

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

R. Lawton McIntosh, Circuit Court Judge

JEFF A. WEBB ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001694

A P P E N D I X

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1 STATE OF SOUTH) IN THE COURT OF GENERAL
 2 CAROLINA) SESSIONS
 3)
 4 COUNTY OF OCONEE) INDICTMENT NO:
 5 2009-GS-37-01279, 01282

5 STATE OF SOUTH)
 6 CAROLINA)
 7)
 8 PLAINTIFF,) TRANSCRIPT OF RECORD
 9) TRIAL - VOLUME I
 10 -VS-) MARCH 15, 2010
 11)
 12 JEFFREY A. WEBB,)
 13)
 14 DEFENDANT.)

MARCH 15 AND MARCH 16, 2010
 WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

DAVID WAGNER, ESQ.
 ATTORNEY FOR THE STATE

R. DANIEL DAY, ESQ.
 ATTORNEY FOR THE DEFENDANT

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Ocone County Clerk Of Court RANDOM STRIKE SHEET

2-A

3

JUDGE NAME : Alexander Stephens Macaulay

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : 2009GS3701279

DESCRIPTION : State V Jeffrey A. Webb

Trial

COURTROOM CTRM

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Udall, Cindy H	115	W	F	()	()	()	
2 Hall, Brenda C	39	B	F	()	()	()	
3 Jenkins, Tammy L	49	B	F	()	(X)	()	
4 Ferriouolo, Joseph A	31	W	M	()	(X)	()	
5 Stanton, Kathleen E	105	W	F	()	(X)	()	
6 Defore, Gregory S	27	W	M	(X)	()	()	
7 Gaines, Glenda L	33	B	F	()	()	()	
8 Jordan, Kristy D	52	W	F	()	()	()	
9 Price, Sue E	90	W	F	()	()	()	
10 Hoxit, William J	47	W	M	(X)	()	()	
11 Schaffer, Nancy K	98	W	F	()	(X)	()	
12 Myers, Matthew R	82	W	M	()	()	()	
13 Mcgarity, Loretta A	69	W	F	()	(X)	()	
14 Leroy, Patricia P	60	W	F	()	()	()	
15 Shirley, Phillip S	102	W	M	()	()	()	
16 Whiten, Johnnie B	126	W	M	(X)	()	()	
17 Long, Cynthia C	62	W	F	()	()	()	
18 Stratman, Scot M	107	W	M	()	()	()	
19 Tolbert, Ruth W	114	W	F	()	()	()	Forelady
20 Axelberd, Frederick J	4	W	M	()	()	()	
21 Collins, Benjie M	22	W	M	()	()	()	
22 Hartford, Donna L	43	W	F	()	()	()	
23 Mckinnon, Martha J	72	W	F	()	()	()	
24 Miller, Tammy G	74	W	F	()	()	()	

**Oconee County Clerk Of Court
RANDOM STRIKE SHEET**

2-B

JUDGE NAME : Alexander Stephens Macaulay**TRIAL TYPE :** Criminal**PANEL ID :** 2009GS3701279**DESCRIPTION :** State V Jeffrey A. Webb**Sorted by:** Random Nbr

Trial

COURTROOM CTRM

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Sanders, Deborah J	97	W	F	()	()	()	_____
26 Mason, Idella J	67	W	F	()	()	()	_____
27 Crawford, Peggy S	26	W	F	()	()	()	_____
28 Slavik, Sharon S	103	W	F	()	(X)	()	_____
29 Pitts, Harold R	89	W	M	(X)	()	()	_____
30 Morgan, Janice M	78	W	F	()	()	()	_____
31 Hammond, Brandon L	41	W	M	()	()	()	_____

Total Number of Jurors:**31****** END OF REPORT ****

Alternate

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **
2 (WHEREUPON, THE TRIAL OF THE CASE OF *THE*
3 *STATE OF SOUTH CAROLINA V JEFFREY A WEBB*
4 BEGAN ON MARCH 15TH, 2010, WITH ALL PARTIES
5 EXCEPT MR. R. DANIEL DAY AND THE DEFENDANT
6 BEING PRESENT, AS FOLLOWS:)

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

14 A TRIAL OF A CASE BEGINS WITH THE SELECTION OF A
15 JURY. BOTH THE STATE AND THE DEFENDANT ARE ENTITLED TO
16 JURORS WHO APPROACH THE CASE WITH AN OPEN MIND. THE
17 TRIAL JURY MUST BE AS FREE AS HUMANLY POSSIBLE FROM ANY
18 BIAS...

19 LET'S SEE. WHERE ARE MR. DAY AND THE DEFENDANT?

20 (DISCUSSION OFF THE RECORD.)

21 **THE COURT:** WELL, I CAN GO AHEAD AND GIVE YOU THE
22 IMMEDIATE INSTRUCTIONS.

23 AS I SAY, THE TRIAL JURY MUST BE AS FREE AS HUMANLY
24 POSSIBLE FROM ANY BIAS, PREJUDICE OR SYMPATHY FOR EITHER
25 SIDE OR FREE FROM ANY PRECONCEIVED IDEAS ON THE FACTS OF

1 THE CASE OR THE LAW ON THE CASE. THEREFORE, CERTAIN
2 QUESTIONS WILL BE ASKED OF ALL OF YOU, THE PETIT JURY
3 PANEL. THE QUESTIONS WHICH WILL BE ASKED ARE DESIGNED TO
4 ENSURE EACH SIDE HAS A FAIR AND IMPARTIAL JURY.

5 NOW, I MIGHT NOTE FURTHER, THAT IF ANY PERSON SHOULD
6 TALK WITH YOU OR --

7 (MR. DAY AND THE DEFENDANT ENTERED THE
8 COURTROOM.)

9 **THE COURT:** -- ATTEMPT TO TALK WITH YOU ABOUT ANY
10 CASE SCHEDULED FOR THIS TERM OF COURT, IT WOULD BE YOUR
11 SOLEMN DUTY TO IMMEDIATELY REPORT THE MATTER TO THE
12 COURT.

13 YES, MA'AM.

14 **PROSPECTIVE JUROR:** I KNOW SOMEBODY HERE AND I SPOKE
15 TO THEIR MOTHER BEFORE I CAME INTO THE COURTROOM.

16 **THE COURT:** ALL RIGHT. AND YOUR NAME, PLEASE,
17 MA'AM?

18 **PROSPECTIVE JUROR HARTFORD:** MY NAME IS DONNA
19 HARTFORD.

20 **THE COURT:** ALL RIGHT. I'M NOT EXACTLY SURE WHAT
21 THE CASE IS GOING TO BE, BUT I'LL BE ASKING QUESTIONS
22 LIKE THAT FOR YOU. AT THIS POINT DO YOU FEEL THAT YOU
23 COULD PUT OUT OF YOUR MIND ANYTHING YOU MIGHT KNOW ABOUT
24 THE CASE?

25 **PROSPECTIVE JUROR HARTFORD:** I DO BELIEVE SO, YES.

1 **THE COURT:** ALL RIGHT. VERY GOOD. THANK YOU,
2 MA'AM.

3 COULD I SEE THE COUNSEL, PLEASE?

4 (DISCUSSION AT SIDEBAR AMONG THE COURT,
5 MR. WAGNER AND MR. DAY.)

6 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN OF THE
7 JURY, WE WILL NOW BEGIN THE SELECTION OF THE TRIAL JURY
8 IN THE FIRST CASE. NOW, IF ANYBODY CANNOT HEAR ME, IF
9 YOUR WOULD PLEASE RAISE YOUR HAND. AS WE MENTIONED
10 EARLIER IN THE PROCESS, THE ACOUSTICS IN THIS COURTROOM
11 ARE NOT ALL THAT GOOD. SO IF YOU CANNOT HEAR ME, IF YOU
12 WOULD RAISE YOUR HAND OR IF YOU NEED FOR ME TO REPEAT
13 MYSELF OR TO SPEAK MORE CLEARLY, I'LL TRY TO DO THAT.
14 JUST RAISE YOUR HAND AT ANY TIME THAT YOU HAVE A PROBLEM.
15 NOW, MADAM SOLICITOR, IF YOU WOULD PLEASE, OR
16 MR. SOLICITOR, YOU CAN CALL YOUR FIRST CASE.

17 **MR. WAGNER:** THANK YOU, JUDGE. YOUR HONOR, THE
18 STATE WOULD CALL FOR TRIAL THE CASE OF 2009-1279 AND
19 1282, BOTH OF THOSE ARE INDICTMENTS FOR ARMED ROBBERY AND
20 POSSESSION OF A WEAPON DURING THE COMMISSION OF VIOLENT
21 CRIME AGAINST THE DEFENDANT, JEFFREY WEBB; AND ALSO
22 2009-1280 FOR DISCHARGING A FIREARM INTO A DWELLING.

23 **THE COURT:** LADIES AND GENTLEMEN, PLEASE GIVE ME
24 YOUR ATTENTION. WE ARE ABOUT TO COMMENCE THE TRIAL OF
25 THE CASE OF *THE STATE OF SOUTH CAROLINA VERSUS JEFFREY A.*

1 WEBB, WHO IS CHARGED IN INDICTMENT NUMBER 2009-GS-37-1279
2 WITH ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE
3 COMMISSION OF A VIOLENT CRIME; AND IN INDICTMENT NUMBER
4 2009-GS-37-1280, AN INDICTMENT FOR DISCHARGING FIREARMS
5 INTO A DWELLING; AND INDICTMENT NUMBER 2009-GS-37-1282,
6 AN INDICTMENT FOR ARMED ROBBERY AND POSSESSION OF A
7 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

8 THE STATE WILL BE REPRESENTED BY MR. WAGNER.

9 MR. WAGNER, IF YOU WOULD PLEASE STAND, INTRODUCE
10 YOURSELF AND ANYONE WHO WILL BE ASSISTING YOU IN THE
11 TRIAL OF THIS CASE.

12 MR. WAGNER: I'M DAVID WAGNER. I'M ONE OF THE
13 ASSISTANT SOLICITORS HERE IN OCONEE COUNTY. SEATED HERE
14 AT THE TABLE WITH ME IS CHRISSY ADAMS, THE SOLICITOR,
15 SHE'S MY BOSS; AND THE CHIEF INVESTIGATOR ON THIS CASE IS
16 SCOTT ARNOLD. THERE ARE A NUMBER OF WITNESSES ON THIS
17 CASE HERE THAT WILL STAND WHEN THEY ARE CALLED IF THEY'RE
18 HERE, TOO.

19 THE COURT: ALL RIGHT. THE DEFENDANT, JEFFREY A.
20 WEBB, IS REPRESENTED BY MR. DAY.

21 MR. DAY, IF WOULD PLEASE STAND AND INTRODUCE
22 YOURSELF, YOUR CLIENT, AND ANYONE WHO MIGHT BE ASSISTING
23 YOU IN THE TRIAL OF THE CASE.

24 MR. DAY: THANK YOU, YOUR HONOR.

25 I'M DANNY DAY. I'M WITH THE PUBLIC DEFENDER'S

1 OFFICE HERE IN OCONEE COUNTY. I REPRESENT JEFFREY WEBB
2 HERE. AND SEATED HERE AT THE TABLE WITH ME IS KEITH
3 DENNY, A NEW LAWYER WHO WILL BE OBSERVING THE TRIAL AND
4 WILL BE SEATED WITH ME HERE.

5 **THE COURT:** MR. DENNY, IF YOU WOULD PLEASE STAND.

6 (MR. DENNY STANDS AND FACES THE JURY PANEL.)

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

8 AND ANY TIME I INTRODUCE ANYONE TO THE JURY, TO
9 INCLUDE THE POTENTIAL WITNESSES IN THIS CASE, I'M GONNA
10 ASK THEM IF THEY ARE IN THE COURTROOM TO STAND AND LOOK
11 UPON THE JURY. THE REASON FOR THAT, OF COURSE, IS IN
12 THESE DAYS WE MIGHT NOT RECOGNIZE THE NAMES BUT WE WILL
13 RECOGNIZE THE FACE, SO WE WANT TO BE SURE THAT ALL OF THE
14 QUESTIONS ARE APPROPRIATELY RESPONDED TO.

15 NOW, LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, I
16 NOW DIRECT YOU TO THE FOLLOWING QUESTIONS. IS THERE ANY
17 MEMBER OF THE JURY PANEL RELATED BY BLOOD OR MARRIAGE OR
18 CLOSE PERSONAL FRIENDS OR BUSINESS ASSOCIATES OF THE
19 DEFENDANT, JEFFREY A. WEBB? IF SO, PLEASE STAND. ANY
20 MEMBER OF THE JURY PANEL RELATED BY BLOOD OR MARRIAGE,
21 NOW OR FORMERLY, OR A CLOSE PERSONAL FRIEND OR BUSINESS
22 ASSOCIATE OF THE DEFENDANT, JEFFREY A. WEBB, IF YOU WILL
23 PLEASE STAND AT THIS TIME. (NO RESPONSE.)

24 WAS ANY MEMBER OF THE JURY PANEL A MEMBER OF THE
25 GRAND JURY FOR OCONEE COUNTY IN THE YEAR 2009 THAT

1 RETURNED THE INDICTMENTS IN THIS CASE, IF SO, PLEASE
2 STAND. (NO RESPONSE.)

3 NOW I'M GOING TO BE CALLING OUT A LIST OF POTENTIAL
4 WITNESSES IN THIS CASE. WHEN I SAY POTENTIAL WITNESSES,
5 THESE ARE WITNESSES WHO MAY BE CALLED BUT THEY DO NOT
6 HAVE TO BE CALLED IN THE TRIAL OF THE CASE. AND, AS I
7 SAID, IF THEY ARE IN THE COURTROOM AT THE TIME THEIR
8 NAMES ARE CALLED, IF THEY WOULD PLEASE STAND.

9 SERGEANT SCOTT ARNOLD. IF YOU WOULD, AGAIN, LOOK ON
10 THE JURY.

11 (SERGEANT SCOTT ARNOLD STANDS AND FACES THE
12 JURY PANEL.)

13 **THE COURT:** THANK YOU, SIR.

14 SERGEANT MIKE MCGOWAN.

15 DEPUTY BRANDON MEADOWS.

16 CORPORAL JARRETT PRICE.

17 JEREMY CHAPMAN.

18 (JEREMY CHAPMAN STOOD AND FACED THE JURY
19 PANEL.)

20 **THE COURT:** THANK YOU, SIR.

21 BRANDON LONG.

22 (BRANDON LONG STOOD AND FACED THE JURY
23 PANEL.)

24 **THE COURT:** THANK YOU, SIR.

25 SHANE ELLIOTT.

1 (SHANE ELLIOTT STOOD AND FACED THE JURY
2 PANEL.)

3 **THE COURT:** THANK YOU, SIR.

4 MARIA VILLEGAS.

5 (MS. MARIA VILLEGAS STOOD AND FACED THE JURY
6 PANEL.)

7 **THE COURT:** DID I PRONOUNCE IT CORRECT?

8 **MS. VILLEGAS:** YES, SIR.

9 **THE COURT:** THANK YOU, MA'AM.
10 GENTRY HAWK.

11 (MR. GENTRY HAWK STOOD AND FACED THE JURY
12 PANEL.)

13 **THE COURT:** THANK YOU, SIR.

14 LAURA MEADOWS.

15 (MS. LAURA MEADOWS STOOD AND FACED THE JURY
16 PANEL.)

17 **THE COURT:** THANK YOU, MA'AM.

18 JASON MCCALL.

19 (MR. JASON MCCALL STOOD AND FACED THE JURY
20 PANEL.)

21 **THE COURT:** THANK YOU, SIR.

22 NATHAN MCCALL.

23 (MR. NATHAN MCCALL STOOD AND FACED THE JURY
24 PANEL.)

25 **THE COURT:** THANK YOU, SIR.

1 JUSTIN CRENSHAW.

2 CHAD CRENSHAW.

3 (MR. CHAD CRENSHAW STOOD AND FACED THE JURY
4 PANEL.)

5 **THE COURT:** THANK YOU, SIR.

6 BARRY OWENS.

7 RYANNE NICOLE SMITH.

8 ALL RIGHT. IS ANY MEMBER OF THE JURY PANEL RELATED
9 BY BLOOD OR MARRIAGE, CLOSE PERSONAL FRIENDS OR BUSINESS
10 ASSOCIATE WITH ANY OF THE POTENTIAL WITNESSES IN THIS
11 CASE? SERGEANT SCOTT ARNOLD, SERGEANT MIKE MCGOWAN,
12 DEPUTY BRANDON MEADOWS, CORPORAL JARRETT PRICE, MR. SHANE
13 ELLIOTT, MS. MARIA VILLEGAS, MS. LAURA MEADOWS, MR. JASON
14 MCCALL, MR. NATHAN MCCALL, MS. RYANNE NICOLE SMITH,
15 MR. JERRY CHAPMAN, MR. BRADLEY -- BRANDON LONG, MR. BARRY
16 OWENS, MR. GENTRY HAWK, MR. JUSTIN CRENSHAW, MR. CHAD
17 CRENSHAW? IF SO, PLEASE STAND. IS ANY MEMBER OF THE
18 JURY PANEL WHO IS RELATED BY BLOOD OR MARRIAGE, CLOSE
19 PERSONAL FRIENDS OR BUSINESS ASSOCIATE OF ANY OF THE
20 POTENTIAL WITNESSES IN THIS CASE?

21 YES, MA'AM. YOUR NAME, PLEASE?

22 **POTENTIAL JUROR:** RHONDA LOUDERMILK.

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

24 **POTENTIAL JUROR LOUDERMILK:** I'M RELATED TO SHANE
25 ELLIOTT BY MARRIAGE, WE'RE FIRST COUSINS.

1 **THE COURT:** ALL RIGHT. IF SHANE ELLIOTT SHOULD BE A
2 WITNESS IN THIS CASE, WOULD THAT IN ANY WAY AFFECT YOUR
3 ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
4 AND IMPARTIAL TRIAL?

5 **PROSPECTIVE JUROR LOUDERMILK:** I THINK SO.

6 **THE COURT:** IT WOULD AFFECT YOU?

7 **PROSPECTIVE JUROR LOUDERMILK:** YES, SIR.

8 **THE COURT:** YES, MA'AM. ALL RIGHT. WELL, YOU WILL
9 BE EXCUSED ON THE TRIAL OF THIS CASE BUT YOU -- EXCUSE
10 ME -- BUT YOU WILL REMAIN WITH US.

11 **PROSPECTIVE JUROR LOUDERMILK:** OH, OKAY.

12 **THE COURT:** THIS WILL NOT BE THE ONLY CASE THIS
13 WEEK.

14 ALL RIGHT. ANYONE ELSE? (NO RESPONSE.)

15 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED
16 AN OPINION ABOUT ANY MATTER THAT MIGHT BE INVOLVED IN
17 THIS CASE? IF SO, PLEASE STAND. (NO RESPONSE.)

18 IS ANY MEMBER OF THE JURY PANEL AWARE OF ANY
19 INTEREST, BIAS OR PREJUDICE TOWARDS EITHER THE DEFENDANT
20 OR THE STATE OF SOUTH CAROLINA? IF SO, PLEASE STAND. (NO
21 RESPONSE.)

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

1 ANY ADDITIONAL QUESTIONS FROM THE STATE?

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

3 **THE COURT:** FROM THE DEFENSE?

4 **MR. DAY:** NONE, YOUR HONOR, THANK YOU.

5 **THE COURT:** VERY GOOD. NOW, LADIES AND GENTLEMEN OF
6 THE JURY PANEL, THE WAY WE SELECT A JURY IN GENERAL
7 SESSIONS COURT IS THAT THE CLERK OF COURT WILL CALL YOUR
8 NAMES ACCORDING TO A LIST THAT HAS BEEN DRAWN RANDOMLY BY
9 THE COMPUTER, AND AS YOUR NAME IS CALLED, IF YOU WOULD
10 PLEASE COME FORWARD AND STAND AT THE FRONT OF THE ROOM
11 WHERE MR. BIBB OR THE BAILIFF IS NOW STANDING AND FACE
12 BACK TOWARDS THE BACK OF THE ROOM.

13 THE STATE WILL GO FIRST AND THEN WILL EITHER SAY
14 "PRESENT THE JUROR" OR "EXCUSE THE JUROR." IF THE JUROR
15 IS PRESENTED, THEN THE DEFENSE WILL GO NEXT AND WILL
16 EITHER SAY "SWEAR THE JUROR" OR "EXCUSE THE JUROR." AND
17 IF YOU ARE SELECTED, I WANT YOU TO BRING ALL YOUR THINGS
18 WITH YOU AS YOU COME FORWARD WHEN YOUR NAME IS CALLED,
19 BRING ANYTHING YOU HAVE WITH YOU, ANY PERSONAL ITEMS.

20 AND I THINK THIS IS A FIVE-AND-TEN CASE; IS THAT
21 CORRECT, MR. WAGNER?

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

23 **THE COURT:** MR. DAY?

24 **MR. DAY:** YES, SIR.

25 **THE COURT:** VERY GOOD. ALL RIGHT.

1 MADAM CLERK, GIVE US A JURY.

2 (DISCUSSION OFF THE RECORD.)

3 **THE COURT:** NOW, MADAM CLERK, IF YOU WOULD PLEASE
4 GIVE US A JURY.

5 **THE CLERK:** LADIES AND GENTLEMEN, AS I CALL YOUR
6 NAME, IF YOU WOULD PLEASE COME FORWARD STANDING AT THIS
7 PODIUM AND FACING THE AUDIENCE.

8 NUMBER 115, CINDY UDALL (WHITE FEMALE).
9 WHAT SAYETH THE STATE?

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

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

12 **MR. DAY:** PLEASE SEAT THE JUROR.

13 **THE CLERK:** PLEASE TAKE A SEAT IN THE JURY-BOX.
14 NUMBER 39, BRENDA HALL (BLACK FEMALE).

15 WHAT SAYETH THE STATE?

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

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

18 **MR. DAY:** PLEASE SEAT MS. HALL.

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

21 NUMBER 49, TAMMY JENKINS (BLACK FEMALE).
22 WHAT SAYETH THE STATE?

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

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

25 **MR. DAY:** PLEASE EXCUSE MS. JENKINS IN THIS CASE.

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

3 NUMBER 31, JOSEPH FERRIOUOLO (WHITE MALE).

4 WHAT SAY THE STATE?

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

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

7 **MR. DAY:** EXCUSE MR. FERRIOUOLO IN THIS CASE,
8 PLEASE.

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

11 NUMBER 105, KATHLEEN STANTON (WHITE FEMALE).

12 WHAT SAYETH THE STATE?

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

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

15 **MR. DAY:** EXCUSE MS. STANTON IN THIS CASE, PLEASE.

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

18 NUMBER 27, GREGORY DEFORE (WHITE MALE).

19 WHAT SAYETH THE STATE?

20 **MR. WAGNER:** PLEASE EXCUSE THE JUROR ON THIS CASE.

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

23 NUMBER 33, GLENDA GAINES (BLACK FEMALE).

24 WHAT SAYETH THE STATE?

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

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

2 **MR. DAY:** PLEASE SEAT MS. GAINES, PLEASE.

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

5 NUMBER 52, KRISTY JORDAN (WHITE FEMALE).

6 WHAT SAYETH THE STATE?

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

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

9 **MR. DAY:** PLEASE SEAT MS. JORDAN, PLEASE.

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

12 NUMBER 90, SUE PRICE (WHITE FEMALE).

13 WHAT SAYETH THE STATE?

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

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

16 **MR. DAY:** PLEASE SEAT MS. PRICE.

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

19 NUMBER 47, WILLIAM HOXIT (WHITE MALE).

20 WHAT SAYETH THE STATE?

21 **MR. WAGNER:** PLEASE EXCUSE THE JUROR ON THIS CASE,
22 PLEASE.

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

25 NUMBER 98, NANCY SCHAFER (WHITE FEMALE).

1 WHAT SAYETH THE STATE?

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

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

4 **MR. DAY:** EXCUSE MS. SCHAFER IN THIS CASE.

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

7 NUMBER 82, MATTHEW MYERS (WHITE MALE.)

8 WHAT SAYETH THE STATE?

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

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

11 **MR. DAY:** PLEASE SEAT MR. MYERS.

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

14 NUMBER 69, LORETTA MCGARITY (WHITE FEMALE).

15 WHAT SAYETH THE STATE?

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

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

18 **MR. DAY:** EXCUSE MS. MCGARITY IN THIS CASE.

19 **THE CLERK:** NUMBER 60, PATRICIA LEROY (WHITE
20 FEMALE).

21 WHAT SAYETH THE STATE?

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

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

24 **MR. DAY:** PLEASE SEAT MS. LEROY, PLEASE.

25 **THE CLERK:** MA'AM, IF YOU WOULD PLEASE TAKE A SEAT

1 IN THE JURY-BOX.

2 NUMBER 102, PHILLIP SHIRLEY (WHITE MALE).

3 WHAT SAYETH THE STATE?

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

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

6 **MR. DAY:** PLEASE SEAT MR. SHIRLEY.

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

9 126, JOHNNIE WHITEN (WHITE MALE).

10 WHAT SAYETH THE STATE?

11 **MR. WAGNER:** PLEASE EXCUSE THE JUROR ON THIS CASE.

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

14 NUMBER 62, CYNTHIA LONG (WHITE FEMALE).

15 WHAT SAYETH THE STATE?

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

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

18 **MR. DAY:** PLEASE SEAT MS. LONG, PLEASE.

19 **THE CLERK:** NUMBER 107, SCOT STRATMAN (WHITE MALE).

20 WHAT SAYETH THE STATE?

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

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

23 **MR. DAY:** PLEASE SEAT MR. STRATMAN.

24 **THE CLERK:** PLEASE TAKE A SEAT IN THE JURY-BOX.

25 NUMBER 114, RUTH TOLBERT (WHITE FEMALE).

1 WHAT SAYETH THE STATE?

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

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

4 **MR. DAY:** PLEASE SEAT MS. TOLBERT.

5 **THE CLERK:** NUMBER 4, FREDERICK AXELBERD^{G?} (WHITE
6 MALE.)

7 WHAT SAYETH THE STATE?

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

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

10 **MR. DAY:** PLEASE SEAT MR. AXELBERD^{O?} PLEASE.

11 **THE CLERK:** THIS WILL BE FOR THE ALTERNATE.

12 NUMBER 103, SHARON SLAVIK (WHITE FEMALE).

13 **THE COURT:** TWO AND ONE ON THE ALTERNATES.

14 **THE CLERK:** WHAT SAY THE STATE?

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

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

17 **MR. DAY:** EXCUSE MS. SLAVIK IN THIS CASE, PLEASE.

18 **THE CLERK:** MA'AM, YOU HAVE BEEN EXCUSED IN THIS
19 CASE, YOU MAY BE SEATED.

20 NUMBER 89, HAROLD PITTS (WHITE MALE).

21 WHAT SAYETH THE STATE?

22 **MR. WAGNER:** PLEASE EXCUSE THE JUROR ON THIS CASE.

23 **THE CLERK:** NUMBER 78, JANICE MORGAN (WHITE FEMALE).

24 WHAT SAYETH THE STATE FOR CAUSE?

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

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

2 **MR. DAY:** PLEASE SEAT MS. MORGAN.

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

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

7 **MR. WAGNER:** NONE FROM THE STATE, YOUR HONOR.

8 **THE COURT:** FROM THE DEFENSE?

9 **MR. DAY:** NONE, YOUR HONOR.

10 **THE COURT:** VERY GOOD.

11 MS. TOLBERT, I'LL ASK YOU TO SERVE AS THE FOREPERSON
12 OF THIS JURY, SO YOU WILL SIT IN THE FIRST SEAT, FRONT
13 ROW. NOT NOW, BUT WHEN YOU COME BACK FROM THE JURY ROOM
14 BECAUSE I'M GOING TO EXCUSE YOU FOR A FEW MINUTES.

15 AND, MS. MORGAN, YOU WILL ALWAYS SIT IN THAT SEAT.
16 THOSE ARE THE ONLY TWO RESERVED SEATS: THE FIRST SEAT ON
17 THE FRONT ROW AND THE END SEAT ON THE SECOND ROW.
18 EVERYONE ELSE CAN SIT WHEREVER THEY WOULD IN THE
19 JURY-BOX.

20 NOW, I HAVE SOME MATTERS I NEED TO TAKE UP WITH THE
21 ATTORNEYS, AND -- WELL, LET ME SEE.

22 APPROACH, IF YOU WOULD, PLEASE.

23 (DISCUSSION AT SIDEBAR AMONG THE COURT,

24 MR. WAGNER AND MR. DAY.)

25 **THE COURT:** ALL RIGHT. NOW, MADAM FORELADY, I TELL

1 YOU WHAT I'M GOING TO DO IS WE'RE GOING TO TRY TO DRAW
2 ANOTHER JURY IN ANOTHER CASE THIS WEEK, AND NOT BEGIN
3 THIS ONE AT THIS TIME. WE'LL BEGIN AT 2:30, THOUGH. SO
4 I'LL ASK YOU TO GO WITH THE BAILIFF AND HE WILL SHOW YOU
5 THE JURY ROOM THAT YOU WILL BE USING DURING THE TRIAL OF
6 THIS CASE. AND THEN AFTER YOU FIND THE JURY ROOM AND YOU
7 ARE EXCUSED AND SHOWN HOW TO GET BACK TO THE JURY ROOM,
8 THEN YOU WILL BE EXCUSED UNTIL 2:30.

9 NOW, MY INSTRUCTIONS THROUGHOUT THE TRIAL IN THIS
10 CASE AND ANY CASE THAT'S TRIED THIS WEEK IS GOING TO BE
11 THAT YOU ARE NOT TO DISCUSS IT AMONG YOURSELVES OR PERMIT
12 ANYONE TO DISCUSS IT WITH YOU. THE REASON FOR THAT IS
13 THAT YOU NEVER KNOW WHAT'S GONNA BE THE MOST IMPORTANT
14 PART OF THE CASE: IT COULD BE THE OPENING STATEMENTS BY
15 THE ATTORNEYS, THE FIRST WITNESS OR THE LAST WITNESS THAT
16 WAS CALLED, THE CLOSING ARGUMENTS BY THE ATTORNEYS, AND
17 THEN THE CHARGE ON THE LAW. IN OTHER WORDS, IT FOLLOWS A
18 PARTICULAR PROCEDURE. SO YOU NEVER KNOW WHAT'S GONNA BE
19 THE MOST IMPORTANT THING TO YOU OR THE PART THAT WILL
20 IMPRESS YOU THE MOST, SO YOU NEED AN OPEN MIND THROUGHOUT
21 THE TRIAL OF THE CASE.

22 AS I SAY, MY INSTRUCTIONS THROUGHOUT THE TRIAL OF
23 THE CASE WILL BE NOT TO DISCUSS IT IN ANY WAY, TO INCLUDE
24 PERSONALITIES OR ANYTHING ELSE. IN OTHER WORDS, YOU CAN
25 TALK ABOUT ANYTHING ELSE BUT THE TRIAL OF THIS PARTICULAR

1 CASE.

2 AND SO WITH THAT I'M GOING TO EXCUSE YOU. BUT WHEN
3 YOU COME BACK, MADAM FORELADY, IF YOU WOULD SIT IN THE
4 FRONT SEAT; AND MADAM ALTERNATE, IF YOU WOULD SIT IN THAT
5 LAST SEAT. VERY GOOD. I LOOK FORWARD TO WORKING WITH
6 YOU AND I'LL SEE YOU AT 2:30.

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

9 (THE JURY WAS EXCUSED FOR LUNCH AND LEFT THE
10 COURTROOM AT APPROXIMATELY 11:51 A.M. AND THE
11 COURT CONSIDERED OTHER MATTERS.)
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1 AFTERNOON PROCEEDINGS

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3 (WHEREUPON, THE PROCEEDINGS IN *THE STATE OF*
4 *SOUTH CAROLINA V. JEFFREY A. WEBB* RESUMED
5 WITH ALL PARTIES PRESENT AT APPROXIMATELY
6 2:37 P.M.)

7 **THE COURT:** DOES THE STATE HAVE ANY EXHIBITS THEY
8 PLAN TO USE?

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

10 **THE COURT:** ALL RIGHT. LET'S HAVE THEM MARKED FOR
11 IDENTIFICATION, AND IF YOU CAN AGREE ON THEM, WE'LL GO
12 AHEAD AND ADMIT THEM. OR ANY THAT YOU CAN AGREE ON, GO
13 AHEAD.

14 (STATE'S EXHIBIT 1, 9-1-1 CALL DISK
15 7-23-2009, WAS MARKED FOR IDENTIFICATION.)
16 (STATE'S EXHIBIT 2 A THROUGH 2 P,
17 PHOTOGRAPHS, WERE MARKED FOR IDENTIFICATION.)
18 (STATE'S EXHIBIT 3, BULLET, WAS MARKED FOR
19 IDENTIFICATION.)
20 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
21 RECORD.)

22 **THE COURT:** ARE YOU STILL LOOKING AT THE PHOTOS?

23 **MR. DAY:** WE HAVE NO OBJECTION TO THEM.

24 **THE COURT:** ALL RIGHT. THE STATE HAS PROFFERED
25 EXHIBITS -- WHAT ARE THE NUMBERS?

1 (COURT REPORTER CONFERRED WITH THE COURT OFF
2 THE RECORD.)

3 **THE COURT:** ANY OBJECTIONS TO THE VIDEO?

4 **MR. DAY:** TO THE 9-1-1 CALL?

5 **THE COURT:** CORRECT.

6 **MR. DAY:** NO.

7 **THE COURT:** OH, I SAID VIDEO. IT'S AN AUDIO?

8 **MR. DAY:** AUDIO.

9 **MR. WAGNER:** IT'S AUDIO, JUDGE. AND JUST FOR
10 CLARIFICATION IT'S ACTUALLY TWO CALLS, TWO DIFFERENT
11 CALLS, ONE RIGHT AFTER IT HAPPENED AND ONE A SHORT TIME
12 LATER.

13 **MR. DAY:** I'VE HEARD THEM. THEY'VE GIVEN ME COPIES,
14 YOUR HONOR, AND I'VE LISTENED TO THEM.

15 **THE COURT:** ALL RIGHT. NO OBJECTION TO STATE'S
16 EXHIBIT NUMBER 1, AN AUDIO OF A RECORDING.

17 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT 1.)

18 **THE COURT:** STATE'S EXHIBITS 2-A THROUGH -P ARE A
19 SERIES OF PHOTOGRAPHS. ANY OBJECTIONS?

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

21 **THE COURT:** ALL RIGHT. WITHOUT OBJECTION, STATE'S
22 EXHIBITS 1 AND 2-A THROUGH -P WILL BE ADMITTED.

23 (STATE'S EXHIBIT 2-A THROUGH 2-P WAS RECEIVED
24 IN EVIDENCE.)

25 **THE COURT:** ALL RIGHT. ANYTHING ELSE?

1 **MR. WAGNER:** STATE'S EXHIBIT 3 IS A FIRED BULLET
2 RECOVERED. A FIRED BULLET.

3 **THE COURT:** A SPENT BULLET?

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

5 **THE COURT:** HAVE I GOT THAT RIGHT?

6 **MR. DAY:** YES, SIR. AND I HAVE NO OBJECTION, YOUR
7 HONOR. I'VE SEEN IT, THE OFFICERS HAVE SHOWN IT TO ME,
8 AND THE PICTURES OF IT, BASED UPON THE FACT THAT IT IS A
9 SPENT ROUND.

10 **THE COURT:** VERY GOOD. STATE'S EXHIBIT 3 WILL BE
11 ADMITTED WITHOUT OBJECTION.

12 (STATE'S EXHIBIT 3, SPENT BULLET, WAS
13 RECEIVED IN EVIDENCE.)

14 **THE COURT:** ANYTHING ELSE?

15 **MR. WAGNER:** NO, SIR.

16 **THE COURT:** ALL RIGHT. DO YOU WANT TO TAKE YOUR
17 LEAD WITNESS FIRST?

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

19 **THE COURT:** I MEAN THE ONE WE DISCUSSED, AND THEN
20 WE'LL GET INTO THE QUESTIONS ABOUT THE OTHER ONE?

21 **MR. WAGNER:** I'D RATHER START WITH -- I'D RATHER
22 JUST DO IT IN THE ORDER I HAD, JUDGE, AND I'D PROBABLY
23 WANT TO PUT THE VICTIM UP FIRST.

24 **THE COURT:** THE REASON I ASK THAT IS BECAUSE THERE
25 ARE GONNA BE SOME MOTIONS ABOUT EXAMINING THE WITNESSES

1 AND I WOULD LIKE TO TAKE IT UP BEFORE WE CALL THEM RATHER
2 THAN BRING THE JURY OUT AND THEN CALL HIM.

3 **MR. WAGNER:** WELL, WE COULD GO AHEAD -- I GUESS WE
4 COULD GO AHEAD AND START AND I COULD CALL THE ONE WITNESS
5 OUT OF ORDER. SHE'S HERE AND SHE'S PREGNANT, SO THAT
6 WOULD BE CONVENIENT FOR HER. THEN WE'LL GET INTO THOSE
7 ISSUES RIGHT AFTER SHE'S FINISHED.

8 **THE COURT:** SOUNDS GOOD. ALL RIGHT. ANYTHING FROM
9 THE STATE BEFORE WE BRING THE JURY BACK?

10 **MR. WAGNER:** NO, SIR.

11 **THE COURT:** ANYTHING FROM THE DEFENSE?

12 **MR. DAY:** NO, YOUR HONOR.

13 **THE COURT:** VERY GOOD. ASK THE JURY TO JOIN US.

14 (THE JURY ENTERED THE COURTROOM AT
15 APPROXIMATELY 2:58 P.M.)

16 **THE COURT:** ALL RIGHT. MADAM CLERK, IF YOU WOULD
17 SWEAR THE JURY.

18 AND LET THE RECORD REFLECT THE JURY AND ALTERNATE
19 ARE IN THE JURY-BOX.

20 **THE CLERK:** LADIES AND GENTLEMEN, IF YOU WOULD
21 PLEASE STAND. RAISE YOUR RIGHT HAND.

22 (WHEREUPON, THE JURY WAS SWORN.)

23 **THE CLERK:** PLEASE BE SEATED.

24 PRELIMINARY INSTRUCTIONS BY THE COURT TO THE JURY:

25 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF

1 THE JURY, I'M SURE THAT EACH OF YOU NOW FULLY APPRECIATES
2 THAT THIS COURT, THE COURT OF GENERAL SESSIONS FOR OCONEE
3 COUNTY, EXISTS FOR THE PURPOSE OF RESOLVING QUESTIONS OF
4 ALLEGED CRIMINAL CONDUCT ARISING BETWEEN THE STATE OF
5 SOUTH CAROLINA AND THE DEFENDANT.

6 IT IS A GUARANTEED CHARGE OF EVERY CITIZEN THAT A
7 CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN COURT
8 ACCORDING TO CERTAIN RULES OF PROCEDURE. THE STATE HAS
9 NOT ONLY AN EQUAL RIGHT BUT A DUTY TO PRESENT A CRIMINAL
10 CHARGE IN OPEN COURT ACCORDING TO THE SAME RULES OF
11 PROCEDURE.

12 EACH OF THE PARTIES, THEREFORE, BOTH THE STATE AND
13 THE DEFENDANT, THEN HAVE AN EQUAL RIGHT TO THE
14 OPPORTUNITY OF THIS JUDICIAL PROCEEDING AND TO HAVE YOU
15 AS THE JURY SELECTED AND NOW SWORN FOR THE TRIAL OF THIS
16 CASE. ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS
17 THE JURY LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW
18 TAKEN TO WELL AND TRULY TRY AND DETERMINE THE FACTS OF
19 THIS CASE.

20 THAT OATH IN A VERY ESSENTIAL WAY SAYS THAT YOU ARE
21 THE SOLE JUDGES OF THE FACTS IN THIS CASE. OBVIOUSLY ANY
22 CASE TRIED IN COURT WILL INVOLVE A QUESTION ABOUT WHAT
23 HAPPENED OR HOW SOMETHING CAME TO HAPPEN OR WHOM, IF
24 ANYONE, DID ANYTHING IN A PARTICULAR OCCURRENCE OR
25 CIRCUMSTANCE. FROM THIS POINT FORWARD, THEN, NO ONE

1 CONCERNED WITH THIS TRIAL HAS THE RIGHT TO DECIDE ANY
2 QUESTIONS OF FACT IN THIS TRIAL OR THE TRUTH OF IT EXCEPT
3 FOR YOU, THE JURY. THE FACTS THEN ARE FOR YOUR
4 RESOLUTION AND YOUR DECISION AND YOURS ALONE.

5 AND AFTER YOU HEAR ALL OF THE EVIDENCE IN THE CASE,
6 THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT
7 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
8 DECIDING THE WEIGHT AND THE BELIEVABILITY OF EACH PART OF
9 THE EVIDENCE AND BY APPLYING THE LAW OF THE CASE THERETO.

10 NOW, AS TRIAL JUDGE I AM THE JUDGE OF THE LAW IN THE
11 CASE. IT IS ALSO MY RESPONSIBILITY AMONG OTHER DUTIES TO
12 PRESIDE OVER THIS TRIAL, TO RULE ON THE ADMISSIBILITY OF
13 EVIDENCE DURING THE PROGRESS OF THE TRIAL, AND TO STATE
14 TO YOU, THE JURY, THE LAW APPLICABLE TO THE CASE. THE
15 CONSTITUTION OF SOUTH CAROLINA MANDATES THAT I AS THE
16 TRIAL JUDGE CANNOT DIRECTLY OR INDIRECTLY COMMENT ABOUT
17 THE FACTS IN THIS CASE.

18 THE PROCESS OF A VERDICT THEN IS SIMPLY THAT YOU,
19 THE JURY, FIRST DETERMINE WHAT IS THE TRUTH OF THE FACTS
20 AND THEN APPLY TO THAT TRUE STATE OF FACTS THAT PRINCIPLE
21 OF THE LAW APPLICABLE, AND BY THEN BY THAT PROCESS
22 DETERMINE AND REPORT TO THIS COURT YOUR FINAL VERDICT IN
23 THIS CASE, SPEAKING THE TRUTH OF THE CASE AS YOU
24 DETERMINE IT.

25 NOW, I'LL MORE FULLY AND COMPLETELY STATE TO YOU THE

1 PRINCIPLES OF LAW APPLICABLE TO THIS CASE BEFORE IT IS
2 SUBMITTED TO YOU FOR YOUR DECISION. HOWEVER, THERE ARE
3 CERTAIN PRINCIPLES OF THE LAW APPLICABLE TO THE FRAMEWORK
4 OF EVERY CASE IN GENERAL SESSIONS COURT, AND IN A BASIC
5 WAY I WILL EXPRESS THEM TO YOU.

6 FIRST, THE DEFENDANT HAS PLED NOT GUILTY TO THE
7 CHARGES CONTAINED IN THE INDICTMENT. NOW, AN INDICTMENT
8 IN A CASE IS NOT EVIDENCE, IT IS SIMPLY THE WRITTEN
9 INSTRUMENT THAT CONTAINS THE CHARGE OR CHARGES AGAINST
10 THE DEFENDANT AND IT SERVES AS THE FORMAL DOCUMENT BY
11 WHICH THE CASE IS PROCESSED INTO THIS COURT.

12 THE PLEA OF NOT GUILTY PLACES UPON THE STATE THE
13 BURDEN OF PROOF IN THE CASE. AS TO WHAT IS MEANT BY THE
14 BURDEN OF PROOF, THE DEFENDANT IS PRESUMED IN LAW
15 INNOCENT OF ALL CHARGES CONTAINED IN EACH OF THE
16 INDICTMENTS. THE BURDEN OF PROOF REQUIRES THE STATE TO
17 PROVE GUILT BEYOND A REASONABLE DOUBT, AND THEREFORE
18 CONSISTENT WITH THAT BURDEN THE DEFENDANT OR THE ACCUSED
19 PARTY SHALL BE PRESUMED TO BE INNOCENT, AND THAT
20 PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL A
21 VERDICT OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS
22 THE JURY CONCLUDES THAT THE STATE HAS SATISFIED IT'S
23 OBLIGATION TO PROVE THE DEFENDANT'S GUILT BEYOND A
24 REASONABLE DOUBT.

25 NOW, THE TERM "REASONABLE DOUBT" MEANS THE KIND OF

1 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
2 ACT.

3 THIS CASE WILL BE OPENED BY THE SOLICITOR, AFTER
4 WHICH THE SAME OPPORTUNITY WILL BE AFFORDED TO THE
5 DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL THE
6 EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE
7 STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO THE
8 JURY THEIR RESPECTIVE POSITIONS, AFTER WHICH THE COURT
9 WILL MORE FULLY STATE THE APPLICABLE LAW.

10 OBVIOUSLY, ALL PARTS OF THE CASE ARE IMPORTANT. YOU
11 DO NOT KNOW WHICH WITNESS IN A CASE WILL MOST IMPRESS
12 YOU, WHETHER IT BE THE FIRST WITNESS OR THE LAST WITNESS.
13 IN REACHING YOUR FINAL CONCLUSIONS, YOU WILL NEED THE
14 GUIDANCE AND THE JUDGMENT OF THE OTHER JURORS, YOU WILL
15 NEED GUIDANCE OF THE PRINCIPLES OF LAW THAT WILL BE
16 STATED TO YOU BY THE COURT.

17 FOR ALL OF THESE REASONS, THEN, IF WE HAVE ANY
18 RECESS PERIODS WHEN YOU RETIRE TO YOUR JURY ROOM OR
19 DURING AN OVERNIGHT OR MEAL RECESS, THE COURT INSTRUCTS
20 YOU THAT YOU MUST NOT UNDERTAKE TO DISCUSS THIS CASE
21 AMONG YOURSELVES UNTIL THE CASE IS FINALLY GIVEN TO YOU
22 FOR YOUR DELIBERATIONS, NOR ARE YOU TO DISCUSS THIS CASE
23 WITH ANYONE OR PERMIT ANYONE ELSE TO DISCUSS THIS CASE
24 WITH YOU. IF THEY SHOULD TRY TO DO SO, YOU SHOULD REPORT
25 THEM IMMEDIATELY SO I MIGHT TAKE THE APPROPRIATE ACTION.

1 AND I MIGHT NOTE THAT THE VERDICT IN THIS CASE MUST
2 BE UNANIMOUS, THE UNANIMOUS VERDICT OF ALL MEMBERS OF THE
3 JURY, ALL 12 MEMBERS THAT WILL BE SITTING IN
4 DELIBERATION.

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

12 SECOND, FROM TIME TO TIME AN ATTORNEY MAY OBJECT TO
13 SOME BIT OF TESTIMONY AND EVIDENCE WHICH THE OTHER SIDE
14 IS SEEKING TO PRESENT. AS IN SPORTS OR BUSINESS OR ANY
15 OTHER STRUCTURED ACTIVITY, THERE ARE CERTAIN RULES THAT
16 BOTH SIDES MUST OBEY IN PRESENTING EVIDENCE. THESE RULES
17 HAVE A DEFINITE PURPOSE. THEY ENSURE THAT THE
18 INFORMATION YOU RECEIVE IS THE MOST TRUSTWORTHY AND
19 RELIABLE EVIDENCE AVAILABLE, AND AN OBJECTION IS A
20 PROCEDURE WE USE FOR AN ATTORNEY TO CALL A POSSIBLE
21 VIOLATION OF THE RULES TO THE COURT'S ATTENTION, AND FOR
22 THIS REASON YOU SHOULD NOT HOLD AN ATTORNEY'S OBJECTION
23 AGAINST HIS CLIENT, NOR SHOULD YOU CONCLUDE FROM MY
24 RULING ON THE OBJECTION THAT I FAVOR ONE SIDE OR THE
25 OTHER.

1 FINALLY, I WOULD ASK THAT YOU PAY THE CLOSEST
2 ATTENTION POSSIBLE TO THE EVIDENCE PRESENTED TO YOU. I
3 WILL ASK THAT YOU DO NOT TAKE NOTES, FOR IF THE
4 NOTE-TAKER MAKES AN ERROR, THOSE NOTES CAN BE MORE
5 DETRIMENTAL THAN HELPFUL DURING THE DELIBERATIONS. THE
6 TIME-TESTED SYSTEM IS FOR EACH OF YOU TO LISTEN CAREFULLY
7 AND I'M CONFIDENT THAT YOU WILL DO THAT.

8 NOW, I SUGGEST THAT YOU NOT TAKE NOTES. THE REASON
9 FOR THAT, OF COURSE, IS WHEN YOU TAKE NOTES YOU HAVE A
10 TENDENCY TO CONCENTRATE ON THE NOTE, IN OTHER WORDS, YOU
11 WANT TO BE SURE YOU WRITE DOWN WHAT YOU THINK YOU HEAR,
12 AND THEN ALSO SOMETIMES THE SPELLING, YOU WANT TO BE SURE
13 THAT'S CORRECT, OR EVEN JUST THE SEMANTICS OF THE
14 STATEMENT TO BE SURE THAT IT'S PROPER.

15 IN DOING ALL OF THAT, YOU ARE DISTRACTED FROM WHAT
16 IS OCCURRING AT THE TIME. IN OTHER WORDS, YOU MUST MAKE
17 YOUR DECISION BASED ON THE TESTIMONY AND EVIDENCE HEARD
18 FROM THE SWORN WITNESSES FROM THIS WITNESS STAND AND THE
19 EXHIBITS AND OTHER EVIDENCE INTRODUCED IN THIS COURTROOM,
20 SO YOU NEED TO CONCENTRATE ON WHAT IS HAPPENING AT THE
21 TIME, NOT MAKING NOTES.

22 MOREOVER, AND WHEN I SAY THAT NOTES CAN BE
23 DETRIMENTAL IF THEY ARE IN ERROR, THERE'S A VERY SIMPLE
24 SORT OF THING TO THINK ABOUT WHEN COPYING DOWN WHAT YOU
25 THINK YOU HEARD SOMEBODY SAY. IF YOU LEAVE OUT ONE WORD

1 IT CHANGES THE NOTE ENTIRELY. I USE THE WORD "NOT". IF
2 YOU EITHER DON'T HEAR THE WORD "NOT" OR DON'T WRITE IT
3 DOWN, IT HAS AN ENTIRELY DIFFERENT MEANING AND THEREFORE
4 IT CAN BE MORE DETRIMENTAL THAN HELPFUL.

5 NOW, HAVING SAID THAT I SUGGEST THAT YOU NOT TAKE
6 NOTES, I DO TAKE NOTES, AND THAT'S NOT ONE OF THESE
7 THINGS, DO AS I SAY NOT AS I DO. WE HAVE ENTIRELY
8 DIFFERENT PURPOSES IN THIS COURTROOM. I AM NOT CONCERNED
9 ABOUT THE VALUE OR THE WEIGHT OF THE TESTIMONY OR THE
10 OTHER EVIDENCE. THAT IS WHAT YOU ARE SUPPOSED TO DO.
11 THAT IS WHAT YOU ALONE CAN DO IS TO WEIGH THE TESTIMONY
12 AND EVIDENCE AND DETERMINE ITS VALUE.

13 I AM NOT CONCERNED ABOUT THE VALUE OF EVIDENCE. I'M
14 NOT CONCERNED ABOUT ANYTHING ABOUT THE CASE OTHER THAN
15 WHAT THINGS HAVE TO BE DONE ACCORDING TO THE PROCEDURES
16 AND RULES OF LAW THAT WE HAVE. SO I'M JUST JOTTING DOWN
17 WHAT IS HAPPENING, NOT THE SIGNIFICANCE OF IT, BECAUSE
18 THAT'S FOR YOUR PURVIEW FOR YOU TO DECIDE.

19 WITH THAT I'LL NOW RECOGNIZE THE SOLICITOR FOR HIS
20 OPENING STATEMENTS.

21 **MR. WAGNER:** THANK YOU, JUDGE.

22 OPENING STATEMENT ON BEHALF OF THE STATE:

23 **MR. WAGNER:** BACK ON JULY 23RD OF LAST YEAR, 2009,
24 HERE IN OCONEE COUNTY, TWO GUYS, SHANE ELLIOTT AND THE
25 DEFENDANT, MR. WEBB, YOU'RE GONNA HEAR PICKED UP A COUPLE

1 OF GIRLS. THE FOUR OF THEM ENDED UP GOING TO JASON AND
2 NATHAN MCCALLS' HOUSE, PEOPLE THAT THEY KNEW. THE
3 DEFENDANT PULLED OUT A GUN. THEY PUSHED THEIR WAY --
4 EITHER THEY WERE LET IN OR THEY JUST WALKED IN -- THEY
5 WENT INTO NATHAN MCCALL'S ROOM WHERE HE WAS ASLEEP IN HIS
6 BED IN THE LATE AFTERNOON.

7 YOU'LL HEAR THE DEFENDANT PULLED A GUN ON HIM,
8 ROBBED HIM OF HIS, OF THE VICTIM'S PISTOL, AND LATER ALSO
9 ROBBED HIM OF CASH MONEY OUT OF THE HOUSE. HE AND SHANE
10 ELLIOTT AND THE TWO GIRLS LEFT THE SCENE. AS THEY WERE
11 LEAVING THE SCENE THE DEFENDANT PULLED OUT ONE OF THE
12 PISTOLS, FIRED A SHOT THROUGH THE WALL OF THE HOUSE, AND
13 FIRED INTO THE DWELLING. SO YOU GOT THREE CHARGES
14 BASICALLY HERE TO CONSIDER. HE'S CHARGED WITH TWO COUNTS
15 OF ARMED ROBBERY FOR PULLING A PISTOL AND ROBBING JASON
16 AND NATHAN MCCALL, ONE COUNT FOR EACH VICTIM. HE'S ALSO
17 CHARGED WITH FIRING INTO A DWELLING FOR FIRING A PISTOL
18 INTO THEIR HOUSE. HE'S ALSO CHARGED WITH TWO COMPANION
19 CHARGES FOR POSSESSION OF A PISTOL DURING THE COMMISSION
20 OF A VIOLENT CRIME, AND THE JUDGE IS GONNA CHARGE YOU
21 THAT IN SOUTH CAROLINA ARMED ROBBERY IS CONSIDERED A
22 VIOLENT CRIME, AND THAT'S ANOTHER CHARGE IF YOU HAVE A
23 PISTOL OR A KNIFE, THAT'S KIND OF ATTACHED ON.

24 SO YOU'RE GONNA HEAR FROM A NUMBER OF WITNESSES,
25 SOME OF THEM MAY BE A LITTLE OUT OF ORDER. SOMETIMES WE

1 HAVE TO WORK AROUND WITNESSES' SCHEDULES AND THINGS LIKE
2 THAT TO PRESENT THE CASE. SO IF SOMETHING SEEMS A LITTLE
3 BIT OUT OF ORDER, BEAR WITH US UNTIL YOU HEAR THE WHOLE
4 PICTURE AND HEAR FROM EVERYBODY.

5 YOU'RE GONNA HEAR FROM AN INTERESTING GROUP OF
6 PEOPLE THAT WERE THERE. SOME OF THESE PEOPLE ARE GONNA
7 HAVE CRIMINAL RECORDS. SOMETIMES YOU DON'T GET TO PICK
8 WHERE THINGS HAPPEN. AND THERE'S AN OLD SAYING OUT THERE
9 THAT CRIMES CONCEIVED IN HELL DON'T OFTEN HAVE ANGELS FOR
10 WITNESSES, AND THAT'S TRUE IN THIS CASE.

11 BUT THE FACTS BEING THAT, I THINK AT THE END OF THIS
12 CASE I SUBMIT TO YOU THAT YOU'RE GONNA -- AFTER HEARING
13 ALL THE EVIDENCE, YOU'RE GONNA BE ABLE TO FIND THE
14 DEFENDANT GUILTY ON ALL COUNTS FOR ROBBING JASON AND
15 NATHAN MCCALL AND THEN FIRING A PISTOL INTO THEIR HOUSE.
16 THANK YOU.

17 **THE COURT:** MR. DAY?

18 **MR. DAY:** THANK YOU, YOUR HONOR, MAY IT PLEASE THE
19 COURT.

20 OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

21 **MR. DAY:** LADIES AND GENTLEMEN, AS I SAID BEFORE,
22 I'M DANNY DAY OF THE PUBLIC DEFENDER'S OFFICE AND I
23 REPRESENT JEFFREY WEBB SITTING HERE AT THE TABLE.

24 THIS CASE TODAY HAS EVERYTHING TO DO WITH JEFF WEBB.
25 HE IS HERE NOW TO FACE THE CHARGES AGAINST HIM. THIS IS

1 HIS FIRST OPPORTUNITY TO HEAR THE ENTIRE CASE AGAINST HIM
2 AND TO HEAR ALL THE EVIDENCE AGAINST HIM, TO SEE ALL THE
3 EVIDENCE AGAINST HIM, AND TO BE ABLE TO CONFRONT IT, AS
4 GUARANTEED TO EACH OF US THROUGH THE CONSTITUTION OF THIS
5 STATE AND THIS GREAT UNITED STATES.

6 SO IN ORDER FOR THE STATE TO PROVE THAT, IN FACT, HE
7 IS GUILTY OF THESE CHARGES THAT THE SOLICITOR HAS TOLD
8 YOU ABOUT, THE STATE HAS THE BURDEN TO PROVE TO YOU
9 BEYOND A REASONABLE DOUBT THAT, IN FACT, A, A CRIME WAS
10 COMMITTED AND B, EVIDENCE WOULD POINT TO JEFF WEBB.

11 NOW, IN ORDER TO DO THAT THEY'RE GONNA PRESENT SOME
12 TANGIBLE EVIDENCE. WE HAVE SOME PICTURES, A SPENT ROUND,
13 WE HAVE 9-1-1 TELEPHONE CALLS, THIS SORT OF THING. BUT
14 THE MAIN TESTIMONY AND THE MAIN EVIDENCE IS GONNA COME
15 FROM RIGHT OVER HERE IN THIS CHAIR WHERE THE WITNESSES
16 WILL SIT, THEY WILL TAKE AN OATH UPON THE BIBLE TO TELL
17 THE TRUTH. AND THAT IS WHERE THEIR CASE RESTS. YOU HAVE
18 GOT TO DETERMINE BASED UPON THE EVIDENCE THAT THEY PLACE
19 BEFORE YOU COMING FROM THAT WITNESS STAND WHETHER IT
20 MAKES SENSE.

21 TWO, WHO IS TESTIFYING?

22 THREE, WHY ARE THEY TESTIFYING? AND FOUR, DO THEY
23 HAVE SOME REASON TO MAYBE THEY WANT TO TELL ALL THE
24 TRUTH, OR DO THEY WANT TO TELL YOU WHAT THEY WANT YOU TO
25 BELIEVE IS THE TRUTH?

1 BECAUSE IN THIS CASE THE MAIN WITNESS AGAINST
2 MR. WEBB IS SHANE ELLIOTT THEY SPOKE ABOUT WHO WAS ONE OF
3 THE TWO PEOPLE THEY SAID WENT TO THE HOUSE THAT NIGHT.
4 THE ONE AND THE SAME SHANE ELLIOTT WHO IS CHARGED WITH
5 THE SAME IDENTICAL CRIMES. THE SAME SHANE ELLIOTT WHO IS
6 GOING TO GET UP HERE AND TESTIFY AS TO WHAT HE WANTS YOU
7 TO BELIEVE IS THE TRUTH.

8 I WANT YOU TO LISTEN TO NOT ONLY HIS TESTIMONY, I
9 WANT YOU TO LISTEN TO THE VICTIMS' (GESTURED QUOTATION
10 MARKS) TESTIMONY AND SEE IF YOU CAN GET ALL OF THAT TO
11 MIX IN AND COME UP WITH A PLAUSIBLE, REASONABLE
12 CONCLUSION.

13 NEEDLESS TO SAY, UNLIKE TELEVISION, YOU DON'T GET TO
14 SEE IT PLAY OUT IN FRONT OF YOU. YOU DON'T NEED, YOU
15 DON'T HAVE AN OPPORTUNITY TO GET UP EVERY 14 MINUTES AND
16 RUN IN AND GET A COFFEE OR A GLASS OF TEA AND COME BACK
17 AND SEE WHAT ELSE IS HAPPENING. IT'S ALL GOT TO COME
18 FROM RIGHT HERE IN THIS COURTROOM, AND YOU ARE GOING TO
19 HAVE TO PAINT THE PICTURE IN YOUR OWN MIND AS TO WHAT
20 WENT ON AND START ASKING YOURSELF, HOW MUCH OF THIS IS
21 MAKING SENSE? HOW MUCH OF THIS IS REALLY CREDIBLE? HOW
22 MUCH OF THIS IS BELIEVABLE?

23 ALL OF THAT'S GOING TO BE PLACED INTO YOUR LAPS. I
24 HATE HAVING TO DO THAT TO YOU, BECAUSE IT'S DIFFICULT.
25 BUT YOU WILL BE ABLE TO SEE THAT, IN FACT, YOU'RE GONNA

1 HAVE TO MAKE THIS STORY MAKE SENSE. I THINK YOU'RE GONNA
2 HAVE A VERY HARD TIME DOING THAT. JEFF WEBB STANDS IN
3 THIS COURTROOM AND HE HAS SAID, I AM NOT GUILTY OF THESE
4 CHARGES. AND HE HAS ASKED THAT YOU MAKE THAT
5 DETERMINATION BECAUSE HE HAS BEEN ACCUSED OF SOMETHING.
6 THE PAPERWORK, THE INDICTMENTS, EVERYTHING ELSE IS MERELY
7 ACCUSATIONS AND CHARGES AGAINST THE PERSON. IF WE DIDN'T
8 HAVE IT THAT WAY, THEN ALL THEY WOULD HAVE TO DO IS PUT
9 IT ON A PIECE OF PAPER AND SAY THAT YOU DID SOMETHING
10 WRONG, GO GET YOU AND THROW YOU IN JAIL.

11 BUT YOU STAND BETWEEN THE JAIL AND A PERSON WHO HAS
12 BEEN ACCUSED OF SOMETHING WHICH DOES NOT APPEAR TO BE
13 TRUE, AND YOU GET TO TAKE ALL THAT EVIDENCE, YOU'RE GOING
14 TO BOIL IT DOWN AND YOU'RE GOING TO BE ABLE TO GO BACK
15 INTO A ROOM BACK THERE WHICH NO ONE CAN JOIN YOU WITH AND
16 NO ONE CAN EVEN LISTEN TO YOU, AND MAKE A DETERMINATION.

17 ALL WE ASK YOU TO DO IS LISTEN VERY CAREFULLY
18 BECAUSE THE WITNESSES IN THIS CASE ARE GONNA HAVE TO BE
19 PEOPLE YOU BELIEVE. THEY'RE GONNA HAVE TO BE PEOPLE WHO
20 YOU BELIEVE WHO, ONCE TAKEN AN OATH, ARE TO BE BELIEVED
21 BASED UPON WHAT THEY TELL YOU. WE ASK THAT YOU LISTEN
22 VERY CAREFULLY. I KNOW THAT YOU WILL DO THAT. JEFF WEBB
23 KNOWS THAT YOU WILL DO THAT AND THAT'S WHY HE ASKED TO
24 YOU DO IT.

25 WE APPRECIATE YOU BEING HERE. I KNOW YOU WOULD

1 RATHER BE SOMEPLACE ELSE, ANYWHERE THAN IN HERE, BUT THIS
2 IS IMPORTANT, IT'S VERY IMPORTANT.

3 AS WINSTON CHURCHILL SAID, THE GREATEST SERVICE YOU
4 CAN DO FOR YOUR COUNTRY, OTHER THAN IN WARTIME, IS TO
5 SERVE ON A JURY. IT'S NOT FUN, BUT YOU WILL SEE HOW
6 IMPORTANT IT IS, AND WE THANK YOU.

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

9 **MR. WAGNER:** THANK YOU, SIR.
10 RYANNE NICOLE SMITH.

11 WHEREUPON,

12 RYANNE NICOLE SMITH,
13 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
14 DIRECT EXAMINATION BY MR. WAGNER:

15 Q. WOULD YOU GIVE US YOUR NAME AND SPELL YOUR LAST
16 NAME FOR THE RECORD?

17 A. RYANNE NICOLE SMITH, S-M-I-T-H.

18 Q. OKAY. MS. SMITH, WHAT DO YOU NORMALLY GO BY, WHAT
19 DO PEOPLE CALL YOU?

20 A. NICKIE.

21 Q. NICKIE?

22 A. UH-HUH.

23 Q. WERE YOU GOING BY NICKIE BACK ON JULY 23RD OF
24 2009, WERE YOU LIVING HERE IN OCONEE COUNTY BACK THEN?

25 A. YES.

1 Q. OKAY. DO YOU CURRENTLY STILL LIVE IN OCONEE
2 COUNTY?

3 A. YES.

4 Q. BACK ON JULY 23RD WERE YOU HANGING OUT WITH THE
5 DEFENDANT, JEFF WEBB?

6 A. YES.

7 Q. AND HOW DID YOU KNOW HIM, WERE YOU FRIENDS?

8 A. I MET JEFF THROUGH MY COUSIN. AND ME AND JEFF, WE
9 HAD KNOWN EACH OTHER MAYBE FOUR MONTHS PRIOR TO WHEN ALL
10 THIS HAPPENED. I DIDN'T KNOW HIM THAT LONG, REALLY.

