING AWAY BY ANY PERSON OF THE GOODS OR THE
5 PERSONAL PROPERTY OF ANOTHER WITH THE FELONIOUS INTENT TO
6 PERMANENTLY DEPRIVE THE OWNER OF HIS PROPERTY AND CONVERT
7 IT TO THE TAKER'S OWN USE.

8 THE ESSENTIAL ELEMENTS OF THE OFFENSE OF LARCENY,
9 WHICH IS ORDINARILY CALLED STEALING, ARE THE FELONIOUS
10 TAKING INTO POSSESSION THE PERSONAL PROPERTY OF ANOTHER,
11 THE CARRYING AWAY AND THE REMOVAL OF THAT PERSONAL
12 PROPERTY, THE FELONIOUS INTENT, THE INTENT TO STEAL ON
13 THE PART OF THE TAKER, TO PERMANENTLY DEPRIVE THE OWNER
14 OF THE PERSONAL PROPERTY AND TO CONVERT THE PROPERTY TO
15 THE TAKER'S OWN USE.

16 NOW, ROBBERY IS THE FELONIOUS TAKING AND CARRYING
17 AWAY OF THE PERSONAL PROPERTY OF ANY VALUE OF ANOTHER FROM
18 HIS PERSON OR IN HIS PRESENCE BY VIOLENCE OR PUTTING HIM OR
19 HER IN FEAR OF VIOLENCE. ROBBERY INCLUDES LARCENY AND ALL
20 THE ELEMENTS THAT ARE NECESSARY TO CONSTITUTE LARCENY ARE
21 ALSO NECESSARY TO CONSTITUTE ROBBERY.

22 SO AGAIN THE ELEMENTS OF ROBBERY ARE THE PROPERTY
23 TAKEN MUST BE THE SUBJECT OF LARCENY, THAT IS, IT MUST BE
24 PERSONAL PROPERTY. I WOULD CHARGE YOU THAT LAWFUL COIN AND
25 CURRENCY OF THE UNITED STATES OF AMERICA IS PERSONAL

1 PROPERTY.

2 SECONDLY, THERE MUST BE A FELONIOUS TAKING AND
3 CARRYING AWAY OF THE PERSONAL PROPERTY, THAT IS, THERE
4 MUST BE A TRESPASS TO AND AN ASPORTATION OF THE PERSONAL
5 PROPERTY WITH THE INTENT TO STEAL. THE COMPLETE POSSESSION
6 OF THE PERSONAL PROPERTY BY THE TAKER EVEN FOR AN INSTANT
7 IS SUFFICIENT, AND THE CARRYING AWAY OR EVEN THE SLIGHTEST
8 REMOVAL OF THE PERSONAL PROPERTY IS SUFFICIENT IN LAW.

9 NEXT, THE TAKING AND CARRYING AWAY OF THE
10 PERSONAL PROPERTY MUST BE WITH THE FELONIOUS INTENT, THAT
11 IS, WITH THE INTENT TO STEAL ON THE PART OF THE TAKER, TO
12 PERMANENTLY DEPRIVE THE OWNER OF THE PERSONAL PROPERTY AND
13 TO CONVERT THE PERSONAL PROPERTY TO THE TAKER'S OWN USE.

14 NEXT, THE AGGRAVATED CIRCUMSTANCES NECESSARY TO
15 CONSTITUTE ROBBERY AS DISTINGUISHED FROM LARCENY ARE THESE.
16 THE PROPERTY MUST BE TAKEN FROM THE PERSON OF ANOTHER, BUT
17 IF IT'S TAKEN IN HIS OR HER PRESENCE, IT IS TAKEN
18 CONSTRUCTIVELY FROM HIS OR HER PERSON; AND ALSO THE TAKING
19 MUST NOT ONLY BE WITHOUT HIS OR HER CONSENT, BUT IT MUST BE
20 ACCOMPLISHED WITH VIOLENCE OR BY PUTTING THE VICTIM IN FEAR
21 OF VIOLENCE.

22 NOW, IN ORDER FOR ONE TO BE GUILTY OF ROBBERY
23 WHILE ARMED WITH A DEADLY WEAPON, THE LAW REQUIRES THAT ONE
24 MUST HAVE USED A DEADLY WEAPON TO ACCOMPLISH THE PURPOSE OF
25 THE ROBBERY AS I HAVE DEFINED THAT TERM FOR YOU. I WOULD

1 FURTHER CHARGE YOU THAT A PISTOL IS A DEADLY WEAPON WHETHER
2 IT WAS ACTUALLY LOADED WITH AMMUNITION AT THE TIME OF THE
3 ROBBERY OR NOT.

4 I WOULD FURTHER CHARGE YOU THAT WITH REGARD TO
5 THE REQUIREMENT THAT A PISTOL OR DEADLY WEAPON BE USED IN A
6 ROBBERY TO CONSTITUTE ARMED ROBBERY, IF A DEFENDANT USES A
7 WEAPON THAT IS INOPERABLE, THE OFFENSE WILL BE ARMED
8 ROBBERY PROVIDED THAT THE APPEARANCE OF THE PISTOL OR THE
9 WEAPON APPEARED REAL AND OPERABLE TO THE VICTIM AT THE TIME
10 OF THE OFFENSE AND ALSO THE VICTIM WAS PUT IN FEAR OF
11 BODILY HARM OR THE THREAT OF BODILY HARM WAS REASONABLY
12 APPARENT TO THE VICTIM.

13 THAT IS THE LAW THAT APPLIES TO THE OFFENSE OF
14 ARMED ROBBERY. THE OTHER OFFENSE THAT IS CHARGED IN THE
15 OTHER INDICTMENT IS POSSESSION OF A PISTOL BY A PERSON
16 CONVICTED OF A VIOLENT CRIME. THAT OFFENSE IS FOUND IN
17 SECTION 16-23-30 AND LET ME FIND THAT. I THINK IT'S IN
18 THIS SAME BOOK. BEAR WITH ME ONE SECOND.

19 (PAUSE).

20 THE COURT: SUBSECTION (E) OF SECTION 16-23-30
21 READS THAT IT SHALL BE UNLAWFUL FOR ANY PERSON COVERED IN
22 SUBSECTION (A), (B), (C) OR (D) OF THIS SECTION TO POSSESS
23 OR ACQUIRE PISTOLS WITHIN THIS STATE.

24 THE PERSONS COVERED IN SUBSECTION (A) OF THIS
25 STATUTORY PROVISION ARE PEOPLE WHO HAVE BEEN CONVICTED OF A

1 CRIME OF VIOLENCE IN ANY COURT OF THE UNITED STATES OR ONE
2 OF THE SEVERAL STATES. THAT IS THE OFFENSE THAT IS CHARGED
3 IN THE SECOND INDICTMENT, THAT BEING POSSESSION OF A PISTOL
4 BY A PERSON PREVIOUSLY CONVICTED OF A VIOLENT CRIME.

5 NOW, MADAME FORELADY, AND LADIES AND GENTLEMEN,
6 IN THIS CASE ON EACH CHARGE THERE ARE TWO POSSIBLE
7 VERDICTS, EITHER GUILTY OR NOT GUILTY. ONCE YOU HAVE
8 DELIBERATED AND REACHED A VERDICT -- AND WHATEVER VERDICT
9 YOU REACH MUST BE UNANIMOUS. ALL 12 OF YOU MUST AGREE.

10 ONCE YOU HAVE DELIBERATED AND REACHED A VERDICT
11 ON THE INDICTMENTS THAT YOU WILL HAVE, MADAME FORELADY, YOU
12 PROBABLY CAN'T SEE IT FROM THERE; BUT ON THE BACK OF EACH
13 ONE IS SAYS VERDICT. THEN THERE ARE SEVERAL LINES UNDER
14 THAT.

15 YOU WOULD WRITE YOUR VERDICT, EITHER GUILTY OR
16 NOT GUILTY. THEN YOU AS THE FOREPERSON WOULD SIGN ON THE
17 BOTTOM LINE AND DATE IT. AGAIN, THERE IS A PLACE ON THE
18 OTHER INDICTMENT THAT SAYS THE SAME THING.

19 YOU WILL HAVE THESE WITH YOU BACK IN THE JURY
20 ROOM. AFTER YOU HAVE DELIBERATED AND REACHED A UNANIMOUS
21 VERDICT AND COMPLETED THAT ON THE INDICTMENTS, IF YOU
22 WILL SIMPLY KNOCK ON THE DOOR AND TELL THE BAILIFF THAT
23 YOU HAVE REACHED A VERDICT -- DON'T TELL THEM WHAT IT IS --
24 WE WILL BRING YOU BACK IN AND TAKE YOUR VERDICT AT THAT
25 TIME.

1 NOW, WHEN ALL OF THE EXHIBITS AND THE INDICTMENTS
2 ARE BROUGHT TO YOU, AT THAT TIME YOU CAN BEGIN YOUR
3 DELIBERATIONS. UNTIL THEN I WOULD ASK YOU NOT TO DISCUSS
4 THE CASE. I WILL GO OVER WITH THE ATTORNEYS THE
5 INSTRUCTIONS I HAVE JUST GIVEN YOU. IF I HAVE OMITTED
6 ANYTHING, IF I NEED TO EXPLAIN ANYTHING AT THIS TIME, I
7 WILL DO THAT RIGHT NOW.

8 IF THAT IS NOT NECESSARY, THEN WHEN THE EXHIBITS
9 AND THE EXHIBITS ARE BROUGHT TO YOU, GO AHEAD AND BEGIN
10 YOUR DELIBERATIONS. ONCE YOU HAVE COMPLETED THE VERDICT
11 FORMS, AGAIN NOTIFY THE BAILIFF AND WE WILL BRING YOU BACK
12 IN THE COURTROOM. IF YOU WOULD ALL PLEASE STEP BACK TO
13 YOUR JURY ROOM, WITH THE EXCEPTION OF MY ALTERNATE. IF YOU
14 WILL STAY HERE WITH ME IN THE COURTROOM, PLEASE.

15 (THE JURY RETIRES TO THE JURY ROOM).

16 (THE ALTERNATE IS EXCUSED).

17 THE COURT: EXCEPTIONS OR ADDITIONS FROM THE
18 STATE?

19 MR. MAYE: NONE FROM THE STATE, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. WILLIAMS: YOUR HONOR, WE HAVE ONE, THAT IS,
22 I DIDN'T HEAR A CHARGE ON A UNANIMOUS VERDICT.

23 THE COURT: YES, SIR, I CHARGED THAT ABOUT THREE
24 TIMES RIGHT THERE AT THE END. I SAID IT MUST BE UNANIMOUS.
25 ALL 12 OF THEM HAVE TO AGREE. I TOLD THEM THAT TWO OR

1 THREE TIMES.

2 MR. WILLIAMS: DID YOU HAVE A CHARGE THAT GOES TO
3 THEY ARE NOT TO COMPROMISE AND TO DO SO WOULD VIOLATE THEIR
4 INDIVIDUAL CONSCIENCE?

5 THE COURT: NO, SIR. I HAVE CHARGED WHAT MY
6 STANDARD CHARGE IS. I THINK THEY UNDERSTAND THEY HAVE TO
7 UNANIMOUSLY AGREE ON THE VERDICT. I DON'T GO ANY FURTHER
8 THAN THAT UNLESS IT APPEARS THEY ARE HAVING SOME PROBLEM IN
9 REACHING A VERDICT, MAYBE SOMETHING ALONG THE LINES OF AN
10 ALLEN CHARGE. I DON'T GET INTO THAT UNTIL -- IF THEY
11 INDICATE THEY ARE HAVING TROUBLE, I WILL CONSIDER
12 RECHARGING THEM.

13 MR. WILLIAMS: THANK YOU, YOUR HONOR.

14 THE COURT: BE SURE WE HAVE GOT ALL THE EXHIBITS.
15 HERE ARE THE INDICTMENTS. WE WILL BE IN RECESS AT THIS
16 TIME UNTIL WE HEAR FROM THE JURY. MADAME COURT REPORTER,
17 IF YOU WILL MARK THIS STIPULATION AS A COURT'S EXHIBIT.

18 (COURT EXHIBIT'S NUMBER 1, STIPULATION IS MARKED
19 FOR PURPOSES OF THE RECORD).

20 (THE JURY COMMENCED ITS DELIBERATION AT 3:35
21 P.M.).

22 (THE FOLLOWING OCCURRED AT 3:55 P.M.).

23 THE COURT: I HAVE BEEN TOLD THE JURY HAS REACHED
24 A VERDICT. I DON'T PERMIT ANY KIND OF EMOTIONAL OUTBURSTS
25 FROM ANYONE IN THE COURTROOM. IF ANYONE THINKS THEY MAY

1 HAVE TROUBLE CONTAINING THEIR EMOTIONS, THEY NEED TO REMOVE
2 THEMSELVES RIGHT NOW. LET'S BRING THE JURY, PLEASE.

3 (THE JURY RETURNS TO OPEN COURT TO REPORT ITS
4 VERDICT).

5 THE COURT: MADAME FORELADY, I HAVE BEEN TOLD THE
6 JURY HAS REACHED A VERDICT. IS THAT CORRECT?

7 FOREMAN: YES, WE HAVE.

8 THE COURT: WAS IT UNANIMOUS?

9 FOREMAN: YES, IT WAS.

10 THE COURT: IF YOU WILL HAND THE INDICTMENTS TO
11 THE BAILIFF, PLEASE.

12 (HANDS TO COURT).

13 THE COURT: MADAME CLERK, YOU MAY PUBLISH THE
14 VERDICTS.

15 (WHEREUPON THE VERDICTS OF THE JURY WERE
16 PUBLISHED AS FOLLOWS).

17 CLERK: THE STATE OF SOUTH CAROLINA VERSUS
18 FRANK TOLEN, JR., INDICTMENT 98-GS-41-165, THE VERDICT IS
19 GUILTY. THE STATE OF SOUTH CAROLINA VERSUS FRANK TOLEN,
20 JR., DOCKET NUMBER 98-GS-41-166, THE VERDICT IS GUILTY.

21 THE COURT: MADAME FORELADY, AND LADIES AND
22 GENTLEMEN, IF THIS IS YOUR VERDICT ON BOTH CHARGES, PLEASE
23 INDICATE BY RAISING YOUR RIGHT HAND.

24 (ALL JURORS SO INDICATE).

25 THE COURT: ALL 12 JURORS HAVE SO INDICATED.

1 ANYTHING FURTHER OF THE JURY, MR. WILLIAMS?

2 MR. WILLIAMS: YOUR HONOR, I THINK THAT WOULD ACT
3 AS A POLLING.

4 THE COURT: ALL RIGHT, SIR. ANYTHING FROM THE
5 STATE?

6 MR. MAYE: NOTHING FROM THE STATE.

7 THE COURT: MADAME FORELADY, AND LADIES AND
8 GENTLEMEN, THAT WILL CONCLUDE YOUR SERVICE ON THIS CASE. I
9 WISH I COULD SAY THAT'S IT FOR THE WEEK BUT I CAN'T. THE
10 REST OF THE JURY PANEL IS GOING TO BE HERE AT 9:30 IN THE
11 MORNING. WE NEED TO HAVE YOU BACK.

12 THERE IS STILL A SENTENCING PROCEEDING THAT I
13 WILL BE GOING THROUGH IN THIS CASE. YOU ARE CERTAINLY
14 WELCOME TO STAY AND OBSERVE THAT IF YOU LIKE TO. YOU HAVE
15 GOT SOME TIME INVESTED IN THE CASE.

16 AT THE SAME TIME IF YOU WOULD PREFER TO LEAVE, I
17 WILL GIVE YOU PERMISSION TO DO THAT ALSO. IF YOU WOULD
18 LIKE TO STAY OR GO IS UP TO YOU. EACH ONE CAN MAKE YOUR
19 OWN DECISION ON THAT.

20 (PAUSE).

21 THE COURT: IF Y'ALL WOULD COME FORWARD, PLEASE.
22 SOLICITOR, I WILL BE GLAD TO HEAR FROM THE STATE PRIOR TO
23 IMPOSING SENTENCING. MR. WILLIAMS, OF COURSE, I WOULD BE
24 GLAD TO HEAR FROM YOU AND IF YOUR CLIENT WOULD LIKE TO MAKE
25 ANY STATEMENTS AT THE APPROPRIATE TIME, I WILL HEAR FROM

1 HIM. SOLICITOR.

2 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR.
3 ON DECEMBER 16, 1997, THE STATE OF SOUTH CAROLINA NOTICED
4 FRANK TOLEN THROUGH HIS ATTORNEY, MR. VANNIE WILLIAMS, OF
5 THEIR INTENT TO SEEK LIFE WITHOUT PAROLE AT SENTENCING IN
6 THIS CASE.

7 YOUR HONOR, THE AGGRAVATING CIRCUMSTANCES WOULD
8 BE A PRIOR VIOLENT FELONY CONVICTION. THE CONVICTION UPON
9 WHICH THE STATE RELIED UPON AND PLACED THE DEFENDANT UNDER
10 NOTICE WAS A PRIOR CONVICTION FOR ARMED ROBBERY OUT OF
11 AIKEN COUNTY.

12 YOUR HONOR, I HAVE -- FOR THE RECORD THIS WAS
13 INDICTMENT 90-GS-02-327, THE STATE VERSUS FRANK TOLEN, JR.
14 THE INDICTMENT WAS FOR ARMED ROBBERY. THE DATE OF
15 CONVICTION IN THIS CASE WAS 3/22 OF 1990. HE WAS CONVICTED
16 OF ARMED ROBBERY IN FRONT OF JUDGE FRANK EPPES.

17 THE COURT: WHAT WAS THAT DATE AGAIN, PLEASE?

18 MR. MAYE: 3/22/1990. THE STATE DID COMPORT WITH
19 THE STATUTE AND GAVE THE DEFENDANT APPLE ADVANCE NOTICE OF
20 THE STATE'S INTENT TO SEEK SENTENCING UNDER LIFE WITHOUT
21 PAROLE OR TO SEEK LIFE WITHOUT PAROLE ON THIS CHARGE. THIS
22 INDIVIDUAL ALSO HAS -- THE DEFENSE WAS PROVIDED WITH A
23 CERTIFIED TRUE COPY FROM THE AIKEN COUNTY CLERK OF COURT'S
24 OFFICE OF THIS PRIOR CONVICTION.

25 ADDITIONALLY I HAVE CERTIFIED TRUE COPIES OF AN

1 INDICTMENT FOR ARMED ROBBERY, POSSESSION OF A STOLEN MOTOR
2 VEHICLE AND POSSESSION OF AN UNLAWFUL WEAPON OUT OF
3 LEXINGTON, SOUTH CAROLINA, INDICTMENT 90-GS-32-301.

4 I HAVE CERTIFIED TRUE COPIES OF THE SENTENCE
5 SHEET HERE FROM THE LEXINGTON COUNTY CLERK OF COURT. HE
6 PLED, IT LOOKS LIKE TO ME, ON 4/20 OF 1990. HE PLED GUILTY
7 TO ARMED ROBBERY IN LEXINGTON COUNTY, INDICTMENT
8 90-GS-32-301, ARMED ROBBERY. HE RECEIVED A Y.O.A.
9 SENTENCE, I BELIEVE, ON BOTH OF THESE.

10 YOUR HONOR, HE HAS AN EXTENSIVE RECORD. THESE
11 ARE NOT ONLY HIS ONLY CRIMES. HE HAS PENDING CHARGES IN
12 LEXINGTON COUNTY NOW. HE HAS AN EXTENSIVE RECORD. THE
13 STATE HAS COMPLIED WITH THE STATUTORY PRESCRIPTIONS FOR
14 SEEKING LIFE WITHOUT PAROLE IN THIS CASE.

15 I BELIEVE THE STATE AT THIS TIME WOULD MAKE THESE
16 PART OF THE COURT'S RECORD, THESE CERTIFIED TRUE COPIES OF
17 THE SENTENCING SHEETS. I BELIEVE THERE WOULD BE NO OTHER
18 SENTENCE IF THE COURT ACCEPTS THESE.

19 THE COURT: CAN YOU TELL ME THE -- I HAD THE
20 STATUTE OUT YESTERDAY DEALING WITH THE NOTICE THAT YOU HAVE
21 GIVEN AND THE LIFE WITHOUT PAROLE POSSIBILITY. I JUST
22 CAN'T FIND IT, CAN'T PUT MY HAND ON IT. IT'S UNDER TITLE
23 24, I BELIEVE. WAIT A MINUTE. I HAVE GOT IT RIGHT HERE.

24 (PAUSE).

25 THE COURT: IT'S TITLE 17. THAT'S WHY I COULDN'T

1 FIND IT. IT'S UNDER 17-25-45. MR. WILLIAMS, DO YOU
2 DISPUTE -- I HAVE BEEN TOLD YOU HAVE BEEN PROVIDED
3 CERTIFIED COPIES OF THE INDICTMENTS ON THE AIKEN COUNTY AND
4 THE LEXINGTON CASE, PRIOR ARMED ROBBERY CONVICTIONS OR
5 PLEAS OF YOUR CLIENT; IS THAT CORRECT?

MR. WILLIAMS: YES, I HAVE.

6 THE COURT: YOU DON'T DISPUTE THESE, DO YOU? DO
7 YOU DISPUTE THE ACCURACY OF THOSE INDICTMENTS OR SENTENCING
8 SHEETS?
9

MR. WILLIAMS: WE DO NOT, YOUR HONOR.

10 THE COURT: ANYTHING FURTHER FROM THE STATE?
11

12 MR. MAYE: YOUR HONOR, I WILL PASS THESE UP TO BE
13 MADE A PART OF THE COURT'S RECORD.

14 THE COURT: THEY WILL BE MADE COURT'S EXHIBITS.
15 I GUESS THAT WOULD BE THE BEST WAY TO HANDLE THAT.

16 (COURT'S EXHIBIT NUMBER 2, INDICTMENT AND
17 SENTENCING SHEET FROM AIKEN COUNTY; AND NUMBER 3,
18 INDICTMENT AND SENTENCING SHEET FROM LEXINGTON COUNTY, ARE
19 MARKED FOR PURPOSES OF THE RECORD).

20 THE COURT: MR. WILLIAMS, I WOULD BE GLAD TO HEAR
21 ANY ARGUMENTS OR ANY STATEMENTS YOU WOULD LIKE TO MAKE.

22 MR. WILLIAMS: THANK YOU, YOUR HONOR. IF IT
23 PLEASES THE COURT. YOUR HONOR, THE FACTS OF THIS CASE HAVE
24 REVEALED AND I WOULD REMIND THE COURT THAT FRANK TOLEN IS
25 28-YEAR-OLD INDIVIDUAL WITH A WIFE, THREE CHILDREN.

1 ON THE NIGHT OF THIS EVENT, WITHOUT -- HE HAD NO
2 INTENTION TO DO ANY HARM TO MR. DYSON. THE EVIDENCE HAS
3 REVEALED, YOUR HONOR, ONE, THAT THE GUN THAT WAS USED IN
4 THIS EVENT WAS INOPERABLE. A QUICK REVIEW OF THE WEAPON
5 AND HANDLING OF THE WEAPON WOULD CERTAINLY SUBSTANTIATE THE
6 TESTIMONY.

7 ADDITIONALLY THERE WAS TESTIMONY THAT THE WEAPON
8 WAS NOT EVEN LOADED. FURTHERMORE THERE HAS BEEN NO
9 TESTIMONY THAT, IN FACT, MR. DYSON WAS EVER ASSAULTED,
10 PHYSICALLY ASSAULTED IN ANY MANNER WHATSOEVER.

11 YOUR HONOR, FOR ALL PRACTICAL PURPOSES BUT FOR
12 THE USE OF A BROKEN WEAPON, THIS WOULD ESSENTIALLY HAVE
13 BEEN A STRONG ARMED ROBBERY, WHERE SOMEONE GOES TO SOMEONE
14 AND SAYS, "GIVE ME YOUR MONEY."

15 YOUR HONOR, WE WOULD ASK THE COURT TO VIEW THIS
16 MATTER IN THE LIGHT OF THE FACTS AS PRESENTED; AND THAT IS
17 ESSENTIALLY A STRONG ARMED ROBBERY. WHILE THE LAW STATES
18 THAT THE FACT THE WEAPON WAS INOPERABLE -- THE LAW STATES
19 THAT THE FACT THE WEAPON WAS INOPERABLE, THE DEFENDANT
20 NEVERTHELESS CAN BE CONVICTED ON ARMED ROBBERY.

21 WE WOULD ASK THE COURT, HOWEVER, THAT YOUR HONOR
22 HAS THE DISCRETION IN SENTENCING. WE WILL CERTAINLY ASK
23 YOUR HONOR TO CONSIDER THE FACT THAT NO HARM WAS DONE TO
24 MR. DYSON, AND OBVIOUSLY THERE WAS NO INTENT TO DO ANY HARM
25 TO MR. DYSON. WE JUST ASK THE COURT TO CONSIDER THAT IN

1 THE SENTENCING OF THIS YOUNG MAN.

2 FURTHER, YOUR HONOR, WE WOULD CERTAINLY MAINTAIN
3 THAT THE OFFER OF THE STATE TO HAVE MR. TOLEN SENTENCED
4 UNDER THE RECIDIVIST STATUTE IS PUNISHMENT THAT WOULD NOT
5 FIT THIS PARTICULAR CRIME.

6 THE PUNISHMENT THAT THE COURT CAN GIVE UNDER THE
7 ARMED ROBBERY STATUTE, AS WELL AS FELONY POSSESSION OF A
8 WEAPON, CERTAINLY IS SUFFICIENT TO, ONE, SERVE THE ROLE OF
9 PUNISHMENT FOR THIS CRIME. CERTAINLY IT WOULD SERVE THE
10 ROLE TO SEND A MESSAGE TO ANYONE ELSE WHO MAY BE THINKING
11 ABOUT COMMITTING SUCH A CRIME.

12 CERTAINLY, YOUR HONOR, IT WOULD EVEN SERVE TO AN
13 EXTENT TO GIVE MR. DYSON SOME SENSE OF VENGEANCE AND
14 RETRIBUTION AGAINST MY CLIENT. YOUR HONOR, WE WOULD ASK
15 THAT HE NOT BE SENTENCED UNDER THE RECIDIVIST STATUTE, BUT
16 WE DO RECOGNIZE THAT THE COURT WILL PROBABLY IMPOSE A
17 SIGNIFICANT SENTENCE IN THIS MATTER.

18 THE COURT: I NEED TO GET ON THE RECORD A COUPLE
19 OF THINGS. FIRST OF ALL, UNDER THE ARMED ROBBERY STATUTE,
20 THE POSSIBLE SENTENCE IS TEN TO THIRTY YEARS, TEN YEARS
21 BEING THE MINIMUM/MANDATORY WITH A PROVISION THAT A MINIM
22 OF SEVEN YEARS OF THAT WOULD HAVE TO BE SERVED PRIOR TO
23 ANYONE BEING ELIGIBLE FOR PAROLE CONSIDERATION.

24 BUT UNDER 17-25-45 -- THE OTHER CHARGE CARRIES
25 TO FIVE YEARS, I BELIEVE. BUT UNDER 17-25-45,

1 NOTWITHSTANDING ANY OTHER PROVISION OF LAW EXCEPT IN CASES
2 IN WHICH THE DEATH PENALTY IS IMPOSED, UPON A CONVICTION
3 FOR A MOST SERIOUS OFFENSE AS DEFINED BY THIS SECTION, A
4 PERSON MUST BE SENTENCED TO A TERM OF IMPRISONMENT FOR LIFE
5 WITHOUT THE POSSIBILITY OF PAROLE IF THAT PERSON HAS ONE OR
6 MORE PRIOR CONVICTIONS FOR A MOST SERIOUS OFFENSE.

7 IN SUBSECTION (C) AS USED IN THIS SECTION, MOST
8 SERIOUS OFFENSE MEANS -- AND IT LISTS A NUMBER OF OFFENSES
9 -- WHICH INCLUDES ARMED ROBBERY, WHICH BY DEFINITION ARMED
10 ROBBERY IS DEFINED AS A MOST SERIOUS OFFENSE. THE SECTION
11 THAT I JUST READ IS UNDER SUBSECTION (A).

12 WHEN YOU FLIP OVER TO SUBSECTION (F) -- EXCUSE ME
13 -- TO SUBSECTION (G), THE DECISION TO INVOKE SENTENCING
14 UNDER 17-25-45 (B) IS IN THE DISCRETION OF THE SOLICITOR.
15 PROVISIONS OF 17-25-45 (A) SHALL BE MANDATORY.

16 I AM NOT SURE WHERE YOU ARE GETTING THAT THE
17 COURT HAS DISCRETION. THAT MANDATORY LANGUAGE IS IN THERE.
18 I AM NOT SURE WHETHER IT'S DISCRETIONARY OR NOT. I AM NOT
19 SURE WHAT YOUR RATIONAL IS FOR THAT. I WOULD BE GLAD TO
20 HEAR FROM YOU FURTHER ON THAT PARTICULAR POINT.

21 MR. WILLIAMS: YOUR HONOR, YOUR READING OF THE
22 STATUTE IS ACCURATE; AND AT THIS POINT I WOULD BE INCLINED
23 TO SAY THAT I BELIEVE YOUR INTERPRETATION OF THE STATUTE IS
24 ACCURATE.

25 HOWEVER, THERE HAVE BEEN OTHER LAWS IN THIS

1 STATE, YOUR HONOR, WHICH WE HAVE HAD CIRCUIT JUDGES WHO
2 HAVE GONE AGAINST THE LAW AND THE GRAIN AND HAVE BEEN
3 UPHELD LATER BY APPELLATE COURTS.

4 BASED UPON THAT, YOUR HONOR, WE WOULD JUST ASK
5 THAT YOUR HONOR DISREGARD THE MANDATORY PROVISIONS OF
6 THAT STATUTE ON THE BASIS THAT WE WOULD ARGUE IT'S
7 UNCONSTITUTIONAL. IT IMPOSES AN EXCESSIVE PENALTY. WE
8 FEEL AS THOUGH IT WOULD BE TO PENALIZE AN INDIVIDUAL TWICE
9 BASED UPON MATTERS WHERE HE HAS PREVIOUSLY PAID HIS DEBT TO
10 SOCIETY.

11 THE COURT: ALL RIGHT. THANK YOU. MR. TOLEN,
12 ANY STATEMENT YOU WOULD LIKE TO MAKE?

13 DEFENDANT TOLEN: NO, SIR.

14 THE COURT: SOLICITOR, I DIDN'T GIVE YOU AN
15 OPPORTUNITY TO RESPOND TO ANYTHING FURTHER YOU WOULD LIKE
16 TO PUT ON THE RECORD AS FAR AS SENTENCING IS CONCERNED.

17 MR. MAYE: YOUR HONOR, I CAN ONLY SAY THAT THE
18 STATE HAS COMPLIED WITH ALL OF THE PROCEDURES NECESSARY FOR
19 SENTENCING UNDER LIFE WITHOUT PAROLE. THE DEFENDANT HAD
20 ADEQUATE NOTICE AND THERE IS NO OTHER SENTENCE NOW THAT THE
21 JURY HAS REACHED A VERDICT.

22 THE COURT: I HAVE CONSIDERED THE ARGUMENTS MADE
23 BY COUNSEL. I DON'T VIEW THE STATUTE AS GIVING THE COURT
24 DISCRETION. EVEN IF IT DID, BASED ON THE HISTORY OF THE
25 PRIOR ARMED ROBBERIES, ALL OF WHICH ARE CLASSIFIED AS MOST

1 SERIOUS OFFENSES, IT IS THE SENTENCE OF THIS COURT THAT MR.
2 TOLEN IS TO BE CONFINED IN THE DEPARTMENT OF CORRECTIONS
3 FOR A TERM OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
4 PAROLE PURSUANT TO SECTION 17-25-45 ON THE CHARGE OF ARMED
5 ROBBERY. ON THE OTHER CHARGE HE IS SENTENCED TO
6 CONFINEMENT FOR A PERIOD OF FIVE YEARS TO RUN CONCURRENT.
7 WE ARE IN RECESS.

8 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, THE UNDERSIGNED L. COCONUT PANTSARI, OFFICIAL
COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF ALL THE PROCEEDINGS HAD AND THE EVIDENCE
INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CRIMINAL COURT FOR SALUDA COUNTY, SOUTH
CAROLINA, ON THE 26TH AND 27TH DAYS OF JANUARY, 1998.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 7, 1998

L. Coconut Pantsari
COURT REPORTER

Appendix 316

FILED
CLERK OF COURT
S.C.

315

98 APR 15 AM 10:53

STATE OF SOUTH CAROLINA

County of SALUDA

In the Court of Common Pleas

FRANK TOLEN #246966

Full name and prison number (if any) of Applicant.

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

98-CP-41-64

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention ALLENDALE CORRECTIONAL INSTITUTION, F-1
B-10, P.O. BOX 1151, FAIRFAX, S.C. 29827-1151

2. Name and location of Court which imposed sentence SALUDA COUNTY COURTHOUSE

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 97-GS-41-293 ARMED ROBBERY -

(b) 97-GS-41-294 CAR JACKING

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 1-27-98 97-GS-41-293 LIFE WITHOUT POSSIBILITY OF PAROLE

(b) 1-27-98 97-GS-41-294 5 YEARS CONCURRENT

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) I TOLD MY LAWYER TO APPEAL MY CASE AND HE LET THE 10 DAY

(b) FILING TIME RUN OUT

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) FAILURE TO FILE MY DIRECT APPEAL BY MY LAWYER

(c) NO PRELIMINARY HEARING WAS DONE IN MY CASE

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) WHITE [REDACTED] -VS- STATE, 200 S.E.2d 35 (1974)

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? NO
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
 - (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:
- (a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

- (b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

- (d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO

(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? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. VANNIE WILLIAMS, JR 202 WEST EUTAW STREET,
SALLIDA, S.C. 29138

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL: VANNIE WILLIAMS, JR.

ii. SENTENCING: VANNIE WILLIAMS, JR.

iii. _____

18. State clearly the relief you seek in filing this application.

A NEW JURY TRIAL

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of SALUDA

VERIFICATION

I, FRANK TOLEN #246966

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.

Frank Tolen

SWORN to and subscribed before me this 14thday of April, 19 88

[Signature]
Notary Public

(L.S.)

My Commission Expires: 10/13/88

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, FRANK TOLEN #246966

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 therefor.

Frank Tolen
Applicant

SWORN or affirmed to and subscribed before me this

14th day of April, 19 88

[Signature]
Notary Public

My Commission Expires 10/13/88

Appendix 321

State of South Carolina)
County of Saluda)

Frank Tolen Jr. #246966)
Vs. Appellant)
State of South Carolina)
Respondent)

Motion to Make
Amends to Original
P.C.R.

In this referenced case, I would pass upon and ask you to enter, enforce and bring in effect of action the Article (1V) Section 1- full faith credit of the United States Constitution. Also Article (6) Clause (2) Supremacy supreme law of the land. I would like to exercise my 1st amendment freedom of speech, because I want to attack the 4th, 5th, 6th, and 14th amendment of the United States Constitution.

On January 27, 1998, appellant was convicted in a Court of Law in Saluda County Court Room. Appellant was sentenced to life sentence without the possibility of parole for the charge of Armed Robbery and (5) five years for unlawful possession of a pistol under the two strike law. The 1995 Act no: 83 by section 62 provides that the 1995 amend to this section under (17-25-45) applies prospectively to all crimes committed on or after the Act's effective date of January 1, 1996. On March 22, 1990 appellant pleaded guilty to Armed Robbery under the Youth Offender Act. Appellant served 4 years 8 months and was released ~~_____~~

~~_____~~. Appellant argues that he was denied due process of the law, because when he pleaded guilty in 1990 this law was not in effect at the time his offense was committed. See: Jones-v-State of Ark. Cite as 929 F.2d. 375 violates 5th, 14th amendment. Also sentencing appellant under the amended version of the South Carolina Code of Law Statute which was not in force when appellant committed his offense, which on its face did not apply to appellant, violated ex-post-facto clause and denied

appellant due process. Appellant argues that this law is ex-post-facto because its enactment is retrospective because it apply to a crime occurring before its existence, a crime appellant committed 4 years 8 months ago which causes appellant a great disadvantage. See: People-v-Jenkins Cal. app 2 Dist 1995, 41 Cal. Rptr 2d 502. 35 Cal. app 4th 669 Review Denied.

Appellant also argues that the new guideline foreclosed his ability to challenge the imposition of a sentence longer than his presumptive sentence under the old law. Appellant therefore was "disadvantaged" by retrospective application of the revised guidelines to his crime. See: Miller-v-Florida 482 U.S. 423, 96 L. Ed. 2d 351. Appellant feels that his constitutional rights was violated because he was sentenced under a guideline that was not in effect at the time of his earlier crime, which is indeed "ex-post-facto" clause. See: Hamilton-v- United States 67 F. 3d. 761,765 (9th Cir 1995). Furthermore appellant argue that in calculating his sentence under the newly revised law that went into effect January 1, 1996 that the State Court improperly relied on a 1990 conviction for Armed Robbery which was based on a constitutionally infirm guilty plea, because a constitutionally invalid conviction can not be used to enhance a sentence. See: United States-v-Tucker 404 U.S. 443, 448, -49, 92 S.Ct. 589, 592-93, 30 L.Ed. 2d 592 (1972). Appellant argues that the procedure by which he was sentenced under the South Carolina Code of Law section 17-25-45 Two Strike Law Statute violated due process. Appellant argues that the State Judge Honorable James W. Johnson Jr. disregarded his obligation to make a finding that it was "just and proper for him to be adjudged a two strike offender." As required by the South Carolina Code of Law under (section 17-25-45) which went into effect January 1, 1996. Appellant contend that South Carolina Code of Law (section 17-25-45) Two Strike Law created a liberty interest in sentencing procedures protected by due process clause of the 14th amendment. See: Hicks-v-Oklahoma 447 U.S. 343, 346, 100 S.Ct. 2227, 2229, 65 L.Ed.2d 175 (1980). And appellant argues that the court's failure to adhere to its own procedures violate his due process right, but also violates the Federal rights and that it will be cognizable within a Federal Court. See: 28 U.S.C.A. §§ 636 (B) 2254; U.S.C.A. Const. Amend 5, 14. Appellant argues that this law was passed after the occurrence

of his act or his commission which was on March 22, 1990 which retrospectively changes the legal consequences on relations of such Fact or deed. This law is indeed unconstitutionally "ex-post-facto" because it deprives defendant of a defense to criminal liability that he had prior enactment of the law. See: State-v-Rogers Ohio Com. Pl, 346 N.E. 2d 352, 361 Also Art. (I) § 9 (C1.3) and § 10 of the U.S. Constitution prohibit both Congress and the State from passing any ex-post-facto law. Appellant argues that it is clear to see that the appellant of sentencing guideline was not in effect when appellant accepted a plea bargain in 1990. Furthermore appellant argues that application of amended version of new sentencing guideline does violate ex-post-facto clause, and appellant also feels that appellant after conviction should have been sentenced pursuant to guideline in effect at time of offense, which means if appellant was convicted, which was the case it should have been his first under the new sentencing guideline, which went into effect January 1, 1996. Appellant argues that to fall within the ex-post-facto prohibition two elements must take place or be present: First the law must be retrospective, that is it must apply to all events occurring before its enactment; and second, it must disadvantage the offender affected by it. See: Miller-v-Florida 482 U.S. 423, 430, 107 S.Ct. 2446, 2451, 96 Ced, 2d 351 1987 (quotations omitted). The 1996 Sentencing Guideline satisfy squarely the first element. The 1996 version of section 17-25-45 quoted by stating that the 1995 amend to this section applies prospectively to all crimes committed on or after the Act's effective date of January 1, 1996. Also under this same section 17-25-45 under section (F), the State use this section which is the (F) section for the purpose of determining a prior conviction. Under this section (F), the State has applied it to a crime that occurred in 1990; six years to its enactment. This is what makes it retrospective. Appellant argues that the ex-post-facto clause forbids imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred. See: Weaver-v-Graham 450 U.S. 24, 30, 101 S.Ct. 960, 965, 67 L.Ed. 2d 17 (1981). Not only is the newly created guideline unconstitutional, but it also contradict itself by saying one thing and then created a section (F) to violate its own law. Not

only does this law violate its own rules and regulations, it violates the Supreme Law of the Land. The State used organic instrument of State Government purports to deprive appellant of rights granted by Federal Constitution. These instruments are said to violate Federal Constitution under Supremacy Clause. See: Sitz-v-Dept of State Police Mich (1993) 506 N.W. 2d 209, 443 Mich. 744. Supremacy Clause provides that all state laws is subordinate to and may not detract from Federal Constitutional Rights. Layne-v-City of Mandeville appl Cir. (1993) 633 ⁵⁰ 2d 608 State Judges. Appellant argues that the new sentencing guideline deprive a person like himself who is accused of crimes of some lawful protection to which he have become entitled, such as the protection of a former conviction or acquittal, violates the fourteenth amendment also Art. (I) § 9 (Cl.3) and § 10 of the U.S. Constitution. Furthermore, appellant argues the State expose him to resentencing under statute for which he could not have been prosecuted prior to adoption of the new legislation. Appellant argues the State errors by using a conviction from a guilty plea that happened back in March 22, 1990. Appellant further argues that increasing a legal sentence after it has been fully served violates the Double Jeopardy Clause. See: United States-v-Woodward 726 F.2d 1320, 1328 (9th Cir 1983). In conclusion of appellant argument, he further argue that under the South Carolina Code 17-25-45 it stated thatThe 1995 Act no: 83 by§ 62 provided that the 1995 amendment to this section applies prospectively to all crimes committed on or after the Act's effective date of January 1, 1996. At no point whatsoever does it states or specify that this law is retroactive. Once again, in order to fall within the ex-post-facto law, first the law must be retrospective, that is it must apply to events occurring before its enactment, and second, it must disadvantage the offender affected by it. See: Miller-v-Florida 482 U.S. 423, 430, 107 S.Ct. 2446, 2451, 96 L.Ed. 2d 351 1987 (quotation omitted). Under South Carolina Code 17-25-45 is retrospective because it applies to an event that occurred 6 years before its enactment, and #2, it does disadvantage the offender affected by it. Appellant further argues that his guilty plea in 1990 was not identical to the charges that he was convicted to on January 27, 1998. On March 22, 1990 appellant

pleaded guilty to Armed Robbery and was sentenced under the Youth Offenders Act. Appellant served 4 years 8 months and was released. Appellant pleaded to a Youth Offenders Act on March 22, 1990. Also when the State relied on appellant's prior conviction to enhance appellant's sentence, they were in clear violation. Appellant further argue^{that} Attorney fail to file appeal when was asked by appellant immediately after conviction. Attorney fail to do so is a clear violation. See: U.S.-v-Peak 992 F.2d 39, 41 (4th Cir 1993) ineffective assistance of counsel fail to file direct appeal notwithstanding like hood of success of appeal); U.S.-v-Gipson 985 F.2d 212, 215-16 (5th Cir 1993) Ineffective assistance to be determined on remand when counsel failed to inform defendant of 10-day deadline for filing an appeal after defendant expressed desire to appeal convictions. Appellant alleges that attorney conducted his defense in a totally incompetent manner and that such incompetence prejudiced his defense.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

98-CP-41-64

Frank Tolen, 246966,
Applicant,
vs.
State of South Carolina,
Respondent.

RETURN

Respondent, making its return to the application for post-conviction relief filed April 15, 1998, would respectfully show this Court:

I.

Applicant is presently confined in the Allendale Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the January 1998 term of the Court of General Sessions for Saluda County for unlawful possession of pistol and armed robbery. He was represented by Vannie Williams, Jr., Esq. A jury trial was held on January 27, 1998, at the conclusion of which, Applicant was found guilty of the charges. He was sentenced by the Honorable James W. Johnson, Jr. to confinement for a period of five (5) years for unlawful possession of pistol and life for armed robbery. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Saluda County Clerk of Court regarding the subject conviction, and the Applicant's records from the South Carolina Department of Corrections. A copy of the transcript of the jury trial will be forwarded upon receipt.

II.

In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Failure to file my direct appeal by my lawyer.
3. No preliminary hearing was done in my case.

III.

In his first and second allegations, the Applicant alleges that he was denied effective assistance of trial counsel. The Respondent contends that the attorney for the Applicant was diligent in his representation of the Applicant, performed well within the range of competence demanded of attorneys in criminal matters and performed within the wide range of reasonable professional assistance. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

In Strickland v. Washington, supra, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S.Ct. at 2064. The Respondent submits that counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance.

Nevertheless, the allegation of ineffective assistance of counsel probably raises questions of fact which cannot be conclusively refuted by the record presently before this Court. Therefore, the Respondent requests that an evidentiary hearing be held in order to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his third allegation, the Applicant alleges that he was denied his right to a preliminary hearing. The Respondent submits that this allegation is without merit. First, there is no constitutional right to a preliminary hearing. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982); State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982). Second, the Applicant's silence before the trial court concerning his desire for a preliminary hearing constituted evidence of waiver of said preliminary hearing. State v. McClure, supra; Bonnette v.

State, 277 S.C. 12, 282 S.E.2d 597 (1981). The allegation is without merit and should be summarily dismissed.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing to be held solely on the issue of whether the Applicant received effective assistance of trial counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to § 17-27-20, S.C. Code Ann., (1976) on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

TERESA A. KNOX
Assistant Deputy Attorney General

BY:


(ATTORNEYS FOR RESPONDENT)
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

July 24, 1998

Appendix 330

329

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) C/A NO.: 98-CP-41-68

FRANK TOLEN,)
PLAINTIFF,)

VS.)

STATE OF SOUTH CAROLINA,)
DEFENDANT.)

TRANSCRIPT OF RECORD

HEARING HELD BEFORE THE HONORABLE RODNEY A.
PEEPLER, PRESIDING JUDGE, 11TH JUDICIAL CIRCUIT, AT THE
LEXINGTON COUNTY COURTHOUSE, LEXINGTON, SOUTH CAROLINA,
ON, NOVEMBER 15, 2000.

APPEARANCES:

S. MURRY KINARD, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

ROBERT DeLOACH, ESQUIRE
ATTORNEY FOR THE DEFENDANT

TAKEN BY: SHARON L. VIZER
TRANSCRIBED BY: NANCY S. AHRENS, CVR

1 THE COURT: MADAM COURT REPORTER, PLEASE,
2 MA'AM, WE ARE PROCEEDING AT THIS TIME IN REGARD TO
3 TODAY'S ROSTER NUMBER 21, FRANK TOLEN, T-O-L-E-N
4 (SPELLED), WHO IS PRESENT. THIS IS A SALUDA COUNTY
5 CASE, CIVIL ACTION 98-CP-41-64. MURRY KINARD IS
6 APPOINTED IN THIS CASE OR RETAINED?

7 MR. KINARD: APPOINTED, YOUR HONOR.

8 THE COURT: APPOINTED. VANNIE WILLIAMS WAS
9 COUNSEL AT TRIAL. HE IS PRESENT. BOB DeLOACH OF
10 THE A.G.'S OFFICE IS PRESENT. THE COURT HAS THE
11 APPLICATION. IT APPEARS TO HAVE BEEN FILED APRIL
12 15 OF '98, AND A COPY OF THE SENTENCE SHEETS AND
13 THE GUILTY VERDICT AND THE TRANSCRIPT OF THE
14 PROCEEDING OF JANUARY 26 AND 27, '98, BEFORE JUDGE
15 JAMES W. JOHNSON, JR., A TRIAL OVER IN SALUDA. THE
16 TRANSCRIPT CONSISTS OF 314 PAGES. THE RETURN OF
17 THE STATE INDICATES THAT THE SUBJECT WAS INDICTED
18 THE JANUARY, 1998, TERM OF COURT OF GENERAL
19 SESSIONS FOR SALUDA COUNTY FOR UNLAWFUL POSSESSION
20 OF PISTOL AND ARMED ROBBERY, REPRESENTED BY VANNIE
21 WILLIAMS, JR., AT THE JURY TRIAL ON JANUARY 27 OF
22 '98, FOUND GUILTY, SENTENCED BY JUDGE JOHNSON FOR
23 FIVE YEARS FOR UNLAWFUL POSSESSION AND LIFE FOR
24 ARMED ROBBERY. THERE WAS NOT AN APPEAL FROM THE
25 CONVICTION OR SENTENCE. IN THE APPLICATION MR.

1 TOLEN ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL,
2 FAILURE TO FILE A DIRECT APPEAL BY HIS LAWYER, NO
3 PRELIMINARY HEARING WAS DONE IN HIS CASE. MR.
4 KINARD, MAY I PLEASE AFFORD YOU THE OPPORTUNITY TO
5 OFFER ANY AMENDMENTS THAT YOU'D LIKE TO MAKE AT
6 THIS TIME TO THE APPLICATION SO THAT WE CAN
7 ENCOMPASS EVERYTHING THAT SHOULD BE BROUGHT TO THE
8 ATTENTION OF THE COURT?

9 MR. KINARD: YOUR HONOR, MR. TOLEN ACTUALLY
10 PROVIDED ME WITH A DOCUMENT HE HAD PREPARED WHICH
11 WAS HIS MOTION TO MODIFY THE ALLEGATIONS IN HIS
12 APPLICATION.

13 THE COURT: IS THERE A COPY THAT THE COURT CAN
14 HAVE OF THAT?

15 MR. KINARD: YES, SIR, YOUR HONOR.

16 THE COURT: AN EXTRA COPY. YOU MAY HAVE TO
17 READ IT. I DON'T WANT TO TAKE IT AWAY FROM YOU.

18 MR. KINARD: I THINK HE'S GOT A COPY.

19 THE COURT: ALL RIGHT. IN ESSENCE IT'S NO
20 NEED TO READ THIS BECAUSE IT'S TYPED PAGES
21 CONSISTING OF FIVE PAGES AND I HAVE NO OBJECTION.
22 IT'S DATED AUGUST 15 OF 2000, SIGNED BY HIM, WHICH
23 AS YOU KNOW WE DON'T HAVE HYBRID REPRESENTATION.
24 EITHER MR. TOLEN CAN REPRESENT HIMSELF OR EITHER
25 YOU CAN REPRESENT HIM BUT WE ARE NOT GOING TO HAVE

1 A BIFURCATED, TWO PART, REPRESENTATION. AND IF
2 YOU'D LIKE TO AMEND I HAVE NO PROBLEM WITH THE
3 AMENDMENT WHATEVER IT IS.

4 MR. KINARD: I MOVE TO AMEND ON HIS BEHALF.

5 THE COURT: AND TO AMEND TO DO WHAT?

6 MR. KINARD: TO ALLEGE SOME ALLEGATIONS WITH
7 REGARDS TO HIS FAILURE TO MAKE CERTAIN MOTIONS TO
8 SUPPRESS IN-COURT IDENTIFICATIONS. THERE'S ALSO
9 ISSUES WITH REGARD TO PRETRIAL DISCOVERY. THESE
10 THINGS ARE NOT OUTLINED IN HIS --

11 THE COURT: I HAVE NO PROBLEM WITH THAT. ANY
12 OBJECTION, MR. A.G.?

13 MR. DeLOACH: NONE, YOUR HONOR, .

14 THE COURT: ALL RIGHT. I'M GOING TO ALLOW THE
15 AMENDMENT.

16 MR. KINARD: THERE ARE A FEW OTHERS I WOULD
17 LAY OUT TO THE COURT, SPELL OUT TO THE COURT.

18 THE COURT: ALL RIGHT.

19 MR. KINARD: JURY MOTIONS, BATSON MOTIONS IN
20 PARTICULAR. FAILURE TO OBTAIN RULE 5 AND BRADY
21 ITEMS. FAILURE TO TIMELY FILE BRADY AND RULE 5
22 REQUESTS.

23 THE COURT: RULE 5, BRADY, BATSON, PRELIM,
24 WHAT ELSE?

25 MR. KINARD: PRE-TRIAL INVESTIGATION.

1 THE COURT: SURE, ALL OF THAT WOULD BE
2 ENCOMPASSED UNDER A GENERAL INEFFECTIVE ASSISTANCE,
3 YOU KNOW, BUT OBVIOUSLY ANYTHING YOU DON'T PRESENT
4 EVIDENCE ON IS CONSIDERED ABANDONED. WE'LL
5 ENCOMPASS ALL OF HIS AMENDMENTS. I HAVE NO
6 PROBLEM.

7 MR. KINARD: MY ONLY CONCERN WAS THAT IN HIS
8 APPLICATION HE WAS VERY SPECIFIC BECAUSE IT ASKED
9 HIM TO STATE CONCISELY THE GROUNDS AND THERE'S ONLY
10 A "B" AND A "C," A FAILURE TO FILE A DIRECT APPEAL
11 AND NO PRELIMINARY HEARING WAS DONE IN THE CASE.

12 THE COURT: I UNDERSTAND.

13 MR. KINARD: I JUST DIDN'T WANT TO BE LIMITED
14 BY THAT IN THE TESTIMONY.

15 THE COURT: YOU'RE NOT.

16 MR. KINARD: THANK YOU. I WOULD LIKE TO ADD
17 ONE OTHER THING THAT I BELIEVE IS BY WAY OF
18 STIPULATION.

19 THE COURT: YES, SIR.

20 MR. KINARD: IT IS I THINK GOING TO BE
21 STIPULATED BY THE STATE THAT MR. TOLEN DID ASK MR.
22 WILLIAMS TO FILE AN APPEAL, MADE A TIMELY REQUEST
23 OF HIM TO DO THAT AND I THINK MR. WILLIAMS HAS
24 ACKNOWLEDGED AND WILL ACKNOWLEDGE THAT HE FAILED TO
25 FILE THAT APPEAL. IT'S MY UNDERSTANDING THE STATE

1 IS GOING TO CONSENT TO ALLOW MR. TOLEN TO FILE A
2 DIRECT APPEAL.

3 THE COURT: WELL, IF THERE'S A CONSENT TO A
4 BELATED APPEAL THEN WHY WOULD WE NEED TO PROCEED
5 WITH THIS HEARING TODAY BECAUSE IN THE EVENT THAT
6 THE COURT ON DIRECT APPEAL REVERSES THE CASE THE
7 LAW ABHORS A FUTILE ACT.

8 MR. DeLOACH: MAY I APPROACH WITH COUNSEL?

9 THE COURT: YOU MAY CERTAINLY APPROACH WITH
10 COUNSEL.

11 (WHEREUPON A BENCH CONFERENCE WAS HELD OUT OF
12 THE HEARING OF THE COURT REPORTER IN CHAMBERS)

13 THE COURT: MADAM COURT REPORTER, THERE'S BEEN
14 A CONFERENCE IN CHAMBERS WITH MR. DeLOACH AND MR.
15 KINARD AND I'VE REVIEWED THE CASE OF STATE V.
16 WHITE. I'VE LOOKED AT THE STATE V. DAVIS CASE AND
17 I'LL BE GLAD TO HEAR FROM YOU, MR. KINARD, AS TO
18 YOUR PLEASURE IN THE MATTER.

19 MR. KINARD: IF IT PLEASE THE COURT, YOUR
20 HONOR, I'VE SPOKEN WITH MY CLIENT AND HE BELIEVES
21 HE WAS ENTITLED TO AN APPEAL. THAT BALL GOT
22 DROPPED AND I THINK THAT'S THE STIPULATION FROM THE
23 STATE. HE WANTS THAT RIGHT TO AN APPEAL. HE
24 UNDERSTANDS THAT THIS P.C.R. CASE WILL BE DISMISSED
25 WITHOUT PREJUDICE. HE UNDERSTANDS THAT AFTER THE

1 APPEAL HAS RUN ITS COURSE, WHATEVER THE RESULT IS,
2 HE WOULD HAVE ONE YEAR FROM THAT DATE TO REFILE
3 THIS P.C.R., THIS POST CONVICTION RELIEF
4 APPLICATION. OBVIOUSLY, IF THE COURT OF APPEALS OR
5 SUPREME COURT REVERSES HIS CONVICTION AND SENDS IT
6 BACK FOR A NEW TRIAL, THEN HE'S GOTTEN THE RELIEF
7 HE WAS SEEKING HERE ANYWAY AND HE UNDERSTANDS THAT
8 TODAY. SO, WE ARE ASKING THE COURT TO GRANT HIM
9 THE RIGHT TO AN APPEAL PER THE STIPULATION OF THE
10 PARTIES IN THIS CASE AND TO DISMISS THIS CASE
11 WITHOUT PREJUDICE SO THAT HE CAN REFILE THIS POST
12 CONVICTION RELIEF APPLICATION.

13 THE COURT: AND IS THERE ANY OBJECTION BY THE
14 STATE?

15 MR. DeLOACH: YOUR HONOR, I BELIEVE THIS IS A
16 MATTER IN YOUR SOUND DISCRETION. THERE WOULD BE NO
17 OBJECTION.

18 THE COURT: ALL RIGHT. THANK YOU. EVERYBODY
19 IS PREPARED TO GO FORWARD TODAY BUT IN THE EVENT
20 THAT THERE IS A REVERSAL AND I DO NOT PRESAGE OR
21 PROGNOSTICATE WHAT THE RESULT WILL BE BECAUSE I
22 DON'T KNOW WHAT THE GROUNDS WOULD BE BUT AGAIN I
23 ACKNOWLEDGE APPRECIATION FOR THE COMPLETE CANDOR
24 AND HONESTY OF MR. VANNIE WILLIAMS. IF HE WAS TOLD
25 TO APPEAL AND ACKNOWLEDGES THAT HE FUMLED THE

1 BALL, IT JUST SHOWS YOU THAT VANNIE IS HUMAN AND
2 VANNIE KNOWS THEY CRUCIFIED THE ONLY PERFECT MAN
3 TWO THOUSAND YEARS AGO AND WE ALL MAKE MISTAKES.
4 THAT'S WHY WE ALL HAVE ERASERS ON THE PENCILS AND
5 WHILE I KNOW NOTHING ABOUT THE APPEAL AS I'VE
6 MENTIONED, IT JUST SEEMS TO BE AN UNNECESSARY,
7 REPETITIVE ACT TO GO THROUGH A POST CONVICTION
8 RELIEF HEARING UNTIL YOU'VE HAD A DECISION ON THE
9 DIRECT APPEAL. THAT'S LIKE COUNTING THE WRITE-IN
10 VOTES IN FLORIDA WHEN ELECTION DAY HASN'T COME YET.
11 SO, I DO GRANT YOUR MOTION AND THE P.C.R. IS
12 DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO HIM
13 TO PROCEED WITH A DIRECT APPEAL. DOES HE HAVE
14 COUNSEL FOR THAT? MURRY, ARE YOU GOING TO SEE
15 ABOUT --

16 MR. KINARD: NO, SIR, YOUR HONOR. CANDIDLY,
17 I'M NOT SURE THAT I KNOW WHAT TO DO.

18 MR. DeLOACH: I WILL TELL HIM NOW, YOUR HONOR,
19 HE SHOULD CALL THIS YOUNG LADY'S NUMBER THAT I'M
20 ABOUT TO GIVE HIM. THIS IS MS. LORRINE FRENCH AT
21 THE SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE.
22 SHE WILL EXPLAIN THE PROCEDURES TO MR. KINARD IN
23 TERMS OF HIM BEING RELIEVED AS COUNSEL AT WHICH
24 TIME IF MR. TOLEN QUALIFIES FOR INDIGENCY
25 SCREENING, HE WOULD BE ACCEPTED BY THE SOUTH

1 CAROLINA OFFICE OF APPELLATE DEFENSE. I'M ASSUMING
2 THAT BECAUSE MR. KINARD WAS APPOINTED IS BECAUSE HE
3 MET THE INDIGENCY REQUIREMENTS OF THE LEXINGTON
4 COUNTY CLERK OF COURT AND SO IF YOU COULD CALL MS.
5 FRENCH AT 734-1330, AND HER NAME IS LORRINE FRENCH,
6 SHE CAN GIVE YOU THE PROPER MAILING ADDRESS AND
7 WHAT WILL BE NECESSARY TO PERFECT MR. TOLEN'S
8 APPEAL AND WHAT STEPS WILL BE NECESSARY TO HAVE YOU
9 RELIEVED AS COUNSEL.

10 THE COURT: AND, BOB, AGAIN I EXPRESS MY
11 APPRECIATION TO YOU FOR YOUR WEALTH OF KNOWLEDGE
12 AND SHARING INFORMATION BECAUSE WE ALL NEED TO WORK
13 TOGETHER TO ACCOMPLISH THAT WHICH SHOULD BE DONE IN
14 AN APPROPRIATE MANNER.

15 MR. DeLOACH: YES, SIR, YOUR HONOR. JUST ONE
16 LAST THING TO ADD FOR THE RECORD AND WE DISCUSSED
17 THIS IN CHAMBERS AS WELL IS THAT THE STATUTE OF
18 LIMITATIONS WITH RESPECT TO ANY OTHER CLAIMS HE MAY
19 HAVE REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL
20 WILL BE TOLLED DURING THE PENDENCY OF THE APPEAL
21 AND THAT IF THE APPEAL IS DECIDED ADVERSELY TO MR.
22 TOLEN THAT HE WOULD HAVE ONE YEAR FROM THE TIME
23 THAT THAT APPEAL BECAME FINAL TO REFILE A POST
24 CONVICTION RELIEF APPLICATION. SO, WHATEVER
25 RESOLUTION OF THAT APPEAL, MR. TOLEN, IF IT'S

Appendix 339

338

1 DECIDED AGAINST YOU YOU HAVE ONE YEAR AFTER THE
2 SUPREME COURT DECIDES YOUR APPEAL TO REFILE FOR
3 POST CONVICTION RELIEF. DO YOU UNDERSTAND?

4 DEFENDANT TOLEN: YES, I UNDERSTAND.

5 MR. DeLOACH: ALL RIGHT. THAT WILL ALSO BE
6 SET FORTH EXPRESSLY IN THE POST CONVICTION RELIEF
7 ORDER, YOUR HONOR.

8 THE COURT: THANK YOU, GENTLEMEN. Y'ALL HAVE
9 A NICE DAY.

10 (ADJOURNED)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

336

STATE OF SOUTH CAROLINA
COUNTY OF Saluda
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 98-CP-41-64

Frank Tden 12:30

State

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED** *without prejudice* (**CHECK REASON**): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN** (**CHECK REASON**): ☐ Rule 40(j) SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Revised appeal allowed - State v. State

Dated at Saluda, South Carolina, this 15th day of November, 2000.

Frank Tden
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Murray, Kenneth, Esquire

G. Robert DeLoach, III, Assistant
Deputy Attorney General

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

NOTICE OF APPEAL FROM SENTENCE IMPOSED BY COURT OF GENERAL
SESSIONS

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal From Saluda County
Court of General Sessions
James W. Johnson, Jr., Circuit Court Judge

RECEIVED
NOV 28 2000
S.C. SUP. COURT

Case No. 98-CP-41-64

The State,.....Respondent.
v.
Frank Tolen, Jr.,.....Appellant.

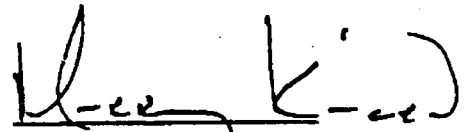
NOTICE OF INTENT TO APPEAL

Frank Tolen, Jr. appeals his conviction and sentence in this case. The sentence was imposed by the Honorable James W. Johnson, Jr. on January 27, 1998. This direct appeal was granted pursuant to the filing of a Post Conviction Relief application, dated April 14, 1998. The right to a belated appeal was granted in the Order of the Honorable Rodney A. Peeples, filed with the Saluda County Clerk of Court on November 17, 2000 and received by the Attorney for the Appellant on November 21, 2000.