11 Q. OKAY. DID YOU ALSO KNOW SHANE ELLIOTT?

12 A. UH-HUH.

13 Q. WERE YOU FRIENDS WITH HIM?

14 A. UH-HUH.

15 Q. AND WERE YOU FRIENDS WITH MARIA VILLEGAS?

16 A. NO, I WASN'T.

17 Q. WHO WERE YOU HANGING OUT WITH THAT DAY, HOW MANY
18 OF Y'ALL WERE THERE, AND WHAT WERE Y'ALL DOING?

19 A. WE WERE GONNA GO SWIMMING IN MARIA'S, I THINK IT
20 WAS HER BOYFRIEND'S POOL THAT DAY. IT WAS ME AND JEFF
21 AND SHANE AND MARIA. AND THEN WE WENT TO -- WHERE WAS
22 IT -- WE PICKED UP SHANE AND WE PICKED UP MARIA, AND THEN
23 FOR THE LONGEST TIME WE JUST RODE AROUND TOWN.

24 Q. OKAY. WERE YOU ALL DRINKING THAT DAY?

25 A. YES, WE WAS.

1 Q. WHAT WERE YOU DRINKING?

2 A. LIQUOR.

3 Q. HOW MUCH LIQUOR WERE YOU DRINKING?

4 A. NOT A LOT.

5 Q. ALL RIGHT. HOW MUCH LIQUOR WAS EVERYBODY ELSE IN
6 THE CAR DRINKING?

7 A. NOT TOO MUCH, LIKE A BOTTLE.

8 Q. ALL RIGHT. AT SOME POINT IN TIME LATE IN THE
9 AFTERNOON, DID YOU END UP GOING OVER TO JASON AND NATHAN
10 MCCALL'S HOUSE?

11 A. YES.

12 Q. WAS THAT HOUSE IN OCONEE COUNTY?

13 A. YES.

14 Q. ALL RIGHT. AND WHEN YOU WENT THERE, WHY DID YOU
15 GO?

16 A. I REALLY DON'T KNOW THE WHOLE POINT OF WHY WE WENT
17 TO NATHAN'S HOUSE. BUT WE HAD PULLED UP IN THE DRIVE,
18 AND HE TOLD US ALL TO GET OUT.

19 Q. WHO IS "HE"?

20 A. JEFF.

21 Q. AND WHO WAS DRIVING?

22 A. JEFF.

23 Q. WHAT CAR WAS HE IN?

24 A. IT WAS A GOLD CHEVY CAR. I DON'T KNOW WHOSE IT
25 WAS.

1 Q. OKAY. AND HE TOLD YOU TO GET OUT?

2 A. YEAH, HE TOLD US ALL TO GET OUT.

3 Q. HOW DID HE SAY IT, WHAT WAS HE SAYING?

4 A. GET OUT THE CAR, JUST GET OUT THE CAR, HOPPED OUT,
5 GET OUT THE CAR.

6 WE GOT OUT OF THE CAR. AND HE WENT IN NATHAN'S
7 HOUSE. NATHAN WAS ASLEEP IN THE BED. AND I HEARD "BAP"
8 AND HE HIT NATHAN IN THE HEAD WITH A PISTOL.

9 Q. WERE YOU FOLLOWING BEHIND HIM?

10 A. YEAH.

11 Q. WHO ELSE WAS WITH YOU?

12 A. ME AND SHANE AND MARIA.

13 Q. ALL FOUR OF YOU ALL WENT IN THE HOUSE?

14 A. YES.

15 Q. SO HE WALKED IN AND HIT NATHAN ON THE HEAD WITH
16 THE PISTOL?

17 A. YES.

18 Q. DID HE HIT HIM HARD?

19 A. YEAH, HE HIT HIM HARD.

20 Q. ALL RIGHT. WHAT DID HE SAY?

21 A. WHERE'S YOUR MONEY? AND JUST POINTED THE PISTOL
22 AT HIM, KIND OF LIKE JUST SCREAMING AND STUFF AT FIRST.
23 I DON'T REALLY REMEMBER AT FIRST EXACTLY EVERYTHING THAT
24 WAS SAID. DEMANDING. AND THEN HE GOT JASON, NATHAN'S
25 BROTHER. AND NATHAN TOLD HIM, HE SAID, LOOK, I DON'T

1 HAVE NO MONEY. I DON'T HAVE NOTHING, I DON'T HAVE
2 NOTHING FOR YOU.

3 AND HE POINTED THE GUN AT JASON AND HE TOLD JASON
4 TO GO BACK TO THE BEDROOM. I DON'T KNOW WHAT HAPPENED
5 WHILE THEY WERE BACK THERE. I DIDN'T GO BACK THERE. HE
6 TOLD ME AND SHANE TO STAY IN THE ROOM WITH NATHAN, SO WE
7 DID. AND HE WENT TO THE BACK WITH JASON. WHEN HE COME
8 OUT, HE HAD A GUN AND SOME MONEY.

9 Q. A GUN AND SOME MONEY?

10 A. UH-HUH.

11 Q. DID HE HAVE THE GUN AND THE MONEY BEFORE HE --
12 WHAT DID HE DO WITH HIS GUN?

13 A. I DON'T KNOW. I GUESS HE HAD IT ON HIM. BUT HE
14 HAD, HE HAD ONE OF NATHAN'S PISTOLS, I GUESS, OR
15 WHOEVER'S IT WAS, HE HAD TOOK AND SOME CASH.

16 Q. WHEN HE WENT INTO THE HOUSE, DID HE HAVE HIS
17 PISTOL OUT?

18 A. UH-HUH, YES, HE DID. WHEN HE WENT INTO THE HOUSE
19 HE HAD IT OUT. THAT'S WHAT HE HIT NATHAN IN THE HEAD
20 WITH.

21 Q. WHAT DID YOU ALL DO AFTER THAT?

22 A. WE COMMENCED TO LEAVING. AND HE TURNED AROUND AS
23 WE WERE GOING TO THE CAR AND FIRED SHOTS INTO THE HOME.

24 Q. OKAY. AND WHEN YOU SAY HE FIRED SHOTS, WHO FIRED
25 SHOTS?

1 A. JEFF WEBB.

2 Q. IS JEFF WEBB HERE IN THE COURT TODAY?

3 A. YES.

4 Q. OKAY. COULD YOU JUST POINT HIM OUT?

5 A. (PPOINTS.)

6 Q. HAVE YOU SEEN OR TALKED TO JEFF WEBB SINCE THAT

7 DAY?

8 A. NO.

9 Q. DO YOU HAVE ANY BEEFS WITH JEFF WEBB?

10 A. NO.

11 Q. HAVE YOU GOT ANY PROBLEM WITH JEFF WEBB AT ALL?

12 A. NO.

13 Q. WHEN THIS HAPPENED, DID YOU WANT TO BE HANGING

14 AROUND WITH JEFF WEBB?

15 A. WHEN THIS HAPPENED, I DIDN'T EXPECT IT TO HAPPEN.

16 I MEAN, YOU DON'T EXPECT SOMETHING LIKE THAT TO HAPPEN.

17 Q. OKAY. WHAT DID YOU DO? HOW DID YOU GET OUT?

18 A. HOW DID I GET OUT?

19 Q. (NODDED HEAD.)

20 A. WHEN WE WENT -- WE WERE IN SALEM. WHEN HE STOPPED

21 AT, I THINK HIS NAME IS ZACK, ZACK'S HOUSE, HE HAD PARKED

22 THE CAR AROUND BACK, AND ME AND MARIA COMMENCED TO

23 GETTING A HOLD OF A PHONE AND CALLED SOMEONE TO COME AND

24 GET US.

25 Q. OKAY. WAS THE DEFENDANT SAYING ANYTHING WHILE ALL

1 OF THIS WAS GOING ON?

2 A. "I'LL DIE BEFORE I GO BACK TO JAIL."

3 Q. HOW WAS HE ACTING?

4 A. A LITTLE, A LITTLE SHOOK UP. KIND OF LIKE -- I
5 DON'T KNOW -- JUST WORRIED ABOUT GOING TO JAIL ONE
6 MINUTE. AND THEN, YOU KNOW, HE TOLD ME TO TELL EVERYBODY
7 HE LOVES THEM.

8 **MR. DAY:** OBJECTION, YOUR HONOR, UNDER RULE 5. NO
9 STATEMENTS LIKE THAT WERE EVER DISCLOSED TO THE
10 DEFENDANT.

11 **THE COURT:** I'M SORRY. YOU ARE SAYING -- DO WE HAVE
12 RULE 5'S IN HERE?

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

14 **THE COURT:** STATEMENT MADE BY THE -- ALL RIGHT. I'M
15 GOING TO SUSTAIN THE OBJECTION. AGAIN, DISREGARD ANY
16 ALLEGED STATEMENT MADE BY ANYONE.

17 YOU MAY PROCEED.

18 **MR. WAGNER:** OKAY.

19 BY MR. WAGNER:

20 Q. SO YOU GOT SOMEBODY TO COME PICK YOU AND MARIA UP?

21 A. YES.

22 Q. AND Y'ALL LEFT?

23 A. YES.

24 Q. AND WHAT HAPPENED AFTER THAT?

25 A. I DON'T, I DON'T KNOW WHAT HAPPENED AFTER THAT. I

1 REMEMBER TRYING TO GET SHANE TO GO WITH ME, AND JEFF RAN
2 OUT TO THE CAR. AND HONESTLY HE WAS A LITTLE BIT WORRIED
3 ABOUT JEFF, ABOUT, YOU KNOW, WHAT HE WAS GONNA DO. IF HE
4 WAS GONNA ---

5 **MR. DAY:** I'VE GOT TO OBJECT, YOUR HONOR; I THINK
6 WE'RE GETTING INTO SPECULATION HERE.

7 **THE COURT:** I THINK SHE'S TRYING TO GIVE YOU HER
8 PRESENT SENSE OF MIND AT THAT TIME. I OVERRULE YOUR
9 OBJECTION. LET'S BE SURE WE ARE IN AN AREA OF THIS
10 WITNESS'S EXPERTISE.

11 BY MR. WAGNER:

12 Q. WHAT DID SHANE DO WHEN JEFF WENT DOWN THE HALL
13 WITH A PISTOL? WAS HE ARMED ---

14 A. HE STOOD WITH ME. HE SAID, Y'ALL TWO -- THIS IS
15 BEFORE HE GOT NATHAN'S GUN SO THEREFORE THERE WAS ONLY
16 ONE PISTOL IN THE WHOLE, YOU KNOW, DISCUSSION. HE HIT
17 NATHAN IN THE HEAD WITH IT. HE TURNED IT AND SAID, WELL,
18 NATHAN? NATHAN SAID, I DON'T HAVE ANYTHING. I DON'T
19 HAVE ANYTHING FOR YOU. I DON'T HAVE ANY MONEY, NOTHING.

20 THEN HE TURNED THE PISTOL TO NATHAN'S BROTHER,
21 JASON. AT THAT TIME THAT WAS THE ONLY PISTOL THERE WAS
22 UNTIL THEY COME BACK OUT OF THE BEDROOM. JEFF HAD BOTH
23 OF THOSE. HE JUST TOLD ME AND SHANE TO STAY IN THE
24 BEDROOM AND MAKE SURE NATHAN DIDN'T GET AWAY.

25 Q. AT SOME POINT IN TIME DID SHANE FIRE A ROUND INTO

1 THE HOUSE?

2 A. I DON'T REMEMBER. I, I DON'T KNOW.

3 Q. OKAY. AND WHEN YOU LEFT I BELIEVE YOU SAID IT WAS
4 JEFF THAT FIRED INTO THE HOUSE?

5 A. FIRED INTO THE HOME, YES.

6 Q. OKAY. HAVE YOU SEEN OR HUNG OUT WITH EITHER OF
7 THESE GUYS SINCE THEN?

8 A. NO, I HAVEN'T.

9 Q. OKAY. AND WHAT YOU ARE TELLING US HERE TODAY, IS
10 IT THE TRUTH --

11 A. YES.

12 Q. -- AS FAR AS WHAT YOU REMEMBER HAPPENING?

13 A. YES.

14 **MR. WAGNER:** THANK YOU. THAT'S ALL THE QUESTIONS I
15 HAVE.

16 EXCUSE ME. ONE MORE THING.

17 BY MR. WAGNER:

18 Q. YOU WERE CONVICTED OF SHOPLIFTING BACK IN 2003?

19 A. UH-HUH.

20 Q. OKAY. AND THAT WAS SEVEN YEARS AGO?

21 A. (NODDED HEAD.)

22 **MR. WAGNER:** OKAY. THANK YOU. THAT'S THE ONLY
23 QUESTIONS I HAVE. (WITNESS GETS UP.) IF YOU WOULD,
24 MA'AM, YOU NEED TO STAY.

25 **THE WITNESS:** OKAY.

1 CROSS-EXAMINATION BY MR. DAY:

2 Q. I'LL TRY NOT TO TAKE TOO LONG.

3 A. OKAY.

4 Q. OKAY. A COUPLE QUESTIONS IF I MAY.

5 Y'ALL WENT TO THE HOUSE THAT NIGHT AND YOU SAID
6 THERE WAS ONE GUN WHEN Y'ALL WALKED IN ON HIM, ONE GUN
7 WAS VISIBLE OR SEEN OR YOU EVEN KNEW ABOUT; IS THAT
8 CORRECT?

9 A. YES, SIR.

10 Q. OKAY. AND WHEN YOU WENT IN, AS I UNDERSTAND IT,
11 YOU SAID THAT YOU AND SHANE AND -- IS IT MARIA?

12 A. UH-HUH.

13 Q. -- Y'ALL STAYED IN ONE ROOM AND THEN YOU SAY WEBB
14 WENT INTO ANOTHER ROOM?

15 A. UH-HUH.

16 Q. OKAY. NOW, JEFF WEBB HAS GONE INTO THE OTHER ROOM
17 YOU SAID WHERE JASON WAS?

18 A. UH-HUH.

19 Q. AND I THINK YOU SAID SOMETHING ABOUT YOU AND SHANE
20 WERE WATCHING NATHAN?

21 A. YES, SIR.

22 Q. THAT'S CORRECT?

23 A. YES.

24 Q. SO Y'ALL WERE WATCHING NATHAN WHILE JASON
25 SUPPOSEDLY WENT IN ANOTHER ROOM?

1 A. YOU COULD SEE HIM GO DOWN THE HALLWAY DIAGONALLY
2 FROM WHERE HIS BEDROOM DOOR OPENS UP AT, YOU COULD SEE
3 CLEAR DOWN FROM THE HALLWAY, YES.

4 Q. OKAY. SO Y'ALL WERE WATCHING OVER NATHAN DURING
5 THIS TIME NOW. AND AS A RESULT OF YOUR ANSWER TO
6 MR. WAGNER'S QUESTION ABOUT SHANE ELLIOTT, YOU SAID YOU
7 DON'T REMEMBER?

8 A. AT THAT TIME THERE WAS ONLY ONE PISTOL, SO, I
9 MEAN, AND JEFF HAD THAT, SO HOW COULD HE?

10 Q. OKAY. HE ASKED YOU IF SHANE FIRED A GUN. WHEN
11 YOU WERE THERE, AND YOU SAID YOU DON'T REMEMBER IF SHANE
12 FIRED A GUN. HE FIRED NO TIME?

13 A. NOT WHILE WE WERE AT THE HOUSE I DON'T BELIEVE.

14 Q. OKAY. BUT YOU DO, YOU REMEMBER THIS GENTLEMAN
15 HERE, MR. SCOTT ARNOLD?

16 A. YES.

17 Q. SOMETIME BACK IN AUGUST OF LAST YEAR?

18 A. SOMEWHERE AROUND THERE.

19 Q. AND YOU GAVE HIM A STATEMENT, DID YOU NOT, THAT
20 YOU WROTE OUT AS TO WHAT HAPPENED THAT NIGHT, AND THAT
21 WAS IN AUGUST, CORRECT?

22 A. UH-HUH.

23 Q. ALL RIGHT. IF YOU ARE UNCOMFORTABLE OR NEED TO
24 MOVE AROUND, PLEASE DO SO.

25 A. OKAY.

1 Q. IF WE NEED TO STOP, WE'LL STOP.

2 A. NO, SIR, GO AHEAD.

3 Q. IN THAT STATEMENT YOU STATED, AND I QUOTE
4 (READING): SHANE SHOOTS A BULLET INTO THE COUCH OR A
5 WALL.

6 A. WELL, I WAS IN THE BEDROOM. IT COULD HAVE BEEN
7 EITHER ONE OF THEM. BUT AT THE TIME JEFF ONLY HAD ONE
8 GUN.

9 Q. OKAY. BUT YOUR STATEMENT WAS -- AND AGAIN AND I
10 QUOTE -- SHANE SHOOTS A BULLET INTO THE COUCH OR WALL,
11 PERIOD.

12 A. WELL, THE STATEMENT MIGHT SAY THAT BUT IT COULD
13 HAVE BEEN JEFF OR SHANE.

14 Q. OKAY. SO WHAT YOU ARE SAYING NOW YOU ARE TELLING
15 US WHAT HAPPENED AND YOUR STATEMENT TO MR. ARNOLD IS
16 DIFFERENT; IS THAT CORRECT?

17 A. (SHRUGS.)

18 Q. OKAY. AND YOU SAY IT WAS A GOLD-COLORED CAR?

19 A. IT WAS A GOLD CHEVY CAR LIKE A NEWER MALIBU MAYBE
20 OR AN IMPALA FOUR-DOOR.

21 (COUNSEL CONFER.)

22 BY MR. DAY:

23 Q. ALL RIGHT. I WANT TO SHOW YOU A COPY OF YOUR
24 STATEMENT WHICH I'VE JUST GOTTEN FROM THE SOLICITOR AND
25 DEPUTY ARNOLD DATED AUGUST THE 3RD, AND I BELIEVE THAT'S

1 YOUR SIGNATURE DOWN ON THE RIGHT?

2 A. UH-HUH.

3 Q. I HIGHLIGHTED A SENTENCE. NOW, WOULD YOU READ
4 WHAT YOU SAID THERE?

5 A. SHANE SHOOTS BULLET INTO THE COUCH.

6 Q. OKAY. AND THAT'S WHAT YOU SAID BACK THEN. AND
7 THAT WAS JUST A FEW DAYS AFTER THIS HAPPENED,
8 APPROXIMATELY A WEEK OR SO, WEEK AND TWO DAYS?

9 A. I DON'T, I DON'T REMEMBER HOW LONG IT WAS.

10 Q. THIS HAPPENED ON JULY 23RD AND THAT'S AUGUST THE
11 3RD.

12 A. OKAY.

13 Q. THAT'S SEVEN TO TEN DAYS, SOMETHING LIKE THAT,
14 APPROXIMATELY.

15 A. (HANDING.)

16 Q. OKAY. NOW YOU SAID AS THEY WERE LEAVING THE
17 HOUSE, AS I UNDERSTAND YOU ARE TALKING ABOUT WALKING...

18 (COUNSEL CONFER.)

19 BY MR. DAY:

20 Q. OKAY. AS YOU ARE WALKING OUT OF THE MCCALLS'
21 HOUSE GOING BACK TO WHERE THE CAR WAS PARKED, OKAY? AND
22 I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 2-E AS
23 IN EASY. DO YOU RECOGNIZE WHERE THAT IS?

24 A. UH-HUH.

25 Q. WHERE IS THAT?

1 A. SALEM.

2 Q. SALEM, BUT I MEAN WHOSE HOUSE IS THIS?

3 A. OH, THAT'S NATHAN'S.

4 Q. THAT'S NATHAN'S HOUSE?

5 A. UH-HUH.

6 Q. AS A MATTER OF FACT YOU HAVE SPENT TIME IN THAT
7 HOUSE AND YOU KNOW IT?

8 A. YES.

9 Q. YOU KNOW IT, CORRECT?

10 A. YES.

11 Q. OKAY. SO IS THIS THE DOOR THAT Y'ALL CAME OUT OF?

12 A. THE DOOR WE WENT IN AND COME OUT OF.

13 Q. THE SAME ONE?

14 A. YES.

15 Q. OKAY. AND THE CAR THEN I TAKE IT WAS PARKED ---

16 A. PARKED AT THE TOP OF THE HILL. AS YOU COME IN
17 RIGHT HERE, IF YOU LOOK TO THE SIDE UP HERE, IF YOU ARE
18 ON THE PORCH TO THE LEFT, THERE'S AN EMBANKMENT AND A
19 TREE AND THERE'S THE DRIVEWAY, AND IN THE BACK THERE'S
20 THE CUL-DE-SAC.

21 Q. OKAY. SO IF I LOOK AT THIS PICTURE, WHERE THE CAR
22 WAS PARKED WOULD HAVE BEEN BEYOND WHERE THE PICTURES
23 SHOWS?

24 A. YES.

25 Q. I KNOW YOU DIDN'T GO OUT THERE AND MEASURE IT, I

1 DON'T THINK, DID YOU?

2 A. HUH-UH.

3 Q. SO I'M GONNA ASK YOU TO JUST KIND OF GIVE YOUR
4 BEST GUESSTIMATE AS ABOUT HOW FAR ---

5 A. FOUR CAR LENGTHS.

6 Q. FOUR CAR LENGTHS?

7 A. YEAH. FROM THE EMBANKMENT AND DOWN TO THE FRONT
8 PORCH.

9 Q. OKAY. FOUR CAR LENGTHS --

10 A. THREE, FOUR CAR LENGTHS.

11 Q. -- FOUR CAR LENGTH I CAN UNDERSTAND.

12 OKAY. SO ABOUT FOUR CAR LENGTHS FROM THE RIGHT
13 SIDE LOOKING AT THE PICTURE?

14 A. UH-HUH.

15 Q. ABOUT FOUR CAR LENGTHS THAT WAY, TO THE RIGHT?

16 A. TO THE LEFT. IF WE WERE STANDING COMING OUT ---

17 Q. BUT I'M LOOKING AT THE HOUSE, THOUGH?

18 A. YEAH, YEAH.

19 Q. SO IT WOULD BE OVER ON THAT SIDE?

20 A. UH-HUH.

21 Q. AND IF YOU'RE LOOKING FROM THE HOUSE IT WOULD BE
22 ON THE LEFT?

23 A. UH-HUH.

24 Q. OKAY. AND THAT'S WHERE YOU ARE SAYING THAT ABOUT
25 WHERE YOU ALL WERE WHEN YOU FIRED THAT SHOT?

1 A. YEAH. WALKING TOWARDS THE CAR IT WAS PROBABLY
2 ABOUT 15, 12, 15 FEET AWAY FROM THE VEHICLE, THE BACK END
3 OF THE VEHICLE.

4 Q. OKAY. AND HOW MANY SHOTS WERE FIRED THAT YOU
5 REMEMBER?

6 A. I THINK ONE OR TWO, JUST ONE OR TWO.

7 Q. OKAY.

8 **MR. DAY:** ALL RIGHT. JUST ONE SECOND, PLEASE,
9 MA'AM.

10 **THE WITNESS:** UH-HUH.

11 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
12 RECORD.)

13 **MR. DAY:** I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.
14 THANK YOU VERY MUCH, MA'AM.

15 **THE WITNESS:** UH-HUH.

16 **THE COURT:** RE-EXAM?

17 **MR. WAGNER:** NOTHING FURTHER.

18 **THE COURT:** MAY THE WITNESS BE EXCUSED?

19 **MR. WAGNER:** YES, MA'AM.

20 **MR. DAY:** I HAVE NOTHING FURTHER.

21 **THE COURT:** WITHOUT OBJECTION YOU MAY BE EXCUSED.
22 THANK YOU, MA'AM.

23 (WHEREUPON, THE WITNESS WAS EXCUSED.)

24 **MR. WAGNER:** I CALL NATHAN MCCALL.

25 WHEREUPON,

1 NATHAN MCCALL,

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

3 DIRECT EXAMINATION BY MR. WAGNER:

4 Q. MR. MCCALL, WOULD YOU GIVE US YOUR NAME, SPELLING
5 YOUR LAST NAME FOR THE RECORD?

6 A. ALL RIGHT. NATHAN FRED MCCALL, M-C-C-A-L-L.

7 Q. WHERE DO YOU LIVE, MR. MCCALL?

8 A. 287 LITTLE RIVER LANE.

9 Q. WHO DO YOU LIVE THERE WITH?

10 A. ME AND MY BROTHER LIVE THERE.

11 Q. WERE YOU ALL LIVING THERE BACK ON JULY 23RD OF
12 LAST YEAR?

13 A. YES, SIR.

14 Q. YOUR ADDRESS THERE, IS THIS YOUR HOUSE, WHERE YOU
15 RESIDE, IS IT IN OCONEE COUNTY?

16 A. YES, SIR.

17 Q. WHAT WERE YOU DOING LATE AFTERNOON OF JULY 23RD OF
18 2009?

19 A. I WAS TAKING A NAP, WHEN IT RUDELY GOT
20 INTERRUPTED.

21 Q. AND WHO WAS IN THE HOUSE WITH YOU?

22 A. MY BROTHER, YOU KNOW, AND I THINK THAT WAS ALL.

23 Q. OKAY. SO WERE YOU ASLEEP IN YOUR BED?

24 A. YES.

25 Q. ABOUT WHAT TIME DID THIS INCIDENT OCCUR?

1 A. 4:30, AROUND 4:00 OR 4:30.

2 Q. WHAT DO YOU REMEMBER, WHAT HAPPENED?

3 A. ALL I REMEMBER IS WAKING UP WITH JEFF WALKING
4 THROUGH THE DOOR DEMANDING MONEY WITH A PISTOL OUT COCKED
5 AND LOADED.

6 Q. WHAT KIND OF PISTOL WAS IT?

7 A. IT WAS, I BELIEVE IT WAS A .38.

8 Q. AN AUTOMATIC OR A REVOLVER?

9 A. REVOLVER.

10 Q. AND WHAT DID YOU DO?

11 A. ACTUALLY, I WAS REACHING FOR MY PISTOL, AND HE
12 KNEW WHERE IT WAS, AND HE ABRUPTLY STOPPED ME AND
13 DEMANDED MONEY. THEN HE PROCEEDED TO THE SIDE OF MY BED
14 WHERE HE HIT ME ON THE TOP OF MY HEAD AND TOOK THE PISTOL
15 FROM OUT FROM UNDER MY MATTRESS, AND THEN MY BROTHER SAID
16 SOMETHING THAT ACTUALLY HE SAID, TOLD JEFF NOT TO SHOOT
17 ME. AND JEFF PROCEEDED TO HIM FROM THAT POINT.

18 Q. OKAY. DID JEFF SAY ANYTHING TO YOU WHILE THIS WAS
19 GOING ON?

20 A. NO. OTHER THAN "GIVE ME YOUR MONEY."

21 Q. OKAY. AND FROM THERE, WHO WAS WITH HIM?

22 A. SHANE, MARIA AND NICKIE.

23 Q. DID YOU KNOW ALL FOUR OF THEM?

24 A. YES, I DID.

25 Q. HAD YOU KNOWN THEM FOR A WHILE?

1 A. YEAH, A GOOD LITTLE WHILE, OVER A YEAR.

2 Q. HAD YOU BEEN FRIENDS WITH HIM?

3 A. YES, YOU COULD SAY THAT I WAS A FRIEND OF THEM.

4 Q. DID ANY OF THEM SAY ANYTHING? WHAT DID SHANE DO
5 WHEN THE DEFENDANT LEFT AND WENT DOWN THE HALL WITH YOUR
6 BROTHER?

7 A. HE JUST TOLD ME IT WOULD BE ALL RIGHT. I DON'T
8 KNOW, I DON'T KNOW WHAT FOR, BUT ---

9 Q. DID SHANE HAVE A GUN?

10 A. YES, HE DID.

11 Q. DID HE HAVE A GUN WHEN HE CAME IN?

12 A. YES.

13 Q. OKAY. WHAT DID HE DO?

14 A. WELL, WHEN JEFF LEFT THE ROOM, HE TOLD SHANE TO
15 WATCH ME. HE SAT DOWN ON THE BED AND SHANE DID FIRE A
16 SHOT THROUGH MY LIVING ROOM. BUT OTHER THAN THAT, YOU
17 KNOW, OTHER THAN TELLING ME THAT EVERYTHING WOULD BE
18 OKAY. I DON'T KNOW WHY HE FIRED THE SHOT, BUT JEFF AND
19 MY BROTHER WAS ALREADY IN HIS ROOM WHEN THAT OCCURRED.

20 Q. OKAY. SO YOU LOST SIGHT OF YOUR BROTHER AND THE
21 DEFENDANT?

22 A. YES.

23 Q. OKAY. DID SHANE WATCH YOU THE WHOLE TIME WITH A
24 PISTOL?

25 A. YES.

1 Q. DID HE POINT IT AT YOU?

2 A. YES.

3 Q. AND WHAT DID MARIA AND THE NICKIE GIRL DO?

4 A. THEY WERE JUST BYSTANDERS OVER THERE. THEY DIDN'T
5 REALLY DO ANYTHING. EXCEPT THEY HAD BOTH SET IN MY ROOM,
6 TOO.

7 Q. HOW DID THE DEFENDANT ACT?

8 A. HE WAS NERVOUS, JERKY.

9 Q. LET ME SHOW YOU SOME PICTURES HERE AND ASK YOU IF
10 YOU CAN IDENTIFY THEM BY THE NUMBER AND LETTER ON THE
11 BACK.

12 A. ALL RIGHT.

13 Q. FIRST IS GONNA BE STATE'S EXHIBIT 2-E (HANDING).

14 A. THE FRONT OF MY HOUSE.

15 Q. 2-H (HANDING).

16 A. THAT IS GOING INTO MY KITCHEN FROM MY LIVING ROOM.

17 Q. 2-A?

18 A. THAT'S A REPRESENTATION OF WHAT, HOW SHANE HAD A
19 GUN TO ME ON MY BED.

20 Q. 2-B (HANDING).

21 A. SHOW WHERE I WAS HIT OVER THE TOP OF THE HEAD.

22 Q. DID YOU HAVE AN INJURY ON TOP OF YOUR HEAD?

23 A. THERE WAS A FEW MARKS, YES.

24 Q. DID IT LEAVE LIKE A WELT?

25 A. THERE'S A FEW KNOTS, BUT...

1 Q. 2-J (HANDING).

2 A. THAT'S THE BULLET WHERE SHANE HAD FIRED A ROUND
3 THROUGH MY LIVING ROOM. IT WENT INTO THE MOLDING RIGHT
4 BEHIND MY LOVE SEAT.

5 Q. 2-K (HANDING).

6 A. THAT'S THE SHOT, THAT'S THE ANGLE OF THE SHOT HE
7 WAS SHOOTING FROM.

8 Q. 2-L (HANDING).

9 A. THAT'S THE ENTRANCE WOUND OF THE BULLET.

10 Q. WHAT DO YOU MEAN?

11 A. THE ENTRANCE POINT WHERE THE BULLET WENT IN.

12 Q. AND WHAT SHOT WAS THAT?

13 A. FROM SHANE.

14 Q. OKAY. 2-M (HANDING).

15 A. THAT'S THE ENTRANCE POINT FROM THE BULLET THAT
16 COME RIGHT BESIDE MY DOOR.

17 Q. 2-O (HANDING).

18 A. THAT'S WHERE SHANE SHOT IN THE MOLDING.

19 Q. AND 2-P (HANDING).

20 A. IT'S ALSO THE ENTRANCE POINT WHERE SHANE SHOT.

21 Q. NOW, WAS THAT THE ONLY SHOT FIRED AT YOUR HOUSE
22 THAT NIGHT?

23 A. THOSE TWO, THE ONE INSIDE AND THE ONE THAT COME
24 FROM RIGHT BESIDE THE FRONT DOOR.

25 Q. OKAY. DO YOU RECOGNIZE 2-F (HANDING)?

1 A. YES. THAT'S WHERE THE ENTRANCE POINT FROM THE
2 SHOT FROM THE OUTSIDE.

3 Q. OKAY. AND 2-G (HANDING)?

4 A. THAT'S ON THE INSIDE OF THE WALL FROM THE SHOT
5 OUTSIDE.

6 Q. 2-N?

7 A. IT'S AN OUTSIDE ENTRANCE POINT.

8 Q. AND 2-I (HANDING)?

9 A. THAT'S THE ACTUAL LEAD OUT OF THE BULLET THAT WAS,
10 IT HIT A LITTLE CHANDELIER OR A CANDLE HOLDER ABOVE THE
11 ENTRANCEWAY TO MY KITCHEN; IT HIT THE CANDLE HOLDER, AND
12 THE LEAD CARTRIDGE FELL ON THE FLOOR.

13 Q. OKAY. SO THE BULLET CAME FROM OUTSIDE YOUR HOUSE?

14 A. YES, SIR.

15 Q. IT WENT THROUGH YOUR OUTER WALL INTO YOUR INNER
16 WALL FROM WHERE YOUR LIVING ROOM IS?

17 A. IT DID NOT GO INTO THE INNER WALL. THERE WAS A
18 BIG ARCH OPENING WALKING INTO MY KITCHEN, AND THERE'S A
19 CANDLE HOLDER THAT STEMMED DOWN, AND IT HIT THE CANDLE
20 HOLDER AND ALMOST CUT IT IN HALF, AND WHEN IT HIT IT THE
21 BULLET FELL ON THE FLOOR.

22 Q. DID YOU SEE THE CAR THE DEFENDANT WAS DRIVING THAT
23 NIGHT?

24 A. NO, SIR.

25 Q. OKAY. WHAT DID THEY SAY WHEN THEY LEFT YOUR

1 HOUSE?

2 A. FOR ME NOT TO CALL THE COPS.

3 Q. OKAY. SO WHAT DID YOU DO?

4 A. CALLED THE COPS.

5 Q. AND HOW DID YOU DO THAT?

6 A. I CALLED 9-1-1.

7 Q. OKAY. PRIOR TO COURT TODAY HAVE YOU LISTENED TO A
8 RECORDING OF A 9-1-1 CALL YOU MADE?

9 A. YES, I HAVE.

10 Q. AND DID IT FAIRLY AND ACCURATELY DEPICT THE 9-1-1
11 CALL AS IT CAME ACROSS WITH YOU MAKING IT?

12 A. YES, IT DID.

13 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
14 NUMBER 1. DO YOU RECOGNIZE THIS?

15 A. YES, SIR, IT'S THE 9-1-1 C.D.

16 Q. AND HOW DO YOU KNOW THAT'S THE SAME ONE?

17 A. BECAUSE I INITIALED IT EARLIER.

18 Q. OKAY. AND IT FAIRLY AND ACCURATELY DEPICTED THE
19 9-1-1 CALL?

20 A. YES, SIR.

21 **MR. WAGNER:** YOUR HONOR, AT THIS TIME WE WOULD LIKE
22 TO ASK STATE'S NUMBER 1, I BELIEVE, AND THE PICTURE
23 EXHIBITS THERE WHICH INCLUDE EVERYTHING BUT 2-D AND 2-C.
24 I'M SORRY. JUST FOR THE RECORD, JUDGE, I'LL READ THEM
25 OFF. 2-H, 2-E, 2-A, 2-B, 2-J, 2-K, 2-L, 2-M, 2-O, 2-P,

1 2-F, 2-G, 2-N, AND 2-I. WE WOULD ASK THOSE BE ADMITTED.

2 **THE COURT:** WITHOUT OBJECTION.

3 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT 1,
4 9-1-1 CALL C.D.)

5 (RECEIVED IN EVIDENCE WAS STATE'S 2-A, 2-B,
6 2-E, 2-F, 2-G, 2-H, 2-I, 2-J, 2-K, 2-L, 2-M,
7 2-N, 2-O, AND 2-P, PHOTOGRAPHS.)

8 **MR. WAGNER:** AND WE WOULD ASK IF WE COULD PUBLISH
9 THE 9-1-1 CALL, STATE'S EXHIBIT NUMBER 1.

10 **THE COURT:** ALL RIGHT. DO I UNDERSTAND THERE ARE
11 TWO CALLS? ARE YOU PUBLISHING BOTH CALLS?

12 **MR. WAGNER:** YES, SIR. IT'S ESSENTIALLY TWO CALLS
13 BUT IT'S KIND OF A TWO-PART.

14 **THE COURT:** ANY OBJECTION?

15 **MR. DAY:** NO OBJECTION, YOUR HONOR. WE'VE HAD A
16 COPY OF THE CALLS AND WE'VE LISTENED TO THEM BEFORE.

17 **THE COURT:** VERY GOOD. ALL RIGHT. SO ADMITTED.

18 (STATE'S EXHIBIT 1, 9-1-1 CALL DISC, PLAYED
19 FOR JURY FROM 3:46 P.M. UNTIL 3:51 P.M.)

20 BY MR. WAGNER:

21 Q. DID YOU CALL BACK THAT EVENING?

22 A. YES, SIR, I DID.

23 Q. OKAY. WHY DID YOU CALL BACK?

24 A. A FRIEND OF MINE HAD CALLED ME AND TOLD HIM THEY
25 THOUGHT THEY HAD SEEN THEM.

1 **MR. DAY:** OBJECTION TO THE HEARSAY. SOMEONE.

2 **THE COURT:** JUST A MOMENT. HE TESTIFIED THAT HE GOT
3 A CALL AND AS A RESULT OF THE CALL HE DID SOMETHING.
4 THAT'S HOW THE QUESTION WAS COUCHED. OVERRULED BUT
5 PLEASE STATE YOUR QUESTION.

6 BY MR. WAGNER:

7 Q. YOU GOT A CALL ABOUT THEIR WHEREABOUTS?

8 A. YES, SIR.

9 Q. OKAY. FROM A FRIEND OF YOURS?

10 A. YES.

11 Q. OKAY. AND BASED ON THAT INFORMATION WHAT DID YOU
12 DO?

13 A. I CALLED BACK TO 9-1-1 AND TOLD THEM WHAT MY
14 FRIEND HAD TOLD ME THEIR WHEREABOUTS WERE, AT THE END OF
15 BURNS MILL ROAD.

16 Q. AND LISTEN TO THE SECOND PART OF THE C.D.

17 (SECOND 9-1-1 CALL ON STATE'S EXHIBIT 1 WAS
18 PLAYED FOR JURY FROM 3:52 A.M. UNTIL
19 APPROXIMATELY 5:53 P.M.)

20 BY MR. WAGNER:

21 Q. MR. MCCALL, WHAT KIND OF GUN DID THE DEFENDANT
22 STEAL FROM YOU?

23 A. A RUGER P 95.

24 Q. TELL US WHAT KIND OF GUN THAT IS.

25 A. IT'S A SEMIAUTOMATIC.

1 Q. WHAT KIND OF COLOR WAS IT?

2 A. IT WAS A MATTE FINISH WHICH WAS A DULL GRAY AND
3 WITH A BLACK PLASTIC GRIP.

4 Q. WOULD YOU CALL IT LIKE A TWO-TONE FINISH?

5 A. NO. A MATTE FINISH, IS A BRUSHED ALUMINUM IS WHAT
6 IT IS.

7 Q. OKAY. SO IT'S KIND OF SILVERISH COLOR?

8 A. YES, A DULLED SILVER.

9 Q. OKAY. AND IS THAT THE SLIDE PART ON TOP?

10 A. THAT'S THE WHOLE GUN EXCEPT FOR THE BLACK PISTOL
11 GRIP.

12 Q. OKAY. SO IT'S SILVER AND BLACK, I GUESS?

13 A. RIGHT.

14 Q. AND WAS IT LOADED WHEN HE STOLE IT FROM YOU?

15 A. YES. THE CLIP WAS LOADED BUT THERE WASN'T BUT ONE
16 IN THE CHAMBER.

17 Q. OKAY. AND I BELIEVE YOU TESTIFIED HE DEMANDED
18 MONEY FROM YOU, ALSO?

19 A. YES. HE DEMANDED MONEY FROM ME, WHICH I TOLD HIM
20 I DIDN'T HAVE ANY, AND HE DIDN'T PURSUE IT FURTHER.

21 Q. OKAY. DID SHANE SAY ANYTHING WHEN HE FIRED A
22 ROUND THROUGH YOUR WALL?

23 A. NO, SIR.

24 Q. DID THEY SAY ANYTHING, DID ANY OF THEM SAY
25 ANYTHING BEFORE THEY LEFT?

1 A. JUST NOT TO CALL THE LAW.

2 Q. OKAY. I'M GONNA ASK YOU THIS BECAUSE I THINK
3 YOU'LL BE ASKED ABOUT IT LATER. BUT BACK IN JUNE OF 2007
4 DID YOU GET CONVICTED OF A RECEIVING STOLEN GOODS CHARGE?

5 A. YES, SIR, I DID.

6 Q. OKAY. DID YOU PLEAD GUILTY TO THAT?

7 A. YES, SIR.

8 Q. YOU FINISHED YOUR SENTENCE?

9 A. YES, SIR, I DONE ONE YEAR OF PROBATION FOR THAT.

10 Q. OKAY.

11 **MR. WAGNER:** THANK YOU. THAT'S THE ONLY QUESTIONS I
12 HAVE.

13 **THE COURT:** CROSS-EXAM?

14 **MR. DAY:** YOUR HONOR, JUST ONE SECOND?

15 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
16 RECORD.)

17 CROSS-EXAMINATION BY MR. DAY:

18 Q. A COUPLE THINGS, IF I MAY, MR. MCCALL. ONE OF --
19 I THINK THE LAST THING YOU SAID WAS THAT WHAT MR. WEBB
20 SAID I BELIEVE YOU SAID WAS NOT TO CALL THE LAW?

21 A. YES, SIR.

22 Q. DO YOU REMEMBER GIVING A STATEMENT TO THIS
23 GENTLEMAN, SCOTT ARNOLD, BACK ON THE SAME NIGHT THIS
24 HAPPENED, JULY 23RD OF '09?

25 A. YES.

1 Q. THAT WASN'T IN THERE, WAS IT?

2 A. I'M NOT SURE. I HAVEN'T READ THE STATEMENT SINCE
3 I WROTE IT.

4 (COUNSEL CONFER.)

5 BY MR. DAY:

6 Q. LET ME SEE IF YOU RECOGNIZE THAT. IS THAT YOUR
7 SIGNATURE IN THE STATEMENT, DO YOU REMEMBER THAT?

8 A. YES, SIR.

9 Q. ALL RIGHT, SIR. SO DOWN THERE AT THE BOTTOM,
10 RIGHT AT THE END OF YOUR STATEMENT OR WHATEVER, WHERE YOU
11 WOULD HAVE FINISHED THAT UP AS TO WHAT THEY SAID AT THE
12 END, IS THERE ANYTHING IN THERE WHERE YOU SAID NOT TO
13 CALL THE LAW?

14 A. NO, SIR, THERE ISN'T.

15 Q. OKAY. NOW -- ALL RIGHT, SIR. WHAT WENT ON BACK
16 IN JASON'S ROOM YOU WEREN'T AWARE OF; IS THAT CORRECT?

17 A. NO, SIR.

18 Q. YOU COULDN'T SEE BACK THERE?

19 A. NO.

20 Q. BUT THERE'S NO QUESTION IN YOUR MIND THAT SHANE
21 FIRED A SHOT IN YOUR HOUSE?

22 A. YES, SIR.

23 Q. AND I BELIEVE YOU DESCRIBED THOSE OR INDICATED
24 THOSE ON THE PICTURE SHOWING WHERE IT WENT INTO THE WALL,
25 ET CETERA?

1 A. YES, SIR, I DID.

2 Q. OKAY. NOW, WHEN EVERYONE LEFT AND WENT OUTSIDE,
3 GOING BACK TO WHERE THE CAR, WHEREVER, DID YOU GO OUTSIDE
4 WITH THEM?

5 A. NO, SIR, I DIDN'T.

6 Q. WERE YOU -- I MEAN, WERE YOU HIDING OR ANYTHING
7 LIKE THAT?

8 A. NO, I WASN'T HIDING.

9 Q. OKAY. BUT YOU CERTAINLY DIDN'T GO OUTSIDE?

10 A. NO.

11 Q. BECAUSE I BELIEVE YOU SAY IN YOUR STATEMENT
12 (READING): AS THEY WERE LEAVING THEY FIRED A SHOT THROUGH
13 MY LIVING ROOM AND I PROCEEDED TO CALL 9-1-1?

14 A. YES, SIR.

15 Q. OKAY. SO ONE SHOT?

16 A. ONE SHOT.

17 Q. ALL RIGHT, SIR. NOW, YOU ALSO, IN LOOKING AT THIS
18 YOU SPOKE OF A SPENT ROUND THAT GOES ON THE FLOOR, I
19 BELIEVE IS IN YOUR KITCHEN; IS THAT RIGHT?

20 A. YES. IT WAS LAYING IN THE ENTRANCE TO MY KITCHEN.

21 Q. ENTRANCE TO THE KITCHEN. OKAY. AND YOU ARE
22 SAYING THAT THAT SPENT ROUND CAME FROM OUTSIDE?

23 A. YES, SIR.

24 Q. SO THAT SPENT ROUND WOULD HAVE COME THROUGH WALL
25 OUTSIDE, I BELIEVE, AS THE OFFICER'S POINTED OUT TO ME IN

1 THEIR PICTURES -- LET ME MAKE SURE I GOT THE RIGHT ONE.
2 HOLD ON -- OKAY. AND I WANT TO SHOW YOU STATE'S EXHIBITS
3 2-G AND 2-F, OKAY? WE'LL START WITH 2-G. I BELIEVE YOU
4 TESTIFIED THAT THAT IS WHERE YOU BELIEVE THAT THE BULLET
5 CAME FROM OUTSIDE INTO THE HOUSE?

6 A. YES, THAT IS WHERE THE BULLET COME THROUGH.

7 Q. OKAY. AND THIS IS 2-F HERE, AND THE INVESTIGATOR
8 SAID THAT WAS THE BULLET. IS THAT CORRECT AS FAR --

9 A. YES, SIR.

10 Q. OKAY. THIS RIGHT UP HERE ON TOP?

11 A. LET ME...

12 Q. OH, I'M SORRY. (SHOWING.)

13 A. YES, SIR.

14 Q. OKAY. ON TOP HERE. ALL RIGHT. AND THAT'S WHERE
15 THE BULLET CAME IN AND YOU SAID WENT THROUGH THIS AREA
16 HERE (INDICATING):

17 A. YEAH, THAT'S IT. THAT'S WHERE IT WENT THROUGH THE
18 WALL.

19 Q. OKAY. ALL RIGHT. BUT YOU DON'T KNOW WHO FIRED
20 THAT SHOT?

21 A. I DO NOT.

22 Q. OKAY. NOW WHEN SHANE CAME IN, HE HAD A GUN?

23 A. YES, SIR.

24 Q. WHAT KIND OF GUN DID HE HAVE?

25 A. .357 MAGNUM.

1 Q. AND THIS IS WHAT HE HAD, THAT'S THE ONE HE WAS
2 FIRING OFF IN THE HOUSE?

3 A. YES, SIR.

4 Q. OKAY. DO YOU KNOW WHETHER OR NOT YOU WERE ABLE TO
5 FIND THOSE SPENT ROUNDS?

6 A. NO, THEY WERE NOT FOUND.

7 Q. SO HE'S GOT A .357 WHEN HE WALKS INTO THE HOUSE,
8 AND DID HE POINT THAT AT YOU?

9 A. YES, SIR.

10 Q. ALL RIGHT. SO SHANE ELLIOTT HAS COME INTO THE
11 HOUSE, HE HAS POINTED THIS GUN AT YOU --

12 A. YES.

13 Q. -- IS THAT CORRECT?

14 AND I BELIEVE THAT MS. SMITH TESTIFIED THAT SHANE
15 AND SHE WERE WATCHING YOU?

16 A. YES.

17 Q. SO MS. SMITH AND YOU AND SHANE WERE IN THE SAME
18 ROOM. WAS MARIA UP THERE?

19 A. YES, SHE WAS.

20 Q. SHE WAS IN THE ROOM, TOO?

21 A. YES.

22 Q. OKAY. NOW, TELL ME -- AS I UNDERSTAND IT, SHANE
23 SAT DOWN ON YOUR BED AND HAD THE GUN?

24 A. YES.

25 Q. AS HE SAT DOWN WAS HE POINTING IT AT YOU?

1 A. YES. HE HAD IT TO MY HEAD.

2 Q. HAD IT TO YOUR HEAD?

3 A. YES, SIR.

4 Q. USE YOUR FINGER IF YOU WOULD AND --

5 A. RIGHT HERE (INDICATING).

6 Q. LIKE THAT (INDICATING)?

7 A. YES, SIR.

8 Q. SO SHANE ELLIOTT HAS GOT A PISTOL TO YOUR HEAD
9 RIGHT HERE?

10 A. YES.

11 Q. OKAY. AND THAT'S A .357?

12 A. YEAH.

13 Q. PRETTY HEALTHY GUN?

14 A. YEAH.

15 Q. OKAY. AND HE THEN I BELIEVE IN YOUR STATEMENT
16 SAID (READING): SHANE THEN TURNED HIS GUN ON ME, SAT
17 DOWN ON MY BED AND FIRED A ROUND THROUGH MY BEDROOM DOOR.

18 OKAY? IS THAT CORRECT?

19 A. YES, SIR.

20 Q. SO YOU'RE IN THE BEDROOM ON THE BED, HE'S GOT A
21 GUN TO YOUR HEAD, AND I BELIEVE THERE WAS A PICTURE IN
22 HERE WHICH --

23 A. YEAH, IT SHOWS HOW HE --

24 Q. SHOWS HOW HE DID IT?

25 A. YES, SIR.

1 Q. OKAY. I BELIEVE THAT'S STATE'S EXHIBIT 2-A. AND
2 I SHOW THAT TO YOU. IS THAT WHAT YOU'RE TALKING ABOUT?

3 A. YES, SIR.

4 Q. NOW, LOOKING OUT OF YOUR BEDROOM -- OKAY. THIS IS
5 EXHIBIT 2-K, AS IN KILO. IS THIS WHAT IT LOOKS LIKE
6 LOOKING OUT OF YOUR BEDROOM WINDOW?

7 A. YES, MY BEDROOM DOOR, YES, SIR.

8 Q. YOUR BEDROOM DOOR?

9 A. YES.

10 Q. EXCUSE ME. I'M SORRY. SO THIS IS A DOOR THAT
11 SHANE SHOT THROUGH?

12 A. YES, SIR.

13 Q. OKAY. AS SHOWN IN 2-A, LYING ON THE BED, DID HE
14 HAVE HIS ARM AROUND YOU?

15 A. YES.

16 Q. OKAY. SO HE'S HOLDING YOU LIKE THIS AND HE'S GOT
17 THE PISTOL UP TO YOUR HEAD AND THEN HE FIRES?

18 A. YES, SIR.

19 Q. HE FIRES THROUGH THIS DOOR. AND I BELIEVE THAT'S
20 THE LIVING ROOM OUT THERE; IS THAT CORRECT?

21 A. YES, SIR.

22 Q. IS THAT WHERE THE TWO GIRLS WERE?

23 A. NO. THEY WERE BACK HERE BACK IN THE CORNER OF MY
24 BEDROOM.

25 Q. SO EVERYBODY WAS IN THE BEDROOM WITH YOU?

1 A. EXCEPT FOR JEFF AND MY BROTHER, JASON.

2 Q. OKAY. SO THEY WERE IN THE ROOM AND HE FIRED
3 THROUGH THAT DOOR?

4 A. YES, SIR.

5 Q. OKAY. WHAT DID SHANE SAY TO YOU? DID HE ASK FOR
6 MONEY?

7 A. NO.

8 Q. DID -- I TAKE IT WHEN HE WAS HOLDING YOU THERE, IT
9 WASN'T A VERY PLEASANT TIME, WAS IT?

10 A. NO, IT WASN'T.

11 Q. PARTICULARLY WHEN HE FIRED OFF THAT .357 IN THAT
12 LITTLE ROOM.

13 A. NO, IT WASN'T A VERY PLEASANT FEELING AT ALL, SIR.

14 Q. OKAY. BECAUSE I'M JUST LOOKING AT YOUR STATEMENT
15 AGAIN. I'LL SHOW IT TO YOU AGAIN (HANDING). RIGHT ABOUT
16 HALFWAY DOWN ON THE RIGHT SIDE, I'LL SHOW YOU WHERE IT
17 SAYS SHANE --EXCUSE ME -- RIGHT HERE, SHANE ELLIOTT
18 THEN -- WAS THAT TURNED A GUN?

19 A. YES.

20 Q. ALL RIGHT. I'M GONNA READ THROUGH THAT AND YOU
21 TELL ME IF I'M SAYING IT RIGHT. (READING): SHANE ELLIOTT
22 THEN TURNED HIS GUN ON ME, SAT DOWN ON MY BED, FIRED A
23 ROUND THROUGH MY BEDROOM DOOR.

24 A. YES.

25 Q. OKAY. THEN YOU SAY (READING): TWO GIRLS ENTERED

1 MY BEDROOM, MARIA VILLEGAS -- AM I PRONOUNCING THAT
2 RIGHT?

3 A. YES.

4 Q. -- AND NICKIE SMITH.

5 A. RIGHT.

6 Q. OKAY. ALL RIGHT, SIR, OKAY. LET ME GIVE THAT
7 BACK TO THEM.

8 (HANDING TO MR. WAGNER.)

9 MR. MCCALL, THERE AT THE HOUSE ON 287 LITTLE RIVER
10 LANE -- IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND THAT'S WHERE YOU AND YOUR BROTHER LIVE?

13 A. YES, SIR.

14 Q. OKAY. LET ME ASK YOU THIS, SIR: HAVE YOU EVER
15 SOLD DRUGS FROM THAT ---

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

17 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF
18 THE JURY, I'LL HAVE TO ASK YOU TO RETIRE TO THE JURY
19 ROOM. OR YOU MIGHT TAKE THIS AS YOUR AFTERNOON BREAK
20 BECAUSE I NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS
21 BEFORE WE PROCEED.

22 AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG
23 YOURSELVES IN ANY WAY.

24 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
25 4:08 P.M.)

1 **THE COURT:** ALL RIGHT. I THOUGHT YOU WERE GONNA
2 GIVE ME A LITTLE NOTICE.

3 **MR. DAY:** I'M SORRY, YOUR HONOR.

4 **THE COURT:** NOT AS SORRY AS I AM.

5 GO AHEAD. ALL RIGHT. WHAT'S YOUR OBJECTION,
6 MR. WAGNER?

7 **MR. WAGNER:** YOUR HONOR, AGAIN HE'S TRYING TO GO
8 INTO WHAT HE DEEMS AS MISCONDUCT ON STUFF THAT THE
9 DEFENDANT HAS NEVER BEEN CONVICTED OF, AND I THINK IT'S
10 IMPROPER.

11 **THE COURT:** WELL, HE'S NOT GOING INTO SOMETHING THAT
12 HE'S NEVER -- THE THING IS I DON'T THINK THIS WITNESS HAS
13 PUT HIS CREDIBILITY AT ISSUE AS YET AS FAR AS THE SELLING
14 OF DRUGS. IF THAT HAD COME OUT IN SOME FASHION, I
15 IMAGINE HE COULD IMPEACH HIM.

16 BUT ARE YOU GONNA ASK HIM IF HE'S BEATING A DOG
17 THERE? HOW ABOUT MAYBE A GOLD-PLATED OLIVIA THERE? WHEN
18 DOES THE QUESTION STOP?

19 **MR. DAY:** I THINK IT WOULD HAVE TO STOP ---

20 **THE COURT:** I THINK IT'S GONNA STOP RIGHT NOW.
21 ACTUALLY WHAT YOU DID IS CLOSE THE DOOR BEFORE IT WAS
22 OPENED. OR SEALED THE DOOR. BECAUSE THERE HASN'T BEEN
23 ANY TESTIMONY ABOUT THAT. YOU COULD HAVE PRESENTED THE
24 CASE SO THAT YOU MIGHT BE ABLE TO GET INTO WHY PEOPLE
25 WENT SOMEWHERE. BUT IT WASN'T THERE AT THIS TIME. ALL

1 RIGHT. I'M GOING TO SUSTAIN THE OBJECTION AND DISALLOW
2 ANY QUESTION ABOUT DRUG DEALING AT THAT LOCATION.

3 MR. DAY: YOUR HONOR, I WONDER IF I MIGHT PROFFER
4 THE TESTIMONY BASED UPON THAT.

5 THE COURT: LET'S DO THAT. THAT'S WHAT I WANTED YOU
6 TO DO BEFORE, BUT YOU DIDN'T UNDERSTAND, SO I THOUGHT
7 MAYBE YOU DID UNDERSTAND AND YOU REJECTED IT. BUT IF YOU
8 INSIST ON DOING IT, OF COURSE I WOULD LIKE TO ASK YOU.
9 THAT'S THE REASON I'M GIVING YOU THAT OPPORTUNITY. GO
10 AHEAD.

11 MR. DAY: I APOLOGIZE, YOUR HONOR. I KNEW THERE WAS
12 SOMETHING I WAS THINKING ABOUT BEFORE I GOT STARTED.
13 BY MR. DAY (OUTSIDE JURY PRESENCE):

14 Q. MR. MCCALL, DO YOU HAVE PENDING CHARGES AGAINST
15 YOU RIGHT NOW?

16 A. YES, SIR.

17 Q. THESE ARE DRUG CHARGES?

18 A. YES, SIR.

19 Q. OKAY. THERE'S DISTRIBUTION OF MARIJUANA AS WELL
20 AS METHAMPHETAMINE?

21 A. YES, SIR.

22 Q. AND ALSO CONSPIRACY ALONG WITH YOUR BROTHER?

23 A. YES, SIR.

24 Q. OKAY. AND THESE ALLEGATIONS ARE THAT THE CHARGES
25 TOOK PLACE AT 287 LITTLE RIVER LANE?

1 A. YES, SIR.

2 Q. OKAY. AND IN THOSE CHARGES YOU ARE ACCUSED OF
3 SELLING DRUGS TO A CONFIDENTIAL INFORMANT WORKING ON
4 BEHALF OF THE SHERIFF'S DEPARTMENT?

5 A. THOSE ARE ACCUSATIONS, YES, SIR.

6 Q. OKAY. IN THAT REGARD, SIR, I FIGURED YOU WOULD
7 ADMIT OR DENY THAT IN FACT THAT OCCURRED?

8 A. THAT'S THE ACCUSATION. I HAVEN'T WENT TO COURT
9 YET.

10 Q. I TAKE IT THAT'S A "NO."

11 A. YES, SIR.

12 Q. OKAY. SO YOUR ANSWER WOULD BE THAT YOU HAVE NOT
13 SOLD METH OR MARIJUANA AT THAT RESIDENCE, AND IN THIS
14 CASE, JULY 7TH OF '08, THE 14TH OF -- MARIJUANA ON THE
15 7TH, WE'RE ON THE 14TH OR 15TH OF JULY OF '08?

16 A. AS I SAID, THOSE ARE CHARGES BUT THEY HAVEN'T WENT
17 TO COURT YET, SIR.

18 (DEFENDANT LEAVES COURTROOM.)

19 BY MR. DAY:

20 Q. AND IN REGARDS TO THOSE PARTICULAR CHARGES, HAVE
21 YOU BEEN OFFERED ANY KIND OF DEAL BY THE SOLICITOR OR
22 ANYONE ELSE CONCERNING THOSE CHARGES AND YOUR TESTIMONY
23 HERE TODAY?

24 A. NO, SIR, I HAVE NOT.

25 (DEFENDANT RETURNS TO COURTROOM.)

1 BY MR. DAY:

2 Q. ALL RIGHT, SIR. AS TO THOSE CHARGES, I WOULD ASK
3 YOU, AT THAT RESIDENCE, HAVE YOU EVER SOLD DRUGS TO
4 ANYONE THERE?

5 A. I'M NOT GONNA, I'M NOT GONNA ANSWER THAT.

6 Q. WHY NOT?

7 **MR. WAGNER:** OBJECTION, JUDGE.

8 **THE COURT:** YOU HAVE TO TAKE THE ANSWER YOU SAY HE
9 WASN'T GONNA ANSWER. I'M SORRY. THAT, BY THE WAY,
10 THAT'S THE CASE OF *STATE VERSUS COOPER*, 312 S.C. 90, A
11 1994 CASE. (READING): THE CROSS-EXAMINER MUST TAKE THE
12 WITNESS'S ANSWER AND THE PRIOR BAD ACTS MAY NOT BE PROVED
13 BY EXTRINSIC EVIDENCE.

14 **MR. DAY:** I UNDERSTAND THAT, YOUR HONOR, BUT HE WAS
15 GONNA TAKE THE FIFTH AMENDMENT.

16 **THE COURT:** I DON'T CARE WHAT YOU'RE GONNA DO. HIS
17 ANSWER WAS NO. YOU HAVE TO TAKE HIS ANSWER. SWEAR OUT A
18 WARRANT FOR PERJURY.

19 **MR. DAY:** THAT'S ALL I HAVE CONCERNING THE PROFFER,
20 YOUR HONOR.

21 **THE COURT:** ALL RIGHT.

22 MR. WAGNER?

23 **MR. WAGNER:** YOUR HONOR, I DON'T HAVE ANYTHING
24 FURTHER. I JUST THINK THE WHOLE LINE OF QUESTIONING THE
25 STATE'S POSITION WOULD BE IT'S IMPROPER. I THINK HE'S

1 TRYING TO GO IN ON A FISHING EXPEDITION AS TO WHETHER OR
2 NOT, ON PENDING CHARGES THAT HAVE NOT BEEN ADJUDICATED
3 YET, AND I THINK HE HAS EVERY RIGHT TO PLEAD NOT GUILTY
4 ON THOSE CHARGES, AND THAT'S WHAT HE'S DONE ON THE STAND
5 AND IT SHOULD PROBABLY STOP THERE.

6 AS WELL AS WITH HIS BROTHER, UNLESS WE'RE GOING TO
7 GO INTO HIS BROTHER, TOO, ON THE SAME LINE OF QUESTIONING
8 BEFORE THE JURY COMES BACK IN.

9 **THE COURT:** AGAIN, I THINK, NOT TO TELL YOU HOW TO
10 TRY THE CASE, BUT IF YOU WANT TO FIND OUT IF HE HAS
11 PENDING CHARGES THAT MIGHT REFLECT ON HIS CREDIBILITY, I
12 FIND THAT WOULD BE APPROPRIATE. TO ASK HIM IF HE'S MADE
13 ANY DEAL WITH THE STATE CONCERNING HIS TESTIMONY, I THINK
14 THAT'S APPROPRIATE, TOO, BUT IT STOPS THERE.

15 **MR. DAY:** ALL RIGHT. WILL I BE ALLOWED TO BROACH
16 THAT WHEN THE JURY COMES BACK IN?

17 **THE COURT:** THAT'S WHAT I WAS TRYING TO DO IS TELL
18 YOU WHAT YOU CAN DO. BUT THAT'S IT. IF YOU WANT TO TRY
19 THE OTHER CASES, THAT'S FOR A DIFFERENT DATE AND TIME.

20 **MR. DAY:** ALL RIGHT. WHEN THE BROTHER TESTIFIES,
21 I'LL WANT TO DO THE SAME, BUT I WILL STOP AND LET YOU
22 KNOW AT THAT POINT.

23 **THE COURT:** WELL, I'LL TELL YOU, MR. DAY, IT WILL BE
24 HELPFUL IF I KNOW WHERE YOU'RE GOING. I DO KNOW WHERE
25 YOU'RE GOING, BUT THERE ARE WAYS TO GET THERE, AND SOME

1 WAYS ARE NOT ACCEPTABLE AND SOME ARE. AND WHEN THEY
2 AREN'T ACCEPTABLE, I'M GONNA HAVE TO CUT YOU OFF.

3 **MR. DAY:** I UNDERSTAND.

4 **THE COURT:** IT MIGHT BE BETTER TO DO WHAT I THOUGHT
5 WE WERE GONNA DO WITH THIS WITNESS, THAT BEFORE YOU
6 STARTED DOWN YOUR PATH, THAT YOU MIGHT WANT TO SAY I'LL
7 BE TAKING UP A MATTER WITH THIS WITNESS, TOO, THAT A
8 PROFFER, NOT EXAMINATION, THOUGH. ALL RIGHT? BUT I
9 DON'T GIVE ADVISORY OPINIONS.