Appendix 343

342

Date: November 28, 2000



S. Murry Kinard
135 East Main St.
Lexington, SC 29212
(803) 359-6194
Attorney for Appellant

Other Counsel of Record
George R. Deloach, Jr.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-3730
Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF SALUDAIN THE COURT OF COMMON PLEAS00 DEC 12 PM 2:03 FOR THE 11TH JUDICIAL CIRCUIT

FRANK TOLEN, JR.,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT

CIVIL ACTION NO. 98-CP-41-64

MOTION FOR RECONSIDERATION

(ALTER OR AMEND)

TO: THE HONORABLE RODNEY A. PEEPLES/PRESIDING JUDGE/ELEVENTH JUDICIAL CIRCUIT/
SALUDA COUNTY:

Applicant, Frank Tolen, Jr., Pro Se, pursuant to Rules 59(e) and 60(b), SCRCP, moves this Honorable Court to reconsider (Alter or Amend) its Order, dated 11/15/2000 : Filed 11/17/2000; Received at ACI 12/4/2000; and received Applicant December 5 2000. SEE EXHIBIT NO. 1, 2, 3.

This motion is based upon the following grounds:

1. The Order was improvidently issued.
2. That this Court has not addressed all issues raised in Applicant's PCR as required by Pruitt v. State, 423 SE2d 127, SC (1992); and McCray v. State, 408 SE2d 241, SC (1992):
3. That the Court only addressed the issue of Belated Appeal.
4. That this Court failed to address the issues of: (1) Ineffective Assistance of Counsel; (2) and Denial of statutory due process right to a preliminary hearing.

WHEREFORE, Applicant prays that this Honorable Court will reconsider (alter or amend) its and address all the issues raised in Applicant's PCR Application.

Respectfully submitted,

S/

Frank Tolen, Jr., #246966
BW/F-2/A-35/Applicant, Pro Se
Allendale Correctional Institution
P. O. Box 1151
Fairfax, S. C. 29827-1151

Fairfax, South Carolina

December 8, 2000

Appendix 345

South Carolina Office of Appellate Defense³⁴⁴

RMP

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201-3243

Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

October 19, 2001

Honorable Doris B. Holmes
Clerk of Court
County Courthouse
Saluda, SC 29138

CLERK OF COURT
SALUDA, S.C.
OCT 22 PM 4:45

Re: Frank Tolen v. State of South Carolina
Indictment #: 98-CP-41-64

Dear Ms. Holmes:

Our office is handling the appeal in this case and we require the following documents to perfect our file.

Document(s) Requested: Rule 59 (e) motion dated 12-8-00 filed 12-12-00.

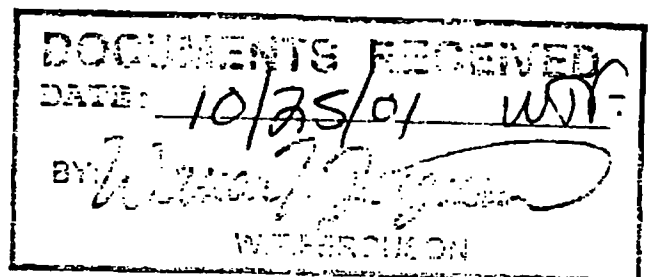
Please send this as soon as possible.

Thank you for your assistance in this matter.

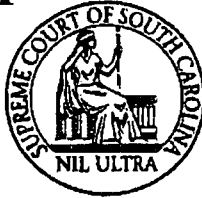
Sincerely,

Warren T. Ferguson

Warren T. Ferguson
Appellate Services Coordinator



Appendix 346



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

345
JUN 08 2001
POST OFFICE BOX 11380
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1498

June 8, 2001

✓ Assistant Appellate Defender Robert M. Pachak
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: Tolen, Frank v. State

Dear Counsel:

Your office is representing Mr. Tolen in the above entitled matter. Mr. Tolen has filed the attached correspondence stating that a timely Rule 59(e) Motion to Reconsider is still pending in the circuit court.

I ask that your office please advise the Court, within ten (10) days of the date of this letter, whether this matter should be dismissed as provided by Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986).

Very truly yours,

DEPUTY CLERK

BFS/dmh

Enclosures

cc: Mr. Frank Tolen, Jr. #246966
Assistant Deputy Attorney General Allen Bullard

Appendix 347

346

BW/F-2/A-35
Allendale Correctional Institution
P. O. Box 1151
Fairfax, S. C. 29827-1151
6/4/ 2001

The Honorable Rodaney A. Peeples
Circuit Court Judge
P. O. Box 426
Barnwell, S. C. 29812-0426

RE: C/A # 98-CP-41-64 (PCR)

Frank Tolen, Jr.
-vs
State of South Carolina

Dear Judge Peeples:

On December 12, 2000, I filed and served a timely MOTION FOR RECONSIDERATION of this Court's Order, 11/15/ 2000, granting me a RELATED APPEAL. SEE ATTACHED ENCLOSURE.

I have enclosed a proposed Order granting a hearing on my MOTION FOR RECONSIDERATION. If the proposed Order meets this Court's approval, it is respectfully requested that the Court complete the blank spaces and return to me for proper filing and service.

It is my understanding that this Court still has jurisdiction to hear my MOTION FOR RECONSIDERATION. And the motion hearing may be held in circuit in which this Court is in session.

I shall appreciate an early reply. I appreciate your cooperation and consideration in this matter.

Sincerely yours,

s/ Frank Tolen, Jr.

Frank Tolen, Jr./246966
Applicant, Pro Se

Incls:

1. Motion for Reconsideration
with Exhibits

JUN 05 2001

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

FRANK TOLAN, JR.,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

CIVIL ACTION NO. 98-CP-41-64

O R D E R

For good cause having been shown, the Applicant Frank Tolan, Jr. is granted a hearing on his MOTION FOR RECONSIDERATION. Said hearing on the MOTION FOR RECONSIDERATION shall be held at the _____ County Courthouse on _____, 2001 at _____ a.m./p.m.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

S/ _____
 Rodney A. Peeples, Circuit Court Judge

 Judicial Circuit

_____ South Carolina
 _____, 2001

Appendix 349

348

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

CERTIFICATE OF MAILING

CIVI ACTION NO. 98-CP-41-64 (PCR)

I, Frank Tolen, Jr., Applicant, Pro Se, do certify
that a true and correct copy of the attached PROPOSED ORDER GRANTING HEARING
ON MOTION FOR RECONSIDERATION

in the matter of FRANK TOLEN, JR. -VS- STATE OF SOUTH CAROLINA

was mailed this 4 day of June, 2001 to:

The Honorable Rodney A. Peebles
Presiding Judge/Eleventh Judicial
Circuit/Saluda County
P. O. Box 426
Barnwell, S. C. 29812-0426

Ms. Doris B. Holmes
Clerk of Court/Saluda County
Saluda County Courthouse
Saluda, S. C. 29138

Mr. S. Murry Kinard
Attorney At Law/PCR Attorney
135 East Main Street
P. O. Box 832
Lexington, S. C. 29072-0832

Mr. George R. Deloach
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211-1549

Mr. Daniel E. Shearouse
Clerk of Court/S. C. Supreme Court
P. O. Box 11330
Columbia, S. C. 29211-1330

Mr. Daniel T. Stacy/Chief Attorney
S. C. Appellate Defense
1122 Lady Street/Suite 940
Columbia, S. C. 29201-_____

s/ Frank Tolen Jr.

Frank Tolen, Jr./246966, Applicant

Pro Se

BW/F-2/A-35
Allendale Correctional Institution
P. O. Box 1151
Fairfax, S. C. 29827-1151

Fairfax, South Carolina

6/4/

20 01

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

D
SUPREME COURT OF COMMON PLEASS.C.
FOR THE 11TH JUDICIAL CIRCUIT

00 DEC 12 PM 2:38

FRANK TOLEN, JR.,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT

CIVIL ACTION NO. 98-CP-41-64

MOTION FOR RECONSIDERATION

(ALTER OR AMEND)

TO: THE HONORABLE RODNEY A. PEEPLES/PRESIDING JUDGE/ELEVENTH JUDICIAL CIRCUIT/
SALUDA COUNTY:

Applicant, Frank Tolen, Jr., Pro Se, pursuant to Rules 59(e) and 60(b), SCRCP, moves this Honorable Court to reconsider (Alter or Amend) its Order, dated 11/15/ 2000: Filed 11/17/, 2000; Received at ACI 12/4/, 2000; and received Applicant December 5 2000. SEE EXHIBIT NO. 1, 2, 3.

This motion is based upon the following grounds:

1. The Order was improvidently issued.
2. That this Court has not addressed all issues raised in Applicant's PCR as required by Pruitt v. State, 423 SE2d 127, ___ SC ___ (1992); and McGray v. State, 408 SE2d 241, ___ SC ___ (1992);
3. That the Court only addressed the issue of Belated Appeal.
4. That this Court failed to address the issues of: (1) Ineffective Assistance of Counsel; (2) and Denial of statutory due process right to a preliminary hearing.

WHEREFORE, Applicant prays that this Honorable Court will reconsider (alter or amend) its and address all the issues raised in Applicant's PCR Application.

Respectfully submitted,

Frank Tolen

Frank Tolen, Jr., #246966
BW/F-2/A-35/Applicant, Pro Se
Allendale Correctional Institution
P. O. Box 1151
Fairfax, S. C. 29827-1151

FAIRFAX COUNTY
Fairfax, South Carolina
December 8, 2000

Appendix 351

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

FILED
Clerk of Court
Saluda Co. SC

DEC 12 2000

CERTIFICATE OF MAILING

350

EX # 2

Doris B. Holmes

ACTION NO. 98-CP-41-64 (PCR)

I, Frank Tolen, Jr., Pro Se, do certify
that a true and correct copy of the attached MOTION FOR RECONSIDERATION
(ALTER OR AMEND)

in the matter of FRANK TOLEN, JR.; -VS- STATE OF SOUTH CAROLINA

was mailed this 8 day of DECEMBER, 19 2000 to:

The Honorable Rodney A. Peeples
Presiding Judge/Eleventh Judicial
Circuit/Saluda County
P. O. Box 426
Barnwell S. C. 29812-0426

Mr. S. Murry Kinard
Attorney AT Law/PCR Attorney
135 East Main Street
P. O. Box 832
Lexington, S. C. 29072-0832

Mr. Daniel E. Shearouse
Clerk of Court/S.C. Supreme Court
P. O. Box 11330
Columbia, S. C. 29211-1330

Ms. Doris B. Holmes
Clerk of Court/Saluda County
Saluda County Courthouse
Saluda, S. C. 29138

Mr. George R. Deloach
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211-1549

Mr. Daniel T. Stacy
Chief Attorney
S. C. Appellate Defense
1122 Lady Street/Suite 940
Columbia, S. C. 29201-

s/

Frank Tolen
Frank Tolen, Jr., #246966, Appellant Pro Se

BW/F-2/A-35
Allendale Correctional Institution
P. O. Box 1151
Fairfax, S. C. 29827-1151

Fairfax, South Carolina

December 8 19/ 2000

Appendix 352

351 EX 3

FILED
CLERK OF COURT
SALUDA COUNTY

00 DEC 12 PM 2:38

B/WYF-2/A-35

Allendale Correctional Institution

P. O. Box 1151

Fairfax, S. C. 29827-1151

December 8, 2000

Mr. Daniel E. Shearouse
Clerk of Court/S. C. Supreme Court
P. O. Box 11330
Columbia, S. C. 29211-1330

Re: C/A #98-CP-41-64 (PCR)

Tolen v. State of South Carolina

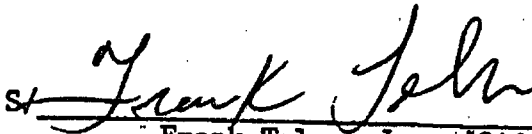
Dear Mr. Shearhouse:

I have filed a timely Motion for Reconsideration (12/8/2000) and attached herein. Houston v. Lach, 487 US 266, 108 S. Ct. 2379 (1988) and Hostler v. Grooves, 912 F2d 1158 (9th Cir. 1990).

It is respectfully requested that I be permitted to withdraw my NOTICE OF APPEAL without prejudice, pursuant to Hudson v. Hudson, 349 SE2d 341, 290 SC 215 (1986); and Otten v. Otten, 337 SE2d 207, 287 SC 161 (1985).

I shall appreciate an early reply. I appreciate your cooperation and consideration in this matter.

Sincerely yours,



Frank Tolen, Jr., #246966
Applicant, Pro Se

COPY TO:

The Honorable Rodney A. Peeples/Presiding Judge
Mr. S. Murry Kinard, Attorney At Law/PCR Attorney
Ms. Doris B. Holmes/Clerk of Court/Saluda County
Mr. George R. Deloach, Assistant Attorney General
Mr. Daniel T. Stacy, Chief Attorney/S. C. Appellate Defense

Appendix 353

352

Ex 4

FILED
Clerk of Court
Saluda Co. SC
DEC 12 2000

BW/F-2/A-35

Allendale Correctional Institution
P. O. Box 1151

Arfax, S. C. 29827-1151

December 8, 2000

Doris B. Holmes

Mr. S. Murray Kinard
Attorney At Law/PCR Attorney
135 East Main Street
P. O. Box 832
Lexington, S. C. 29072-0832

Re: C/A #98-CP-41-64 (PCR)

Tolen v. State of South Carolina

Dear Mr. Kinard:

Pursuant to Noisette v. Ismail, 403 SE2d 122, 304 SC 56 (1991), it is respectfully requested that your office file and serve the enclosed Motion for Reconsideration, in my behalf. ALSO, WITHDRAW MY NOTICE OF APPEAL.

I received a copy of the PCR Court Order from your office on December 5, 2000, although the letter was dated November 29, 2000. I have ten (10) days within to file my Motion for Reconsideration (December 15, 2000).

I shall appreciate an early reply. I appreciate your cooperation and consideration in this matter.

Sincerely yours,

Frank Tolen, Jr.
S/ Frank Tolen, Jr., #246966
Applicant, Pro Se

COPY TO:

The Honorable Rodney A. Peeples, Presiding Judge
Ms. Doris B. Holmes, Clerk of Court/Saluda County
Mr. Daniel E. Shearhouse, Clerk of Court/S. C. Supreme Court
Mr. George R. Deloach, Assistant Attorney General
Mr. Daniel T. Stacy, Chief Attorney/S. C. Appellate Defense

COPY

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Katherine Camuth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

July 10, 2001

JUL 10 2001
SC SUPREME COURT

Honorable Brenda F. Shealy
Deputy Clerk, SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

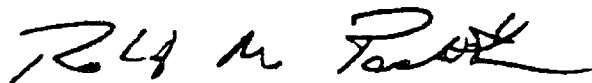
Re: Frank Tolen v. State of South Carolina

Dear Ms. Shealy:

This Court has advised me that Mr. Tolen has a Rule 59(e) Motion for Reconsideration (Alter or Amend) concerning the order of dismissal on his application for post-conviction relief. The order was signed by the Honorable Rodney A. Peebles on November 15, 2000. It was filed on November 17, 2000. The order was received at Allendale Correctional Institution on December 4, 2000, and petitioner received the order on December 5, 2000. Mr. Tolen made his Rule 59(e) motion on December 8, 2000, and the Saluda County Clerk of Courts' Office shows that the order was filed on December 12, 2000.

Pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986), appellate counsel would respectfully ask this Court that Mr. Tolen's present appeal from the denial of post-conviction relief be dismissed without prejudice so that his pending Rule 59(e) motion can be ruled upon.

Sincerely yours,



Robert M. Pachak
Assistant Appellate Defender

RMP/srw

Cc: Elizabeth McMahon, Esquire
Mr. Frank Tolen

The Supreme Court of South Carolina

Frank Tolen, Jr.,

Petitioner

v.

State of South Carolina,

Respondent.

The Honorable Rodney A. Peeples
Saluda County
Trial Court Case No. 1998-CP-41-64

ORDER

The above entitled matter is pending on appeal in this Court. It now appears that a Rule 59, SCRCP, motion is still pending in the circuit court. Accordingly, this appeal is dismissed without prejudice. Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986).

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Frederic I. Stealy*
Deputy Clerk

Columbia, South Carolina

July 16, 2001

cc: ✓ Assistant Appellate Defender Robert M. Pachak
Mr. Frank Tolen, Jr. #246966
Assistant Attorney General Elizabeth McMahon

355

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA)

01 OCT -4 AM 11:59

98-CP-41-64

Frank Tolen, Jr.,)

Applicant,)

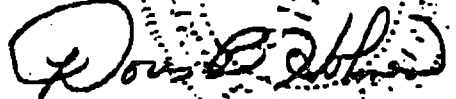
vs.)

ORDER

State of South Carolina,)

Respondent.)

ATTEST TRUE COPY


 Clerk of Court
 Saluda, S. C.

Frank Tolen, Jr. (Applicant) filed a motion to reconsider this Court's ruling filed November 17, 2000 wherein the Court granted the applicant a belated appeal pursuant to *State v. White*, 208 S.E.2d 35, 263 S.C. 110 (1974) following a Post Conviction Relief (PCR) hearing. The Court finds that oral argument would serve no useful purpose.

The applicant alleges in his motion for reconsideration that the Court erred in failing to rule on all of his grounds set forth in his PCR application. To support his position, applicant cites *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) and *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1992). Each of these cases involves a trial court denying an applicant's PCR application without reaching all of the grounds for the application. This case is clearly distinguishable. In the Court's order dated November 17, 2000, the applicant was granted leave to pursue a belated appeal. Furthermore, the November 17 order clearly dismissed the applicant's PCR *without* prejudice, and the applicant was advised that he would be allowed to re-file his PCR application following the ultimate resolution of his appeal within one year, if necessary. Clearly, if the applicant successfully appeals his conviction, this PCR action will be moot. Therefore, the Court refuses to rule on the remaining grounds raised in the applicant's PCR application until the aforementioned appeal is resolved with finality.

#1

R.R.P.

356

For the foregoing reasons, the motion for reconsideration is denied.

ALL OF WHICH IS SO ORDERED.


Rodney A. Peoples
Resident Judge
2nd Judicial Circuit

#5
October 2, 2001
Barnwell, South Carolina

357

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA)

01 OCT - 3 2:11:59
98-CP-41-64

Frank Tolen, Jr.,)

Petitioner,)

vs.)

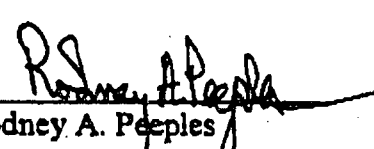
ORDER DISMISSING WRIT OF MANDAMUS

State of South Carolina,)

Respondent.)

Frank Tolen, Jr. petitioned the court for a writ of mandamus to require this Court to rule on his motion for reconsideration filed December 8, 2000. The Court has ruled on the motion to reconsider and has mailed its Order to the Saluda County Clerk of Court for filing. The relief requested by the petition for a writ of mandamus has been granted, in that the Court has ruled with finality on the petitioner's Application for Post Conviction Relief. Therefore, the petition for writ of mandamus is moot and is hereby DISMISSED.

AND IT IS SO ORDERED.


Rodney A. Peoples
Resident Judge
2nd Judicial Circuit

October 2, 2001
Barnwell, South Carolina

WITNESSES
HERLONG - BCSO

WHISENANT - BCSO

85

The State of South Carolina,

County of SALUDA

COURT OF GENERAL SESSIONS

JANUARY TERM 1998

THE STATE

vs.

FRANK TOLEN, JR.

ARREST WARRANT NO. _____
STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Michael A. Canwell
Foreman of Grand Jury

VERDICT

Guilt

Indictment for Armed
Robbery and Robbery

ATTEST: TRUE COPY
Louis B. Thomas
Clerk of Court
Saluda, S. C.

Appendix 359

Michael A. Canwell
Foreman of Petit Jury
Date: 1-27-98

STATE OF SOUTH CAROLINA)

INDICTMENT FOR ARMED ROBBERY

COUNTY OF SALUDA)~~ARMED ROBBERY~~At a Court of General Sessions, convened on JANUARY 15, 1998the Grand Jurors of SALUDA County present upon their oath:

COUNT ONE — ARMED ROBBERY

That FRANK TOLEN, JR. did inSALUDA County on or about OCTOBER 2, 1996 while armed with a deadly
weapon, to wit: a pistolfeloniously take from the person or presence of OATON DYSON by means of
force or intimidation goods or monies of OATON DYSON such goods or monies being
described as follows: Sixty (\$60.00) Dollars in U.S. Currency

with intent to deprive the owner permanently of such property.

~~COUNT TWO — ROBBERY~~

That _____ did in _____

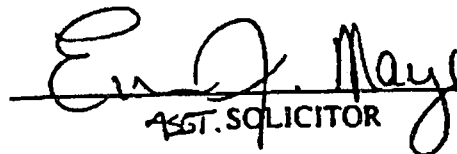
County on or about _____ feloniously take from the
person or presence of _____ by means of

force or intimidation goods or monies of _____

such goods or monies being described as follows: _____

with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASST. SOLICITOR

Appendix 361

360

CASE NO. 98-GS-41-1125

WARRANT NO. St. Luke

SENTENCE

INDICTMENT FOR

~~Night~~
Armed Robbery

PLED TO:

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

The defendant

Frank Tolson Jr

is committed to the State Department of Corrections

County for a term of

life without possibility of parole

pursuant to § 17-25-45; provided upon the

service of _____ (months) (years) (and) (or) to pay a fine of \$ _____ plus (pay) (waive) costs and assessments as

applicable*, the balance suspended with probation for _____ (months) (years).

Restitution

For physical injury \$ _____

Yes/No

property damage \$ _____

to be paid

ATTEST: TRUE COPY

To Clerk for

Doris B. Holmes
Clerk of Court
Saluda, S. C.

Other conditions

Date

July 27, 1998

Presiding Judge

*Costs and Assessments

Fine

\$ _____

Restitution

\$ _____

TOTAL

\$ _____

(Including Court Cost)

Clerk of Court

Attorney for Defendant:

Vannie Wie

**Pay to Victim's Comp. Fund if subrogated

White: Clerk Canary: Probation Pink: LEC

Goldenrod: Defendant

DOCKET NO. 98-09-21-166

The State of South Carolina,

County of SALUDA

COURT OF GENERAL SESSIONS

SALUDAS TERM 1998

THE STATE

VS.

FRANK TOLEN, JR.

Appendix 362

ARREST WARRANT NO.

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

WITNESSES

HERLONG - BCBO

WHISENANT - BCBO

361

Therrell A. Canell
Foreman of Grand Jury

VERDICT

Guilty

Amended 11/10/98 1-27-98

Indictment for

POSSESSION OF A PISTOL BY A
PERSON CONVICTED OF A CRIME OF VIOLENCE

ATTEST: TRUE COPY

David B. Thomas
Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POSSESSION OF A PISTOL BY A PERSON
CONVICTED OF A CRIME OF VIOLENCE

At a Court of General Sessions, convened on JANUARY 19, 1998
the Grand Jurors of SALUDA County present upon their oath:

That FRANK TOLEN JR. did in SALUDA County on or about October 2, 1996 unlawfully possess a pistol in violation of Section 16-23-30 of the Code of Laws of the State of South Carolina, in that he did possess a pistol within this State after having been previously convicted in the courts of the State of South Carolina of a crime of violence.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. J. Maye
DIST. SOLICITOR

Appendix 364 (

365

CASE NO. B-GS-41-166WARRANT NO. Indict

SENTENCE

PLED TO:

INDICTMENT FOR

Possession of a
 pistol by a Person
Convicted of a Crime
in Violence

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

The defendant Frank John Jr. is committed to the State Department of Corrections/
County for a term of 5 (months) (years) (and) (or) to pay a fine of \$ _____ ; provided upon the
service of _____ (months) (years) (and) (or) payment of \$ _____ , plus (pay) (waive) costs and assessments as
applicable*, the balance suspended with probation for _____ (months) (years).

Restitution

For physical injury \$ _____

Yes/No

property damage \$ _____

to be paid _____

To Clerk for _____

Other conditions Concurrent

Date

July 27, 1998

Presiding Judge

*Costs and Assessments

Fine \$ _____

Restitution \$ _____

TOTAL \$ _____

(Including Court Cost)

Clerk of Court

Attorney for Defendant:

Varrie Williams

**Pay to Victim's Comp. Fund if subrogated

White: Clerk Canary: Probation Pink: JEC

Goldenrod: Defendant

Appendix 365

364

11

CMTI100D

SCDC OFFENDER MANAGEMENT SYSTEM COMMITMENT APPLICATION CONVICTION SUMMARY

06/1

SCDC # 246966

SMITHKIM

TOLAN, JR., FRANK -

CURR LOC: ALLEI

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY: VIOL

CURR SENT SERVING CAT: VIOL

NUM	CONVICTION OFFENSE	INCARC SENT	SENT	SENT	START	PROJ COMP	STAT
?_ S00002	FIREARMS PROVISION	005 00 000	01/27/98	01/27/98	01/26/2003	ACT	
?_ * S00001	ARMED ROBBERY	999 99 999	01/27/98	01/27/98	99/99/9999	ACT	

PAGE: 7000

MAKE A SELECTION AND PRESS <ENTER>...
PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

RECEIVED
S. C. ATTORNEY GENERAL
DATE 6-23-98

Appendix 366

365

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTEM RELEASE DATE SCREEN

06/12/98

SCDC ID: 00246966

SMITHKIM

LOC: ALLENDALE

TOLEN, JR., FRANK -

OFFENDER CATEGORY: VIOLENT

CURR SENT SERVING CAT: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

TOTAL SENTENCE...: LIFE

CONSECUTIVE SENTENCE ...:

CURRENT SENTENCE: 999-00-000

CURRENT SENT START DATE: 01/27/1998

PROJECTED COMPLETION DATES

MAXOUT DATE: 99/99/9999

CURRENT EWC ..:

YOA SIX YEAR DATE: 00/00/0000

CURRENT EEC ..:

INITIAL PAROLE DATE: 0/ 0/ 0 0

NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

TOTAL GT DAYS EARNED: 000000

LABOR CREW/WORK PROG DATE: 99/99/999-

TOTAL EARNED WORK CREDITS ..: 000000

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000000

OFFENSE > CAT 3

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000000

PFKEYS:

5: HISTORY OF DATE CHANGES

Appendix 367

366

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORD SUMMARY REPORT DATED 06/12/98

SM

TOLEN, JR., FRANK - FBI # 152130LA5 SID# SC00715978 SCDC # 246966

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... ALLENDALE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

TOT INCARC SENT....: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #....: 250234503

DORM.....: COB0010A

RACE.....: B SEX....: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: FOOD SERVICE AIDE

EDUC PGM.: NO CURR EDUC PROGRA

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: CAFETERIA

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE....: 26 DATE OF BIRTH...: 10/ 5/71

PREVIOUS NUMBERS:

Y00166785

CURRENT OFFENSES

FIREARMS PROVISION

ARMED ROBBERY

SENTENCE
YRS MOS DYS COUNTY

5 0 0 SALUDA
999 99 999 SALUDA

SENTENCE
START V/NV CATEG

1/27/1998 N 3
1/27/1998 V 4

PRIOR COMMITMENTS OVER 90 DAYS:

10/17/94 *RESISTING OFFICER

1/10/90 ARMED ROBBERY

11/27/89 *ARMED ROBBERY

0 YRS 5 MOS 0 DYS

6 YRS 0 MOS 0 DYS

6 YRS 0 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

8/27/91 STRIKING AN INMATE WITH CONVICTED

MAJOR INMATE WEAPON Y00166

NON-ASSAULTIVE DISCIPLINARIES:

1/ 4/94 FIGHTING WITHOUT A WEAPON CONVICTED

MINOR Y00166

8/10/93 USE OBSCENE, VULGAR, PROFA CONVICTED

MINOR Y00166

8/10/93 REFUSING OR FAILING OBEY CONVICTED

MINOR Y00166

3/ 6/91 OUT OF PLACE

CONVICTED

MINOR Y00166

HISTORY OF MOVEMENTS:

3/16/98 ALLENDALE

INCARCERATED

ADMINISTRATIVE

2/ 3/98 KIRKLAND

INCARCERATED

R&E PROCESSING

1/28/98 BRR&EC

INCARCERATED

NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB START END TERMINATION
DESCRIPTION DATE DATE REASON

FOOD SERVICE AIDE 04/15/98 0/ 0/ 0

HISTORY OF EARNED EDUCATION CREDITS:

EEC START END TERMINATION
DESCRIPTION DATE DATE REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

Appendix 368

I - 152130LA5
E - 250234503

367

INQUIRY SENT TO NCIC WANTED*

OCT 17, 1996 10:36:33
OCT 17, 1996 10:36:59

MSG# 8736

000221630332/288
SAN: OPHKOH8CK6P4

: LSL1
OM: NCIC1

01OPHKOH8CK6P4108
032015A

NCIC WANT FBI/152130LA5
NCIC WANT SOC/250234503

OCT 17, 1996 10:36:36
T OCT 17, 1996 10:37:01

MSG# 8737

000221633201/288
SAN: OPHKOH8CK6P4

Appendix 369

366

COURT DATE-05/04/1995

TOLEN, FRANK JR
SC0400100 COLUMBIA PD
CASE-952301

10/29/1995 ARREST CHARGE 01-DRUNKENESS
PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-DISORDERLY
CONDUCT
ARREST CHARGE 03-RESISTING
ARREST

TOLEN, FRANK JR
SC0320100 BATESBURG PD
CASE-95-1182

11/08/1995 ARREST CHARGE 01-ASSAULT &
BATTERY, HIGH & AGGRAVATED
NATURE
OFFENSE DATE-11/02/1995
PHOTOGRAPH AVAILABLE

BASED ON SEARCH OF SCLED CJICS CCH FILE USING FBI/152130LAS
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJICS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION
INQUIRY WILL BE FORWARDED TO S L E D W A N T E D P E R S O N S

** S C CJICS END OF RECORD **

IN OCT 17, 1996 10:36:33
OUT OCT 17, 1996 10:36:59

MSG# 8735

000221626422/288
SAN: OPHKOH8CK6P4

TO: LSL1
FROM: SCCH

CIT-16-11-330
DOC-90G0200326 WARR-C4994...

Appendix 370

369

COURT CHARGE 01-ARMED ROBBERY
COURT DISP-NON-CONVICTION;
NOLLE PROCEED
COURT DATE-03/22/1990

WARR-C499445

COURT CHARGE 02-ARMED ROBBERY
COURT DISP-CONVICTED;1Y-6Y
CONFINED; INDETERMINATE;
YOA 5C;NO COURT COST
COURT DATE-03/22/1990

SC040055C R & E CENTER COLA
CASE-133785

04/09/1990 CUSTODY STATUS-RECEIVED

START DATE-04/09/1990

COURT CHARGE 01-ARMED ROBBERY
COURT DISP-CONVICTED;1Y-6Y
CONFINED; INDETERMINATE;
YOA 5C

TOLEN, FRANK JR
SC0410100 CALUDA PD
CASE-7539 WARR-D361877

11/30/1994 ARREST CHARGE 01-POSSESSION
WITH INTENT TO DIST CRACK
COCAINE

OFFENSE DATE-10/17/1994

PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-POSSESSION
W/I TO DIST CRACK W/I
PROX SCHOOL

OFFENSE DATE-10/17/1994

ARREST CHARGE 03-RESISTING

ARR-D361878

WARR-D361875

DOC-95GS4100083 WARR-D361876

ARREST
OFFENSE DATE-10/17/1994
COURT CHARGE 01-RESISTING
ARREST OR SERVICE OF PROCE
S
COURT DISP-CONVICTED;1 YR
SUSP TO 5 MOS THE BAL
SUSP WITH 2 YRS PROB CREDI
T 5 MOS SERVED
COURT DATE-05/04/1995

IT-44-53-370
OC-95GS4100081 WARR-D361877

COURT CHARGE 02-MFG/POSS
OTHER SCH I II III WITH
INTENT 1ST
COURT DISP-NON-CONVICTION;
NOLLE PROCEED
COURT DATE-05/04/1995

IT-44-53-370
OC-95GS4100082 WARR-D361878

COURT CHARGE 03-MFG/POSS
OTHER SCH I II III WITH
INTENT 1ST
COURT DISP-NON-CONVICTION;

Appendix 371

PHOTOGRAPH AVAILABLE
ARREST DISP-TREATED AS ADULT
COURT CHARGE 01-DISORDERLY
CONDUCT
COURT DISP-CONVICTED;30D
CONFINEMENT OR FINE;\$218 FINE;CONFINEMENT
COURT DATE-04/13/1989

370

TOLEN, FRANK
SC0320100 BATESBURG PD

04/21/1989 ARREST CHARGE 01-DISORDERLY
CONDUCT

OFFENSE DATE-04/21/1989
PHOTOGRAPH AVAILABLE
ARREST DISP-TREATED AS ADULT
COURT CHARGE 01-DISORDERLY
CONDUCT
COURT DISP-CONVICTED;2D CONFI
NE;\$50 FINE;CONFINEMENT
OR FINE;SERVED TIME
COURT DATE-05/11/1989

TOLEN, FRANK
SC0320000 LEXINGTON CNTY SO
CASE-8939132

11/27/1989 ARREST CHARGE 01-POSSESSION
STOLEN VEHICLE

OFFENSE DATE-11/27/1989
PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-UNLAWFUL
WEAPON
ARREST CHARGE 03-ARMED ROBBER
Y
COURT CHARGE 01-ARMED ROBBERY
COURT DISP-CONVICTED;1Y-6Y
CONFINEMENT; INDETERMINATE;
CONSECUTIVE;YOA 5C;SUBJECT
TO MANDATORY SERVICE OF

WARR-C501745

WARR-C501747

3 YR
COURT DATE-04/20/1990
COURT CHARGE 02-POSSESSION
OF STOLEN VEHICLE
COURT DISP-NON-CONVICTION;
NOLLE PROCEED
COURT DATE-04/20/1990
COURT CHARGE 03-UNLAWFUL
PISTOL
COURT DISP-NON-CONVICTION;
NOLLE PROCEED
COURT DATE-04/20/1990

WARR-C501743

TOLEN, FRANK JR

01/10/1990 ARREST CHARGE 01-ARMED ROBBER
Y

: LSL1
OM: SCCH

HR REQUEST FOR RAP SHEET
I-SC032015A FBI-152130LAS PUR-C
N-CAUGHMAN, JANE H

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

AGE-01 DATE-10/17/1996 TIME-10:36:27

EQ ORI-SC032015A CIR SOL LEXINGTON

ED-SC00715978 FBI-152130LAS

NAME-TOLEN, FRANK

SEX-M RACE-B

HEIGHT-511 WEIGHT-168 EYES-BRO HAIR-BLK SKIN- BORN-SC

PC-PO5909171010PO101413

HENRY- 9 0 1 R IID 10

S 19 W OIO

PHOTOGRAPH AVAILABLE

FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--12/06/1989

DATE OF LAST UPDATE--02/02/1996

ADDITIONAL IDENTIFIERS

NAME

TOLEN, FRANK JR

1

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

TOLEN, FRANK

03/27/1989 ARREST CHARGE 01-DISORDERLY
CONDUCT

C0320100 BATESBURG PD

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Frank Tolen,

Petitioner,

v.

State of South Carolina,

Respondent.

ON WRIT OF CERTIORARI

Appeal From Saluda County
James W. Johnson, Jr., Trial Judge
Rodney A. Peeples, Post-Conviction Judge

Memorandum Opinion No. 2002-MO-024
Submitted March 1, 2002 - Filed March 22, 2002

APPEAL DISMISSED

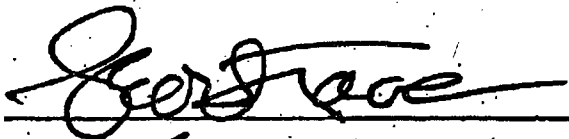
Assistant Appellate Defender Robert M. Pachak, of
S.C. Office of Appellate Defense, of Columbia, for
petitioner.

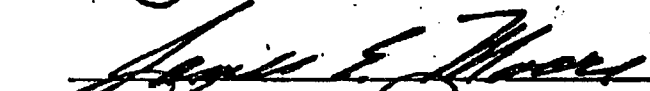
Attorney General Charles M. Condon, Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Allen Bullard, all
of Columbia, for respondent.

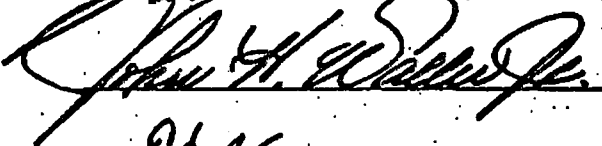
PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief (PCR).

Because there is sufficient evidence to support the PCR judge's finding that petitioner did not knowingly and intelligently waive his right to a direct appeal, we grant the petition for a writ of certiorari and proceed with a review of the direct appeal issues pursuant to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

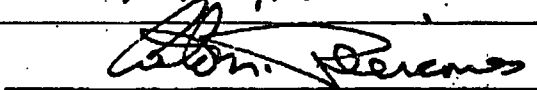
The direct appeal issues are dismissed under Rule 220(b)(1), SCACR, after consideration of appellant's pro se brief and review pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

 C.J.

 J.

 J.

 J.

 J.

FILED
CLERK OF COURT
SALUDA CO., S.C.

02 MAY 17 PM 4:23

STATE OF SOUTH CAROLINA

County of SALUDA

In the Court of Common Pleas

2002-CP-41-85

FRANK TOLEN JR. # 246966
Full name and prison number (if any) of Applicant.

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.

CHARLES M. CONDON

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention ALLENDALE CORRECTIONAL INSTITUTION P.O. BOX 1151, HWY #47
FAIRFAX, SOUTH CAROLINA 29827
2. Name and location of Court which imposed sentence LIFE WITHOUT THE POSSIBILITY OF PAROLE
PURSUANT TO SECTION 17-25-45 (A) SALUDA COUNTY COURT OF GENERAL SESSIONS
SALUDA, SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 98-GS-41-165 and 98-GS-41-166
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) JANUARY 27, 1998 LIFE WITHOUT THE POSSIBILITY OF PAROLE
(b) _____
(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
(b) after a plea of not guilty: *****
(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. S.C. SUPREME COURT
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. AFFIRMED
ii. _____
iii. _____

(c) the date of each such result:

- i. 2001
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. DK
ii. _____
iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
(b) _____
(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
(b) SENTENCE IMPOSED EXCEEDED THE STATUTORY MAXIMUM PENALTY ALLOWED PURSUANT TO
(c) SECTION 17-27-20 (A)(3)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) SEE ATTACHMENT
(b) _____
(c) _____

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. DIRECT APPEAL
- ii. POST-CONVICTION RELIEF PURSUANT TO AUSTIN V. STATE
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. COLUMBIA, SOUTH CAROLINA
- ii. SALUDA COUNTY COURTHOUSE; COURT OF COMMON PLEAS
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DENIED
- ii. GRANTED A BELATED APPEAL PURSUANT TO AUSTIN V. STATE
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 2000
- ii. 2002
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. dk
- ii. dk
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NONE
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NONE
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? 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? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. MR. VANNIE WILLIAMS SALUDA COUNTY PUBLIC DEFENDER'S OFFICE

ii. DANIEL T. STACEY S.C. OFFICE OF APPELLATE DEFENSE

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL / SENTENCING

ii. DIRECT APPEAL

iii. _____

18. State clearly the relief you seek in filing this application.

VACATE SENTENCE AND CONVICTION / REMAND FOR RESENTENCING

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of SALUDA

I, FRANK TOLEN JR. #246966, 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 attached in this application; and that the matters and allegations therein set forth are true.

Frank Tolen Jr.

SWORN to and subscribed before me this 16

day of May, 2002

Helen P. Lu (L.S.)
Notary Public

My Commission Expires: 6/10/04

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, FRANK TOLEN JR. #246966, 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 therefor.

Frank Tolen Jr.
Applicant

SWORN or affirmed to and subscribed before me this

16 day of May, 2002

Helen P. Lu
Notary Public

My Commission Expires 6/10/04

(9) State concisely the ground on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant was denied effective assistance of trial counsel. The attorney for Applicant was neither diligent in his representation of Applicant, nor did he perform within the range of reasonable professional assistance. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985); Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

In Strickland v. Washington, *supra*, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that trial counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S. Ct. At 2064. The Applicant submits that counsel's performance was deficient and the Applicant was prejudiced by counsel's deficient performance.

In Hill v. Lockhart, *supra*, the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea based challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. The Applicant submits that an evidentiary hearing would reveal that Applicant can meet the prejudice requirement.

(b) The trial court's sentence exceeded the statutory maximum penalty allowed for the offense and thus the trial court lacked authority to impose the sentence of life without the possibility of parole.

(10) State concisely and in the same order the facts which support each of the grounds set out in (9):

FACTS

1. Applicant's trial counsel failed to thoroughly investigate his case and the facts surrounding it.
2. Applicant's trial counsel failed to fully explain all of the elements of his charges and make sure that he understood each one of them.
3. Applicant's trial counsel failed to properly put together a defense in his behalf.
4. Applicant's trial counsel failed to interview certain witnesses in which he could have established an alibi.
5. Applicant's trial counsel failed to object to the trial court's burden-shifting charge.
6. Applicant's trial counsel failed to object to the State's introduction of the alleged weapon used to commit the alleged crime.
7. The trial court's sentence exceeded the statutory maximum penalty allowed for the charged offense.

CASE NO. 98-GS-41-166
 WARRANT NO. Indict.

SENTENCE

PLED TO:

INDICTMENT FOR

Possession of a
 pistol by a Person
Convicted of a Crime
in Probation

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

The defendant Frank Tolson Jr. is committed to the State Department of Corrections/
 County for a term of 5 (months) (years) (and) (or) to pay a fine of \$ _____ ; provided upon the
 service of _____ (months) (years) (and) (or) payment of \$ _____ , plus (pay) (waive) costs and assessments as
 applicable*, the balance suspended with probation for _____ (months) (years).

Restitution

For physical injury \$ _____

Yes/No

property damage \$ _____

to be paid _____

To Clerk for _____

Other conditions ConcurrentDate July 27, 1998

Presiding Judge

*Costs and Assessments

Fine \$ _____

Restitution \$ _____

TOTAL \$ _____

(Including Court Cost)

Clerk of Court

ATTEST: TRUE COPY

Doris B. Johnson
 Clerk of Court
 Saluda, S. C.

Attorney for Defendant:

**Pay to Victim's Comp. Fund if subrogated

White: Clerk Canary: Probation Pink: LEC
 Goldenrod: Defendant

28

WITNESSES

HERLONG - SC80

WHISENANT - SC80

DOCKET NO. 98-GS-41-166

The State of South Carolina,

County of SALUDA

COURT OF GENERAL SESSIONS

SALUDAS TERM 1998

THE STATE

vs.

FRANK TOLEN, JR.

ARREST WARRANT NO.

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

Therrell A. Canell
Foreman of Grand Jury

VERDICT

Guilty

Indictment for

POSSESSION OF A PISTOL BY A
PERSON CONVICTED OF A CRIME OF VIOLENCE

ATTEST: TRUE COPY

Clifford B. Johnson
Clerk of Court
Saluda, S. C.

1-22-98

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POSSESSION OF A PISTOL BY A PERSON
CONVICTED OF A CRIME OF VIOLENCE

At a Court of General Sessions, convened on JANUARY 19, 1998
the Grand Jurors of SALUDA County present upon their oath:

That FRANK TOLEN JR. did in SALUDA County on or about October 2, 1996 unlawfully possess a pistol in violation of Section 16-23-30 of the Code of Laws of the State of South Carolina, in that he did possess a pistol within this State after having been previously convicted in the courts of the State of South Carolina of a crime of violence.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ATTEST: TRUE COPY

Don B. Johnson
Clerk of Court
Saluda, S. C.

E. J. May
SOLICITOR

CASE NO. 98-GS-41-1165WARRANT NO. At Indictment

SENTENCE

INDICTMENT FOR

Armed Robbery

PLED TO:

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

The defendant Frank Tolson Jr is committed to the State Department of Corrections/
County for a term of life without possibility of parole pursuant to §17-25-45 (months) (years) (and) (or) to pay a fine of \$ _____; provided upon the
service of _____ (months) (years) (and) (or) payment of \$ _____, plus (pay) (waive) costs and assessments as
applicable*, the balance suspended with probation for _____ (months) (years).

Restitution

Yes/No

For physical injury \$ _____

property damage \$ _____

To be paid

To Clerk for

Other conditions

Date

July 27, 1998

Presiding Judge

*Costs and Assessments

Fine \$ _____

Restitution \$ _____

TOTAL \$ _____

(Including Court Cost)

ATTEST: TRUE COPY

Don B. BlumClerk of Court
Saluda, S. C.

Clerk of Court

Attorney for Defendant:

**Pay to Victim's Comp. Fund if subrogated

White: Clerk Canary: Probation Pink: LEC
Goldenrod: Defendant

WITNESSES

HERLONG - BCSO

WHISENANT - BCSO

DOCKET NO. 98-GJ-41-25

The State of South Carolina,

County of SALUDA

COURT OF GENERAL SESSIONS

JANUARY TERM 1998

THE STATE

vs.

FRANK TOLAN, JR.

Appendix 38

PREST WARRANT NO.

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TIME FOR

Beryl A. Canell
Foreman of Grand Jury

VERDICT

Guthy

Warrant will pass 1-27-98

Indictment for Armed
Robbery and Robbery

ATTEST: TRUE COPY
James B. Johnson
Clerk of Court
Saluda, S. C.

FORM 20 (1/91)

STATE OF SOUTH CAROLINA)

INDICTMENT FOR ARMED ROBBERY

COUNTY OF SALUDA)~~ARMED ROBBERY~~At a Court of General Sessions, convened on JANUARY 19, 1998the Grand Jurors of SALUDA County present upon their oath:

COUNT ONE — ARMED ROBBERY

That FRANK TOLAN, JR. did inSALUDA County on or about OCTOBER 2, 1996 while armed with a deadly weapon, to wit: a pistolfeloniously take from the person or presence of OATON DYSON by means of force or intimidation goods or monies of OATON DYSON such goods or monies being described as follows: Sixty (\$60.00) Dollars in U.S. Currency

with intent to deprive the owner permanently of such property.

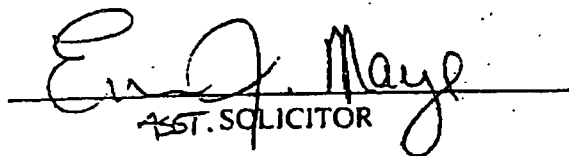
~~COUNT TWO — ARMED ROBBERY~~

That _____ did in _____

County on or about _____ feloniously take from the person or presence of _____ by means of force or intimidation goods or monies of _____ such goods or monies being described as follows: _____

with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 ASST. SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS

2002-CP-41-085

Frank Tolen, 246966,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed May 17, 2002, 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 Clerk of Court for Saluda County. The Applicant was indicted at the January 1998 term of the Saluda County grand jury for unlawful possession of a pistol and armed robbery. He was represented by Vannie Williams, Esquire. On January 27, 1998, the Applicant underwent trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable James W. Johnson, Jr. to confinement for a period of five (5) years for unlawful possession of a pistol and life without parole pursuant to S.C. Code §17-25-45 for armed robbery. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on April 15, 1998 (1998-CP-41-064). The State filed its Return on July 24, 1998. On November 15, 2000, an evidentiary hearing was held before the Honorable Rodney A. Peeples, at which the Applicant was present and was

represented by Murray Kinard, Esquire. By Order dated November 15, 2000, Judge Peebles denied and dismissed the Applicant's application without prejudice but allowed for a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On March 22, 2002, the South Carolina Supreme Court denied the Applicant's direct appeal issues and affirmed his convictions and sentences. Tolen v. State, Op. No. 2002-MO-024 (S.C. Sup. Ct. filed March 22, 2002).

Attached herewith and incorporated herein by reference are the records of the Saluda County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript and the Applicant's appellate records.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Trial court's sentence exceeded the statutory maximum penalty allowed for the offense and thus the trial court lacked authority to impose the sentence of life without the possibility of parole.
3. Trial counsel failed to thoroughly investigate his case.
4. Trial counsel failed to fully explain all the elements of his charges.
5. Trial counsel failed to properly put together a defense.

6. Trial counsel failed to interview certain witnesses who could have established an alibi.
7. Trial counsel failed to object to the trial court's burden shifting instruction.
8. Trial counsel failed to the State's introduction of the weapon used to commit the crime.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. 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, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Chief, Capital and Collateral Litigation

ALLEN BULLARD
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 13, 2002.

)
) IN THE COURT OF COMMON PLEAS

2002-CP-41-085

Applicant,

AFFIDAVIT OF SERVICE BY MAIL

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:

Wayne Floyd, Esquire
1611 Augusta Road
West Columbia, South Carolina 29171-3972

DATED this 13th day of December, 2002.

Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

COURT OF COMMON PLEAS
2002-CP-41-85

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

FRANK TOLEN, JR.,)
DEFENDANT.)

APRIL 17, 2003
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KENNETH G. GOODE, JUDGE

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

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
ALLEN BULLARD, ESQ.
Attorney for the Plaintiff

WAYNE FLOYD, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

PAGE

FRANK TOLEN

Direct Exam by Mr. Floyd

4

VANNIE WILLIAMS

Direct Exam by Mr. Bullard

24

Cross-Exam by Mr. Floyd

28

Redirect Exam by Mr. Bullard

34

Recross-Exam by Mr. Floyd

37

E X H I B I T S

(There were no exhibits offered.)

1 MR. BULLARD: Your Honor, we'll move on
2 to Frank Tolen.

3 Mr. Tolen is present, and he's
4 represented by Mr. Wayne Floyd, who is also
5 present. I believe we're ready to proceed.

6 THE COURT: Good morning, Mr. Floyd.

7 MR. FLOYD: Good morning, Your Honor.

8 THE COURT: Ready to proceed, Mr.
9 Floyd?

10 MR. FLOYD: Yes, Your Honor. Your
11 Honor, if I may approach the bench a moment.

12 THE COURT: Yes, sir.

13 MR. FLOYD: I'd pass up to you two
14 authorities that have become relevant. One is a
15 copy of Section 17-25-45 of the South Carolina Code
16 of Laws. It's the statute governing the sentencing
17 of someone with life without parole, and the last
18 subsection I have highlighted which would be
19 appropriate in this case. Plus the case of State v
20 Johnson, which is an Appeals Court case that
21 rehearing was denied and cert was denied on it, and
22 it's on the issue also. I have the appropriate
23 parts there highlighted on it also.

24 We call as our first witness Mr. Frank
25 Tolen.

1 THE COURT: Mr. Tolen, please come
2 forward.

3 FRANK TOLEN, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FLOYD:

7 Q. Mr. Tolen, where are you currently
8 incarcerated?

9 A. Lieber Correctional Institution.

10 Q. And under what type of a sentence?

11 A. Presently the two-strike law, 17-25-45
12 statute.

13 Q. And what is that sentence that you're
14 currently serving?

15 A. Life without possibility of parole.

16 Q. Is that in connection with a trial you had
17 down in Saluda County?

18 A. Yes, sir.

19 Q. And that you're at issue for here today?

20 A. Yes, sir.

21 Q. Now, were you also at that time sentenced
22 for another charge of possession of a weapon?

23 A. Yes, sir.

24 Q. And what did you receive on that sentence?

25 A. Five years concurrent.

1 Q. How old are you, Frank?

2 A. I'm 31 years old.

3 Q. Now, did you ever receive before your trial
4 written notice that the State intended to seek a
5 sentence of life without parole in connection with
6 your charges there in Saluda County?

7 A. No, sir, I didn't.

8 Q. Now, do you recall your trial?

9 A. Yes, sir.

10 Q. Who represented you at your trial?

11 A. Vannie Williams.

12 Q. Was he retained or appointed to represent
13 you?

14 A. He was appointed.

15 Q. Before your trial, did something happen in
16 the courthouse that put you in contact with the
17 victim in your case?

18 A. Yes. Prior to my trial there was a physical
19 identification done.

20 Q. How was that done?

21 A. I was taken out of the courtroom into a
22 secluded area room in the courtroom and was asked to
23 step in the room, and the Assistant Solicitor and
24 the Solicitor as well as my attorney was there along
25 with the victim, but my attorney was like in the

1 background where I couldn't see him. So as I
2 entered the room, just the Assistant Solicitor and
3 the Solicitor and the victim was standing there. I
4 backed up out the room. My attorney come back out
5 the room and asked me to enter the room again. They
6 left. So he asked me, did I recognize the three
7 individuals that was in the room. I stated two of
8 the three, which was the Assistant Solicitor and the
9 Solicitor.

10 Q. And this took place in the courthouse?

11 A. In the courthouse.

12 Q. How soon was this in relationship to your
13 trial?

14 A. Approximately about 15 minutes before my
15 trial.

16 Q. Now, on the night of the incident for which
17 you were tried, the victim was not able to identify
18 you, was he?

19 A. No, sir, he wasn't.

20 Q. In fact, wasn't he taken to the police
21 department and shown photograph photo lineups and so
22 forth?

23 A. Yes, sir, he was.

24 Q. And you were not identified, were you?

25 A. No, sir, I wasn't.

1 Q. And isn't it true that even at the trial,
2 the victim testified that the person that robbed
3 him, that you were heavier than the person that
4 robbed him?

5 A. Yes, I was bigger than both of the
6 individuals that entered his vehicle.

7 Q. And he was only able, was he not, on the
8 night in question to give very general descriptions
9 of people?

10 A. Yeah.

11 Q. Now, in your opinion, if you had not been
12 taken into that room with him, do you think he could
13 have ever said you were the person?

14 A. Most certainly he wouldn't have never said I
15 was the person.

16 Q. Did your attorney object to the procedure
17 where they took you in and showed you to the victim
18 right before trial?

19 A. No, sir, he never objected.

20 Q. Do you think he was ineffective for failure
21 to do that?

22 A. Yes, sir, most definitely.

23 Q. Now, at trial the victim said that you were
24 larger and fatter than the guy who robbed him,
25 either one of them. Did he say that?

1 A. Yeah, he most definitely said it.

2 Q. Did your attorney produce any kind of
3 evidence -- at the time of trial, was there any
4 difference in your size than it was at the time of
5 the alleged incident?

6 A. No, sir.

7 Q. Did your attorney present any evidence at
8 trial to show the jury that you were the same size
9 at trial that you were on the night of the alleged
10 robbery?

11 A. No, he didn't.

12 Q. Do you feel like he was ineffective for
13 failing to do that?

14 A. Most definitely.

15 Q. Now, were there two people prosecuting you?
16 Do you recall the prosecutors?

17 A. Ervin May and Julius Baggett.

18 Q. Now, did you have a co-defendant in your
19 case?

20 A. Yes.

21 Q. What was your co-defendant's name?

22 A. Wade Lamar Brannon.

23 Q. Did Mr. Brannon, in fact, get some kind of
24 deal about which he then testified against you?

25 A. Yes, he did.

1 Q. Who was Mr. Brannon's attorney?

2 A. Ralph Kennedy.

3 Q. And did it come out in court that Mr.
4 Kennedy was the law partner of Julius Baggett?

5 A. Yes, sir.

6 Q. And, in fact, Mr. Kennedy sat at the
7 prosecution table with the prosecutors, didn't he?

8 A. Yes, sir, he did.

9 Q. Now, it never was revealed, was it, exactly
10 what kind of sentencing arrangement or deal was made
11 with Mr. Brannon, was it?

12 A. No, sir.

13 Q. I mean, your lawyer asked that, but he
14 didn't say, did he?

15 A. Never did.

16 Q. Do you know what happened to him?

17 A. I think he got a parole violation in New
18 York City.

19 Q. But he didn't get any time for this
20 particular incident, did he?

21 A. No, no time.

22 Q. Now, did your attorney make any kind of
23 motion or objection to the fact that your
24 co-defendant's attorney's law partner was
25 prosecuting you?

1 A. No, he didn't.

2 THE COURT: What was that last
3 question, please, Mr. Floyd?

4 MR. FLOYD: Did his attorney make any
5 objections or motions directed to the fact that his
6 co-defendant's law partner was prosecuting him.

7 MR. BULLARD: Your Honor, I object to
8 the question on the grounds that it assumes facts
9 not in evidence. I don't know that they have proven
10 that his co-defendant's law partner was prosecuting
11 him.

12 MR. FLOYD: Your Honor, I refer to page
13 168 of the transcript that's a matter of evidence.

14 MR. BULLARD: Is it in the transcript?

15 MR. FLOYD: Page 168.

16 MR. BULLARD: All right. If it's in
17 the transcript, then I withdraw my objection.

18 MR. FLOYD: Your Honor, I refer to page
19 168.

20 THE COURT: 168. I'm there.

21 MR. FLOYD: Yes, sir.

22 THE COURT: Okay. It does appear, Mr.
23 Bullard, that it does state it there.

24 BY MR. FLOYD:

25 Q. Now, when you were sentenced to life without

1 parole, did the State use as one of your prior
2 convictions an armed robbery that occurred here in
3 Lexington County?

4 A. Yes, sir.

5 Q. And who sentenced you to that armed robbery?

6 A. Julius Baggett.

7 Q. And was that the same individual who was the
8 prosecutor in this case?

9 A. Yes, sir.

10 Q. Did your attorney make any kind of objection
11 or motion directed to that situation?

12 A. No, sir, he didn't.

13 Q. Do you think he was ineffective for failing
14 to somehow prevent you from being prosecuted by the
15 law partner of the co-defendant's attorney and
16 someone who had actually sentenced you in the past
17 also?

18 A. Yes, sir.

19 THE COURT: Mr. Floyd, if I could
20 interrupt you for a second. And I will accept a
21 response from you or Mr. Bullard or a joint
22 response.

23 I'm looking through the record as the
24 testimony of Mr. Tolen is unfolding. I notice that
25 this case has been to the Court of Appeals, and it

1 indicates the trial judge and the post-conviction
2 judge. How are we back here? I'm certainly not
3 saying we shouldn't be. If you would just
4 procedurally explain to me how we are here today,
5 please.

6 MR. FLOYD: At the first PCR he was
7 represented by Murray Kinard. The only issue that
8 they got to was the failure to advise him of his
9 right to appeal. So the judge, I believe Judge
10 Peeples was the judge at that time.

11 THE COURT: He was the PCR judge?

12 MR. FLOYD: He was the PCR judge, and
13 they didn't really go into anything else other than
14 that, to give him his right to appeal. That was
15 exercised, the appeal.

16 THE COURT: Okay. I'm with you now.

17 MR. FLOYD: No relief on the appeal,
18 and it came back down.

19 THE COURT: I'm with you now.

20 Do you agree with that recitation, Mr.
21 Bullard?

22 MR. BULLARD: Yes. In the order, Judge
23 Peeples ordered -- he dismissed the claims that Mr.
24 Tolen would be raising right now without prejudice
25 and just letting the direct appeal issues go up to

1 see what happened with those.

2 THE COURT: Thank you. That's just to
3 make it clear to me as we go along.

4 MR. FLOYD: Yes, sir.

5 BY MR. FLOYD:

6 Q. Now, Mr. Tolen, do you recall in your
7 attorney's opening statement to the jury, do you
8 recall him making that opening statement?

9 A. Yes, sir.

10 Q. And do you recall him saying something to
11 the effect of depending on who you talked to, the
12 defendant might have a poor reputation; do you
13 remember him saying that?

14 A. Yes. Very, very, yes, sir.

15 Q. Then do you remember him saying shortly
16 after that --

17 MR. FLOYD: And, Your Honor, this is
18 page 70, 71 of the transcript.

19 THE COURT: Pages 70, 71.

20 BY MR. FLOYD:

21 Q. Saying shortly after that that a person who
22 may be hated and despised in the community is still
23 protected by the Constitution. Do you remember
24 that?

25 A. Yeah, I remember him saying that.

1 Q. Now, did you give your attorney permission
2 or did you discuss with him before he made those
3 comments as to whether or not you agreed those type
4 of comments should be made because they were
5 negative about you?

6 A. Exactly.

7 Q. In fact, did you testify at this trial?

8 A. No, sir, I didn't.

9 Q. So you never really put your character into
10 evidence other than your attorney did that as your
11 opening statement; is that correct?

12 A. That's correct.

13 Q. Do you think he was ineffective for saying
14 derogatory things to you, about you to the jury?

15 A. Very much. Very much so, sir.

16 Q. Now, do you recall that your co-defendant,
17 Wade Brannon, do you recall him testifying against
18 you?

19 A. Yes, he did.

20 Q. Do you recall on page 152 of the transcript
21 where Mr. Brannon testified that Frank Tolen asked
22 him if he wanted to go break in a store? Do you
23 recall that testimony on page 152?

24 Did your attorney object when he said
25 that about you?

1 A. No, sir.

2 Q. Had you been provided before trial notice
3 that that statement was going to be made?

4 A. No, sir, I didn't.

5 Q. Do you think your attorney was ineffective
6 for failing to object to that statement?

7 A. Yes, sir, he was.

8 Q. In fact, you all weren't charged with
9 robbing a store, were you?

10 A. No, sir, I wasn't.

11 Q. You all were charged with robbing an
12 individual who was in a tractor trailer truck,
13 weren't you?

14 A. Exactly.

15 Q. Now, do you recall on page 155 when Mr.
16 Brannon testified that you all were getting high
17 smoking crack?

18 A. Yeah, I recall that.

19 Q. Did your attorney object to that statement?

20 A. No, sir, he didn't.

21 Q. And was that statement provided to you
22 before trial?

23 A. No, sir, it wasn't.

24 Q. Do you think your attorney was ineffective
25 for failing to object to that statement?

1 A. Yes, sir, he was.

2 Q. Because you weren't charged with smoking
3 crack or possession of drugs, were you?

4 A. No, sir, I wasn't.

5 Q. Now, on page 202 of your transcript, isn't
6 it true that the transcript reveals that on that
7 page that your co-defendant Brannon testified that
8 you, Frank Tolen, said that you would have shot
9 Dyson if the gun was loaded?

10 A. Excuse me? I was reading.

11 THE COURT: Give me a line reference.

12 MR. FLOYD: Yes, sir, line eight.

13 THE COURT: Eight?

14 MR. FLOYD: Yes, sir.

15 THE COURT: Thank you.

16 BY MR. FLOYD:

17 Q. The Solicitor asked him, and this is on
18 redirect, that he would have shot Mr. Dyson if the
19 gun was functioning?

20 A. Yes, sir, he did ask him that.

21 Q. And right above that Mr. Williams talked to
22 you about the gun not being loaded, What did Frank
23 tell you about the gun not being loaded, in
24 reference to Mr. Dyson. And he answered, It was
25 like if it was loaded, then he would have shot him.

1 A. Yes, sir.

2 Q. Now, had you been given notice before trial
3 that the State was going to use that statement
4 against you?

5 A. No, sir, I wasn't.

6 Q. Now, do you feel that that statement
7 prejudiced you highly in front of the jury?

8 A. Very much so.

9 Q. Because it made you look like a vicious
10 killer, didn't it?

11 A. Exactly.

12 Q. Now, your attorney objected at that point in
13 time, but did he move for a mistrial because of the
14 fact that that statement had prejudiced you in front
15 of the jury?