10 **MR. DAY:** I UNDERSTAND.

11 **THE COURT:** ALL RIGHT. DO WE NEED TO TAKE A SHORT
12 BREAK?

13 **MR. DAY:** RIGHT. AND WHEN WE COME BACK, THAT WOULD
14 BE THE ONLY TWO QUESTIONS I WOULD HAVE LEFT OF THIS
15 WITNESS.

16 **THE COURT:** PARDON?

17 **MR. DAY:** THE ONLY TWO QUESTIONS I WOULD HAVE OF
18 THIS WITNESS WOULD BE THOSE WHICH YOU STATED ABOUT
19 WHETHER THERE ARE PENDING CHARGES AND WHETHER THERE'S
20 BEEN ANY DEAL FOR ANYTHING.

21 **THE COURT:** ALL RIGHT. VERY GOOD. I'LL NOTE YOUR
22 OBJECTIONS TO MY FORBIDDING THOSE QUESTIONS. DO YOU NEED
23 A BREAK?

24 **MR. DAY:** YES, SIR, THAT WOULD BE GOOD.

25 **THE COURT:** ALL RIGHT. LET'S TAKE A SHORT BREAK.

1 OH. YOU UNDERSTAND YOU ARE UNDER OATH SO YOU CANNOT
2 DISCUSS YOUR TESTIMONY WITH ANYBODY AT ALL. DO YOU
3 UNDERSTAND THAT?

4 **THE WITNESS:** YES, SIR.

5 (WITNESS LEAVES STAND.)

6 **THE COURT:** VERY GOOD.

7 (A RECESS WAS TAKEN.)

8 **THE COURT:** ALL RIGHT. ARE WE READY TO PROCEED?

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

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

11 **MR. DAY:** YES, SIR.

12 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN US.

13 (THE JURY ENTERED THE COURTROOM AT

14 APPROXIMATELY 4:31 P.M.)

15 **THE COURT:** LET THE RECORD REFLECT THE JURY AND
16 ALTERNATE ARE IN THE JURY-BOX.

17 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE
18 WILL CONTINUE WITH THE CROSS-EXAMINATION.

19 **MR. DAY:** THANK YOU, YOUR HONOR.

20 BY MR. DAY:

21 Q. JUST A FEW MORE QUESTIONS IF I CAN, MR. MCCALL.

22 YOU PRESENTLY HAVE SOME CHARGES PENDING AGAINST
23 YOU HERE IN OCONEE COUNTY; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. AS A RESULT OF THOSE PENDING CHARGES, HAS ANY

1 OFFER BEEN MADE TO YOU BY THE SOLICITOR FOR YOUR
2 TESTIMONY OR TO GIVE YOU ANY KIND OF BREAK, DEAL OR
3 ANYTHING FOR YOUR TESTIMONY?

4 A. NO, SIR.

5 Q. OKAY. ONE LAST THING, SIR. I BELIEVE YOU AND
6 MR. SHANE ELLIOTT WERE HOUSED IN THE SAME CELL AT THE
7 DETENTION CENTER -- LET ME MAKE SURE I GOT THIS RIGHT --
8 NOVEMBER 18TH THROUGH NOVEMBER 20TH OF THIS PAST YEAR; IS
9 THAT CORRECT?

10 A. I DON'T KNOW THE DATES, BUT YES, WE WERE IN THE
11 SAME CELL.

12 **MR. DAY:** OKAY. THOSE ARE ALL THE QUESTIONS I HAVE,
13 YOUR HONOR.

14 **THE COURT:** RE-EXAM?

15 REDIRECT EXAMINATION BY MR. WAGNER:

16 Q. MR. MCCALL, WHAT -- I MEANT TO ASK YOU, WHAT DO
17 YOU DO FOR A LIVING?

18 A. I'M SELF-EMPLOYED IN HEATING AND AIR-CONDITIONING
19 WORK.

20 Q. OKAY. HAVE YOU GOT A DEGREE IN THAT?

21 A. YES, SIR. A DEGREE IN HEATING AND AIR
22 CONDITIONING AND A DEGREE IN INDUSTRIAL MECHANICS -- OR
23 GENERAL TECHNOLOGY WITH A MAJOR IN INDUSTRIAL MECHANICS.

24 Q. ON JULY 23RD DID YOU TALK TO SCOTT ARNOLD AND GIVE
25 A WRITTEN STATEMENT? I BELIEVE YOU'VE ALREADY REFERRED

1 TO IT. TO SCOTT ARNOLD?

2 A. YES, SIR.

3 Q. LET ME HAND YOU A COPY OF THAT STATEMENT. AND HOW
4 LONG IS THE STATEMENT?

5 A. IT'S A GOOD PARAGRAPH.

6 Q. OKAY. COULD YOU HAVE WRITTEN IT A LOT LONGER HAD
7 YOU WANTED TO AND TAKEN THE TIME TO MAKE IT A LOT MORE
8 DETAILED?

9 A. YES, SIR.

10 Q. AND HOW COME YOU DIDN'T DO THAT?

11 A. I THOUGHT WHAT I WROTE WAS ALL THAT WAS NEEDED.

12 Q. OKAY. SO THE FACT THAT YOU DIDN'T PUT IN WHAT
13 JEFF WEBB SAID TO YOU WHEN HE LEFT ABOUT NOT CALLING THE
14 COPS IN YOUR STATEMENT, DID YOU PUT EVERYTHING --

15 A. NO, SIR.

16 Q. -- YOU COULD HAVE POSSIBLY PUT IN YOUR STATEMENT?

17 A. NO, SIR.

18 Q. OKAY. SO IT'S MORE, I GUESS MORE SAFE TO SAY MORE
19 OF A SYNOPSIS?

20 A. RIGHT. I MEAN, OF COURSE HE'S GONNA SAY THAT, YOU
21 KNOW? IS THE WAY I WAS LOOKING AT IT, YOU KNOW?

22 Q. OKAY. BUT HE SAID OTHER THINGS TO YOU, TOO, WHILE
23 IT WAS GOING ON THAT YOU DIDN'T PUT IN THE STATEMENT,
24 TRUE?

25 A. RIGHT.

1 Q. OKAY. AND IS THAT STATEMENT THAT YOU GAVE SCOTT
2 ARNOLD THAT NIGHT, IS IT EXACTLY WHAT HAPPENED?

3 A. TO MY KNOWLEDGE AND TO WHAT I RECOLLECT, YES, IT
4 IS.

5 Q. OKAY. AND IS IT EXACTLY WHAT YOU HAVE TESTIFIED
6 TO TODAY?

7 A. YES, SIR.

8 Q. OKAY. YOU KIND OF CONFUSED ME ABOUT WHERE SHANE
9 WAS AND WHO WAS HOLDING THE GUN TO YOUR HEAD. DID BOTH
10 GUYS HAVE PISTOLS AT THE SAME TIME?

11 A. YES, SIR. THEY BOTH COME IN THE HOUSE WITH
12 PISTOLS.

13 Q. DID BOTH GUYS HOLD GUNS TO YOUR HEAD?

14 A. YES.

15 Q. AT WHAT POINT IN TIME DID THEY STEAL OR TAKE
16 POSSESSION OF YOUR PISTOL FROM YOU?

17 A. JEFF TOOK MY PISTOL WHEN HE CAME TO THE SIDE OF MY
18 BED AND AFTER HE HIT ME OVER THE HEAD WITH HIS PISTOL.

19 Q. OKAY. AND DID HE TAKE YOUR PISTOL AND CARRY IT
20 BACK DOWN THE HALL TOWARDS ---

21 A. YES, SIR.

22 Q. AND WHEN YOU SAY YOU DON'T KNOW WHICH ONE OF THEM
23 SHOT INTO YOUR HOUSE, HOW COME YOU DIDN'T GO OUT THERE
24 AND FOLLOW THEM OUT?

25 A. BECAUSE I HAD, I HAD NO FIREARM AND THEY HAD

1 THREE. I MEAN, YOU KNOW, IT DOESN'T SEEM PRACTICAL FOR
2 ME TO WALK OUT MR. BARE-HANDED, YOU KNOW.

3 Q. I MEAN, YOU DIDN'T FEEL LIKE GETTING SHOT TO
4 DEATH?

5 A. RIGHT.

6 Q. OKAY.

7 MR. WAGNER: THANK YOU, MR. MCCALL. THOSE ARE ALL
8 THE QUESTIONS I HAVE.

9 THE WITNESS: HERE'S YOUR STATEMENT (LEAVING STAND.)

10 MR. DAY: ONE QUICK QUESTION. I'M SORRY.

11 THE COURT: YOU MAY PROCEED.

12 RECROSS-EXAMINATION BY MR. DAY:

13 Q. JUST A FOLLOW-UP TO MR. WAGNER'S QUESTION. THE
14 STATEMENT YOU MADE THAT NIGHT IS WHAT YOU PUT DOWN IS
15 WHAT YOU REMEMBER HAPPENING; IS THAT CORRECT?

16 A. YES, SIR.

17 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK
18 YOU, SIR.

19 THE COURT: ALL RIGHT. NOW YOU MAY STEP DOWN.

20 (WITNESS LEAVES STAND.)

21 THE COURT: ANY RE, REDIRECT?

22 MR. WAGNER: NO, SIR.

23 THE COURT: ALL RIGHT. YOU MAY CALL YOUR NEXT
24 WITNESS.

25 MR. WAGNER: I CALL JASON MCCALL.

1 WHEREUPON,

2 JASON MCCALL,

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

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q. SIR, COULD YOU GIVE US YOUR FULL NAME AND SPELL
6 YOUR LAST FOR THE RECORD?

7 A. JASON ANDREW MCCALL, M-C-C-A-L-L.

8 Q. OKAY. MR. MCCALL ARE YOU RELATED TO NATHAN MCCALL
9 WHO JUST TESTIFIED HERE?

10 A. HE'S MY LITTLE BROTHER.

11 Q. AND YOU ALL LIVE TOGETHER?

12 A. YES, WE DO.

13 Q. AND WHERE DO YOU LIVE?

14 A. 287 LITTLE RIVER LANE.

15 Q. WERE YOU LIVING THERE BACK ON THE 23RD OF JULY
16 LAST YEAR?

17 A. YES, SIR. YEA.

18 Q. AND SOMETIME THAT AFTERNOON DID THE DEFENDANT,
19 JEFF WEBB, COME OVER TO YOUR HOUSE?

20 A. YES, HE DID.

21 Q. AND ABOUT WHAT TIME WAS THAT, DO YOU REMEMBER?

22 A. I HAVE NO CLUE. I WOULD GUESS AROUND FOUR OR
23 FOUR-THIRTY.

24 Q. OKAY. WHO ELSE WAS IN THE HOUSE?

25 A. ME AND MY BROTHER.

1 Q. OKAY. WHAT WAS THE FIRST TIME -- WHEN DID YOU
2 FIRST BECOME AWARE THAT JEFF WEBB AND THESE OTHER THREE
3 FOLKS WERE THERE?

4 A. I ACTUALLY, FROM MY SIDE BEDROOM WINDOW I SAW THEM
5 PULLING INTO THE DRIVEWAY, SO I ACTUALLY WALKED FROM MY
6 ROOM INTO THE LIVING ROOM, CRACKED THE DOOR AND LEFT IT
7 OPEN FOR THEM.

8 Q. OKAY. SO YOU KNEW THEM?

9 A. YEAH.

10 Q. OKAY. WOULD YOU SAY AT THE TIME BEFORE ALL THIS
11 HAPPENED, WOULD YOU CONSIDER YOURSELF FRIENDS?

12 A. ACTUALLY PRETTY GOOD FRIENDS.

13 Q. OKAY. SO YOU DIDN'T HAVE ANY PROBLEM WITH THEM
14 COMING IN YOUR HOUSE --

15 A. NO.

16 Q. -- AT THE TIME?

17 A. NONE.

18 Q. WHAT'S THE FIRST THING YOU REALIZED SOMETHING WAS
19 WRONG?

20 A. WHEN I WAS BACK IN MY ROOM AND I HEARD JEFF AND MY
21 BROTHER WITH ELEVATED VOICES.

22 Q. AND WHEN YOU SAY ELEVATED VOICES, WHAT DO YOU
23 MEAN?

24 A. I MEAN THEY WAS YELLING; JEFF WAS YELLING AT
25 NATHAN AND NATHAN WAS BASICALLY YELLING BACK.

1 Q. WHAT WERE THEY SAYING?

2 A. I COULDN'T MAKE IT OUT. I JUST KNEW IT WAS OFF.

3 Q. WHAT DID YOU DO?

4 A. I WENT FROM MY BEDROOM INTO THE DOORWAY OF MY
5 BROTHER'S BEDROOM.

6 Q. HOW FAR IS THAT?

7 A. WHAT? HOW FAR OF A WALK? MAYBE 15 TO 20 FEET
8 FROM ROOM TO ROOM.

9 Q. IN RELATION TO WHERE YOU ARE SITTING RIGHT THERE
10 AND I'M SITTING RIGHT HERE ---

11 A. ABOUT THERE, ABOUT LIKE THAT.

12 Q. OKAY. YOU WERE NOT BUT A SHORT DISTANCE AWAY AT
13 THAT POINT?

14 A. YEAH.

15 Q. WERE THE TWO OF THEM INSIDE NATHAN'S ROOM?

16 A. ALL FOUR OF THEM WERE.

17 Q. ALL FOUR OF THEM. BUT I MEAN EVERYBODY THAT WAS
18 IN THE HOUSE --

19 A. EVERYBODY IN THE HOUSE EXCEPT FOR ME.

20 Q. WHO ALL WAS THERE?

21 A. JEFF, NICKIE, MARIA, NATHAN, SHANE; AND THEN I WAS
22 IN THE DOORWAY OF MY BROTHER'S ROOM.

23 Q. ALL RIGHT. WHAT DID YOU OBSERVE?

24 A. JEFF -- SHANE I BELIEVE WAS LAYING ON THE BED,
25 DIDN'T SEE HIM WITH THE WEAPON AT THAT TIME. THE TWO

1 GIRLS WERE STANDING TO THE SIDE NEAR THE BATHROOM, AND
2 JEFF WAS OVER MY BROTHER WITH A GUN TO HIS HEAD.

3 Q. AND WHAT WAS HE SAYING?

4 A. "WHERE'S YOUR MONEY?" "WHERE'S YOUR SHIT?"
5 SOMETHING LIKE THAT. PRETTY MUCH WORDS OF VALUABLES.

6 Q. WHAT DID YOU DO?

7 A. I THOUGHT -- HE WAS A BIT SHAKY, I COULD TELL. I
8 WAS AFRAID HE MIGHT ACTUALLY DO SOMETHING STUPID AND
9 SHOOT MY BROTHER. SO JUST TO BREAK THE MOMENT I LOOKED
10 AT HIM AND I SAID "DON'T SHOOT MY BROTHER, DOG."

11 Q. YOU SAID WHAT?

12 A. I SAID, "DON'T SHOOT MY BROTHER, DOG."

13 Q. OKAY. WHAT DID HE SAY?

14 A. NOTHING. HE JUST LOOKED UP AND HE LOOKED UP AND
15 BROKE HIS LITTLE CONCENTRATION. I TURNED MY BACK AND
16 STARTED TO WALK AWAY. HE FOLLOWED ME.

17 Q. OKAY. DID YOU SEE HIM WITH NATHAN'S GUN?

18 A. I SAW NATHAN HAND HIM THE GUN, YEAH.

19 Q. ALL RIGHT. DID YOU HEAR HIM DEMAND THE GUN?

20 A. YES.

21 Q. ALL RIGHT. SO HE DEMANDED HIS MONEY AND GUN IN
22 YOUR PRESENCE WITH A GUN IN HIS HAND?

23 A. CORRECT.

24 Q. WHEN YOU WALKED DOWN THE HALL, THEN WHAT HAPPENED?

25 A. HE FOLLOWED ME.

1 Q. ALL RIGHT. AND WHAT TRANSPIRED DOWN THERE?

2 A. NOTHING. HE JUST CAME IN AND ACTUALLY JUST SAID A
3 COUPLE WORDS TO ME. I HAD A LITTLE BIT OF CASH. EITHER
4 IT WAS ON A LITTLE LIKE A DESK RIGHT BESIDE MY BED, LIKE
5 THAT, SOMETHING TO THE EFFECT, "IS THAT WHAT YOU OWE ME?"
6 PICKED IT UP, WALKED OUT, AND I ACTUALLY WALKED WITH HIM
7 AS HE WAS WALKING. YOU KNOW, THIS CHANGES THINGS. AND
8 WALKED HIM ALL THE WAY TO THE DOOR, A COUPLE STEPS OUT
9 ONTO THE PORCH. AND THEY WALKED UP TO THE CAR. I JUST
10 SHOOK MY HEAD, WENT, CLOSED THE DOOR. BY THE TIME I GOT
11 THE DOOR CLOSED A ROUND CAME THROUGH THE WALL.

12 Q. DID HE HOLD THE GUN ON YOU, TOO?

13 A. YES.

14 Q. OKAY. DID HE DEMAND THE MONEY FROM YOU?

15 A. NO. HE DIDN'T DEMAND IT, HE JUST SAW IT, IT WAS
16 THERE, SO HE JUST TOOK IT.

17 Q. OKAY.

18 A. HE DIDN'T DEMAND ANYTHING. HE JUST, HE WAS LIKE,
19 "DO YOU HAVE WHAT YOU OWE ME?" SOMETHING LIKE THAT.

20 Q. WOULD HE HAVE TAKEN IT FROM YOU IF HE DIDN'T HAVE
21 A GUN?

22 A. NO.

23 Q. WHY NOT?

24 A. BECAUSE IT JUST WOULDN'T HAVE HAPPENED. IT ALMOST
25 DIDN'T HAPPEN WITH THE GUN.

1 Q. OKAY. I GUESS MY POINT IS, DID HE STEAL THE
2 MONEY?

3 A. YES. HE TOOK IT, TOOK IT WITHOUT MY PERMISSION.

4 Q. OKAY. WHILE HOLDING A GUN ON YOU?

5 A. YES.

6 Q. YOU WALKED HIM OUT TO --

7 A. YES, I DID.

8 Q. DID YOU GO OUTSIDE WITH HIM?

9 A. YES, I DID.

10 Q. WHAT WAS SAID THEN? WHAT DID HE SAY?

11 A. I TOLD HIM HE BROKE MY HEART, HOW MUCH HE BROKE MY
12 HEART. "YOU WERE MY BROTHER, AND I WANT YOU TO KNOW THIS
13 CHANGES THINGS." AND I TOLD HIM HE BETTER NOT PULL OUT
14 OF THE DRIVEWAY OR ALL FOUR OF THEM WERE DEAD.

15 Q. OKAY. DID ANY OF THE REST OF THEM SAY ANYTHING TO
16 YOU?

17 A. NO.

18 Q. DID YOU HEAR THE SHOT SHANE ELLIOTT FIRED?

19 A. YES, I DID.

20 Q. WHAT DID YOU THINK WHEN THAT HAPPENED?

21 A. I LOOKED AT JEFF AND TOLD HIM "GO CHECK ON MY
22 BROTHER."

23 Q. SO THAT -- WHEN DID THAT HAPPEN? WERE YOU DOWN
24 THE HALL WITH JEFF?

25 A. WE WERE BOTH -- I WAS INSIDE MY ROOM, HE WAS IN

1 THE DOORWAY OF MY ROOM. I HAD TO TELL HIM TWICE LIKE,
2 "GO CHECK MY BROTHER." HE SORT OF HESITATED. AND I'M
3 LIKE, "GO CHECK ON MY FUCKING BROTHER." AND WE BOTH SORT
4 OF WALKED DOWN, SAW THAT IT WAS JUST IDLE ROUND FIRE.

5 Q. SO WHAT HAPPENED WHEN YOU WALKED OUTSIDE WITH HIM
6 AND TOLD HIM THAT STUFF?

7 A. NOTHING. THEY WERE JUST -- THE TWO GIRLS WERE
8 ALREADY IN THE CAR, JEFF AND SHANE WERE ABOUT TO GET IN
9 THE CAR. I DON'T KNOW WHO FIRED THE SHOT. BUT THEY BOTH
10 WERE ARMED, THEY BOTH WERE STILL OUTSIDE THE VEHICLE. I
11 SHOOK MY HEAD, CLOSED THE DOOR, AND THAT'S WHEN I HEARD
12 THE ROUND. BUT LATER WE FOUND THE CASING AND IT WAS, IN
13 FACT, A .38 WHICH IS WHAT, A .38 OR A 9-MILLIMETER. IT
14 WASN'T A .357, AND THAT'S WHAT SHANE HAD.

15 Q. SHANE HAD WHICH GUN?

16 A. SHANE HAD A .357 MAGNUM. JEFF -- WHEN THEY
17 ENTERED THE HOME IN THE BEGINNING OR WHEN I CAME INTO THE
18 ROOM, SHANE HAD THE .357, JEFF HAD THE .38. JEFF ALSO
19 LATER, WITHIN A COUPLE OF MINUTES, ACQUIRED MY BROTHER'S
20 9-MILLIMETER.

21 Q. OKAY. YOU GOT CONVICTED OF A DRUG CONVICTION BACK
22 IN 2005?

23 A. YES, I DID.

24 Q. OKAY. HAVE YOU HAD ANY CONTACT WITH EITHER FOUR
25 OF THESE PEOPLE THAT CAME IN TO YOUR HOUSE THAT DAY, THE

1 DEFENDANT --

2 A. ONLY MARIA.

3 Q. -- HIS CODEFENDANT, OR THE OTHER TWO WOMEN SINCE
4 THEN?

5 A. MARIA IS THE ONLY ONE.

6 Q. DO YOU FEEL LIKE THE GIRLS HAD ANY KNOWLEDGE OR
7 ANYTHING TO DO WITH IT?

8 A. NO.

9 Q. DID YOU KNOW NATHAN WAS SLEEPING IN HIS BED WHEN
10 IT HAPPENED, DID YOU KNOW HE WAS IN HIS ROOM ASLEEP?

11 A. YES. I MEAN, I KNEW HE WAS IN HIS ROOM ASLEEP
12 WHEN THEY ARRIVED. BUT OBVIOUSLY THEY HAD WOKEN UP
13 BECAUSE I HEARD THEM TALKING. BUT THEN THEY GOT LOUD AND
14 THAT'S WHEN I WENT TO SEE WHAT WAS GOING ON.

15 Q. OKAY.

16 **MR. WAGNER:** THANK YOU, MR. MCCALL. IF YOU WOULD
17 ANSWER ANYTHING THAT MR. DAY WOULD HAVE FOR YOU.

18 **THE WITNESS:** ALL RIGHT.

19 CROSS-EXAMINATION BY MR. DAY:

20 Q. LET ME MAKE SURE I UNDERSTAND IT. DID I HEAR YOU
21 CORRECTLY JUST A MINUTE AGO, YOU SAID WHEN THEY LEFT YOU
22 DON'T KNOW WHO SHOT?

23 A. THAT IS CORRECT.

24 Q. OKAY. AND I MISSED SOMETHING JUST A FEW MINUTES
25 AGO. YOU SAID THAT MR. WEBB FOLLOWED YOU INTO THE ROOM?

1 A. YES.

2 Q. AND THAT HE PICKED UP SOMETHING?

3 A. HE PICKED UP CASH OFF A LITTLE NIGHTSTAND TYPE
4 DEAL.

5 Q. OKAY. AND HOW MUCH WAS THAT?

6 A. \$125.

7 Q. OKAY. AND I BELIEVE YOU TOLD THE OFFICERS THAT
8 FIRST ARRIVED TO INVESTIGATE IT WAS 150?

9 A. IT MIGHT HAVE BEEN. 125, 150, SOMEWHERE IN THAT
10 AREA. I MEAN, I'M NOT EXACTLY SURE. BUT IT WAS ALL THE
11 CASH I HAD AT THE TIME.

12 Q. OKAY. YOU'RE NOT SURE WHETHER IT WAS 125 OR 150
13 OR REALLY HOW MUCH IT WAS?

14 A. IT WAS BETWEEN A HUNDRED AND 150. I WANT TO SAY
15 125. IT MAY HAVE BEEN 150. I'M NOT SURE.

16 Q. OKAY.

17 A. BUT I KNOW IT WAS OVER A HUNDRED BECAUSE I HAD A
18 HUNDRED DOLLAR BILL AND LOOSE.

19 Q. MR. WAGNER ALSO ASKED YOU, HE SAID THAT YOU REALLY
20 HADN'T SPOKEN TO ANYONE EXCEPT MARIA PRETTY MUCH SINCE
21 THIS HAPPENED; IS THAT CORRECT?

22 A. CORRECT.

23 Q. THIS MORNING AND THIS AFTERNOON, WHEN YOU WERE
24 SITTING WITH SHANE ELLIOTT, HAD YOU BEEN TALKING?

25 A. YES. YES. AS HIS, THIS IS THE SECOND TIME I'VE

1 EVEN LAID EYES ON HIM SINCE THE INCIDENT HAPPENED. THE
2 LAST TIME WE ACTUALLY ALMOST -- IT WAS ALMOST A FIGHT AT
3 A BAR, BUT WE JUST SORT OF WENT OUR SEPARATE WAYS. THIS
4 IS THE FIRST TIME WE'VE ACTUALLY BEEN SOCIAL TO ONE
5 ANOTHER AND NOTHING WAS MENTIONED ABOUT WHAT'S GOING ON
6 HERE. IT WAS JUST IDLE CHAT.

7 Q. ALL RIGHT, SIR. NOW, WHEN YOU WERE IN THE OTHER
8 ROOM THERE, DID YOU SEE SHANE HOLDING THE GUN TO YOUR
9 BROTHER'S HEAD?

10 A. NO, I DID NOT.

11 Q. WHEN THE SHOT WAS FIRED, WHERE WAS -- THAT YOU
12 HEARD INSIDE THE HOUSE -- WHERE WAS JEFF WEBB?

13 A. JEFF WAS IN MY DOORWAY.

14 Q. OKAY. SO HE DIDN'T FIRE THAT SHOT?

15 A. HE DID NOT. HE ABSOLUTELY DID NOT.

16 Q. OKAY. NOW, YOU SAID AS THEY WERE LEAVING, SOMEONE
17 FIRED A SHOT?

18 A. CORRECT.

19 Q. WERE YOU ACTUALLY ALL THE WAY OUTSIDE THE DOOR OR
20 STANDING IN THE DOORWAY?

21 A. I WALKED, I WALKED TO THE TOP OF THE STAIRS, WHICH
22 IS FIVE OR SIX FEET TOTALLY OUTSIDE OF THE HOUSE BEFORE
23 YOU GO DOWN INTO THE YARD. I STOPPED ON THE STAIRS. AS
24 THEY GOT TO THE CAR I JUST LOOKED AT THEM, KIND OF SHOOK
25 MY HEAD, WALKED BACK TO THE DOORWAY AND SHOOK MY HEAD

1 AGAIN, CLOSED THE DOOR. AS THE DOOR CLOSED AROUND CAME
2 THROUGH THE, ABOVE THE DOOR.

3 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
4 RECORD.)

5 BY MR. DAY:

6 Q. NOW, THIS MONEY THAT YOU SAY THAT JEFF WEBB TOOK
7 WITH HIM, DID YOU OWE HIM THAT MONEY?

8 A. I OWED HIM, I DID OWE HIM PART OF THAT MONEY.

9 Q. WHAT DID YOU OWE HIM FOR?

10 A. I DON'T REMEMBER THAT. I DON'T REMEMBER WHAT I
11 OWED HIM FOR, BUT I KNOW I OWED HIM. I REMEMBER HIM
12 ASKING, DO YOU HAVE THE MONEY YOU GOT? I MAY HAVE BEEN,
13 IT MAY HAVE BEEN FOR BEER OR IT COULD HAVE BEEN JUST A
14 LINE AT THE BAR, BUT I DON'T KNOW. WE'RE POOR. WE
15 BORROW MONEY FROM ONE ANOTHER ALL THE TIME.

16 Q. NOW, YOU -- DID YOU ACTUALLY MAKE CONTACT WITH
17 JEFF WEBB WHEN YOU WENT OUT THE FRONT DOOR, DID YOU ALL
18 ACTUALLY -- DID YOU CONVERSE, TALK, SLAP HANDS, SAY
19 HELLO, HUG, DO ANYTHING?

20 A. AT WHAT TIME? WHEN HE WAS LEAVING OR WHEN HE
21 FIRST GOT THERE?

22 Q. NO. WHEN HE WAS LEAVING.

23 A. I WAS TALKING TO HIM. HE DIDN'T SAY ANYTHING.

24 Q. OH.

25 A. I WAS WALKING BESIDE HIM AND STOPPED AT THE TOP OF

1 THE STAIRWELL. HE CONTINUED ON TO THE CAR.

2 Q. OKAY. SO YOU WALKED OUT THE DOOR WITH HIM SIDE BY
3 SIDE --

4 A. HE WAS ABOUT A FOOT AND A HALF, TWO FEET IN FRONT
5 OF ME. HE WAS ONE STRIDE AHEAD OF ME. I WAS BASICALLY
6 FOLLOWING HIM.

7 Q. OH, OKAY. AND LIKE YOU SAY, A STRIDE, YOU WERE
8 THAT CLOSE TO HIM?

9 A. YES, I WAS.

10 Q. AT THE BOTTOM OF THE STEPS OR ANYTHING DID YOU ALL
11 EXCHANGE A HUG, A HEY, A SEE YOU LATER OLD BUDDY OR
12 ANYTHING LIKE THAT?

13 A. NO.

14 Q. BUT YOU FOLLOWED HIM ON OUT. HE'S THERE IN FRONT
15 OF YOU. GOT TO THE BOTTOM OF THE STEPS. THAT'S WHEN YOU
16 TURNED AROUND AND WENT BACK. YOU SAID SOMETHING TO HIM,
17 YOU SAID?

18 A. NO. I STAYED AT THE TOP OF THE STAIRWELL UNTIL
19 THEY MADE IT TO THE CAR. THEY MADE IT OUT TO THE CAR, I
20 SHOOK MY HEAD, TURNED, WALKED TO THE DOORWAY, LOOKED BACK
21 AND THEY WERE LIKE THEY WERE GETTING READY TO GET INTO
22 THE CAR BECAUSE THEY ALREADY HAD THE DOORS OPEN, ABOUT TO
23 GET IN. I CLOSED THE DOOR, THAT'S WHEN A ROUND CAME
24 THROUGH THE WALL.

25 Q. OKAY. AND THAT PLACE WHERE THE CAR IS, OR WAS

1 PARKED, IT WAS ON A RISE?

2 A. IT WAS ON A RISE ABOUT 20, 25 FEET FROM THE
3 DOORWAY.

4 Q. OKAY. AND THAT WOULD BE, IF I AM STANDING AT THE
5 DOORWAY HERE, IF THIS IS YOUR HOUSE, THIS IS THE DOORWAY
6 WHERE YOU WALKED OUT AND WENT DOWN --

7 A. THE DOORWAY, YEAH.

8 Q. -- IT WOULD BE OVER THAT WAY (INDICATING)?

9 A. YEAH, RIGHT UP IN THERE (INDICATING).

10 Q. ABOUT A, LIKE A 45-DEGREE ANGLE, APPROXIMATELY? I
11 KNOW YOU DIDN'T MEASURE IT.

12 A. APPROXIMATELY, YES.

13 Q. OKAY. AND ON THIS RISE IF YOU ARE STANDING AT THE
14 DOORWAY HERE, THE CAR RIGHT THERE, WOULD YOU BE LOOKING
15 LIKE IN TO THE, INTO THE WINDSHIELD, ABOUT EVEN WITH IT,
16 WITH YOUR EYES?

17 A. NO. THE CAR, THE CAR WAS UP IN FRONT. I'M
18 STANDING IN THE DOORWAY, THIS WAS THE PORCH, THE CAR WAS
19 UP HERE (INDICATING).

20 Q. ABOUT EYE LEVEL, APPROXIMATELY?

21 A. ABOUT.

22 Q. OKAY.

23 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
24 RECORD.)

25 **MR. DAY:** YOUR HONOR, AT THIS TIME I WOULD LIKE TO

1 ASK THE COURT'S INDULGENCE. I'D LIKE TO PROCEED INTO
2 ANOTHER AREA.

3 **THE COURT:** GO AHEAD. BUT I THINK YOU UNDERSTAND
4 WHAT THE COURT HAS RULED.

5 **MR. DAY:** YES, SIR.

6 BY MR. DAY:

7 Q. MR. MCCALL, DO YOU HAVE PENDING CHARGES AGAINST
8 YOU RIGHT NOW HERE IN OCONEE COUNTY?

9 A. YES, SIR, I DO.

10 Q. AS A RESULT OF THOSE CHARGES, HAS THE SOLICITOR
11 OFFERED YOU ANYTHING TO GET YOU TO TESTIFY OR ANY KIND OF
12 DEAL WAS SUGGESTED TO YOU?

13 A. ABSOLUTELY NOT.

14 Q. DO YOU THINK YOUR TESTIMONY HERE WILL HELP YOU?

15 A. NO, I DO NOT.

16 **MR. DAY:** THAT'S ALL I HAVE OF THIS WITNESS, YOUR
17 HONOR.

18 **THE COURT:** RE-EXAM?

19 **MR. WAGNER:** JUST ONE QUICK QUESTION, JUDGE.

20 REDIRECT EXAMINATION BY MR. WAGNER:

21 Q. SO YOU DID SEE THE CAR WHEN THEY LEFT?

22 A. YES, I DID.

23 Q. LET ME SHOW YOU STATE'S EXHIBIT 2-C AND 2-D
24 (HANDING).

25 A. YEP.

1 Q. DO YOU RECOGNIZE THAT?

2 A. YES, I DID.

3 Q. AND WHAT IS THAT?

4 A. THAT IS THE IMPALA THEY WERE DRIVING, THAT'S THE
5 CAR THEY WERE DRIVING.

6 Q. OKAY.

7 MR. WAGNER: YOUR HONOR, AT THIS TIME WE WOULD ASK
8 TO ADMIT 2-C AND 2-D.

9 MR. DAY: THEY'VE ALL BEEN ADMITTED.

10 THE COURT: I THINK THOSE ARE THE TWO YOU LEFT OUT
11 EARLIER BUT THEY'RE NOW INCLUDED. STATE'S EXHIBIT 2-C
12 AND 2-D. VERY GOOD.

13 (RECEIVED IN EVIDENCE WERE STATE'S EXHIBITS
14 2-C AND 2-D, PHOTOGRAPHS.)

15 BY MR. DAY:

16 Q. VERY BRIEFLY, THIS IS THE CAR HERE?

17 A. YES.

18 Q. DID YOU SAY THAT? AND I BELIEVE WE HEARD THE
19 9-1-1 CALL WHERE YOU REFER TO IT AS A GOLD OR BRONZE
20 MALIBU?

21 A. THAT WOULD BE MY BROTHER REFERRED TO IT.

22 Q. OKAY. I HEARD YOU IN THE BACKGROUND. I WAS ABOUT
23 TO ASK YOU WHAT KIND OF CAR IT WAS.

24 A. AND YOU HEARD ME SAY TWO OR THREE DIFFERENT KINDS
25 BECAUSE I AM MORE INTO FEMALES THAN I AM INTO CARS.

1 THEREFORE, I DON'T KNOW THAT MUCH. I KNOW IT LOOKED LIKE
2 A CADILLAC-TYPE CAR. BUT LOOKING AT THIS, I DO HAVE
3 20/20 VISION, AND THAT IS THE CAR.

4 Q. OKAY. SO APPARENTLY YOUR BROTHER WAS MISTAKEN WAS
5 HE SAID IT WAS A GOLD OR BRONZE CAR?

6 A. WELL, THIS ACTUALLY IS KIND OF A GOLD COLOR TO ME,
7 GRAY, GOLDISH.

8 Q. SILVER?

9 A. YEAH.

10 **MR. DAY:** NO MORE QUESTIONS.

11 **MR. WAGNER:** NOTHING FURTHER.

12 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

13 (WITNESS LEAVES STAND.)

14 **THE COURT:** WOULD COUNSEL APPROACH?

15 (DISCUSSION AT SIDEBAR.)

16 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF
17 THE JURY, WE WILL BREAK FOR THE DAY. IT'S USUALLY MY
18 POLICY NOT TO GO BEYOND 5:00, IN OTHER WORDS, NOT TAKE A
19 WITNESS THAT WILL GO BEYOND FIVE, SO SOMETIMES I BREAK
20 EARLIER THAN FIVE. THE REASON FOR THAT, OF COURSE, IS
21 THAT YOU WANT A WITNESS'S TESTIMONY COMPLETED AT ONE TIME
22 IF POSSIBLE AND NOT HAVE IT BROKEN AND SO IT COMES BACK
23 AFTER NOT HAVING CONTINUITY YOU MIGHT SAY.

24 NOW, THE REASON I STOP AT 5:00 IS THAT MY EXPERIENCE
25 IS THAT WE HAVE TWO WORLDS: ONE BEGINS EARLY IN THE

1 MORNING AND GOES TO 5:00 AND THEN WE HAVE ONE THAT STARTS
2 AT 5:00 AND SEEMS TO [?]GOES ON FOREVER. SO THAT'S WHAT
3 WILL BE MY POLICY DURING THE TRIAL OF THE CASE. WE
4 MIGHT, IN ORDER TO COMPLETE A WITNESS, GO A LITTLE
5 BEYOND, BUT I'LL LET YOU KNOW IF WE'RE GONNA DO THAT.

6 MADAM FORELADY, THIS IS GONNA BE YOUR FIRST DUTY.
7 I'M GONNA ASK YOU TO CONSULT WITH YOUR JURORS THERE IN
8 THE BOX AS TO WHEN YOU WOULD LIKE TO START IN THE
9 MORNING. I WOULD SUGGEST 9:00, 9:30 OR 10:00. YOU ALL
10 WILL KNOW WHAT YOU HAVE TO DO BEFORE YOU GET HERE, HOW
11 FAR YOU HAVE TO COME. IF YOU WOULD JUST CONSULT WITH
12 YOUR JURORS, 9:00, 9:30, 10:00.

13 **A JUROR:** THE EARLIER THE BETTER.

14 (JURY CONFERS IN JURY-BOX.)

15 **THE FORELADY:** 9:00.

16 **THE COURT:** 9:00. VERY GOOD. COME BACK TO THE JURY
17 ROOM WHERE YOU WERE THIS AFTERNOON AND WE'LL START THE
18 TRIAL AT THAT TIME.

19 NOW, I TELL JURORS THAT THIS IS THE MOST DIFFICULT
20 PART OF THE TRIAL THAT YOU WILL HAVE, BECAUSE YOU WILL GO
21 HOME AND SOMEBODY WILL ASK YOU WHAT ARE YOU DOING?
22 YOU'LL SAY, I'VE BEEN SELECTED ON A JURY. THEY'RE GONNA
23 SAY, WHAT'S IT ABOUT? AND YOU'RE GOING TO TELL THEM,
24 WELL, I CAN'T TELL YOU, I CAN'T DISCUSS IT WITH YOU.
25 THEY'RE GONNA SAY, WHY NOT? AND YOU'LL TELL THEM,

1 BECAUSE THE JUDGE SAYS SO. AND THEY'LL PROBABLY SAY
2 SOMETHING, WELL, THAT'S RIDICULOUS.

3 I THINK THAT YOU UNDERSTAND THIS IS AN IMPORTANT
4 CASE TO EVERYBODY THAT'S INVOLVED AND IT NEEDS TO BE
5 RESOLVED IN A PROPER FASHION, AND NO ONE WHO HAS NOT SAT
6 IN THAT BOX OR WITH YOU OR WILL BE IN THAT JURY ROOM WHEN
7 YOU GO IN THERE TO MAKE YOUR DECISION IN THIS CASE CAN
8 HELP YOU. THEY HAVEN'T HEARD THE FIRST WITNESS, SEEN THE
9 FIRST EXHIBIT OR ANYTHING ELSE. THEY CAN ONLY INTERFERE
10 WITH THE PROPER RESOLUTION OF THE CASE.

11 NOW, IF THEY INSIST ON TALKING TO YOU, TELL THEM
12 THAT I'LL BE HERE AT 8:30 IN THE MORNING AND I'LL BE GLAD TO
13 EXPLAIN IT TO THEM. BUT AS I SAID, THIS IS AN IMPORTANT
14 CASE THAT NEEDS TO BE RESOLVED IN A PROPER FASHION.

15 AND WITH THAT I EXCUSE YOU AND I LOOK FORWARD TO
16 WORKING WITH YOU AND I THANK YOU FOR YOUR PATIENCE WITH
17 THE COURT TODAY. 9:00 IN THE MORNING.

18 EVERYONE REMAIN SEATED WHILE THE JURY RETIRES FROM
19 THE COURTROOM.

20 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
21 4:59 P.M.)

22 **THE COURT:** ALL RIGHT. ANYTHING FROM THE STATE
23 BEFORE WE RECEDE FOR THE EVENING?

24 **MR. WAGNER:** NO, SIR.

25 **THE COURT:** ANYTHING FROM THE DEFENSE?

1 **MR. DAY:** NONE, YOUR HONOR.

2 **THE COURT:** ALL RIGHT. VERY GOOD. TRY TO BE HERE A
3 LITTLE BIT BEFORE 9:00 IN THE MORNING.

4 (COURT ADJOURNED AT 5:00 P.M. ON MARCH 15,
5 2010, TO RESUME AT 9:00 A.M. ON MARCH 16,
6 2010.)

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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL,
IN THE COURT OF GENERAL SESSIONS FOR OCONEE COUNTY, SOUTH
CAROLINA, ON THE 15TH DAY AND 16TH DAY OF MARCH, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

MAY 10, 2010

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

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STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 COUNTY OF OCONEE) INDICTMENT NOS:
) 2009-GS-37-01279, 01282

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL - VOLUME II
 -VS-) MARCH 16, 2010
)
 JEFFREY A. WEBB,)
)
 DEFENDANT.)

MARCH 15 AND MARCH 16, 2010
 WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

DAVID WAGNER, ESQ.
 ATTORNEY FOR THE STATE

R. DANIEL DAY, ESQ.
 ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
 CIRCUIT COURT REPORTER
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1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE

3 STATE OF SOUTH CAROLINA VERSUS JEFFREY A.

4 WEBB RESUMED ON TUESDAY, MARCH 16TH, 2010, AT

5 APPROXIMATELY 9:07 A.M.)

6 **THE COURT:** ALL RIGHT. WE'RE BACK ON THE CASE OF

7 *THE STATE OF SOUTH CAROLINA VERSUS JEFFREY A. WEBB.*

8 ANYTHING FROM THE STATE BEFORE WE BEGIN?

9 **MR. WAGNER:** NO, SIR.

10 **THE COURT:** ANYTHING FROM THE DEFENSE?

11 **MR. DAY:** YES, YOUR HONOR. THE DEFENDANT WISHES TO
12 ADDRESS THE COURT.

13 **THE COURT:** VERY WELL.

14 DEFENDANT'S MOTION FOR NEW ATTORNEY:

15 **THE DEFENDANT:** MR. MACAULAY, I DIDN'T KNOW BUT UP
16 TO TEN DAYS AGO THAT I WAS EVEN CHARGED WITH ARMED
17 ROBBERY. TEN DAYS. AND I HAVE A QUESTION FOR THE
18 SOLICITOR, MY ATTORNEY, THE CLERK OF COURT FOR MY *BRADY*
19 MOTION. I DIDN'T KNOW WHAT I HAD AGAINST ME UNTIL NOW.

20 I WAS TOLD BY MY LAWYER THAT I DIDN'T NEED NO
21 WITNESSES. I GOT SEVEN WITNESSES READY TO COME, AND NOW
22 I CAN'T GET THEM. AND ALL THIS, YOUR HONOR, I WOULD LIKE
23 TO FIRE MY ATTORNEY AND TRY TO GET ANOTHER ATTORNEY
24 BECAUSE I DON'T FEEL MY BEST INTERESTS IN THIS.

25 **THE COURT:** I UNDERSTAND. ANYTHING ELSE?

1 **THE DEFENDANT:** (SITS DOWN.)

2 **THE COURT:** WELL, LOOKING AT THE ARMED ROBBERY
3 INDICTMENTS, NOT ONLY ARE THEY 2009 INDICTMENTS, WHICH
4 MEANS THEY WERE RETURNED IN 2009, BUT THEY WERE DATED BY
5 THE GRAND JURY ON APRIL THE 2ND, 2009, SO IT WAS
6 APPARENTLY MORE THAN TEN DAYS AGO THAT YOU WERE CHARGED
7 WITH ARMED ROBBERY.

8 **THE DEFENDANT:** YOUR HONOR ---

9 **MR. DAY:** HOLD ON.

10 YOUR HONOR, I THINK THEY WERE SERVED -- I WANT TO
11 SAY MARCH THE 5TH, I THINK IT WAS, WHEN THEY WERE SERVED.

12 **MR. WAGNER:** NO. YOUR HONOR, WE JUST OUT OF
13 PRECAUTION SENT OUR INVESTIGATOR DOWN TO SERVE HIM
14 PERSONALLY IN THE JAIL. BUT MS. PRUITT, THE INVESTIGATOR
15 FOR MR. DAY, ACCEPTED SERVICE OF THEM LIKE TWO MONTHS
16 AGO. AT THE PRELIMINARY HEARING BEFORE HE WAS EVEN
17 INDICTED, I TALKED WITH MR. DAY AND THE DEFENDANT SITTING
18 RIGHT THERE WITH HIM THROUGH -- AGAIN I TOLD HIM, I SAID,
19 YOU WILL BE INDICTED FOR ARMED ROBBERY IF WE COULDN'T
20 WORK IT OUT, THAT HE WAS GOING TO THE GRAND JURY AS AN
21 ARMED ROBBERY. SO HE WAS AWARE OF THAT BACK LAST FALL
22 THAT HE WAS GONNA BE INDICTED ON ARMED ROBBERY.

23 AND THEN I SERVED THEM -- I SERVED HIM THROUGH HIS
24 ATTORNEY.

25 DO YOU REMEMBER THAT, MARTHA?

1 **MS. PRUITT:** I DID NOT ACCEPT SERVICE. YOU ASKED ME
2 IF I WOULD AND I DECLINED TO.

3 **MR. WAGNER:** YOU SAID ALSO YOU WOULD LET ME KNOW
4 WITHIN A WEEK OF WHETHER OR NOT THAT WAS GONNA BE
5 ACCEPTABLE. THAT WAS TWO MONTHS AGO, A LITTLE OVER TWO
6 MONTHS AGO.

7 (OFF-THE-RECORD DISCUSSION.)

8 **THE COURT:** ALL RIGHT. IF PEOPLE WANT TO PUT THINGS
9 ON THE RECORD, WE WILL HAVE TO DO IT IN THE PROPER ORDER.

10 **MR. WAGNER:** YES, SIR. YOUR HONOR, HE WAS SERVED
11 LONGER AGO THAN THAT.

12 **MR. DAY:** IT WAS SENT OVER, YOUR HONOR, IN FEBRUARY
13 WHEN I WAS IN ANDERSON IN THE DEATH PENALTY CASE, WE WERE
14 TOLD ABOUT IT AND IT WAS SENT OVER AT THAT TIME, AND THEN
15 I THINK THEY DID SERVE THE DEFENDANT.

16 **THE COURT:** THE DEFENDANT WAS SERVED WHEN?

17 **MR. DAY:** AND AS I REMEMBER CORRECTLY, ABOUT, IT WAS
18 THE 2ND OR 3RD OF FEBRUARY WHEN WE FOUND OUT THAT, IN
19 FACT, THERE WAS A DIRECT INDICTMENT, THEY WERE GONNA
20 SERVE THEM THE INDICTMENT, AND I WAS NOT ABLE TO ACCEPT
21 SERVICE OR ANYTHING BECAUSE I WAS OVER IN ANDERSON. AND
22 THEY SENT US COPIES OF THEM ON THAT, AND THEN THEY DID
23 SERVE THE DEFENDANT -- AND I'M TRYING TO REMEMBER EXACTLY
24 WHAT DATE -- THE 5TH OF MARCH. THAT SOUNDS ABOUT RIGHT.

25 (COUNSEL CONFER.)

1 **MR. WAGNER:** MARCH THE 5TH, DANNY.

2 YOUR HONOR, WE GOT AN AFFIDAVIT, IT WAS MARCH THE
3 5TH THAT HE ACTUALLY WAS SERVED PHYSICALLY WITH THE
4 INDICTMENTS; BUT AS I SAY, THE PUBLIC DEFENDER'S OFFICE
5 WAS SERVED A COUPLE OF MONTHS AGO, ROUGHLY.

6 **THE COURT:** SO HE'S BEEN SERVED MORE THAN TEN DAYS?

7 **MR. WAGNER:** YES, SIR. AND HIS INITIAL CHARGES WERE
8 ROBBERY. PROBABLY, HE WAS ACTUALLY UNDERCHARGED. WHEN
9 THEY GOT THE WARRANTS, THE WARRANTS WERE TAKEN OUT FOR
10 COMMON LAW ROBBERY BECAUSE AT THE TIME THE SHERIFF'S
11 OFFICE DIDN'T KNOW WHAT THEY HAD.

12 WHEN IT CAME INTO MY OFFICE AND I SAW WHAT THE FACTS
13 WERE, I DIRECT-INDICTED IT AND HE WAS PUT ON NOTICE AT
14 THE TIME OF THE PRELIMINARY HEARING THAT IT WAS GONNA BE
15 INDICTED FOR ARMED ROBBERY.

16 **THE COURT:** ALL RIGHT. ANYTHING ELSE?

17 **MR. DAY:** NO. AND JUST FOR THE RECORD, THOUGH,
18 MR. BURR WAS THE ONE THAT WAS AT THE PRELIMINARY, HE
19 JUST, HE FILLED IN FOR ME FOR THAT DAY.

20 **THE COURT:** THERE WAS A PRELIMINARY ON THE WARRANTS?

21 **MR. DAY:** THERE WAS, YES, SIR.

22 **THE COURT:** AND WHAT WERE THE WARRANTS AGAIN,
23 SOLICITOR?

24 **MR. WAGNER:** THE WARRANTS, THE ROBBERY WARRANTS WERE
25 ACTUALLY FOR COMMON-LAW ROBBERY.

1 **THE COURT:** WELL, HOW ABOUT TELLING ME WHAT THE
2 WARRANTS CHARGED? YOU SAY COMMON LAW ROBBERY?

3 **MR. DAY:** STRONG-ARM.

4 **MR. WAGNER:** STRONG-ARM ROBBERY. I CAN'T REMEMBER
5 WHETHER IT WAS WORDED THAT WAY.

6 **THE COURT:** YOU DON'T HAVE COPIES OF THE WARRANTS?

7 **MR. WAGNER:** YES, SIR, I DO.

8 YOUR HONOR, IT WAS WARRANT N 130083 FOR COMMON LAW,
9 COMMON-LAW ROBBERY, STRONG-ARM ROBBERY, BUT FOR ROBBERY;
10 N 130081 FOR DISCHARGING A FIREARM INTO A DWELLING; AND
11 N 130067, AGAIN FOR ROBBERY, COMMON-LAW ROBBERY OR
12 STRONG-ARM ROBBERY. THOSE WARRANTS WERE SERVED ON HIM ON
13 JULY 26TH OF 2009 WHEN HE WAS ARRESTED.

14 **THE COURT:** WAS THERE ALSO AN ASSAULT AND BATTERY
15 WITH INTENT TO KILL WARRANT?

16 **MR. WAGNER:** YOUR HONOR, HE'S GOT A NUMBER OF OTHER
17 CHARGES PENDING, YES, SIR.

18 **THE COURT:** OUT OF THE SAME INCIDENT?

19 **MR. WAGNER:** YES. WELL, YOUR HONOR, IT WAS KIND OF
20 ONE CONTINUING PATTERN OVER THE COURSE OF A DAY, BUT THEY
21 WERE AT SEPARATE, SEPARATE LOCATIONS WITH SEPARATE
22 VICTIMS AND SEPARATE WITNESSES.

23 **THE COURT:** ALL RIGHT. ANYTHING ELSE?

24 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
25 RECORD.)

1 **MR. DAY:** NOTHING FURTHER, YOUR HONOR. HE JUST
2 REITERATES HE SAYS HE WANTS ANOTHER LAWYER.

3 **THE COURT:** I UNDERSTAND. WELL, I NOTE THAT YOU
4 HAVE BEEN ON THE CASE FOR HOW LONG NOW, MR. DAY?

5 **MR. DAY:** YOUR HONOR, IT WOULD HAVE BEEN PROBABLY IN
6 AUGUST OF LAST YEAR.

7 **THE COURT:** THE REASON I ASK THAT, BECAUSE I SEE A
8 MOTION AND ORDER GRANTING A CONTINUANCE OVER THE FEBRUARY
9 THE 15TH TERM OF COURT BECAUSE I THINK THAT YOU WERE
10 INVOLVED IN A CAPITAL CASE IN ANDERSON DURING THAT PERIOD
11 OF TIME.

12 **MR. DAY:** YES, SIR.

13 **THE COURT:** SO APPARENTLY IT'S NOT A SURPRISE THAT
14 THE CASE WAS GOING TO BE TRIED. AND AS FAR AS NOTICE, I
15 DO FIND THAT THERE WERE AT LEAST TWO REQUESTS FOR COPIES
16 OF THE WARRANTS LISTING WHAT THEY ARE, I THINK IT WAS
17 STRONG-ARM ROBBERY OR COMMON-LAW ROBBERY, BUT THOSE WERE
18 THE WARRANTS.

19 THE INDICTMENT WAS SERVED ON MARCH THE 5TH, SO
20 OBVIOUSLY HE'S HAD NOTICE OF WHY HE WAS COMING TO COURT
21 TODAY AND YESTERDAY. NOW, HAS HE GIVEN YOU ANYTHING ELSE
22 THAT YOU HAVEN'T BEEN ABLE TO DO?

23 **MR. DAY:** YOUR HONOR, THIS MORNING THE DEFENDANT HAS
24 GIVEN ME SOME NAMES OF OTHER WITNESSES, TWO OF WHICH WE
25 HAVE BEEN ABLE TO LOCATE, ONE OF WHICH WE KNEW ABOUT, HE

1 HAD NOT SPOKEN TO US. HE HAD GIVEN ME SOME OTHER
2 WITNESSES HE WISHES FOR ME TO --

3 **THE COURT:** WHEN DID HE DO THAT.

4 **MR. DAY:** EXCEPT FOR ONE OF THEM, THEY WERE NEW THIS
5 MORNING.

6 **THE COURT:** WELL, YOU DID GIVE ME A LIST OF NAMES
7 THAT I DID INQUIRE THE JURY AS TO ANY KNOWLEDGE, I THINK
8 THERE WERE SOME SIX NAMES ON THAT LIST, AND IT WENT
9 THROUGH AND THERE WAS NO REQUEST FOR ANYTHING FURTHER AT
10 THAT TIME, BUT I UNDERSTAND YOU HAVE ANOTHER NAME?

11 **MR. DAY:** YES, SIR. MR. SHAWN OWENS.

12 **THE COURT:** ALL RIGHT. IS HE AVAILABLE?

13 **MR. DAY:** YES, YOUR HONOR, HE IS AVAILABLE. HE IS
14 PRESENTLY IN OUR JAIL.

15 **THE COURT:** ALL RIGHT. WELL, WE'LL SEE THAT HE IS
16 IN ATTENDANCE, THEN.

17 **MR. DAY:** YES, SIR.

18 **THE COURT:** ANYONE ELSE?

19 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
20 RECORD.)

21 **MR. DAY:** YOUR HONOR, THERE IS ONE MORE WITNESS,
22 RONALD PAYNE, P-A-Y-N-E.

23 **THE COURT:** AND --

24 **MR. DAY:** HE TELLS ME HE BELIEVES HE'S IN THE
25 COUNTY, WE'RE NOT SURE EXACTLY WHERE HE IS, BUT WE'LL TRY

1 TO GET A SUBPOENA TO HIM.

2 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
3 RECORD.)

4 **MR. DAY:** YOUR HONOR, HE ALSO TELLS ME A CASEY AND
5 DENNIS LANCE, L-A-N-C-E. I'M NOT SURE WHAT THEY WOULD
6 TESTIFY TO. HE ADVISES ME THAT HE WANTS ME TO TRY TO
7 CONTACT THEM.

8 **THE COURT:** ALL RIGHT. AND DID HE GIVE YOU THOSE
9 NAMES BEFORE?

10 **MR. DAY:** NO, SIR.

11 **THE COURT:** WHERE DID YOU GET THE NAMES THAT YOU DID
12 CALL OUT YESTERDAY?

13 **MR. DAY:** THOSE ARE THE ONES HE -- THE CRENSHAW'S HE
14 HAD GIVEN ME BEFORE, AND THEN THE OTHER ONES WERE
15 OFFICERS WHO HAD TO COME TESTIFY CONCERNING CHARGES
16 PENDING AGAINST THE TWO WITNESSES MCCALL.

17 **THE COURT:** BUT HE DID GIVE YOU NAMES BEFORE?

18 **MR. DAY:** YES, SIR.

19 **THE COURT:** JUSTIN CRENSHAW AND CHAD CRENSHAW?

20 **MR. DAY:** YES, SIR.

21 **THE COURT:** AND THEN TODAY HE'S GIVEN YOU SHAWN
22 OWENS AND RONALD PAYNE, AND CASEY AND DENNIS LANCE?

23 **MR. DAY:** YES, SIR.

24 THE COURT'S RULING ON DEFENDANT'S MOTION:

25 **THE COURT:** WELL, WE'LL DO THE BEST WE CAN.

1 BUT IT SEEMS THAT YOU WERE AWARE A LITTLE BIT OF
2 YOUR OWN PREDICAMENT, SO IT WOULD BE ONE THING TO, MORE
3 PEOPLE TO PREPARE A CASE FOR YOU, BUT IT'S ANOTHER THING
4 TO NOT TO HELP THEM PREPARE IT, SO I'M GONNA DENY YOUR
5 MOTION.

6 **THE DEFENDANT:** YOUR HONOR?

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

8 **THE DEFENDANT:** THEY -- ANOTHER THING IS, I DIDN'T,
9 LIKE I SAID, I DIDN'T KNOW ABOUT THIS -- PLUS I REQUESTED
10 SEVERAL TIMES --

11 **THE COURT:** YOU KNEW ABOUT THE INDICTMENTS ON MARCH
12 THE 5TH?

13 **THE DEFENDANT:** ON MARCH THE 5TH. AND I'M IN JAIL.
14 I CAN'T GET IN TOUCH WITH NOBODY. I HAD TO CALL COLLECT.

15 **THE COURT:** RIGHT.

16 **THE DEFENDANT:** AND THEY DON'T LET YOU USE FREE
17 PHONE CALLS THERE.

18 ANOTHER THING IS I REQUESTED SEVERAL TIMES FOR MY
19 MOTIONS FOR DISCOVERY TO THE SOLICITOR, WHICH I GOT A
20 BRADY MOTION WHERE I FILED MYSELF.

21 **THE COURT:** ALL RIGHT. AND WHAT HAVE YOU BEEN
22 DENIED AS FAR AS ---

23 **THE DEFENDANT:** I HAVEN'T EVEN GOT NOTHING. I GOT
24 NOTHING.

25 **THE COURT:** WELL, I FIND IN ---

1 **THE DEFENDANT:** I ASKED MY LAWYER, TOO.

2 **THE COURT:** I FIND IN THE RECORD THAT THERE HAVE
3 BEEN AT LEAST TWO EXCHANGES OF BRADY MATERIALS FROM THE
4 SOLICITOR'S OFFICE?

5 **MR. WAGNER:** YES, SIR, YOUR HONOR, THERE'S BEEN
6 ACTUALLY PROBABLY MORE THAN THAT. IT'S BEEN CONTINUING.
7 I'VE ACTUALLY GOT ONE HERE THAT WAS FILED SEPTEMBER THE
8 16TH AND ONE NOVEMBER THE 23RD, AND THEN SINCE THEN WE
9 HAVE GOTTEN IN OUR POSSESSION, LIKE WE JUST GOT THE
10 ACTUAL 9-1-1 CALL LAST WEEK AND WE TURNED IT OVER WHEN WE
11 GOT IT. BUT WE'VE GIVEN THEM EVERYTHING WE HAVE.

12 **THE COURT:** VERY WELL. BUT YOU DID GIVE HIM THE
13 NAMES OF MR. CRENSHAW, OR THE CRENSHAW, MR. JUSTIN
14 CRENSHAW AND MR. CHAD CRENSHAW?

15 **THE DEFENDANT:** YES, SIR. AND I GAVE HIM RONALD
16 PAYNE'S NAME ABOUT A MONTH AGO BECAUSE IT WAS -- HE SAID
17 THAT I WOULDN'T NEED NO WITNESSES, THAT MR. DAY SAID THAT
18 IT WOULD BE, WE WOULD GO BACK TO -- AND I WOULDN'T
19 TESTIFY, WHICH I UNDERSTAND THAT.

20 **THE COURT:** WELL, THAT'S NEITHER HERE NOR THERE.
21 BUT THE FACT IS YOU DID GIVE HIM SOME NAMES AND THOSE
22 NAMES WERE GIVEN TO THE JURY YESTERDAY WHEN WE WERE
23 QUALIFYING THE JURY PANEL.

24 ALL RIGHT. AGAIN, YOUR MOTION IS DENIED AND WE WILL
25 CONTINUE. YOUR MOTION IS NOTED FOR THE RECORD, OF

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1 COURSE.

2 ALL RIGHT. ANYTHING ELSE FROM THE STATE BEFORE WE
3 PROCEED?

4 **MR. WAGNER:** NO, SIR.

5 **THE COURT:** FROM THE DEFENSE?

6 **MR. DAY:** NOTHING FURTHER, YOUR HONOR.

7 **THE COURT:** VERY GOOD. ALL RIGHT. ASK THE JURY TO
8 JOIN US.

9 (THE JURY ENTERED THE COURTROOM AT
10 APPROXIMATELY 9:46 A.M.)

11 **THE COURT:** LET THE RECORD REFLECT THAT THE JURY AND
12 ALTERNATE ARE IN THE JURY-BOX.

13 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY,
14 I'M SORRY ABOUT THE DELAY, BUT WE HAD SOME THINGS I
15 NEEDED TO TAKE UP BEFORE WE STARTED TODAY. WE WILL NOW
16 PROCEED WITH THE STATE'S CASE.

17 **MR. WAGNER:** THANK YOU, JUDGE.

18 MARIA VILLEGAS.

19 WHEREUPON,

20 MARIA VILLEGAS,
21 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
22 DIRECT EXAMINATION BY MR. WAGNER:

23 Q. MA'AM, WOULD YOU STATE YOUR FULL NAME AND SPELL
24 YOUR LAST NAME FOR THE RECORD?

25 A. MARIA VILLEGAS, V-I-L-L-E-G-A-S.

1 Q. WHERE DO YOU LIVE?

2 A. WALHALLA.

3 Q. OKAY. ARE YOU FROM AROUND HERE?

4 A. UH-HUH.

5 Q. BACK ON JULY 23RD, 2009, WERE YOU HANGING OUT WITH
6 THE DEFENDANT, JEFFREY WEBB, AND SHANE ELLIOTT?

7 A. YES.

8 Q. WAS ANYBODY ELSE WITH YOU?

9 A. WAS THIS THE SAME DATE THAT ALL THIS HAPPENED ON?

10 Q. YEAH.

11 A. JUST, IT WAS JUST US HANGING OUT.

12 Q. WHO WAS "US"?

13 A. ME, JEFF, SHANE AND NICKIE.

14 Q. OKAY. ARE THEY ALL FRIENDS OF YOURS?

15 A. UM, NOT REALLY.

16 Q. ARE YOU STILL FRIENDS WITH THE DEFENDANT?

17 A. I HAVEN'T TALKED TO HIM.

18 Q. HAVE YOU RECEIVED ANY CORRESPONDENCE FROM HIM
19 SINCE THIS HAPPENED?

20 A. NO.

21 Q. YOU HAVEN'T RECEIVED ANY LETTERS OR ANYTHING FROM
22 HIM SINCE THIS HAPPENED?

23 A. OH, SINCE THE WHOLE THING HAPPENED?

24 Q. SINCE THIS HAPPENED --

25 A. OH, YES, JUST A FEW.

1 Q. -- HAVE YOU HAD CONTACT WITH THE DEFENDANT?

2 A. LIKE ONE OR TWO LETTERS AND THAT'S IT.

3 Q. OKAY. DO YOU STILL CONSIDER YOURSELVES FRIENDS
4 WITH THE DEFENDANT?

5 A. NOT REALLY.

6 Q. OKAY. BACK ON THE DAY THIS HAPPENED, JULY 23RD,
7 2009, WHAT LED YOU TO GET IN THE CAR WITH THE DEFENDANT
8 AND THE REST OF THE PEOPLE?