16 A. No, sir, he didn't.

17 Q. Did he ask for the Court to at least inform
18 the jury that they should disregard that statement?

19 A. No, sir, he didn't.

20 Q. Do you feel he was ineffective for not
21 moving for either a mistrial because of that
22 statement or for the jury to be told to disregard
23 that statement?

24 A. Excuse me?

25 Q. Did you feel he was ineffective?

1 A. Yes, sir, he was.

2 Q. Now, let's go to the testimony of Fontaine
3 Smith on page 205.

4 MR. FLOYD: Your Honor, if you'd give
5 me a moment. I have a wrong page number written
6 down.

7 THE COURT: Yes, sir.

8 BY MR. FLOYD:

9 Q. On page 205 at line 20, do you recall Mr.
10 Smith testifying that a Ben Tolen came in his store?

11 THE COURT: What page are we on?

12 MR. FLOYD: Page 205, line 20.

13 BY MR. FLOYD:

14 Q. And he testified that they gave him some
15 information about where these people were, said he
16 was scared of them and wanted to get them out of his
17 house. Do you recall that testimony, line 20, page
18 205?

19 A. 205? Is this Fontaine Smith's testimony?

20 Q. Yes, Fontaine Smith.

21 A. I don't think I have that in mine.

22 Q. Do you have page 205?

23 A. Yeah, I have 205.

24 Q. Right there.

25 A. Yes, sir, I remember that.

1 Q. Okay. Now, that testimony, of course that
2 was hearsay testimony, wasn't it?

3 A. Yeah.

4 Q. Now, Mr. Williams, your attorney, objected
5 to it, did he not? But did he move for a mistrial
6 or that the jury be instructed to disregard the
7 testimony at that time?

8 A. No, sir, he didn't.

9 Q. Do you feel he was ineffective for failing
10 to make either one of those motions?

11 A. Yes, sir.

12 Q. Now, do you recall the closing statement
13 that the Solicitor made in your case? I refer you
14 to page 285 of your transcript. At lines 18 through
15 22, isn't it true that the prosecutor basically said
16 to them, I prosecute up here, but I don't live up
17 here. I don't live in Saluda County. I'm going
18 back to Lexington County when this case is over.
19 Each of you live in Saluda County. Then didn't he
20 say, It's up to you to decide what goes on up here.
21 You are the conscience of the community. It's up to
22 you. Do you recall him making that statement?

23 A. Yes, sir, I do.

24 Q. Now, would you agree that that type of a
25 statement is not proper in a closing argument? It

1 has nothing to do with whether or not you committed
2 this particular crime, does it?

3 A. No, sir, it doesn't.

4 Q. It's trying to stir up the passions of the
5 jurors to let them think their verdict has something
6 to do with their community rather than with you,
7 doesn't it?

8 A. Yes, sir.

9 Q. Did your attorney object to that argument?

10 A. No, sir, he didn't.

11 Q. Do you feel he was ineffective for not
12 objecting to that argument?

13 A. Yes, he was.

14 Q. Thank you. Now one other thing.

15 Isn't it true in your case that the
16 witness, Mr. Dyson, didn't want to come back and the
17 State somehow compelled him to come back through a
18 subpoena?

19 A. Yes, sir.

20 Q. Isn't it true that they kept him in the
21 Saluda County jail until your trial?

22 A. Yes, sir.

23 Q. Now, do you recall a hearing at some point
24 in time where your attorney called as a witness a
25 lady who worked in the jail?

1 A. Yes, sir, I do.

2 Q. And didn't that lady testify that she was
3 told by the Solicitor's office not to allow your
4 attorney to have contact with Mr. Dyson?

5 A. That's right. That's correct.

6 Q. Now that was at some hearing before trial,
7 wasn't it, so it's not in the trial transcript?

8 A. It's not in the transcript, right.

9 Q. Do you think that was proper? Do you think
10 it was proper for them to try and limit your
11 attorney?

12 A. No, it wasn't proper.

13 Q. And you feel that would justify you getting
14 a new trial also?

15 A. Yes.

16 MR. FLOYD: Thank you. That's all the
17 testimony I have.

18 THE COURT: Thank you.

19 Mr. Bullard, cross?

20 MR. BULLARD: No questions, Your
21 Honor.

22 THE COURT: Thank you. You may step
23 down.

24 Yes, sir, Mr. Floyd.

25 MR. FLOYD: Thank you, Your Honor. I

1 have no further testimony to offer at this time.

2 THE COURT: Thank you. Do you rest?

3 MR. FLOYD: Yes, Your Honor. We would
4 have a motion that we would like to make on one
5 particular point because we think it's uncontested.

6 THE COURT: I'll be happy to hear from
7 you.

8 MR. FLOYD: Your Honor, at this time we
9 would move on our issue of whether or not it was
10 proper to sentence Mr. Tolen to life without
11 parole.

12 We would move for a directed verdict in
13 his favor on that point because there's nothing in
14 the record that indicates -- in fact, we would refer
15 the Court, Your Honor, to the sentencing of Mr.
16 Tolen. And on page 306 in the transcript, Mr. May,
17 the Solicitor, indicates to the Court, line 18 he
18 says, The State did comport with the statute and
19 give the defendant -- it says apple, but I assume
20 that means applicant -- advance notice of the
21 State's intent to do the sentencing under life
22 without parole or to seek life without parole on
23 this charge. Let me see. Wait a minute.

24 Here it is. 306, line three, I'm
25 sorry, Your Honor. The State of South Carolina

1 noticed Frank Tolen through his attorney, Mr. Vannie
2 Williams, of their intent to seek life without
3 parole.

4 So the State admits that the way they
5 gave notice in this case was by giving notice to his
6 attorney. The statute clearly indicates that
7 written notice must be given both to the attorney
8 and to the defendant. It's clear on that point.
9 State v Johnson, which we handed up to Your Honor,
10 illustrates that.

11 In the State v Johnson case, it's a
12 Richland County case with Judge Barber, in fact, the
13 defense attorney moved for a continuance in that
14 case because his client was being noticed for life
15 without parole. According to the Solicitor's
16 office, it was in the discovery they gave to the
17 defense attorney and the defendant knew about it in
18 that case. And the Court ruled that that was not
19 sufficient because the statute means what it says,
20 you have to interpret it strictly. It's a criminal
21 statute. And unless the record reflects that
22 written notice was given at least ten days before
23 trial to both the defendant and his attorney, then
24 you do not comply with the statute and life without
25 parole would not be appropriate. And the record

1 clearly indicates here that notice was only given to
2 the attorney.

3 THE COURT: I'll rule on that motion at
4 the same time I rule on the petition of Mr. Tolen.

5 MR. FLOYD: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Yes, sir, Mr. Bullard.

8 MR. BULLARD: The State would call
9 Vannie Williams.

10 THE COURT: Mr. Williams, come forward
11 and be sworn, please, sir.

12 VANNIE WILLIAMS, after being duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BULLARD:

16 Q. Mr. Williams, did you receive written notice
17 of the State's intent to seek life without parole?

18 A. Yes, I did.

19 Q. And does your recollection jibe with what is
20 in the transcript, what the Solicitor related to the
21 Court in the transcript?

22 A. Yes, it does.

23 Q. Did Mr. Tolen ever tell you about being
24 taken into a room by himself by the Solicitor or
25 deputies or however he described it and being, I

1 guess, exhibited for lack of a better word to the
2 victim?

3 A. I don't recall Mr. Tolen telling me that.

4 Q. Do you recall whether you made a motion to
5 suppress the victim's in-court identification of Mr.
6 Tolen?

7 A. Yes, I did.

8 Q. Do you remember doing that?

9 A. Yes.

10 Q. If Mr. Tolen had told you that he had been
11 taken into a room in the courthouse shortly before
12 trial started and exhibited in the manner that he
13 described today, would you have made that part of
14 your argument or testimony in that suppression
15 hearing?

16 A. Well, according to what Mr. Tolen said, if I
17 understood him correctly, he said that happened some
18 ten minutes before the case actually went to trial.
19 The suppression motion we argued was one of numerous
20 pre-trial motions we had filed and argued. And I
21 honestly don't recall Mr. Tolen telling me that, but
22 I would want to believe that had he told me that, I
23 would have made that an issue immediately.

24 Q. Did I understand you to say that you weren't
25 certain based on his testimony of whether it

1 happened according to him prior to or after your
2 suppression motion? Is that what you were saying?

3 A. What I'm saying is, I can't confirm nor deny
4 that it happened. But what I am saying is, I didn't
5 have notice of it. Because if he had told me that,
6 I would have acted on it.

7 Q. With regard to the issue of Judge Baggett
8 acting as a prosecuting attorney, had you ever
9 raised that issue in the past?

10 A. Judge Baggett, to my understanding, had a
11 contract with the 11th Circuit where he served as an
12 assistant solicitor.

13 THE COURT: Just to keep the record
14 clear, I think that until now he's been referred to
15 as Julius Baggett. Are we, in fact, referring to
16 the same individual that Mr. Bullard referred to as
17 Julius Baggett when you say Judge Baggett?

18 MR. BULLARD: Yes, sir. I'm sorry if I
19 said --

20 THE COURT: I just want to keep the
21 record clear so that someone reading it will know
22 that Julius Baggett and Judge Baggett are in fact
23 one and the same. Is that a correct statement?

24 MR. BULLARD: Yes, sir.

25 THE COURT: Thank you.

1 A. Julius Baggett to my understanding had a
2 contract with the 11th Circuit Solicitor's office to
3 act as a part-time solicitor. And to the best of my
4 recollection, I had raised his participation in the
5 prosecution of another case at some point. I can't
6 recall the name of the case. I really don't recall
7 -- I can't recall which case it was, but I do
8 recall that I raised that issue before I tried Mr.
9 Tolen's case.

10 BY MR. BULLARD:

11 Q. And were you successful when you raised that
12 issue?

13 A. No, I wasn't.

14 Q. In this trial you did make the jury aware of
15 the relationship between Julius Baggett and the
16 co-defendant's attorney, did you not?

17 A. Yes, I did.

18 Q. And what was your purpose in doing that?

19 A. Part of the trial strategy was to try to
20 attack the credibility of Mr. Brannon, and Mr.
21 Brannon to my understanding had already pled guilty,
22 but sentencing was being deferred until after the
23 trial. I wanted to demonstrate that he was, his
24 trial team, that he was intimately connected with
25 the State and that he was looking to benefit from

1 his testimony essentially.

2 Q. And that was, I think, part of what you told
3 the jury in your opening statement, that that was
4 what Mr. Brannon was doing was trying to cut his
5 losses and hang Mr. Tolen?

6 A. Yes, sir.

7 Q. Do you recall whether you were able to
8 present testimony to the jury regarding the victim's
9 unwillingness to attend the trial?

10 A. I don't recall that I did.

11 Q. All right. Whatever the transcript says,
12 though, you wouldn't dispute?

13 A. I wouldn't dispute that.

14 MR. BULLARD: That's all the questions
15 I have, Your Honor.

16 THE COURT: Thank you, Mr. Bullard.
17 Mr. Floyd.

18 MR. FLOYD: Just a couple, Your Honor.

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q. Mr. Williams, was the victim in this case a
23 Mr. Dyson, was he, in fact, forcibly brought there
24 by the State?

25 A. Yes, he was.

1 Q. And did they not, in fact, incarcerate him
2 there in a local jail for some period of time before
3 the trial?

4 A. Yes, they did.

5 Q. Did you, of course, try to go contact him at
6 the jail?

7 A. Yes, I did.

8 Q. Did you discover that the State Solicitor's
9 office had left instructions that you were not to
10 speak with him?

11 A. That issue came up, and, in fact, we had a
12 hearing on that issue. In the testimony of the
13 witness, basically he said he didn't want to talk to
14 me. The presiding judge at that time said, Well, I
15 can't make him talk to you if he doesn't want to
16 talk to you.

17 Q. Okay. But did you have a hearing where a
18 jail employee said something to the effect that the
19 Solicitor's office had said something to the effect
20 to not allow you to have access to him?

21 A. I don't recall. If you have something I
22 wouldn't dispute it. I really can't recall.

23 Q. Now, did you think it was proper that Julius
24 Baggett was prosecuting Mr. Tolen and his law
25 partner, Mr. Kennedy, was representing the

1 co-defendant and got the good deal?

2 A. I'm trying to recall if I raised that. I
3 don't see it in the transcript, but for some reason
4 I seem to think that I've raised that. I don't know
5 if I would have raised it in chambers, but again I'd
6 have to stay with the transcript.

7 Q. Do you feel that that should have been
8 objected to or some type of motion made in
9 connection with that situation?

10 A. Yes, I wish I had. I really wish that was
11 in the record. But at that point -- see, the thing
12 about trying a case, you can always -- after you try
13 a case, almost invariably you can go back and say,
14 well, maybe I should have done this or should not
15 have said that, but part of the strategy was to try
16 to attack the credibility of the co-defendant.

17 Now, I recall that the fact that Ralph
18 Kennedy and the fact that Julius Baggett would be at
19 the table would tend to lend itself to that overall
20 strategy. So I may have made a trial decision not
21 to raise it.

22 Now, in hindsight I probably -- now if
23 I had to do it again, I probably would have raised
24 it, but at that time I may have just made a trial
25 decision not to make a motion.

1 Q. Were you aware that one of the convictions
2 that the State was relying upon in order to seek a
3 sentence of life without parole for Mr. Tolen was in
4 fact a sentence given to him by Julius Baggett when
5 he was a judge in Lexington County?

6 MR. BULLARD: Your Honor, again correct
7 me if I am wrong, but I don't think there is any
8 evidence that Judge Baggett sentenced Mr. Tolen. If
9 they have it, that's fine, but right now we're in a
10 position where we don't have evidence.

11 MR. FLOYD: Your Honor, I think it's in
12 the record from the --

13 MR. BULLARD: Again, if it's in the
14 record, I apologize for making the motion.

15 THE COURT: That's fine. You are
16 protecting the State and doing your job.

17 MR. BULLARD: Yes, sir.

18 MR. FLOYD: Your Honor, this is some of
19 the materials of his indictment that was placed into
20 the Court's exhibit, you know, to show that there
21 were prior convictions at the time of sentencing,
22 and first I will address a copy of it to the judge.

23 THE COURT: Show it to Mr. Bullard
24 first.

25 MR. BULLARD: I would withdraw my

1 objection. It's clearly Judge Baggett.

2 THE COURT: Okay. Thank you. Go ahead
3 and state on the record what that document is that
4 you have in your hand, Mr. Floyd.

5 MR. FLOYD: Yes, Your Honor. It is a
6 -- I think it's called a sentencing sheet?

7 THE COURT: Yes, sir.

8 MR. FLOYD: A sentencing sheet dated
9 April 20th, 1990, in the Court of General Sessions,
10 County of Lexington, Case No. 90-GS-32-301, in which
11 Frank Tolen, Frank Junior Tolen, III, is sentenced
12 to a YOA sentence for armed robbery by Presiding
13 Judge Julius H. Baggett.

14 THE COURT: And that would be the same
15 Julius Baggett that has been referred to in this
16 case both as Julius Baggett and Judge Baggett?

17 MR. FLOYD: Yes, Your Honor.

18 THE COURT: Thank you.

19 BY MR. FLOYD:

20 Q. Were you aware of that situation?

21 A. I really don't recall.

22 Q. Did you make any type of objection to the
23 Court about that situation?

24 A. I don't recall that I did.

25 Q. Do you think that was an appropriate

1 situation?

2 A. Once again, I go back to what I said just a
3 moment ago about trial strategy, and then maybe
4 later in looking at things in another light, that
5 you might do things differently. I probably would
6 raise that issue now knowing about it.

7 Q. Do you recall Mr. May's closing statement
8 that we referred to earlier where he told the jury
9 that they're the conscience of the community and
10 it's up to them to see what goes on up here because
11 he lived in Lexington County and he would leave
12 after prosecuting the case and go home?

13 A. Yes, sir.

14 Q. Did you make any objection to that
15 argument?

16 A. No, sir.

17 Q. Would you agree that that argument really
18 has nothing to do with whether or not Frank Tolen
19 was innocent or guilty of these charges?

20 A. I agree with that argument.

21 Q. Would you agree that that argument seems to
22 appeal to the passions of the jurors or their
23 loyalty to their home county, something other than
24 what they're there for?

25 A. I think you could.

1 Q. Now, also --

2 A. Let me just say this. All of the time,
3 depending upon how the flow of the trial is going,
4 sometimes if you object to something, it tends to
5 bring attention to it. And again, sometimes the
6 decision to object is made based upon the way things
7 are going. So I just offer that.

8 Q. Do you recall the victim, Mr. Dyson,
9 testifying that Mr. Tolen looked large or bigger,
10 heavier than either one of the guys that robbed
11 him?

12 A. Yes, I did.

13 Q. Did you put in any kind of testimony or
14 documentation of any nature to show that Mr. Tolen
15 was, in fact, the same size then as he was at the
16 time of the incident?

17 A. I don't recall that I did.

18 MR. FLOYD: Thank you. I have no
19 further questions.

20 THE COURT: Thank you. Any redirect,
21 Mr. Bullard?

22 MR. BULLARD: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. BULLARD:

25 Q. Mr. Williams, when you were saying,

1 commenting about objecting to things that might
2 highlight them, were you saying that you chose not
3 to object to the closing argument of the Solicitor
4 or that you can't recall what you were thinking?

5 A. I can't recall what I was thinking at that
6 particular time. But once again, just like with
7 hearsay, even though you have the right to object,
8 when the hearsay doesn't hurt you, if you don't
9 think it hurts you, you typically, I typically would
10 not object to it. It's just a matter of trial
11 strategy in trying the case.

12 So even with this statement in the
13 closing argument, in the whole context of the trial
14 and in the context of the whole closing argument, I
15 really didn't think that was very damaging. Still
16 don't.

17 Now, the question is, if I was trying
18 the case again would I make an objection to that
19 part. I will be candid about it, I very well might.

20 Q. At the beginning of the trial -- well, let
21 me ask it this way. Do you recall what you were
22 referring to at the beginning of the trial when you
23 told the judge that your client was ignoring some
24 advice you were giving him?

25 A. The State had offered a deal that would not

1 have triggered the LWOP statute, and based upon
2 everything I knew about Mr. Tolen's case, I felt it
3 was in his best interest to strongly consider the
4 offer of plea bargain.

5 Q. Did you recommend to him that he should
6 accept the plea offer?

7 A. No, I didn't recommend, I begged.

8 Q. You begged him to take it?

9 A. I begged him to take it.

10 Q. Did you make that recommendation or make
11 that, or beg him because of the strength of the
12 State's case as you saw it?

13 A. Yes, sir.

14 MR. BULLARD: That's all the questions
15 I have, Your Honor.

16 THE COURT: Thank you, Mr. Bullard.
17 Mr. Floyd.

18 MR. FLOYD: If you'd give us just a
19 moment.

20 THE COURT: Certainly.

21 MR. FLOYD: Turn to page 59, Judge,
22 please.

23 THE COURT: Sir?

24 MR. FLOYD: Page 59.

25 THE COURT: Page 59?

1 MR. FLOYD: Yes, sir. Line 23.

2 RECROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q. Where you address the Court and it says,
5 Your Honor, I would query as to whether or not an
6 offer made by the State, which of course the Court
7 interrupted at that point. Were you asking there
8 whether or not they were going to make an offer?
9 Did I direct you to the right line?

10 A. I'm just trying to read that sentence in the
11 context of what happened just prior to that.

12 THE COURT: Of course, this was not in
13 front of the jury, was it?

14 MR. FLOYD: That is correct, Your
15 Honor.

16 A. I believe I was asked from the Solicitor to
17 ask the Court to have the Solicitor state on the
18 record what offer had been made to Mr. Tolen.

19 BY MR. FLOYD:

20 Q. That's your recollection of what you were
21 asking about there?

22 A. Yes, sir, it is.

23 Q. Now, does that mean you weren't sure what
24 offer had been made or if an offer had been made?

25 A. Well, sir, my concern was that I essentially

1 wanted something on the record that indicated what
2 the offer was so that if something came up later, it
3 wouldn't be an issue that had my lawyer told me that
4 had been offered, I wouldn't have gone through with
5 the trial.

6 MR. FLOYD: Thank you, Your Honor. No
7 further questions, Your Honor.

8 THE COURT: Thank you. Anything in
9 reply?

10 MR. BULLARD: No.

11 THE COURT: You may step down, Mr.
12 Williams.

13 MR. BULLARD: No further witnesses from
14 the State. We would be resting.

15 THE COURT: Thank you. I will take
16 both the matter of the directed verdict under
17 advisement as well as a ruling on the
18 post-conviction relief petition and will rule within
19 two weeks.

20 MR. FLOYD: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (The proceedings were concluded.)
23
24
25

CERTIFICATE OF REPORTER

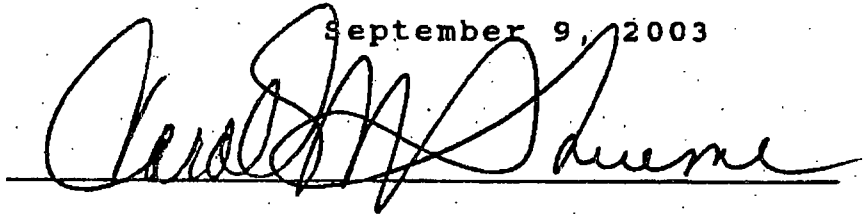
STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

I, Carol M. Thueme, Official Court Reporter for the 8th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Saluda County, South Carolina, on the 17th day of April, 2003.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 9, 2003



Carol M. Thueme, RPR

Court Reporter

My Commission Expires: 06-04-07

Appendix 435

FILED
CLERK OF COURT
SALUDA CO., S.C.
IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA 03 JUN 24 AM 9:14)
2002-CP-41-85

FRANK TOLEN JR., #246966,)
Applicant,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)

SR# 26521

ORDER

PROCEDURAL HISTORY

Applicant was tried and convicted in the Saluda Court of General Sessions of Armed Robbery and Possession of a Pistol by a Person Convicted of a Crime of Violence on January 27, 1998. He was sentenced to Life without Parole (LWOP) for the Armed Robbery conviction and 5 years concurrent on the Pistol charge.

Applicant originally filed an application for Post Conviction Relief on April 15, 1998 (98-CP-41-64), alleging ineffective assistance of counsel and that his counsel failed to file a direct appeal or inform applicant of his right to file an appeal.

Pursuant to a hearing on this application applicant was granted the right to file a belated appeal on November 7, 2000 under the authority of State v. White.

Notice of appeal was filed on November 28, 2000 by applicant's original PCR counsel.

Applicant then filed a Motion to Reconsider the Order granting him the right to file an appeal pro se, on December 12, 2000.

On July 16, 2001, applicant's appeal was dismissed without prejudice pending

Appendix 436

resolution of his Motion for Reconsideration.

The Motion for Reconsideration was denied by Order dated October 2, 2001.

Applicant's direct appeal was subsequently denied by Opinion filed March 22, 2002.

Applicant then filed a new Application for Post Conviction Relief on May 17, 2002. Respondent filed a return to the Application dated December 13, 2002.

ALLEGATIONS

Applicant contends that his sentence of Life without Parole exceeded the statutory maximum penalty for his offense in that the State failed to provide written notice to the applicant of its intent to seek LWOP as required by §17-25-45 and that his conviction should be reversed because he received ineffective assistance of Counsel.

EVIDENCE

1. Sentence of Life Without Parole

Applicant testified that he never received written notice that the State intended to seek a sentence of Life without Parole for his armed robbery charge. Respondent did not introduce any evidence to show that written notice was given.

The trial transcript clearly indicates that the State noticed applicant's trial counsel, not the appellant (Tr. p. 306, ll. 2-6).

§17-25-45 governs proceedings when the State seeks to impose a sentence of life without parole. §17-25-45 (H) clearly requires that written notice must be given by the solicitor to the defendant and to defendant's counsel.

Applicant has shown by a preponderance of the evidence that the solicitor failed to comply with the requirements of §17-25-45 (H) and his sentence of life

K-#2

without parole must be vacated.

2. Ineffective Assistance of Counsel

Applicant alleges that his trial counsel was ineffective in several particulars as follows:

A. In opening statement applicant's trial counsel told the jury that "depending on who you talk to defendant might have a poor reputation" (Tr. p. 70, ll. 19-20). He then told the jury that "irrespective of the fact that a person may be hated and despised in his community, our constitution protects us all" (Tr. p. 71, ll. 2-4).

Applicant argues, and this Court agrees, trial counsel's argument that degraded applicant in the eyes of the jury and placed the applicant's character at issue was improper and prejudicial to the applicant. Applicant's trial counsel had the jury prejudiced against the applicant before they heard one piece of evidence.

KA#3
B. Applicant's codefendant (Brannon) testified against him. Applicant argues that trial counsel was ineffective because he failed to object or move for a mistrial when Brannon testified to the following:

1. Frank Tolen asked Brannon if he wanted to go break into the store (Tr. p. 152, ll. 23-24). This testimony was irrelevant and highly prejudiced. Applicant was not charged with breaking into a store, but with armed robbery of an individual. This court agrees that trial counsel should have objected to the testimony and moved for a mistrial and counsel was ineffective for failing to do this.

2. Brannon testified that he and applicant were getting high, smoking crack before the robbery (Tr. p. 155, ll. 4-7). This testimony was also prejudicial and

Appendix 438

was evidence of another crime for which applicant was not charged. Applicant argues and this court agrees that counsel was ineffective for failing to object and move for a mistrial because of this testimony.

3. Brannon testified that applicant told him he would have shot the victim if the gun was loaded (Tr. p. 202, ll. 3-15).

This testimony was solicited by the solicitor on redirect examination. Trial counsel objected on the grounds that it was speculative and the objection was overruled.

Applicant argues that trial counsel should have objected and moved for a mistrial because of the highly prejudicial nature of the testimony. He argues that trial counsel was ineffective because he made the wrong objection. The statement was irrelevant as it was made after the robbery and had nothing to do with the robbery and the statement was not disclosed to the defense prior to trial. Applicant argues and this court agrees that counsel was ineffective for failing to make the proper objection to this testimony and move for a mistrial.

C. Applicant argues that trial counsel was ineffective for failing to object and move for a mistrial because of certain hearsay testimony of witness Frontis Smith. Smith testified that Ben Tolen, a family member of applicant, gave him some information about where these people were and that he was scared of them and wanted them out of his house (Tr. p. 205, ll. 20-22). Trial counsel objected but did not move to strike the testimony or for mistrial. Immediately after this testimony Smith testified he called Saluda County Law enforcement and told them that he had information where the people that robbed the man were at. (Tr.

KK #4

p. 206, ll. 7-9). Trial counsel did not object to this testimony which was clearly hearsay and highly prejudicial. Applicant argues and this court agrees that trial counsel was ineffective for failing to object to this testimony and move for a mistrial.

D. Applicant argues that trial counsel was ineffective for failing to follow up on testimony of the victim (Dyson) that applicant looked different than the man who robbed him.

Dyson testified that applicant was not the same size as the man who robbed him. He testified applicant was bigger, larger and fatter than the man who robbed him (Tr. p. 104, l. 23 to p. 105, l. 5). Applicant testified that he was the same size at trial as he was the date of the robbery and that he had many witnesses who could attest to that fact. Yet trial counsel did not call any witness or present any evidence to show he was the same size. Applicant argues and this court agrees that trial counsel was ineffective for failing to exploit this great inconsistency in the victim's eyewitness testimony.

E. Applicant argues that trial counsel was ineffective for failing to object to the fact that Brannon's counsel was the law partner of one of the solicitors who was prosecuting applicant.

Applicant's codefendant Brannon was given a deal to testify against applicant. Brannon, whose nickname is "Killer" (Tr. p. 166, ll. 5-8) admitted to a criminal record in Georgia, New York and South Carolina (Tr. p. 167, ll. 15-21) and was allowed to plead to Strong Armed Robbery (Tr. p. 163, ll. 23-25). He was represented by an attorney who was the law partner of one of the solicitors

KJ #5

Appendix 440

prosecuting applicant (Tr. p. 167, l. 22 to p. 168, l. 22).

Applicant argues and this Court agrees that trial counsel should have objected to being prosecuted by the law partner of his codefendant's lawyer particularly when that relationship may have influenced the decision to give the codefendant a deal in exchange for his testimony. Applicant argues and this Court agrees that Counsel was ineffective for failing to object to this situation and move for a mistrial or disqualification of the solicitors office to prosecute applicant.

F. Applicant argues that trial counsel was ineffective for failing to object to solicitor's closing argument when he told the jury "It's up to you to decide what goes on here. You are the conscience of this community" (Tr. p. 285, ll. 21-23)

Applicant argues, and this Court agrees, that this argument was improper in that it appealed to the jury to convict applicant for some reason other than the facts of the case. It appealed to the jury's community spirit and equated a conviction with proper exercise of that spirit. Applicant argues and this Court agrees that trial counsel was ineffective for failing to object to this argument and move for a mistrial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record in this matter and the evidence and arguments presented at the PCR hearing I find and conclude:

1. The State failed to comply with the notice requirements of §17-25-45 (H) in that the record demonstrates that the Defendant was not given written notice of the States intention to seek a sentence of Life without Parole.

Appendix 441

2. § 17-25-45 is the controlling statute and governs the procedure that must be followed when the state seeks to impose a sentence of Life without Parole on a Defendant. Subsection (H) of said statute specifically requires that the State must provide written notice of its intention to seek Life without Parole to both the Defendant and the Defendant's attorney no less than ten days before trial. The providing of written notice to Defendant's counsel does not satisfy the requirements of this statute as the statute specifically requires written notice and actual notice is not sufficient. See State v. Johnson 552 SE 2d. 339 (S.C. App. 2001).

3. Applicant's trial counsel representation fell below that which is in the expected range of competence for performance and his performance was deficient and did deprive the Applicant of a fair trial;

4. The Applicant has shown by the evidence that there is a reasonable probability that for counsel's deficient performance the outcome of Applicant's trial most likely would have been different.

5. In order to prevail upon in ineffective assistance of counsel claim an Applicant must show that trial counsel's performance fell below an objective standard of reasonableness and that but for the deficient performance the outcome would have probably been different. Strickland v. Washington 466 US 668 (1984); Butler v. State 286 SC 441, 334 SE 2d 813 (1985).

6. This Court concludes that Applicant has met both prongs of this ineffective assistance of counsel test. Applicant has demonstrated by preponderance of the evidence that there is a reasonable probability that, but for trial counsels deficient performance the result would have been different. Cherry v. State 300 SC 117; 386 SE 2d 625 (1989).

Appendix 442

Furthermore the probability of a different result is sufficient to undermine confidence in the outcome of Applicant's trial Johnson v. State 325 SC 182, 480 SE 2d 733 (1997).

7. I find and conclude that the above mentioned deficiencies in trial counsel's performance fell far below reasonable and expected standards of performance and that the cumulative affects of these deficiencies created a reasonable probability that the outcome of Appellant's trial would likely have been different had the performance of trial counsel met accepted standards. The opening statement of trial counsel severely prejudiced the Defendant and prevented the Defendant from receiving a fair trial. Trial counsel's characterization of the Defendant as a person with a poor reputation and as someone hated and despised in the community almost insured his conviction. Also, trial counsel failed to exploit the testimony of the victim where the victim indicated that the Defendant was bigger, fatter and heavier than the man who robbed him. Furthermore trial counsel was ineffective for failing to move to disqualify the prosecutors because the codefendant who testified against Applicant in exchange for a deal was represented by one of the prosecutors law partners. This Court is also troubled by the trial counsel's failure to move for a mistrial and to object to hearsay testimony of witness Frontis Smith who testified that a family member told him that Defendant robbed the victim and that the family member was afraid of him and by trial counsel's failure to object to the codefendant's statement that the Applicant told him that he would have shot the victim if the gun worked. The admission of the irrelevant, damaging and prejudicial testimony when coupled with trial counsel's telling the jury that the Applicant had a poor reputation and was hated and despised ion the community undermines this courts confidence in the outcome of Applicant's trial.