9 A. UM, THEY CAME TO PICK ME UP. THEY -- AND I WENT
10 TO THE STORE TO GET SOME CIGARETTES AND ALCOHOL.

11 Q. WHAT KIND OF ALCOHOL?

12 A. LIQUOR.

13 Q. LIQUOR? WHAT KIND OF LIQUOR?

14 A. REALLY, I DON'T KNOW. VODKA. THERE WAS VODKA,
15 THERE WAS WHISKEY.

16 Q. HOW MUCH LIQUOR DID YOU ALL DRINK?

17 A. I'M NOT SURE. I KNOW I WAS PRETTY DRUNK. I'M NOT
18 SURE ABOUT THE REST, ANYONE ELSE, BUT...

19 Q. OKAY. WERE YOU ALSO DOING ANYTHING ELSE THAT DAY?

20 A. NO, NOT THAT I KNOW OF.

21 Q. OKAY. I MEAN, DID YOU TAKE ANY PILLS OR ANYTHING
22 LIKE THAT OTHER THAN THE LIQUOR?

23 A. I TAKE MY MEDICATION THAT THE DOCTOR PRESCRIBES
24 ME; AND DRINKING WAS IT, IT CAUSES ME TO BLACK OUT A LOT
25 AND FORGET STUFF.

1 **THE COURT:** CAN WE PULL THAT MIC A LITTLE BIT CLOSER
2 TO THE WITNESS?

3 **THE WITNESS:** I HAD TAKEN MY MEDICATION THAT DAY,
4 AND WHAT THE DOCTOR PRESCRIBES ME, AND I GUESS DRINKING A
5 LOT OF ALCOHOL WITH IT CAUSES ME TO BLACK OUT.
6 BY MR. WAGNER:

7 Q. ARE YOU HERE TODAY BECAUSE YOU WANT TO BE?

8 A. UM, NOT REALLY.

9 Q. WHY ARE YOU HERE?

10 A. BECAUSE, BECAUSE Y'ALL SAID I HAD TO BE HERE. I
11 DON'T KNOW.

12 Q. YOU GOT A SUBPOENA?

13 A. YEAH.

14 Q. OKAY. BACK ON JULY 23RD, AGAIN, 2009, I BELIEVE
15 YOU ALREADY SAID THE DEFENDANT CAME AND PICKED YOU UP?

16 A. UH-HUH.

17 Q. IS THAT CORRECT?

18 A. YES.

19 Q. ALL RIGHT. NOW, WHO WAS IN THE CAR AT THE TIME?

20 A. UM, SHANE AND NICKIE.

21 Q. ALL RIGHT. SO YOU WERE THE LAST ONE TO GET PICKED
22 UP THAT DAY, THAT YOU REMEMBER?

23 A. YEAH.

24 Q. OKAY. AND WERE ALL OF Y'ALL DRINKING?

25 A. UH-HUH.

1 Q. OKAY. AT SOME POINT IN TIME DURING THE DAY DID
2 YOU END UP GOING OVER TO NATHAN MCCALL'S HOUSE?

3 A. YES.

4 Q. OKAY. AND DO YOU REMEMBER AND CAN YOU TELL US
5 WHAT HAPPENED FROM THE POINT Y'ALL PULLED UP INTO NATHAN
6 MCCALL'S DRIVEWAY? WHAT HAPPENED?

7 A. UM, WE GOT TO NATHAN'S, AND JEFF WALKED INTO THE
8 ROOM TO TALK TO HIM, I GUESS WITH SHANE. AND I WAS
9 STAYING IN THE LIVING ROOM. NATHAN WAS IN HIS BEDROOM,
10 AND I GUESS HE HAD THE GUN ON HIM. I MEAN, IT WAS KIND
11 OF, IT'S KIND OF BLURRY FROM WHAT I REMEMBER. BUT HE
12 WANTED HIS MONEY, SO I GUESS THAT WAS IT. I, I WENT BACK
13 OUT TO THE CAR TO GET SOME THINGS, AND I WAS IN AND OUT
14 WHEN ALL THIS STUFF HAPPENED.

15 Q. OKAY. SO YOU WERE WALKING IN AND OUT OF THE
16 HOUSE. WHY WERE YOU GOING BACK OUT TO THE CAR?

17 A. TO GET SOME OF MY THINGS FROM THE CAR.

18 Q. WHY WERE YOU GONNA DO THAT?

19 A. I WAS GONNA STAY THERE.

20 Q. OKAY. AND WHY WOULD YOU WANT TO STAY THERE?

21 A. I TOLD JASON MCCALL I WAS GONNA HANG OUT WITH HIM.
22 JASON MCCALL.

23 Q. OKAY. DID YOU THINK ANYTHING OF IT WHEN THE
24 DEFENDANT PULLED A GUN ON NATHAN?

25 A. UM, YEAH.

1 Q. OKAY. AND WHAT HAPPENED THEN?

2 A. WELL, I WENT BACK OUTSIDE TO GET MY STUFF OUT OF
3 THE CAR; AND BY THE TIME I HAD GOTTEN ALL MY STUFF, THEY
4 WERE, THEY HAD COME BACK OUT BY THE CAR. AND I WAS JUST
5 TRYING TO GET MY C.D.'S AND STUFF OUT OF THE CAR. AND WE
6 LEFT.

7 Q. DO YOU REMEMBER SCOTT ARNOLD COMING TO TALK TO YOU
8 A COUPLE DAYS OR SO AFTER THIS HAPPENED?

9 A. UM, YEAH, AT MY HOUSE.

10 Q. AND DID YOU GIVE HIM A STATEMENT AS TO WHAT
11 HAPPENED AT THAT TIME?

12 A. UM, I THINK SO, YES.

13 Q. DO YOU REMEMBER WHAT YOU SAID AS FAR AS TO WHERE
14 JEFF HAD THE GUN POINTED?

15 A. TO HIS HEAD. UM...

16 Q. IS THAT WHAT YOU REMEMBER?

17 A. UM, BARELY. I MEAN, I KNOW I -- AT THE VERY END
18 OF THE STATEMENT.

19 Q. WHEN Y'ALL LEFT, DID YOU -- WHAT HAPPENED?

20 A. UM, WE WENT TO ZACK'S HOUSE, AND WE JUST WENT IN
21 THERE AND SAT DOWN. JEFF WAS ON THE PHONE TALKING TO
22 PEOPLE. I WAS ON MY CELL PHONE. UM...

23 Q. DID YOU WANT TO LEAVE?

24 A. UH-HUH.

25 Q. AFTER ALL THIS HAPPENED WERE YOU TRYING TO GET OUT

1 OF THE CAR?

2 A. YEAH. I WAS CALLING A RIDE. AND WE WERE -- I
3 CONTINUED, I CONTINUED TO DRINK THROUGHOUT THE ENTIRE
4 TIME. AND SO I STARTED TO GET MY STUFF TOGETHER, AND
5 AFTER, UM, WE LEFT, WELL, AFTER ZACK'S, I LEFT. THAT'S
6 WHEN WE -- THEY WERE --

7 Q. HOW DID YOU LEAVE, DID SOMEBODY COME PICK YOU UP?

8 A. NO ONE GOT ME. I STARTED WALKING DOWN THE ROAD.
9 IT'S NOT THAT FAR FROM NATE'S HOUSE.

10 Q. AND WHERE DID YOU GO?

11 A. SOMEONE ENDED UP PICKING ME UP ON THE SIDE OF THE
12 ROAD AND BROUGHT ME BACK TO JASON AND NATHAN'S AND THAT'S
13 WHERE I STAYED AT.

14 Q. AND IS THAT ALL -- DO YOU REMEMBER ANYTHING ELSE
15 ABOUT THIS INCIDENT, OR IS THAT WHAT YOU'RE SAYING, THAT
16 THAT'S ALL YOU REMEMBER?

17 A. AS FAR AS THE GUNSHOTS AND STUFF THERE, IT SAID
18 THAT HAD WENT OFF, I DON'T, I DON'T REMEMBER HEARING ANY
19 GUNSHOTS GOING OFF AT THE TIME, SO --

20 Q. ARE YOU TALKING ABOUT -- WHICH TIME ARE YOU
21 TALKING ABOUT? ARE YOU TALKING ABOUT INSIDE THE HOUSE OR
22 OUTSIDE OF THE HOUSE?

23 A. INSIDE, INSIDE THE HOUSE I DON'T REMEMBER ANY
24 GUNSHOTS GOING OFF. OUTSIDE THE HOUSE I JUST REMEMBER A
25 LOUD NOISE, BUT I DON'T, I DIDN'T SEE ANYONE WITH, YOU

1 KNOW, GUNS OR WHATEVER, SO I REALLY DON'T KNOW. I WAS
2 REAL DRUNK WHEN IT HAPPENED.

3 **MR. WAGNER:** THANK YOU, MA'AM. I DON'T HAVE ANY
4 FURTHER QUESTIONS.

5 **MR. DAY:** YOUR HONOR, IF I COULD JUST HAVE A MINUTE
6 OR TWO?

7 **THE COURT:** CERTAINLY.

8 **MR. DAY:** EXCUSE ME.

9 (MR. DAY AND MS. PRUITT CONFERRED OFF THE
10 RECORD.)

11 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
12 RECORD.)

13 **MR. DAY:** THANK YOU, YOUR HONOR.

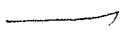
14 **THE COURT:** CROSS-EXAMINE.

15 CROSS-EXAMINATION BY MR. DAY:

16 Q. IS IT VILLEGAS?

17 A. VILLEGAS.

18 Q. VILLEGAS. I'M GONNA MISPRONOUNCE IT AND I KNOW IT
19 AND I APOLOGIZE.

20 WHEN YOU ALL WENT TO ZACK'S, YOU LEFT ZACK'S, AND
21 WAS IT CHAD CRENSHAW WHO CAME AND PICKED YOU UP AND TOOK
22 YOU BACK TO THE MCCALLS^U? 

23 A. UM, I DON'T REMEMBER CHAD CRENSHAW BEING THERE AT
24 THE TIME. BUT NO ONE -- HE DIDN'T TAKE ME BACK TO NATHAN
25 AND JASON'S I DON'T THINK.

1 Q. WHO TOOK YOU BACK THERE?

2 A. I STARTED WALKING AND SOMEONE STOPPED ON THE SIDE
3 OF THE ROAD TO PICK ME UP. I WAS TRYING TO FLAG SOMEBODY
4 DOWN ANYWAY AND I WAS ON MY CELL PHONE, AND THEY DIDN'T
5 LIVE THAT FAR AWAY SO I JUST WENT BACK OVER TO JASON'S.

6 Q. OKAY. SO IT WAS A RIDE, SOMEBODY JUST GAVE YOU A
7 RIDE; IT WASN'T ANY OF THE CRENSHAW'S OR JEFF OR SHANE OR
8 ANYONE LIKE THAT?

9 A. IT WASN'T ANY OF THEM.

10 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK
11 YOU VERY MUCH, MA'AM.

12 THE COURT: REDIRECT?

13 MR. WAGNER: NOTHING FURTHER, JUDGE.

14 THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

15 (WITNESS LEAVES STAND.)

16 MR. WAGNER: SHANE ELLIOTT.

17 WHEREUPON,

18 SHANE ELLIOTT,

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

20 DIRECT EXAMINATION BY MR. WAGNER:

21 Q. SIR, COULD YOU GIVE US YOUR NAME, FULL NAME, AND
22 PLEASE SPELL YOUR LAST NAME FOR THE RECORD?

23 A. IT'S MICHAEL SHANE ELLIOTT, THE LAST NAME IS
24 E-L-L-I-O-T-T.

25 Q. OKAY. MR. ELLIOTT, DO YOU KNOW WHY YOU ARE HERE

1 TODAY?

2 A. UH-HUH.

3 Q. OKAY. BACK ON JULY 23RD, WERE YOU HANGING OUT
4 WITH THE DEFENDANT, JEFF WEBB?

5 A. YES, SIR.

6 Q. DURING THAT HANGING OUT, DID YOU GO OVER TO NATHAN
7 MCCALL'S HOUSE WITH HIM?

8 A. YES, SIR.

9 Q. AND DID YOU GO OVER THERE AND PARTICIPATE IN A
10 ROBBERY AT NATHAN MCCALL'S HOUSE WITH HIM?

11 A. YES, SIR.

12 Q. TELL US WHAT HAPPENED. WHERE DID YOU END UP
13 GETTING IN THE CAR WITH HIM, AND WHAT WERE Y'ALL DOING TO
14 START THE DAY?

15 A. HE PICKED, HE PICKED ME UP FROM MY COUSIN'S HOUSE.
16 AND HE HAD, WHEN HE PICKED ME UP HE HAD MARIA, NICKIE
17 WITH HIM. HE WAS DRIVING A CAR THAT I HAD NEVER SEEN
18 BEFORE, AND --

19 Q. WHAT KIND OF CAR?

20 A. IT WAS A CHEVROLET. IT WAS A SILVER CAR.

21 (DISCUSSION OFF THE RECORD.)

22 BY MR. WAGNER:

23 Q. LET'S KEEP GOING WHILE WE'RE WAITING FOR THAT. SO
24 YOU HAD NEVER SEEN THE CAR BEFORE?

25 A. NO, SIR.

1 Q. WHAT WERE Y'ALL DOING? WHAT WAS THE WHOLE POINT
2 OF YOU ALL GETTING TOGETHER? WERE YOU JUST HANGING OUT?

3 A. HE WAS -- I WAS, I WAS ABOUT TO LEAVE WALKING AND
4 HE WAS SUPPOSED TO PICK ME UP AND TAKE ME HOME. BUT ONCE
5 WE, ONCE I GOT IN THE CAR, WE STARTED DRINKING, AND THEY
6 HAD SEVERAL BOTTLES OF LIQUOR, AND WE STARTED DRINKING
7 AND WERE RIDING AROUND AND JUST, YOU KNOW, MESSING UP AT
8 FIRST.

9 Q. OKAY. AND HOW WAS THE DEFENDANT ACTING THAT DAY?

10 A. AT FIRST HE WAS NORMAL UNTIL HE GOT, UNTIL WE ALL
11 STARTED GETTING DRUNK, HE STARTED ACTING, YOU KNOW,
12 ACTING FRANTIC.

13 Q. OKAY. SO THEN WHAT HAPPENED?

14 A. UM, WE HIT, WE HIT A CAR IN WEST UNION.

15 Q. ALL RIGHT. WITHOUT GOING INTO THAT, LET ME FIRST
16 SHOW YOU STATE'S EXHIBITS 2-D AND 2-C AND ASK YOU IF YOU
17 RECOGNIZE THOSE?

18 A. YES. THAT'S THE CAR.

19 Q. WHAT IS THAT?

20 A. IT'S A CHEVY MALIBU, I GUESS.

21 Q. DO YOU RECOGNIZE WHERE IT'S PARKED?

22 A. UM, THAT'S THE HOUSE THAT, THAT WE ENDED UP AT.
23 I'D NEVER BEEN THERE BEFORE, THAT WAS THE FIRST TIME I'D
24 EVER BEEN TO THE HOUSE.

25 Q. DOES THAT APPEAR TO BE THE CAR THAT Y'ALL WERE IN

1 THAT DAY?

2 A. YES, SIR.

3 Q. THAT WAS THE CAR. I MEAN, IS THAT THE CAR OR DO
4 YOU KNOW?

5 A. YEAH, THAT, THAT'S THE CAR BECAUSE OF THE DENT IN
6 THE BUMPER.

7 Q. OKAY. YOU JUST SAID YOU WERE RIDING AROUND
8 DRINKING. ALL RIGHT. AT SOME POINT IN TIME DID YOU ALL
9 GO OVER TO NATHAN MCCALL'S?

10 A. YES, SIR.

11 Q. DID YOU ALL HAVE GUNS?

12 A. UM, WHEN WE ENTERED, WHEN WE ENTERED THE HOUSE --

13 Q. BEFORE THIS, I MEAN, DID YOU ALL HAVE A GUN IN THE
14 CAR?

15 A. YES, SIR.

16 Q. OKAY. SO YOU WENT TO NATHAN'S?

17 A. YES, SIR.

18 Q. WHO WAS DRIVING THIS WHOLE TIME?

19 A. JEFF.

20 Q. ALL RIGHT. WHOSE IDEA WAS IT TO GO TO NATHAN'S?

21 A. JEFF'S.

22 Q. WHY DID YOU ALL GO TO NATHAN'S?

23 A. I MEAN, I DON'T KNOW. I DIDN'T KNOW AT THE TIME
24 WHY WE WENT TO NATHAN'S.

25 Q. ALL RIGHT. AT THE TIME THIS HAPPENED, HOW

1 INTOXICATED WERE YOU?

2 A. I MEAN, I WAS PRETTY MUCH DRUNK, OR ALMOST. I
3 MEAN, I WAS CLOSE.

4 Q. ALL RIGHT. WHEN YOU PULLED UP TO NATHAN'S HOUSE,
5 WHAT HAPPENED, WHAT WAS SAID, WHAT DID YOU ALL DO?

6 A. UM, WE WENT, WE WENT IN, AND JEFF ASKED WHERE
7 NATHAN WAS, AND JASON SAID THAT NATHAN WAS ASLEEP. JEFF
8 PROCEEDED TO WALK INTO NATHAN'S ROOM. JASON TURNED AND
9 WENT BACK DOWN THE HALL. AND I WALKED IN BEHIND THEM,
10 AND WHEN I WALKED IN, JEFF, I COULDN'T, I DIDN'T HEAR
11 EVERYTHING THAT WAS SAID AT FIRST, BUT WHENEVER I WALKED
12 IN I SEEN JEFF HIT NATHAN IN THE HEAD WITH A PISTOL, AND
13 THEN HE TOOK NATHAN'S PISTOL FROM HIM AND THEN HE HANDED
14 ME THE PISTOL THAT HE HAD AND TOLD ME TO WATCH NATHAN.

15 Q. DID YOU WATCH NATHAN WITH A PISTOL?

16 A. YEAH.

17 Q. OKAY. DO YOU REMEMBER FIRING A SHOT?

18 A. I DON'T REMEMBER, BUT THEY SAID I DID, SO...

19 Q. DO YOU THINK YOU FIRED A SHOT?

20 A. I MEAN, IT'S, IT'S A POSSIBILITY, YEAH, BUT...

21 Q. OKAY. I MEAN, FROM WHAT YOU HAVE BEEN TOLD
22 AFTERWARDS, YOU ARE SAYING YOU DON'T REMEMBER BUT YOU
23 THINK YOU DID WHAT THEY SAID YOU DID?

24 A. YEAH. 'CAUSE THERE, EVERYBODY SAID IT, SO...

25 Q. OKAY. ALL RIGHT. SO YOU ARE HOLDING THE PISTOL

1 ON NATHAN AT THE DEFENDANT'S REQUEST?

2 A. YEAH. HE TOLD ME TO WATCH NATHAN, AND THEN HE
3 LEFT THE ROOM AND HE WENT BACK TO WHERE JASON WAS, BUT I
4 DIDN'T SEE ANY OF THAT.

5 Q. ALL RIGHT. THEN WHAT HAPPENED?

6 A. UM, THEN HE CAME IN, AND AS WE WERE LEAVING, HE
7 ASKED, HE ASKED FOR HIS PISTOL BACK. WHEN WE WERE GOING
8 TO GET IN THE CAR, HIM AND JASON HAD A FEW WORDS, AND HE
9 FIRED ONE SHOT RIGHT AS WE GOT TO THE CAR TO THE HOUSE
10 AND THEN WE LEFT.

11 Q. OKAY. AND THEN FROM THERE WHERE DID YOU ALL GO?

12 A. WE WENT TO LUCAS CROWE'S HOUSE.

13 Q. OKAY. AND AFTER -- AT SOME POINT IN TIME DID YOU
14 ALL GET THE IDEA THAT MAYBE THE POLICE WOULD BE LOOKING
15 FOR YOU?

16 A. YEAH.

17 Q. AND WHEN WAS THAT AND WHY WAS THAT?

18 A. WE WENT TO, BECAUSE WE WENT TO, WE WENT TO HIDE
19 THE CAR AT ZACK'S HOUSE 'CAUSE SUNSHINE HAD CALLED OR
20 SAID SHE WAS CALLING THE LAW.

21 Q. OKAY. SO YOU, YOU THOUGHT THE LAW WAS AFTER YOU?

22 A. YEAH.

23 Q. DID YOU ALL LEAVE ZACK'S HOUSE?

24 A. YEAH.

25 Q. ALL RIGHT. AND WHERE DID YOU GO?

1 A. AT THAT TIME IT WAS ONLY ME AND JEFF.

2 Q. AND WHERE DID YOU AND JEFF GO?

3 A. WE WENT BACK UP FLAT SHOALS ROAD AND THAT'S WHEN
4 WE WERE CHASED BY THE COPS.

5 Q. WHAT DID YOU SAY AGAIN?

6 A. THAT'S WHEN WE WERE CHASED. WE WENT BACK UP FLAT
7 SHOALS ROAD, WE TURNED ON I THINK IT'S MOUNTAIN VIEW
8 ROAD, AND THEN A COP PASSED US, AND WHEN IT TURNED
9 AROUND, THEN THAT'S --

10 MR. DAY: I'M GONNA HAVE TO OBJECT BECAUSE I THINK
11 WE ARE GETTING WELL BEYOND THE SCOPE OF THIS PARTICULAR
12 CASE.

13 THE COURT: MR. WAGNER?

14 MR. WAGNER: YOUR HONOR, WE'RE STILL -- I MEAN,
15 WE'RE STILL IN THIS CASE, BUT...

16 THE COURT: ALL RIGHT. I'LL LET YOU PROCEED, BUT
17 LET'S DO BE SURE THAT WE'RE --

18 MR. WAGNER: YES, SIR.

19 THE COURT: -- RELEVANT TO WHAT WE'RE TALKING ABOUT.
20 BY MR. WAGNER:

21 Q. MR. ELLIOTT --

22 THE COURT: OVERRULED.

23 BY MR. WAGNER:

24 Q. -- A SHORT TIME AFTER THAT DID YOU ALL END UP
25 GOING OVER TO LAURA MEADOWS'S HOUSE?

1 A. YES, SIR.

2 Q. OKAY. AND DID YOU PARK THE CAR IN LAURA MEADOWS'S
3 DRIVEWAY?

4 A. YES, SIR.

5 Q. WAS LAURA MEADOWS THERE?

6 A. SHE WAS AT FIRST AND THEN SHE LEFT.

7 Q. OKAY. SO Y'ALL PULLED UP TO LAURA MEADOWS'S --
8 WHEN Y'ALL WENT TO LAURA MEADOWS'S HOUSE, SHE WAS THERE
9 BUT THEN SHE LEFT?

10 A. YES.

11 Q. ALL RIGHT. DID YOU AND JEFF HANG OUT THERE AT HER
12 HOUSE?

13 A. YES. WE, WE HUNG OUT THERE FOR A, A,
14 APPROXIMATELY TEN MINUTES, 15 MINUTES, SOMETHING, UNTIL,
15 UNTIL THE COPS CAME.

16 Q. ALL RIGHT. WHEN THE COPS SHOWED UP AT LAURA
17 MEADOWS'S HOUSE WHAT DID YOU DO, WHAT DID JEFF DO?

18 A. I TOOK OFF RUNNING DOWN THROUGH THE WOODS.

19 Q. AND WHAT DID JEFF DO?

20 A. HE RAN THE OTHER WAY.

21 Q. OKAY. AND THEN HOW LONG DID YOU STAY IN THE
22 WOODS?

23 A. I STAYED IN THE WOODS UNTIL IT GOT REAL DARK, AND
24 THEN I CAME OUT AND I TRIED TO FIND WHERE I WAS AT, AND I
25 WALKED UP TO THIS HOUSE AND THEY WERE PEOPLE LIKE, THE

1 DOOR WAS OPEN BUT THEY LIKE SLAMMED THE DOOR IN MY FACE.

2 **MR. DAY:** OBJECTION, YOUR HONOR. I THINK WE'VE GONE
3 WELL BEYOND RELEVANCY IN THIS CASE.

4 **THE COURT:** ALL RIGHT. MR. WAGNER?

5 **MR. WAGNER:** YOUR HONOR, I'M JUST ASKING HIM TO
6 FINISH UP WHAT HAPPENED THAT DAY.

7 **THE COURT:** ALL RIGHT. I'M GONNA OVERRULE IT. BUT
8 LET'S, UNLESS IT HAS SOMETHING TO DO WITH THE CHARGES ON
9 THESE INDICTMENTS, I THINK WE'RE GOING A LITTLE FAR
10 AFIELD.

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

12 BY MR. WAGNER:

13 Q. DO YOU REMEMBER, DID YOU HAVE A GUN WHEN YOU RAN
14 OUT OF THE CAR?

15 A. NO.

16 Q. WHEN YOU RAN FROM THE SCENE THERE?

17 A. NO, I DID NOT.

18 Q. OKAY. DO YOU KNOW WHAT HAPPENED TO THE GUN?

19 A. NO, I DO NOT.

20 Q. LATER ON, HOW LONG WAS IT BEFORE YOU GOT CAUGHT?

21 A. I GOT CAUGHT AT LIKE 3:30 IN THE MORNING.

22 Q. WAS IT THAT DAY, THE NEXT DAY, OR TWO DAYS LATER?

23 A. IT WAS THAT -- I STARTED RUNNING LIKE 5:00 IN THE
24 EVENING, AND THEN IT WAS 3:30 IN THE MORNING WHEN I GOT
25 CAUGHT, OR 3:00.

1 Q. ALL RIGHT. DO YOU REMEMBER, DID YOU TALK TO SCOTT
2 ARNOLD ABOUT THIS CASE?

3 A. YES, SIR.

4 Q. AND DID YOU GIVE HIM A STATEMENT LIKE THAT DAY OR
5 THE NEXT DAY?

6 A. YES, SIR.

7 Q. OKAY.

8 **MR. WAGNER:** THOSE ARE THE ONLY QUESTIONS I WOULD
9 HAVE. ANSWER ANYTHING MR. DAY HAS.

10 **THE COURT:** MR. DAY?

11 CROSS-EXAMINATION BY MR. DAY:

12 Q. I'VE GOT A FEW QUESTIONS FOR YOU HERE, IF I MAY.

13 YOU STARTED OFF SAYING THAT YOU PARTICIPATED IN
14 THIS ROBBERY, THIS ALLEGED ROBBERY THAT TOOK PLACE OVER
15 AT THE MCCALLS?

16 A. I MEAN, I DIDN'T TAKE ANYTHING, AND I DIDN'T KNOW
17 WHAT WAS GOING TO HAPPEN BEFORE IT DID HAPPEN, SO I MEAN,
18 BUT I WAS THERE, YES.

19 Q. ALL RIGHT, SIR. YOU REMEMBER MR. NATHAN MCCALL
20 TESTIFYING, DON'T YOU?

21 A. YES, SIR.

22 Q. YOU WERE HERE IN THE COURTROOM?

23 A. YES, SIR.

24 Q. HE TESTIFIED THAT YOU SAT ON THE BED, YOU PUT YOUR
25 ARM AROUND HIM, AND YOU STUCK A PISTOL RIGHT HERE TO HIS

1 HEAD (DEMONSTRATING). DO YOU REMEMBER THAT?

2 A. I REMEMBER HIM SAYING THAT, YES, SIR.

3 Q. YES, SIR. BUT YOU DON'T REMEMBER THAT HAPPENING?

4 A. I DIDN'T STICK A PISTOL TO HIS HEAD, NO.

5 Q. ALL RIGHT. SO YOU DENY THAT OCCURRED?

6 A. I WAS HOLDING THE GUN, BUT I NEVER PHYSICALLY PUT
7 A PISTOL TO HIS HEAD, NO.

8 Q. OKAY. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
9 EXHIBIT 2-A WHICH INDICATES MR. NATHAN MCCALL ON THE BED
10 WITH ANOTHER PERSON THERE AS HE TESTIFIED DEMONSTRATING
11 TO HOW IT IS THAT YOU WERE THERE WITH YOUR ARM AROUND HIM
12 AND A PISTOL IN YOUR HAND AND WHEN YOU SHOT. DO YOU DENY
13 THAT YOU WERE ON THE BED WITH YOUR ARM AROUND HIM?

14 A. NO. I MEAN, I WAS LAYING ON HIS BED AND I DID
15 HAVE MY ARM AROUND HIM. BECAUSE WHEN I LAID ON THE BED
16 WITH NATHAN, I WAS LIKE, I WAS LIKE EVERYTHING IS GONNA
17 BE ALL RIGHT, I WASN'T GONNA LET HIM HURT YOU. AND YEAH,
18 I MEAN, PRETTY MUCH THAT'S HOW IT WAS. BUT THE PISTOL
19 WENT -- WHEN JEFF HANDED ME THE PISTOL, I JUST HAD IT
20 LIKE SITTING LIKE RIGHT HERE IN MY LAP (DEMONSTRATING).

21 Q. OH, YOU HAD IT IN YOUR LAP. OKAY. AND YOU DIDN'T
22 POINT IT TO HIS HEAD?

23 A. NO, SIR.

24 Q. OKAY. AND YOU DIDN'T FIRE IT OFF? YOU JUST SAID
25 A MINUTE AGO YOU DIDN'T ---

1 A. I'M NOT SURE ABOUT -- I DON'T REMEMBER FIRING IT
2 OFF, BUT EVERYONE SAYS I DID, SO...

3 Q. OKAY. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS
4 2-K AS IN KILO, WHICH HAS BEEN TESTIFIED TO THAT'S WHAT
5 IT LOOKS LIKE LOOKING OUT OF THE BEDROOM, MR. NATHAN
6 MCCALL'S BEDROOM, WHERE YOU ALL WERE IN THERE LYING ON
7 THE BED. DOES THAT LOOK RIGHT?

8 A. UH-HUH.

9 Q. IS THAT RIGHT?

10 A. YES, SIR.

11 Q. OKAY. AND THE TESTIMONY FROM MR. MCCALL IS THAT
12 YOU FIRED A PISTOL THROUGH THAT, A PISTOL ROUND THROUGH
13 THAT DOOR.

14 **MR. WAGNER:** YOUR HONOR, I BELIEVE IT'S ALREADY BEEN
15 ASKED AND ANSWERED, SO I WOULD OBJECT TO THE...

16 **MR. DAY:** I ASKED HIM ABOUT THE PARTICULAR, TO MAKE
17 SURE I IDENTIFY WHERE THE SHOT WENT.

18 **THE COURT:** VERY WELL. OVERRULED.

19 BY MR. DAY:

20 Q. SO YOU ARE SAYING YOU DID NOT FIRE A ROUND THROUGH
21 THAT DOOR?

22 A. I DON'T -- I'M NOT SAYING THAT I -- I DIDN'T
23 REMEMBER AT THE TIME DOING THAT. BUT, LIKE I SAID
24 BEFORE, EVERYONE THAT WAS THERE SAID I DID, SO
25 OBVIOUSLY...

1 Q. AND SO THESE -- I HAVE HERE STATE'S EXHIBIT 2-J AS
2 IN JACK, 2-L AS IN LIMA, AND 2-P AS IN PAPA, ALL SHOW
3 WHERE THAT SUPPOSED ROUND WENT THREW THE WALL. YOU DON'T
4 REMEMBER THAT, EITHER?

5 A. NO, SIR, I MEAN, I REALLY DON'T.

6 Q. OKAY. WHO ALL WAS IN THE BEDROOM THERE WITH YOU
7 AND NATHAN?

8 A. MARIA AND NICKIE AND NATHAN.

9 Q. OKAY. SO THERE WERE FOUR PEOPLE IN THERE: MARIA,
10 NICKIE AND MARIA -- EXCUSE ME -- MARIA, NICKIE, YOU, AND
11 NATHAN MCCALL; IS THAT CORRECT?

12 A. UH-HUH.

13 Q. ALL RIGHT. SO WHEN THIS WAS GOING ON, MARIA WAS
14 IN THERE WITH YOU, RIGHT?

15 A. YEAH.

16 Q. OKAY. ALL RIGHT, SIR. NOW, WHILE YOU WERE IN
17 THERE WITH NATHAN, I BELIEVE YOU SAID YOU AND NICKIE WERE
18 TO WATCH NATHAN, IS THAT RIGHT, THAT'S WHAT YOU TESTIFIED
19 TO?

20 A. YES.

21 Q. OKAY. NOW, Y'ALL WERE LEAVING FROM THERE AND WENT
22 OUT THE DOOR. YOU SAID JASON WENT OUT WITH Y'ALL?

23 A. JASON COME TO THE -- JASON FOLLOWED US TO THE
24 DOORWAY OF THE FRONT DOOR.

25 Q. OKAY. AND HE DIDN'T GO OUTSIDE?

1 A. NOT THAT I REMEMBER. HE MIGHT HAVE COME OUT ON
2 THE PORCH, BUT I JUST REMEMBER THEM HAVING HIM AND JEFF
3 TALKING TO EACH OTHER, HAVING WORDS. I WAS ON -- I MEAN,
4 WE WERE ON OUR WAY TO THE CAR.

5 Q. OKAY. THEY WERE TALKING TO EACH OTHER, YOU SAY
6 HAVING WORDS. WERE THEY ARGUING, YELLING AT EACH OTHER?

7 A. PRETTY MUCH, YEAH.

8 Q. ALL RIGHT. DO YOU REMEMBER ANYTHING THAT JASON
9 SAID?

10 A. UM, I MEAN, PRETTY MUCH TO THE EFFECT THAT "I
11 CAN'T BELIEVE YOU WOULD DO THIS." I WASN'T -- I MEAN, I
12 WAS TRYING TO GET TO THE CAR. I MEAN, I WAS TRYING TO
13 HURRY UP AND GET TO THE CAR.

14 Q. OKAY. AND WHEN YOU GOT IN THE CAR, WHERE DID YOU
15 GET, WHERE DID YOU SIT IN THE CAR?

16 A. I SAT IN THE BACK SEAT IN THE, ON THE PASSENGER'S
17 SIDE.

18 Q. ALL RIGHT. AND WHO WAS IN THE BACK SEAT WITH YOU?

19 A. NICKIE.

20 Q. NICKIE WAS IN THE BACK SEAT?

21 A. UH-HUH.

22 Q. OKAY. AND IN THE FRONT SEAT THEN I TAKE IT WAS
23 MARIA?

24 A. MARIA MIGHT HAVE BEEN IN THE BACK SEAT, TOO.

25 Q. OKAY. SO THE THREE OF Y'ALL WERE IN THE BACK

1 SEAT, POSSIBLY?

2 A. POSSIBLY.

3 Q. MAYBE?

4 A. I KNOW AT ONE POINT IN TIME THE THREE OF US WERE
5 IN THE BACK SEAT.

6 Q. OKAY. WHO WAS DRIVING?

7 A. JEFF.

8 Q. OKAY. WHEN YOU SAID SOMETHING ABOUT AS YOU WERE
9 LEAVING, JEFF SHOT?

10 A. AS HE WAS WALKING UP THE HILL TO THE CAR.

11 Q. WALKING UP THE HILL?

12 A. YEAH.

13 Q. YOU REMEMBER THAT?

14 A. YEAH.

15 Q. ALL RIGHT. NOW, WHAT KIND OF PISTOL DID YOU HAVE
16 IN THE HOUSE?

17 A. UM, JEFF HANDED ME A, IT WAS A REVOLVER.

18 Q. A REVOLVER?

19 A. UH-HUH.

20 Q. OKAY. AND THAT'S WHAT YOU HAD? YOU DON'T
21 REMEMBER WHAT KIND IT WAS?

22 A. NO, SIR.

23 Q. ALL RIGHT. AND WHEN YOU WENT BACK OUTSIDE -- LET
24 ME MAKE SURE I UNDERSTAND THIS -- YOU SAID THAT YOU GAVE
25 UP THE PISTOL?

1 A. YES.

2 Q. ALL RIGHT. SO WHAT YOU ARE SAYING, AS BEST I CAN
3 UNDERSTAND, IS THAT JEFF WAS WALKING OUT, HE HAD PISTOLS
4 IN BOTH HANDS?

5 A. NO, SIR.

6 Q. WHAT DID HE HAVE?

7 A. WHENEVER WE WALKED OUT THE DOOR, I JUST HANDED, I
8 HANDED THE GUN BACK TO JEFF. HE STUCK ONE IN HIS
9 WAISTBAND, AND THAT'S WHEN HIM AND JASON STARTED TO
10 ARGUE. I WENT TO THE CAR AND I GOT IN THE CAR AND THEN
11 HE WAS WALKING UP THE HILL AND THEN I HEARD GUNSHOT FIRE,
12 "BAM."

13 Q. YOU REMEMBER THAT GUNSHOT?

14 A. YEAH.

15 Q. BUT IN A ROOM THAT WAS PROBABLY, THE NORMAL SIZE
16 OF A BEDROOM IN THIS HOUSE WOULD BE ABOUT FROM ME TO YOU
17 AND THE WALLS, YOU DON'T REMEMBER THE SOUND, ACCORDING TO
18 THE TESTIMONY OF NATHAN MCCALL, OF A .357 MAGNUM BEING
19 FIRED?

20 A. I MEAN, I'M NOT SAYING I, I JUST DON'T, I DON'T
21 REMEMBER THAT. I MEAN, I'D BEEN DRINKING A LOT.

22 Q. AND THEN IF I MIGHT CLEAR UP SOMETHING ALSO, Y'ALL
23 LEFT THERE AND YOU WENT TO ZACK'S HOUSE, RIGHT?

24 A. SOMEWHERE THEREAFTER, YEAH.

25 Q. OKAY. BUT, WELL, THAT'S WHERE YOU DROVE TO.

1 WHATEVER ROUTE YOU TOOK YOU ENDED UP AT ZACK'S HOUSE,
2 RIGHT?

3 A. THAT'S THE LAST PLACE WE ENDED UP, YES.

4 Q. AND AT ZACK'S HOUSE WAS YOU, MARIA, NICKIE AND
5 JEFF?

6 A. UH-HUH.

7 Q. IS THAT CORRECT?

8 A. UH-HUH.

9 Q. HOW LONG DID YOU ALL STAY THERE?

10 A. MAYBE 20, 30 MINUTES.

11 Q. OKAY. WHAT DID YOU DO IN THOSE 20 OR 30 MINUTES?

12 A. I TOOK A SHOWER.

13 Q. THIS SOUNDS LIKE A SILLY QUESTION, BUT TAKE THAT
14 SHOWER ALONE?

15 A. NO.

16 Q. WHO WAS WITH YOU?

17 A. MARIA AND NICKIE.

18 Q. MARIA AND NICKIE AND YOU TOOK A SHOWER AT ZACK'S?

19 A. YEAH.

20 Q. OKAY. NOW, SOMETIME LATER, SOMETIME AFTER THAT,
21 MARIA LEFT; IS THAT CORRECT?

22 A. YEAH, THEY BOTH LEFT.

23 Q. THEY BOTH LEFT?

24 A. YEAH, MARIA AND NICKIE.

25 Q. AND HOW DID THEY LEAVE?

1 A. CHAD CRENSHAW.

2 Q. CHAD CRENSHAW CAME AND PICKED THEM UP; IS THAT
3 RIGHT?

4 A. UH-HUH.

5 Q. YOU HAVE TO SPEAK UP, SIR. SORRY.

6 A. OH, YES, SIR.

7 Q. OKAY. AND THAT'S WHEN THEY LEFT. DO YOU REMEMBER
8 WHERE MARIA SAID SHE WAS GOING?

9 A. NO, SIR.

10 Q. ALL RIGHT, SIR. NOW, YOU SAID YOU GOT ARRESTED
11 ABOUT 3:30 THAT MORNING; IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND WHAT WERE YOU ARRESTED FOR?

14 A. STRONG-ARM, STRONG-ARM ROBBERY.

15 Q. STRONG-ARM ROBBERY. WHAT ELSE?

16 A. THAT'S IT.

17 Q. THAT'S THE ONLY THING YOU WERE ARRESTED FOR?

18 A. YES, SIR.

19 Q. IS THAT THE ONLY CHARGE YOU HAVE PENDING AGAINST
20 YOU IN THIS CASE?

21 A. NO, SIR.

22 Q. IN THIS CASE WHAT CHARGES DO YOU HAVE PENDING
23 AGAINST YOU CONCERNING THIS MATTER WITH THE MCCALLS?

24 A. STRONG-ARM ROBBERY AND DISCHARGING A FIREARM INTO
25 A DWELLING.

1 Q. OKAY. YOU WERE ALSO CHARGED WITH BEING IN
2 POSSESSION OF A WEAPON DURING A CRIME, YOU KNOW, HAVING A
3 PISTOL IN YOUR POSSESSION DURING THE COMMISSION OF A
4 CRIME?

5 A. UM, NO, SIR.

6 Q. AND WHEN YOU SAY STRONG-ARM ROBBERY, HOW MANY
7 COUNTS OF STRONG-ARM ROBBERY?

8 A. ONE.

9 Q. JUST ONE?

10 A. YES, SIR.

11 (COUNSEL CONFER.)

12 **MR. DAY:** ONE SECOND, YOUR HONOR, IF I MAY.

13 **THE COURT:** CERTAINLY.

14 BY MR. DAY:

15 Q. ALL RIGHT, SIR. NOW, THOSE TWO CHARGES -- AND YOU
16 WERE IN JAIL FOR HOW LONG?

17 A. EIGHT AND A HALF MONTHS.

18 Q. ALL RIGHT. SO FROM THAT TIME, WHEN DID YOU GET
19 OUT OF JAIL?

20 A. TWO WEEKS AGO.

21 Q. ALL RIGHT. RIGHT AT THE END OF FEBRUARY,
22 BEGINNING OF THIS MONTH?

23 A. YES, SIR.

24 Q. ALL RIGHT. NOW, YOU WERE IN JAIL DURING THIS
25 TIME, YOU WERE FACING THESE TWO CHARGES. IN EXCHANGE FOR

1 YOUR TESTIMONY HAS THE SOLICITOR OFFERED YOU ANYTHING AS
2 A DEAL, RECOMMENDATION, OR OTHERWISE, CONCERNING YOUR
3 CHARGES?

4 A. UM, I'M ASKING TO GET A TWO-YEAR CAP.

5 Q. THAT'S WHAT THEY'VE OFFERED TO RECOMMEND, A
6 TWO-YEAR CAP, OFFERING YOU A TWO-YEAR CAP, MAXIMUM TWO
7 YEARS IN JAIL FOR YOUR TESTIMONY; IS THAT RIGHT?

8 A. THAT'S WHAT I'M ASKING, YEAH.

9 Q. OKAY. SO STRONG-ARM ROBBERY CARRIES 15 YEARS, AND
10 DISCHARGING CARRIES FIVE YEARS, SO YOU ARE FACING 20
11 YEARS IN JAIL; IS THAT RIGHT?

12 A. YES, SIR.

13 Q. ALL RIGHT. AND WHEN YOU GOT OUT OF JAIL, WHY
14 DIDN'T YOU GET OUT OF JAIL BEFORE?

15 A. UM, I HAD A YEAR CHILD SUPPORT TIME.

16 Q. ALL RIGHT. DID YOU HAVE A BOND SET ON YOU FOR
17 THESE CHARGES?

18 A. YEAH.

19 Q. HOW MUCH WAS IT?

20 A. 27, 27, 5.

21 Q. \$27,500?

22 A. YES, SIR.

23 Q. OKAY. WHEN YOU GOT OUT OF JAIL WHAT KIND OF BOND
24 DID YOU HAVE?

25 A. A PR BOND.

1 Q. THAT STANDS FOR PERSONAL RECOGNIZANCE. AND THAT
2 MEANS YOU SIGN AND YOU GO HOME; IS THAT RIGHT?

3 A. YES, SIR.

4 Q. SO YOU DIDN'T HAVE TO PUT UP ANY MONEY OR PROPERTY
5 OR ANYTHING?

6 A. NO, SIR.

7 Q. WAS THAT PART OF YOUR DEAL TO TESTIFY, THAT YOU
8 WOULD BE ABLE TO GET A PERSONAL RECOGNIZANCE BOND AND GET
9 OUT OF JAIL?

10 A. UM, I'M NOT SURE. I, I MEAN, I DIDN'T ASK FOR A
11 PR BOND, NO.

12 Q. OKAY. SO SOMEONE DID THAT FOR YOU?

13 A. YES, MY LAWYER.

14 Q. OKAY. ALL RIGHT, SIR. NOW WE'RE TALKING ABOUT,
15 THIS CASE IS ABOUT JEFF WEBB AND YOU ARE TESTIFYING
16 AGAINST HIM. WHAT HAVE YOU GOT AGAINST JEFF? HAVE Y'ALL
17 HAD SOME SORT OF CONFRONTATION OR SOMETHING?

18 A. NO, SIR.

19 Q. DIDN'T YOU ALL HAVE A CONFRONTATION ABOUT TWO
20 WEEKS BEFORE ALL THIS TOOK PLACE?

21 A. YES, SIR.

22 Q. AND I'M TALKING ABOUT YOU AND JEFF.

23 A. YES, SIR.

24 Q. AND AT THAT TIME APPARENTLY Y'ALL GOT PRETTY MAD
25 AT EACH OTHER. DID JEFF WHACK YOU IN THE HEAD WITH A

1 GOLF CLUB?

2 A. YES, SIR.

3 Q. IT MADE YOU PRETTY MAD?

4 A. NO, SIR.

5 Q. NO? YOU DIDN'T FEEL THAT WHEN HE HIT YOU WITH A
6 GOLF CLUB?

7 A. YEAH, I FELT THAT.

8 Q. OKAY. AND APPARENTLY Y'ALL KIND OF MADE UP FROM
9 THAT?

10 A. YES, SIR, WE DID.

11 Q. ALL RIGHT. BUT THE FACT OF THE MATTER IS YOU
12 STILL REMEMBER HE HIT YOU WITH THAT GOLF CLUB, DON'T YOU?

13 A. I MEAN, OF COURSE I REMEMBER IT.

14 Q. OKAY. LET ME SORT OF CLEAR UP ONE THING I WAS
15 KIND OF CONFUSED ABOUT. WHEN YOU ARRIVED AT THE MCCALLS'
16 HOUSE, JASON WAS THE ONE THAT LET Y'ALL IN?

17 A. TO THE BEST OF MY KNOWLEDGE, YES.

18 Q. ALL RIGHT.

19 A. JEFF WAS AHEAD OF ME. I MEAN, JEFF GOT TO THE
20 DOOR FIRST.

21 Q. ALL RIGHT. HOW FAR AHEAD OF YOU WAS HE: FROM ME
22 TO YOU OR FROM YOU TO MS. HILD?

23 A. MAYBE FROM ME TO THE DESK THERE.

24 Q. OKAY. SO YOU CAME IN BEHIND HIM, YOU WERE THAT
25 FAR BEHIND HIM?

1 A. YES, SIR.

2 Q. OKAY. AND WHEN YOU GOT IN, DID YOU SEE JASON?

3 A. I, I SAW THE, I SAW THE BACK OF JASON WALKING DOWN
4 THE HALL TOWARDS HIS ROOM.

5 Q. OKAY. SO HE WAS LEAVING THE ROOM YOU WERE COMING
6 INTO?

7 A. UH-HUH.

8 Q. OKAY. DID YOU SEE NATHAN --

9 A. NO.

10 Q. -- WHEN YOU CAME IN?

11 A. NOT RIGHT AWAY. NOT UNTIL WE WENT INTO NATHAN'S
12 ROOM.

13 Q. THE -- WHEN YOU SAY THAT JEFF SHOT BACK AT THE
14 HOUSE AS Y'ALL WERE LEAVING --

15 A. YEAH.

16 Q. -- GOING BACK TO THE CAR --

17 A. YES, SIR.

18 Q. -- YOU SAID HE WAS COMING UP THE HILL WHERE THE
19 CAR WAS?

20 A. YES, HE WAS WALKING TOWARDS THE CAR, YES.

21 Q. AND WAS HE COMING UP THAT RISE THAT OTHERS HAVE
22 TESTIFIED TO WHERE THE CAR WAS PARKED, GOING UP THAT RISE
23 TO THE CAR?

24 A. YES, SIR.

25 Q. AND THAT WAS OFF TO THE SIDE, IF I'M STANDING

1 HERE, AND THIS IS A DOOR, INSTEAD OF BIG OLD ME IS A
2 DOOR, Y'ALL WERE GOING THAT WAY (POINTS)?

3 A. PRETTY MUCH, RIGHT.

4 Q. RIGHT. NOT DIRECTLY TO THE SIDE BUT OUT THIS WAY
5 (PPOINTS)?

6 A. I MEAN, I CAN'T EXACTLY REMEMBER WHERE WE WERE
7 PARKED AT BECAUSE THE DRIVEWAY GOES ALL THE WAY BESIDE
8 THERE.

9 Q. OKAY. SO BUT IT WAS OVER ON THAT SIDE?

10 A. YEAH. I MEAN, IT WAS OVER ON THAT SIDE, YES, SIR.

11 Q. OKAY. AND JUST ONE BRIEF THING, IF I CAN.
12 TALKING ABOUT THE GOLF CLUB INCIDENT, THAT ACTUALLY
13 HAPPENED AT THE MCCALLS' HOUSE, DIDN'T IT?

14 A. YES, SIR.

15 **MR. DAY:** THANK YOU, SIR. THAT'S ALL THE QUESTIONS
16 I HAVE.

17 **THE COURT:** RE-EXAM.

18 REDIRECT EXAMINATION BY MR. WAGNER:

19 Q. MR. ELLIOTT, ON THIS DEAL YOU HAVE WITH THE STATE
20 TO TESTIFY TODAY, ARE YOU TELLING ANYTHING TODAY THAT YOU
21 DIDN'T TELL SCOTT ARNOLD WHEN YOU WERE PICKED UP?

22 A. NO, SIR.

23 Q. SO YOU TOLD THE TRUTH THAT DAY?

24 A. YES, SIR.

25 Q. OKAY. ARE YOU TELLING ANYTHING DIFFERENT TODAY?

1 A. NO, SIR.

2 Q. OKAY. WHAT WAS YOUR DEAL WITH THE STATE FOR A CAP
3 OF TWO YEARS, THAT YOU WOULD GET A RECOMMENDATION OF TWO
4 YEARS IN JAIL?

5 A. YES, SIR.

6 Q. OR NO MORE THAN TWO YEARS?

7 A. YES, SIR.

8 Q. AND WHAT WAS THAT FOR, WAS THAT TO TESTIFY HERE
9 TODAY OR TO TELL THE TRUTH?

10 A. TO TELL THE TRUTH.

11 Q. HAVE YOU TOLD THE TRUTH TODAY?

12 A. YES, SIR.

13 Q. TO THE BEST OF YOUR, WHAT YOU CAN REMEMBER ABOUT
14 THAT NIGHT?

15 A. YES, SIR.

16 MR. WAGNER: THANK YOU. I DON'T HAVE ANYTHING
17 FURTHER.

18 THE COURT: RECROSS?

19 MR. DAY: NO, SIR, I DON'T THINK I HAVE ANY. THANK
20 YOU.

21 THE COURT: YOU MAY STEP DOWN. THANK YOU.

22 (WITNESS LEAVES STAND.)

23 MR. WAGNER: LAURA MEADOWS.

24 WHEREUPON,

25 LAURA MEADOWS,

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

2 DIRECT EXAMINATION BY MR. WAGNER:

3 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
4 LAST NAME FOR THE RECORD, PLEASE?

5 A. LAURA MEADOWS, M-E-A-D-O-W-S.

6 Q. MS. MEADOWS, WHERE DO YOU LIVE?

7 A. RIGHT NOW?

8 Q. YEAH. WHERE WERE YOU LIVING BACK ON JULY 23RD?

9 A. OH. 523 HILLMAN DRIVE.

10 Q. BACK ON JULY 23RD, DID YOU KNOW THE DEFENDANT,
11 JEFF WEBB?

12 A. YES.

13 Q. WHAT WAS YOUR RELATIONSHIP WITH HIM?

14 A. WE WAS TALKING, HANGING OUT.

15 Q. WERE YOU DATING?

16 A. YEAH, WE WAS GOING OUT.

17 Q. HOW LONG HAD YOU BEEN DATING HIM?

18 A. ABOUT A MONTH.

19 Q. ALL RIGHT. WERE YOU HOME THAT DAY?

20 A. YES, SIR.

21 Q. AT SOME POINT IN TIME ON THE 23RD IN THE LATE
22 AFTERNOON DID HE COME TO YOUR HOUSE?

23 A. UH-HUH.

24 Q. WHO WAS WITH HIM?

25 A. HIM AND SHANE.

1 Q. WHAT WERE THEY DOING? WHO WAS DRIVING?

2 A. I DIDN'T REALLY SEE THAT. I HAD MY KIDS. AND AS
3 SOON AS THEY CAME IN AND MY SON TOLD ME HE SEEN GUNS, I
4 TOOK MY KIDS HOME. AND AS SOON AS I GOT BACK THE POLICE
5 CAME AND --

6 Q. LET ME BACK UP --

7 A. OKAY.

8 Q. -- AND LET ME SHOW YOU STATE'S EXHIBIT 2 ON THE --
9 LOOK AT THE STICKER ON THE BACK. I CAN'T REMEMBER WHAT
10 NUMBERS AND LETTERS THERE ARE ON THE BACK. FLIP IT OVER,
11 PLEASE.

12 A. 2-C AND D.

13 Q. 2-C AND D?

14 A. UH-HUH.

15 Q. DO YOU RECOGNIZE THOSE?

16 A. YEAH.

17 Q. OKAY. WHAT IS THAT A PICTURE OF?

18 A. MY SISTER'S DRIVEWAY.

19 Q. YOUR SISTER'S DRIVEWAY?

20 A. UH-HUH.

21 Q. IS THAT WHERE YOU WERE LIVING AT THE TIME?

22 A. UH-HUH.

23 Q. OKAY. DO YOU RECOGNIZE THAT CAR?

24 A. UH-HUH.

25 Q. WHAT CAR IS THAT?

1 A. THE CAR THEY DROVE UP IN.

2 Q. WHEN YOU SAY "THEY DROVE UP IN"?

3 A. THE BOYS --

4 Q. JEFF WEBB AND --

5 A. -- JEFF AND SHANE.

6 Q. -- SHANE ELLIOTT?

7 OKAY. SO YOU SAID THEY DROVE UP IN YOUR DRIVEWAY,
8 YOU'RE NOT SURE WHICH ONE WAS DRIVING?

9 A. RIGHT.

10 Q. THEY CAME IN YOUR HOUSE?

11 A. UH-HUH.

12 Q. DID THEY HAVE GUNS?

13 A. UH-HUH.

14 Q. ALL RIGHT. AND WHAT WERE THEY SAYING?

15 A. THEY WERE JUST TALKING CRAZY. I MEAN, I REALLY
16 DIDN'T PAY MUCH ATTENTION. LIKE --

17 Q. SPECIFICALLY WHAT DID THE DEFENDANT SAY?

18 A. JEFF, THEY JUST HAD SOME SHOOTINGS GOING ON HERE
19 AND THERE AND PEOPLE OWED MONEY AND HE WASN'T GOING BACK
20 TO JAIL, AND YADDA YADDA YADDA.

21 Q. DID HE SAY ABOUT SHOOTING UP THE HOUSE?

22 A. UH-HUH. HE DIDN'T PHYSICALLY SAY, SO I'M NOT
23 REALLY SURE.

24 Q. OKAY. AND YOU LEFT?

25 A. HUH? YEAH. I TOOK MY KIDS HOME, YES, SIR, I DID.

1 ME AND MELISSA.

2 Q. OKAY. AND HOW LONG WERE YOU GONE?

3 A. I WAS GONE FOR ABOUT MAYBE ABOUT 15, 20, 20
4 MINUTES.

5 Q. THEN WHAT DID YOU DO?

6 A. CAME BACK.

7 Q. WHEN YOU GOT BACK, WERE THEY STILL THERE?

8 A. UH-HUH.

9 Q. WHERE WERE THEY?

10 A. DOWN AT THE FIRE PIT.

11 Q. THEY WERE WHERE?

12 A. LIKE AT THE FIRE THING WHERE YOU SIT AROUND.

13 Q. OKAY. DID YOU TALK TO THEM?

14 A. YEAH, I WENT DOWN THERE.

15 Q. AND THEN WHAT HAPPENED?

16 A. ABOUT FIVE MINUTES AFTER THAT THEY SEEN THE POLICE
17 AND BEFORE THEY PULLED IN OR WHATEVER, AND THEN THE BOYS
18 HIT THE WOODS.

19 Q. OKAY. WHICH WAY DID JEFF RUN?

20 A. UM, THEY BOTH WENT DIRECTLY IN THE WOODS; NOT
21 TOGETHER, BUT THEY DID GO IN THE WOODS.

22 Q. DID YOU SEE THEM AGAIN AFTER THIS?

23 A. UM, NOT SHANE, NO.

24 Q. OKAY. YOU SAW JEFF LATER?

25 A. YEAH.

1 Q. AND WHERE WAS HE?

2 A. THE NEXT DAY.

3 Q. ALL RIGHT. AND WHERE DID YOU SEE HIM?

4 A. CHAD CAME AND PICKED ME UP BUT HE CALLED ME LIKE
5 FRIDAY FROM A PRIVATE NUMBER AND CHAD PICKED ME UP AND I
6 WENT WITH JEFF.

7 Q. CHAD WHO?

8 A. CRENSHAW.

9 Q. SO HE CALLED YOU?

10 A. UH-HUH.

11 Q. CHAD CRENSHAW CAME AND PICKED YOU UP?

12 A. UH-HUH.

13 Q. AND THEN TOOK YOU TO WHERE JEFF WAS?

14 A. UH-HUH.

15 Q. OKAY. ARE YOU STILL DATING?

16 A. NO.

17 Q. DO YOU REMEMBER WHAT THEY WERE WEARING THAT DAY?

18 A. NO, SIR.

19 Q. OKAY. YOU DON'T REMEMBER?

20 A. NO.

21 Q. OKAY.

22 MR. WAGNER: THANK YOU. I DON'T HAVE ANY FURTHER
23 QUESTIONS. IF YOU WOULD ANSWER ANYTHING MR. DAY HAS.

24 THE COURT: CROSS-EXAM.

25 MR. DAY: THANK YOU.

1 CROSS-EXAMINATION BY MR. DAY:

2 Q. MS. MEADOWS, JUST A FEW QUESTIONS, IF I MAY.

3 WHEN JEFF GOT OVER THERE DID HE SAY ANYTHING ABOUT
4 DOING ANYTHING AT THE MCCALLS'?

5 A. NOT SPECIFICALLY. HE DIDN'T SAY SPECIFICALLY, NO,
6 SIR.

7 Q. YOU KNOW THE MCCALLS?

8 A. YES, SIR, I DO.

9 Q. OKAY. YOU SAID WHEN THEY GOT THERE, YOU THEN
10 LEFT?

11 A. YEAH. I TOOK MY KIDS HOME, YES, SIR.

12 Q. OKAY. DID YOU COME BACK?

13 A. YES, SIR.

14 Q. ABOUT HOW LONG AFTER THAT DID YOU COME BACK?

15 A. ABOUT 15, 20 MINUTES, I'D SAY.

16 Q. WERE YOU THERE WHEN THE OFFICERS ARRIVED?

17 A. UH-HUH.

18 Q. NOW, WHEN THEY ARRIVED, IT WAS JUST THE TWO OF
19 THEM?

20 A. UH-HUH.

21 Q. ALL RIGHT. AND IT WAS SHANE AND JEFF; MARIA NOR
22 NICKIE WERE THERE?

23 A. NO, SIR.

24 Q. SO ABOUT WHAT TIME WAS THIS?

25 A. I WOULD SAY THIS WAS AROUND 4:00, 4:30.

1 Q. 4:00 TO 4:30 IN THE AFTERNOON?

2 A. UH-HUH.

3 MR. DAY: THAT'S ALL I HAVE. THANK YOU VERY MUCH.

4 THE WITNESS: THANK YOU.

5 MR. WAGNER: NOTHING FURTHER, JUDGE.

6 THE COURT: VERY GOOD.

7 MR. WAGNER: I CALL MIKE MCGOWAN.

8 (WITNESS LEAVES STAND.)

9 WHEREUPON,

10 MIKE MCGOWAN,

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

12 DIRECT EXAMINATION BY MR. WAGNER:

13 Q. SIR, COULD YOU GIVE US YOUR NAME AND SPELL YOUR
14 LAST NAME FOR THE RECORD, PLEASE?

15 A. MY NAME IS MIKE MCGOWAN, M-C-G-O-W-A-N.

16 Q. AND WHO ARE YOU EMPLOYED WITH?

17 A. OCONEE COUNTY SHERIFF'S OFFICE.

18 Q. WERE YOU WORKING FOR THE SHERIFF'S OFFICE BACK ON
19 JULY 23RD OF 2009?

20 A. YES, SIR, I WAS.

21 Q. DID YOU GET A CALL TO GO OUT TO, I'M GONNA CALL IT
22 A MANHUNT, BUT I DON'T KNOW -- WHAT DO YOU ALL CALL IT?
23 WHAT KIND OF CALL DID YOU GET?

24 A. I DON'T REMEMBER EXACTLY HOW THE CALL FIRST CAME
25 OUT, BUT IT WAS IN REFERENCE TO I THINK SOME SHOTS BEING

1 FIRED AT A HOUSE MAYBE.

2 Q. OKAY. WHEN YOU GOT OUT THERE, DID YOU FIND OUT
3 WHAT OR WHO YOU WERE LOOKING FOR?

4 A. WHEN I FIRST ARRIVED, I THINK THE -- I WAS
5 ACTUALLY OFF OF CARMEL RIDGE ROAD. THE DETAILS OF THAT
6 PARTICULAR TIME ARE PRETTY SKETCHY ON WHO WE WERE
7 POSSIBLY LOOKING FOR.

8 I HAD JUST ARRIVED. SOME OF THE OTHER UNITS WERE
9 ALREADY THERE. I HAD JUST ARRIVED, AND THAT'S WHEN I
10 HEARD ON THE RADIO THAT THEY HAD SAID THEY HAD RAN OUT
11 THE BACK. AT THAT PARTICULAR TIME I WENT FROM WHERE I
12 WAS ON CARMEL RIDGE ROAD BACK OUT TO FLAT SHOALS AND INTO
13 THE INTERSECTION OF FLAT SHOALS, FRIENDLY DRIVE, AND
14 CARMEL RIDGE ROAD RIGHT THERE AT THE INTERSECTION.

15 Q. HOW FAR DO YOU THINK AS THE CROW FLIES WERE YOU
16 FROM CARMEL ROAD TO WHERE LAURA MEADOWS LIVED?

17 A. I WOULD SAY SOMEWHERE WITHIN A HALF A MILE.

18 Q. OKAY. AND WHY DID YOU PICK THAT LOCATION?

19 A. WELL, I DIDN'T KNOW WHICH WAY THEY HAD WENT, AND I
20 KNEW THAT OTHER OFFICERS WERE COMING THE DIRECTION THAT I
21 HAD COME AT, OR HAD COME IN AT, AND I REALIZED THAT THERE
22 WAS NOBODY ON THE OTHER END OF CARMEL RIDGE, SO THAT'S
23 WHY I TOOK UP THAT LOCATION.

24 Q. OKAY. AND WHAT DID YOU DO WHEN YOU -- YOU SAY YOU
25 TOOK UP THAT LOCATION, WHAT DID YOU DO?

1 A. BASICALLY I CAME OFF OF FLAT SHOALS AND I TURNED
2 RIGHT ON FRIENDLY DRIVE. AND THERE USED TO BE A, I THINK
3 A SINGLE-WIDE TRAILER THERE AND THERE WAS A PLACE WHERE
4 YOU CAN ACTUALLY PULL OFF. SO I JUST BASICALLY PULLED ON
5 TO FRIENDLY DRIVE AND SORT OF MADE A U-TURN BACK FACING
6 TOWARDS CARMEL RIDGE IN THAT LITTLE PULL-OFF AREA AT THE
7 INTERSECTION.

8 Q. OKAY. AND WHILE YOU WERE THERE, WERE YOU THERE BY
9 YOURSELF?

10 A. NOT INITIALLY. THERE WERE SEVERAL OTHER OFFICERS
11 THERE, AND I DON'T REMEMBER WHAT THE CIRCUMSTANCES WERE.
12 I THINK MAYBE THEY HAD HAD A CALL THAT MAYBE ONE OF THEM
13 HAD BEEN SIGHTED OR SOMETHING. EVERYBODY ELSE LEFT
14 EXCEPT FOR MYSELF.

15 Q. OKAY. AND DID YOU SEE ANYTHING?

16 A. YEAH. I WAS THERE, AND I COULDN'T, I DON'T KNOW
17 EXACTLY HOW LONG, BUT IT WAS, IT WAS PROBABLY 20, 30
18 MINUTES, SOMEWHERE IN THAT TIME FRAME. I WAS LOOKING
19 DOWN CARMEL RIDGE AND I SAW A WHITE MALE WALKING UP THE
20 ROAD, HE HAD A BLUE SHIRT WITH SORT OF HORIZONTAL WHITE
21 STRIPES, BLUE JEANS. THE THING THAT SORT OF CAUGHT
22 ATTENTION THERE WAS THE FACT HE DIDN'T HAVE SHOES ON; HE
23 HAD BASICALLY WHAT I WOULD CALL JUST WHITE SOCKS.

24 I LOOKED AT HIM FOR A SECOND, AND THEN ALL OF A
25 SUDDEN I REALIZED THAT HE HAD A GUN IN HIS HAND. AT THAT

1 POINT I OPENED THE DOOR ON MY TAHOE AND, OF COURSE, I
2 PULLED MY GUN OUT. I STARTED YELLING AT HIM TO PUT THE
3 GUN DOWN. AT THE SAME TIME I WAS TRYING TO GET ON THE
4 RADIO TO LET EVERYBODY KNOW THAT I HAD THIS INDIVIDUAL
5 THAT HAD A WEAPON, THAT HAD A GUN, THERE AT THE
6 INTERSECTION.

7 IT WAS, YOU KNOW, A FEW SECONDS, AND THEN ALL OF A
8 SUDDEN HE TOOK OFF RUNNING DOWN FLAT SHOALS TO MY LEFT,
9 HIS RIGHT, SO I CLOSED THE DOOR ON MY TAHOE AND TRIED TO
10 DRIVE DOWN THERE. BY THE TIME I GOT ON TO FLAT SHOALS
11 AND JUST A LITTLE PIECE, JUST A LITTLE WAY DOWN FLAT
12 SHOALS, HE WAS CUTTING OFF THE BANK GOING TOWARDS, IT
13 LOOKED LIKE A, LIKE A WORK BUILDING OR WORKSHOP.

14 I JUMPED OUT OF MY TAHOE, RAN DOWN A LITTLE, JUST
15 SORT OF DOWN TO THE WOODS DOWN THE HILL A LITTLE BIT, AND
16 AS HE WENT AROUND THE BUILDING I STOPPED BECAUSE I WAS
17 SORT OF CONCERNED OF THE FACT THAT HE MIGHT BE AROUND
18 THAT BUILDING AS I CAME AROUND THE CORNER.

19 A FEW SECONDS LATER HE CAME, APPARENTLY WENT
20 AROUND THE BUILDING AND CAME OUT ON THE OTHER SIDE. AND
21 ABOUT THAT TIME I GUESS THE HOMEOWNER MUST HAVE BEEN IN
22 THE SHOWER BECAUSE HE CAME OUT AND THEY SORT OF MET EACH
23 OTHER RIGHT THERE IN THE DRIVEWAY. SO I'M YELLING AT THE
24 HOMEOWNER TO GET BACK INSIDE BECAUSE HE'S GOT A GUN. I
25 START RUNNING DOWN THE HILL AND BOTH OF US END UP GOING

1 AROUND THE, WHAT WOULD BE THE LEFT SIDE OF THAT BUILDING.
2 WENT DOWN THE WOODS A LITTLE BIT. I WAS PROBABLY
3 20 YARDS OR SO BEHIND HIM. JUST A LITTLE WAYS DOWN THE
4 WOODS THERE'S AN OLD BARBED WIRE FENCE. WELL, WHEN HE
5 HIT THE FENCE, HE WENT UNDER IT. AND AT THAT POINT I
6 STOPPED BECAUSE I WAS AFRAID TO TRY TO GO UNDER THE FRONT
7 OF THE FENCE AND CONTINUE CHASING HIM AT THAT POINT.

8 Q. OKAY. ARE YOU FAMILIAR WITH PISTOLS --

9 A. SOMEWHAT.

10 Q. -- IN YOUR LINE OF WORK?

11 A. SOMEWHAT.

12 Q. WERE YOU ABLE TO DESCRIBE OR GET A LOOK AT THE
13 PISTOL THAT THE SUBJECT HAD?

14 A. IT WAS WHAT WE CALL A SEMIAUTOMATIC. THE FRAME OF
15 THE PISTOL WAS BLACK AND THE TOP OR THE SLIDE WAS SORT OF
16 A SILVER OR A GRAY COLOR. AND IT WAS OBVIOUS THAT IT WAS
17 A SEMIAUTOMATIC, IT WAS NOT A REVOLVER.

18 Q. WAS IT CONSISTENT WITH A RUGER P95?

19 A. THAT'S WHAT -- I MEAN, THERE ARE OTHER PISTOLS
20 THAT ARE SIMILAR TO THAT, BUT THAT WAS, THAT'S ONE THAT'S
21 CONSISTENT WITH THAT IS A RUGER.

22 Q. OKAY. WERE YOU ALL ABLE TO RECOVER ANY GUNS TO
23 YOUR KNOWLEDGE ON THIS CASE?

24 A. NO, SIR. WE LOOKED, WE SPENT QUITE A WHILE
25 LOOKING AROUND THE BUILDING TO SEE IF MAYBE HE HAD THROWN

1 THE GUN DOWN OR WHATEVER, BUT WE DIDN'T RECOVER A
2 FIREARM.

3 Q. WERE YOU ABLE TO IDENTIFY WHO YOU SAW?

4 A. YES, SIR.

5 Q. OKAY. AND WHO DID YOU SEE?

6 A. IT'S THE DEFENDANT SITTING RIGHT THERE.

7 Q. OKAY. AND AFTER YOU CHASED HIM DID YOU EVER SEE
8 HIM AGAIN?

9 A. NO, SIR. I STAYED THERE FOR QUITE A WHILE, AND I
10 THINK EVENTUALLY WE ENDED UP CALLING OFF THE, BASICALLY
11 THE MANHUNT. IT WAS LATE THAT NIGHT, AND I DON'T, I
12 HAVEN'T SEEN THE DEFENDANT UNTIL THIS TIME RIGHT NOW.

13 **MR. WAGNER:** OKAY. THANK YOU, OFFICER MCGOWAN.

14 **THE WITNESS:** THANK YOU.

15 CROSS-EXAMINATION BY MR. DAY:

16 Q. OFFICER MCGOWAN, JUST SO I UNDERSTAND, WHEN YOU
17 FIRST SAW HIM, HOW FAR AWAY WERE YOU?

18 A. I WOULD SAY APPROXIMATELY 40 YARDS.

19 Q. 40 YARDS?

20 A. YES, SIR.

21 Q. IT'S A LITTLE BIT FURTHER THAN THE LENGTH OF THE
22 COURTROOM?

23 A. YES, SIR.

24 Q. OKAY. A LITTLE BIT FURTHER THAN THAT?

25 A. YES, SIR.

1 Q. AND THIS PISTOL THAT YOU SAY YOU SAW, WHERE WAS
2 IT?

3 A. IT WAS IN HIS RIGHT-HAND.

4 Q. OKAY. HOLDING IT IN HIS HANDS?

5 A. YES, SIR. IT WAS ACTUALLY DOWN AT HIS SIDE WHEN I
6 ORIGINALLY, WHEN I ORIGINALLY REALIZED HE HAD A PISTOL,
7 IT WAS IN HIS RIGHT HAND AND IT WAS DOWN BY HIS SIDE.

8 Q. OKAY. HOW CLOSE DID YOU EVER GET TO HIM?

9 A. PROBABLY THE CLOSEST I GOT WAS WHEN WE WERE
10 ACTUALLY RUNNING THROUGH THE WOODS, MAYBE WITHIN 20
11 YARDS.

12 Q. OKAY. AND HE WAS AT VARYING STAGES STILL HAD THE
13 PISTOL IN HIS HAND?

14 A. I DID NOT SEE THE PISTOL IN HIS HAND AT THAT TIME;
15 NO, SIR, I CAN'T SAY THAT.

16 Q. OKAY. SO YOU SAW HIM, AND THEN YOU SAY HE BEGAN
17 TO RUN, YOU TOOK OFF AFTER HIM AND YOU GOT WITHIN 20
18 YARDS, AND THEN HE WENT UNDER A FENCE AND YOU DECIDED NOT
19 TO GO THAT FAR?

20 A. YES, SIR.

21 Q. OKAY. BUT WHEN HE WENT UNDER THE FENCE, ET
22 CETERA, YOU DID NOT, YOU DON'T REMEMBER HIM HAVING A
23 PISTOL OF ANY KIND?

24 A. HE DID NOT HAVE A PISTOL IN HIS HAND, YES, SIR.

25 Q. OKAY.

1 A. NOT THAT I COULD SEE.

2 Q. ALL RIGHT. DID YOU THEN SEARCH THE AREA TO SEE IF
3 THAT PISTOL WAS THERE?

4 A. YES, SIR. THAT'S WHAT I WAS TALKING ABOUT
5 EARLIER. WE SPENT A LOT OF TIME LOOKING AROUND THE
6 BUILDING. THE AREA THAT I, AS I EXPLAINED, HE WENT
7 AROUND THE BUILDING ON THE LEFT SIDE AND APPARENTLY RAN
8 AROUND AND CAME BACK OUT ON THE RIGHT SIDE, AND THAT'S
9 WHY I SPENT TIME LOOKING AROUND THAT BUILDING TO SEE IF I
10 COULD FIND A PISTOL.

11 Q. OKAY. HE HAD NO SHOES ON?

12 A. NO, SIR, HE HAD SOCKS ON.

13 Q. SOCKS, OKAY.

14 A. YES, SIR.

15 Q. AND ABOUT WHAT TIME OF THE DAY WAS THIS; YOUR
16 REPORT, WHAT DOES IT SHOW?

17 A. TO BE HONEST WITH YOU I CAN'T GIVE YOU AN EXACT
18 TIME. I WOULD SAY IT WOULD BE LATE MIDAFTERNOON.

19 Q. AROUND 4:00?

20 A. SOMETIME IN THAT -- I'D SAY SOMETIME BETWEEN 4:00
21 AND 5:00, JUST AS A GUESS.

22 Q. AND THE DATE?

23 A. THE 23RD OF JULY.

24 Q. SO APPROXIMATELY 4:00 TO 4:30, 4:00, SOMEWHERE?

25 A. FOUR, FIVE, SOMETIME IN THERE. LIKE I SAY, I

1 CAN'T GIVE YOU AN EXACT TIME.

2 Q. THIS PARTICULAR P95 YOU SAY THAT YOU SAW, IS THE
3 BARREL AND THE SLIDE AND ALL THAT, IS THAT SQUARE, THICK?

4 A. YEAH. LIKE IF YOU WOULD TURN IT SIDEWAYS, IT
5 WOULD BE -- IT WOULD NOT LOOK LIKE A REVOLVER BARREL;
6 IT'S NOT ROUND, IT'S SQUARED, YES, SIR.

7 Q. SO THE SLIDE WHICH GOES OVER THAT MAKES IT LOOK
8 LIKE ALMOST SQUARE LIKE THE ROUND IS GONNA COME OUT OF A
9 BOX ALMOST WHEN IT FIRES?

10 A. YOU COULD DESCRIBE IT AS THAT, YES, SIR.

11 Q. OKAY. LIKE A BOX, ET CETERA. IT COULD ALSO LOOK
12 LIKE A BEEBEE PISTOL, COULDN'T IT?

13 A. SURE, IT COULD. BUT THAT'S NOT WHAT IT LOOKED
14 LIKE TO ME. IT LOOKED LIKE A FIREARM. IT LOOKED LIKE A
15 GUN.

16 Q. OKAY.

17 **MR. DAY:** I THINK THAT'S ALL I HAVE. THANK YOU,
18 SIR.

19 **THE WITNESS:** YES, SIR.

20 REDIRECT EXAMINATION BY MR. WAGNER:

21 Q. AS FAR AS THE TIME GOES, IF IT'S JULY 23RD, IT
22 DOESN'T GET DARK TILL LATE, RIGHT?

23 A. YES. VERY LATE. AND I WAS THERE QUITE A WHILE
24 BEFORE IT EVER GOT DARK. SO, LIKE I SAY, I CAN'T TELL
25 YOU THE EXACT TIME. IT MIGHT HAVE BEEN LATE -- IT MIGHT

1 HAVE EVEN BEEN LATER THAN THAT.

2 Q. SO IT COULD HAVE BEEN 6:30 OR 7:00?

3 A. IT COULD HAVE. LIKE I SAY, I'M JUST GUESSING
4 BETWEEN FOUR AND FIVE.

5 Q. OKAY. AND YOU ARE FAMILIAR WITH WHAT A RUGER P95
6 LOOKS LIKE?

7 A. YES, SIR. I'M ONE OF THE FIREARMS INSTRUCTORS FOR
8 OUR DEPARTMENT SO I'M FAMILIAR WITH IT.

9 Q. OKAY. SO THE PISTOL THAT YOU SAW LOOKED
10 CONSISTENT WITH A RUGER P95?

11 A. IT LOOKED LIKE A, IT LOOKED LIKE A, IT LOOKED LIKE
12 A RUGER TO ME.

13 Q. OKAY.

14 **MR. WAGNER:** THANK YOU. THAT'S ALL THE QUESTIONS I
15 HAVE.

16 **THE COURT:** RECROSS?

17 **MR. DAY:** NOTHING FURTHER. THANK YOU.

18 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

19 **THE WITNESS:** THANK YOU, YOUR HONOR.

20 (WITNESS LEAVES STAND.)

21 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF
22 THE JURY, I'M GONNA SUGGEST THAT YOU TAKE YOUR MORNING
23 BREAK AT THIS TIME. WHEN YOU ARE READY TO COME BACK,
24 JUST KNOCK ON THE DOOR AND COME BACK AT THAT TIME.

25 AGAIN, ARE THERE ANY REFRESHMENTS BACK THERE?

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

2 **THE COURT:** ALL RIGHT. VERY GOOD.

3 AND, AS I SAY, TAKE THIS AS YOUR BREAK, AND THEN
4 WHEN YOU ARE READY TO COME BACK -- AGAIN, DO NOT
5 UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY
6 WAY. THANK YOU VERY MUCH.

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

9 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
10 10:53 A.M.)

11 **THE COURT:** ALL RIGHT. ANYTHING FROM THE STATE?

12 **MR. WAGNER:** NO, SIR.

13 **THE COURT:** FROM THE DEFENSE?

14 **MR. DAY:** NONE, YOUR HONOR.

15 **THE COURT:** HAVE YOU GOTTEN THE SUBPOENAS SERVED?

16 **MR. DAY:** I BELIEVE THEY'VE GONE OUT. I HAVE NEVER
17 CHECKED.

18 **THE COURT:** YOU MIGHT WANT TO DO THAT. THE COURT
19 WILL STAND AT EASE.

20 (A RECESS WAS TAKEN.)

21 (STATE'S EXHIBIT NUMBER 4, WAIVER OF RIGHTS
22 FORM, WAS MARKED FOR IDENTIFICATION.)

23 **THE COURT:** ALL RIGHT. MR. WAGNER?

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

25 **THE COURT:** THEY'RE READY.

1 **MR. WAGNER:** I'M SORRY, JUDGE. THE OFFICER IS RIGHT
2 HERE, I'LL GO GET HIM.

3 **THE COURT:** AND WE NEED THE DEFENDANT, I GUESS.

4 (DEFENDANT ENTERS COURTROOM.)

5 **THE COURT:** ALL RIGHT. IS THE STATE READY?

6 **MR. WAGNER:** WE'RE READY, JUDGE.

7 **THE COURT:** DEFENSE READY?

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

9 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN US.

10 **MR. WAGNER:** JUDGE, WE'LL HAVE A *JACKSON V. DENNO*
11 ISSUE WE NEED TO TAKE UP.

12 **THE COURT:** YOU NEED TO TELL ME.

13 **MR. WAGNER:** I'M SORRY.

14 **THE COURT:** ALL RIGHT. WE'RE GONNA HAVE TO ASK THE
15 JURY TO WAIT IN THE JURY ROOM.

16 OKAY.

17 **MR. WAGNER:** I ASSUME YOU WANT A *JACKSON V. DENNO*
18 HEARING ON THE STATEMENT THAT HE GAVE?

19 **MR. DAY:** YOU'RE TALKING ABOUT WHAT'S IN THE
20 INCIDENT REPORT?

21 **MR. WAGNER:** YES. IT'S LISTED THERE IN THE
22 NARRATIVE OF WHAT HE TOLD SCOTT.

23 (MARKED FOR IDENTIFICATION AND RECEIVED INTO
24 COURT'S EVIDENCE WAS COURT'S EXHIBIT 1, NOTE
25 FROM JURY RE BREAK.)

1 **THE COURT:** ARE YOU READY TO GO BACK ON THE RECORD
2 FROM THE STATE?

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

4 **THE COURT:** FROM THE DEFENSE?

5 **MR. DAY:** YOUR HONOR, THANK YOU. I'VE DISCUSSED
6 WITH THE DEFENDANT AND WITH THE SOLICITOR AS TO THE
7 TESTIMONY OF DETECTIVE ARNOLD AS TO WHAT HE WILL TESTIFY
8 TO. HE HAS ADVISED ME THAT HE WILL BE TESTIFYING TO
9 STATEMENTS THAT HE TOOK FROM THE DEFENDANT. IT'S AN ORAL
10 STATEMENT, NOTHING WRITTEN, CONCERNING THE ISSUES OF THIS
11 TRIAL, AND THAT WOULD BE THE ONLY ISSUES HE WOULD BE
12 TESTIFYING TO.

13 MY CLIENT ADVISES THAT NO ONE THREATENED HIM, HE DID
14 SO VOLUNTARILY, HE UNDERSTANDS HIS RIGHT TO HAVE A
15 HEARING, HE UNDERSTOOD HE WAS A POLICE OFFICER, HE WAS
16 SPEAKING TO A POLICE OFFICER, HE WAS ASKING HIM QUESTIONS
17 AND HE RESPONDED. THE ONLY THING IS WE ARE SAYING THAT
18 AS LONG AS HE TESTIFIES JUST TO WHAT WAS SAID ABOUT THIS
19 CASE, THEN WE CERTAINLY WAIVE IT.

20 **THE COURT:** WAS THAT WHAT THE WITNESS WILL BE
21 TESTIFYING TO, LIMITED SOLELY TO THIS CASE?

22 **MR. WAGNER:** YES, SIR, PROVIDED ON CROSS-EXAMINATION
23 THEY DON'T GO INTO OTHER STUFF.

24 **THE COURT:** THAT WOULD BE UP TO THAT POINT THE
25 DIRECT TESTIMONY WILL BE ONLY AS TO MATTERS CONCERNING

1 THIS MATTER?

2 **MR. WAGNER:** YES, SIR. WHICH, JUST FOR THE RECORD
3 AND LET ME MAKE SURE WE'RE CLEAR, I'M ALSO ASSUMING
4 THEY'RE GONNA -- STATE'S EXHIBIT NUMBER 4 IS THE RIGHTS
5 WAIVER, THE ORIGINAL RIGHTS WAIVER THAT HE SIGNED WAIVING
6 HIS *MIRANDA* RIGHTS.

7 **THE COURT:** ALL RIGHT. ANY OBJECTION TO THAT?
8 THAT'S JUST THE *MIRANDA* RIGHTS WAIVER.

9 **MR. DAY:** YES, WE HAVE A COPY OF THAT AND HE
10 ACKNOWLEDGES HE DID SIGN THAT.

11 **THE COURT:** ALL RIGHT. SO THAT WOULD COME IN
12 WITHOUT OBJECTION.

13 (STATE'S EXHIBIT # 4, WAIVER OF RIGHTS FORM,
14 WAS RECEIVED IN EVIDENCE.)

15 **MR. WAGNER:** YOUR HONOR, WHAT I ANTICIPATE THE
16 OFFICER TESTIFYING THE DEFENDANT TOLD THEM WAS THAT
17 (READING): THE FOUR OF THEM HAD BEEN RIDING AROUND
18 DRINKING LIQUOR, LEAVE OUT THE STUFF BETWEEN THERE AND
19 THE MCCALLS' HOUSE. THEY WENT TO THE MCCALLS' HOUSE.
20 THAT THEY GO IN. THAT SHANE SAT ON THE BED WITH NATHAN.
21 JASON MCCALL GAVE HIM THREE GRAMS OF ICE, JEFF HEARD THE
22 GUN GO OFF, SHANE HAD THE GUN. JEFF TOLD SHANE, "LET'S
23 GET THE HELL OUT OF HERE." JEFF SAID THAT HE DIDN'T
24 DISCHARGE THE FIREARM WHILE HE WAS AT THE RESIDENCE.

25 THAT'S BASICALLY IT UNLESS THEY OPEN THE DOOR TO

1 OTHER THINGS.

2 MR. DAY: AND THE FACT THEY DID LEAVE THERE AND GO
3 TO LUKE'S HOUSE, WHICH HAS BEEN TESTIFIED TO ALREADY.

4 THE COURT: TO LUKE'S?

5 MR. WAGNER: TO LUKE'S HOUSE.
6 LUCAS CROWE, RIGHT?

7 MR. DAY: RIGHT.

8 THE COURT: LUCAS --

9 MR. DAY: -- CROWE.

10 THE COURT: CROWE, ALL RIGHT. AND WHO IS THAT?

11 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
12 RECORD.)

13 MR. DAY: THAT WAS ZACK. THE GIRLS TALK ABOUT GOING
14 TO ZACK'S LATER, TOO.

15 THE COURT: IS ZACK LUCAS CROWE?

16 MR. DAY: NO, SIR.

17 THE COURT: I WAS JUST CURIOUS. WHO --

18 MR. DAY: JUST, IT FLOWS. THAT'S WHAT EVERYBODY
19 SAID, THEY TOOK OFF TO LUCAS'S AND ENDED UP AT ZACK'S. I
20 DON'T THINK IT'S ALL THAT IMPORTANT.

21 THE COURT: WELL, I MEAN, I WAS JUST TRYING TO FIND
22 OUT HOW MANY DIFFERENT ENTITIES ARE BEING IDENTIFIED, OR
23 TRYING TO IDENTIFY THE DIFFERENT ENTITIES. ALL RIGHT.
24 VERY WELL.

25 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE

1 RECORD.)

2 MR. DAY: OH, THAT'S RIGHT. I'M SORRY. I
3 APOLOGIZE, YOUR HONOR. I ALSO GOT LUKE AND ZACK MIXED
4 UP. THEY DID TALK ABOUT GOING TO ZACK'S RATHER THAN
5 LUKE'S, SO I DON'T THINK -- I'LL GO ALONG WITH WHAT THE
6 SOLICITOR SAYS AND NOT EVEN TALK ABOUT GOING TO LUKE'S
7 HOUSE.

8 THE COURT: ALL RIGHT. VERY GOOD.
9 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

10 MR. WAGNER: NO, SIR.

11 THE COURT: FROM THE DEFENSE?

12 MR. DAY: NONE, YOUR HONOR.

13 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US,
14 PLEASE.

15 (THE JURY ENTERED THE COURTROOM AT
16 APPROXIMATELY 11:20 A.M.)

17 THE COURT: LET THE RECORD REFLECT THE JURY AND
18 ALTERNATE ARE IN THE JURY-BOX.

19 WE WILL NOW PROCEED WITH THE STATE'S CASE.
20 MR. WAGNER?

21 MR. WAGNER: YOUR HONOR, WE WOULD CALL SCOTT ARNOLD.
22 WHEREUPON,

23 SCOTT ARNOLD,
24 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
25 DIRECT EXAMINATION BY MR. WAGNER:

1 Q. DETECTIVE ARNOLD, COULD YOU GIVE US YOUR FULL NAME
2 AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE?

3 A. SCOTT BRADLEY ARNOLD, A-R-N-O-L-D.

4 Q. WHERE ARE YOU FROM, DETECTIVE ARNOLD?

5 A. I'M FROM OCONEE COUNTY.

6 Q. HOW LONG HAVE YOU WORKED FOR THE SHERIFF'S OFFICE?

7 A. THE SHERIFF'S OFFICE APPROXIMATELY ABOUT TWELVE
8 AND A HALF YEARS.

9 Q. AND BACK ON JULY 23RD, WERE YOU IN INVESTIGATIONS?

10 A. YES, I WAS.

11 Q. WERE YOU THE INVESTIGATOR ON CALL THAT DAY?

12 A. ON JULY 23RD, YES, I WAS.

13 Q. AND ON JULY 23RD, DID YOU GET A CALL TO GO OUT TO
14 A ROBBERY AT THE MCCALL BROTHERS' HOUSE?

15 A. YES, SIR, I WAS DISPATCHED TO GO OUT THERE.

16 Q. DID YOU GO OUT THERE IMMEDIATELY?

17 A. YES, I DID.

18 Q. AND HOW LONG WAS IT BETWEEN THE TIME YOU THINK YOU
19 GOT DISPATCHED OUT THERE FROM THE 9-1-1 CALL UNTIL THE
20 TIME YOU GOT THERE?

21 A. FROM THE TIME I WAS DISPATCHED TO THE TIME I GOT
22 OUT THERE?

23 Q. TELL US HOW THAT WORKS. I MEAN, IF A 9-1-1 CALL
24 COMES IN, WHAT HAPPENED AFTER THAT?

25 A. WELL, THE DEPUTIES HAVE TO GO OUT AND ASSESS THE

1 SITUATION AND THEY GET THE SUPERVISOR TO DETERMINE IF AN
2 INVESTIGATOR NEEDS TO BE CALLED OUT.

3 Q. OKAY. SO THE OFFICERS WERE INITIALLY DISPATCHED
4 FIRST AND THEN THEY CALLED YOU?

5 A. YEAH, THEN I WAS CALLED OUT.

6 Q. ABOUT WHAT TIME DID YOU GET OUT THERE?

7 A. ROUGHLY 10, 15 TO 10 MINUTES TO SIX, SOMEWHERE
8 AROUND THERE.

9 Q. OKAY. AND WHEN YOU GOT OUT THERE, WHAT DID YOU
10 FIND?

11 A. WHEN I ARRIVED I WAS BRIEFED BY THE DEPUTIES, I
12 THINK IT WAS BRANDON MEADOWS WOULD BE THE RESPONDING
13 OFFICER. HE HAD BRIEFED ME AND TOLD ME THAT NATHAN
14 MCCALL HAD BEEN ROBBED. I ACTUALLY WENT INSIDE AND SPOKE
15 WITH JASON AND NATHAN AND THEY TOLD ME WHAT HAPPENED.

16 Q. OKAY. AND DID YOU TAKE SOME PICTURES?

17 A. YES, I DID.

18 Q. THESE HAVE ALREADY BEEN ADMITTED INTO EVIDENCE.
19 BUT STATE'S EXHIBITS 2, AND RATHER THAN GO THROUGH THEM
20 ALL LET ME JUST HAND THEM UP TO YOU. THE PICTURES HAVE
21 ALREADY BEEN IDENTIFIED. BUT DO YOU RECOGNIZE THOSE AS
22 THE PICTURES THAT YOU TOOK (HANDING)?

23 IF YOU COULD, JUST GO THROUGH THEM ONE BY ONE AND
24 IDENTIFY THEM BY THE NUMBER AND LETTER ON THE BACK AND
25 THEN TELL US WHY YOU TOOK THE PICTURE AND WHAT THEY

1 REPRESENTED.

2 A. OKAY. EXHIBIT 2-A IS A PICTURE OF NATHAN AND
3 ANOTHER INDIVIDUAL, WHICH I DON'T KNOW WHO HE IS, GIVING
4 ME A POSITION WHERE HE WAS WHEN JEFF CAME IN AND -- OR
5 EXCUSE ME -- WHEN SHANE WAS LAYING BESIDE HIM ON THE BED.
6 ACTUALLY, HE WAS DEMONSTRATING HISSELF [SIC] AS SHANE IN
7 THIS PICTURE RIGHT HERE.

8 EXHIBIT 2-J IS A PICTURE OF THE WALL THAT WAS SHOT
9 THAT HAS A BULLET HOLE IN IT.

10 Q. WERE YOU ABLE TO DETERMINE WHO FIRED THAT ROUND?

11 A. BASED ON STATEMENTS AND THE EVIDENCE I COLLECTED,
12 SHANE, SHANE FIRED THAT SHOT.

13 AND HERE'S A CLOSER PICTURE OF THE BULLET HOLE IN
14 THE WALL AT NATHAN'S HOUSE.

15 EXHIBIT 2-P IS ANOTHER PICTURE OF THE BULLET THAT
16 SHANE DISCHARGED.

17 Q. AND WHERE IS THAT WALL IN RELATION TO NATHAN'S
18 BEDROOM?

19 A. OKAY. THERE'S A PICTURE OF IT HERE, AND --

20 Q. SEE IF YOU CAN FIND THAT PICTURE.

21 A. OKAY. STATE EXHIBIT 2-K, THIS PICTURE IS WHERE I
22 WAS STANDING IN NATHAN'S ROOM, AND IT'S CONSISTENT WITH
23 SHANE LYING IN THE BED, LYING ON THE BED, AND DISCHARGING
24 A FIREARM, AND YOU CAN SEE THAT IT'S IN THE LINE OF FIRE
25 FROM HIS BED.

1 HERE'S ANOTHER PICTURE OF THE BULLET HOLE THAT
2 SHANE, FROM SHANE.

3 THIS IS 2-N. HERE'S A PICTURE OF A BULLET HOLE
4 FROM THE FRONT, FRONT OF THE HOUSE THAT WAS DISCHARGED
5 INSIDE THE HOME.

6 Q. WHEN YOU SAY INSIDE THE HOME, YOU MEAN INTO THE
7 INTERIOR OF THE HOME.

8 A. YEAH, INSIDE THE INTERIOR OF THE HOME.

9 Q. WHERE THE BULLET CAME, WERE YOU ABLE TO DETERMINE
10 WHAT DIRECTION THE BULLET CAME FROM?

11 A. IT APPEARS -- I MEAN, BASED ON THE EVIDENCE I
12 COLLECTED IT APPEARS THAT IT CAME FROM THE OUTSIDE FROM
13 WHERE THEY WERE, THE VEHICLE WAS PARKED, THE VEHICLE THAT
14 JEFF AND SHANE WAS IN.

15 2-B IS A PICTURE OF NATHAN'S TOP OF HIS HEAD WHERE
16 HE, WHERE HE WAS ASSAULTED BY MR. WEBB.

17 Q. WERE YOU ABLE TO SEE A WELT ON THE TOP OF HIS
18 HEAD?

19 A. YES, THERE'S SOME REDNESS ON THE TOP OF HIS HEAD.

20 Q. DOES IT APPEAR THAT HE HAD BEEN STRUCK?

21 A. YEAH, IT APPEARED HE HAD BEEN.

22 HERE'S A PICTURE OF THE BULLET HOLE INSIDE THE
23 HOME.

24 2-I IS A PICTURE OF THE BULLET THAT I RECOVERED.
25 THE BULLET CAME THROUGH THE LIVING ROOM, ACTUALLY HIT A,

1 LIKE A HANGING CHANDELIER I CALL IT. I DON'T KNOW HOW IT
2 HAPPENED BUT IT HIT IT. IT WASN'T ABOUT THE SIZE OF MY
3 FINGER. BUT IT HIT IT, MADE A BIG INDENTION, AND FELL
4 DOWN ON THE FLOOR, AND WE WAS ABLE TO RECOVER THE BULLET
5 FROM THAT SHOT.

6 HERE'S A PICTURE OF IT, TOO. THIS IS 2-H.
7 ACTUALLY THAT'S THE ONE TO THE LEFT IF YOU LOOK AT THIS
8 PICTURE. WHEN THE BULLET CAME THROUGH, IT SHOT, AND YOU
9 CAN SEE THE SMALL INDENTION RIGHT THERE WHERE THE BULLET
10 HIT AND IT FELL DOWN OVER HERE TO THE RIGHT.

11 HERE'S ANOTHER PICTURE OF THE WALL THAT WAS SHOT
12 INSIDE THE LIVING ROOM, 2-G.

13 HERE'S ANOTHER PICTURE OF THE BULLET HOLE OUTSIDE
14 THE HOME, THE EXTERIOR SIDE OF THE HOME.

15 AND HERE'S A PICTURE OF HIS HOME, NATHAN'S
16 ADDRESS, A FULL PICTURE OF IT.

17 Q. DO THOSE PICTURES ALL FAIRLY AND ACCURATELY DEPICT
18 THE SCENE AS IT LOOKED WHEN YOU GOT THERE --

19 A. YES, IT IS.

20 Q. -- A SHORT TIME AFTER THIS HAPPENED?

21 A. YES, IT IS.

22 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
23 NUMBER 3.

24 A. THIS IS A BULLET THAT I RECOVERED FROM NATHAN'S
25 HOME AT 287 LITTLE RIVER LANE. THAT'S THE BULLET THAT

1 ACTUALLY COME THROUGH THE HOME, HIT THE LITTLE CHANDELIER
2 HANGING DOWN, AND HIT THE FLOOR. BASED ON MY OPINION,
3 I'VE NOT BEEN ABLE TO --

4 **MR. DAY:** I'M GONNA HAVE TO OBJECT TO THAT, YOUR
5 HONOR.

6 BY MR. WAGNER:

7 Q. IN YOUR TIME --

8 **THE COURT:** ALL RIGHT. THE OBJECTION IS SUSTAINED.

9 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY,
10 WITNESSES ARE LIMITED TO GIVING US TESTIMONY AS TO WHAT
11 THEY OBSERVE AND AS TO THINGS THAT THEY KNOW BY REASON OF
12 THE EXERCISE OF THEIR OWN SENSES; IN OTHER WORDS, WHAT
13 THEY SEE, HEAR, TOUCH, AND THE LIKE.

14 IF A WITNESS IS QUALIFIED AS AN EXPERT, WHICH
15 REQUIRES A FINDING BY THE COURT, ONLY THEN MAY THEY GIVE
16 AN OPINION AS TO A PARTICULAR AREA OF EXPERTISE. AND
17 UNLESS THEY HAVE BEEN SO QUALIFIED, THEN THEY ARE LIMITED
18 IN ONLY TELLING WHAT THEY KNOW BY REASON OF THEIR
19 EXERCISE OF THEIR OWN SENSES.

20 ALL RIGHT. YOU MAY PROCEED.

21 BY MR. WAGNER:

22 Q. IN YOUR TIME AS A LAW ENFORCEMENT OFFICER, HAVE
23 YOU BEEN AROUND FIREARMS, PISTOLS?

24 A. YES, I HAVE.

25 Q. OKAY. AND HOW LONG HAVE YOU BEEN KNOWLEDGEABLE OR

1 BEEN FAMILIAR WITH FIREARMS, PISTOLS?

2 A. WELL, ACTUALLY I'M WORKING ON MY 15TH YEAR IN LAW
3 ENFORCEMENT, AND I'VE BEEN AROUND FIREARMS THE WHOLE
4 TIME.

5 Q. OKAY. DO YOU KNOW THE DIFFERENCE BETWEEN A
6 9-MILLIMETER AND A .38 AND A .357 AND SAY A .40 CAL?

7 A. SOMEWHAT.

8 Q. OKAY. DO YOU KNOW WHAT A 9-MILLIMETER OR A .38
9 CALIBER BULLET ACTUALLY LOOKS LIKE?

10 A. SOMEWHAT.

11 Q. OKAY. WHEN YOU SAY "SOMEWHAT," EXPLAIN TO WHAT,
12 CAN YOU EXPLAIN WHAT THE CALIBERS, AND WHEN YOU ARE
13 TALKING ABOUT A PISTOL, WHAT IS A CALIBER, WHAT DOES THAT
14 MEAN AND...

15 A. TO ME, I MEAN, JUST BASED ON MY EXPERIENCE, I FEEL
16 LIKE IT'S CONSISTENT WITH EITHER A .38 OR A 9-MILLIMETER,
17 I MEAN, JUST BASED ON THE SIZE OF IT. I MEAN, THAT'S ALL
18 I'M BASING IT ON: THE SIZE OF THE BULLET.

19 Q. OKAY. WAS THAT THE -- FROM WHAT YOU KNOW IN YOUR
20 INVESTIGATION OF THE CASE, WERE THOSE THE CALIBERS PISTOL
21 THAT THE DEFENDANT WAS SAID TO BE CARRYING THAT NIGHT?

22 A. YES.

23 Q. OR HAVE TAKEN FROM THE RESIDENCE?

24 A. UH-HUH.

25 Q. OKAY. IS THAT STILL IN THE SAME CONDITION AS IT

1 WAS WHEN YOU PICKED IT UP OFF THE FLOOR?

2 A. YES, IT IS.

3 Q. IN YOUR INVESTIGATION WERE YOU ABLE TO IMMEDIATELY
4 TALK WITH BOTH JASON AND NATHAN MCCALL RIGHT AFTER THIS
5 HAPPENED?

6 A. YES. I TALKED TO THEM AT THEIR, AT THE HOME.

7 Q. AND DID THEY GIVE YOU WRITTEN STATEMENTS --

8 A. YES, THEY DID.

9 Q. -- AS TO WHAT TRANSPIRED?

10 WERE YOU LATER ABLE TO TALK TO THE OTHER PEOPLE
11 THAT WERE INVOLVED IN THIS CASE?

12 A. NICKIE SMITH, RYANNE NICOLE SMITH, AND MARIA
13 VILLEGAS.

14 Q. OKAY. AND WERE YOU ABLE TO GET STATEMENTS FROM
15 THEM, TOO?

16 A. YES, I WAS.

17 Q. WHAT ELSE IN YOUR INVESTIGATION WERE YOU ABLE TO
18 DETERMINE AFTER TALKING WITH EVERYBODY?

19 A. AFTER SPEAKING WITH EVERYBODY, MARIA, SHANE,
20 NICKIE, AND COLLECTING EVIDENCE, I MEAN, EVERYTHING WAS
21 CONSISTENT WITH WHAT THEY WAS TELLING ME AND EVERYTHING
22 PRETTY WELL POINTED TO JEFF AS BEING THE RINGLEADER IN
23 WHAT HAPPENED.

24 Q. OKAY. AND DID YOU CHARGE JEFF AND SHANE, WHO
25 TESTIFIED EARLIER, DID YOU CHARGE THEM WITH THE SAME

1 CRIME?

2 A. YES, I DID.

3 Q. OKAY. WHERE DID YOU LOCATE SHANE? WERE YOU
4 PRESENT WHEN HE WAS LOCATED?

5 A. NO, I WAS NOT. I WAS NOT PRESENT WHEN HE WAS
6 ARRESTED.

7 Q. WAS HE ARRESTED THE SAME DAY, THE SAME NIGHT?

8 A. I'M NOT REALLY SURE. I'M NOT SURE IF IT -- IT WAS
9 RIGHT AFTER THAT.

10 Q. OKAY. HOW MUCH LONGER WAS IT BEFORE JEFF WEBB WAS
11 ARRESTED?

12 A. IT WAS THREE DAYS AFTER.

13 Q. WERE Y'ALL LOOKING FOR HIM ACTIVELY?

14 A. YEAH. WHEN THIS INCIDENT HAPPENED, ACTUALLY, YOU
15 KNOW, AFTER THEY LEFT NATHAN'S HOUSE, THEY HAD WENT OVER
16 TO LAURA MEADOWS' HOUSE AND, YOU KNOW, THEY HAD TAKEN OFF
17 AND THEY HAD RAN.

18 AND AFTER MIKE MCGOWAN HAD SEEN THEM, WE SET
19 SUSPECT A COMMAND POST AT THE TAMASSEE ELEMENTARY SCHOOL
20 AND BROUGHT OUT A LOT OF UNITS OUT TO SET UP A PERIMETER
21 TO TRY TO LOCATE THESE INDIVIDUALS BECAUSE WE KNEW THEY
22 WAS ARMED.

23 WE WAS UNABLE TO LOCATE THEM. I ACTUALLY DON'T,
24 YOU KNOW, LOOK FOR THIS, LOOK FOR JEFF FOR ABOUT THREE
25 DAYS. I KEPT FOLLOWING UP ON LEADS, AND FINALLY, AFTER

1 TALKING WITH A LOT OF PEOPLE, I GOT THIS ONE SPECIFIC TIP
2 THAT HE WAS IN A LOCATION IN SENECA.

3 SO I TALKED TO MY LIEUTENANT, I GOT WITH HIM AND
4 SEVERAL OTHER DEPUTIES AND WE WENT TO SENECA. AND WE
5 BRIEFED EACH OTHER AND I TOLD THEM, I SAID, MOST LIKELY
6 JEFF IS GONNA PROBABLY RUN. HE'S ALREADY RUN BEFORE. HE
7 RAN FROM US THREE DAYS AGO AND HE'S PROBABLY GONNA RUN
8 AGAIN.

9 SO I TOLD THE UNIFORM, THE MARKED UNITS, I SAID,
10 Y'ALL COME IN IN FRONT OF THE DOUBLE-WIDE -- IT WAS A
11 DOUBLE-WIDE TRAILER. I SAID, Y'ALL PULL IN AND LET HIM
12 KNOW Y'ALL ARE COMING IN. I SAID, Y'ALL HAVE TO SQUEAL
13 THE TIRES OR WHATEVER. LET HIM KNOW YOU'RE COMING IN. I
14 SAID, WE'LL BE IN THE BACK. I SAID, IF HE RUNS OUT THE
15 BACK, WE'LL GET HIM.

16 SO MY LIEUTENANT AND I, WE WENT TO THE REAR OF THE
17 HOUSE, AND WE WAITED. AND HERE COME THE TWO UNIFORMED
18 DEPUTIES AND THE MARKED, TWO MARKED UNITS. THEY COME IN
19 AND YOU COULD HEAR THEM COMING IN; I MEAN, IT WAS A HIGH
20 RATE OF SPEED.

21 AND WHEN THEY DID, MOMENTS LATER JEFF OPENS UP THE
22 CURTAINS IN THE BACK AND HE PROCEEDS TO GO OUT THE BACK
23 WINDOW. AND WHEN HE DOES, I DRAW DOWN ON MY, I DRAW DOWN
24 ON HIM WITH MY DUTY WEAPON AND TOLD HIM TO PUT HIS HANDS
25 UP, YOU KNOW, SHERIFF'S OFFICE.

1 HE LOOKED, SAW IT WAS ME. HE PULLED THE CURTAINS
2 TOGETHER AND YOU COULD HEAR HIM RUNNING INSIDE THE HOUSE.

3 MOMENTS LATER I GO IN AND THEY'VE GOT HIM
4 HANDCUFFED. I WAS NOT IN THERE WHEN THEY HANDCUFFED HIM
5 BUT I WALKED IN. AND HE WAS SITTING THERE, AND I TOLD
6 HIM, "HOW ARE YOU DOING, JEFF?"

7 HE SAID, "WHO ARE YOU?"

8 AND I TOLD HIM, I SAID, I'M SCOTT ARNOLD, I'M WITH
9 THE SHERIFF'S OFFICE.

10 AND HE SAID, "YEAH, I HEARD YOU'VE BEEN LOOKING
11 FOR ME. IT'S NICE TO MEET YOU. I FINALLY FIGURED OUT
12 WHO YOU ARE." AND WE GO FROM THERE.

13 Q. GOING BACK TO THE HOUSE WHEN YOU GOT OUT THERE ON
14 THE SCENE, WAS THERE ANYTHING -- AND I KNOW YOU TOOK
15 PICTURES AND DISCOVERED THAT BULLET -- WAS THERE ANY LIKE
16 PHYSICAL EVIDENCE OR TESTS OR ANYTHING LIKE THAT YOU FELT
17 LIKE YOU COULD HAVE DONE AT THE TIME THAT WOULD HAVE BEEN
18 PROBATIVE LATER?

19 A. WE WERE NOT -- WE WERE UNABLE TO LOCATE A WEAPON.
20 IF WE HAD THE WEAPON, I WOULD HAVE SENT, YOU KNOW, THE
21 WEAPON AND THE BULLET OFF FOR BALLISTICS, BUT WE WAS
22 UNABLE TO RECOVER THE WEAPON.

23 Q. SO YOU NEVER RECOVERED A WEAPON FROM EITHER SHANE
24 ELLIOTT OR JEFF WEBB OR --

25 A. NO.

1 Q. -- FOUND IN ANY WOODS?

2 A. NO.

3 Q. DO YOU HAVE ANY IDEA WHERE THESE GUNS THAT THEY
4 USED ACTUALLY ENDED UP?

5 A. MY ONLY, MY OPINION, THEY'RE IN A WOODED AREA OFF
6 FLAT SHOALS ROAD SOMEWHERE. MY OPINION.

7 Q. OKAY.

8 A. BUT THAT'S A LARGE AREA. I'M FAMILIAR WITH THAT
9 AREA, AND THERE'S A GOOD BIT OF, A LOT OF ACREAGE IN
10 THERE.

11 Q. BEING THAT BOTH JEFF WEBB AND SHANE ELLIOTT ARE
12 ALLEGED TO HAVE FIRED AT LEAST EACH A SHOT, WOULD YOU
13 HAVE DONE ANY KIND OF RESIDUE TESTS OR ANYTHING LIKE THAT
14 TO DETERMINE WHETHER OR NOT THEY POSSIBLY WOULD HAVE
15 FIRED A GUN, AND IF NOT, WHY DIDN'T YOU DO IT?

16 A. WELL, WE COULDN'T FIND THEM.

17 Q. OKAY. WOULD YOU HAVE NEEDED TO DO THAT SOON
18 AFTER?

19 A. YES. THAT NEEDED TO BE DONE RIGHT AFTER THAT.

20 Q. OKAY. IS THERE ANY OTHER KIND OF TEST THAT YOU
21 FELT LIKE YOU COULD HAVE DONE OR ANYTHING LIKE THAT THAT
22 WOULD HAVE HELPED YOU?

23 A. NO.

24 Q. OKAY. SO AFTER TALKING AND GETTING STATEMENTS
25 WITH EVERYBODY THAT WAS THERE, AND ARRESTING JEFF WEBB,

1 DID YOU MIRANDIZE HIM?

2 A. YES. AFTER WE, AFTER WE ARRESTED HIM AT THE
3 DOUBLE-WIDE, WE BROUGHT HIM TO THE SHERIFF'S OFFICE. AND
4 I TOOK HIM TO THE INTERVIEW ROOM AT THE SHERIFF'S OFFICE
5 AND I READ HIM HIS MIRANDA RIGHTS AND I SPOKE WITH HIM.

6 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
7 STATE'S EXHIBIT NUMBER 4. IS THAT THE MIRANDA FORM THAT
8 YOU USED?

9 A. YES, IT IS.

10 Q. IS THAT SOMETHING YOU WOULD USE IN BASICALLY ANY
11 CASE INVOLVING ^{ID} IN TALKING TO A DEFENDANT THAT'S IN
12 CUSTODY?

13 A. YES, IT IS.

14 Q. AND DID YOU READ HIM HIS MIRANDA RIGHTS OFF THAT
15 FORM?

16 A. YES, I DID.

17 Q. JUST TELL US BASICALLY WHAT IT WAS. IF YOU WOULD
18 READ IT FOR US TELL US WHAT IT SAYS.

19 A. OKAY. BEFORE I ASKED HIM ANY SPECIFIC QUESTIONS
20 ABOUT THE CASE, I READ HIM HIS MIRANDA RIGHTS. I
21 INITIALED IT, THE DATE IS THE 26TH, JULY THE 26TH OF
22 2009, AT 16-1500 HOURS. (READING):

23 BEFORE I ASK YOU ANY QUESTIONS, YOU MUST
24 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN
25 SILENT, WHICH HE INITIALED, JW.

1 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
2 HE INITIALED THAT.

3 YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE
4 BEFORE I ASK YOU ANY QUESTIONS AND HAVE HIM WITH YOU
5 DURING QUESTIONING. HE INITIALED THAT.

6 IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
7 APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU WISH. HE
8 INITIALED THAT.

9 IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT
10 A LAWYER PRESENT, YOU STILL HAVE THE RIGHT TO STOP
11 ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP
12 ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER. HE
13 INITIALED THAT.

14 I EXPLAINED TO HIM THE WAIVER, THAT IF HE, YOU
15 KNOW, IF HE SIGNED THIS, HE CAN TALK TO ME.

16 AND IT READS (READING): I HAVE READ THESE
17 STATEMENTS OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS
18 ARE. WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS.
19 I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND
20 KNOW WHAT I'M DOING. NO PROMISES OR THREATS HAVE BEEN
21 MADE TO ME OR PRESSURE OR COERCION OF ANY KIND USED
22 AGAINST ME. AND HE INITIALED THAT.

23 HE SIGNED IT AND I SIGNED IT AND PUT THE TIME ON
24 IT.

25 Q. OKAY. DID HE AGREE TO TALK TO YOU INITIALLY?

1 A. YES, HE DID.

2 Q. ALL RIGHT. BASED ON HIM WAIVING HIS MIRANDA
3 RIGHTS -- YOUR HONOR, AT THIS TIME I DON'T THINK THAT'S
4 BEEN PUT IN EVIDENCE BUT I'LL GO AHEAD AND MOVE STATE'S
5 EXHIBIT 4.

6 **MR. DAY:** NO OBJECTION.

7 **THE COURT:** WITHOUT OBJECTION STATE'S EXHIBIT NUMBER
8 4 IS ADMITTED.

9 (STATE'S EXHIBIT NUMBER 4, WAIVER OF RIGHTS
10 FORM, WAS RECEIVED IN EVIDENCE.)

11 BY MR. WAGNER:

12 Q. WHAT DID HE TELL YOU ABOUT THE MCCALLS' RESIDENCE,
13 WHAT DID HE TELL YOU?

14 A. BASICALLY THEY ALL WENT THERE, HE, SHANE, MARIA
15 AND NICKIE, THEY ALL WENT THERE. HE SAID THAT SHANE GOT
16 ON THE BED WITH, WITH NATHAN. HE STATED HE DID NOT
17 DISCHARGE A FIREARM. HE ALSO STATED THAT HE, THAT HE
18 TOOK THREE AND A HALF GRAMS OF ICE FROM JASON. HE SAID
19 IT WASN'T MONEY, HE STATED THAT HE TOOK ICE.

20 HE SAID HE DID HEAR A GUN GO OFF. AFTER ALL THAT,
21 HE TOLD SHANE "WE NEED TO GET THE HELL OUT OF THERE."
22 THAT'S WHAT HE TOLD ME.

23 BUT HE STATED HE DIDN'T, HE DIDN'T DISCHARGE A
24 FIREARM INSIDE THE RESIDENCE OR AT THE RESIDENCE.

25 Q. IN YOUR 15 YEARS ON THE FORCE, WHAT DOES ICE MEAN?

1 A. THAT'S METHAMPHETAMINE.

2 Q. ALL RIGHT. SO BASICALLY HE SAID HE DIDN'T DO
3 ANYTHING?

4 A. BASICALLY HE SAID HE DIDN'T DO ANYTHING.

5 Q. OKAY. AND BASED ON THAT DID HE -- DID YOU
6 TERMINATE THE INTERVIEW ESSENTIALLY SOON AFTER THAT?

7 A. PRETTY MUCH.

8 Q. OKAY.

9 A. BUT I KNEW -- BASED ON WHAT I HAD, I KNEW THAT
10 OTHER THINGS HAD HAPPENED.

11 Q. WERE YOU ABLE TO -- HOW LONG DID IT TAKE YOU TO
12 FIND THESE OTHER WITNESSES, THE VILLEGAS GIRL, THE NICKIE
13 GIRL?

14 A. I SPOKE WITH MARIA ON AUGUST THE 3RD. IT TOOK ME
15 THAT LONG TO GET --

16 Q. WERE THEY EASY TO FIND?

17 A. NO.

18 Q. DID ANY OF THEM COME TO YOU?

19 A. NO. I HAD TO GO TO THEM.

20 Q. OKAY. AND WHEN YOU FOUND THEM ALL, DID YOU TAKE
21 WRITTEN STATEMENTS FROM THEM?

22 A. YES, I DID.

23 Q. AND WERE THEY AT DIFFERENT LOCATIONS WHEN YOU
24 FOUND THEM? WERE ANY OF THEM HANGING OUT TOGETHER?

25 A. NOT TO MY KNOWLEDGE. THEY ALL CAME TO THE LAW

1 ENFORCEMENT CENTER WHEN I DID FINALLY GET AHOLD OF THEM,
2 THEY CAME TO THE LAW ENFORCEMENT CENTER AND SPOKE WITH
3 ME.

4 Q. THEY DID COME UP TO TALK WITH YOU?

5 A. YEAH, THEY FINALLY DID COME UP AND SPEAK WITH ME.

6 Q. IS THERE ANYTHING ELSE YOU NEED TO TELL US ABOUT
7 YOUR INVESTIGATION?

8 A. WELL, BASED ON MY INVESTIGATION, AFTER I GOT
9 THROUGH TALKING TO MARIA AND NICKIE AND SHANE, AND MY
10 VICTIMS, THERE WAS NO DOUBT IN MY MIND THAT JEFF WEBB WAS
11 THE RINGLEADER.

12 **MR. DAY:** OBJECTION, YOUR HONOR.

13 **THE COURT:** NO. THAT'S SOMETHING THE JURY NEEDS TO
14 DETERMINE.

15 I INSTRUCT YOU TO DISREGARD WHAT ANY WITNESSES
16 THINKS ABOUT THE CONCLUSION OF THE CASE.

17 **MR. WAGNER:** THOSE ARE THE ONLY QUESTIONS I HAVE.
18 GO AHEAD AND ANSWER MR. DAY'S QUESTIONS.

19 CROSS-EXAMINATION BY MR. DAY:

20 Q. A FEW THINGS, IF I MAY, SERGEANT ARNOLD.

21 THE ORIGINAL CALL, I THINK ACCORDING TO THE
22 INCIDENT REPORT, WAS AT 4:16 IN THE AFTERNOON ACCORDING
23 TO THE INCIDENT REPORT. WOULD THAT BE RIGHT, SOUND ABOUT
24 RIGHT?

25 A. THAT SOUNDS ABOUT RIGHT.

1 Q. AND THE 9-1-1 CALL IS APPROXIMATELY THAT SAME,
2 SAME TIME?

3 A. I THINK -- I DON'T KNOW, I DON'T HAVE THE TIME IN
4 FRONT OF ME. I DON'T HAVE THE TIME IN FRONT OF ME.

5 MR. DAY: IS THAT HERE SOMEWHERE?

6 MR. WAGNER: IT'S ON THE PAPERWORK. YOU WOULD HAVE
7 IT JUST THE SAME AS I WOULD.

8 BY MR. DAY:

9 Q. I'M LOOKING AT THE INCIDENT REPORT. IT SAYS
10 OCCURRED FROM 7-23-09, 1612. REPORTED TIME, 1612.

11 WOULD THAT APPEAR TO BE CORRECT IF THAT'S WHAT IT
12 SAYS ON THAT?

13 A. IF THAT'S WHAT IT SAYS. I MEAN...

14 Q. OKAY. YOU SAY YOU WENT THAT NIGHT, THAT SAME
15 NIGHT YOU WENT DOWN AND INTERVIEWED MR. NATHAN MCCALL?

16 A. YEAH, I INTERVIEWED NATHAN THAT EVENING.

17 Q. ABOUT WHAT TIME WAS THAT?

18 A. ACCORDING TO MY STATEMENT HERE, IT WAS AROUND
19 6:00, SOMEWHERE IN THAT, SOMEWHERE IN THAT NEIGHBORHOOD.
20 IT TOOK HIM A WHILE TO DO THIS STATEMENT. I MEAN, YOU
21 KNOW, WHEN I GOT THERE, THE DEPUTIES, LIKE I SAY, WERE
22 BRIEFING ME ON THINGS, AND THEN THEY GET THIS CALL THAT
23 THEY THINK THAT JEFF AND SHANE HAD BEEN SPOTTED, AND THEY
24 PRETTY WELL ALL TOOK OFF AND I WAS THERE BY MYSELF, YOU
25 KNOW, PROCESSING THE SCENE AND THEN TAKING STATEMENTS

1 FROM NATHAN AND JASON.

2 Q. OKAY. AND ACCORDING TO THE -- I'M JUST LOOKING AT
3 A COPY OF YOUR STATEMENT YOU TOOK FROM NATHAN, IT SAYS
4 STARTED AT 6:00 P.M. AND COMPLETED AT 6:44 P.M.

5 A. UH-HUH.

6 Q. IS THAT ABOUT WHAT YOU REMEMBER?

7 A. THAT'S PRETTY WELL, IF IT'S ON THERE, THAT'S WHAT
8 TIME IT TOOK PLACE, THE STATEMENT.

9 Q. OKAY. SO HIS -- YOU FINISHED TAKING HIS STATEMENT
10 AT 6:44; AND THEN ON JASON, YOU STARTED HIS AT 6:39 AND
11 FINISHED AT 6:41?

12 A. IF THAT'S WHAT IT SAYS, THAT'S WHAT TIME.
13 ACTUALLY, WHEN I GOT THERE, I THINK HE HAD ALREADY
14 STARTED FILLING SOME OF IT OUT, AND I JUST PRETTY WELL
15 TOOK OVER ON NATHAN'S. HE WAS ALREADY STARTED WORKING ON
16 HIS, BECAUSE WHEN I CAME IN HE WAS SEATED AT THE TABLE IN
17 HIS LIVING ROOM. YOU KNOW, NATHAN KNOWS ME AND WE, HE
18 SAID, YOU KNOW, "I'M FILLING OUT THIS STATEMENT."

19 I SAID, "WELL, CONTINUE WHAT YOU'RE DOING." YOU
20 KNOW. HE KIND OF TOLD ME WHAT HAPPENED, AND I SAID,
21 "WELL, JUST CONTINUE WHAT YOU'RE DOING THEN."

22 Q. WAS THERE ANYONE ELSE THERE BESIDES THE TWO MCCALL
23 BROTHERS AT THE HOUSE?

24 A. AT THAT TIME THAT WAS IT.

25 Q. JUST THE TWO OF THEM?

1 A. UH-HUH.

2 Q. OKAY. DID THEY TELL YOU ANYTHING ABOUT HAVING
3 SPOKEN TO THE TWO GIRLS, EITHER MARIA OR NICKIE?

4 A. THEY JUST SAID THEY WERE THERE.

5 Q. OKAY. ALL RIGHT, SIR.

6 NOW, YOU SPOKE A MINUTE AGO ABOUT THE BULLET THAT
7 YOU FOUND THERE. WERE ANY BALLISTICS OF ANY KIND DONE ON
8 THE BULLET?

9 A. NO.

10 Q. NONE?

11 A. NONE.

12 Q. ALL RIGHT. ANYTHING DONE, ANY BALLISTICS TESTING
13 OR ANYTHING DONE TO SHOW THAT, IN FACT, THAT IS THE SAME
14 BULLET THAT HIT THIS THING YOU SAY WAS HANGING DOWN, YOU
15 SAID LIKE A CHANDELIER-TYPE THING?

16 A. NO.

17 Q. WAS ANYTHING DONE TO SHOW THAT THAT BULLET IS THE
18 ONE THAT CAME FROM ANYWHERE?

19 A. IT'S CONSISTENT WITH WHAT I SAW COMING THROUGH THE
20 WALL.

21 Q. OKAY. LET'S, IF I MAY, PICTURES THERE?

22 A. (HANDING).

23 Q. OKAY. OKAY. I SHOW YOU WHAT'S BEEN MARKED AS
24 STATE'S EXHIBIT 2-N AS IN NOVEMBER. ON THAT, IS THAT
25 SHOWING THE BULLET HOLE?

1 A. JUST SHOWING A HOLE. ACTUALLY AT THE TOP, THE TOP
2 HOLE, THE TOP HOLE IS THE ONE I FEEL LIKE IS THE ONE THAT
3 OCCURRED THAT DAY. I DON'T KNOW WHAT THAT OTHER ONE IS.
4 I JUST HAD MY -- THAT ONE IS MORE CONSISTENT WITH THE...

5 Q. OKAY. I THOUGHT WHEN YOU TESTIFIED A MINUTE AGO
6 THAT'S THE ONE YOU POINTED TO, THE ONES YOU WERE
7 MEASURING.

8 A. NO. I WAS ACTUALLY POINTING TO THAT ONE UP THERE.

9 Q. OKAY.

10 A. IT'S JUST MORE CONSISTENT, THAT BULLET HOLE UP
11 THERE, 'CAUSE IT LOOKS FRESHLY DONE WITH THE WOOD AND
12 ALL.

13 Q. OKAY. SO YOU ARE SAYING --

14 A. BASED ON MY OPINION IT'S JUST FRESHLY DONE.

15 Q. IT LOOKS LIKE THERE COULD BE TWO BULLET HOLES?

16 A. I DON'T KNOW WHAT THAT OTHER ONE IS. I JUST PUT
17 MY RULER UP AGAINST IT AND WAS TAKING A PICTURE OF THAT.

18 Q. OKAY.

19 A. THEY JUST TOLD ME THEY JUST HEARD ONE SHOT, THE
20 VICTIM DID, HE HEARD ONE SHOT.

21 Q. OKAY. AND YOU ARE SAYING THAT THE -- OKAY -- THAT
22 YOU BELIEVE THERE WAS NO TESTING, THERE WAS NOTHING DONE
23 WHATSOEVER TO DETERMINE WHAT THAT HAD PASSED THROUGH THE
24 WOOD THERE?

25 A. NO TESTING, NO.

1 Q. OKAY. NOW, AND JUST TO MAKE SURE I UNDERSTAND IT,
2 FROM THE INFORMATION THAT YOU DERIVED FROM THE VICTIMS
3 AND WHAT YOU SAW ON THE SITE, IT WAS TOLD TO YOU BY ONE
4 OF THE MCCALLS THAT THE BULLET THAT YOU SAY WAS SHOT FROM
5 OUTSIDE WAS SHOT BY JEFF WEBB. IS THAT WHAT YOU WERE
6 TOLD?

7 A. THEY DIDN'T KNOW WHO HAD SHOT, THE MCCALLS DIDN'T.

8 Q. OKAY.

9 A. THEY JUST TOLD ME THAT A SHOT CAME IN TO THEIR
10 HOUSE, AND THEY ASSUMED ONE OF THEM, SOMEBODY DONE IT
11 BECAUSE ONE OF THEM INDIVIDUALS THAT WAS IN THE CAR HAD
12 TO DO IT. THEY DIDN'T KNOW WHO DONE IT.

13 Q. OKAY. SO WHEN THEY WERE TALKING TO YOU, THEY
14 DIDN'T SAY WHO DID THE SHOOTING FROM OUTSIDE?

15 A. NO.

16 Q. OKAY.

17 A. BECAUSE THEY DIDN'T, THEY DIDN'T TELL ME WHO DONE
18 IT. APPARENTLY THEY DIDN'T SEE IT.

19 Q. OKAY. BUT YOUR INVESTIGATION YOU ARE SAYING IS
20 SOMETHING ABOUT IT CAME FROM, A MINUTE AGO IT CAME FROM
21 THE DIRECTION OF THE CAR?

22 A. BASED ON MY INVESTIGATION, THE CAR WAS OUTSIDE THE
23 HOME NEXT TO THE MAIN ROAD.

24 Q. OKAY. IF I MAY, AGAIN, PROJECTING MYSELF AS THE
25 DOOR HERE GOING INTO THE HOUSE, AND THE HOUSE IS BEHIND

1 ME, INSIDE THE HOUSE, THE BULLET WOULD HAVE HAD TO COME
2 FROM LIKE OVER IN THIS DIRECTION WHERE SUPPOSEDLY THE CAR
3 WAS PARKED?

4 Q. YOU'RE THE FRONT DOOR AND THIS IS THE HOUSE HERE?

5 A. YEAH.

6 Q. IT WOULD HAVE HAD TO COME FROM THAT DIRECTION ON
7 OVER TO YOUR RIGHT.

8 Q. OVER TO MY RIGHT?

9 A. NO. COME THIS WAY SOME MORE.

10 Q. (POINTING) IN FRONT?

11 A. WELL, THE ROAD, IF I'M THE FRONT DOOR, THE ROAD
12 KIND OF GOES LIKE THIS TO THE MAIN ROAD. I'M ASSUMING,
13 BASED ON MY OPINION, THE SHOT HAD TO COME FROM IN THIS
14 AREA SOMEWHERE BECAUSE OF THE LINE OF FIRE THAT CAME
15 THROUGH THE HOUSE, THEN HIT THE CHANDELIER.