Appendix 443

8. I find and conclude that the Applicant's sentence of Life without Parole should be vacated.

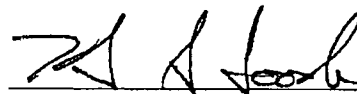
9. I find and conclude that the Applicant's conviction of Armed Robbery and Possession of a Pistol by a Person Convicted of a Violent Crime should be reversed and Applicant's sentences vacated and this matter remanded for Applicant to have a new trial.

THEREFORE IT IS

ORDERED that the Applicant's sentence of Life without Parole be and hereby is vacated.

ORDERED that Applicant's conviction of Armed Robbery and Possession of a Pistol by a Person Convicted of a Crime of Violence be and hereby are reversed, and Applicant sentences on these charges are vacated and Applicant is hereby granted a new trial in this matter.

AND IT IS SO ORDERED.


Kenneth G. Goode, Judge

Lancaster
Lexington, South Carolina

June 17, 2003

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Frank Tolen, Jr., Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal From Saluda County
Kenneth G. Goode, Circuit Court Judge

Memorandum Opinion No. 2005-MO-061
Submitted November 16, 2005 - Filed December 19, 2005

DISMISSED, IN PART, AS IMPROVIDENTLY GRANTED, VACATED IN PART, AND REMANDED.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Attorney General Adrienne L. Turner, and Assistant
Attorney General Sabrina C. Todd, of Columbia, for
Petitioner.

Acting Deputy Chief Attorney Wanda H. Carter, of
Columbia, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the grant of post-conviction relief (PCR) to Respondent, Frank Tolen, Jr. We dismiss, in part, as improvidently granted, and vacate the remainder of the PCR court's rulings.

We dismiss certiorari as improvidently granted with respect to the PCR court's ruling on the issue of the State's failure to give proper notice of intent to seek a sentence of life imprisonment without parole pursuant to S.C. Code Ann. § 17-25-45(H) (2003).

The remainder of the holdings of the PCR court are vacated, and the matter is remanded for a new trial.

DISMISSED IN PART AS IMPROVIDENTLY GRANTED, VACATED IN PART AND REMANDED.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur. WALLER, J., not participating.

Appendix 446

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF SALUDA

4
5 THE STATE,

6 V.

7 FRANK TOLEN, JR.,

8 DEFENDANT.

9
10 B E F O R E : THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A JURY.

11
12 A P P E A R A N C E S :

13 FOR THE STATE: ERVIN J. MAYE, ASSISTANT SOLICITOR

14 FOR THE DEFENDANT: ANDREW THOMPSON, ESQUIRE

15
16 COURT REPORTER: SMOKEY PERRY

17
18 INDICTMENTS 1998-GS-41-165 AND 1998-GS-41-166

19
20 WEEK OF 11-7-06

21

22

23

24

25

Appendix 447

INDEX

1	<u>VOIR DIRE</u> 5
2	
3	IMPANELED JURY....52
4	DIRECT EXAMINATION OF OATON DYSON BY MR. MAYE....65
5	CROSS-EXAMINATION OF OATON DYSON BY MR. THOMPSON....78
6	DIRECT EXAMINATION OF MARK WHISENANT BY MR. MAYE....95
7	CROSS-EXAMINATION OF MARK WHISENANT BY MR. THOMPSON....96
8	OPENING STATEMENT TO THE JURY BY MR. MAYE....107
9	OPENING STATEMENT TO THE JURY BY MR. THOMPSON....116
10	DIRECT EXAMINATION OF OATON DYSON BY MR. MAYE....113
11	CROSS-EXAMINATION OF OATON DYSON BY MR. THOMPSON....131
12	DIRECT EXAMINATION OF JOEL LINDLER BY MR. MAYE....160
13	CROSS-EXAMINATION OF JOEL LINDLER BY MR. THOMPSON....165
14	DIRECT EXAMINATION OF BILL LINDLER BY MR. MAYE....167
15	CROSS-EXAMINATION OF BILL LINDLER BY MR. THOMPSON....169
16	DIRECT EXAMINATION OF WADE BRANNON BY MR. MAYE....171
17	CROSS-EXAMINATION OF WADE BRANNON BY MR. THOMPSON....182
18	REDIRECT EXAMINATION OF WADE BRANNON BY MR. MAYE....196
19	DIRECT EXAMINATION OF TONY TOLEN BY MR. MAYE....196
20	CROSS-EXAMINATION OF TONY TOLEN BY MR. THOMPSON....201
21	REDIRECT EXAMINATION OF TONY TOLEN BY MR. MAYE....207
22	RECROSS EXAMINATION OF TONY TOLEN BY MR. THOMPSON....209
23	DIRECT EXAMINATION OF BEN TOLEN BY MR. MAYE....211
24	CROSS-EXAMINATION OF BEN TOLEN BY MR. THOMPSON....221
25	DIRECT EXAMINATION OF BOBBY JONES BY MR. MAYE....223

Appendix 448

INDEX

1	
2	CROSS-EXAMINATION OF BOBBY JONES BY MR. THOMPSON....231
3	DIRECT EXAMINATION OF BOBBY JONES BY MR. THOMPSON....244
4	CLOSING ARGUMENT TO THE JURY BY MR. THOMPSON....253
5	CLOSING ARGUMENT TO THE JURY BY MR. MAYE....257
6	CHARGE TO THE JURY BY THE COURT....265
7	VERDICT....277
8	SENTENCE....281
9	CERTIFICATE.....283

EXHIBITS

10	
11	STATE'S EXHIBIT FOR IDENTIFICATION #1 130
12	DEFENDANT'S EXHIBIT #1 MARKED FOR IDENTIFICATION.....145
13	DEFENDANT'S EXHIBIT #2 MARKED FOR IDENTIFICATION....146
14	DEFENDANT'S EXHIBITS 3 AND 4 RECEIVED IN EVIDENCE.....158
15	STATE'S EXHIBITS 2, 3, 6, 8, 9, 10, 15, 16 RECEIVED IN EVIDENCE....164
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Appendix 449

1 THE COURT: SOLICITOR, CALL YOUR CASE.

2 MR. MAYE: INDICTMENT #98-GS-41-165 THE STATE -VS- FRANK TOLEN, JR. AN
3 INDICTMENT FOR ARMED ROBBERY, IT'S BEEN TRUE-BILLED BY THE GRAND JURY IN
4 SALUDA COUNTY, THE STATE NOW CALLS THIS CASE FOR TRIAL. ALSO, INDICTMENT 98-
5 GS-41-166 THE STATE -VS- FRANK TOLEN, JR. AN INDICTMENT FOR POSSESSION OF A
6 PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE. BOTH OF THESE HAVE BEEN
7 TRUE-BILLED BY THE GRAND JURY. THE STATE NOW CALLS THESE FOR DISPOSITION BY
8 TRIAL.

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, PLEASE GIVE ME YOUR
10 ATTENTION. WE'RE ABOUT TO QUALIFY A JURY THAT WILL HEAR TWO SEPARATE AND
11 DISTINCT INDICTMENTS WHICH WILL BE TRIED TOGETHER FOR THE PURPOSE OF
12 CONVENIENCE.

13 NOW WHAT I'M GOING TO DO IS I'M GOING TO BE ASKING YOU A SERIES OF
14 QUESTIONS. IF ANY OF THESE QUESTIONS APPLY TO YOU OR YOU HAVE DOUBT ABOUT
15 WHETHER THEY APPLY TO YOU, YOU NEED TO STAND. YOU NEED TO LISTEN CAREFULLY
16 TO THE QUESTION THAT I ASK OF YOU. THE FIRST THING I'M GOING TO DO IS GET YOU TO
17 IDENTIFY YOURSELF BY YOUR NAME AND YOUR JUROR NUMBER. LISTEN CAREFULLY TO
18 THE QUESTION THAT I ASK OF YOU. ANSWER THAT QUESTION. REMEMBER THAT IF I ASK
19 YOU ANYTHING THAT YOU WOULD PREFER TO DISCUSS MORE PRIVATELY, COME DOWN
20 FRONT AND WE'LL TALK ABOUT IT DOWN HERE.

21 NOW, FOLKS, THERE MAY BE TIMES WHEN I LIMIT YOUR RESPONSES. I MAY SAY,
22 FOR EXAMPLE, JUST ANSWER A QUESTION YES OR NO. IF I DO THAT AND YOU DON'T
23 FEEL YOU CAN ADEQUATELY ANSWER THE QUESTION WITHIN THE LIMITATIONS THAT I
24 PLACE ON YOU, DON'T GIVE ME THE FULL ANSWER IN FRONT OF EVERYBODY. TELL ME
25 YOU WANT TO COME DOWN FRONT AND GIVE ME THE FULL ANSWER DOWN HERE. THE

Appendix 450

1 PURPOSE FOR ALL THESE QUESTIONS IS TO OBTAIN INFORMATION FROM YOU ABOUT
2 ANY POSSIBLE CONNECTION YOU MAY HAVE WITH THE CASE, WITH ANYBODY IN IT,
3 WITH A SIMILAR TYPE OF SITUATION IN YOUR PAST OR IN THE LIVES OF SOMEBODY
4 CLOSE TO YOU. WHAT WE'RE TRYING TO OBTAIN IS INFORMATION ABOUT ANY POSSIBLE
5 INTEREST, BIAS, CONNECTION, PREJUDICE THAT YOU MIGHT HAVE RELATED TO THE
6 CASE. SO IF YOU KEEP IN MIND THAT THE GOAL OF ALL THIS IS TO HAVE A JURY
7 SERVING THAT IS FAIR AND IMPARTIAL, I THINK THAT THESE QUESTIONS WILL MAKE
8 MORE SENSE TO YOU.

9 NOW IF THERE IS SOMETHING ABOUT YOUR BACKGROUND OR ABOUT YOUR
10 SITUATION THAT MEANS IT WOULD BE BETTER THAT YOU NOT SERVE ON THIS
11 PARTICULAR CASE, THAT'S FINE. THAT'S WHY WE BRING IN 64 OF YOU AND NOT JUST 12
12 OR 14. WE CAN SET YOU ASIDE ON THIS CASE, AND THEN IF WE GET TO ANOTHER CASE,
13 MAYBE YOU'LL GET TO SERVE ON THAT ONE. BUT IT'S REALLY IMPORTANT THAT YOU
14 UNDERSTAND THAT YOU SHOULD NOT TAINT THE REST OF THE JURY POOL WITH
15 WHATEVER YOUR PARTICULAR SITUATION MAY BE. IF YOU HOLD OPINIONS OR THERE IS
16 SOMETHING ABOUT YOUR LIFE'S EXPERIENCE THAT AFFECTS YOUR ABILITY TO BE FAIR
17 AND IMPARTIAL IN THIS CASE, YOU NEED TO TELL ME ABOUT IT DOWN FRONT. DON'T
18 JUST SAY THINGS THAT WOULD TAINT THE REST OF THE JURY POOL. LET ME GIVE YOU
19 EXAMPLES OF WHAT I MEAN. IN EVERY CASE I HAVE TO READ OUT THE NAMES OF
20 CERTAIN PEOPLE. I ALWAYS READ OUT A LIST OF THE STATE'S WITNESSES. I'VE HAD
21 JURORS STAND UP IN RESPONSE TO WHETHER THEY'VE HAD ANY CONNECTION WITH
22 CERTAIN INDIVIDUALS LISTED AS A WITNESS AND PROCEED TO TELL ME AND THE
23 WHOLE WORLD WHAT A WONDERFUL PERSON THAT WAS AND HOW BELIEVABLE THEY
24 ARE. WELL, THEY'RE A WITNESS. AND THE JURY'S GONNA HAVE TO EVALUATE
25 WHETHER THEY'RE BELIEVABLE OR NOT. I'VE HAD THE OPPOSITE OCCUR. I'VE HAD

Appendix 451

1 JURORS STAND UP AND TELL ME WHAT A LOW-LIFE DOG THAT WITNESS IS AND THEY
2 WOULDN'T BELIEVE ANYTHING HE SAID.

3 NOW IF YOU HOLD OPINIONS LIKE THAT, YOU NEED TO SHARE THEM WITH ME,
4 BUT DO IT DOWN FRONT ON THE SIDE. DON'T JUST BLURT OUT THE ANSWER.

5 THE STATE HAS CALLED FOR TRIAL 2 INDICTMENTS EACH OF WHICH IS
6 CAPTIONED THE STATE -VS- FRANK TOLEN, JR. IN ONE INDICTMENT IT IS ALLEGED THAT
7 FRANK TOLEN, JR., DID IN SALUDA COUNTY ON OR ABOUT OCTOBER THE SECOND 1996,
8 WHILE ARMED WITH A DEADLY WEAPON, SPECIFICALLY, A PISTOL, FELONIOUSLY TAKE
9 FROM THE PERSON OR PRESENCE OF -- IS IT OATEN O-A-T-E-N?

10 MR. MAYE: YES, SIR---

11 THE COURT: O-A-T-E-N. I'M SORRY. OATEN DYSON BY MEANS OF FORCE OR
12 INTIMIDATION GOODS OR MONIES FROM OATEN DYSON DESCRIBED AS \$60 IN UNITED
13 STATES CURRENCY WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF THE
14 PROPERTY. THAT IS AN INDICTMENT FOR ARMED ROBBERY. ON HIS ARRAIGNMENT ON
15 THIS INDICTMENT MR. TOLEN HAS ENTERED A PLEA OF NOT GUILTY. HE IS PRESUMED TO
16 BE INNOCENT.

17 THE OTHER INDICTMENT CHARGES THAT FRANK TOLEN, JR., DID IN SALUDA
18 COUNTY ON OR ABOUT OCTOBER THE 2ND 1996, UNLAWFULLY POSSESS A PISTOL IN
19 VIOLATION OF SECTION 16-23-30 OF THE CODE OF LAWS OF SOUTH CAROLINA IN THAT HE
20 POSSESSED A PISTOL WITHIN THIS STATE AFTER HAVING PREVIOUSLY BEEN CONVICTED
21 IN COURTS OF THIS STATE WITH A CRIME OF VIOLENCE. THIS INDICTMENT CHARGES
22 POSSESSION OF A PISTOL BY A PERSON PREVIOUSLY CONVICTED OF A CRIME OF
23 VIOLENCE. UPON HIS ARRAIGNMENT ON THIS CHARGE MR. TOLEN HAS ENTERED A PLEA
24 OF NOT GUILTY. HE IS PRESUMED TO BE INNOCENT.

25 NOW INDICTMENTS ARE NOT EVIDENCE. AN INDICTMENT HAS NO EVIDENTIARY

Appendix 452

1 VALUE WHATSOEVER. IT IS NOTHING MORE THAN A PIECE OF PAPER THAT FORMALLY
2 CHARGES SOMEONE AND BRINGS THAT PERSON TO TRIAL. YOU SHOULD NOT GIVE THE
3 INDICTMENTS ANY EVIDENTIARY VALUE. THE MERE FACT THAT SOMEONE HAS BEEN
4 CHARGED WITH A CRIME ONLY MEANS THAT. THEY'VE BEEN CHARGED WITH IT. THEY
5 ARE PRESUMED TO BE INNOCENT. MR. TOLEN IS PRESUMED TO BE INNOCENT. AND IT IS
6 INCUMBENT UPON THE STATE OF SOUTH CAROLINA HAVING BROUGHT THESE CHARGES
7 TO PROVE THE GUILT OF MR. TOLEN BEYOND A REASONABLE DOUBT. I'LL BE ASKING
8 YOU A SERIES OF QUESTIONS. IF ANY OF THEM APPLY TO YOU OR YOU HAVE A DOUBT
9 ABOUT WHETHER THEY APPLY TO YOU, PLEASE, STAND. REMEMBER THAT YOU'RE
10 UNDER OATH.

11 NOW IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR
12 MARRIAGE OR CONNECTED BY EMPLOYMENT WITH THE DEFENDANT IN THESE CASES
13 FRANK TOLEN, JR.? IF SO, PLEASE, STAND.

14 MR. TOLEN WILL BE REPRESENTED BY MR. ANDREW THOMPSON. THANK YOU.

15 THE FOLLOWING PERSONS HAVE BEEN NAMED AS WITNESSES FOR THE STATE.
16 I'M GONNA READ OUT A LIST OF NAMES, AND IF THERE'S A NAME HERE AND YOU'RE
17 NOT CERTAIN IT'S THE SAME PERSON YOU MAY KNOW, I'LL TRY TO GET MORE
18 IDENTIFYING INFORMATION FROM THE ATTORNEYS. IF ANY OF THESE PEOPLE HAPPEN
19 TO BE PRESENT AS THEIR NAME IS CALLED, THAT PERSON WILL NEED TO STAND. OATEN
20 DYSON.

21 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? I'D ASK THAT HE --
22 WOULD YOU ASK THAT MR. DYSON STEP IN, PLEASE.

23 THE COURT: ANY OF THE WITNESSES THAT ARE BACK THERE, TELL 'EM TO COME
24 ON IN RIGHT NOW. ALL RIGHT. IF I CALL YOUR NAME YOU NEED TO STAND UP, AND
25 TURN AROUND AND FACE TOWARD THE JURY FOR ME. ALL RIGHT? OATEN DYSON.

Appendix 453

1 THANK YOU, SIR. MARK WHISENANT. THANK YOU. BOBBY JONES OF THE SALUDA
2 COUNTY SHERIFF'S OFFICE. THANK YOU. JOEL LINDLER. BILLY LINDLER. GAYLE SMITH.
3 BEN TOLEN. THANK YOU. TONY TOLEN. THANK YOU, SIR. WADE BRANNON. ROBERT
4 ZEB SHORTER OF THE SALUDA COUNTY SHERIFF'S OFFICE. JEFF HERLONG. OVER HERE
5 TO MY RIGHT. COCONUT PANTSARI. SHE'S NOT HERE. SHE'S A COURT REPORTER.

6 MR. MAYE: AND I DON'T KNOW THAT WOULD BE NECESSARY, YOUR HONOR. I
7 DON'T KNOW THAT SHE WILL TESTIFY. JUST AS A PRECAUTION I PLACED HER NAME ON
8 THE WITNESS LIST.

9 THE COURT: ALL RIGHT. AND THEN THERE IS ONE WITNESS WHO THERE MAY BE
10 SOME SWORN TESTIMONY READ FROM, AND THAT WITNESS IS FRONTIS SMITH WHO IS
11 NOW DECEASED. ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR CONNECTED
12 BY EMPLOYMENT WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE? IF SO,
13 PLEASE, STAND. DO ANY OF YOU HAVE ANY CONNECTION OF ANY KIND WITH THE
14 SALUDA COUNTY SHERIFF'S OFFICE OR THE SALUDA COUNTY DETENTION CENTER? IF
15 SO, PLEASE, STAND. YOUR NAME, PLEASE?

16 THE JUROR: LISA HAAG.

17 THE COURT: MS. HAAG, HOLD ON JUST A SECOND.

18 THE CLERK: 71.

19 THE COURT: JUROR #71. AND WHAT'S YOUR CONNECTION?

20 THE JUROR: MY HUSBAND IS A POLICE OFFICER.

21 THE COURT: DO YOU FEEL THAT THAT IN ANY WAY WOULD AFFECT YOUR
22 ABILITY TO SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

23 THE JUROR: YES, I DO.

24 THE COURT: OKAY. I'LL SET YOU ASIDE ON THIS TRIAL, BUT DON'T DISCUSS ANY
25 OF THAT WITH YOUR FELLOW JURORS, PLEASE. OKAY? THANK YOU. JUST STAY RIGHT

Appendix 454

1 WHERE YOU ARE. 71 IS EXCUSED FROM THE FIRST TRIAL. YOUR NAME, SIR?

2 THE JUROR: FREDDIE HILL.

3 THE COURT: HOLD ON JUST A MOMENT, MR. HILL.

4 THE CLERK: #84.

5 THE COURT: OKAY. MR. HILL IS JUROR #84. WHAT'S YOUR SITUATION, PLEASE?

6 THE JUROR: MY NEPHEW IS A DEPUTY SHERIFF.

7 THE COURT: IN SALUDA COUNTY?

8 THE JUROR: YES, SIR.

9 THE COURT: I'M GONNA SET YOU ASIDE ON THIS TRIAL, MR. HILL. YOU'RE
10 RELATED TO AN OFFICER WITH THE PROSECUTING AGENCY. YOU STAY WITH US. DON'T
11 DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. 84 IS SET ASIDE ON THE FIRST
12 TRIAL. ANYBODY ELSE?

13 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR, MAY WE APPROACH?

14 THE COURT: SURE. (THERE WAS A BENCH CONFERENCE OUT OF THE HEARING OF
15 THE JURY AND OFF THE RECORD.) MS. BRICKLEY, JUROR #15, THEY'VE ADVISED ME
16 THAT YOUR HUSBAND HAD SOME INVOLVEMENT IN THIS CASE. I'M GONNA SET YOU
17 ASIDE. OKAY? DON'T DISCUSS ANYTHING ABOUT YOUR HUSBAND'S WORK OR
18 ANYTHING WITH YOUR FELLOW JURORS. OKAY?

19 THE JUROR: OKAY.

20 THE COURT: THANK YOU. 15 IS SET ASIDE ON THE FIRST TRIAL. DIDN'T I HAVE A
21 DISPATCHER SOMEWHERE?

22 THE JUROR: VAN YONCE HIGHWAY PATROL.

23 THE COURT: MR. YONCE?

24 THE JUROR: YES, SIR.

25 THE COURT: WERE YOU WORKING THAT JOB BACK IN 1996?

Appendix 455

1 THE JUROR: NO, SIR.

2 THE COURT: OKAY. THANK YOU, SIR. HE'S JUROR #200. ALL RIGHT. THE STATE
3 WILL BE REPRESENTED BY MR. ERVIN MAYE. MR. MAYE IS AN ASSISTANT SOLICITOR
4 WITH THE 11TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE. FOLKS, DO ANY OF YOU KNOW
5 ANYTHING AT ALL ABOUT THIS CASE? WHEN I SAY ABOUT THE CASE I'M NOT TALKING
6 IN ANY LEGALISTIC SENSE. I'M TALKING ABOUT IN A PRACTICAL SENSE. DO YOU HAVE
7 ANY KNOWLEDGE WHATSOEVER ABOUT THE UNDERLYING FACTS THAT ARE ALLEGED,
8 ANYTHING ABOUT THE CASE? TO THE BEST OF YOUR KNOWLEDGE HAVE YOU EVER
9 HEARD, SEEN OR READ ANYTHING ABOUT IT? HAS ANYBODY EVER DISCUSSED
10 ANYTHING WITH YOU RELATED TO THIS CASE? IF SO, PLEASE, STAND. YES, MA'AM.
11 WHAT'S YOUR NAME?

12 THE JUROR: SONJA RIKARD #147.

13 THE COURT: RIKARD?

14 THE JUROR: YES.

15 THE COURT: COME DOWN HERE, PLEASE. LAWYERS MAY JOIN ME ON THE SIDE.
16 147. (THE FOLLOWING OCCURRED ON THE RECORD BUT OUTSIDE THE HEARING OF THE
17 COURTROOM AUDIENCE.)

18 THE JUROR: IT'S JUST THAT I KNOW SEVERAL OF THE PEOPLE ON BOTH SIDES OF
19 THIS CASE AND I DON'T KNOW IF I'D FEEL TOTALLY COMFORTABLE. I COULD STILL BE,
20 YOU KNOW, -- NOT BE PARTIAL, BUT---

21 THE COURT: DO YOU THINK THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND
22 IMPARTIAL?

23 THE JUROR: NO, IT WON'T.

24 THE COURT: IT WON'T?

25 THE JUROR: IT WON'T. BUT I MEAN I JUST KNOW SEVERAL ON BOTH SIDES.

Appendix 456

1 THE COURT: IN MAKING YOUR DECISION YOU WOULD BE CONCERNED ABOUT
2 WHATONE SIDE OR THE OTHER MAY THINK ABOUT YOUR DECISION?

3 THE JUROR: YES.

4 THE COURT: OKAY. I'LL SET YOU ASIDE.

5 THE JUROR: THANK YOU.

6 THE COURT: DON'T DISCUSS ANYTHING WITH YOUR FELLOW JURORS. OKAY?

7 THE JUROR: OKAY. (THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE
8 COURTROOM AUDIENCE AND ON THE RECORD.)

9 THE COURT: MS. RIKARD IS 147. SHE'S SET ASIDE ON THE FIRST TRIAL. WHERE IS
10 THIS ALLEGED TO HAVE OCCURRED?

11 MR. MAYE: TRAFFIC CIRCLE, YOUR HONOR.

12 THE COURT: WAS IT IN A BUSINESS OR---

13 MR. MAYE: NO, SIR. THE VICTIM WAS A TRUCK DRIVER AT THE TRAFFIC CIRCLE
14 WHERE THE ARMED ROBBERY IS ALLEGED TO HAVE OCCURRED. IN THE PARKING LOT
15 OUTSIDE OF SMITH'S STORE AT THE TRAFFIC CIRCLE.

16 THE COURT: PARKING LOT OF SMITH'S STORE?

17 MR. MAYE: YES, SIR. AT THE TRAFFIC CIRCLE. STOP AND SHOP. THE STORE MR.
18 FRONTIS SMITH AND HIS WIFE OPERATED. THE STOP AND SHOP.

19 THE COURT: OKAY. FOLKS, THEY JUST ADVISED ME THAT THIS INCIDENT IS
20 ALLEGED TO HAVE OCCURRED AT THE AREA OF THE PARKING LOT OF A BUSINESS
21 KNOWN AS THE STOP AND SHOP AT THE TRAFFIC CIRCLE OUT ON HIGHWAY 378, AND IT'S
22 ALLEGED THAT MR. DYSON THE PURPORTED VICTIM IN THE CASE IS A TRUCK DRIVER
23 WHO WAS PARKED OUT THERE. ANY OF Y'ALL KNOW ANYTHING AT ALL ABOUT THIS
24 MATTER? OKAY. ARE ANY OF YOU EMPLOYED AS A TRUCK DRIVER? OR ANYONE IN
25 YOUR IMMEDIATE FAMILY EMPLOYED AS A TRUCK DRIVER? IF SO, PLEASE, STAND.

Appendix 457

1 LET'S START OVER HERE. YOUR NAME, SIR?

2 THE JUROR: CALVIN GENTRY.

3 THE COURT: MR. GENTRY IS JUROR #60. WHO'S EMPLOYED AS A TRUCK DRIVER?

4 THE JUROR: I GOT 3 UNCLES.

5 THE COURT: DO YOU KNOW IF THEY'RE LOCAL OR LONG DISTANCE?

6 THE JUROR: 2 ARE LOCAL AND ONE IS LONG DISTANCE.

7 THE COURT: OKAY. IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP
8 WITH YOUR UNCLES THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
9 JUROR IN THIS CASE?

10 THE JUROR: NO, SIR.

11 THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND?

12 THE JUROR: NO, SIR.

13 THE COURT: THANK YOU VERY MUCH. JUROR #60 IS ELIGIBLE TO SERVE. YES,
14 SIR?

15 THE JUROR: GEORGE CLARK.

16 THE CLERK: #32.

17 THE COURT: OKAY. MR. CLARK'S JUROR #32. WHAT -- YOU'RE EMPLOYED AS A
18 TRUCK DRIVER.

19 THE JUROR: YES, SIR.

20 THE COURT: ANYBODY ELSE IN YOUR FAMILY?

21 THE JUROR: NO, SIR.

22 THE COURT: YOU DO LONG DISTANCE TRUCKING OR LOCAL?

23 THE JUROR: LOCAL RIGHT NOW.

24 THE COURT: HAVE YOU DONE LONG DISTANCE IN THE PAST?

25 THE JUROR: YES, SIR.

Appendix 458

1 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR SITUATION THAT AFFECTS
2 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

3 THE JUROR: NO, SIR.

4 THE COURT: ANY DOUBT IN YOUR MIND?

5 THE JUROR: NO, SIR.

6 THE COURT: THANK YOU. 32 MR. CLARK IS ELIGIBLE TO SERVE. YOUR NAME,
7 PLEASE, MA'AM?

8 THE JUROR: BESSY JONES.

9 THE COURT: HOLD ON. WHAT'S YOUR SITUATION, MS. JONES?

10 THE JUROR: MY BROTHER AND BROTHER-IN-LAW ARE TRUCK DRIVERS.

11 THE COURT: YOUR BROTHER AND YOUR BROTHER-IN-LAW.

12 THE JUROR: YES, SIR.

13 THE COURT: ARE THE LOCAL DRIVERS OR ARE THEY LONG DISTANCE DRIVERS?

14 THE JUROR: MY BROTHER IS LOCAL AND MY BROTHER-IN-LAW IS LONG
15 DISTANCE.

16 THE COURT: OKAY. IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP
17 WITH THEM THAT AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
18 CASE?

19 THE JUROR: NO.

20 THE COURT: ANY DOUBT IN YOUR MIND?

21 THE JUROR: NO.

22 THE COURT: YOU SAID NO?

23 THE JUROR: YES.

24 THE COURT: OKAY. JUROR #91 MS. JONES IS ELIGIBLE TO SERVE. OKAY. BACK
25 OVER HERE IN THE BLUE SHIRT. YOUR NAME, SIR?

Appendix 459

1 THE JUROR: LARRY MILLER.

2 THE COURT: OKAY. MR. MILLER IS ---

3 THE CLERK: 121.

4 THE COURT: JUROR 121. WHAT'S YOUR SITUATION, PLEASE?

5 THE JUROR: MY SON-IN-LAW HAULS FEED FOR AMICK FARMS. AND I HAVE A
6 BROTHER-IN-LAW THAT DRIVES A TRUCK.

7 THE COURT: OKAY. ARE THEY BOTH LOCAL DRIVERS?

8 THE JUROR: YES.

9 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH
10 THEM THAT AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR IN THIS
11 CASE?

12 THE JUROR: NO, SIR.

13 THE COURT: ANY DOUBT IN YOUR MIND?

14 THE JUROR: NO, SIR.

15 THE COURT: THANK YOU. JUROR 121 IS ELIGIBLE. YOUR NAME, PLEASE?

16 THE JUROR: SANDRA CROUCH.

17 THE COURT: WAIT A SECOND. ARE Y'ALL ON THE SAME ROW? I'M SORRY.
18 YOU'RE RIGHT. IT'S MS. CROUCH?

19 THE JUROR: YES, SIR.

20 THE COURT: I'VE GOT THESE READING GLASSES ON. I CAN'T SEE.

21 THE JUROR: MY OLDEST SON DRIVES FOR U.S. FOOD SERVICE.

22 THE COURT: 44. IS THAT LOCAL ROUTES OR LONG DISTANCE?

23 THE JUROR: LOCAL. MOSTLY IN THE STATE.

24 THE COURT: ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HIM THAT
25 AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR IN THE CASE?