16 Q. IN ORDER TO HIT THAT CHANDELIER, YOU ARE SAYING IT
17 HAD TO COME STRAIGHT, JUST ABOUT STRAIGHT, I DON'T MEAN
18 DIRECT?

19 A. I DON'T KNOW WHERE THE CAR WAS PARKED. BUT IT HAD
20 TO BE SOMEWHERE IN THE AREA IN THE FRONT IN THAT AREA.

21 Q. WHEN JASON TESTIFIED HE SAID THE CAR WAS PARKED ON
22 A LITTLE RISE OVER ON THIS SIDE.

23 A. THERE IS A LITTLE RISE.

24 Q. OKAY.

25 A. BUT IT'S MORE, TO ME, MY OPINION IS IT'S MORE,

1 IT'S OVER TO THE LEFT SOME, BUT IT FINALLY EASES OVER AND
2 THEN IT COMES DOWN TO THE MAIN ROAD WHERE LITTLE RIVER
3 ROAD IS AT, IN MY OPINION.

4 Q. OKAY. BUT YOU WEREN'T THERE THAT NIGHT?

5 A. NO.

6 Q. AND THE WITNESSES WHO SAW THE CAR ALL SAID IT WAS
7 ON THAT RISE OVER THERE. THAT'S WHAT THEY SAID, RIGHT?
8 YOU'VE BEEN HERE ALL DAY AND YESTERDAY WITH ME. THAT'S
9 WHAT THEY SAID, RIGHT?

10 A. THEY SAID IT.

11 Q. NOW, YOU SAID SOMETHING ABOUT GUNSHOT RESIDUE, BUT
12 YOU DIDN'T DO THAT SINCE YOU DIDN'T FIND THEM. NOW,
13 SHANE ELLIOTT WAS ARRESTED THAT NIGHT?

14 A. I DON'T KNOW WHEN HE WAS ARRESTED. I KNOW I
15 TALKED WITH HIM ON THE 25TH. I DON'T KNOW WHEN HE WAS
16 ARRESTED.

17 Q. ALL RIGHT.

18 A. I BELIEVE I WAS NOTIFIED HE WAS IN JAIL. IT WAS
19 LATER ON HE WAS -- THAT'S ALL I KNOW. THEY NOTIFIED ME
20 HE WAS IN JAIL AND THAT'S WHEN I WENT DOWN THERE AND
21 TALKED TO HIM.

22 Q. SO FIRST ON THE 25TH THAT'S WHEN FOUND OUT HE WAS
23 IN JAIL AND YOU HEADED DOWN THERE?

24 A. YEAH.

25 Q. OKAY. ALL RIGHT. THE -- WHEN YOU WENT TO --

1 EXCUSE ME -- WHEN Y'ALL ARRESTED JEFF, HE WAS INSIDE THE
2 HOUSE; IS THAT CORRECT? WHEN YOU GOT HIM, THEY HAD HIM,
3 HE HAD BEEN HANDCUFFED, ET CETERA, BY THE DEPUTIES?

4 A. EXACTLY.

5 Q. SO Y'ALL SEARCHED THE HOUSE?

6 A. YES.

7 Q. FIND ANY GUN, ANY KIND OF GUN?

8 A. WE FOUND NO GUN WHEN WE SEARCHED THE HOUSE.

9 Q. OKAY. WHAT JEFF TOLD YOU WHEN YOU INTERVIEWED
10 HIM, BASED ON YOUR INVESTIGATION, TURNED OUT TO BE
11 CORRECT WHEN HE SAID SHANE WAS ON THE BED WITH NATHAN?

12 A. THAT'S WHAT HE TOLD ME.

13 Q. AS A MATTER OF FACT, YOU TOOK THESE PICTURES,
14 RIGHT?

15 A. YES, I DID.

16 Q. ALL RIGHT. AND YOU HAD NATHAN ACTUALLY POSE FOR
17 YOU TO DEMONSTRATE HOW IT WAS SHANE WAS ON THE BED?

18 A. YES, I DID.

19 Q. AND THAT SHANE HAD A GUN?

20 A. YES, HE DID.

21 Q. AND THAT SHANE FIRED THAT GUN?

22 A. YES, HE DID. THAT'S WHAT NATHAN TOLD ME.

23 Q. RIGHT. AND THE PISTOL HE FIRED IS THE ONE YOU
24 SAID WENT INTO THAT WALL, ET CETERA; IS THAT CORRECT? AT
25 THE DOORJAMB WHERE IT GOES IN, WHERE THE MATERIAL IS?

1 A. THAT'S CONSISTENT WITH EVERY, WHAT NATHAN WAS
2 TELLING ME AND WHERE HE WAS LAYING, YES, THAT'S WHERE THE
3 BULLET WENT.

4 Q. WERE YOU ALL ABLE TO FIND THAT BULLET?

5 A. NO, WE WAS NOT.

6 Q. OKAY. AND WHEN YOU ARRESTED JEFF, THE DEFENDANT,
7 WHILE THERE AT THE HOUSE AND YOU WERE TALKING TO HIM AND
8 YOU WERE GETTING INFORMATION, AND EVEN AFTER WHEN YOU
9 WERE TALKING, DIDN'T YOU SAY HE WAS WILLING TO TAKE A
10 TEST FOR GUNSHOT RESIDUE?

11 A. THAT WAS NEVER MENTIONED.

12 Q. YOU ARE SAYING HE NEVER SAID THAT?

13 A. HUH-UH.

14 Q. YOU DON'T REMEMBER THAT?

15 A. NO.

16 Q. OKAY. OKAY.

17 **MR. DAY:** ONE SECOND, IF I MAY, YOUR HONOR.

18 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
19 RECORD.)

20 **MR. DAY:** THOSE ARE ALL THE QUESTIONS I HAVE, YOUR
21 HONOR, THANK YOU.

22 **THE COURT:** RE-EXAM?

23 **MR. WAGNER:** YES, SIR, THANK YOU.

24 REDIRECT EXAMINATION BY MR. WAGNER:

25 Q. THE HOLE IN THE WALL, IN THE EXTERIOR (HANDING), I

1 BELIEVE YOU TESTIFIED THERE WAS TWO HOLES THERE?

2 A. UH-HUH.

3 Q. WHAT KIND OF SIDING HAS THIS HOUSE GOT?

4 A. CEDAR SIDING.

5 Q. IN A CEDAR SIDING HOUSE, ARE THERE HOLES IN PIECES
6 OF CEDAR WOOD THROUGHOUT THE EXTERIOR OF THE HOUSE?

7 A. YEAH, I HAVE SEEN CEDAR SIDING WITH -- I DIDN'T GO
8 ALL OVER HIS HOUSE ON THAT PARTICULAR DAY, BUT --

9 Q. I GUESS MY QUESTION IS: IS THERE ANY EVIDENCE THAT
10 THERE WERE TWO BULLET HOLES IN THE HOUSE OR JUST ONE?

11 A. JUST ONE.

12 Q. OKAY. WAS THERE ONE ENTRY HOLE INTO THE INTERIOR
13 OF THE HOUSE?

14 A. THERE WAS JUST ONE INSIDE THE HOME.

15 Q. THE OTHER HOLE, COULD IT OR COULD IT NOT BE A KNOT
16 IN THE WOOD --

17 A. IT COULD HAVE BEEN. I JUST --

18 Q. -- OR COULD IT HAVE SOMETHING, A DEFECT IN THE
19 BOARD?

20 A. IT COULD BE.

21 Q. OKAY. AND YOU DIDN'T RECOVER THE OTHER BULLET,
22 WHAT WOULD YOU HAVE HAD TO DO TO RECOVER -- IF YOU COULD
23 RECOVER THE OTHER BULLET, WOULD YOU HAVE HAD TO TEAR THE
24 WALL OUT?

25 A. WE WOULD PROBABLY HAVE HAD TO TEAR THE WALL OUT.

1 Q. OKAY. IF TIME, AT ANY TIME IN THIS CASE, IF YOU
2 NEVER RECOVERED A PISTOL, WOULD YOU HAVE HAD, WOULD THERE
3 BE ANY REASON TO TEAR THAT WALL OUT TO GET THAT BULLET IF
4 YOU HAD NOTHING TO COMPARE IT TO?

5 A. NO.

6 Q. OKAY. SO WAS IT BASICALLY YOUR CHOICE NOT TO TEAR
7 UP THE VICTIMS' HOUSE?

8 A. YES. AT THE TIME I DIDN'T FEEL LIKE WE NEEDED TO
9 TEAR THE MAN'S WALL OUT. HE'S ALREADY BEEN ASSAULTED AND
10 I FELT LIKE, YOU KNOW...

11 Q. AND AS FAR AS THE RESIDUE ON SHANE ELLIOTT'S
12 HANDS, RESIDUE LIKE THAT, GUNSHOT RESIDUE IN YOUR
13 EXPERIENCE, DOES IT TAKE MUCH TO WASH IT OFF?

14 A. IT DON'T TAKE MUCH.

15 Q. I MEAN, IF YOU WASH YOUR HANDS, DOES IT ALL GO
16 AWAY?

17 A. THE MAJORITY OF IT DOES.

18 Q. IF SOMEBODY HAD BEEN RUNNING AROUND IN THE WOODS
19 FOR SIX, EIGHT, NINE, TWELVE HOURS, EVADING Y'ALL --

20 **MR. DAY:** I'M GOING TO HAVE TO OBJECT. THAT'S
21 GETTING A LITTLE --

22 **THE COURT:** LET'S -- AGAIN, IF HE KNOWS, HE CAN
23 TESTIFY TO IT. AND AGAIN, LET'S BE CAREFUL HOW WE COUCH
24 OUR QUESTIONS, TOO. WE WANT TO HEAR WHAT THE WITNESS HAS
25 TO SAY.

1 BY MR. WAGNER:

2 Q. DID YOU SEE A REASON TO DO A TEST ON SHANE
3 ELLIOTT'S HANDS?

4 A. NOT AT THAT TIME, NO.

5 MR. WAGNER: OKAY. THANK YOU. THOSE ARE ALL THE
6 QUESTIONS I HAVE.

7 THE COURT: RECROSS?

8 MR. DAY: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK
10 YOU, SIR.

11 (WITNESS LEAVES STAND.)

12 MR. WAGNER: YOUR HONOR, I BELIEVE ALL THE EXHIBITS
13 UP HERE HAVE BEEN ADMITTED INTO EVIDENCE. I WANT TO GO
14 THROUGH THEM REAL QUICK. THE REASON I TELL YOU THAT IS
15 AT THIS POINT THE STATE IS GONNA REST. ESSENTIALLY THESE
16 EXHIBITS HERE HAVE BEEN ADMITTED AND I THINK THEY ALL
17 HAVE.

18 THE COURT: ALL RIGHT. THAT WOULD BE EXHIBITS,
19 STATE'S EXHIBITS 1, 2-A THROUGH -- MADAM COURT REPORTER?

20 THE COURT REPORTER: P.

21 THE COURT: -- P, AS IN PETER; AND STATE'S EXHIBIT
22 3.

23 OTHER EXHIBITS, MADAM COURT REPORTER?

24 THE COURT REPORTER: AND 4.

25 THE COURT: AND 4.

1 ANYTHING ELSE FROM THE STATE?

2 **MR. WAGNER:** NO, SIR. I ASK IF WE COULD GO AHEAD
3 AND PUBLISH THE PICTURES TO THE JURY.

4 **THE COURT:** ALL RIGHT. VERY WELL.

5 **MR. WAGNER:** YOUR HONOR, WITH THAT THE STATE RESTS.

6 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, I WILL
7 NEED SOME TIME TO TAKE UP THESE MATTERS WITH THE
8 ATTORNEYS, AND ALSO FOR LUNCH, SO IT'S 12:00. I'M GONNA
9 SUGGEST THAT YOU COME BACK AT 2:00, AND THEN WE'LL
10 CONTINUE WITH THE TRIAL OF THE CASE AT THAT TIME. NOW,
11 ALL OF THESE EXHIBITS WILL BE GIVEN TO YOU AT THE TIME
12 YOU DO YOUR DELIBERATIONS, SO YOU DON'T HAVE TO STAY HERE
13 AND LOOK AT THOSE, BUT THEY WILL BE NOT AVAILABLE -- THEY
14 WILL BE NOT AVAILABLE, THEY WILL BE GIVEN TO YOU FOR YOUR
15 REVIEW.

16 WITH THAT I'M GOING TO EXCUSE YOU UNTIL 2:00 AND I'M
17 GOING TO ASK YOU, OF COURSE, NOT TO UNDERTAKE DISCUSSION
18 OF THE CASE AMONG YOURSELVES IN ANY WAY OR PERMIT ANYBODY
19 TO DISCUSS IT WITH YOU.

20 EVERYONE REMAIN SEATED WHILE THE JURY RETIRES FROM
21 THE COURTROOM.

22 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
23 12:04 P.M.)

24 **THE COURT:** ANYTHING ELSE FROM THE STATE?

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

1 **THE COURT:** THE STATE DOES REST. ALL RIGHT.

2 ANYTHING FROM THE DEFENSE?

3 DEFENSE MOTION FOR DIRECTED VERDICT:

4 **MR. DAY:** YOUR HONOR, WE WOULD MOVE FOR A DIRECTED
5 VERDICT IN THIS CASE IN THAT THE STATE'S EVIDENCE FAILS
6 TO MEET THE THRESHOLD BASED UPON THE CONFLICTING
7 TESTIMONY OF WHAT WENT ON ON THAT PARTICULAR EVENING, AND
8 BASED ON THAT WE WOULD MOVE FOR A DIRECTED VERDICT ON
9 BEHALF OF THE DEFENDANT FOR ACQUITTAL.

10 **THE COURT:** ALL RIGHT. OF COURSE, UNDER RULE 19-A
11 THE COURT IS NOT CONCERNED WITH THE WEIGHT OF THE
12 EVIDENCE, BUT ONLY WHETHER THERE DOES, THE EXISTENCE OR
13 NON-EXISTENCE OF EVIDENCE THAT WOULD SUPPORT THE VARIOUS
14 CHARGES. AND, OF COURSE, IF THERE'S A CONFLICT IN
15 TESTIMONY, THEN THAT CREATES A JURY QUESTION AND THE
16 COURT DOES FIND THAT THE JURY SHOULD DETERMINE THAT THERE
17 IS SUFFICIENT EVIDENCE TO GO FORWARD IN THIS CASE. I
18 DENY YOUR MOTION FOR A DIRECTED VERDICT BUT IT'S NOTED
19 FOR THE RECORD.

20 **MR. DAY:** THAT'S ALL I HAVE AT THIS TIME, YOUR
21 HONOR.

22 **THE COURT:** ALL RIGHT. NOW, LET ME ASK YOU. WE'LL
23 BE GOING FORWARD WITH THE DEFENDANT'S CASE. NOW, HAVE
24 YOU DISCUSSED WITH THE DEFENDANT HIS RIGHT TO TESTIFY OR
25 HIS RIGHT TO EXERCISE HIS RIGHT NOT TO TESTIFY?

1 **MR. DAY:** I HAVE, YOUR HONOR.

2 **THE COURT:** I TELL YOU -- MR. WEBB, IF YOU WOULD
3 PLEASE STAND AND RAISE YOUR RIGHT HAND.

4 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
5 COURT.)

6 **THE COURT:** VERY GOOD. THANK YOU. YOU MAY LOWER
7 YOUR HAND.

8 AT THIS TIME I'M GOING TO EXPLAIN TO YOU CERTAIN OF
9 YOUR RIGHTS. IF YOU DO NOT UNDERSTAND ANYTHING I SAY,
10 PLEASE LET ME KNOW. IF YOU WANT ME TO EXPLAIN ANYTHING
11 IN MORE DETAIL, PLEASE LET ME KNOW. DO YOU UNDERSTAND
12 WHAT I'VE SAID?

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

14 **THE COURT:** WE HAVE NOW REACHED OR APPROACHED THE
15 STAGE IN THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE.
16 YOU HAVE THE RIGHT TO CLAIM THE PROTECTIONS GIVEN TO YOU
17 BY THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED
18 STATES. THIS AMENDMENT STATES, IN PERTINENT PART,
19 (READING): NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL
20 CASE TO BE A WITNESS AGAINST THEMSELVES. THIS MEANS THAT
21 YOU CANNOT BE REQUIRED TO TESTIFY IN THIS CASE. YOU HAVE
22 THE RIGHT TO TESTIFY ON YOUR OWN BEHALF; HOWEVER, NO ONE
23 CAN MAKE YOU TESTIFY. THIS IS A PERSONAL RIGHT AND NO
24 ONE CAN WAIVE THIS RIGHT EXCEPT YOU. IF YOU DECIDE TO
25 TESTIFY, YOU WILL BE SUBJECT TO THE SAME RULES THAT

1 GOVERN OTHER WITNESSES AND YOU MAY BE EXAMINED AND
2 CROSS-EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE. IN
3 ADDITION, IF YOU HAVE ANY CONVICTIONS INVOLVING
4 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY
5 IMPRISONMENT FOR MORE THAN ONE YEAR AND THIS COURT
6 DETERMINES THAT THE PROBATIVE VALUE FOR ADMITTING THIS
7 EVIDENCE OUTWEIGHS ITS PREJUDICIAL EFFECT TO YOU, THE
8 SOLICITOR WILL BE ABLE TO INTRODUCE YOUR RECORD TO ATTACK
9 YOUR CREDIBILITY. DO YOU UNDERSTAND THIS?

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

11 **THE COURT:** IF YOU DECIDE TO TESTIFY, THIS DECISION
12 ON YOUR PART MUST BE FREELY, VOLUNTARILY, AND
13 INTELLIGENTLY MADE, WITH KNOWLEDGE OF THE PROTECTIONS
14 GIVEN TO YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES
15 OF YOUR DECISION TO TESTIFY. DO YOU UNDERSTAND?

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

17 **THE COURT:** IF YOU DECIDE NOT TO TESTIFY, I WILL
18 INSTRUCT THE JURORS THAT THEY CANNOT GIVE THE FACT THAT
19 YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER, AND
20 THAT THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU
21 BECAUSE YOU DID NOT TESTIFY. IT IS LEFT ENTIRELY UP TO
22 YOU WHETHER OR NOT YOU TESTIFY. DO YOU UNDERSTAND THAT?

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

24 **THE COURT:** YOU MAY HAVE TALKED WITH YOUR ATTORNEY
25 OR ANYONE THAT YOU HAVE ACCESS TO, OR ANYONE ELSE. BUT

1 THE FINAL DECISION WILL BE LEFT ENTIRELY UP TO YOU. DO
2 YOU UNDERSTAND WHAT I'VE EXPLAINED TO YOU?

3 **THE DEFENDANT:** YES.

4 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT WHAT
5 I'VE EXPLAINED TO YOU?

6 **THE DEFENDANT:** NO, SIR.

7 **THE COURT:** ALL RIGHT. VERY GOOD. THANK YOU, SIR.
8 YOU MAY BE SEATED.

9 ALL RIGHT. NOW, MR. DAY, WILL YOU HAVE TIME TO
10 CHECK ON YOUR WITNESSES?

11 **MR. DAY:** YOUR HONOR, THAT'S WHAT WE'RE GONNA BE
12 DOING DURING LUNCH.

13 **THE COURT:** HAVE YOU TALKED TO MS. PRUITT TO FIND
14 OUT IF SERVICE HAS BEEN MADE?

15 (DISCUSSION OFF THE RECORD.)

16 **MR. DAY:** HAVE THE SUBPOENAS BEEN SERVED?

17 **MS. PRUITT:** THEY'RE SERVING THEM RIGHT NOW.

18 **THE COURT:** ALL RIGHT. VERY GOOD. I'LL SEE YOU
19 BACK AT 2:00, THEN.

20 **MR. DAY:** OKAY. THANK YOU.

21 (A LUNCHEON RECESS OCCURRED.)

22

23

24

25

1 **AFTERNOON PROCEEDINGS** (2:40 P.M.)

2 **THE COURT:** WE ARE BACK ON THE CASE OF *STATE VERSUS*
3 *WEBB*, THE STATE HAS RESTED AND WE WILL GO FORWARD WITH
4 THE DEFENSE CASE. IS THE STATE READY?

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

6 **THE COURT:** DEFENSE READY?

7 **MR. DAY:** YES, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. LET'S SEE. MR. WEBB, IF YOU
9 WOULD PLEASE STAND. YOU REMEMBER BEFORE LUNCH I PUT YOU
10 UNDER OATH SO YOU ARE STILL UNDER OATH, I DON'T NEED TO
11 RE-SWEAR YOU. BUT HAVE YOU DISCUSSED WITH YOUR LAWYER
12 WHETHER YOU WISH TO TESTIFY OR NOT?

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

14 **THE COURT:** DO YOU WISH TO TALK TO YOUR LAWYER ANY
15 MORE ABOUT THAT?

16 **THE DEFENDANT:** NO, SIR.

17 **THE COURT:** HAVE YOU MADE UP YOUR MIND AS TO WHETHER
18 OR NOT YOU WISH TO TESTIFY?

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

20 **THE COURT:** DO YOU WISH TO TESTIFY?

21 **THE DEFENDANT:** NO, SIR.

22 **THE COURT:** ALL RIGHT. VERY GOOD. THANK YOU, SIR.

23 ALL RIGHT. I FIND THAT THE DEFENDANT'S WAIVER OF
24 HIS RIGHT TO TESTIFY AND EXERCISE OF HIS RIGHT NOT TO
25 TESTIFY IS DONE FREELY, VOLUNTARILY, KNOWINGLY AND

1 INTELLIGENTLY.

2 NOW, I WILL INSTRUCT THE JURY, THOUGH, THAT YOU DO
3 NOT HAVE ANY DUTY OR RESPONSIBILITY TO TESTIFY OR TO EVEN
4 PRESENT EVIDENCE. AS I UNDERSTAND IT, THE DEFENSE WILL
5 REST AT THIS TIME?

6 **MR. DAY:** THAT'S CORRECT. THE DEFENSE RESTS, YOUR
7 HONOR.

8 **THE COURT:** ALL RIGHT. SO I WILL INSTRUCT THE JURY
9 THAT BEFORE WE GO TO THE JURY. HOWEVER, IT WOULD HELP IF
10 WE CAN GO FORWARD WITH THE CASE WITHOUT FURTHER DELAY.
11 I'M GONNA ASK YOU TO REST ON THE RECORD NOW, OF COURSE IN
12 FRONT OF THE JURY. AND I TRUST YOU WILL RENEW YOUR
13 MOTIONS FOR A DIRECTED VERDICT?

14 **MR. DAY:** YES, SIR.

15 **THE COURT:** AND BASED ON THE SAME RULING ON THE, AT
16 THE CLOSE OF THE STATE'S CASE, I'M GOING TO DENY YOUR
17 MOTION FOR A DIRECTED VERDICT.

18 NOW, ANY REQUESTS AS FAR AS CHARGES FROM THE...

19 **MR. WAGNER:** JUST THE HAND OF ONE IS THE HAND OF
20 ALL, JUDGE.

21 **THE COURT:** ALL RIGHT.

22 **MR. DAY:** YOUR HONOR, THE ONLY OTHER QUESTION I HAD
23 AS TO INSTRUCTING THE JURY AS TO THE TESTIMONY, OF COURSE
24 CREDIBILITY, WHICH THE COURT DOES ANYWAY AS TO THE
25 WITNESSES, THEIR BELIEVABILITY OF PART OR ALL OR

1 WHATEVER. BUT ALSO AS TO THE TESTIMONY OF A CODEFENDANT
2 UNDER A PLEA AGREEMENT DEAL, I'VE TRIED TO FIND AN EXACT
3 ONE ON THAT POINT, BUT THERE DOESN'T SEEM TO BE ANYTHING
4 THAT TALKS DIRECTLY TO THAT PAST CREDIBILITY OF
5 WITNESSES, WHETHER THEY HAVE A REASON FOR BIAS, WHETHER
6 THEY HAVE A REASON FOR THEIR BELIEVABILITY TO BE BROUGHT
7 INTO QUESTION, ET CETERA, WHICH YOU DO IN YOUR NORMAL
8 INSTRUCTION WHICH I HEARD BEFORE. I TRIED TO FASHION
9 SOMETHING LIKE THAT AND IT JUST WOULD NOT GO WITHOUT
10 APPEARING TO SOUND AS IF IT WAS CREATING ALMOST
11 TESTIMONY.

12 **THE COURT:** WELL, I'LL TELL YOU, THE PROBLEM WITH
13 THAT, MR. DAY, IS THAT A CHARGE BASED ON THOSE
14 CIRCUMSTANCES WOULD BE CLOSE TO A CHARGE ON THE FACTS.

15 **MR. DAY:** PRETTY CLOSE.

16 **THE COURT:** IN OTHER WORDS, THAT CHARGE WOULD ALMOST
17 ASSUME THAT THERE IS A DEAL IS THE WORD WE HAVE BEEN
18 USING; AND IF THE COURT DOES THAT, AS YOU KNOW, YOU AND I
19 BOTH HAVE BEEN WHERE YOU ARE RIGHT NOW, AND ON MANY
20 OCCASIONS WE HAVE HAD TO ARGUE, AND THAT'S WHAT IT WAS,
21 IT WAS THE CREDIBILITY OF THE WITNESS RATHER THAN ANY
22 SORT OF ASSUMPTION OR SOME INFERENCE THAT MIGHT BE DRAWN
23 LEGALLY. SO THAT'S WHAT LAWYERS DO: THEY TRY TO EXPLAIN
24 WHY THINGS SHOULD BE DONE THE WAY THEY ARE.

25 **MR. DAY:** YES, SIR.

1 **THE COURT:** ALL RIGHT. I DECLINE -- I'LL LOOK WHILE
2 WE'RE PREPARING OR WHATEVER, BUT I'LL LOOK TO SEE WHAT
3 THE, IF I COULD FIND ANYTHING. BUT DO YOU HAVE ANY OTHER
4 REQUESTS?

5 **MR. DAY:** NO, SIR.

6 (DISCUSSION OFF THE RECORD.)

7 (THE DEFENDANT CONFERRED WITH COUNSEL OFF THE
8 RECORD.)

9 **THE COURT:** ALL RIGHT.

10 **MR. DAY:** I'M SORRY, YOUR HONOR. WE HAD SUBPOENAED
11 SEVERAL WITNESSES, YOUR HONOR. AT THIS TIME WE ARE GOING
12 TO RELEASE THOSE WITNESSES FROM THEIR SUBPOENAS. SOME OF
13 THEM ARE IN THE COURTROOM, AND I WANTED TO TELL THEM THAT
14 THEY WILL BE FREE TO LEAVE IF THEY SO DESIRE.

15 **THE COURT:** ANY OBJECTION FROM THE STATE?

16 **MR. WAGNER:** NO, SIR.

17 **THE COURT:** ALL RIGHT. WITHOUT OBJECTION THE
18 SUBPOENAS OF DEFENSE WITNESSES ARE VACATED.

19 **MR. DAY:** THANK YOU.

20 (THREE MEN LEAVE COURTROOM.)

21 **MR. DAY:** THANK YOU, YOUR HONOR.

22 **THE COURT:** YES, SIR. LET ME SEE COUNSEL FOR A
23 MOMENT, PLEASE.

24 (DISCUSSION AT SIDEBAR.)

25 CHARGE CONFERENCE:

1 **THE COURT:** ALL RIGHT. AT THE SIDEBAR, PARTICULARLY
2 IN LIGHT OF THE REQUEST FOR THE CHARGE ON THE HAND OF ONE
3 IS THE HAND OF ALL, WHICH, OF COURSE, IS THE AIDING AND
4 ABETTING AND CONSPIRACY-TYPE CHARGE, THE ALTERNATIVE TO
5 THAT WOULD BE THAT THEY FOUND THAT THERE WAS NO JOINT
6 ACTION OR EFFORT LINKING ALL TOGETHER, AS WITH ONE HAND.

7 THEN IT WOULD MEAN THAT THERE'S, THE TESTIMONY COULD
8 BE THAT THEY WERE SO DISASSOCIATED THAT MAYBE ONE WOULD
9 BE GUILTY OF THE LESSER-INCLUDED OFFENSE OF ROBBERY. AND
10 THERE'S A TACTICAL DECISION TO BE MADE WHETHER OR NOT TO
11 RELY ON THE MORE SERIOUS OFFENSE SO THAT THERE IS NO
12 COMPROMISE; BUT IF YOU PUT IN THE LESSER-INCLUDED
13 OFFENSE, THEN THEY COULD COMPROMISE DOWN BETWEEN ARMED
14 ROBBERY AND NOT GUILTY. SO I'M GONNA ASK, THE STATE
15 STILL WANTS A CHARGE ON HAND OF ONE, HAND OF ALL?

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

17 **THE COURT:** THAT WILL BE CHARGED.

18 **MR. DAY:** YOUR HONOR --

19 **THE COURT:** THE ONLY REASON I'M BRINGING IT UP IS
20 BECAUSE I HAVE TO LOOK AT ALL OF THE EVIDENCE AND WHAT
21 MIGHT BE PERMISSIBLE TO BE CHARGED UNDER THE EVIDENCE,
22 NOT THE WEIGHT OF IT OR THE VALUE OF IT. GO AHEAD.

23 **MR. DAY:** YES, SIR. IT WOULD ASK FOR THE CHARGE OF
24 LESSER-INCLUDED STRONG-ARM ROBBERY, THE SAME IN WHICH THE
25 CODEFENDANT IN THIS CASE IS CHARGED, AND BASED UPON THE

1 FACT THAT THE EVIDENCE AS PRESENTED THROUGH TESTIMONY
2 DOES CREATE SOME SORT OF CONFUSION AS TO EXACTLY THE
3 ARMED ROBBERY, STRONG-ARM ROBBERY, WHETHER A GENERAL
4 LARCENY AS TO AN ARMED LARCENY, THAT THERE'S ENOUGH
5 QUESTION IN THERE --

6 **THE COURT:** THIS IS NO LARCENY.

7 **MR. DAY:** ROBBERY, EXCUSE ME.

8 **THE COURT:** LARCENY IS OUT OF THE PRESENCE OF THE
9 VICTIM.

10 **MR. DAY:** RIGHT.

11 **THE COURT:** THAT'S THE DIFFERENCE BETWEEN ROBBERY
12 AND LARCENY. ROBBERY REQUIRES TAKEN FROM THE PRESENCE
13 AND POSSESSION OF THE VICTIM.

14 YOU BRING UP A GOOD POINT BECAUSE RIGHT NOW THE
15 TESTIMONY IS THAT THE CODEFENDANT IS CHARGED WITH
16 STRONG-ARM ROBBERY OR IS CHARGED WITH STRONG-ARM ROBBERY,
17 SO APPARENTLY SOMEBODY THOUGHT OF IT AS ONLY STRONG-ARM
18 ROBBERY. SO I'M GOING AHEAD AND CHARGE NOT ONLY THE HAND
19 OF ONE, THE HAND OF ALL, BUT ALSO STRONG-ARM ROBBERY.

20 **MR. DAY:** THANK YOU, YOUR HONOR.

21 **THE COURT:** ANYTHING ELSE?

22 **MR. WAGNER:** NO, SIR.

23 **THE COURT:** ANYTHING ELSE, MR. DAY?

24 **MR. DAY:** NO, YOUR HONOR.

25 **THE COURT:** WHEN WE COME BACK YOU'LL REST ON THE

1 RECORD. AND I'LL THEN DIRECT THE JURY AS TO THE LACK OF
2 ANY SORT OF PRESUMPTION AS TO THE DEFENDANT EXERCISING
3 HIS RIGHT TO NOT TESTIFY, AND THEN WE'LL GO TO THE JURY.
4 AND THE DEFENDANT HAVING NOT PUT UP ANY TESTIMONY OR
5 EVIDENCE, THE DEFENDANT WILL HAVE LAST ARGUMENT.

6 **MR. DAY:** YES, SIR.

7 **THE COURT:** IS THAT YOUR UNDERSTANDING, MR. WAGNER?

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

9 **MR. DAY:** DO I NEED TO SAY ANYTHING ABOUT RENEWING
10 THE MOTIONS OR HAVE WE ALREADY COVERED IT?

11 **THE COURT:** YOU CAN GO AHEAD AND RENEW THE MOTIONS
12 NOW. IT IS MY UNDERSTANDING YOU RENEW THE SAME MOTIONS
13 FOR DIRECTED VERDICT YOU HAD AND YOU WANT TO STAND ON
14 THOSE MOTIONS?

15 **MR. DAY:** I DO, YOUR HONOR, I RENEW THE MOTIONS.

16 **THE COURT:** VERY GOOD. AND THOSE MOTIONS ARE DENIED
17 FOR THE SAME REASONS.

18 ANYTHING FROM THE STATE NOW?

19 **MR. WAGNER:** NO, SIR.

20 **THE COURT:** VERY GOOD. ASK THE JURY TO JOIN US,
21 PLEASE.

22 (THE JURY ENTERED THE COURTROOM AT
23 APPROXIMATELY 2:54 P.M.)

24 **THE COURT:** LET THE RECORD REFLECT THE JURY AND
25 ALTERNATE ARE IN THE JURY-BOX.

1 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, I
2 APPRECIATE YOUR PATIENCE WITH THE COURT, BUT WE HAVE BEEN
3 ABLE TO PERHAPS MAKE THE CASE MOVE SOMEWHAT MORE
4 EXPEDITIOUSLY.

5 I RECOGNIZE MR. DAY NOW.

6 **MR. DAY:** THANK YOU, YOUR HONOR. THE DEFENSE RESTS,
7 YOUR HONOR. THANK YOU.

8 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF
9 THE JURY, THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO
10 REMAIN SILENT, TO PUT UP NO EVIDENCE AND REQUIRE THE
11 STATE TO MEET ITS BURDEN OF PROOF BEYOND A REASONABLE
12 DOUBT. THE ASSERTION OF THE CONSTITUTIONAL RIGHT NOT TO
13 TESTIFY OR PRESENT EVIDENCE MUST NOT, MUST NOT BE
14 CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR OATH
15 YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT
16 THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY OR PUT UP
17 EVIDENCE. AS I STATED, THE DEFENDANT IS NOT REQUIRED TO
18 PROVE HIS INNOCENCE AND THE BURDEN OF PROOF REMAINS UPON
19 THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

20 NOW, WITH THAT ADMONITION, I NOW RECOGNIZE THE STATE
21 FOR ITS CLOSING ARGUMENT.

22 **MR. WAGNER:** THANK YOU, JUDGE.

23 CLOSING ARGUMENT ON BEHALF OF THE STATE:

24 **MR. WAGNER:** WE'RE HERE 'CAUSE JULY 23RD, 2009, THE
25 DEFENDANT CHOSE TO DRINK A LARGE AMOUNT OF LIQUOR, DRIVE

1 AROUND AND COMMIT THESE CRIMES. AND HOW DO WE KNOW WHAT
2 HE DID? WE KNOW IT FROM THE WITNESSES WHO TESTIFIED AT
3 THE WITNESS STAND.

4 NOW, I DON'T KNOW -- I KNOW THEY'RE ALL NOT THE MOST
5 CREDIBLE PEOPLE IN THE WORLD AS FAR AS THEIR DEMEANOR,
6 AND, IN FACT, SOME OF THEM HAD PRIOR CONVICTIONS OF SOME
7 SORT OR ANOTHER. THEY WERE DRINKING, SOME OF THEM HAVE
8 SKETCHY MEMORIES.

9 BUT THEY ALL BASICALLY SAID THE SAME THING. IF YOU
10 LOOK DOWN TO IT, WHEN SCOTT ARNOLD GOT THE CALL TO GO OUT
11 THERE THAT AFTERNOON, HE DIDN'T KNOW WHAT HE HAD. WHEN
12 HE GOT THERE, HE TALKED TO THE TWO VICTIMS, JASON AND
13 NATHAN MCCALL. THEY WERE HOME IN THEIR OWN HOUSE MINDING
14 THEIR OWN BUSINESS. THE DEFENDANT, SHANE ELLIOTT AND THE
15 TWO GIRLS SHOW UP WITHOUT WARNING. AND THEY KNOW THEM.
16 I MEAN, HE TESTIFIED HE LEFT THE DOOR OPEN FOR THEM, LET
17 THEM IN. SO IT'S NOT A BURGLARY-TYPE SITUATION.

18 BUT THEY CAME IN THERE WITH GUNS DRAWN, AT LEAST ONE
19 OF THEM. I KNOW THERE WAS DISCREPANCY IN THE TESTIMONY
20 AS TO WHETHER BOTH CAME IN WITH A GUN OR JUST ONE DID.
21 BUT THE ONE THING THAT IS CONSISTENT ON EVERY SINGLE
22 COUNT FROM EVERY SINGLE WITNESS IS THAT JEFF WEBB HAD A
23 GUN. HE CAME IN THERE AND THE FIRST THING HE DID WAS PUT
24 IT TO NATHAN MCCALL'S HEAD, HIT HIM ON THE HEAD AND HE
25 DEMANDED MONEY AND STOLE HIS PISTOL. WE KNOW WHAT HIS

1 PISTOL LOOKED LIKE BECAUSE NATHAN DESCRIBED IT. IT WAS A
2 GRAYISH SLIDE RUGER P95 AUTOMATIC WITH BLACK TYPE RIBS.

3 THE SAME PISTOL I SUBMIT TO YOU WAS SEEN IN THE
4 DEFENDANT'S HAND A SHORT TIME LATER WHEN MIKE MCGOWAN WAS
5 ON THE STAKEOUT OUT IN THE PERIMETER WHEN THEY WERE
6 TRYING TO FIND THESE PEOPLE, HE SAW THE DEFENDANT WITH
7 THAT PISTOL IN HIS HAND. SAME DESCRIPTION. I KNOW IT'S
8 30 OR 40 YARDS AWAY, BUT IT'S THE SAME DESCRIPTION. I
9 SUBMIT TO YOU IT'S THE SAME PISTOL. AND THE DEFENDANT
10 RAN AT THAT POINT AND HE RAN BECAUSE HE HAD JUST
11 COMMITTED AN ARMED ROBBERY.

12 HE HID OUT FOR THREE DAYS UNTIL SCOTT ARNOLD COULD
13 LOCATE HIM, LOOKING. THE REASON HE RAN IS BECAUSE HE'S
14 GUILTY.

15 NATHAN MCCALL AND JASON MCCALL. THEY'RE HOME IN
16 THEIR OWN HOUSE. THEY CALLED 9-1-1 IMMEDIATELY. WHEN
17 THEY LEFT, THE GUY TOLD THEM "DON'T CALL THE COPS." WELL
18 YOU HEARD HIS 9-1-1 CALL. IN THAT 9-1-1 CALL HE SAID
19 THEY JUST CAME AND STOLE MY PISTOL. HE SAYS THAT ON THE
20 TAPE. THEN HE CALLED BACK TRYING TO HELP WHERE THEY
21 FOUND THEM.

22 THEY SHOT INTO THE HOUSE. AND LET ME GO BACK JUST
23 BRIEFLY. ESSENTIALLY YOU'LL HAVE THREE CHARGES TO
24 CONSIDER: ARMED ROBBERY, WHICH IS ROBBING A PERSON WHILE
25 ARMED WITH A DEADLY WEAPON, TAKING SOMETHING FROM THEM AT

1 GUNPOINT ESSENTIALLY IN THIS CASE, WHICH IS WHAT WE HAVE
2 HERE. THE JUDGE IS ALSO GONNA CHARGE COMMON LAW ROBBERY,
3 WHICH IS ESSENTIALLY ROBBING SOMEBODY WITHOUT A GUN BY
4 FORCE OR INTIMIDATION BUT YOU DON'T HAVE A GUN. HE'S
5 GONNA CHARGE YOU FIRING INTO A DWELLING. NOW, WE KNOW AT
6 LEAST ONE OF THE SUBJECTS FIRED A ROUND THROUGH THE
7 DWELLING BECAUSE YOU HAVE THE PICTURES TO SHOW IT, AND
8 THERE WAS TESTIMONY FROM TWO OF THEM THAT THE SHOT, TWO
9 OF THE WITNESSES, THAT THE SHOT CAME FROM JEFF WEBB.

10 THERE WAS NOBODY, NOBODY AT ALL SAID SHANE ELLIOTT
11 FIRED. BUT NO MATTER WHICH ONE FIRED, THE JUDGE IS ALSO
12 GONNA CHARGE YOU A PRINCIPLE IN LAW IS THE HAND OF ONE IS
13 THE HAND OF ALL. THAT MEANS IF THEY BOTH GO INTO THIS
14 HOUSE ON A CRIMINAL ENTERPRISE, THE STUFF THAT HAPPENS IN
15 THAT HOUSE DURING THAT CRIME, THEY ARE BOTH EQUALLY
16 RESPONSIBLE FOR. THE HAND OF ONE IS THE HAND OF ALL.

17 SO EVEN IF SHANE ELLIOTT DIDN'T HAVE A GUN GOING IN
18 THAT HOUSE, BUT JEFF WEBB DID, AND THEY ALL BOTH
19 PARTICIPATE IN THE ROBBERY, EVEN IF THERE'S ONLY ONE GUN,
20 AND HERE THERE WERE AT LEAST TWO, THEY'RE BOTH GUILTY OF
21 ARMED ROBBERY WHETHER ONE GUY HAD A GUN OR NOT.

22 THE SAME WITH SHOOTING INTO A DWELLING. NO MATTER
23 WHICH ONE FIRED THE SHOT, THEY BOTH ARE, HAND OF ONE IS
24 THE HAND OF ALL, GUILTY OF THAT CHARGE.

25 NOW, SHANE ALSO FIRED A SHOT INSIDE THE HOUSE SO

1 THEY ARE BOTH GUILTY TECHNICALLY FOR THAT, TOO.

2 WHEN YOU GOT SO MANY PEOPLE DRINKING A LOT OF
3 LIQUOR, THEY ALL COULD NOT RECALL EVERY SINGLE THING THAT
4 WENT ON. YOU GOT FIVE EYEWITNESSES TO THIS CRIME. THERE
5 WAS MARIA VILLEGAS. SHE WAS NOT VERY FORTHCOMING FROM
6 THE STAND. SHE WAS HERE UNDER SUBPOENA AND SHE SAID SHE
7 DIDN'T WANT TO BE, SHE DIDN'T WANT TO HELP US.

8 YOU HAD NICKIE SMITH, WHO WAS ALSO NOT VERY
9 FORTHCOMING FROM THE STAND.

10 SHANE ELLIOTT, WHO GRANTED IS GETTING A DEAL. I
11 MEAN, HE TESTIFIED THAT HE WOULD TELL THE TRUTH IN
12 EXCHANGE FOR A RECOMMENDATION OF A CAP OF TWO YEARS.
13 SOMETIMES THAT'S NECESSARY IN THIS BUSINESS, AND HE
14 TESTIFIED AND TOLD THE TRUTH.

15 NOW, THE FACT THAT HE'S GETTING A DEAL MIGHT LEAD
16 YOU TO BELIEVE WELL, YOU KNOW, HIS CREDIBILITY AS FAR AS
17 HIS BIAS MAY BE AN ISSUE. BUT WHAT WE DO KNOW IS THAT
18 RIGHT THAT VERY NIGHT WHEN HE GOT CAUGHT, AND THE
19 DETECTIVE WENT DOWN THERE AND TOOK A STATEMENT FROM HIM,
20 HE SAID THE SAME THING, SO HE TOLD THE SAME THING FROM
21 THE START, TOLD WHAT HAPPENED. HE ADMITTED HIS
22 INVOLVEMENT IN IT AND HE ADMITTED HIS GUILT, AND HE
23 ADMITTED HIS GUILT HERE ON THE STAND. HOW YOU CANNOT
24 REMEMBER FIRING A SHOT INTO THE FLOOR AND INTO THE WALL I
25 DON'T KNOW. BUT THERE WERE TWO OF THEM THAT WERE SO

1 DRUNK THEY DON'T REMEMBER IT, EITHER, BESIDES HIM. BUT
2 HE ADMITTED, YOU KNOW, I THINK I DID IT BECAUSE THEY ALL
3 SAID I DID IT, AND THEY WERE ALL THERE, TOO.

4 SO THERE ARE CERTAIN THINGS IN THIS CASE THAT'S
5 NEVER GONNA BE 100 PERCENT FROM EVERY SINGLE WITNESS ALL
6 SAYING THE SAME THING BECAUSE THEY ALL SAW IT FROM A
7 DIFFERENT ANGLE. SOME OF THEM WEREN'T DOWN THE HALL.
8 THERE WAS ONLY JASON AND JEFF WEBB WHEN THEY WENT DOWN
9 THE HALL, AND HE HELD A GUN ON JASON AND TOOK HIS MONEY.
10 THEY WERE THE ONLY TWO WITNESSES TO THAT.

11 BUT THE REST OF THIS GROUP SAW THE WHOLE THING. AND
12 THEY WERE ALL THERE, AND ALL THEIR STORIES ARE BASICALLY
13 CONSISTENT IN THE FACT THAT JEFF WEBB WAS THE RINGLEADER,
14 JEFF WEBB WAS DRIVING, JEFF WEBB PICKED THEM UP, JEFF
15 WEBB HAD THE LIQUOR.

16 THEY ALL GOT DRUNK. JEFF WEBB HAD THE GUN, JEFF
17 WEBB WAS THE ONE THAT WENT IN THE DOOR FIRST. JEFF WEBB
18 WAS THE ONE THAT FIRST PUT THE PISTOL TO NATHAN'S HEAD
19 AND DEMANDED HIS MONEY AND DEMANDED HIS PISTOL. JEFF
20 WEBB IS THE ONE THAT WENT DOWN THE HALL PUT HIS PISTOL ON
21 JASON. HE ALSO LEFT HIS PISTOL OR HE LEFT SHANE ELLIOTT
22 WITH HIS OWN PISTOL, DEPENDING ON WHETHER WE KNOW THERE
23 WAS TWO GUNS THERE OR NOT. BUT WE DO KNOW AT ONE POINT
24 IN TIME BOTH OF THEM WERE ARMED IN THE HOUSE.

25 SHANE ELLIOTT, LIKE I SAY, YEAH, HIS DEAL, HE IS

1 GETTING A DEAL TO TESTIFY, BUT HE GAVE THAT SAME STORY
2 WELL BEFORE HE GOT ANY DEAL, AND HE TOLD THE TRUTH THEN.
3 OFFICER ARNOLD, BEING THE GOOD DETECTIVE THAT HE
4 WAS, SPENT THREE OR FOUR DAYS CHASING THESE PEOPLE AROUND
5 THE COUNTY. THEY WEREN'T EASY FOR HIM TO FIND. WHEN HE
6 FOUND THEM, THEY WERE ALL SEPARATED AT DIFFERENT
7 LOCATIONS WITH DIFFERENT PEOPLE. HE TALKED TO EVERY
8 SINGLE ONE OF THEM, AND LIKE I SAY, EVERY SINGLE ONE OF
9 THEM WAS FAIRLY CONSISTENT IN WHAT THEY SAY HAPPENED.
10 AND THE FINGER ON EVERY SINGLE ONE OF THEM, IT DID NOT
11 POINT AT SHANE ELLIOTT, THEY ALL BLAMED HIM, TOO; BUT THE
12 BIG FINGER POINTED RIGHT BACK AT THE DEFENDANT RIGHT
13 THERE, JEFF WEBB. HE WAS THE MASTERMIND, HE WAS THE
14 RINGLEADER. I'M NOT EXCUSING WHAT SHANE ELLIOTT DID, BUT
15 HE'S THE ONE THAT DID IT (POINTING TO DEFENDANT). AND
16 THERE WAS NO EVIDENCE TO THE CONTRARY. THEY ALL SAW IT.
17 EVEN THOUGH, LIKE I SAY, SOME OF THEM HAVE SKETCHY
18 MEMORIES.

19 NOW, I WON'T HAVE A CHANCE TO GET BACK UP HERE AND
20 REBUT ANYTHING THAT'S SAID. BUT LET ME TOUCH ON THE FACT
21 THAT OFFICER ARNOLD, HE DID EVERYTHING HE THOUGHT HE
22 COULD DO PHYSICAL EVIDENCE-WISE TO MAKE SURE THAT HIS
23 CASE WAS THERE. HE COULD HAVE TORN OUT THAT WALL, HE
24 COULD HAVE GOT THAT OTHER BULLET. BUT WHY? WHY ARE THEY
25 GONNA TEAR OUT THE WALL, WHY ARE THEY GONNA GET THAT

1 OTHER BULLET?

2 THEY DIDN'T HAVE ANY GUNS RECOVERED FROM EITHER ONE
3 OF THE DEFENDANTS WHO I SUBMIT TO YOU DITCHED THEM IN THE
4 WOODS, HID THEM SOMEWHERE BECAUSE THEY, WE DON'T KNOW
5 WHERE THEY WENT. BUT UNLESS YOU'VE GOT A BULLET TO MATCH
6 TO -- A GUN TO MATCH TO THAT BULLET, THERE'S NO POINT IN
7 TEARING OUT THE WALL OUT TO GET IT. THEY GOT THE BULLET
8 HOLE IN THE WALL.

9 THE PHYSICAL EVIDENCE AT THE SCENE, WITHIN A SHORT
10 TIME AFTER, WHEN NATHAN MCCALL MADE THAT 9-1-1 CALL, THE
11 SHERIFF'S OFFICE WITH AN ARMED ROBBERY, HOME
12 INVASION-TYPE SCENARIO, THEY HAD SOMEBODY OUT THERE
13 PRONTO, AND THEY WENT STRAIGHT OUT THERE, THE DEPUTIES
14 DID.

15 THESE GUYS DIDN'T HAVE THE TIME TO COOK UP SOME SORT
16 OF CRAZY STORY. THEY TOLD WHAT HAPPENED. AND THE
17 PHYSICAL EVIDENCE, ACCORDING TO SERGEANT ARNOLD, MATCHED
18 EXACTLY, BASICALLY WHAT THEY SAID HAPPENED. AND IT ALL
19 ADDS UP. AND LIKE I SAY, YOU CAN NIT-PICK ONE PERSON'S
20 STATEMENT. MAYBE THEY FORGOT. WHY DID THEY FORGET? WHY
21 DOES NOBODY WANT TO COME UP HERE AND TESTIFY? THEY'RE
22 ALL FRIENDS. AT LEAST THEY WERE.

23 ONE PERSON WHO DID TESTIFY THAT WAS NOT THERE WAS
24 LAURA MEADOWS. SHE WAS ACTUALLY JEFF WEBB'S GIRLFRIEND
25 AT THE TIME. AND WHAT DOES SHE SAY? WELL, YOU KNOW,

1 THEY PULLED UP. THEY CAME IN MY HOUSE. THEY BOTH HAD
2 GUNS. THEY WERE TALKING CRAZY STUFF. I BELIEVE SHE SAID
3 THEY SAID SOMETHING ABOUT SHOOTING UP A HOUSE OR
4 SOMETHING TO THAT EFFECT. SHE LEFT TO TAKE HER KIDS OUT
5 OF THERE, AND WHEN SHE CAME BACK THEY WERE STILL THERE,
6 THE COPS PULLED UP AND THEY RAN.

7 RIGHT AFTER THAT IS WHEN MIKE MCGOWAN SAW THE
8 DEFENDANT WITH A STOLEN PISTOL AND HE RAN AGAIN AND HE
9 HID OUT FOR THREE STRAIGHT DAYS, AND LIKE I SAID, HE HID
10 OUT BECAUSE HE'S GUILTY.

11 NOW, HIS STORY TO OFFICER ARNOLD IS THE ONLY ONE
12 THAT DOESN'T ADD UP. HIS STORY WAS BASICALLY YEAH, I
13 WENT OVER THERE WITH THEM, I DIDN'T DO ANYTHING. I GOT
14 THREE GRAMS OR THREE HALF GRAMS OF ICE, THAT'S ALL THAT
15 HAPPENED TO ME. I HEARD THE SHOOTING, SO I SAID, LET'S
16 GET THE HELL OUT OF HERE.

17 IT DOESN'T ADD UP. IT DOESN'T ADD UP TO WHAT ALL
18 THE OTHER WITNESSES SAY, IT DOESN'T ADD UP TO WHAT HIS
19 GIRLFRIEND, OR EX-GIRLFRIEND, LAURA MEADOWS, SAID. AND
20 YOU GOT TO UNDERSTAND, AGAIN, ALL THESE PEOPLE SAID IT
21 INDEPENDENTLY OF EACH OTHER, EITHER IMMEDIATELY RIGHT
22 AFTER THAT OR A SHORT TIME LATER OR SEVERAL DAYS LATER
23 WHEN THEY WERE BY THEMSELVES AND SERGEANT ARNOLD TALKED
24 TO THEM. SO YOU KNOW THEIR STORIES WERE NOT ALL HOOKED
25 UP JUST TO GET JEFF WEBB. THEY WERE FRIENDS WITH HIM,

1 THEY WERE HANGING OUT. THE TWO GIRLS, THEY JUST KIND OF
2 GOT CAUGHT UP IN THE MESS APPARENTLY. BUT IT DOESN'T
3 EXCUSE WHAT SHANE ELLIOTT DID, IT DOESN'T EXCUSE WHAT THE
4 DEFENDANT DID.

5 AND THE BOTTOM LINE IS, THEY'RE GUILTY OF ARMED
6 ROBBERY, GOING IN A HOUSE ARMED WITH A PISTOL AND
7 STEALING MONEY AND A PISTOL FROM JASON AND NATHAN MCCALL.
8 THEY'RE GUILTY OF FIRING INTO A DWELLING, AND HERE'S THE
9 PROOF ON THAT, TOO, WITH THE BULLET HOLES IN THE ROOM.

10 IF YOU NEED TO LISTEN TO THE 9-1-1 CALL AGAIN, IT'S
11 AVAILABLE, IT'S IN EVIDENCE. YOU HAVE AN ACTUAL FIRED
12 BULLET. I DON'T KNOW IF Y'ALL CAN SEE IT (PULLS OUT OF
13 BAG) BUT YOU CAN TAKE THAT BACK THERE AND TAKE A LOOK AT
14 IT, TOO, THAT THE OFFICER TESTIFIED MATCHED ESSENTIALLY
15 WHAT THEY, THE KIND OF GUNS THEY SAID THEY HAD.

16 THERE'S NO WAY THE STATE IN ANY CASE LIKE THIS CAN
17 TAKE AWAY EVERY DOUBT THAT'S OUT THERE. THE JUDGE IS
18 GONNA CHARGE YOU THAT WE HAVE TO PROVE TO YOU BEYOND A
19 REASONABLE DOUBT THAT THE DEFENDANT'S GUILTY OF WHAT HE'S
20 CHARGED WITH, OR A LESSER DEGREE THEREOF. AND IN THIS
21 CASE, WITH THE FIVE EYEWITNESSES, AND THEN LAURA MEADOWS
22 WHO IS A WITNESS THEREAFTER, AND THE FACT THAT YOU HAVE
23 TWO OFFICERS THAT INVESTIGATED THE CASE AND THEIR
24 TESTIMONY, IN THIS CASE THERE CAN BE NO REASONABLE DOUBT
25 THAT JEFF WEBB IS ANYTHING BUT GUILTY OF WHAT HE'S

1 CHARGED WITH, AND WE WOULD ASK YOU TO FIND A VERDICT OF
2 GUILTY.

3 **MR. DAY:** MAY IT PLEASE THE COURT, YOUR HONOR?

4 **THE COURT:** MR. DAY.

5 CLOSING STATEMENT ON BEHALF OF THE DEFENDANT:

6 **MR. DAY:** FIRST OF ALL, THANK YOU ALL. I KNOW YOU
7 PAID CLOSE ATTENTION AND LISTENED. AND I GOT A CUP OF
8 WATER. I DIDN'T WANT YOU TO THINK I WAS GONNA BE TALKING
9 FOR THE NEXT COUPLE OF HOURS. I'M JUST THIRSTY.

10 BUT LET'S LOOK AT THIS CASE. I AGREE WITH THE
11 SOLICITOR ON SEVERAL THINGS HE SAID. ONE, AND I THINK
12 THE MOST IMPORTANT ONE, IS WHEN HE SAID IT DOESN'T ADD
13 UP. WELL, HE'S RIGHT, IT DOESN'T. WHEN YOU STOP AND
14 LOOK AT ALL OF THIS, AS TO WHAT HAPPENED ON THAT DATE,
15 WHAT WENT ON, WHO WAS THERE AND WHO SAID WHAT, IT CREATES
16 SOME SERIOUS QUESTIONS HERE.

17 THE SOLICITOR ALSO SAID ONE OF THEM SHOT IN THE
18 HOUSE. BUT THE ONLY PERSON WHO IS HERE ON TRIAL IS JEFF
19 WEBB SO THEY GOT TO PROVE JEFF WEBB SHOT INTO THE HOUSE,
20 AND THERE'S A LOT OF DIFFERENT PEOPLE SAYING DIFFERENT
21 THINGS ON THAT AS PEOPLE THEY SAID WHO WERE THERE.

22 NOW, THE SOLICITOR ALSO SAID THAT YOU'RE GOING TO
23 HAVE TO LOOK AT CREDIBILITY OF THE WITNESSES,
24 PARTICULARLY SHANE ELLIOTT. OF ALL THE PEOPLE THAT HAVE
25 BEEN HERE, SHANE ELLIOTT HAS THE MOST TO GAIN FROM WHAT

1 HE SAID, ABSOLUTELY. FACING 50 YEARS IN JAIL, HE MADE A
2 DEAL FOR TWO, GOT OUT ON A PR BOND, WALKED OUT OF THE
3 JAIL. AND NOW HE'S UP HERE SAYING, WELL, I DON'T
4 ACTUALLY REMEMBER WHAT ALL THOSE PEOPLE, THEY MAY HAVE
5 SAID I DID ALL THIS STUFF BUT I DIDN'T REALLY DO ALL
6 THAT. JEFF WEBB DID IT ALL. BECAUSE BY SAYING THAT, HE
7 GAINS, HE GAINS A LOT. HE'S TRYING TO GET OUT OF IT.

8 SO LET'S STOP AND LOOK AT THIS. THE JUDGE IS GONNA
9 EXPLAIN THE LAW TO YOU, AND IF I SAY ANYTHING ABOUT THE
10 LAW THAT'S DIFFERENT FROM WHAT THE JUDGE SAYS, YOU TAKE
11 WHAT THE JUDGE SAYS, OKAY? BECAUSE HE'S GONNA TELL YOU
12 THE LAW THAT YOU'RE GONNA APPLY TO THE FACTS THAT YOU
13 HAVE HEARD HERE FROM THE TESTIMONY THAT CAME FROM THAT
14 WITNESS STAND, AND THESE PICTURES, ET CETERA, AND YOU'RE
15 GONNA GO BACK IN THAT ROOM AND MAKE A DECISION. BUT IF I
16 MIGHT JUST RUN OVER A FEW THINGS, OKAY?

17 FIRST, TO PROVE GUILT OF ARMED ROBBERY, THE JUDGE IS
18 GONNA GIVE YOU THE ELEMENTS OF ARMED ROBBERY. EACH ONE
19 OF THOSE ELEMENTS MUST BE PROVED BEYOND A REASONABLE
20 DOUBT, EACH ONE. IF ANY ONE OF THEM IS LACKING, OR YOU
21 FEEL THAT IT'S JUST NOT SUFFICIENT TO DO THAT, THAT'S
22 DOUBT, AND THAT MEANS THAT THEY HAVE FAILED TO MEET THAT
23 BURDEN OF PROOF WHICH ONLY THE STATE HAS, TO PROVE THAT
24 PARTICULAR CRIME, WHETHER IT BE ARMED ROBBERY, STRONG-ARM
25 ROBBERY, FIRING INTO A DWELLING, USE OF A WEAPON.

1 THEY'VE GOT TO PROVE EACH ONE OF THOSE CASES AND ALL OF
2 THE ELEMENTS, EACH ONE, BEYOND A REASONABLE DOUBT. YOU
3 MUST BELIEVE THAT ON EACH ONE.

4 THE JUDGE WILL EXPLAIN TO YOU THAT'S HOW YOU WILL DO
5 IT. YOU WILL GO THROUGH EACH ONE AND LOOK AT IT AND MAKE
6 A DETERMINATION FROM YOUR COLLECTIVE WISDOM.

7 WHAT IS ALL THIS BASED ON? IT'S BASED ON SOMETHING
8 THAT WENT ON IN ONE NIGHT. ONE, WE HAD NICKIE SMITH COME
9 UP, THE LADY WHO WAS EXPECTING. SHE TESTIFIES COMPLETELY
10 DIFFERENT IN MOST RESPECTS FROM NATHAN MCCALL WHO SAYS
11 HE'S THE VICTIM.

12 ONE THING. SHE SAYS WE'RE ALL FOUR IN THAT BEDROOM
13 WHEN SHANE FIRED THAT PISTOL. IN THE SAME ROOM. IF YOU
14 HAVE EVER HEARD A PISTOL FIRED IN AN ENCLOSED SPACE, ALL
15 THAT SOUND IS COMPACTED IN ONE AREA, YOU'RE GONNA
16 REMEMBER THAT. YOU'RE GONNA KNOW A PISTOL HAS BEEN
17 FIRED. SHE SAYS ALL FOUR OF US WERE IN THERE.

18 MARIA SAID I WASN'T IN THERE. I CAME IN, I WENT
19 BACK OUT. I DON'T KNOW ANYTHING ABOUT ANYBODY SHOOTING A
20 GUN.

21 THEN NICKIE SAYS WE'RE ALL IN THAT SAME ROOM, BUT I
22 REALLY DON'T REMEMBER ANYBODY SHOOTING THAT GUN. NATHAN
23 SAYS, MY GOSH, SURE DID. NOT ONLY DID SHANE ELLIOTT
24 SHOOT A GUN, HE SHOT A GUN AFTER HE'D HELD IT TO MY HEAD.
25 REMEMBER, HE DEMONSTRATED THAT. HE SAID HE PUT THAT

1 PISTOL TO MY HEAD AND THEN HE FIRED IT. AND THE PICTURES
2 THAT YOU WILL BE ABLE TO TAKE BACK WITH YOU SHOW WHERE
3 THAT BULLET WENT, RIGHT INTO THE WALL. IN THAT ROOM WITH
4 ALL FOUR OF THEM SITTING THERE, STANDING THERE, WHATEVER,
5 AND SHANE NEARLY HAD HIS ARM AROUND HIM AND GUN TO HIS
6 HEAD AND THEN SHOT. SOMEHOW SHE DOESN'T REMEMBER THAT.
7 WHY SHE DOESN'T REMEMBER THAT? ONLY YOU WILL BE ABLE TO
8 DISCERN THAT. WHO IS SHE TRYING TO PROTECT? SHE'S
9 CERTAINLY NOT TRYING TO PROTECT JEFF WEBB. IT SOUNDS TO
10 ME LIKE SHE'S MORE INTERESTED IN PROTECTING SHANE
11 ELLIOTT. AND WHY? I DON'T KNOW.

12 BUT SHE SAYS EVEN THOUGH SHE DOESN'T KNOW WHO SHOT,
13 IF SHANE FIRED A GUN IN THE HOUSE IN THE SAME ROOM WHERE
14 SHE WAS, SHE SAYS, OH, BUT JEFF WEBB SHOT AS WE WERE
15 LEAVING. NOW, SHE SAYS, AS THEY WERE LEAVING, THAT JEFF
16 FIRED THAT PISTOL AS THEY WERE GOING UP THE HILL TO THE
17 CAR, OR RISE. I'M NOT TALKING ABOUT A BIG HILL. YOU
18 HEARD THE TESTIMONY DESCRIBING THE PARKING AREA WHERE
19 THERE WAS A RISE, GOING UP THERE AND HE SHOT IT AT ABOUT
20 A 45-DEGREE ANGLE GIVE OR TAKE. I USE 45 BECAUSE THAT'S
21 IN THAT AREA THERE SOMEWHERE, BUT AT AN ANGLE BACK
22 TOWARDS THE HOUSE.

23 SAYS HE DID THAT AFTER HE'D JUST WALKED OUT WITH
24 SHANE MCCALL, WALKED OUT WITH HIM, WHO SAYS HE'S A VICTIM
25 OF THIS. SAYS HE CAME OUT, WALKED OUT BEHIND HIM.

1 AND THEN WHEN SHANE SAYS HE GOES BACK TO THE HOUSE,
2 THERE'S A GUNSHOT -- NOT SHANE, EXCUSE ME, JASON. I
3 APOLOGIZE. I'M USING THE WRONG NAME. JASON MCCALL.
4 EXCUSE ME. JASON WALKED OUT AS THEY WERE LEAVING, HE
5 SAYS HE CAME OUT, THEY TALKED, CALLED HIM HIS BROTHER,
6 AND JASON MCCALL SAYS HE'S GOING BY THE HOUSE AND THAT'S
7 WHEN THE GUNSHOT TOOK PLACE.

8 NATHAN STATED AND USED THE WORD THEY FIRED A SHOT
9 BECAUSE HE DOESN'T KNOW WHO FIRED A SHOT. HE JUST KNOWS
10 A SHOT WAS FIRED. HE SAYS THEY FIRED A SHOT. AGAIN,
11 THAT FOLLOWS ALONG WITH WHAT THE SOLICITOR IS SAYING. HE
12 SAYS SOMEBODY FIRED A SHOT. SO THEY GOT TO PROVE HE
13 FIRED A SHOT BEYOND A REASONABLE DOUBT. THAT'S WHAT
14 THEY'VE GOT TO PROVE.

15 THE TESTIMONY THAT YOU HEARD FROM NATHAN STANDING UP
16 HERE, AND JASON, BOTH OF THEM ADMIT THEY GOT PENDING
17 CHARGES HERE IN OCONEE COUNTY. DO YOU THINK THEY'RE
18 GOING TO GET ANYTHING OUT OF THIS? WE DON'T KNOW. THEY
19 SAY NO. BUT THEN AGAIN, THEY'RE UP HERE TESTIFYING.

20 ALL OF THIS JUST KEEPS MIXING UP AS TO WHAT WAS
21 GOING ON THERE. MARIA, WHEN SHE TESTIFIED, SHE SAYS SHE
22 DIDN'T SEE ANY GUNS. NONE. NO GUNSHOTS, NONE. DON'T
23 KNOW WHERE SHE WAS. BUT EITHER SHE DID OR SHE DIDN'T.
24 EVERYBODY WHO TESTIFIED SAID, LIKE NATHAN AND JASON, SAID
25 THERE WERE SHOTS. SHANE, HE COULDN'T REMEMBER THEM,

1 EITHER. NICKIE SAID SHE COULDN'T REMEMBER THEM. BUT THE
2 MCCALLS SAID, YEAH, THERE WERE SHOTS. MARIA SAID, I
3 DON'T REMEMBER NO GUNS, I DON'T REMEMBER ANY SHOTS. I
4 EVEN LEFT. WHEN THEY SAID I WAS IN THAT ROOM, I WASN'T
5 IN THAT ROOM. I WAS AT THE CAR. AND SHE WAS READY TO
6 LEAVE.

7 THEN SHE SAID SHE REMEMBERS A LOT ABOUT THAT NIGHT,
8 ONE OF WHICH SHE REMEMBERS IS THAT WHENEVER THEY GOT TO
9 ZACK'S HOUSE, WHEREVER IT WAS THEY WENT TO, AFTER SHE AND
10 NICKIE AND SHANE HAD TAKEN THEIR SHOWER TOGETHER, SHE
11 THEN WENT BACK TO JASON MCCALL'S HOUSE THE SAME NIGHT.

12 NOW, WHAT HAS BOTHERED ME MORE THAN ANYTHING IS I'M
13 TRYING TO GRASP THAT. SUPPOSEDLY GOING TO SOMEONE'S
14 HOUSE, FIRING SHOTS IN IT, HAVING GUNS, LEAVING AND
15 SHOOTING INTO THE HOUSE, SHE GOES BACK TO THAT SAME
16 HOUSE, TO THE SAME ONE THE SAME NIGHT. SOMETHING ABOUT
17 THAT IS JUST HARD TO GRASP. WHY WOULD SHE DO THAT? WHY
18 WOULD SHE DO THAT IF SHE BELIEVED ALL OF THIS HAPPENED?

19 DON'T KNOW.

20 BUT WE DO KNOW FROM OTHER TESTIMONY, THAT IT WAS
21 CHAD CRENSHAW THAT CAME AND PICKED HER UP AND ENDED UP
22 CARRYING HER BACK THERE, NOT HITCHHIKING, AS SHE SAID,
23 ALONG THE HIGHWAY.

24 AND SHANE ELLIOTT. CONTRADICTING THE MCCALLS, HE
25 SAID WE DIDN'T HAVE ANY GUNS WHEN I GOT THERE. SAID HE

1 DIDN'T DO ANY SHOOTING. SAID HE DID NOT PUT A GUN TO THE
2 HEAD OF NATHAN MCCALL. SAID I DIDN'T DO ANY OF THAT.
3 NO. NOT ME. HE DOES REMEMBER CHAD CRENSHAW COMING AND
4 PICKING UP THE GIRLS LATER ON. BUT HE DOESN'T REMEMBER
5 FIRING A PISTOL INTO THE WALL INSIDE THAT HOUSE INSIDE OF
6 A BEDROOM. DOESN'T REMEMBER THAT, NOT AT ALL. NOTHING.
7 WHEN THE JUDGE CHARGES YOU, HE WILL TALK TO YOU
8 AGAIN, AS I SAID, ABOUT WITNESSES AND CREDIBILITY. HE'S
9 GONNA CHARGE YOU THAT YOU MAY BELIEVE WHAT A WITNESS SAYS
10 OR YOU MAY NOT. YOU CAN BELIEVE PART OF WHAT A WITNESS
11 SAYS AND PART OF IT NOT. ALL OR NONE, SOME OR PART, IT'S
12 UP TO YOU. BUT AS YOU DO THAT, WHEN YOU THINK OF THE
13 TESTIMONY OF THESE WITNESSES, SEE HOW MUCH OF THAT REALLY
14 MAKES SENSE. HOW MUCH OF THAT CAN REALLY BE BOILED DOWN
15 TO THE ESSENCE OF TRUTH? CUT OUT ALL THE B.S. AND TRY TO
16 GET DOWN, LET'S GET DOWN TO WHAT THIS CASE IS ABOUT AND
17 THAT IS ROBBERY, ARMED ROBBERY, SHOOTING. DO ALL OF
18 THESE THINGS MESH TOGETHER ENOUGH TO CREATE BEYOND A
19 REASONABLE DOUBT THAT JEFF WEBB IS GUILTY? JEFF SPOKE TO
20 SCOTT ARNOLD AND HE ASKS HIM, WHAT WERE YOU DOING THERE?
21 I WAS THERE. TOLD HIM HE WAS THERE. I WENT THERE AND I
22 GOT THREE GRAMS OF ICE, OF METH, METHAMPHETAMINE. AND
23 THEN SHANE STARTS SHOOTING A PISTOL. AND I SAID LET'S
24 GET OUT OF HERE. AND HE TELLS HIM, HE SAID, I DID NOT
25 SHOOT INTO THAT HOUSE. HE ADMITTED THAT HE WAS AT THE

1 HOUSE, HE ADMITTED THAT HE WAS THERE AND GETTING DRUGS.
2 HE TOLD HIM ABOUT IT. HE SAID, I DIDN'T SHOOT ANYTHING.
3 SHANE DID. JUST LIKE NATHAN SAID HE DID. JUST LIKE
4 JASON SAID HE DID. SHANE DID THE SHOOTING. AND THEN
5 THEY LEFT.

6 WHEN HE SPOKE TO SCOTT ARNOLD, HE ANSWERED HIS
7 QUESTIONS. HE WAS UNDER ARREST, HE WAIVED HIS RIGHTS AND
8 SAID, YEAH, I'LL ANSWER QUESTIONS, OKAY. I WAS THERE.
9 HE READ YOU THAT ENTIRE STATEMENT HERE. SCOTT ARNOLD
10 SAYS HE READ THAT TO HIM, HAD HIM INITIAL ALL THAT WHERE
11 IT SAID, I HAVE A RIGHT TO REMAIN SILENT, I CAN TALK TO A
12 LAWYER, I DON'T HAVE TO SAY SAYING. THEY CAN'T MAKE ME
13 SAY ANYTHING UNLESS I WANT TO.

14 BUT HE ADMITTED THAT HE WAS THERE, HE ADMITTED THAT
15 HE GOT DRUGS, HE ADMITTED THAT THERE WAS A SHOT GONE ON
16 THERE, AND HE ADMITTED THAT NATHAN MCCALL APPARENTLY WAS
17 CORRECT ABOUT ONE THING AND THAT IS THAT SHANE FIRED THAT
18 SHOT. NOT HIM. NATHAN SAID THAT'S TRUE. THEY DID ALL
19 OF THAT.

20 AND NOW WE ARE HERE TODAY TO DETERMINE WHETHER OR
21 NOT THERE IS SUFFICIENT EVIDENCE TO CONVICT JEFF WEBB OF
22 THESE CRIMES. AND THAT'S YOUR JOB. YOU GET TO DO THAT.
23 YOU WILL BE LOOKING AT THE EVIDENCE. A BULLET, WHICH WE
24 KNOW ABSOLUTELY NOTHING ABOUT. WHAT KIND OF GUN IT CAME
25 FROM, ANY GUN IT CAME FROM, ANYTHING ELSE. WE DON'T

1 KNOW. THERE IS NOTHING TO TIE THIS BULLET WHATSOEVER
2 WITH JEFF WEBB, ABSOLUTELY NOTHING AT ALL.

3 YOU WILL ALSO BE LOOKING AT THE PICTURES, AND YOU'VE
4 GOT THE, HEARD THE 9-1-1 CALL, TALKING ABOUT THE BRONZE
5 OR GOLD CAR AND THEN THEY BRING YOU A SILVER CAR IN,
6 PICTURES OF A SILVER CAR TO LOOK AT.

7 BUT YOU WILL ALSO BE LOOKING AT THESE PICTURES.
8 ACCORDING TO DETECTIVE ARNOLD, IN THIS PICTURE, WHICH IS
9 2-E, THIS IS THE FRONT OF THE HOUSE HERE -- SORRY I
10 COULDN'T GET IT BLOWN UP -- BUT THIS IS THE FRONT OF THE
11 HOUSE. YOU WILL HAVE THIS BACK THERE WITH YOU. AND THE
12 TESTIMONY OF SCOTT ARNOLD WAS THAT THAT BULLET WENT IN
13 HERE. THERE'S A LIGHT THERE, A PORCH LIGHT. THAT'S
14 WHERE IT SAYS HERE IN 2-F THAT HE SAYS THE BULLET WENT IN
15 THERE. HERE OR HERE, HE WASN'T QUITE SURE WHICH ONE, HE
16 SAYS HE THINKS IT WAS ONE OF THEM, WHATEVER. BUT THAT'S
17 WHAT YOU'RE GOING TO BE LOOKING AT. LOOKING AT THAT AND
18 WHERE THAT IS IN FRONT OF THE HOUSE, OKAY?

19 THEN HE TESTIFIED IN 2-G THAT THAT BULLET CAME
20 THROUGH THE WALL THERE. YOU WILL NOTICE THAT THE DOOR IS
21 HERE AND THE BULLET HOLE IS OVER HERE. NOW, THESE
22 PICTURES ARE CERTAINLY NOT TO SCALE. DON'T CLAIM THEY
23 ARE. BUT IF YOU LOOK AT THE OTHER PICTURES, THEY JUST
24 DON'T MATCH UP. HE SAYS THAT BULLET CAME THROUGH
25 STRAIGHT THROUGH. THE TESTIMONY OF ALL WAS THAT WHEN

1 THEY LEFT, THAT IF JEFF WEBB SHOT, THE TESTIMONIES CLAIM
2 THAT HE SHOT AS HE WAS WALKING BACK UP TO THE CAR, GOING
3 UP THE HILL TO THE CAR OR WHATEVER; OR SCOTT ARNOLD WHO
4 SAYS, NOPE, THAT BULLET CAME THROUGH THERE MORE STRAIGHT,
5 THEN PERHAPS THEY WERE DRIVING AWAY OR SOMETHING AND JEFF
6 WEBB WAS DRIVING THE CAR.

7 IF YOU LOOK AT THOSE, IT'S A BIG DIFFERENCE WHERE
8 THEY SAY THAT BULLET WENT IN AND WHERE IT CAME OUT.

9 I'M NOT SURE IF THAT'S THE BULLET HOLE OR NOT. I
10 DON'T KNOW. BECAUSE NOBODY TESTED IT TO CHECK TO SEE IF,
11 IN FACT, THERE WAS ANYTHING FROM THAT COPPER-JACKETED
12 SHELL THAT WOULD HAVE BEEN LEFT ON THERE IN THE MANNER IN
13 WHICH IT MADE THE HOLE. WE DON'T KNOW. IT'S JUST ONE OF
14 THOSE QUESTIONS YOU'RE GOING TO HAVE TO LOOK AT TO
15 DETERMINE.

16 THE ONE THING WE DO KNOW, THAT INSIDE THE HOUSE THE
17 BULLET HOLES THAT THEY SAID SAME FROM SHANE ELLIOTT'S GUN
18 WHEN HE SHOT FROM THE BEDROOM INTO THE WALL IN THE
19 KITCHEN. YOU WILL HAVE ALL THOSE SHOWING THEY'RE NEXT TO
20 THE COUCH, SHOWING WHERE THAT BULLET WENT IN. AND ALL
21 THE TESTIMONY WAS THAT IT WAS SHANE'S. CERTAINLY NOT
22 JEFF WEBB'S. NOBODY WHO'S BEEN HERE SAID THAT JEFF WEBB
23 FIRED A GUN INSIDE THAT HOUSE AT ALL.

24 NOW, ALL OF THIS OF COURSE, WHEN YOU LOOK AT IT IN
25 THE BACK, IN YOUR JURY ROOM, I WANT YOU TO REMEMBER THAT

1 IT'S ALL GOT TO ADD UP. YOU'VE GOT TO GET TO THE END.
2 VERY SIMILAR TO A JIGSAW PUZZLE. THAT'S ONE OF THE
3 REASONS THAT I LIKE SNOW IS THAT MY WIFE AND I, AS SOON
4 AS IT STARTS TO SNOW, WE GET OUT A THOUSAND-PIECE JIGSAW
5 PUZZLE, CRANK UP THE FIREPLACE, AND WE WANT TO SIT THERE
6 AND DO THAT PUZZLE. AND THAT'S THE SAME THING IN THIS
7 KIND OF CASE. YOU PUT ALL THOSE PIECES IN THERE THEY'VE
8 BEEN TRYING TO PUT IN THERE, AND IT DOESN'T ADD UP. WE
9 STILL GOT PIECES MISSING. AND IF YOU CAN'T FIND THOSE
10 PIECES, THEN THEY'VE FAILED IN THEIR BURDEN OF PROOF.
11 AND WHAT MAKES THIS COUNTRY GREAT IS THEY MUST MEET THAT
12 BURDEN OF PROOF. THEY CAN'T JUST SAY IT, THEY GOT TO
13 PROVE IT. THEY GOT TO PROVE IT AND YOU'VE GOT TO ADMIT
14 TO IT THAT IT'S TRUE. YOU'VE GOT TO AGREE TO IT, YOU'VE
15 GOT TO ADD IT UP.

16 LADIES AND GENTLEMEN, ALL OF THIS ADDED UP STILL
17 DOES NOT COME UP WITH A FINAL SOLUTION. I ASK AGAIN, YOU
18 CONTINUED TO PAY ATTENTION, YOU HAVE PAID VERY CLOSE
19 ATTENTION, YOU PUT UP WITH ME WHEN I WAS BORING YOU TO
20 DEATH. BUT PLEASE UNDERSTAND, IT IS THAT IMPORTANT.
21 THIS IS HIS ONLY DAY IN COURT. THIS WAS IT. AT NO OTHER
22 TIME. IT'S UP TO YOU NOW. HE IS PLACING IN EFFECT THE
23 REST OF HIS LIFE INTO YOUR HANDS FOR YOU TO MAKE THAT
24 DECISION. THANK YOU.
25 COURT'S CHARGE TO THE JURY:

1 **THE COURT:** MADAM FORELADY, LADIES AND GENTLEMEN OF
2 THE JURY, YOU HAVE CERTAIN FUNCTIONS AND RESPONSIBILITIES
3 TO PERFORM WHICH ARE ENTIRELY SEPARATE AND DISTINCT FROM
4 MINE AS THE TRIAL JUDGE. I AM PROHIBITED BY THE
5 CONSTITUTION OF OUR STATE FROM CHARGING YOU ON THE FACTS
6 OF THIS CASE. I'M ALSO PROHIBITED FROM DISCUSSING THE
7 FACTS OF THE CASE WITH YOU OR IN ANY WAY INTIMATING WHAT
8 MY FEELINGS, IF ANY, ARE ABOUT THE FACTS OF THIS CASE.

9 IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO PASS
10 UPON ALL THE ISSUES OF FACTS PRESENTED IN THE CASE. I
11 WOULD, THEREFORE, CHARGE THAT YOU IF DURING THE COURSE OF
12 THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN GIVEN OR LEFT
13 WITH THE IMPRESSION OR FEELING THAT I DO HAVE A PERSONAL
14 FEELING ABOUT THE FACTS OF THE CASE, I WOULD SPECIFICALLY
15 INSTRUCT YOU TO DISREGARD THAT FEELING OR IMPRESSION.

16 MOREOVER, YOU ARE THE SOLE JUDGES OF WHAT THE
17 TESTIMONY WAS AND NOT THE ARGUMENT OF COUNSEL. IT IS
18 ALSO YOUR DUTY AND YOURS ALONE TO WEIGH THE TESTIMONY AND
19 EVIDENCE IN THE CASE AND TO PASS UPON THE CREDIBILITY OR
20 BELIEVABILITY OF THE WITNESSES.

21 IN THIS CONNECTION YOU HAVE THE RIGHT TO BELIEVE ALL
22 THAT A WITNESS TELLS YOU OR TO DISBELIEVE ALL THAT A
23 WITNESS TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE A PART
24 OF WHAT A WITNESS TELLS YOU OR TO DISBELIEVE A PART OF
25 WHAT A WITNESS TELLS YOU.

1 YOU HAVE THE RIGHT TO TAKE INTO CONSIDERATION ANY
2 BIAS OR PREJUDICE OR INTEREST THAT YOU FEEL A WITNESS
3 MIGHT HAVE IN THE CASE. I SAY THIS MERELY TO EMPHASIZE
4 THAT THE WEIGHT YOU SEE FIT TO GIVE TO THE TESTIMONY, TO
5 THE CREDIBILITY OF THE WITNESSES, AS WELL AS ALL ISSUES
6 OF FACT, ARE FOR YOUR DETERMINATION.

7 AS JUDGES OF THE FACTS YOU ARE THE SOLE JUDGES OF
8 THE CREDIBILITY, THAT IS THE BELIEVABILITY OF THE
9 WITNESSES WHO TESTIFIED IN THIS CASE.

10 IN PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO
11 CONSIDERATION MANY THINGS, SUCH AS THEIR APPEARANCE AND
12 MANNER OF THE WITNESS ON THE STAND, SOMETIMES REFERRED TO
13 AS THE Demeanor OF THE WITNESS. WAS THE WITNESS
14 FORTHRIGHT OR HESITANT? WAS THE WITNESS'S TESTIMONY
15 CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT WAS THE
16 ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH HE
17 OR SHE TESTIFIED? DID THE WITNESS HAVE A CAUSE OR A
18 REASON TO BE BIASED OR PREJUDICED IN FAVOR OF THE
19 TESTIMONY HE OR SHE GAVE? WAS THE TESTIMONY OF THE
20 WITNESS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY
21 AND EVIDENCE OR WAS IT MADE WEAKER OR IMPEACHED BY SUCH
22 OTHER TESTIMONY AND EVIDENCE?

23 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A SMALL
24 PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE LARGER.
25 OR VICE VERSA. YOU MAY BELIEVE ALL OF A WITNESS'S

1 TESTIMONY OR NONE. THROUGHOUT THIS ENTIRE PROCESS YOU
2 HAVE BUT ONE SINGLE OBJECTIVE AND THAT IS TO SEEK THE
3 TRUTH, REGARDLESS OF WHAT WITNESS THAT TESTIMONY MAY HAVE
4 COME.

5 NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES
6 YOU THE FINDERS OF THE FACTS AND THE EVIDENCE AS I'VE
7 DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE AND
8 ONLY INSTRUCTOR OF THE LAW. YOU MUST ACCEPT AS CORRECT
9 THE LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS
10 YOU FIND IT AND REACH A VERDICT. IF I MAKE AN ERROR IN
11 THE LAW AS I INSTRUCT IT TO YOU, THERE'S ANOTHER TIME AND
12 PLACE THAT THAT ERROR CAN BE CONSIDERED AND, IF
13 NECESSARY, CORRECTED. BUT FOR THE PURPOSE OF THIS CASE
14 TODAY, YOU MUST ACCEPT THE LAW AS I CHARGE IT TO YOU TO
15 BE THE CORRECT LAW.

16 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO EACH OF
17 THESE INDICTMENTS AND THAT PLEA PUTS THE BURDEN OF PROOF
18 ON THE STATE TO PROVE THE DEFENDANT GUILTY. THE
19 DEFENDANT CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
20 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
21 INNOCENTLY.

22 I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF LAW
23 THAT THE DEFENDANT IN A CRIMINAL CASE, NO MATTER WHAT THE
24 SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED
25 INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED

1 UNLESS THE GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING
2 YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

3 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
4 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE
5 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT
6 OF GUILTY BASED UPON EVIDENCE SATISFYING YOU OF THAT
7 GUILT BEYOND A REASONABLE DOUBT.

8 NOW, THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
9 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
10 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN
11 STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF
12 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

13 THE PRESUMPTION OF EVIDENCE IS NOT A MERE LEGAL
14 THEORY, IT IS NOT JUST A LEGAL PHRASE. IT IS A
15 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
16 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
17 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

18 WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS
19 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
20 HESITATE TO ACT.

21 IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL
22 INTENT IS REQUIRED. CRIMINAL INTENT MUST BE PROVEN BY
23 THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS
24 ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FOR
25 THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO

1 WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE
2 IS NO WAY MEDICAL SCIENCE CAN DISSECT THE PERSON'S BRAIN
3 AND DETERMINE WHAT THE PERSON HAD IN MIND. THE LAW SAYS
4 THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
5 CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU
6 MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
7 REQUIRING INTENT WAS PRESENT.

8 IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT
9 AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY
10 INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING
11 INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL OF THE
12 FACTS AND CIRCUMSTANCES OF THE CASE.

13 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
14 WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE
15 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN
16 TO HAVE EXISTED. CRIMINAL INTENT IS A STATE OF MIND THAT
17 OPERATES JOINTLY WITH AN ACT OR OMISSION IN THE
18 COMMISSION OF A CRIME.

19 CRIMINAL INTENT IS A MENTAL STATE. CRIMINAL
20 LIABILITY IS NORMALLY BASED UPON THE CONCURRENCE OF TWO
21 FACTORS: AN EVIL MEANING MIND AND AN EVIL DOING HAND.
22 PROOF OF INTENT NECESSARILY RESTS UPON INFERENCE FROM
23 CONDUCT.

24 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
25 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND

1 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
2 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE
3 OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH
4 IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

5 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
6 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT
7 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL
8 FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.
9 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
10 PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF THAT DOES
11 NOT ACTUALLY ESTABLISH THE FACT IN QUESTION BUT THAT
12 ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY
13 EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST
14 REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE
15 FACT IS TRUE. FOR CIRCUMSTANTIAL EVIDENCE TO BE
16 SUFFICIENT TO WARRANT A FINDING OF FACT, THE
17 CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE
18 CERTAINTY.

19 THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN
20 LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE. THE
21 EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION,
22 SURMISE OR CONJECTURE. THE LAW MAKES ABSOLUTELY NO
23 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO
24 EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A
25 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL

1 EVIDENCE THAN OF DIRECT EVIDENCE.

2 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE, AND
3 AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED
4 OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,
5 YOU MUST FIND THE DEFENDANT NOT GUILTY.

6 I CHARGE YOU THAT SUSPICION, HOWEVER STRONG, IS NOT
7 ENOUGH TO SUSTAIN A CONVICTION. THE EVIDENCE PRESENTED
8 BY THE STATE MUST BE SUBSTANTIAL EVIDENCE THAT TENDS TO
9 PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
10 DOUBT.

11 NOW, THE INDICTMENTS IN THIS CASE ALLEGE THREE
12 DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES
13 ARE IN INDICTMENT NUMBER 2009-GS-37-1279, ARMED ROBBERY
14 AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A
15 VIOLENT CRIME; 2009-GS-37-1280, DISCHARGING A FIREARM
16 INTO A DWELLING; AND 2009-GS-37-1282, AGAIN, ARMED
17 ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION
18 OF A VIOLENT CRIME.

19 EACH OF THE THREE CHARGES -- EXCUSE ME -- EACH OF
20 THE THREE INDICTMENTS CHARGES A SEPARATE AND DISTINCT
21 OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON
22 THE EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED
23 BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE
24 DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ONE OR ALL OF
25 THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A

1 SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH
2 INDICTMENT.

3 I REMIND YOU THAT THE FACT THE DEFENDANT WAS
4 ARRESTED, CHARGED AND INDICTED IN THIS CASE IS NOT
5 EVIDENCE IN THIS CASE, IT CANNOT BE CONSIDERED BY YOU AS
6 EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY
7 PRESUMPTION OR INFERENCE OF GUILT. INDICTMENTS ARE
8 SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE
9 CHARGES MADE AGAINST THE DEFENDANT. THEY ARE THE FORMAL
10 DOCUMENTS BY WHICH THE CASE IS BROUGHT INTO COURT.

11 NOW, THE DEFENDANT IS CHARGED WITH ARMED ROBBERY IN
12 TWO INDICTMENTS. IN ORDER TO PROVE THIS OFFENSE, THE
13 STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE
14 DEFENDANT TOOK PERSONAL PROPERTY FROM THE PERSON OR
15 PRESENCE OF ANOTHER PERSON. PROPERTY IS IN THE PRESENCE
16 OF A PERSON IF IT IS WITHIN THE PERSON'S REACH,
17 INSPECTION, OBSERVATION OR CONTROL, SO THAT THE PERSON
18 COULD, IF NOT OVERCOME WITH VIOLENCE OR PREVENTED BY
19 FEAR, KEEP POSSESSION OF THE PROPERTY.

20 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT
21 THAT THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO
22 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY OR TO KEEP
23 THE PROPERTY FOR THE DEFENDANT'S OWN USE. THE SLIGHTEST
24 REMOVAL OF THE PROPERTY OR COMPLETE POSSESSION OF THE
25 PROPERTY, EVEN FOR AN INSTANCE, BY THE DEFENDANT IS

1 SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF THE
2 PROPERTY. THE TAKING AND CARRYING AWAY OF THE PROPERTY
3 MUST HAVE BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER
4 OF THE PROPERTY IN FEAR OF VIOLENCE.

5 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
6 DOUBT THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON
7 DURING THE ROBBERY. A DEADLY WEAPON IS ANY ARTICLE,
8 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR
9 GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED
10 AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES
11 OF EACH CASE.

12 THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY
13 BE DEADLY WEAPONS: A PISTOL, SHOTGUN, A RIFLE, A DIRK, A
14 DAGGER, A KNIFE, A SLINGSHOT, METAL KNUCKLES, A RAZOR,
15 GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER
16 FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT
17 OPERATING. WHETHER A BEEBEE GUN IS A DEADLY WEAPON IS A
18 FACTUAL QUESTION FOR YOU TO DETERMINE.

19 NOW, UNDER SOUTH CAROLINA WE HAVE A PRINCIPLE KNOWN
20 AS LESSER-INCLUDED OFFENSES. SOME CRIMES THAT ARE OF A
21 LESSER OFFENSE ARE INCLUDED IN CRIMES WHICH ARE OF A
22 GREATER OFFENSE. IN THIS CASE THE OFFENSE OF ARMED
23 ROBBERY INCLUDES A LESSER OFFENSE OF ROBBERY.

24 IF YOU FIND THE STATE HAS PROVED THAT THE DEFENDANT
25 WAS ARMED WITH A DEADLY WEAPON, YOU MAY THEN CONSIDER THE

1 STATE HAS PROVED BEYOND A REASONABLE DOUBT THE DEFENDANT
2 COMMITTED ROBBERY.

3 EXCUSE ME. IF YOU FIND THE STATE HAS FAILED TO
4 PROVE THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON,
5 YOU MAY THEN CONSIDER WHETHER THE STATE HAS PROVED BEYOND
6 A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED ROBBERY.

7 IN ORDER TO PROVE ROBBERY THE STATE MUST PROVE
8 BEYOND A REASONABLE DOUBT ALL OF THE ELEMENTS I HAVE JUST
9 EXPLAINED TO YOU, EXCEPT THAT THE DEFENDANT WAS ARMED
10 WITH A DEADLY WEAPON.

11 IN ORDER TO PROVE ROBBERY THE STATE MUST PROVE
12 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE
13 PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER
14 PERSON WITHOUT THE PERSON'S CONSENT AND CARRIED IT AWAY.
15 PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS WITHIN
16 THE PERSON'S REACH, INSPECTION, OBSERVATION AND CONTROL
17 SO THE PERSON COULD, IF NOT OVERCOME BY VIOLENCE OR
18 PREVENTED BY FEAR, RETAIN POSSESSION OF THE PROPERTY.

19 THE STATE MUST ALSO SHOW THAT THE DEFENDANT CARRIED
20 THE PROPERTY AWAY WITH THE INTENT TO PERMANENTLY DEPRIVE
21 THE OWNER OF THE PROPERTY AND CONVERT THE PROPERTY TO THE
22 DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE
23 PROPERTY AND THE COMPLETE POSSESSION OF THE PROPERTY,
24 EVEN FOR AN INSTANCE BY THE DEFENDANT, IS SUFFICIENT TO
25 SHOW A TAKING OR CARRYING AWAY OF THE PROPERTY. THE

1 TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN
2 DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE
3 PROPERTY IN FEAR OF VIOLENCE.

4 IF YOU AS JURORS HAVE A REASONABLE DOUBT AS TO
5 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF, SHOWN ALL
6 OF THE ELEMENTS OF THE CRIME OF ARMED ROBBERY, YOU WOULD
7 THEN CONSIDER THE LESSER-INCLUDED OFFENSE OF ROBBERY.
8 THEN, SHOULD YOU HAVE A REASONABLE DOUBT AS TO WHETHER
9 THE STATE MET ITS BURDEN OF PROOF AND SHOWN ALL THE
10 ELEMENTS OF THE CRIME OF ROBBERY, YOU WOULD THEN FIND THE
11 DEFENDANT NOT GUILTY.

12 NOW, THE DEFENDANT IS ALSO CHARGED WITH POSSESSION
13 OF A WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT
14 A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A
15 REASONABLE DOUBT THE DEFENDANT WAS IN POSSESSION OF A
16 FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A
17 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

18 A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
19 REVOLVER, PISTOL, OR ANY WEAPON WHICH IS DESIGNED TO OR
20 MAY BE READILY CONVERTED TO EXPEL A PROJECTILE. IN ORDER
21 TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A WEAPON
22 DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST
23 FIND THE DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT
24 CRIME OR ATTEMPTING TO COMMIT A VIOLENT CRIME. SECTION
25 16-1-60 OF THE SOUTH CAROLINA CODE OF LAWS PROVIDES THAT

1 ARMED ROBBERY IS A VIOLENT CRIME.

2 NOW, THE DEFENDANT IS ALSO CHARGED WITH DISCHARGING
3 A FIREARM INTO A DWELLING. THE STATE MUST PROVE BEYOND A
4 REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY DISCHARGED
5 OR CAUSED TO BE DISCHARGED A FIREARM AT OR INTO A
6 DWELLING HOUSE, OTHER BUILDING STRUCTURE OR ENCLOSURE
7 REGULARLY OCCUPIED BY PERSONS.

8 A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
9 REVOLVER, PISTOL OR ANY WEAPON WHICH WILL AND IS DESIGNED
10 TO OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE. A
11 DWELLING IS ANY BUILDING OR PORTION OF A BUILDING WHERE A
12 PERSON ORDINARILY SLEEPS.

13 NOW, IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE
14 WHO ARE ACTING TOGETHER IN COMMITTING THE CRIME, THE ACT
15 OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH
16 ANOTHER TO ACCOMPLISH AN ILLEGAL PURPOSE IS CRIMINALLY
17 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH
18 OCCURS AS A NATURAL CONSEQUENCE OF HIS ACTIONS DONE IN
19 CARRYING OUT THE COMMON PLAN OR PURPOSE.

20 IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER
21 ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT
22 OF ONE IS THE ACT OF ALL, OR AS IT'S SOMETIMES SAID, THE
23 HAND OF ONE IS THE HAND OF ALL. PRIOR KNOWLEDGE THAT A
24 CRIME IS GOING TO BE COMMITTED WITHOUT MORE IS NOT
25 SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE

1 KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME,
2 EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS
3 COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS
4 A PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR
5 CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR
6 ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR
7 ARRANGEMENT, PLAN, OR COMMON SCHEME IS NECESSARY FOR A
8 FINDING OF GUILT AS A PRINCIPAL.

9 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY
10 COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE
11 HAND OF ALL. A PRINCIPAL IN A CRIME IS ONE WHO EITHER
12 ACTUALLY COMMITS A CRIME OR IS PRESENT AIDING, ABETTING
13 OR ASSISTING IN THE COMMISSION OF A CRIME. WHEN A PERSON
14 DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF
15 ANOTHER, THE ACT IS DONE BY BOTH. IF TWO OR MORE PEOPLE
16 ACTING WITH A COMMON PLAN OR PURPOSE ARE PRESENT AT THE
17 COMMISSION OF THE CRIME, IT DOES NOT MATTER WHO ACTUALLY
18 COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS
19 THE HAND OF ALL.

20 PRESENT AT THE COMMISSION OF CRIME SUFFICIENTLY NEAR
21 TO AID AND ABET AND ASSIST IN THE COMMISSION OF A CRIME.
22 HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT
23 SUFFICIENT TO CONVICT ONE AS A PRINCIPAL WITH THE THEORY
24 OF AIDING AND ABETTING. INTENT IS ALSO A NECESSARY
25 ELEMENT, BUT THERE MUST HAVE BEEN A COMMON DESIGN OR

1 INTENT TO COMMIT THE CRIME, AND THE CRIME MUST HAVE BEEN
2 COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND
3 ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE
4 RESULT WHICH ACTUALLY OCCURS NOT ACCIDENTALLY OR
5 INVOLUNTARILY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT
6 WITH THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU
7 MAY NATURALLY AND REASONABLY INFER INTENT. THE STATE
8 MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

9 NOW, I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT
10 THE DEFENDANT DID NOT TESTIFY OR PUT UP EVIDENCE IS NOT A
11 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
12 DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION
13 OF WHETHER THE STATE HAS PROVEN THE DEFENDANT IS GUILTY
14 OR NOT GUILTY OF THE CHARGES IN THE INDICTMENT. IT MUST
15 NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. THE
16 DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN SILENT AND
17 THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU
18 IN YOUR DELIBERATIONS.

19 I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO
20 CONCLUSION WHATSOEVER FROM THE FACT THE DEFENDANT IN THIS
21 CASE DID NOT TESTIFY OR PRESENT EVIDENCE. THE FACT THAT
22 THE DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE
23 DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I
24 HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS
25 NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF

1 REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE
2 DOUBT.

3 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF
4 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
5 SIMPLY MEANS BELIEVABILITY. IN THIS REGARD IT IS
6 PROVIDED IT BECOMES YOUR DUTY AS JURORS TO EVALUATE THE
7 EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF
8 ITS TRUTH.

9 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
10 HAVE TESTIFIED IN THIS CASE, YOU MAY CONSIDER EVIDENCE
11 THAT THE PERSON HAS BEEN CONVICTED OF CERTAIN CRIMES.
12 MOREOVER, YOU MAY BELIEVE ONE OVER SEVERAL WITNESSES OR
13 SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A
14 PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
15 REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS.
16 YOU MAY BELIEVE A WITNESS IN ITS ENTIRETY OR REJECT THE
17 TESTIMONY OF A WITNESS IN ITS ENTIRETY.

18 YOU MAY CONSIDER WHETHER A WITNESS HAS AN INTEREST
19 IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS
20 PREJUDICED TOWARDS THE PLAINTIFF OR THE DEFENDANT, THE
21 OPPORTUNITY FOR THESE WITNESSES TO HAVE SEEN THE MATTERS
22 AND THINGS ABOUT WHICH THAT WITNESS MAY TESTIFY, AND THE
23 WAY THE WITNESS ACTS ON THE WITNESS STAND.

24 THE STATE HAS THE BURDEN OF PROOF AND MUST ESTABLISH
25 EACH ELEMENT OF EACH OF THE CHARGES BEYOND A REASONABLE

1 DOUBT. YOU SHOULD ENTER YOUR VERDICT BASED ON WHETHER OR
2 NOT YOU ARE SATISFIED THE STATE HAS ESTABLISHED BEYOND A
3 REASONABLE DOUBT ALL OF THE ELEMENTS OF THE CHARGED
4 OFFENSE IN EACH INDICTMENT.

5 IF YOU AS JURORS HAVE A REASONABLE DOUBT WHETHER THE
6 STATE MET ITS BURDEN OF PROOF AND SHOWN ALL THE ELEMENTS
7 OF THE CHARGE IN EACH OF THESE INDICTMENTS, YOU WOULD
8 FIND THE DEFENDANT NOT GUILTY UNDER THAT INDICTMENT.

9 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY,
10 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS SWORN
11 TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE.
12 WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL
13 HAVE THE RIGHT TO CRITICIZE YOUR VERDICT AND YOU WILL
14 HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

15 YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR
16 EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE HEARD
17 ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE ACCORDING
18 TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE
19 SWORN WITNESSES, ALONG WITH THE OTHER EVIDENCE THAT MAY
20 HAVE BEEN INTRODUCED.

21 AS I SAID EARLIER, YOU ARE THE JUDGES OF THE FACTS
22 IN THIS CASE AND YOU ARE TO DETERMINE ONLY IF THIS
23 DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE
24 TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL AND AFTER
25 APPLYING THE LAW AS I HAVE GIVEN IT TO YOU AS TO EACH

1 CHARGE IN EACH INDICTMENT. IF FROM THE EVIDENCE YOU HAVE
2 A REASONABLE DOUBT AS TO WHETHER OR NOT THE DEFENDANT IS
3 GUILTY OF A PARTICULAR CHARGE, IT IS YOUR DUTY TO ACQUIT
4 HIM AND WRITE THE WORDS "NOT GUILTY."

5 UNDER THE OATH YOU TOOK YOU SWORE TO TRY THIS CASE
6 BASED ONLY AND SOLELY ON THE FACTS AND EVIDENCE AND
7 TESTIMONY AND LAW PRESENTED AND HEARD IN THIS COURTROOM.
8 IT IS YOUR DUTY TO LAY ASIDE ALL BIAS OR PREJUDICE OR
9 SYMPATHY YOU MAY HAVE IN REACHING YOUR VERDICT. YOU HAVE
10 NO FRIENDS TO REWARD OR ENEMIES TO PUNISH IN THIS CASE.

11 I MIGHT NOTE THAT THE WORD "VERDICT" COMES FROM THE
12 LATIN TERM "*VEREDICTO*" WHICH MEANS TO SPEAK THE TRUTH.
13 ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH SPEAKS THE
14 TRUTH.

15 NOW, MADAM FORELADY, I HAVE PREPARED A VERDICT FORM
16 FOR YOU TO USE FOR THE JURY. AS YOU WILL REMEMBER, AS I
17 INSTRUCTED YOU FIRST, WHATEVER THE VERDICT IS AS TO EACH
18 OF THESE CHARGES ON EACH OF THE INDICTMENTS, IT MUST BE A
19 UNANIMOUS VERDICT; IN OTHER WORDS, ALL 12 MEMBERS OF THE
20 JURY MUST AGREE TO THAT VERDICT. HOWEVER, MADAM
21 FORELADY, YOU ARE THE ONE WHO WILL CHECK THE APPROPRIATE
22 BLANK AS TO EACH INDICTMENT AND EACH CHARGE IN EACH
23 INDICTMENT.

24 WE START WITH INDICTMENT NUMBER 2009-GS-37-1279.
25 AND THE POSSIBLE VERDICTS ARE: WE, THE JURY, UNANIMOUSLY

1 FIND THE DEFENDANT, JEFFREY A. WEBB, IS GUILTY OF ARMED
2 ROBBERY OF NATHAN MCCALL AND GUILTY OF POSSESSION OF A
3 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. OR IF
4 YOU DO NOT FIND OF THE COMMISSION OF A VIOLENT CRIME,
5 GUILTY OF ROBBERY OF NATHAN MCCALL. OR NOT GUILTY.

6 WHATEVER THE VERDICT IS, IT WILL BE ONE VERDICT AND
7 WHATEVER THAT VERDICT IS -- EXCUSE ME -- IT CAN BE -- IT
8 WILL BE ONE VERDICT BECAUSE YOU WILL HAVE EITHER GUILTY
9 OF ONE OF THOSE THREE CHARGES OR NOT GUILTY.

10 IN INDICTMENT 2009-GS-37-1280: WE, THE JURY,
11 UNANIMOUSLY FIND THE DEFENDANT, JEFFREY A. WEBB, IS
12 GUILTY OF DISCHARGING A FIREARM INTO A DWELLING OR NOT
13 GUILTY OF DISCHARGING A FIREARM INTO A DWELLING.

14 AND THEN IN INDICTMENT NUMBER 2009-GS-37-1282: WE,
15 THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JEFFREY A.
16 WEBB, IS GUILTY OF ARMED ROBBERY AND GUILTY OF POSSESSION
17 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, OR
18 GUILTY OF ROBBERY OF JASON MCCALL, OR NOT GUILTY.

19 WHATEVER YOUR VERDICT IS, AS I SAY, TO EACH OF THESE
20 CHARGES IN EACH INDICTMENT, IT MUST BE UNANIMOUS. ONCE
21 YOU HAVE CHECKED THE APPROPRIATE BLANK AS TO REPRESENT
22 THE UNANIMOUS VERDICT OF THE JURY, THEN YOU WILL SIGN
23 YOUR NAME, KNOCK ON THE DOOR, RETURN TO THE COURTROOM
24 WITH YOUR VERDICT.

25 I'M GONNA HAVE TO ASK YOU TO RETIRE ONE MORE TIME TO

1 THE JURY ROOM AND NOT BEGIN DELIBERATIONS UNTIL I SEND
2 THE VERDICT FORM IN WITH THE EXHIBITS. THAT WILL JUST
3 TAKE A FEW MINUTES. I NEED TO TAKE UP MATTERS WITH THE
4 ATTORNEYS. BUT LIKE I SAY, ONCE YOU RECEIVE THE VERDICT
5 FORM AND THE EXHIBITS, BEGIN YOUR DELIBERATIONS.

6 MADAM ALTERNATE, IF YOU WOULD PLEASE STAY WITH US.

7 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
8 3:52 P.M., EXCEPT FOR THE ALTERNATE JUROR.)

9 **THE COURT:** ALL RIGHT. ANY EXCEPTIONS OR REQUESTS
10 FROM THE STATE?

11 **MR. WAGNER:** NO, SIR.

12 **THE COURT:** FROM THE DEFENSE?

13 **MR. DAY:** NONE, YOUR HONOR. EXCEPT IF I HEARD THE
14 VERDICT FORM?

15 **THE COURT:** ALL RIGHT. LET'S LOOK AT THE VERDICT
16 FORM TO BE SURE WE HAVE IT RIGHT. IN OTHER WORDS, ARMED
17 ROBBERY CAN BE WITHOUT POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT CRIME. BUT YOU CAN ALSO HAVE
19 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE
20 COMMISSION OF A VIOLENT CRIME. OR YOU CAN HAVE THE
21 LESSER-INCLUDED OFFENSE OF ROBBERY. OR YOU CAN HAVE NOT
22 GUILTY.

23 **MR. DAY:** I WAS THINKING, YOUR HONOR, IS IT POSSIBLE
24 TO SUBMIT A NOT GUILTY TO THE ARMED ROBBERY?

25 **THE COURT:** YES. THAT'S THE BOTTOM ONE.

1 **MR. DAY:** OH.

2 **THE COURT:** IN OTHER WORDS, IF THEY DON'T CHECK
3 ARMED ROBBERY, THEN THEY CAN'T CHECK POSSESSION OF A
4 WEAPON. BUT THEY COULD CHECK -- I MEAN OR THEY COULD,
5 BUT THEY COULD FIND ROBBERY, OR THEY COULD FIND NOT
6 GUILTY ON ALL CHARGES OR ANY CHARGES. NOT ALL CHARGES,
7 BUT ANY CHARGES.

8 **MR. DAY:** OKAY. I JUST WANTED TO MAKE SURE I HEARD
9 IT RIGHT.

10 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM THE
11 DEFENDANT?

12 **MR. DAY:** YES, YOUR HONOR. ONE OF THE EXHIBITS,
13 WHICH IS THE 9-1-1 CALLS, DOES THAT STILL HAVE THE OTHER
14 THREE TRACKS ON IT?

15 **MR. WAGNER:** YEAH.

16 **THE COURT:** ALL RIGHT. NOW, AGAIN, I THINK YOU
17 UNDERSTAND -- BOTH OF YOU ALL TRIED CASES WITH ME -- I DO
18 NOT SEND BACK AUDIO OR VIDEO. SO IF THEY WISH TO HEAR
19 THE AUDIO, WE'LL BRING THEM OUT AND IT WILL BE PLAYED IN
20 THE COURTROOM. THAT WAY WE KNOW EXACTLY WHAT THEY'RE
21 HEARING AND WE DON'T TAKE THE CHANCE OF MARIE -- WHAT WAS
22 HER NAME -- THE SECRETARY FOR PRESIDENT NIXON THAT HIT
23 THE WRONG BUTTON AND ELIMINATED 18 MINUTES OF TESTIMONY.
24 ALL RIGHT. SO WITH THAT WE'LL SEND THE CASE BACK TO
25 THE JURY. DO LOOK OVER THE EXHIBITS AND BE SURE WHAT

1 GOES BACK DOES GO BACK. I THINK YOU CAN SEND THE AUDIO
2 BACK, OR DVD OR WHATEVER, BUT IT DOESN'T HAVE A PLAYER SO
3 IF THEY WANT TO HEAR IT, THEN THEY...

4 (DISCUSSION OFF THE RECORD.)

5 (THE COURT CONFERRED WITH THE ALTERNATE JUROR
6 OFF THE RECORD, AFTER WHICH THE ALTERNATE
7 JUROR WAS EXCUSED.)

8 **THE COURT:** ALL RIGHT, GENTLEMEN, I WANT TO THANK
9 YOU FOR A VERY WELL-TRIED CASE. IT HAD A LOT MORE INTO
10 IT THAN IT MIGHT HAVE APPEARED, SO I DO THANK YOU FOR --

11 **MR. WAGNER:** THANK YOU, JUDGE.

12 **THE COURT:** -- YOUR PROFESSIONAL WAY OF TRYING
13 CASES. WELL, IT'S IN THE HANDS OF THE JURY NOW. WE'LL
14 FIND OUT. THANK YOU.

15 (WHEREUPON, THE JURY BEGAN ITS DELIBERATIONS
16 AT APPROXIMATELY 3:58 P.M.)

17 (WHEREUPON, THERE WAS A NOTE FROM THE JURY AT
18 4:00 P.M.)

19 (MARKED FOR IDENTIFICATION WAS COURT'S
20 EXHIBIT 2, JURY NOTE RE 9-1-1 CALL.)

21 **THE COURT:** LET'S GET THE DEFENDANT. WE'RE BACK IN
22 TRIAL.

23 (WHEREUPON, THE DEFENDANT RETURNED TO THE
24 COURTROOM.)

25 **THE COURT:** ARE WE READY FOR THE JURY NOW, FROM THE

1 STATE?

2 MR. WAGNER: YES.

3 THE COURT: FROM THE DEFENSE?

4 MR. DAY: YES.

5 THE COURT: ALL RIGHT. BRING THE JURY IN.

6 (THE JURY ENTERED THE COURTROOM AT
7 APPROXIMATELY 4:07 P.M.)

8 THE COURT: MADAM FORELADY, I HAVE A MESSAGE HERE
9 (READING): WE WOULD LIKE TO REPLAY THE 9-1-1 CALL, AND
10 SO WE HAVE SET IT UP SO IT CAN BE PLAYED. AND WE CAN
11 PLAY IT AS MANY TIMES AS YOU WANT. BUT I DO REQUIRE IT
12 BE PLAYED IN THE COURTROOM BECAUSE IT'S TESTIMONIAL JUST
13 LIKE THE TESTIMONY OF A WITNESS.

14 SO, THEREFORE, IF YOU WOULD, PLEASE.

15 (WHEREUPON, THE 9-1-1 CALL WAS REPLAYED FOR
16 THE JURY FROM APPROXIMATELY 4:08 P.M. UNTIL
17 APPROXIMATELY 4:13 P.M.)

18 MR. WAGNER: THERE WAS ANOTHER ONE WHEN THEY CALLED
19 BACK, BUT I DIDN'T KNOW WHAT THEY WANTED TO HEAR.

20 THE COURT: PLAY BOTH OF THEM.

21 A JUROR: SURE.

22 (WHEREUPON, THE SECOND 9-1-1 CALL WAS
23 REPLAYED FOR THE JURY FROM APPROXIMATELY 4:14
24 P.M. UNTIL APPROXIMATELY 4:15 P.M.)

25 THE COURT: MADAM FORELADY, DO YOU WANT TO PLAY IT

1 AGAIN OR IS THAT...

2 (JURY CONFERS IN JURY-BOX).

3 **THE FORELADY:** THAT'S ENOUGH.

4 **THE COURT:** VERY GOOD. THANK YOU VERY MUCH.

5 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
6 4:15 P.M.)

7 **THE COURT:** ALL RIGHT. IS THERE ANYTHING FROM THE
8 STATE?

9 **MR. WAGNER:** NO, SIR, YOUR HONOR.

10 **THE COURT:** FROM THE DEFENDANT?

11 **MR. DAY:** NO, SIR, YOUR HONOR, THANK YOU.

12 **THE COURT:** ALL RIGHT. WE'LL STAND AT EASE.

13 (WHEREUPON, THE JURY CONTINUED ITS
14 DELIBERATIONS AT APPROXIMATELY 4:15 P.M.)

15 (WHEREUPON, THERE WAS A QUESTION FROM THE
16 JURY AT APPROXIMATELY 5:00 P.M.)

17 (DISCUSSION OFF THE RECORD.)

18 **THE COURT:** WE'RE BACK ON THE RECORD NOW. WE PLAYED
19 BACK THAT PORTION THAT WE UNDERSTAND IS THE NOTES FROM
20 THE INTERVIEW. IS THERE ANY EXCEPTION TO THAT FROM THE
21 STATE?

22 **MR. WAGNER:** NO, SIR.

23 **THE COURT:** FROM THE DEFENSE?

24 **MR. DAY:** JUST TO MAKE SURE I UNDERSTAND, MS. HILD,
25 IT STARTS AT "ALL THREE OF THEM WENT THERE" AND IT ENDS

1 AT "DID NOT DISCHARGE IN OR AT THE RESIDENCE"? IS THAT
2 WHERE WE'RE GOING AND STOPPING?

3 **THE COURT:** NO. IT GOES TO THAT POINT WHERE HE SAYS
4 BASICALLY THAT ENDS THE INTERVIEW.

5 **MR. DAY:** OH, OKAY.

6 **THE COURT:** I THINK IT'S IS THAT RIGHT OR SOMETHING
7 LIKE THAT AND HE SAYS YES, AND THEN THEY GO ON TO
8 SOMETHING ELSE. BUT IT HAS THAT PART IN THERE.

9 **MR. DAY:** ALL RIGHT. NO OBJECTION.

10 **THE COURT:** ASK THE JURY TO JOIN US, PLEASE.
11 (WHEREUPON, A PORTION OF THE TESTIMONY OF
12 DETECTIVE SCOTT ARNOLD DURING DIRECT
13 EXAMINATION WAS PLAYED BACK FOR THE JURY BY
14 THE COURT REPORTER, FROM PAGE 185, LINE 12,
15 THROUGH PAGE 186 LINE 8, AS FOLLOWS:)

16 (DURING DIRECT EXAMINATION BY MR. WAGNER):

17 Q. WHAT DID HE TELL YOU ABOUT THE MCCALLS' RESIDENCE,
18 WHAT DID HE TELL YOU?

19 A. BASICALLY THEY ALL WENT THERE, HE, SHANE, MARIA
20 AND NICKIE, THEY ALL WENT THERE. HE SAID THAT SHANE GOT
21 ON THE BED WITH, WITH NATHAN. HE STATED HE DID NOT
22 DISCHARGE A FIREARM. HE ALSO STATED THAT HE, THAT HE
23 TOOK THREE AND A HALF GRAMS OF ICE FROM JASON. HE SAID
24 IT WASN'T MONEY, HE STATED THAT HE TOOK ICE.

25 HE SAID HE DID HEAR A GUN GO OFF. AFTER ALL THAT,

1 HE TOLD SHANE "WE NEED TO GET THE HELL OUT OF THERE."
2 THAT'S WHAT HE TOLD ME.

3 BUT HE STATED HE DIDN'T, HE DIDN'T DISCHARGE A
4 FIREARM INSIDE THE RESIDENCE OR AT THE RESIDENCE.

5 Q. IN YOUR 15 YEARS ON THE FORCE, WHAT DOES ICE MEAN?

6 A. THAT'S METHAMPHETAMINE.

7 Q. ALL RIGHT. SO BASICALLY HE SAID HE DIDN'T DO
8 ANYTHING?

9 A. BASICALLY HE SAID HE DIDN'T DO ANYTHING.

10 Q. OKAY. AND BASED ON THAT DID HE -- DID YOU
11 TERMINATE THE INTERVIEW ESSENTIALLY SOON AFTER THAT?

12 A. PRETTY MUCH.

13 Q. OKAY.

14 (CONCLUSION OF REQUESTED PORTION OF TESTIMONY
15 PLAYED BACK FOR JURY BY COURT REPORTER.)

16 **THE FORELADY:** DO YOU ALL NEED TO HEAR IT AGAIN?

17 **A JUROR:** NO.

18 **THE COURT:** ALL RIGHT. IS THAT WHAT YOU NEEDED?

19 **THE FORELADY:** YES.

20 **THE COURT:** VERY GOOD. THANK YOU VERY MUCH.

21 CONTINUE YOUR DELIBERATIONS.

22 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
23 5:18 P.M. AND CONTINUED THEIR DELIBERATIONS.)

24 **THE COURT:** ALL RIGHT. ANYTHING FROM THE STATE?

25 **MR. WAGNER:** NO, SIR.

1 **THE COURT:** FROM THE DEFENSE?

2 **MR. DAY:** NO, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. WE'LL WAIT FOR THE VERDICT.

4 VERDICT OF THE JURY:

5 (WHEREUPON, THE JURY REACHED A VERDICT AT

6 APPROXIMATELY 5:55 P.M.)

7 **THE COURT:** ALL RIGHT. IT IS MY UNDERSTANDING THAT

8 THE JURY HAS REACHED A VERDICT. IS THERE ANYTHING FROM

9 THE STATE BEFORE WE BRING THE JURY BACK?

10 **MR. WAGNER:** NO, SIR.

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

12 **MR. DAY:** NO, YOUR HONOR.

13 **THE COURT:** ASK THE JURY TO JOIN US, PLEASE.

14 (THE JURY ENTERED THE COURTROOM AT

15 APPROXIMATELY 5:59 P.M.)

16 **THE COURT:** ALL RIGHT. MADAM FORELADY, I UNDERSTAND

17 THE JURY HAS REACHED A VERDICT?

18 **THE FORELADY:** THAT'S CORRECT.

19 **THE COURT:** IF YOU WOULD PLEASE PASS IT UP TO THE

20 BAILIFF.

21 **THE FORELADY:** (COMPLIES.)

22 **THE COURT:** MADAM CLERK, IF YOU WOULD PLEASE PUBLISH

23 THE VERDICT.

24 IF THE DEFENDANT WOULD PLEASE STAND.

25 **THE CLERK:** IN THE STATE OF SOUTH CAROLINA VERSUS

1 JEFFREY A. WEBB, INDICTMENT NUMBER 2009-GS-37-1279. WE,
2 THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JEFFREY A.
3 WEBB, IS GUILTY OF ARMED ROBBERY OF NATHAN MCCALL AND
4 GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION OF
5 A VIOLENT CRIME.

6 ON INDICTMENT NUMBER 2009-GS-37-1280: WE, THE JURY,
7 UNANIMOUSLY FIND THAT THE DEFENDANT, JEFFREY A. WEBB, IS
8 NOT GUILTY.

9 INDICTMENT NUMBER 2009-GS-37-1282: WE, THE JURY,
10 UNANIMOUSLY FIND THAT THE DEFENDANT, JEFFREY A. WEBB, IS
11 GUILTY OF ARMED ROBBERY OF JASON MCCALL AND GUILTY OF
12 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
13 CRIME.

14 LADIES AND GENTLEMEN OF THE JURY, IF THIS WAS YOUR
15 VERDICT AND REMAINS YOUR VERDICT, PLEASE INDICATE SO BY
16 RAISING YOUR RIGHT HAND.

17 LET THE RECORD REFLECT THAT ALL MEMBERS OF THE JURY
18 HAVE RAISED THEIR RIGHT HAND.

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

20 YOU MAY SIT DOWN.

21 ALL RIGHT. IS THERE ANYTHING FROM THE JURY FROM THE
22 STATE BEFORE DISCHARGE?

23 **MR. WAGNER:** NO, SIR.

24 **THE COURT:** FROM THE DEFENSE?

25 **MR. DAY:** NONE, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. MADAM FORELADY, LADIES AND
2 GENTLEMEN OF THE JURY, THE COURT IS NEVER INTERESTED IN A
3 VERDICT, ONLY HOW THAT VERDICT IS REACHED. AND I CAN
4 ASSURE YOU, NOT ONLY FROM YOUR QUESTIONS AND OTHER
5 CONCERNS THAT YOU HAD DURING YOUR DELIBERATIONS, BUT ALSO
6 ALTHOUGH IT LOOKS LIKE I'M DOING EVERYTHING BUT PAYING
7 ATTENTION UP HERE I NOTICED THROUGHOUT THE TRIAL THAT
8 EACH OF YOU PAID VERY CAREFUL AND CLOSE ATTENTION. I
9 TOLD THIS ALSO TO THE ALTERNATE WHEN I DISCHARGED HER.
10 AND HAVING DONE SO, I AM SATISFIED THAT YOU GAVE BOTH THE
11 STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL, AND
12 HAVING DONE SO, YOU HAVE SERVED THE HIGHEST DUTY THAT A
13 CITIZEN CAN SERVE, AND I DO THANK YOU FOR YOUR SERVICE ON
14 THIS CASE.

15 UNFORTUNATELY --

16 THEY'LL CALL BACK TOMORROW NIGHT, RIGHT?

17 **THE CLERK:** AFTER 6:00.

18 **THE COURT:** UNFORTUNATELY, WE STILL HAVE SOME WORK
19 THAT WE NEED TO DO THIS WEEK, AND IT COULD BE THAT WE'LL
20 TRY ANOTHER CASE. WE'VE GOT ONE WE ARE STARTING IN THE
21 MORNING, THERE IS ANOTHER JURY AFTER YOU. BUT I'M GONNA
22 HAVE TO ASK YOU TO CALL IN AFTER 6:00. AND DO YOU HAVE
23 THAT TELEPHONE NUMBER? IF NOT, WE'LL GIVE YOU ANOTHER.
24 BUT IT'S AN ANSWERING MACHINE AND IT'LL BE ON AFTER 6:00.
25 WELL, I GUESS IT'S ON NOW. WHY DON'T WE JUST GIVE THEM

1 THE MESSAGE? THEY NEED TO CALL THAT NUMBER, THAT'S
2 RIGHT, AFTER 6:00. BUT THE MESSAGE NOW IS THE REMAINING
3 JURORS -- AND THAT'S WHAT YOU WILL BE KNOWN AS, IN OTHER
4 WORDS, NOT THE TRIAL JURY BECAUSE THAT'S THE ONE THAT'S
5 COMING IN TOMORROW -- BUT YOU WILL DO WHAT THE REMAINING
6 JURORS ARE REQUESTED TO DO. BUT THAT WILL BE OUR MESSAGE
7 AFTER 6:00. SO ANYBODY THAT DOES NOT HAVE THE NUMBER,
8 PLEASE RAISE YOUR RIGHT HAND.

9 (DISCUSSION OFF THE RECORD.)

10 (THE CLERK GIVES JURORS PIECES OF PAPER WITH
11 THE PHONE NUMBER ON IT.)

12 **THE COURT:** IT'S TOMORROW NIGHT. NOW, THAT WILL BE
13 WEDNESDAY NIGHT, NOT TONIGHT. YOU WILL GET THE DAY OFF
14 TOMORROW, BUT CALL BACK AFTER 6:00. AND WHATEVER THE
15 MESSAGE IS, IF YOU WOULD PLEASE DO THAT, I WOULD
16 APPRECIATE IT.

17 NOW, THAT DOES COMPLETE YOUR SERVICE ON THIS
18 PARTICULAR TRIAL AND I DO THANK YOU.

19 EVERYONE IS EXCUSED NOW, EXCEPT I DO NEED THE
20 FORELADY TO CONFORM THE INDICTMENT TO THE VERDICT FORM.

21 ALL RIGHT. SO YOU MAY BE EXCUSED. THANK YOU.

22 (THE JURY LEFT THE COURTROOM AT APPROXIMATELY
23 6:05 P.M., EXCEPT FOR THE FORELADY.)

24 (WHEREUPON, THE FORELADY AND THE COURT
25 CONFERRED OFF THE RECORD, AFTER WHICH THE

1 FORELADY WAS EXCUSED.)

2 SENTENCING OF DEFENDANT:

3 **THE COURT:** ALL RIGHT. IS THE STATE READY?

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

5 **THE COURT:** ALL RIGHT. MR. DAY, MR. WEBB, IF YOU
6 WOULD COME AROUND, PLEASE?

7 ALL RIGHT. THE DEFENDANT, JEFFREY A. WEBB, HAS BEEN
8 FOUND GUILTY OF TWO COUNTS OF ARMED ROBBERY AND TWO
9 COUNTS OF POSSESSION OF A WEAPON DURING THE COMMISSION OF
10 A VIOLENT CRIME ON THOSE INDICTMENTS, 2009-GS-37-1279 AND
11 2009-GS-37-1282. HE HAS BEEN FOUND NOT GUILTY ON
12 INDICTMENT 2009-GS-37-1280, DISCHARGING A FIREARM INTO A
13 DWELLING.

14 MR. SOLICITOR, WHAT IS THE MAXIMUM SENTENCE ON ARMED
15 ROBBERY?

16 **MR. WAGNER:** 30 YEARS, JUDGE.

17 **THE COURT:** MANDATORY MINIMUM OF TEN?

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

19 **THE COURT:** TEN TO 30. WHAT IS THE MAXIMUM SENTENCE
20 ON POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT
21 CRIME?

22 **MR. WAGNER:** FIVE YEARS, I BELIEVE, JUDGE. I'M NOT
23 POSITIVE.

24 **THE COURT:** ISN'T THERE ALSO SOME EFFECT THAT IF THE
25 MINIMUM MANDATORY ON THE VIOLENT CRIME IS MORE THAN THE

1 FIVE YEARS? MR. DAY?

2 **MR. DAY:** THAT'S CORRECT, YOUR HONOR. IF IT IS MORE
3 THAN THE -- IF THE MAXIMUM MINIMUM SENTENCE IS GREATER
4 THAN FIVE YEARS, IT'S NOT ADDED TO IT.

5 **THE COURT:** VERY WELL. IN THAT CASE IT CAN BE RUN
6 CONCURRENT, SUBSUMED?

7 **MR. DAY:** THAT'S CORRECT.

8 **THE COURT:** SO WE ARE LOOKING AT A POSSIBILITY OF 20
9 TO 60 YEARS; IS THAT CORRECT?

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

11 **THE COURT:** MR. DAY, IS THAT WHAT YOU UNDERSTAND?

12 **MR. DAY:** YES, SIR.

13 **THE COURT:** ALL RIGHT. MR. SOLICITOR, WHAT IS THE
14 PRIOR RECORD? OR DO YOU HAVE ANYTHING FROM THE VICTIMS,
15 IS THERE ANYONE THAT WANTS TO SPEAK?

16 **MR. WAGNER:** NO, SIR. NOBODY WANTS TO SAY ANYTHING
17 AT THIS TIME.

18 YOUR HONOR, HE WAS CONVICTED OF SHOPLIFTING IN
19 '92 --

20 **THE COURT:** OH, BY THE WAY, I MIGHT NOTE THAT THE
21 VICTIM HAS BEEN IN COURT DURING THIS TRIAL UNTIL IT WENT
22 TO THE JURY. VERY GOOD.