Appendix 460

1 THE JUROR: NO.

2 THE COURT: ANY DOUBT IN YOUR MIND?

3 THE JUROR: NO.

4 THE COURT: THANK YOU. 44 IS ELIGIBLE. YOUR NAME, PLEASE?

5 THE JUROR: LOUANN MCKINNEY.

6 THE COURT: OKAY. MS. MCKINNEY, WHAT'S YOUR SITUATION? YOUR HUSBAND
7 IS A TRUCK DRIVER?

8 THE JUROR: YES.

9 THE COURT: ANYBODY ELSE?

10 THE JUROR: NO.

11 THE COURT: DOES HE DRIVE LONG DISTANCE OR LOCAL?

12 THE JUROR: LOCAL.

13 THE COURT: ANYTHING ABOUT YOUR RELATIONSHIP WITH HIM THAT AFFECTS
14 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

15 THE JUROR: NO.

16 THE COURT: ANY DOUBT IN YOUR MIND?

17 THE JUROR: NO.

18 THE COURT: THANK YOU. 115 IS ELIGIBLE TO SERVE. ALL RIGHT. I THINK WE'RE
19 TO YOU, SIR, IN THE SWEATER.

20 THE JUROR: STANLEY GUNTER. 206.

21 THE COURT: MR. GUNTER IS JUROR #206. AND WHAT'S YOUR SITUATION?

22 THE JUROR: I GOT A BROTHER-IN-LAW WHOS'S A TRUCK DRIVER. HE'S LOCAL.

23 THE COURT: ANYTHING ABOUT YOUR RELATIONSHIP WITH HIM THAT AFFECTS
24 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

25 THE JUROR: NO.

Appendix 461

1 THE COURT: ANY DOUBT IN YOUR MIND?

2 THE JUROR: NO.

3 THE COURT: THANK YOU. MR. GUNTER IS 206. HE'S ELIGIBLE TO SERVE. OVER
4 THERE. YOUR NAME?

5 THE JUROR: HILDA HALTIWANGER.

6 THE COURT: HOLD ON, MS. HALTIWANGER.

7 MR. THOMPSON: YOUR HONOR, PERMISSION TO APPROACH THE BENCH?

8 THE COURT: SURE. (THERE WAS A BENCH CONFERENCE OUT OF THE HEARING OF
9 THE JURY AND NOT ON THE RECORD.) ALL RIGHT. MS. HALTIWANGER, WHAT'S YOUR
10 SITUATION?

11 THE JUROR: I HAVE A BROTHER-IN-LAW WHO IS A LOCAL TRUCK DRIVER.

12 THE COURT: OKAY. ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE
13 FAIR AND IMPARTIAL IN THIS CASE?

14 THE JUROR: NO, SIR.

15 THE COURT: ANY DOUBT IN YOUR MIND?

16 THE JUROR: NO, SIR.

17 THE COURT: JUROR #74 IS ELIGIBLE. YES, MA'AM?

18 THE JUROR: MONICA BRADLEY.

19 THE COURT: OH, I'M SORRY.

20 THE CLERK: #13.

21 THE COURT: OKAY. MS. BRADLEY, WHAT'S YOUR SITUATION?

22 THE JUROR: MY FATHER OWNS A SMALL TRUCKING COMPANY WITH 3 TRUCKS.

23 THE COURT: IS THERE ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO
24 BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

25 THE JUROR: NO.

Appendix 462

1 THE COURT: ANY DOUBT IN YOUR MIND?
2 THE JUROR: NO, SIR.
3 THE COURT: THANK YOU. JUROR #13'S ELIGIBLE. OVER HERE.
4 THE JUROR: ANDREA EDWARDS.
5 THE CLERK: #52.
6 THE COURT: OKAY. MS. EDWARDS IS JUROR #52. WHAT'S YOUR SITUATION?
7 THE JUROR: MY FATHER IS A TRUCK DRIVER.
8 THE COURT: ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE FAIR
9 AND IMPARTIAL IN THIS CASE?
10 THE JUROR: NO, SIR.
11 THE COURT: LOCAL OR LONG DISTANCE?
12 THE JUROR: LOCAL.
13 THE COURT: ANY DOUBT IN YOUR MIND ABOUT YOUR ABILITY TO BE FAIR AND
14 IMPARTIAL?
15 THE JUROR: NO, SIR.
16 THE COURT: THANK YOU. JUROR #52'S ELIGIBLE. YES, SIR?
17 THE JUROR: RYAN HARTLEY.
18 THE COURT: SAY YOUR LAST NAME AGAIN.
19 THE JUROR: HARTLEY.
20 THE COURT: OKAY.
21 THE CLERK: #76 RYAN HARTLEY.
22 THE COURT: OKAY. MR. HARTLEY, WHAT'S YOUR SITUATION, PLEASE?
23 THE JUROR: MY BROTHER IS A TRUCK DRIVER.
24 THE COURT: LOCAL OR LONG DISTANCE?
25 THE JUROR: LOCAL.

Appendix 463

1 THE COURT: ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE FAIR
2 AND IMPARTIAL IN THIS CASE?

3 THE JUROR: NO, SIR.

4 THE COURT: ANY DOUBT IN YOUR MIND?

5 THE JUROR: NO, SIR.

6 THE COURT: THANK YOU. 76 IS ELIGIBLE. YES, SIR? OVER HERE.

7 THE JUROR: BILLY BRUNSON.

8 THE COURT: OKAY, MR. BRUNSON, WAIT JUST A SECOND. 19. WHAT'S YOUR
9 SITUATION?

10 THE JUROR: MY BROTHER IS A TRUCK DRIVER.

11 THE COURT: LOCAL OR LONG DISTANCE?

12 THE JUROR: LOCAL.

13 THE COURT: ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE FAIR
14 AND IMPARTIAL IN THIS CASE?

15 THE JUROR: NO, SIR.

16 THE COURT: ANY DOUBT IN YOUR MIND?

17 THE JUROR: NO, SIR.

18 THE COURT: THANK YOU. JUROR #19 IS ELIGIBLE TO SERVE. DO ANY OF YOU
19 LIVE IN CLOSE PROXIMITY TO THE TRAFFIC CIRCLE? Y'ALL PLEASE STAND.

20 MR. THOMPSON: YOUR HONOR, MAY I APPROACH THE BENCH AGAIN?

21 THE COURT: SURE. (THERE WAS A BENCH CONFERENCE OUT OF THE HEARING OF
22 THE JURY AND OFF THE RECORD.) START OVER HERE. WHAT'S YOUR NAME, SIR?

23 THE JUROR: JUSTIN RIDGELL.

24 THE COURT: RIDGELL?

25 THE JUROR: YES, SIR.

Appendix 464

1 THE CLERK: 145.

2 THE COURT: OKAY. MR. RIDGELL, YOU'RE #145. HAVE YOU EVER DONE
3 BUSINESS WITH THE STOP AND SHOP?

4 THE JUROR: YES, SIR.

5 THE COURT: YOU DO IT REGULARLY?

6 THE JUROR: NOT ANYMORE. THEY CLOSED NOW.

7 THE COURT: I'M SORRY. I APOLOGIZE. YOU WERE A REGULAR CUSTOMER UP
8 UNTIL IT CLOSED DOWN?

9 THE JUROR: YES, SIR.

10 THE COURT: FOR ABOUT HOW LONG?

11 THE JUROR: I DON'T KNOW. 10 OR 15 YEARS PROBABLY.

12 THE COURT: DID ANYBODY EVER SAY ANYTHING TO YOU ABOUT THIS MATTER?

13 THE JUROR: I NEVER HEARD ANYTHING ABOUT IT.

14 THE COURT: NEVER HEARD ANYTHING? OKAY. YOU KNEW FRONTIS SMITH?

15 THE JUROR: YES, SIR.

16 THE COURT: YOU UNDERSTAND THAT MR. SMITH AS I -- UNLESS I'M WAY OFF ON
17 THIS, AND I DON'T KNOW ANYTHING ABOUT THESE CASES EXCEPT LITTLE BITS AND
18 PIECES THAT I PICK UP. SOMETIMES I MISUNDERSTAND THINGS. BUT YOU UNDERSTAND
19 THAT MR. SMITH IS NOW DECEASED, BUT THERE'S GONNA BE AN ATTEMPT TO
20 INTRODUCE SOME OF HIS TESTIMONY THAT WAS TAKEN IN A PREVIOUS COURT
21 PROCEEDING. DO YOU UNDERSTAND THAT?

22 THE JUROR: YES, SIR.

23 THE COURT: SO YOU'RE GONNA HAVE TO EVALUATE WHETHER OR NOT MR.
24 SMITH'S TELLIN' THE TRUTH OR NOT IF YOU'RE A JUROR. YOU UNDERSTAND THAT?

25 THE JUROR: YES, SIR.

Appendix 465

1 THE COURT: NOW I WANT YOU TO ANSWER THIS QUESTION YES OR NO. DON'T
2 GO BEYOND THAT. IF YOU NEED TO GO BEYOND IT, COME DOWN FRONT AND TALK TO
3 ME ABOUT IT. OKAY?

4 THE JUROR: OKAY.

5 THE COURT: HAVE YOU EVER FORMED IN YOUR OWN MIND OR HAVE YOU EVER
6 EXPRESSED TO ANYONE ELSE AN OPINION ABOUT MR. SMITH'S CREDIBILITY, WHETHER
7 HE'S BELIEVABLE OR NOT?

8 THE JUROR: NO.

9 THE COURT: SO YOU'VE NEVER DECIDED WHETHER HE'S A BELIEVABLE PERSON
10 OR NOT?

11 THE JUROR: OH, YEAH, I HAVE.

12 THE COURT: ALL RIGHT. I NEED TO SET YOU ASIDE ON THIS CASE. OKAY? MR.
13 RIDGELL IS 145. HE'S SET ASIDE ON THE FIRST TRIAL. IF Y'ALL GOT DOUBT ABOUT
14 WHETHER CLOSE PROXIMITY APPLIES TO YOU, STAND UP. OKAY? THAT'S ALL I CAN
15 TELL YOU. I WAS GIVEN A RADIUS OF MILES THAT THEY WANTED ME TO ASK YOU AND
16 I'M NOT GONNA ASK THAT. SO WE'LL STICK WITH CLOSE PROXIMITY. OKAY? YOUR
17 NAME, PLEASE, MA'AM?

18 THE JUROR: TANYA NILES #114.

19 THE COURT: AND YOU'RE LISTED AS MCCALL ON THE SHEET?

20 THE JUROR: YES, SIR.

21 THE COURT: ALL RIGHT. MS. NILES, DID YOU EVER DO BUSINESS WITH THE STOP
22 AND SHOP?

23 THE JUROR: YES, SIR.

24 THE COURT: DID YOU KNOW MR. SMITH?

25 THE JUROR: NO, SIR.

Appendix 466

1 THE COURT: DID ANYBODY EVER DISCUSS THIS INCIDENT WITH YOU?

2 THE JUROR: NO, SIR.

3 THE COURT: ALL RIGHT. SO IS THERE ANYTHING AT ALL ABOUT YOUR LIVING IN
4 THAT VICINITY OR YOUR DEALINGS WITH THE BUSINESS WHERE THIS ALLEGEDLY TOOK
5 PLACE--

6 THE JUROR: NO, SIR, I JUST MOVED THERE 3 YEARS AGO. NO CONNECTION.

7 THE COURT: IS THERE ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO
8 BE FAIR AND IMPARTIAL?

9 THE JUROR: NO, SIR.

10 THE COURT: ANY DOUBT ABOUT IT?

11 THE JUROR: NO, SIR.

12 THE COURT: THANK YOU VERY MUCH. MS. NILES IS JUROR 142. SHE'S ELIGIBLE
13 TO SERVE. OVER HERE ON MY RIGHT. YOUR NAME, PLEASE?

14 THE JUROR: PHYLLIS SHEALY.

15 THE CLERK: 170.

16 THE COURT: OKAY. MS. SHEALY IS 170. WHAT'S YOUR SITUATION, PLEASE?

17 THE JUROR: I JUST ON OCCASIONS I STOPPED IN AND OUT.

18 THE COURT: OKAY. DID YOU KNOW MR. SMITH?

19 THE JUROR: NO, SIR.

20 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH
21 THAT BUSINESS OR THAT AREA THAT AFFECTS YOUR ABILITY TO BE FAIR AND
22 IMPARTIAL IN THIS CASE?

23 THE JUROR: NO, SIR.

24 THE COURT: ANY DOUBT IN YOUR MIND?

25 THE JUROR: NO, SIR.

Appendix 467

1 THE COURT: THANK YOU. MS. SHEALY IS ELIGIBLE TO SERVE. 170. YOUR NAME,
2 SIR?

3 THE JUROR: JERUE HALLMAN.

4 THE COURT: LONG?

5 THE JUROR: HALLMAN. JERUE HALLMAN.

6 THE CLERK: #73.

7 THE COURT: OKAY, MR. HALLMAN. AND WHAT'S YOUR SITUATION? YOU LIVE IN
8 THAT AREA?

9 THE JUROR: YES, SIR.

10 THE COURT: DID YOU EVER STOP -- DID YOU EVER DO BUSINESS WITH THE STOP
11 AND SHOP?

12 THE JUROR: YES, SIR.

13 THE COURT: DID YOU KNOW MR. SMITH?

14 THE JUROR: NO, SIR.

15 THE COURT: ANYBODY EVER DISCUSS THIS MATTER WITH YOU?

16 THE JUROR: NO, SIR.

17 THE COURT: IS THERE ANYTHING AT ALL ABOUT WHERE YOU LIVE OR YOUR
18 RELATIONSHIP WITH THAT COMMUNITY THAT AFFECTS YOUR ABILITY TO BE A FAIR AND
19 IMPARTIAL JUROR IN THIS CASE?

20 THE JUROR: NO, SIR.

21 THE COURT: ANY DOUBT IN YOUR MIND?

22 THE JUROR: NO, SIR.

23 THE COURT: THANK YOU. MR. HALLMAN IS 73. HE'S ELIGIBLE TO SERVE. OH, I'M
24 SORRY. YES?

25 THE JUROR: LEON SIMMONS. I LIVE IN THE AREA.

Appendix 468

1 THE COURT: HOLD ON JUST A SECOND.

2 THE CLERK: #173.

3 THE COURT: ALL RIGHT. MR. SIMMONS, DID YOU DO BUSINESS WITH THE STOP
4 AND SHOP?

5 THE JUROR: OCCASIONALLY I STOPPED IN.

6 THE COURT: DID YOU KNOW MR. SMITH?

7 THE JUROR: NO, SIR.

8 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH
9 THAT COMMUNITY THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
10 JUROR IN THIS CASE?

11 THE JUROR: NO, SIR.

12 THE COURT: ANY DOUBT IN YOUR MIND?

13 THE JUROR: NO, SIR.

14 THE COURT: THANK YOU. 173 IS ELIGIBLE TO SERVE. ALL RIGHT. NOW, FOLKS,
15 EARLIER I ASKED YOU IF YOU WERE RELATED BY BLOOD OR MARRIAGE OR CONNECTED
16 BY EMPLOYMENT WITH ANY OF THE WITNESSES FOR THE STATE OR FOR THE
17 DEFENDANT. IF YOU'RE RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY
18 EMPLOYMENT WITH THE DEFENDANT OR ANY WITNESSES FOR THE STATE. AND WHAT I
19 NEED FOR YOU TO DO NOW AFTER I'VE INTRODUCED TO YOU THE ATTORNEYS; TOLD
20 YOU WHAT LAW ENFORCEMENT AGENCIES ARE INVOLVED; TOLD YOU A LITTLE BIT
21 ABOUT THE ALLEGATIONS, IS FOR YOU TO DO THIS: IF YOU HAVE ANY CONNECTION OF
22 ANY KIND WITH ANY OF THE PEOPLE IN THIS MATTER, YOU NEED TO DISCLOSE THAT TO
23 US. SO THAT WOULD INCLUDE IF YOU'RE A NEIGHBOR; IF YOU'RE A FRIEND; IF YOU
24 ATTEND THE SAME CHURCH OR CIVIC CLUBS; IF YOU ARE CURRENT OR FORMER CLIENTS
25 OF ONE OF THESE ATTORNEYS; IF YOU'VE EVER BEEN ON THE OPPOSITE SIDE OF A CASE

Appendix 469

1 REPRESENTED BY ONE OF THESE ATTORNEYS; IF ANY OF YOU OR ANY OF YOUR
2 IMMEDIATE FAMILY MEMBERS HAVE ANY CHARGES PENDING AGAINST THEM IN THE
3 11TH JUDICIAL CIRCUIT; IF ANY OF YOUR FAMILY MEMBERS OR YOURSELF HAVE EVER
4 BEEN PROSECUTED BY THE SOLICITOR'S OFFICE IN THE 11TH JUDICIAL CIRCUIT OF ANY
5 CRIME; IF YOU'VE EVER BEEN DEFENDED BY MR. THOMPSON OR IF HE'S EVER
6 REPRESENTED YOU OR ANY FAMILY MEMBER ON ANYTHING, REAL ESTATE CLOSING,
7 ANYTHING AT ALL. IF YOU'VE GOT ANY CONNECTION WITH ANY OF THESE PEOPLE, YOU
8 NEED TO TELL US ABOUT IT. IF SO, PLEASE, STAND.

9 OKAY. ARE ANY OF YOU MEMBERS OF OR FINANCIAL CONTRIBUTORS TO ANY
10 ORGANIZATION THAT HAS AS ITS PRIMARY PURPOSE THE SUPPORT OF LAW
11 ENFORCEMENT OR VICTIMS' RIGHTS? THAT WOULD INCLUDE ORGANIZATIONS SUCH AS
12 MOTHERS AGAINST DRUNK DRIVING, STUDENTS AGAINST DRUNK DRIVING, CITIZENS
13 AGAINST VIOLENT CRIME, ANY SIMILAR ORGANIZATION, LAW ENFORCEMENT
14 ASSOCIATION, ANYTHING LIKE THAT. PLEASE STAND IF YOU'RE A MEMBER OF OR
15 FINANCIAL CONTRIBUTOR TO ANY SUCH ORGANIZATION. YOUR NAME, PLEASE?

16 THE JUROR: SANDRA CROUCH.

17 THE COURT: WAIT JUST A SECOND.

18 THE CLERK: #44.

19 THE COURT: OKAY. WHAT'S YOUR SITUATION PLEASE?

20 THE JUROR: WE CONTRIBUTE TO THE STATE TROOPER'S ASSOCIATION.

21 THE COURT: OKAY. TO THE BEST OF YOUR KNOWLEDGE, WOULD THAT IN ANY
22 WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

23 THE JUROR: NO, SIR.

24 THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT THAT?

25 THE JUROR: NO, SIR.

Appendix 470

1 THE COURT: THANK YOU. JUROR NUMBER--

2 THE JUROR: #200. I'M A MEMBER OF THE TROOPER'S ASSOCIATION.

3 THE COURT: ALL RIGHT. MR. YONCE IS JUROR #200. AND WOULD THAT IN ANY
4 WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

5 THE JUROR: NO, SIR.

6 THE COURT: ANY DOUBT IN YOUR MIND?

7 THE JUROR: NO, SIR.

8 THE COURT: THANK YOU. JUROR #200 IS ELIGIBLE TO SERVE. #44 IS ELIGIBLE TO
9 SERVE. IN THE WHITE SWEATER. YOUR NAME?

10 THE JUROR: DEMETRIA COLEMAN. IT'S MCDANIEL.

11 THE COURT: OKAY. MS. MCDANIEL IS JUROR #36. WHAT'S YOUR SITUATION?

12 THE JUROR: MY HUSBAND HELPED PUT ON THE TROOPERS OR LAW
13 ENFORCEMENT SUPPER THE OTHER NIGHT AT THE SHRINER'S CLUB.

14 THE COURT: OKAY. ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE
15 A FAIR AND IMPARTIAL JUROR IN THIS CASE?

16 THE JUROR: NO, SIR.

17 THE COURT: ANY DOUBT IN YOUR MIND?

18 THE JUROR: NO.

19 THE COURT: MS. MCDANIEL IS ELIGIBLE TO SERVE. 36. YOUR NAME, PLEASE?

20 THE JUROR: CYNTHIA NICHOLSON.

21 THE COURT: 128. WHAT'S YOUR SITUATION?

22 THE JUROR: WE CONTRIBUTE TO THE SOUTH CAROLINA TROOPERS'
23 ASSOCIATION.

24 THE COURT: ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE A FAIR
25 AND IMPARTIAL JUROR IN THIS CASE?

Appendix 471

1 THE JUROR: NO, SIR.

2 THE COURT: ANY DOUBT IN YOUR MIND?

3 THE JUROR: NO, SIR.

4 THE COURT: THANK YOU. 128'S ELIGIBLE TO SERVE. ALL RIGHT. OTHER THAN
5 WHAT YOU HAVE ALREADY TOLD ME ABOUT, IF YOU HAVE ALREADY TOLD ME ABOUT
6 THIS, YOU DON'T HAVE TO TELL ME AGAIN, BUT ARE ANY OF YOU EMPLOYED IN ANY
7 FIELD OF LAW ENFORCEMENT OR ARE YOU DEPENDENT FOR SUPPORT IN ANY WAY
8 UPON SOMEONE WHO IS EMPLOYED IN THE FIELD OF LAW ENFORCEMENT? IF SO,
9 PLEASE, STAND. MR. YONCE, YOU GOT ANYTHING OTHER THAN WORKIN' FOR—

10 THE JUROR: WELL, THE NCIC CERTIFICATION THAT'S AN ASPECT OF IT.
11 CRIMINAL HISTORIES.

12 THE COURT: OKAY. IS THERE ANYTHING ABOUT YOUR EMPLOYMENT THAT
13 AFFECTS YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

14 THE JUROR: NO, SIR.

15 THE COURT: ANY DOUBT IN YOUR MIND?

16 THE JUROR: NO, SIR.

17 THE COURT: THANK YOU. 200'S ELIGIBLE TO SERVE. ANYBODY ELSE? DO ANY
18 OF YOU HAVE ANY RELATIVES WHO ARE EMPLOYED IN THE FIELD OF LAW
19 ENFORCEMENT THAT YOU HAVEN'T ALREADY TOLD ME ABOUT? IF SO, PLEASE, STAND.
20 YOUR NAME, SIR?

21 THE JUROR: TERRY MINICK.

22 THE CLERK: 124.

23 THE COURT: MR. MINICK'S JUROR #124. WHAT'S YOUR SITUATION?

24 THE JUROR: MY BROTHER IN SALUDA IS THE ASSISTANT CORONER.

25 THE COURT: OKAY. TO THE BEST OF YOUR KNOWLEDGE, IS THERE ANYTHING

Appendix 472

1 ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

2 THE JUROR: NO, SIR.

3 THE COURT: ANY DOUBT IN YOUR MIND?

4 THE JUROR: NO, SIR.

5 THE COURT: THANK YOU. MR. MINICK IS JUROR #124. HE'S ELIGIBLE TO SERVE.
6 ALL RIGHT. LET ME SEE THE LAWYERS UP HERE, PLEASE.

7 (THERE WAS A BENCH CONFERENCE OUT OF THE HEARING OF THE JURY AND OFF
8 THE RECORD.)

9 ALL RIGHT. LADIES AND GENTLEMEN, AS I READ TO YOU, ONE OF THESE
10 CHARGES ALLEGES THAT MR. TOLEN POSSESSED A PISTOL AFTER HAVING PREVIOUSLY
11 BEEN CONVICTED IN THE COURTS OF SOUTH CAROLINA OF A CRIME OF VIOLENCE.

12 NOW IF YOU'RE SELECTED ON THIS JURY, UNLESS SOMETHING CHANGES -- AND,
13 AGAIN, I KNOW VERY LITTLE ABOUT THESE CASES THAT COME UP. I TYPICALLY KNOW
14 NEXT TO NOTHING WHICH IS BASICALLY WHAT I KNOW IN THIS CASE. SO WHEN I TELL
15 YOU THESE THINGS, IT'S BASED ON MY UNDERSTANDING OF WHAT IS POSSIBLE TO
16 HAPPEN, NOT -- NOT NECESSARILY WHAT IS LIKELY TO HAPPEN, BUT ON THIS CHARGE
17 WHAT I ANTICIPATE WILL HAPPEN IS THAT I WILL INSTRUCT THE JURY THAT'S CHOSEN
18 ON THIS CASE THAT THE ONLY PURPOSE FOR THE ADMISSION OF THAT PRIOR
19 CONVICTION FOR WHAT THE LEGISLATURE HAS ESTABLISHED AS A CRIME OF VIOLENCE,
20 THE ONLY PURPOSE FOR IT IS TO ALLOW THE STATE TO OFFER EVIDENCE TO ATTEMPT TO
21 PROVE THIS CHARGE. AND YOU CAN'T HOLD IT AGAINST MR. TOLEN THAT HE HAS A
22 PRIOR CRIMINAL RECORD.

23 IN OTHER WORDS THE FACT THAT SOMEONE HAS A PRIOR CRIMINAL RECORD
24 DOES NOT MEAN THAT THEY'RE GUILTY OF WHAT THEY'RE CHARGED WITH HERE. AND
25 YOU'LL BE INSTRUCTED THAT YOU CANNOT CONSIDER THAT EVIDENCE IN ANY WAY AT

Appendix 473

1 ALL AGAINST MR. TOLEN EXCEPT FOR THAT VERY LIMITED PURPOSE FOR WHICH IT IS
2 ADMITTED. THAT IS, TO GO TO ONE OF THE ELEMENTS IN THE CHARGE OF POSSESSION
3 OF A PISTOL BY A PERSON PREVIOUSLY CONVICTED OF A VIOLENT CRIME.

4 NOW IS THERE ANY MEMBER OF THE JURY PANEL WHO WOULD BE UNABLE TO
5 FOLLOW THAT INSTRUCTION AND UTILIZE THAT EVIDENCE ONLY FOR THE PURPOSE FOR
6 WHICH IT'S ADMITTED? IF YOU'VE GOT ANY PROBLEM WITH THAT, YOU NEED TO STAND
7 UP AND TELL ME ABOUT IT NOW. OKAY.

8 NOW THE NEXT THING I WANNA ASK YOU IS A COMBINATION OF SEVERAL
9 THINGS, AND, AGAIN, I DON'T KNOW IF THIS STUFF APPLIES OR DOESN'T APPLY. THESE
10 PARTIES GIVE ME VARIOUS QUESTIONS TO ASK, AND I TRY TO MERGE THINGS TOGETHER
11 AND SHORTEN IT AS MUCH AS I CAN, BUT TRYING TO MERGE SEVERAL QUESTIONS
12 TOGETHER, WHAT I NEED FOR YOU TO DO NOW IS THIS: I'M GONNA ASK YOU THESE
13 QUESTIONS; IT'S GONNA BE A LONG QUESTION; IT'S GONNA HAVE MULTIPLE PARTS. IT'S
14 GONNA RELATE NOT ONLY TO YOU, BUT TO ANYBODY CLOSE TO YOU, AN IMMEDIATE
15 FAMILY MEMBER OR CLOSE PERSONAL FRIEND, AND IF IT APPLIES TO YOU OR YOU HAVE
16 DOUBT ABOUT WHETHER IT APPLIES TO YOU, YOU NEED TO STAND. WE'RE GONNA TALK
17 ABOUT IT DOWN HERE. WE'RE NOT GONNA TALK ABOUT IT IN FRONT OF THE WHOLE
18 GROUP.

19 IF ANY OF YOU, ANY OF YOUR IMMEDIATE FAMILY MEMBERS OR ANY OF YOUR
20 CLOSE PERSONAL FRIENDS HAVE EVER BEEN ACCUSED OF COMMITTING AN ACT OF
21 VIOLENCE -- I DON'T MEAN IN ANY LEGAL SENSE. I MEAN VIOLENCE IN ITS PLAIN AND
22 ORDINARY MEANING WHICH IS DIFFERENT SOMETIMES THAN WHAT THE LAW IS. ITS
23 PLAIN AN ORDINARY MEANING. HAVE ANY OF YOU, ANY OF YOUR IMMEDIATE FAMILY
24 MEMBERS OR CLOSE PERSONAL FRIENDS EVER BEEN ACCUSED OF COMMITTING AN ACT
25 OF VIOLENCE OR BEEN THE VICTIM OF AN ACT OF VIOLENCE? OR HAVE ANY OF YOU OR

Appendix 474

1 ANY OF YOUR IMMEDIATE FAMILY MEMBERS, ANY OF YOUR CLOSE PERSONAL FRIENDS
2 EVER BEEN ACCUSED OF COMMITTING A CRIME, DRUG OR ALCOHOL RELATED, THAT
3 WOULD INCLUDE NOT ONLY POSSESSION CHARGES OR PUBLIC DRUNKENNESS, BUT
4 ALSO DRIVING UNDER THE INFLUENCE, ANY CRIME OR HAVE YOU OR HAVE ANY FAMILY
5 MEMBER, ANY CLOSE PERSONAL FRIEND EVER BEEN THE VICTIM OF SOMEBODY IN A
6 CRIME WHICH WAS ALLEGEDLY DRUG OR ALCOHOL RELATED? THAT'S BROAD
7 QUESTIONS. IF ANY OF THOSE THINGS APPLY TO YOU OR ANY OF YOUR IMMEDIATE
8 FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS, PLEASE, STAND. ALL RIGHT. WHAT
9 WE'RE GONNA DO IS I'LL START WITH THE FRONT ROW, AND WE'LL FORM A LINE OVER
10 HERE WHERE THE BAILIFF IS. YOU ALL CAN SIT AND KINDA FILL IN THE LINE IF YOU
11 LIKE AS IT RUNS DOWN. OKAY? LAWYERS MAY JOIN ME ON THE SIDE. Y'ALL CAN SIT
12 UNTIL THE LINE RUNS DOWN UNLESS YOU WANNA JUST STAND.

13 (THE FOLLOWING OCCURRED ON THE RECORD BUT OUTSIDE THE HEARING OF
14 THE COURTROOM AUDIENCE.) TELL ME YOUR NAME.

15 THE JUROR: TANYA NILES JUROR 114.

16 THE COURT: MS. NILES IS 114. SHE'S MCCALL ON THIS. 114. WHAT'S YOUR
17 SITUATION, PLEASE?

18 THE JUROR: MY HUSBAND HAS A PREVIOUS DRUG CONVICTION FROM ABOUT 20
19 YEARS AGO.

20 THE COURT: WAS IT A POSSESSION CHARGE OR---

21 THE JUROR: I'M SURE IT WAS. HE WAS POTENTIALLY GONNA FACE JAIL TIME
22 BUT GOT -- I DON'T KNOW MUCH ABOUT IT.

23 THE COURT: DO YOU KNOW WHAT DRUG IT WAS?

24 THE JUROR: I'M SURE IT WAS COCAINE OR SOMETHING LIKE THAT. MARIJUANA.
25 I'M NOT POSITIVE.

Appendix 475

1 THE COURT: IF THERE IS EVIDENCE IN THIS CASE AND I HAVE NO IDEA IF THERE
2 WILL BE. IF THERE'S EVIDENCE IN THIS CASE RELATED TO THE CONSUMPTION OF
3 ALCOHOL OR DRUGS, WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
4 JUROR IN THE CASE?

5 THE JUROR: UH-UH.

6 THE COURT: ANY DOUBT IN YOUR MIND?

7 THE JUROR: NO, SIR.

8 THE COURT: JUST HAVE A SEAT BACK THERE. MS. NILES IS 114. SHE'S ELIGIBLE
9 TO SERVE. YES, SIR. YES, MA'AM. WHAT'S YOUR NAME?

10 THE JUROR: ROBIN FOULKS.

11 THE COURT: I'M SORRY?

12 THE JUROR: ROBIN FOULKS.

13 THE COURT: DID YOU SAY FOULKS?

14 THE JUROR: YES, SIR.

15 THE CLERK: 56.

16 THE COURT: OKAY, MS. FOULKS. F-O-U-L-K-S.

17 THE JUROR: YES.

18 THE COURT: WHAT'S YOUR SITUATION?

19 THE JUROR: MY NEPHEW WENT TO PRISON FOR CRACK CHARGES.

20 THE COURT: MS. FOULKS, IF THERE IS EVIDENCE IN THIS CASE, AND I DON'T
21 KNOW IF THERE WILL BE OR NOT. IF ANYBODY CONSUMED ALCOHOL OR DRUGS, IS
22 THERE ANYTHING ABOUT THAT THAT WOULD AFFECT YOUR ABILITY TO BE FAIR AND
23 IMPARTIAL?

24 THE JUROR: NO, SIR.

25 THE COURT: ANY DOUBT IN YOUR MIND?

Appendix 476

1 THE JUROR: NO, SIR.

2 THE COURT: THANK YOU VERY MUCH. HAVE A SEAT BACK THERE. MS. FOULKS
3 IS JUROR #56. SHE'S ELIGIBLE TO SERVE. YES, MA'AM? WHAT'S YOUR NAME, PLEASE?

4 THE JUROR: KAREN ADDY.

5 THE CLERK: #5.

6 THE COURT: OKAY, MS. ADDY, WHAT'S YOUR SITUATION?

7 THE JUROR: WHEN I WAS EMPLOYED WITH MID CAROLINA, WE WERE LOCATED
8 ON ST. ANDREWS ROAD. WE HAD 2 ARMED ROBBERIES AND I WAS PRESENT AT BOTH OF
9 'EM. AS FAR AS I KNOW, I NEVER TESTIFIED AGAINST EITHER ONE. I LOOKED AT A
10 PICTURE I.D. AT THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT. I WAS JUST SCARED.

11 THE COURT: IS THERE ANYTHING ABOUT THAT EXPERIENCE, THOSE
12 EXPERIENCES THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
13 IN THIS CASE?

14 THE JUROR: NO, SIR.

15 THE COURT: ANY DOUBT IN YOUR MIND?

16 THE JUROR: NO, SIR.

17 THE COURT: THANK YOU, MA'AM. MS. ADDY IS JUROR #5. SHE'S ELIGIBLE TO
18 SERVE.

19 MR. THOMPSON: YOUR HONOR, SHE'S A VICTIM OF A CRIME, YOUR HONOR, AND I
20 WOULD JUST PUT FORWARD A VIOLENT CRIME VERY SIMILAR TO THIS ONE. I WOULD
21 JUST SAY SHE SHOULD BE EXCUSED.

22 THE COURT: MOTION DENIED.

23 MR. THOMPSON: YES, SIR.

24 THE COURT: YES, MA'AM. WHAT'S YOUR NAME, PLEASE?

25 THE JUROR: MARIE ORR. 129.

Appendix 477

1 THE COURT: MS. ORR'S 129. WHAT'S YOUR SITUATION?

2 THE JUROR: MY BROTHER GOT CONVICTED OF DUI.

3 THE COURT: IF THERE IS EVIDENCE IN THIS CASE, AND I HAVE NO IDEA IF THERE
4 WILL BE, ABOUT THE CONSUMPTION OF ALCOHOL OR DRUGS, WOULD THAT IN ANY WAY
5 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

6 THE JUROR: NO, SIR.

7 THE COURT: ANY DOUBT IN YOUR MIND?

8 THE JUROR: NO.

9 THE COURT: THANK YOU, MA'AM. MS. ORR'S 129. SHE'S ELIGIBLE TO SERVE.
10 YES, SIR? MILLER, ISN'T IT?

11 THE JUROR: THAT'S RIGHT.

12 THE COURT: YOU'RE MR. MILLER?

13 THE JUROR: YES, SIR. 121.

14 THE COURT: LARRY MILLER. WHAT'S YOUR SITUATION?

15 THE JUROR: I HAD A DUI AGAINST ME ABOUT 27 YEARS AGO.

16 THE COURT: IF THERE IS EVIDENCE IN THIS CASE, AND I HAVE NO IDEA WHETHER
17 THERE WILL BE, ABOUT THE CONSUMPTION OF ALCOHOL OR DRUGS, WOULD THAT IN
18 ANY WAY AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR?

19 THE JUROR: NO, SIR.

20 THE COURT: YOU HAVE ANY DOUBT?

21 THE JUROR: NO, SIR.

22 THE COURT: THANK YOU, SIR. MR. MILLER IS 121. HE'S ELIGIBLE TO SERVE. YES,
23 MA'AM? YOU'RE MS. MCDANIEL?

24 THE JUROR: YES.

25 THE COURT: WHAT'S YOUR SITUATION?

Appendix 478

1 THE JUROR: MY HUSBAND'S PLACE OF BUSINESS, LOCAL FINANCE, WAS ROBBED
2 AT GUN POINT ON OCTOBER THE 11TH. THAT WAS THE SECOND TIME IN 60 DAYS.

3 THE COURT: SECOND TIME IN WHAT?

4 THE JUROR: IN 60 DAYS. AND HE WAS IN THE OFFICE JUST THIS LAST TIME AND
5 THE GUY HIT HIS EMPLOYER IN THE BACK OF THE HEAD WITH THE GUN.

6 THE COURT: OKAY. YOU UNDERSTAND THIS IS RELATED TO ARMED ROBBERY?

7 THE JUROR: YES.

8 THE COURT: ANYTHING ABOUT YOUR EXPERIENCE THAT WOULD AFFECT YOUR
9 ABILITY TO BE FAIR AND IMPARTIAL?

10 THE JUROR: YES.

11 THE COURT: DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. OKAY?

12 THE JUROR: OKAY.

13 THE COURT: JUST HAVE A SEAT BACK THERE. MS. MCDANIEL IS JUROR #36.
14 SHE'S SET ASIDE ON THIS TRIAL. YES, MA'AM?

15 THE JUROR: SANDRA CROUCH. #44.

16 THE COURT: OKAY, MS. CROUCH, WHAT'S YOUR SITUATION?

17 THE JUROR: MY BROTHER-IN-LAW IS AN ALCOHOLIC AND HAS SERVED TIME IN
18 PRISON.

19 THE COURT: WHAT DID HE SERVE THE TIME FOR?

20 THE JUROR: SOMETHIN' TO DO WITH DRUGS AND MONEY. I DON'T KNOW.

21 THE COURT: I DON'T KNOW WHAT THE EVIDENCE IS GONNA BE IN THIS CASE,
22 BUT IF THERE IS ANY EVIDENCE ABOUT THE CONSUMPTION OF ALCOHOL OR DRUGS, IS
23 THERE ANYTHING ABOUT YOUR SITUATION THAT AFFECTS YOUR ABILITY TO BE FAIR
24 AND IMPARTIAL?

25 THE JUROR: NO, SIR.

Appendix 479

1 THE COURT: ANY DOUBT IN YOUR MIND?

2 THE JUROR: NO, SIR.

3 THE COURT: THANK YOU VERY MUCH. MS. CROUCH IS 44 SHE'S ELIGIBLE TO
4 SERVE. YES, SIR? YOUR NAME, PLEASE.

5 THE JUROR: JOE BURT.

6 THE CLERK: #22.

7 THE COURT: OKAY, MR. BURT, WHAT'S YOUR SITUATION?

8 THE JUROR: I HAVE DUI CHARGES.

9 THE COURT: YOU HAVE A DUI?

10 THE JUROR: (NODDED YES.)

11 THE COURT: MR. BURT, I DON'T KNOW WHAT THE EVIDENCE IS GONNA BE IN THIS
12 CASE BUT IF THERE IS ANY EVIDENCE ABOUT THE CONSUMPTION OF ALCOHOL OR
13 DRUGS, IS THERE ANYTHING ABOUT YOUR SITUATION THAT AFFECTS YOUR ABILITY TO
14 BE FAIR AND IMPARTIAL?

15 THE JUROR: NO.

16 THE COURT: ANY DOUBT IN YOUR MIND?

17 THE JUROR: NO.

18 THE COURT: THANK YOU, SIR. JUST HAVE A SEAT RIGHT THERE. MR. BURT'S #22.
19 HE'S ELIGIBLE TO SERVE. YES, SIR?

20 THE JUROR: 183 THOMAS TAYLOR. MY AUNT WAS KILLED BY A DRUNK DRIVER.

21 THE COURT: HOLD ON ONE SECOND, MR. TAYLOR. MR. TAYLOR'S 183. YOUR
22 AUNT WAS KILLED BY A DRUNK DRIVER?

23 THE JUROR: YES, SIR.

24 THE COURT: MR. TAYLOR, I DON'T KNOW ANYTHING ABOUT THIS CASE. I DON'T
25 KNOW IF THERE WILL BE ANY EVIDENCE ABOUT THE CONSUMPTION OF ALCOHOL OR

Appendix 480

1 DRUGS, BUT IF THERE IS ANY, IS THERE ANYTHING ABOUT YOUR SITUATION THAT
2 AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL?

3 THE JUROR: NOT REALLY.

4 THE COURT: ANY DOUBT IN YOUR MIND?

5 THE JUROR: NO.

6 THE COURT: THANK YOU, SIR. MR. TAYLOR'S 183. HE'S ELIGIBLE TO SERVE. YES,
7 SIR?

8 THE JUROR: GENTRY.

9 THE COURT: 60. WHAT'S YOUR SITUATION, MR. GENTRY?

10 THE JUROR: I GOT A COUSIN THAT'S CONVICTED OF ARMED ROBBERY AND
11 MURDER.

12 THE COURT: ARMED ROBBERY AND MURDER?

13 THE JUROR: YEP.

14 THE COURT: IN SALUDA COUNTY?

15 THE JUROR: NO, SIR.

16 THE COURT: WHAT COUNTY?

17 THE JUROR: IT'S ONE A DEM THEY PASSED THAT LAW WHERE THEM TWO BOYS
18 GOT CONVICTED I THINK IN WOODRUFF.

19 THE COURT: OKAY. SO IT WASN'T IN THIS CIRCUIT; IT WASN'T AROUND HERE?

20 THE JUROR: NO.

21 THE COURT: OKAY.

22 THE JUROR: I JUST WANTED TO MAKE SURE.

23 THE COURT: WAIT A SECOND. I'M NOT THROUGH. YOU UNDERSTAND THE
24 CHARGES IN THIS CASE?

25 THE JUROR: YES, SIR.

Appendix 481

1 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH
2 YOUR COUSIN OR THAT EXPERIENCE THAT AFFECTS YOUR ABILITY TO BE FAIR AND
3 IMPARTIAL IN THIS CASE?

4 THE JUROR: NO, SIR.

5 THE COURT: ANY DOUBT IN YOUR MIND?

6 THE JUROR: YES, SIR -- NO, SIR.

7 THE COURT: ALL RIGHT. MR. GENTRY'S JUROR #60. HE'S ELIGIBLE TO SERVE.
8 YES, MA'AM? WHAT'S YOUR NAME, PLEASE.

9 THE JUROR: DEBRA ROSIER.

10 THE COURT: WAIT JUST A SECOND. OKAY, MS. ROSIER, WHAT'S YOUR
11 SITUATION?

12 THE JUROR: OKAY. MY 80-YEAR-OLD UNCLE WAS VICIOUSLY ATTACKED AND
13 ROBBED AT HIS PLACE OF BUSINESS ABOUT 2 YEARS AGO.

14 THE COURT: WAS A WEAPON USED?

15 THE JUROR: THEY BEAT HIM WITH THE BUTT OF A RIFLE.

16 THE COURT: WAS THAT IN SALUDA COUNTY?

17 THE JUROR: IT WAS IN SALUDA COUNTY.

18 THE COURT: WHAT HAPPENED TO THE CASE?

19 THE JUROR: ONE WAS APPREHENDED NOT TOO LONG AGO. I THINK THEY'RE
20 STILL LOOKIN' FOR THE OTHER ONE. HE'S STILL SUFFERIN'.

21 THE COURT: YOU UNDERSTAND THAT THE CHARGE HERE IS FOR ARMED
22 ROBBERY?

23 THE JUROR: I DO. EACH CASE IS UNIQUE THOUGH AND I'D HAVE TO LISTEN TO
24 THE TESTIMONY AND THE DETAILS AND THE EVIDENCE.

25 THE COURT: IS THERE ANYTHING ABOUT YOUR SITUATION AND YOUR

Appendix 482

1 RELATIONSHIP WITH YOUR UNCLE THAT AFFECTS YOUR ABILITY TO BE FAIR AND
2 IMPARTIAL IN THIS CASE?

3 THE JUROR: NO, SIR, I REALLY DON'T BELIEVE SO.

4 THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND?

5 THE JUROR: I HAVE NO DOUBT.

6 THE COURT: YOU UNDERSTAND IF THERE IS A PROSECUTION, IT WOULD BE THE
7 SAME PROSECUTOR'S OFFICE HANDLING IT?

8 THE JUROR: YES, SIR.

9 THE COURT: IS THERE ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO
10 BE A FAIR AND IMPARTIAL JUROR?

11 THE JUROR: NO, SIR.

12 THE COURT: MS. ROSIER IS JUROR #157. SHE'S ELIGIBLE TO SERVE. YES, SIR?

13 MR. THOMPSON: YOUR HONOR, I WOULD AGAIN MAKE THE SAME MOTION. SHE
14 IS RELATED TO A VICTIM OF A VIOLENT CRIME VERY SIMILAR TO THIS ONE. WE MOVE
15 TO HAVE HER SET ASIDE.

16 THE COURT: MOTION IS DENIED. YES, MA'AM?

17 THE JUROR: JUROR 205.

18 THE COURT: MS. DAVIS, WHAT'S YOUR SITUATION?

19 THE JUROR: ABOUT 5 YEARS AGO MY HUSBAND WAS CHARGED WITH A DUI AND
20 SIMPLE POSSESSION.

21 THE COURT: OF MARIJUANA?

22 THE JUROR: YES.

23 THE COURT: WAS THAT IN SALUDA COUNTY?

24 THE JUROR: YES, SIR.

25 THE COURT: IS THERE ANYTHING ABOUT THAT -- WELL, LET ME ASK YOU THIS: IF

Appendix 483

1 THERE IS ANY EVIDENCE IN THIS CASE, AND I HAVE NO IDEA IF THERE WILL BE, ABOUT
2 THE CONSUMPTION OF ALCOHOL OR DRUGS, IS THERE ANYTHING ABOUT YOUR
3 EXPERIENCE WITH YOUR HUSBAND THAT AFFECTS YOUR ABILITY TO BE FAIR AND
4 IMPARTIAL?

5 THE JUROR: NO, SIR.

6 THE COURT: ANY DOUBT IN YOUR MIND?

7 THE JUROR: NO, SIR.

8 THE COURT: THANK YOU VERY MUCH. MS. DAVIS IS JUROR #205. SHE'S ELIGIBLE
9 TO SERVE. YES, MA'AM?

10 THE JUROR: I'M JUROR 91.

11 THE COURT: YOU'RE MS. JONES?

12 THE JUROR: YES.

13 THE COURT: BESSIE JONES?

14 THE JUROR: YES, AND 9 OR 10 YEARS AGO MY FATHER WAS STABBED BY HIS
15 GIRLFRIEND UNDER THE INFLUENCE OF CRACK COCAINE.

16 THE COURT: 9 OR 10 YEARS AGO?

17 THE JUROR: YEAH.

18 THE COURT: WAS THAT IN SALUDA COUNTY?

19 THE JUROR: YES.

20 THE COURT: WHAT HAPPENED TO HER?

21 THE JUROR: SHE IN PRISON FOR 25 YEARS.

22 THE COURT: IS THERE ANYTHING AT ALL ABOUT THAT EXPERIENCE WITH YOUR
23 RELATIONSHIP WITH YOUR FATHER THAT AFFECTS YOUR ABILITY TO BE A FAIR AND
24 IMPARTIAL JUROR IN THIS CASE?

25 THE JUROR: NO.

Appendix 484

1 THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT THAT?

2 THE JUROR: NO.

3 THE COURT: THANK YOU. 91 MS. JONES IS ELIGIBLE TO SERVE. YES, SIR? WHAT'S
4 YOUR NAME, SIR?

5 THE JUROR: STAN GUNTER 206.

6 THE COURT: WHAT'S YOUR SITUATION, MR. GUNTER?

7 THE JUROR: I GOT A ASSAULT AND BATTERY CHARGE ABOUT 15 YEARS AGO AND
8 I KNOW A FRIEND OF MINE GOT BUSTED ABOUT 3 YEARS AGO. I'VE HAD A SHOTGUN PUT
9 IN MY FACE AND ROBBED BEFORE DOWN AT THE STORE. LOTTA MEMORIES

10 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

11 THE JUROR: I FEEL LIKE IT WON'T.

12 THE COURT: SAY THAT AGAIN.

13 THE JUROR: NO, SIR. NO.

14 THE COURT: YOU HAD A SHOTGUN PUT IN YOUR FACE.

15 THE JUROR: YES, SIR. I'VE BEEN IN SITUATIONS, YOU KNOW, WHERE THE STORE
16 WAS ROBBED AND A SHOTGUN WAS STUCK IN MY FACE TOO.

17 THE COURT: YOU SAID IT BROUGHT BACK MEMORIES.

18 THE JUROR: OH, YEAH. I WANTED TO TELL YOU THAT.

19 THE COURT: YES, SIR, YOU DID THE RIGHT THING. YOU UNDERSTAND THE
20 ALLEGATIONS IN THIS CASE?

21 THE JUROR: YES, SIR.

22 THE COURT: AND YOU FEEL LIKE YOUR EXPERIENCE WOULD NOT AFFECT YOUR
23 ABILITY TO BE FAIR AND IMPARTIAL?

24 THE JUROR: NO, SIR, I CAN BE FAIR.

25 THE COURT: YOU HAVE ANY DOUBT ABOUT THAT?

Appendix 485

1 THE JUROR: NO, SIR.

2 THE COURT: YOU DON'T HAVE ANY DOUBT?

3 THE JUROR: NO, SIR. IT'S ANOTHER SITUATION.

4 THE COURT: WELL, YOU WERE CONVICTED OF WHAT? SIMPLE ASSAULT AND
5 BATTERY?

6 THE JUROR: YES.

7 THE COURT: SIMPLE ASSAULT.

8 THE JUROR: YES.

9 THE COURT: AND YOUR FRIEND DID WHAT?

10 THE JUROR: HE WAS BUSTED FOR DRUGS. HE'S IN JAIL.

11 THE COURT: IF THERE'S ANY EVIDENCE ABOUT THE CONSUMPTION OF ALCOHOL
12 OR DRUGS IN THIS CASE, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND
13 IMPARTIAL?

14 THE JUROR: NO, SIR.

15 THE COURT: OKAY. YOU HAVE ANY DOUBT WHATSOEVER ABOUT YOUR ABILITY
16 TO BE A FAIR AND IMPARTIAL JUROR IN AN ARMED ROBBERY CASE?

17 THE JUROR: NO, SIR.

18 THE COURT: ALL RIGHT. THANK YOU, SIR. 206 MR. GUNTER IS ELIGIBLE TO
19 SERVE. YOU WANT TO MAKE A MOTION?

20 MR. THOMPSON: YES, SIR. I'D LIKE TO MAKE A MOTION TO HAVE HIM SET ASIDE.
21 THE JUROR SPECIFICALLY SAID IT BROUGHT BACK EMOTIONS.

22 THE COURT: I'LL SET HIM ASIDE. SOLICITOR, I'LL LET YOU BE HEARD IF YOU
23 WANT TO.

24 MR. MAYE: NO, SIR.

25 THE COURT: THE OTHER JURORS WERE MORE CONVINCING. I DON'T THINK MR.

Appendix 486

1 GUNTER IS LYING TO ME. I'M NOT ACCUSING HIM OF THAT.

2 MR. THOMPSON: YES, SIR.

3 THE COURT: THE WAY HE SAID IT, THE THINGS HE SAID, I THINK ONCE HE GETS
4 ON THE JURY IT WOULD BE A PROBLEM. I DON'T THINK HE COULD BE FAIR AND
5 IMPARTIAL.

6 MR. MAYE: NO OBJECTION.

7 THE COURT: YES, SIR? 206 IS SET ASIDE. YOUR NAME?

8 THE JUROR: 105.

9 THE COURT: YOU'RE MR. MARSHALL?

10 THE JUROR: YES, SIR.

11 THE COURT: WHAT'S YOUR SITUATION?

12 THE JUROR: 2002 I WAS ACCUSED OF DRUG-RELATED THINGS BECAUSE OF
13 PEOPLE THAT I KNEW. I WENT THROUGH PTI TO AVOID LOSIN' MY JOB AND GOIN'
14 THROUGH COURT AND ALL THAT STUFF AND ALL THE CHARGES WAS EXPUNGED. I JUST
15 WANTED TO MENTION THAT.

16 THE COURT: WAS THAT HERE IN SALUDA COUNTY?

17 THE JUROR: NO, SIR.

18 THE COURT: WHAT COUNTY WAS IT IN?

19 THE JUROR: LEXINGTON.

20 THE COURT: LEXINGTON?

21 THE JUROR: YES, SIR.

22 THE COURT: IS THERE ANYTHING AT ALL ABOUT THAT EXPERIENCE THAT
23 WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

24 THE JUROR: NO, SIR.

25 THE COURT: AND IF THERE IS EVIDENCE IN THIS TRIAL, AND I HAVE NO IDEA

Appendix 487

1 WHETHER THERE WILL OR THERE WON'T BE, RELATED TO THE CONSUMPTION OF
2 ALCOHOL OR DRUGS, IS THERE ANYTHING ABOUT THAT THAT WOULD AFFECT YOUR
3 ABILITY TO BE FAIR AND IMPARTIAL?

4 THE JUROR: NO, SIR.

5 THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT EITHER OF THOSE
6 ANSWERS?

7 THE JUROR: NO, SIR.

8 THE COURT: THANK YOU. MR. MARSHALL IS 105. HE'S ELIGIBLE TO SERVE. YES,
9 MA'AM? WHAT'S YOUR NAME, PLEASE.

10 THE JUROR: #193.

11 THE COURT: MS. WILLIAMS?

12 THE JUROR: YES. I HAD AN EX-SON-IN-LAW TO SERVE A YEAR FOR SELLING
13 MARIJUANA.

14 THE COURT: WAS THAT IN SALUDA COUNTY? WAS THAT IN SALUDA COUNTY?

15 THE JUROR: YES. UH-HUH.

16 THE COURT: IF THERE'S ANY EVIDENCE IN THIS CASE ABOUT THE CONSUMPTION
17 OF ALCOHOL OR DRUGS, AND I DON'T KNOW IF THERE WILL BE---

18 THE JUROR: NO.

19 THE COURT: --IS THERE ANYTHING ABOUT YOUR EXPERIENCE THAT AFFECTS
20 YOUR ABILITY TO BE FAIR AND IMPARTIAL?

21 THE JUROR: NO.

22 THE COURT: OKAY. IF IT WAS IN SALUDA COUNTY, YOU UNDERSTAND THE SME
23 PROSECUTOR'S OFFICE WOULD HAVE HANDLED YOUR EX-SON-IN-LAW'S CASE?

24 THE JUROR: DIDN'T QUITE UNDERSTAND---

25 THE COURT: IF THIS HAPPENED IN SALUDA COUNTY TO YOUR EX-SON-IN-LAW,

Appendix 488

1 THESE SAME FOLKS WOULD'VE BEEN THE ONES THAT PROSECUTED HIM. YOU
2 UNDERSTAND THAT?

3 THE JUROR: NO, THEY DIDN'T. UH-UH.

4 THE COURT: THEY DIDN'T?

5 THE JUROR: THAT'S BEEN OVER 20 YEARS AGO.

6 THE COURT: SAME OFFICE. DIFFERENT PEOPLE. SAME OFFICE.

7 THE JUROR: RIGHT. UH-HUH.

8 THE COURT: IS THERE ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO
9 BE---

10 THE JUROR: OH, NO. UH-UH.

11 THE COURT: YOU HAVE ANY DOUBT ABOUT YOUR ABILITY TO BE A FAIR AND
12 IMPARTIAL JUROR?

13 THE JUROR: NO.

14 THE COURT: THANK YOU, MA'AM. JUST HAVE A SEAT BACK OUT THERE. MS.
15 WILLIAMS IS 193. SHE'S ELIGIBLE TO SERVE. THAT'S MYRTLE WILLIAMS. MYRTLE.
16 YOUR NAME, PLEASE.

17 THE JUROR: SHIRLEY PADGETT.

18 THE CLERK: 133.

19 THE COURT: OKAY. MS. PADGETT, WHAT'S YOUR SITUATION?

20 THE JUROR: 18 YEARS AGO MY HUSBAND WAS CHARGED WITH DRINKIN' AND
21 DRIVIN'.

22 THE COURT: IF THERE IS EVIDENCE IN THIS CASE ABOUT THE CONSUMPTION OF
23 ALCOHOL, AND I DON'T KNOW THAT THERE WILL BE, BUT IF THERE IS ANY, WOULD THAT
24 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR?

25 THE JUROR: NO, SIR.

Appendix 489

1 THE COURT: YOUR HAVE ANY DOUBT IN YOUR MIND?

2 THE JUROR: NO, SIR.

3 THE COURT: THANK YOU. 133 MS. PADGETT IS ELIGIBLE TO SERVE. YES, MA'AM?
4 YOUR NAME, PLEASE.

5 THE JUROR: HILDA HALTIWANGER #74.

6 THE COURT: MS. HALTIWANGER, WHAT'S YOUR SITUATION?

7 THE JUROR: I HAD A NIECE THAT GOT KILLED BY A DRUNK DRIVER WHEN SHE
8 WAS 19 YEARS OLD.

9 THE COURT: IF THERE IS EVIDENCE IN THIS CASE, MS. HALTIWANGER, I DON'T
10 KNOW WHETHER THERE WILL OR WON'T BE, IF THERE'S EVIDENCE ABOUT THE
11 CONSUMPTION OF ALCOHOL OR DRUGS, IS THERE ANYTHING ABOUT YOUR EXPERIENCE
12 THAT AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL?

13 THE JUROR: POSSIBLY.

14 THE COURT: I'LL SET YOU ASIDE. JUST DON'T DISCUSS ANY OF THAT WITH THE
15 OTHER JURORS. OKAY?

16 THE JUROR: OKAY.

17 THE COURT: THANK YOU. JUST HAVE A SEAT BACK OUT THERE. MS.
18 HALTIWANGER IS JUROR #74. SHE'S SET ASIDE ON THIS TRIAL. YES, MA'AM? YOUR
19 NAME, PLEASE.

20 THE JUROR: 102 DONNA LYBRAND.

21 THE COURT: #102 MS. LYBRAND?

22 THE JUROR: YES.

23 THE COURT: WHAT'S YOUR SITUATION?

24 THE JUROR: MY NEPHEW WAS ROBBED AT GUN POINT. GOT \$4. AND MY
25 HUSBAND'S NEPHEW WAS ARRESTED FOR DRUGS.

Appendix 490

1 MR. THOMPSON: HER HUSBAND WAS ARRESTED---

2 THE JUROR: HUSBAND'S NEPHEW.

3 THE COURT: YOU UNDERSTAND THAT ONE OF THE CHARGES IN THIS CASE IS
4 ARMED ROBBERY?

5 THE JUROR: YES.

6 THE COURT: ANYTHING ABOUT YOUR EXPERIENCE THAT AFFECTS YOUR ABILITY
7 TO BE FAIR AND IMPARTIAL?

8 THE JUROR: I DON'T THINK I CAN.

9 THE COURT: I'LL SET YOU ASIDE ON THIS CASE. DON'T DISCUSS ANY OF THAT
10 WITH YOUR FELLOW JURORS, PLEASE. 102 MS. LYBRAND IS SET ASIDE ON THIS TRIAL.
11 YES, SIR?

12 THE JUROR: 76.

13 THE COURT: MR. HARTLEY?

14 THE JUROR: YES, SIR.

15 THE COURT: WHAT'S YOUR SITUATION?

16 THE JUROR: MY FIRST COUSIN IS SERVIN' TIME.

17 THE COURT: FOR WHAT?

18 THE JUROR: DRUG RELATED.

19 THE COURT: IS THAT FROM SALUDA COUNTY?

20 THE JUROR: YES, SIR.

21 THE COURT: IF THERE IS EVIDENCE IN THIS TRIAL, AND I DON'T KNOW THAT
22 THERE WILL BE, BUT IF THERE'S ANY EVIDENCE IN THIS TRIAL ABOUT THE USE OF DRUGS
23 OR ALCOHOL, IS THERE ANYTHING ABOUT YOUR EXPERIENCE THAT AFFECTS YOUR
24 ABILITY TO BE FAIR AND IMPARTIAL?

25 THE JUROR: NO, SIR.

Appendix 491

1 THE COURT: YOU UNDERSTAND THAT IF YOUR COUSIN WAS PROSECUTED HERE
2 IN SALUDA COUNTY THE SAME OFFICE WOULD'VE PROSECUTED IT, THE SOLICITOR'S
3 OFFICE WOULD'VE PROSECUTED IT?

4 THE JUROR: YES, SIR.

5 THE COURT: IS THERE ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO
6 BE FAIR AND IMPARTIAL?

7 THE JUROR: NO, SIR.

8 THE COURT: YOU HAVE ANY DOUBT ABOUT EITHER ONE OF THOSE RESPONSES
9 ABOUT BEING FAIR AND IMPARTIAL?

10 THE JUROR: NO, SIR.

11 THE COURT: THANK YOU. MR. HARTLEY IS 76. HE'S ELIGIBLE TO SERVE. YES,
12 MA'AM? WHAT'S YOUR NAME?

13 THE JUROR: CYNTHIA NICHOLSON. I THINK I'M 128.

14 THE COURT: WHAT'S YOUR SITUATION?

15 THE JUROR: MY SISTER WAS ROBBED AND SHOT AT DURING AN ARMED
16 ROBBERY AT THE CITGO IN PROSPERITY PROBABLY 10 YEARS AGO.

17 THE COURT: WELL, YOU UNDERSTAND THAT ONE OF THE CHARGES HERE IS
18 ARMED ROBBERY?

19 THE JUROR: YES, I DO.

20 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HER
21 OR THAT EXPERIENCE THAT AFFECTS YOUR ABILITY TO BE FAIR?

22 THE JUROR: IT PROBABLY WILL.

23 THE COURT: WELL, I--

24 THE JUROR: I'M A FAIR PERSON---

25 THE COURT: THAT'S ALL I WANT IS YOUR HONESTY. JUST HAVE A SEAT BACK

Appendix 492

1 THERE. DON'T DISCUSS THAT WITH YOUR FELLOW JURORS. 128 MS. NICHOLSON IS SET
2 ASIDE ON THIS TRIAL. YES, SIR?

3 THE JUROR: SIMMONS. 173.

4 THE COURT: OKAY. MR. SIMMONS, WHAT'S YOUR SITUATION?

5 THE JUROR: I HAVE A NEPHEW THAT I'M NOT SURE IF HE HAD A WEAPON OR
6 NOT---

7 THE COURT: NOT SURE WHAT?

8 THE JUROR: IF HE HAD A WEAPON OR WHAT HE WAS CHARGED FOR OR NOT BUT
9 HE DID SERVE TIME FOR RESISTIN' ARREST I BELIEVE. THAT'S WHAT IT WAS. IT'S BEEN
10 ABOUT 3 OR 4 YEARS AGO.

11 THE COURT: WAS THAT OUT OF SALUDA COUNTY?

12 THE JUROR: YES, SIR.

13 THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HIM
14 OR THAT EXPERIENCE THAT AFFECTS YOUR ABILITY TO BE FAIR AND IMPARTIAL AS A
15 JUROR IN THE CASE?

16 THE JUROR: NO, SIR.

17 THE COURT: YOU UNDERSTAND, MR. SIMMONS, THAT IF YOUR NEPHEW WAS
18 PROSECUTED IN SALUDA COUNTY, THE SAME OFFICE, PROSECUTOR'S OFFICE WOULD'VE
19 HANDLED HIS CASE?

20 THE JUROR: YES, SIR.

21 THE COURT: ANYTHING ABOUT THAT THAT AFFECTS YOUR ABILITY TO BE FAIR
22 AND IMPARTIAL?

23 THE JUROR: NO, SIR.

24 THE COURT: ANY DOUBT ABOUT THAT?

25 THE JUROR: NO, SIR.