23 **MR. WAGNER:** HE JUST LEFT A FEW MINUTES AGO, SAID HE
24 HAD TO GO PICK SOMEBODY UP.

25 CONVICTED OF SHOPLIFTING IN '92; MALICIOUS DAMAGE TO

1 PROPERTY LESS THAN \$200 IN '93; SHOPLIFTING, OPEN LIQUOR
2 IN A VEHICLE, POSSESSION OF BEER BY A MINOR, CRIMINAL
3 DOMESTIC VIOLENCE IN '94; ASSAULT AND BATTERY WITH INTENT
4 TO KILL, HE GOT TEN YEARS ON THAT IN '94; MALICIOUS
5 INJURY TO REAL PROPERTY, IT LOOKS LIKE A COMPANION CHARGE
6 WITH THAT IN '94, THAT'S ON THE SAME DATE. GRAND LARCENY
7 OF A MOTOR VEHICLE IN '94. FAILURE TO STOP FOR A BLUE
8 LIGHT IN '98; ASSAULT AND BATTERY OF A HIGH AND
9 AGGRAVATED NATURE IN '99; ASSAULT AND BATTERY OF A HIGH
10 AND AGGRAVATED NATURE, IT LOOKS LIKE IN '98. I DON'T
11 KNOW WHY THAT SHOWS UP DIFFERENTLY.

12 TWO COUNTS OF ASSAULT AND BATTERY OF A HIGH AND
13 AGGRAVATED NATURE AND FAILURE TO STOP, BOTH 2001. THAT
14 COULD BE THE SAME CHARGE, JUDGE, HE GOT REVOKED ON. HE
15 GOT THREE YEARS IN 2001 FOR TWO A.B.H.A.N.S AND A
16 FAILURE TO STOP, AND IT LOOKS LIKE ONE COUNT OF FORGERY.
17 PUBLIC DISORDERLY CONDUCT IN 2003. ANOTHER ASSAULT AND
18 BATTERY OF A HIGH AND AGGRAVATED NATURE IN 2008. I
19 BELIEVE HE HAD JUST GOTTEN OUT OF JAIL A FEW MONTHS PRIOR
20 ON THAT CHARGE. ONE CHARGE HE HAD JUST GOTTEN OUT THE --
21 ASSAULT AND BATTERY HIGH AND AGGRAVATED, 2008, THAT WAS
22 THE ONE.

23 HE ALSO HAS A RECORD FROM OUT OF STATE. GRAND
24 LARCENY, FELONIOUS ASSAULT IN VIRGINIA IN 2003; ASSAULT
25 AND BATTERY OF A POLICE OFFICER OR A FIREFIGHTER IN 2004.

1 HE WENT TO PRISON ON THOSE. AND I THINK THAT'S IT.

2 **THE COURT:** HE HAD HOW MANY ASSAULT AND BATTERY --
3 WELL, HE HAD ONE ASSAULT AND BATTERY WITH INTENT TO KILL?

4 **MR. WAGNER:** THAT'S WHAT HIS RAP SHEET SHOWED,
5 JUDGE. HE'S GOT SEVERAL, AT LEAST THREE OR FOUR ASSAULT
6 AND BATTERY OF A HIGH AND AGGRAVATED NATURE OR A.B.W.I.K.
7 OR A COMBINATION OF THE TWO. AND THEN HE HAD ANOTHER
8 FELONIOUS ASSAULT, AN ASSAULT ON A POLICE OFFICER OR A
9 FIREFIGHTER IN VIRGINIA.

10 **THE COURT:** DOES IT SHOW HOW MUCH HE GOT ON THOSE
11 CHARGES?

12 **MR. WAGNER:** IN VIRGINIA?

13 **THE COURT:** RIGHT.

14 **MR. WAGNER:** YES, SIR. HE GOT FIVE YEARS SUSPENDED
15 ON THREE YEARS AND FOUR MONTHS IN THE PENITENTIARY.

16 **THE COURT:** HOW ABOUT THE A.B.W.I.K.?

17 **MR. WAGNER:** THAT WAS 2003, JUDGE. AND THEN HE'S
18 GOT AN ASSAULT ON A POLICE OFFICER OR A FIREFIGHTER, HE
19 GOT 12 MONTHS SUSPENDED ON SIX MONTHS JAIL ON THAT, THAT
20 WAS IN 2004.

21 ON THE ASSAULT AND BATTERY WITH INTENT TO KILL HE
22 GOT TWO YEARS IN '94. GRAND LARCENY OF A MOTOR VEHICLE
23 HE GOT SIX YEARS IN '94, WHERE HE GOT VIOLATED ON HIS
24 PROBATION ON THAT FOR SIX YEARS. THIS IS THE LAST
25 A.B.H.A.N. HE HAD UP HERE WAS JUST A COUPLE YEARS AGO AND

1 THAT WAS 2008, AND HE GOT TWO YEARS ON THAT AND THAT'S
2 THE ONE HE HAD JUST GOTTEN OUT OF PRISON ON.

3 **THE COURT:** WAS IT TWO YEARS ACTIVE?

4 **MR. WAGNER:** TWO YEARS ACTIVE.

5 **THE COURT:** ALL RIGHT. MR. DAY WHAT HAVE YOU GOT TO
6 SAY ON BEHALF OF MR. WEBB?

7 **MR. DAY:** THE 1994 CASE, THE ASSAULT AND BATTERY
8 WITH INTENT TO KILL ALONG WITH THE MALICIOUS INJURY TO
9 REAL PROPERTY, WHERE HE WAS CONVICTED BACK ON 12-2-94, HE
10 ADVISED ME THAT IN A P.C.R. THAT WAS REVERSED. IT'S NOT
11 REFLECTED ON HERE. BUT HE SAYS THAT PARTICULAR CHARGE,
12 IT SAYS WHILE THE LISTED ONES IN VIRGINIA, HE SAYS THAT
13 SOME OF THOSE, WHILE IT'S LISTED AS ASSAULT AND BATTERY
14 ON AN OFFICER, IT WAS REDUCED. HE SAYS WHY HE GOT 12
15 MONTHS, SIX MONTHS SUSPENDED AND IN JAIL, WAS THAT HE DID
16 A LESSER-INCLUDED OF THAT CHARGE. WHAT WAS IT?

17 **THE DEFENDANT:** IT'S CALLED AN UNLAWFUL WOUNDING.

18 **MR. DAY:** UNLAWFUL WOUNDING.

19 **THE DEFENDANT:** AND SIMPLE ASSAULT. THEY SAID I
20 SPIT ON HIM.

21 **MR. DAY:** RATHER THAN THE ASSAULT AND BATTERY ON A
22 POLICE OFFICER, ET CETERA.

23 BUT OTHER THAN THAT, THE OTHER ONES APPEAR TO BE
24 CORRECT, YOUR HONOR.

25 **THE COURT:** ALL RIGHT.

1 **MR. DAY:** THANK YOU, YOUR HONOR. I WOULD BRING TO
2 THE COURT'S ATTENTION, IF I MAY, MR. WEBB HAS TWO
3 CHILDREN, AGES 12 AND SEVEN. THEY LIVE WITH THEIR
4 MOTHER, HIS EX-WIFE. HE WAS PAYING SUPPORT AS BEST HE
5 COULD, HAVING A DIFFICULT TIME FINDING WORK. HE WAS IN
6 THE MASONRY BUSINESS, LAST WORKED FOR R & R MASONRY. AND
7 WHEN HE GOT OUT OF JAIL, AS HE SAYS, TRIED TO FIND A JOB,
8 COULDN'T FIND ANYTHING, AND THAT PRETTY MUCH LED TO HIM
9 BEING INVOLVED WITH THE WRONG PEOPLE, BEING AROUND THE
10 WRONG PEOPLE, AND HERE HE IS AGAIN. I WOULD SUBMIT THAT
11 TO THE COURT. WHILE THAT IS CERTAINLY NOT A REASON, BUT
12 IT IS, UNFORTUNATELY, A FACT.

13 YOUR HONOR, WE WOULD ASK THE COURT TO TAKE INTO
14 CONSIDERATION THAT THE STATE ASKED FOR A CHARGE TO THE
15 JURY OF HAND OF ONE IS THE HAND OF ALL. THEY CHARGED
16 MR. ELLIOTT WITH THE SAME CHARGES. THEY DECIDED NOT TO
17 DIRECTLY INDICT HIM BUT ARGUED TO THE JURY BOTH DID THE
18 SAME THING AND ASKED THE COURT TO EXPLAIN THAT TO THE
19 JURY.

20 WE ASK THE COURT TO TAKE THAT INTO CONSIDERATION,
21 CONSIDERING THERE WOULD CERTAINLY BE A DISPARITY OF A
22 SENTENCE IN THERE IF WE START, IF WE HIT HIM WITH THE
23 ARMED ROBBERY, CONSIDERING THAT HIS CODEFENDANT IS
24 LOOKING AT TWO YEARS IN JAIL. I WOULD SUBMIT THAT TO THE
25 COURT, AND OF COURSE, IF MR. WEBB HAS ANYTHING ELSE HE

1 WISHES TO SAY.

2 **THE COURT:** WELL, AS FAR AS EQUAL PUNISHMENT BEING A
3 RIGHT OF PRIVILEGE, I WOULD RECOMMEND YOU, OR RECOMMEND
4 THE CASE OF *HERMAN VERSUS THE UNIVERSITY OF SOUTH*
5 *CAROLINA*, IT'S A 4TH CIRCUIT CASE, (1970).

6 ALL RIGHT, MR. WEBB, ANYTHING YOU WOULD LIKE TO SAY?

7 **THE DEFENDANT:** NO, SIR, YOUR HONOR. I DONE SAID
8 ALL I HAD TO SAY.

9 **THE COURT:** HOW FAR DID YOU GO IN SCHOOL, MR. WEBB?

10 **THE DEFENDANT:** WHEN I WAS IN EMH, WITH EMH CLASS,
11 FOR HANDICAPPED, SO PROBABLY FIFTH GRADE.

12 **THE COURT:** FIFTH GRADE?

13 **THE DEFENDANT:** I LEARNED A LOT IN JAIL IN VIRGINIA.
14 THEY TAUGHT ME A LOT. I LEARNED HOW TO READ A LOT BETTER
15 AND STUFF LIKE THAT.

16 **THE COURT:** WELL, THE THING IS IT IMPRESSED ME THAT
17 YOU ARE VERY ARTICULATE AND OBVIOUSLY AN INTELLIGENT
18 PERSON.

19 ANYTHING ELSE FROM THE STATE?

20 **MR. WAGNER:** NO, SIR.

21 **THE COURT:** MR. DAY, ANYTHING ON BEHALF OF MR. WEBB?

22 **MR. DAY:** NO, YOUR HONOR, THANK YOU.

23 **THE COURT:** MR. WEBB?

24 **THE DEFENDANT:** NO, SIR.

25 SENTENCE OF THE COURT:

1 **THE COURT:** INDICTMENT NUMBER 2009-GS-37-1279, IT'S
2 THE SENTENCE OF THE COURT THAT THE DEFENDANT, JEFFREY A.
3 WEBB, BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
4 FOR A TERM OF 20 YEARS, PLUS PAY THE COSTS AND
5 ASSESSMENTS AS APPLICABLE.

6 INDICTMENT 2009-GS-37-1282, IT IS THE SENTENCE OF
7 THE COURT THAT THE DEFENDANT, JEFFREY A. WEBB, BE
8 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
9 TERM OF 20 YEARS, PLUS PAY THE COSTS AND ASSESSMENTS AS
10 APPLICABLE.

11 SPECIAL CONDITIONS IS TO UNDERGO DRUG AND ALCOHOL
12 TESTING AND TREATMENT, SUBSTANCE ABUSE COUNSELING, TO
13 INCLUDE A.T.U., AND ALSO ANGER MANAGEMENT WHILE
14 INCARCERATED. BOTH SENTENCES WILL RUN CONCURRENT.

15 HOW MUCH TIME HAVE YOU SPENT IN JAIL?

16 **MR. DAY:** SINCE JULY 23RD, YOUR HONOR.

17 **THE DEFENDANT:** I THINK IT WAS ABOUT SIX MONTHS.

18 **MR. DAY:** JULY 23RD -- I TOOK MY COMPUTER DOWN. I'M
19 SORRY.

20 **THE COURT:** JULY THE 23RD?

21 **THE DEFENDANT:** SEVEN MONTHS.

22 **THE COURT:** 236 DAYS?

23 **MR. DAY:** THAT WOULD SEEM CORRECT, YOUR HONOR.

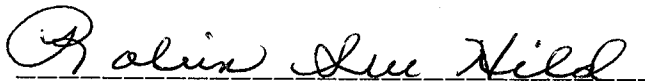
24 **THE COURT:** DEFENDANT BE GIVEN CREDIT FOR 236 DAYS
25 TIME SERVED. ALL RIGHT. GOOD LUCK TO YOU, SIR.

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL OF THE CAPTIONED CASE, VOLUME II, PAGES 104
THROUGH 269, RELATIVE TO APPEAL, IN THE COURT OF GENERAL
SESSIONS FOR OCONEE COUNTY, SOUTH CAROLINA, ON THE 15TH
DAY AND 16TH DAY OF MARCH, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

MAY 12TH, 2010


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA

County of Oconee

JEFFREY A. WEBB 214136

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2012 CP 37.638

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 JUL 12 P 4:04

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MECT F2-A-255, 386 REDEMPTION WAY
MCCORMICK SC. 29899
2. Name and location of Court which imposed sentence GENERAL SESSIONS
Oconee Co.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-37-01279
(b) " -01282

sent to
Warden
to setup
cell

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

JEFFREY A. WEBB
PRO-SE

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By: JEFFREY WEBB #214186

Address: MCCL F2-A-255
386 REDEMPTION WAY
MC CORMICK SC. 29399

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

FILED
OCONEE, SC
CLERK OF COURT
2012 JUL 12 P 4:04

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)			

Submitting Party Signature:

Jeffrey Webb

Date:

7-8-12

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) MARCH 15 + 16, 2010 - 20 + 20 CONCURRENT
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty YES
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. COURT OF APPEALS
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. DENIAL
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. DEC. 20, 2011
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. OPINION No. 2011-UP-566
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) ABUSE OF DISCRETION

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): (WILL AMEND UPON CONSULTATION WITH PER COUNSEL)

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? YES

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? YES

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. ABUSE OF DISCRETION

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. COURT OF APPEALS COLUMBIA SC. (OCONEE)

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. DISMISSAL
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Dec. 20, 2011
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. OPINION No. 2011-LP-566
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES - ABUSE OF DISCRETION - COURT OF APPEALS

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. ABUSE OF DISCRETION
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. DIRECT APPEAL
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL - PCR ISSUE
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? 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?
YES - BUT NOT THIS ONE

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. DIRECT APPEAL - ROBERT M. PACHAK
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. DIRECT APPEAL
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

REVERSAL OF CONVICTION + REMAND TO LOWER COURT

20. Are you now under sentence from any other court that you have not challenged?

2012, CP. 37. 638

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, JEFFREY A Webb #214186, 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.

Jeffrey Webb #214186

SWORN to and subscribed before me this 10
day of July, 2012

Franklin (L.S.)
Notary Public

My Commission Expires: 2-16-2019

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 JUL 12 P 4:04

2012 CP 37-638

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JEFFREY A. WEBB #214186, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jeffrey Webb #214186
Applicant

SWORN or affirmed to and subscribed before me this

10 day of July, 2012.

GCA Ranklin
Notary Public

My Commission Expires: 12-16-2019

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 JUL 12 P 4:04

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jeffrey A. Webb, #214186,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2012-CP-37-638

**RETURN AND PARTIAL
MOTION TO DISMISS**

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 12, 2012, 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 Oconee County Clerk of Court. The Applicant was indicted at the November 2009, term of the Oconee County Grand Jury on two counts of Armed Robbery and of Possession of a Weapon During the Commission of a Violent Crime (2009-GS-37-1279; 2009-GS-37-1282). Applicant was represented by Daniel Day, Esquire.

On March 15-16, 2010, the Applicant was tried and convicted of the aforementioned offenses. Applicant was sentenced by the Honorable Alexander S. Macaulay to confinement for a period of twenty ~~(20)~~ years for Armed Robbery and twenty ~~(20)~~ years for Possession of a Weapon During the Commission of a Violent Crime; sentences to run concurrently.

Applicant did appeal his conviction. On appeal, Applicant was represented by Robert M. Pachak, Esquire. The Court of Appeals dismissed the appeal in an unpublished opinion (No. 2011-UP-566) filed December 20, 2011. The remittitur was issued on January 5, 2012.

Attached herewith and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Abuse of Discretion by the Court of Appeals"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to obtain relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that Applicant's second allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release

[was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976):

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. "Abuse of discretion by the court of appeals" is not a ground for relief. Therefore, the Court should summarily dismiss this claim for post-conviction relief.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

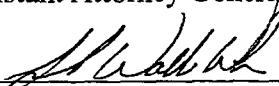
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

JOHH W. WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 4th, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
IN THE TENTH CIRCUIT

2012-CP-37-638

Jeffrey A. Webb, # 214186

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

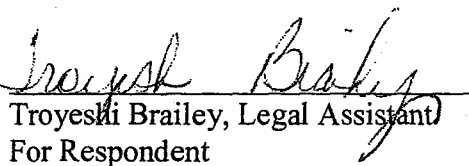
STATE OF SOUTH CAROLINA,

Respondent

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lisabeth K. Rogers, Esquire
298 Memorial Dr.
Seneca, SC 29672

DATED this 4th day of December, 2012


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jeffrey A. Webb,
S.C.D.C. No. 214186

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2012-CP-37-638

BRIEF IN SUPPORT OF DISMISSAL
OF APPLICANT'S PCR APPLICATION

This Court held an evidentiary hearing in regards to the Application for Post-Conviction relief filed by Applicant. Applicant was present and was represented by Rodney W. Richey, Esquire. Respondent was represented by Walt Whitmire of the Office of the Attorney General. At the conclusion of the hearing, this Court requested both Applicant and Respondent brief the following issues:

1. "Was trial counsel ineffective for failing to object to an alleged Doyle violation?"
2. "Was trial counsel ineffective for failing to object to Judge Macaulay's "hand of one is the hand of all" accomplice liability charge?"

I.

The solicitor did not commit a ~~Doyle v. Ohio~~ violation in his closing argument. "An accused has a right to remain silent and the exercise of that right cannot be used against him." Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240 (1976). "Specifically, the solicitor must not comment, either directly or indirectly, on a defendant's silence, failure to testify, or failure to present a defense." State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999).

McFadden v. State, 342 S.C. 637, 539 S.E.2d 391 (2000) is instructive and distinguishable to the present case. McFadden's case reached the South Carolina Supreme Court on appeal from the Circuit Court's dismissal of his PCR action. McFadden's trial attorney failed to object during the solicitor's closing argument. Id. at 640, 539 S.E.3d at 393. The solicitor explained to the jury that the State only had one opportunity to argue the case in the closing argument because McFadden did not present a defense. Id. The solicitor further connected the failure to present a defense with McFadden's guilt. Id. The McFadden Court found the comment constituted a Doyle violation. Id. at 642, 539 S.E.3d at 394.

In the present case, the solicitor did not explicitly comment on Applicant's silence nor did he implicitly comment on it. "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Johnson v. State, 321 S.C. 318, 468 S.E.2d 620 (1997). ~~The solicitor's comment "there is no evidence to the contrary" was made in the context of the solicitor's argument that the eyewitness and co-defendant testimony presented at trial denoted Applicant as the causal connection to the victim(s) and scene of the offense.~~

Officer Arnold talked to every single one of them, and like I say, every single one of them was fairly consistent in what they say happened. And the finger on every single one of them was fairly consistent in what they say happened. And the finger on every single one of them, it did not point at [co-defendant] they all blamed [co-defendant]. But the big finger pointed right back at the defendant right there, [Applicant]. He was the mastermind, he was the ringleader. I'm not excusing what [co-defendant] did, but [Applicant's] the one that did it (pointing to defendant). And there was no evidence to the contrary. They all saw it. Even though, like I say, some of them have sketchy memories.

(Tr. 218, lines 7-18). Therefore, the alleged Doyle violation was nothing more than the solicitor's summary the eyewitness testimony. "A solicitor's closing argument must stay within the record

and has reasonable inferences to it.” State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” Id. Here, there is no impropriety that would have necessitated an objection. Therefore, this Court must find solicitor’s statement in question did not constitute a Doyle violation.

Regardless, Applicant failed to show how any alleged deficiency in counsel’s failure to object to the solicitor’s closing argument was outcome determinative. “When a Doyle violation has occurred, the prejudice prong of the PCR analysis runs parallel to the harmless error analysis applied in a direct appeal.” Edmond v. State, 341 S.C. 340, 534 S.E.2d 682 (2000). The analysis is bifurcated. The reviewing court will employ a harmless error analysis, and it will determine if the trial judge’s jury instruction cured the error. In the present case, any alleged Doyle violation was harmless. Furthermore, Judge Macaulay’s jury instructions cured any alleged error.

First, the reviewing court applies enumerated factors to determine if the error is harmless: “(1) the reference to the defendant’s right to remain silent was a single reference, which was not repeated or alluded to; (2) the solicitor did not tie the defendant’s silence directly with his exculpatory story; (3) the exculpatory story was totally implausible; (4) the evidence of guilt is overwhelming. McFadden, 342 S.C. at 641, 539 S.E.2d at 393. In the present case, the alleged implicit Doyle violation occurred only once. Second, the solicitor distinguished his summary of eyewitness and co-defendant testimony from Applicant’s exculpatory statement. Applicant’s exculpatory statement was introduced at trial. (Tr. 185-186). The solicitor’s closing argument addressed the statement separate and apart from his summary of the eyewitness and co-defendant testimony. (Tr. 220, lines 11-16). Third, Applicant’s statement that he was at the wrong place at the wrong time buying drugs was implausible. Neither the co-defendant, the eyewitnesses, the

two victims, nor Applicant's girlfriend provided testimony that even remotely corroborated Applicant's statement. Fourth, Applicant's conviction was supported by overwhelming evidence of guilt. Numerous eyewitnesses and the victims implicated Applicant's involvement in the armed robbery. Therefore, this Court must find any error constituted harmless error.

Last, Judge Macaulay gave thorough jury instructions regarding the matter prior and subsequent to the solicitor's closing argument. Again, McFadden v. State, 342 S.C. at 642, 539 S.E.2d at 394, is instructive and distinguishable. The McFadden Court found the trial judge's instruction did not cure the error because "nowhere in his instructions did the trial judge inform the jury that the defendant was not required to present any evidence and that the jury could draw no adverse inference from his failure to do so." Id. However, in the present case, Judge Macaulay offered the applicable instructions. Prior to the solicitor's closing argument, Judge Macaulay instructed the jury:

The assertion of the constitutional right not to testify or present evidence must not, must not be considered in your deliberations. Under your oath you are to draw no conclusions whatsoever from the fact that the defendant in this case did not testify or put up evidence. As I stated, the defendant is not required to prove his innocence and the burden of proof remains upon the state to prove guilt beyond a reasonable doubt. Now with that admonition, I now recognize the State for its closing argument.

(Tr. 212, lines 12-21). Judge Macaulay subsequently charged the jury accordingly:

Now, I instruct you and emphasize that the fact that the defendant did not testify or put up evidence is not a factor to be considered by you in any way in your deliberations and in your consideration of the question of whether the State has proven the defendant is guilty or not guilty of the charges in the indictment. It must not be considered by you in any manner whatsoever. The defendant has a constitutional right to remain silent and the assertion of the right must not be considered by you in your deliberations.

I repeat: under your oath you are to draw no conclusion whatsoever from the fact the defendant in this case did not testify or present evidence. ~~The fact that the defendant did not testify should not even be discussed in the jury room.~~ The burden of proof, as I have stated to you, is on the state. The defendant

is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

(Tr. 246, line 9—Tr. 247, line 2) (emphasis added). Thus, Judge Macaulay's instruction and charge cured any alleged Doyle violation. See State v. Northcutt, 372 S.C. 207, 228, 641 S.E.2d 873, 884 (2007) (citing State v. Ard, 332 S.C. 370, 386, 505 S.E.2d 328, 336 (1998) ("Our jurisprudence unwaveringly provides that we are to presume that juries follow their instructions and that proper instruction of the jury by the court cures most errors."))).

Accordingly, Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Applicant also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance.

II.

Trial counsel was not ineffective for failing to object to the "hand of one" jury charge because an objection lacked merit. The South Carolina Supreme Court has stated that under "the hand of one is the hand of all" accomplice theory of guilt, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." Id. at 263, 565 S.E.2d at 304. An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, (2010) is instructive to the present case.

The Mattison Court recently discussed the accomplice liability framework:

It is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.” State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000). “Under the ‘hand of one is the hand of all’ theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct.App.2002).

Under accomplice liability theory, ‘a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.’ ”State v. Langley, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999) (quoting Austin, 299 S.C. at 459, 385 S.E.2d at 832).

“In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987); See Wilson v. Wilson, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995) (“Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime.”).

Id. at 479-80, 697 S.E.2d at 584. Accomplice liability theory is triggered by the facts surrounding the commission of the offense and not by the State’s decision to indict a co-defendant with the same or greater offense. Applicant’s proposition radically departs from precedent. Furthermore, Applicant fails to cite case law necessitated for finding trial counsel was deficient for not objecting to the charge. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”). Because the Sixth Amendment does not require counsel to be clairvoyant, Applicant’s allegation is without merit.

Furthermore, the facts and evidence presented at trial clearly supported a charge of accomplice liability. See State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996) (finding a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and is supported by the evidence).

Accordingly, Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Applicant also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny and dismiss this Application for Post-Conviction Relief.

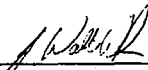
Respectfully submitted,

ALAN WILSON
Attorney General

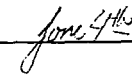
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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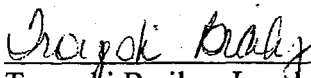
, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF OCONEE	)	
	)	
	)	2012-CP-37-638
	)	
Jeffrey A. Webb, # 214186	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Brief in Support of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esq.
Post Office Box 10916
Greenville, SC 29603

DATED this 4th day of June, 2013



 Troyeshi Brailey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
COUNTY OF OCONEE	)	Tenth Judicial Circuit
Jeffrey A. Webb,	)	
Applicant,	)	C/A # 2012-CP-37-00638.
	)	
v	)	Amendment to the Pleadings
	)	
State of South Carolina,	)	Per Order of Judge McIntosh
Respondent.	)	

NOW COMES Applicant, through Counsel of Record, beseeching the Court to Grant Applicant's Application for Post Conviction Relief based upon the following issues, stated previously but here clarified:

"THE HAND OF ONE IS THE HAND OF ALL" INSTRUCTION IMPROPER

Applicant asserts that the circumstances of his case do not warrant a charge to the jury of "the hand of one is the hand of all" as Applicant was the only person charged with Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime, when two to four people allegedly conspired together to commit the charged crimes ... and, that such charge contributed to lowering the standard and threshold for determining whether reasonable doubt existed that Applicant committed any crimes.

Under "the hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v Gibson, 390 SC 347, 701 SE 2d 766 (SC App 2010), State v Mattison, 697 SE 2d 578.

Though Applicant asserts he neither held a gun on anyone nor robbed anybody, co-defendant Shane Elliott is reported by the alleged victim Nathan McCall to have held him (McCall) at gunpoint to aid in the robbery. "That" is Armed Robbery, what Applicant is charged with, but Elliott was not charged with Armed Robbery - he was charged with Strong Arm Robbery, which is defined as taking from a person "without" using a weapon, which significantly reduced his exposure.

"When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to ensure the success of the common undertaking, the act of one is the act of all, and all are presumed to be present and guilty (emphasis added). Chavis, 277 SC at 522, 290 SE 2d at 412.

"When two or more persons aid, abet, or encourage each other

in commission of a crime, all being present, each is guilty as principal. Yates v Aiken, 290 SC 231, 349 SE 2d 84.

If "Shane Elliott" is not guilty of Armed Robbery, Applicant couldn't be guilty of Armed Robbery either.

"Mere presence and prior knowledge that a crime was going to be committed without more, is insufficient to constitute guilt. Rather, presence at the scene of a crime and a pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal. Gibson, Mattison, Lewis, WL 2017596 SC App 2013.

"Mere presence alone is insufficient to sustain a conviction, and instead, there must be a common design to commit an unlawful act, and one present must aid, abet, or assist in the commission of the crime in order to be found guilty. Mattison.

"Mere knowledge a crime was going to occur, or mere association with one who commits a crime is insufficient to constitute guilt, and instead, defendant must have, while present at the commission of the crime, aided, abetted, or assisted in the commission of the crime pursuant to a common design or purpose before a conviction can be had. Mattison.

"Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Lewis.

Holding a gun to the victim's head is an overt act and is clearly participation in the crime alleged.

"In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. Lewis.

Elliott, in this "alleged" scenario, knew a robbery was taking place and willfully participated in it. Even if he didn't have "distant" prior knowledge of intent, "incident" knowledge of intent is evident. Applicant, however, asserts he had no involvement in a robbery and that any robbery was Shane Elliott's invention and devising and doing without Applicant's knowledge or help.

"An overt act is required to be held liable for aiding and abetting, which necessarily excludes the possibility of being held criminally liable for a failure to act. Lewis.

Applicant asserts he neither went to the McCall's Home to rob them nor did he participate in a robbery once there. Applicant asserts it is possible, however, since there was separation, that co-defendant Shane Elliott did strike alleged victim Nathan McCall in the head with a gun and attempt to rob him. Applicant, though, asserts he had no knowledge of such a

plan and did not observe it, being in another room. Applicant asserts, however, that once he became aware that something aforesaid was in progress, he said "Let me get the hell out of here". Applicant is not guilty by association, nor by mere presence, nor by any failure to act to try to stop Shane Elliott from committing said crimes.

Applicant asserts that he was collecting money that day from numerous customers who owed money for drugs, including McCall (see list of customers and amounts due, already submitted as evidence to the PCR Court, documents obtained by police during a search of Applicant's car). Applicant asserts that, when McCall didn't have his money, he noticed a ½ pound of meth nearby and said he'd "hold" that until McCall paid what was due. After leaving the house, five minutes down the road, McCall's other drug supplier called Applicant, and they immediately met, whereupon Applicant was paid what McCall owed him and the meth was returned to the "other" drug dealer.

"To secure a conviction for aiding and abetting, the government must show that the underlying crime was committed by someone. US v Blair, 661 F. 3d 755 C.A. 4 MD 2011.

"To support a conviction for aiding and abetting, the government was required to prove that defendant participated at some stage of the illegal venture with knowledge of the result and the intent to bring about the result. US v Foster, 507 F. 3d 233 C.A. 4 MD 2007, 18 USCA §2.

"The precise language used in the indictment, by the prosecution, or in the jury instructions is unimportant to determine if whether defendant can be convicted of substantive offense under theory of aiding and abetting. US v Rashwan, 328 F. 3d 160 C.A. 4 Va. 2003, 18 USCA §2(b).

"Defendant is guilty of aiding and abetting if he has knowingly associated himself with and participated in criminal venture; to prove association, government must establish that defendant participated in principal's criminal intent, which requires that defendant be cognizant of principal's criminal intent and lawlessness of his activity. US v Berger, 94 F. 3d 849 C.A. 4 NC 1996.

Applicant did not know what Shane Elliott had on his mind. Though it was Applicant's decision to go to the McCall home, as he had business to take care of there, Applicant was not aware Elliott also had business to take care of with Nathan McCall.

"In criminal context, defendant may be found guilty of aiding and abetting only if he has knowingly associated himself with and participated in criminal venture; association may be established by showing that defendant shared in principal's criminal intent. Flowers v Tandy Corp, 773 F. 2d 585, C.A. 4 SC 1985.

"For an accused individual to be convicted, it must be proved that he was in some way personally responsible for the act

constituting the crime. US v Park, 499 F. 2d 839 C.A. 4 MD 1974.

This case involves a group of friends, a group that regularly associated with one another. This is the "first" reason this alleged crime "as reported" doesn't make sense. It was revealed in the trial that Nathan McCall and Shane Elliott had recently occupied the same jail cell in county detention. Applicant has since learned that Shane Elliott has been charged 26 times for Trafficking 28 grams or more, and apparently has a favorable relationship with law enforcement (see documents submitted at PCR hearing).

Applicant has "also" since learned that, during trial, Nickie was pregnant with Shane's child. Nickie claims at trial to have been present "also watching Nathan" along with Shane as he held him at gunpoint, making her "also" guilty under "the hand of one is the hand of all" theory. Nickie's testimony hints of covering for Shane, which is understandable given their newly learned relationship, not known "by Applicant" at trial.

The one witness who told the truth, Maria, is now deceased. In trial counsel's possession are two letters: one from Maria says, "I know you had nothing to do with what happened - Everything is going to be alright." Another, from Shane, asks Applicant to "let him get through his plea deal and get out, and then he will come to Applicant's aid." Applicant requests the Court take Judicial Notice of these letters, in the interest of justice being done, since Attorney Day has not provided Trial Discovery to Applicant.

Noting again that Elliott was not charged with Armed Robbery, or, Possession of a gun, though the alleged victim says he held a gun to his head, Applicant notes Elliott's deal of a 2 year cap in this case, and that he received a PR bond after serving 8½ months in detention, for his testimony against Applicant. Applicant requests the Court "also" take Judicial Notice of what precise penalty Elliott in fact alas paid for his charged crimes, and, how Nathan and Jason McCall fared with their then pending charges.

A theory of this case is taking shape, that Elliott and McCall perhaps devised a plan together to deliver Webb to the police. Webb had once hit Shane with a golf club, "while" at Nathan and Jason's house. This plan involved getting the girls to corroborate their story, but evidence shows they had a problem accomplishing that. Maria told the truth, and was attacked by the Solicitor for it. There are big differences in the stories offered by the four who were present that day, and these discrepancies can't be discounted.

Even the State realized these witnesses were incredible (Tr.p. 213 lns 4-8), but they used the testimony anyway, against the interests of justice. The Solicitor occupies a quasi-judicial position and is charged with ensuring the administration of justice, not just garnering convictions any way he can get them. The evidence in this case, against Applicant, is unreliable, contradicted, offered by biased witnesses with

lots to gain, and by witnesses who were so drunk that day they can't remember what happened. Such questionable evidence casts a disconcerting shadow over the judicial process to the public and cannot in good conscience be relied upon to take away Applicant's liberty, but Applicant has been tried and sentenced therefor to 20 years in prison using this tainted evidence.

"Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness's testimony. Rules of Evidence., Rule 608(c) ... [A]nything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. State v McEachern, 731 SE 2d 604, SC App 2012, Rules of Evid., Rule 608(c).

"Partiality of witness is always relevant as discrediting witness and affecting weight of his testimony; thus evidence of possible biases, prejudices, or ulterior motives of witness as they relate directly to issues or personalities in case at hand is admissible. US v Turner, 198 F. 3d 425 C.A. 4 W. Va. 1999, Fed Rules of Evid., Rule 401, 28 USCA.

"Bias", defined as emotional partiality, is not a collateral issue and the point of a bias inquiry is to expose to the jury the witness' special motive to lie, by revealing facts such as pecuniary interest in the trial, personal animosity or favoritism toward the defendant, or the witness' plea agreement with the government. US v Greenwood, 796 F. 2d 49 C.A. 4 Va. 1986.

As mentioned, Shane Elliott, though he faced 20-50 years in prison as charged, escaping "other charges", received a 2 year cap and a PR bond, and has a favorable relationship with the police, evidenced by newly discovered NCIC records indicating 26 cases of Trafficking 28 or more grams, yet, Elliott remains free. Perhaps Elliott is a CI (confidential informant) and this information has not been revealed by the prosecution. This relationship, and the 26 cases of trafficking, did not come up at trial, but the Solicitor solicited testimony "instead" that Elliott "took a shower with two girls", "comforted Nathan", and "was going to be 'a hero' and protect Nathan, not allowing Webb to hurt him". Shane Elliott and the Solicitor appear to have a mutually beneficial relationship.

"Partiality of witness is subject to exploration at trial and is always relevant as discrediting witness and affecting weight of his testimony. Davis v Alaska, 94 S. Ct. 1105 US Alaska 1974.

"Generally, parties may show bias and interest of witnesses, and this may be done by showing variety of circumstances from which bias may be inferred provided they are not too remote and have clearly some apparent force as tested by experience. Sprinkle v Davis, 111 F. 2d 925 C.A. 4 Va. 1940.

Shane Elliott avoided the mandatory minimums for his charges, and avoided being charged as a principal though the alleged victim identified him as a principal. This is critical information, as expressed in State v Gracely, 399 SC 363, 731 SE 2d 880 SC 2012: "According to the Defense, it was critical to present to the jury the possible credibility issues with a witness that they know would go to jail for twenty-five years at eighty-five percent." This information should be given serious weight by a jury. Where the credibility of witnesses has not been seriously considered and examined, the result is unreliable, and the interests of justice cannot allow a conviction to rest upon such. There are too many inaccuracies, too many inconsistencies, too much bias and apparent collusion, too many "then unknowns" now being revealed, to let this citizens conviction stand. It appears "the hand of one is the hand of all" was charged just so Elliott's guilt could convict Applicant by association. Much of this, counsel should have discovered "then", and Applicant was prejudiced by his failure to do so.

The testimony of these incredible witnesses is the only evidence against Applicant, so credibility of these witnesses is of paramount importance. Nathan had pending charges for selling to a confidential informant. His brother Jason had a 2005 drug conviction and pending charges. Shane, as reported, we now know has dozens of prior convictions for trafficking and an extremely favorable relationship with the police.

Nickie has a prior shoplifting charge and was not charged for her allegedly helping Shane watch Nathan. Shane was not charged with possession of a gun, nor Armed Robbery, and was in fact charged with robbery "without" a weapon. Even the Solicitor said all are guilty of Armed Robbery (Tr.p. 215 lns 19-21).

Prior to granting the State's request to charge "the hand of one is the hand of all", the Court said:

"All right. At the sidebar, particularly in light of the request for the charge on the hand of one is the hand of all, which, of course, is the aiding and abetting and conspiracy-type charge, the alternative to that would be that they found that there was no joint action or effort linking all together, as with one hand.

Then it would mean that there's, the testimony could be that they were so disassociated that maybe one would be guilty of the lesser-included offense of robbery. And there's a tactical decision to be made whether or not to rely on the more serious offense so that there is no compromise; but if you put in the lesser-included offense, then they could compromise down between armed robbery and not guilty. So I'm gonna' ask, the State still wants a charge on hand of one, hand of all?

Yes, Sir."

... Since Elliott is being said to be guilty of a

lessor-included offense, Strong Arm Robbery, the prosecution has conceded there is "dissociation enough" such that "the hand of one is the hand of all" does not apply, and the charge was therefore inappropriate, and clearly prejudicial and harmful to Applicant.

If all were not going to be charged under that theory once involvement was established, the theory should not have been charged, for doing so permitted Shane Elliott to assure Applicant's conviction simply by admitting his, but he goes as far as to point his finger at Applicant, producing the same result, prejudicing Applicant. And Applicant's attorney, Mr. Day, should have objected to the charging of "the hand of one is the hand of all" theory of accomplice liability.

Further, Applicant was charged with "two" counts of Armed Robbery. Robbery is taking from the presence of the victim. Larceny is taking outside the presence of the victim. In State v Waller, 280 SC 300, 312 SE 2d 552 (SC 1984), the Court ruled:

"Larceny of property from different owners at same time and same place shall be prosecuted only single larceny." SC Code of Laws 1976 §16-13-30.

Following this same principle,

"A robbery of different persons at the same time and same place should "also" be prosecuted as only a single robbery."

Applicant is accused of robbing both brothers in their home as part of the same incident. Therefore, Applicant's attorney should have moved to squash the second or separate indictments, so Applicant would only be exposed to a single burglary. He did not, prejudicing Applicant, and Applicant was convicted on "two" counts of Armed Robbery for the same crime. No other suspect/alleged accomplice was charged with two counts of Armed Robbery. This case fails on principle to be one where "the hand of one is the hand of all". Applicant's attorney should have objected to it.

BURDEN SHIFTING

Applicant asserts the burden of proving guilt or innocence was "further" shifted to Applicant when the prosecution made the following impermissible comments:

"He testified and told the truth."
(Tr.p. 216 lns 13-14)

speaking of Shane Elliott, who got a deal for his testimony against Applicant,

and,

"... He told the truth then ..."
(Tr.p. 218 ln 2)

again, speaking of Shane Elliott, referring to his earlier statement, also against Applicant.

"Because a jury must make its own assessment of the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness' credibility." State v Kelly, 343 SC 350,369, 540 SE 2d 851,861 (2001), reversed on other grounds, 534 US 246, 122 S. Ct. 726 (2002).

Vouching for a witness based on outside material conveys the impression to the jury that the Solicitor has evidence not presented to the jury but known to the prosecution which supports conviction. Kelly.

"In State v Shuler, 344 SC at 630, 545 SE 2d at 818, the Court explained that a Solicitor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness ... Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity by indicating information not presented to the jury supports the testimony ..." Gilchrist v State, 350 SC 221, 565 SE 2d 281 (SC 2002).

"Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of A WITNESS' VERACITY." State v Rye, 375 SC 119, 651 SE 2d 321 (SC 2007).

In Gilchrist, counsel [was] found deficient for the failure to object to the State's vouching for the credibility of a key witness. Brown v State, 375 SC 464, 652 SE 2d 765 (SC App 2007).

US v Kerr, 981 F. 2d 1050, 1053-54 (9th Cir 1992)(prosecutor's improper vouching for credibility of four government witnesses reversible error where curative instructions overly general).

US v Simtob, 901 F. 2d 799,806 (9th Cir 1990)(prosecutor's improper remarks suggesting government knew witness testified truthfully and offer to immunize government witness during trial, where close case and judge's instructions insufficient to undo harm, violation of due process).

US v Jones, 471 F. 3d 535 (C.A. 4 W. Va. 2006)(While vouching constitutes an expression of belief or opinion regarding the

credibility or honesty of a witness, bolstering is an implication by the government that the testimony of a witness is corroborated by evidence known to the prosecution but not known to the jury).

US v Sullivan, 455 F. 3d 248 (C.A. 4 SC 2006)(Prosecutor may neither vouch for nor bolster the testimony of a government witness in arguments to the jury).

US v Bautista, 23 F 3d 726,732-34 (2d Cir 1994)(Prosecutor's remark that witnesses' statements did not contain discrepancies not reversible error where judge immediately reprimanded prosecutor).

Additionally,

The Solicitor said, reference to the prosecutions allegations against Applicant,

"And there was no evidence to the contrary"
(Tr.p. 218 lns 15-16)

In State v Rouse, 262 SC 581, 206 SE 2d 873, our State court ruled this remark to be improper, but did not reverse due to satisfactory contemporaneous curative instructions by the trial judge.

In Applicant's case, his attorney did not object, and there were no curative instructions. Applicant was prejudiced thereby, and the jury was consequently permitted to rely upon the judgment of the Solicitor in making its determination as to the truthfulness and credibility of the State's witnesses, rendering Applicant's trial unfair.

Under the Due Process Clause of the Fifth Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. In re Winship, 397 US 358,364 (1970); and Clark v Arizona, 548 US 735,766 (2006), restating presumption that defendant is innocent unless and until government proves, beyond a reasonable doubt, each element of offense. In Winship, reasonable doubt applies to both state and federal proceedings. The prosecutor may not accomplish this by vouching or bolstering witnesses' testimony.

CONCLUSION

WHEREFORE, for the above stated reasons, Applicant prays His Honor the Court finds Applicant's trial counsel was ineffective and Grants Post Conviction Relief.

Respectfully submitted,

s/ _____

Rodney W. Richey
Attorney At Law
PO Box 10916
Greenville, SC 29603

s/ Jeffrey Webb

Jeffrey A. Webb
214186, F2A-255, McCI
386 Redemption Way
McCormick, SC 29899

PROOF OF SERVICE

I, Jeffrey Webb, SCDC# 214186, do hereby declare that I mailed, via US Mail, postage pre-paid, a 10-page PCR brief entitled "Amendment to the Pleadings", addressed as follows:
w/ 2 pg letter dated June 2,

Rodney W. Richey
Attorney At Law
Post Office Box 10916
Greenville, SC 29603

on June 3, 2013, deposited at the McCormick Correctional Institution mailroom.

s/ Jeffrey Webb
Jeffrey A. Webb
214186, F2A-255, McCI
386 Redemption Way
McCormick, SC 29899

SWORN TO and SUBSCRIBED before me
this 03 day of June, 2013.

[Signature]
Notary Public for South Carolina

My Commission Expires 12.16.2019.

STATE OF SOUTH CAROLINA) IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE) THE COURT OF COMMON PLEAS
) 2012-CP-37-00638
STATE OF SOUTH CAROLINA,)
))
PLAINTIFF,)
))
VERSUS)
))
JEFFREY A. WEBB,)
))
DEFENDANT.))

DATE: MAY 06, 2013
ANDERSON, SOUTH CAROLINA

POST CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

RODNEY RICHEY, ESQUIRE
ATTORNEY FOR THE APPLICANT

WALT WHITMIRE, ESQUIRE
ATTORNEY FOR THE STATE

DANIEL DAY, ESQUIRE
WITNESS

PROVIDED FOR: SCCID SHARON GRAHAM

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SOUTH CAROLINA JUDICIAL DEPARTMENT

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1 THE COURT: Are you ready?

2 MR. WHITMIRE: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. WHITMIRE: The State calls Jeffrey Webb v The State
5 of South Carolina, case number 2012-CP-3778. Mr. Webb is
6 presently confined in the State Department of Corrections
7 pursuant to an order from the Oconee County Clerk of Court.
8 Mr. Webb was indicted November 2, 2009, charged by the
9 Oconee Grand Jury with two counts of armed robbery and
10 possession of a weapon during the commission of a violent
11 crime. Mr. Webb was represented by Daniel Day. On March
12 15th, he was tried and convicted for the offenses. Mr.
13 Webb was sentenced by Judge Macaulay to a period of
14 confinement for a period of twenty years for armed robbery.
15 Mr. Webb appealed his conviction and the appeals were
16 dismissed. Mr. Webb filed his application for post
17 conviction relief on July 12th, 2011. Mr. Webb is present.
18 He is represented by Rodney Richey. At this time, the State
19 will turn these matters over to Mr. Richey.

20 THE COURT: Mr. Richey.

21 MR. RICHEY: Thank you, Your Honor. May it please the
22 Court. Your Honor, I've talked to my client and my client
23 wants me to ask the Court for a continuance. One of the
24 bases for that, apparently, the Grand Jury, when the Grand
25 Jury met, his father was a participant in that Grand Jury.

JEFFREY WEBB VERSUS THE STATE OF SOUTH CAROLINA

1 He has tried to get the minutes and all the records but the
2 Clerk has not furnished them. It's his position that his
3 father recused himself and there were only seventeen people
4 to true bill it. Now, we have no other way of knowing that
5 without the record.

6 Also, Your Honor, I've done some research and there
7 are some issues here that we have in terms of jury charges
8 and that type stuff. He wants additional time to research
9 those issues and so he's asked me to ask the Court for a
10 continuance.

11 THE COURT: As to the jury charge, I'm going to deny
12 that motion. He's had since 2011 to file whatever he feels
13 would be appropriate and so I'm going to deny that. I do
14 want to hear his statement about the Grand Jury. I mean,
15 what you're saying, if I understand, number one, there were
16 seventeen grand jurors present who participated and voted
17 on the indictment.

18 MR. RICHEY: Yes, sir.

19 THE COURT: The Defendant's father was a member of the
20 grand jury and recused himself and did not participate.

21 MR. RICHEY: Yes, sir.

22 THE COURT: How does that violate any action taken by
23 the grand jury? Isn't the rule twelve out of eighteen?

24 MR. RICHEY: Your Honor, it's his position that it
25 wasn't a full panel.

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

5

1 THE COURT: As an officer of the Court, isn't the
2 rule ---

3 MR. RICHEY: It's twelve out of eighteen. Yes, sir.

4 THE COURT: So, regardless, even if you found that
5 there were seventeen folks there that participated, what
6 possible reason can you give based on that? The rule is
7 twelve out of eighteen.

8 MR. RICHEY: Yes, sir.

9 THE COURT: Is there -- I mean, is there something I'm
10 not seeing here, Mr. Richey?

11 MR. RICHEY: No, sir. Twelve out of eighteen of the
12 grand jurors participated. It's our position, we want to
13 know what the deliberations were following when his father
14 recused himself.

15 THE COURT: Okay. I'm going to deny that motion. Are
16 you ready to proceed?

17 MR. RICHEY: Yes, sir. I call Mr. Webb.

18 THE COURT: Come around, please, sir.

19 (After being duly sworn by the Clerk of Court,
20 **JEFFREY WEBB** testified as follows:)

21 CLERK OF COURT: Please state your full name for the
22 record and spell your last name.

23 MR. WEBB: Jeffrey Webb. W-E-B-B.

24 DIRECT EXAMINATION

25 BY MR. RICHEY:

JEFFREY WEBB VERSUS THE STATE OF SOUTH CAROLINA

1 Q Mr. Webb, where are you incarcerated?

2 A McCormick.

3 Q And what are you incarcerated for?

4 A Armed robbery.

5 Q Okay. And who represented you on those charges?

6 A Daniel Day.

7 Q And you have filed an application for post-conviction
8 relief alleging that he did not effectively represent
9 you. Is that correct?

10 A Yes, sir.

11 Q All right. Let's go to some issues. You had a jury
12 trial. Is that correct?

13 A Yes, sir.

14 Q And at that jury trial, you had a co-defendant that
15 also testified against you in that trial. Correct?

16 A Yes, sir.

17 Q Were you and the co-defendant charged with the same
18 charges?

19 A No, sir.

20 Q What was the co-defendant charged with?

21 A He was charged with one, one, strong arm robbery.

22 Q And what were you charged with?

23 A Two armed robberies and possession of a weapon during
24 the act of a violent crime.

25 Q And let me ask you, you were originally charged with

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

7

1 strong arm -- your original charge was strong arm? Is
2 that correct?

3 A Yes, sir. Two counts.

4 Q Okay. And you were directly indicted for armed
5 robbery. Correct?

6 A Yes, sir.

7 Q And you were indicted -- you were served with that
8 indictment on March the 5th, 2010. Is that correct?

9 A Yes, sir.

10 Q And you proceeded to trial ten days later. Is that
11 correct?

12 A Yes, sir.

13 Q Were you ever arraigned on that indictment?

14 A No, sir.

15 Q In your trial, the judge instructed the jury as to the
16 hand of one is the hand of all. Is that correct?

17 A Yes, sir.

18 Q And you believe that that instruction, that your
19 counsel should have objected to that instruction.

20 A Yes, sir.

21 Q And your basis for him objecting, is what?

22 A Because we was never charged the same. How can it be
23 the hand of one is the hand of all when I was charged
24 with two armed robberies, possession of a weapon
25 during the act of a violent crime and he's charged

1 with one strong arm. There's no way. That's a
2 compromise. It can't be hand of one, hand of all.

3 Q And you have your paperwork. If you would take your
4 paperwork out.

5 A Yes, sir.

6 Q I want to go through that with you. Do you have your
7 transcript?

8 A Yes, sir.

9 Q Pull the transcript out and tell me what you are
10 referring to.

11 A Yes, sir. On page 215, line 11, the Solicitor says
12 this, he said: But no matter which one fired, the
13 judge is also going to charge you the principle of the
14 law of the hand of one is the hand of all, which means
15 if they ---

16 THE COURT: What page is that again?

17 MR. WEBB: Two fifteen, sir.

18 THE COURT: Okay.

19 A The Solicitor says, "But no matter which one fired,
20 the judge is also going to charge you with the
21 principle of the hand of one is the hand of all and
22 that means if they both go into this house on a
23 criminal enterprise, the stuff that happens in this
24 house, during this crime, they are both responsible
25 for it in the hand of one is the hand of all. So, if

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

9

1 Shane Elliott didn't have a gun going into that house,
2 but Jeff Webb did, and they all, both, participated in
3 the robbery, even if there was one gun, here there was
4 obviously two, but they are both guilty of armed
5 robbery."

6 Q And so you are saying that since the co-defendant was
7 only charged with strong arm, that the Court could
8 only impute that crime to you and not the armed
9 robbery.

10 A Yes, sir. From the cases I've read, the co-defendant,
11 me and the co-defendant was supposed to be charged the
12 same. They could drop it to a strong arm robbery, but
13 we never was charged the same. He was charged with
14 one and I was charged with two, you know, and I just
15 want a fair trial. That's all I want.

16 Q And you also believe that your attorney should have
17 objected to the Solicitor's closing argument?

18 A Yes, sir.

19 Q Can you tell me what you are referring to?

20 A The Solicitor in direct comment on my right to remain
21 silent.

22 Q What page are you referring to?

23 A I'm referring to 118. I mean, 218. I'm sorry, sir.
24 Two eighteen.

25 Q Two eighteen. And you're basically starting on line

1 12 to line -- you start on line 11?

2 A Yeah, 11. "They ought to blame him, too." They are
3 talking about Shane Elliott. "They ought to blame
4 him, too, but the big finger is pointed back at the
5 Defendant right there, he was the mastermind, he was
6 the ringleader. I'm not excusing what Shane Elliott
7 did, but he's the one that did it, too -- he's the one
8 that did it, pointing the finger at the Defendant, and
9 there was no evidence to the contrary." So, he's
10 saying I didn't put no evidence up.

11 Q And you did not testify at trial. Correct?

12 A No, sir. I invoked my right to remain silent and
13 that's also...

14 Q And you did not put up any evidence?

15 A No, sir.

16 Q So, it's your position that at point the Solicitor was
17 shifting the burden to you?

18 A Yes, sir.

19 Q In your discovery, do you -- in your discovery, you
20 had a -- during the trial there was a statement made
21 that you had a gun, that you hit one of the victims,
22 Nathan, with a gun. Is that correct?

23 A Yes, sir.

24 Q And at the time of trial, had you seen your discovery?
25 Had you had an opportunity to review discovery?

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

11

1 A No, sir. I had not seen nothing. As a matter of
2 fact, at the beginning -- hold on. (Looks through
3 documents) Let me find it. It's under where I tried
4 to fire my attorney, my motion for a new attorney. I
5 can't find it, but I tell him that I -- yeah, it's
6 right at the first thing. It's on page 106.

7 THE COURT: One oh six?

8 MR. WEBB: Yes, sir. It's on, it starts at line 15.

9 A It says, "Mr. Macaulay, I didn't know what up to ten
10 days ago that I was even charged with armed robbery.
11 Ten days and I have questioned the Solicitor and my
12 attorney and the Clerk of Court for my Brady motion
13 and I didn't know what I had against me until now."

14 Q After you -- So, you do have your discovery now.
15 Correct?

16 A Yes, sir. I've got a letter right here. I got it in
17 2011.

18 Q Okay. And in going through that discovery, did you
19 find any discrepancies in the testimony presented at
20 trial?

21 A Oh, yes.

22 Q And can you tell me one about the, well, one of the
23 victims, what he told the police officer?

24 A Okay. I've got an incident report from Mr. Kevin
25 Davis. He was the first officer on the scene. He

1 reports this: Nathan McCall stated that Shane Elliott
2 and Jeffrey Webb had come, came to his house. Nathan
3 stated that Shane hit him in the head with a silver
4 handgun and knocked him onto the bed. Nathan stated
5 that Shane had shot into, had shot the bed and
6 threatened to kill him. Nathan stated that Shane
7 asked him for money. Nathan told him he didn't have
8 any money and Shane told him he was going to take his
9 gun. Nathan stated, stated that. Shane then fired a
10 shot in the door, in the bedroom door, towards the
11 hallway. He stated that Jeff had taken Jason McCall
12 into the back bedroom where Jeff had taken \$150.00
13 cash from Jason.

14 Q Okay. And was there testimony in the trial that was
15 opposite of that?

16 A I've got it, too.

17 Q Yeah. Was there testimony at the trial that was
18 opposite that statement that stated you had the gun
19 and you ---

20 A Yes, sir.

21 Q Okay. What witness testified to that?

22 A The second officer at the scene was Scott Arnold,
23 Detective Scott Arnold, and he says, "I arrived and I
24 speak with Nathan McCall. He stated that Jeff Webb
25 and Shane Elliott had came to his residence and both

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

13

1 had broke in by gunpoint. Jeff struck him in the head
2 with a pistol and stole his pistol from him. Shane
3 laid beside him on the bed and shot into the hallway.
4 Nathan gave a voluntary statement about this. I also
5 spoke with Jason McCall. He stated that Jeff had
6 pointed the gun at him and stole \$150.00 cash from
7 him.

8 Q At the trial, there were two women that testified.
9 Correct?

10 A Yes, sir.

11 Q And did one, did Maria Diegas, her testimony was that
12 she saw you hit Nathan with the gun. Is that correct?

13 A Yes, sir. Yes, sir.

14 Q Okay. Do you believe that this evidence that you now
15 have from the discovery where the officer stated that
16 Nathan told him that the co-defendant hit him, do you
17 think that would have been credible evidence to
18 present to the Court?

19 A It would have been credible to impeach all my
20 witnesses, Scott Arnold, all the way down, every one
21 of them and that was not the only impeachment issues
22 that we have, you know.

23 Q In fact, you were charged with armed robbery and Shane
24 was charged with strong arm. Right?

25 A Yes, sir.

1 Q And the gun, itself, was the reason your charges were
2 enhanced. Is that correct?

3 A Yes, sir.

4 Q And there was some testimony from the victim that
5 outlined it because of that gun. Correct?

6 A Yes.

7 Q Did you talk to your attorney about this evidence?

8 A Yes, sir.

9 Q You did? About what the first officer said?

10 A No, not what the first officer said because I did not
11 have my motion until 2011.

12 THE COURT: Which motion?

13 MR. WEBB: My motion for discovery, my Brady motion.

14 I'm sorry, Your Honor.

15 A He said I only questioned him one time about it, but
16 I've got several, several requests from the county
17 jail faxed to him asking for my Brady motion and this
18 was from 2009 when it started. The judge said it was
19 one thing for me to put up a case and one thing not to
20 help, but I'm trying to help, you know. I can't do
21 but so much, but at least I tried. I just wanted to
22 have a fair trial. You know?

23 Q Do you have the documents that you requested in
24 discovery?

25 A Yes, sir.

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

15

1 MR. RICHEY: May I approach the witness, Your Honor?

2 THE COURT: Yes, sir.

3 (Mr. Richey obtains a document from the witness and
4 shows it to Mr. Whitmire)

5 Q Do you have the requests?

6 A Yes, sir.

7 Q Okay. What is the first date on that request that you
8 have?

9 A One's 9/18/09 and I've got one, 9/18/09 again. It's
10 the same date. I've got one for 9/11 and I've got,
11 this one doesn't have a date on it. Oh, September
12 the 6th, 2009.

13 Q Okay. And those dates are before your trial?

14 A Waiting on my trial. Here's the Brady motion.

15 MR. RICHEY: Your Honor, we are offering these requests
16 as Applicant's #1. I've shown this to opposing counsel.

17 THE COURT: Any objection, Mr. Whitmire?

18 MR. WHITMIRE: No, Your Honor.

19 THE COURT: Okay. Admitted without objection.

20 (Whereupon, faxed requests for discovery are admitted
21 into evidence as Applicant's Exhibit #1, without objection)

22 Q And what these documents are showing here are inmate
23 requests to staff forms and this is your request for
24 your discovery, for a copy of your discovery?

25 A Yes, sir.

1 Q And the one dated 9/11/09 is by you and it's saying
2 that you want a copy of your motion statements, police
3 reports, all the preliminary hearing and this was
4 faxed, on the bottom, is September 21st, 2009.

5 A Yes, sir.

6 Q Okay. And you also made one on September 8th, 2009,
7 an identical request as the fax sent September 20th.

8 A Yes, sir.

9 Q And what response did you get from any of these?

10 A Nothing.

11 Q Okay. Did Mr. Day come to you and talk to you about
12 the case?

13 A He never give me no information of what was going to
14 go on in the case, who was going to testify, none of
15 that.

16 Q No, I'm saying, did y'all sit down and discuss, okay,
17 we're going to trial, and the State has this, this,
18 this, and this. Was there any discussion like that?

19 A No.

20 Q Did you ever talk to him about the trial at all? Any
21 conversation?

22 A We talked about the trial and in the end he said we
23 were going to court and I talked to him about, I
24 pushed the issue about the indictments and I told him
25 I didn't know about the indictments and he told me,

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

17

1 "Well, you're going on armed robbery," so I think he
2 looked up a case or two for me trying to find out
3 about that and that's it.

4 Q Now, when I say talked to you, did y'all have any
5 discussion about, we're going to trial, the State is
6 going to call these witnesses, it's likely that they
7 can convict you or not convict you. Were there any of
8 those types of conversations about strategy or
9 anything?

10 A No. Just, the only thing he talked to me about was my
11 right to remain silent. That was it.

12 Q Were there any plea offers in the case?

13 A No, sir.

14 Q What was that?

15 A No, sir.

16 Q Do you remember in the transcript where Mr. Wagner is
17 talking to the judge about this indictment and he says
18 that he gave y'all notices that if you couldn't work
19 something out, then the case would be indicted for
20 armed robbery. Do you recall that?

21 A Yes, sir.

22 Q Let me ask you, what was the reference to "work
23 something out"? Were you ever presented with a plea
24 offer? Was there any effort to work this out or
25 whatever he was referring to?

1 A No, sir. He even made a mistake that day, he said,
2 well really, he lies. He says that Mr. Day was the
3 lawyer at the preliminary hearing and he told Mr. Day
4 and me that if we didn't work something out, that it
5 was going to go as armed robbery, but Mr. Day was not
6 even at the preliminary hearing. It was Mr. Byrd.
7 And he pointed it out, Mr. Day said, "I was not there.
8 It was Mr. Byrd, so how could he work anything out
9 with me when it had never been him and me. It was Mr.
10 Byrd at the preliminary."

11 Q Okay. In the discovery, did you determine if there
12 were any other issues -- because this was a case
13 where, supposedly, you and the co-defendant went to
14 these folks' house with two girls and there were two
15 brothers and the two brothers claimed that you all
16 robbed them -- there were different forms, there were
17 forms of the story, but that's essentially the bare
18 boned facts. Correct?

19 A Yes, sir.

20 Q And once in the house, there was a difference in the
21 stories, a difference in the stories of who had the
22 gun and who did not have the gun. Is that correct?

23 A Yes, sir.

24 Q And the case was presented at trial as you being the
25 one with the gun. Right?

DIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

19

1 A Yes, sir.

2 Q Did you find any other discrepancies in your
3 discovery?

4 A Yes, sir. With the hand of one, hand of all, once
5 again, Nicky Smith, if it was hand of one hand of all,
6 she should have been charged, because she admits to
7 going in, her and Shane Elliott watching the victim
8 while I was supposedly robbing the other one. Also,
9 under impeachment, these people wrote two different
10 statements. We've got that, too.

11 Q There were conflicting stories about what happened.
12 Correct?

13 A Yes, sir. Yes, sir.

14 Q But the main theme in this case is that you got stuck
15 with this armed robbery because you supposedly had the
16 gun.

17 A Yes, sir.

18 Q And do you believe without the testimony of the
19 officer, that the victim told that the co-defendant
20 had the gun, do you believe that prejudiced your case?

21 A Oh, yes, sir. Most definitely.

22 Q And with that evidence, do you believe that the jury
23 could reasonably have found you guilty of strong arm
24 robbery?

25 A Yes, sir.

1 Q And those are, essentially, the complaints that you
2 have against Mr. Day. Is that correct?

3 A Yes, sir.

4 MR. RICHEY: All right. Answer any questions the
5 Attorney General may have for you.

6 THE COURT: Just one second. Mr. Richey, just to make
7 sure I understand what the grounds are and you had, number
8 one, that he was not arraigned.

9 Mr. RICHEY: Yes, sir.

10 THE COURT: Number two, that there was an improper
11 hand of one hand of all charge ---

12 MR. RICHEY: Yes, sir.

13 THE COURT: --- based on the charge of the co-
14 defendant. Third, the attorney should have objected during
15 closing, which was a Doyle violation, a comment on his
16 right to silence after Miranda.

17 MR. RICHEY: Yes, sir.

18 THE COURT: That he had not seen discovery at the time
19 of trial.

20 MR. RICHEY: Yes, sir, and there was exculpatory
21 evidence.

22 THE COURT: So, including Brady?

23 MR. RICHEY: Yes, sir.

24 THE COURT: Okay. Thank you. I'm sorry.

25 MR. WHITMIRE: Beg the Court's indulgence.

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

21

1 THE COURT: Yes, sir.

2 MR. WHITMIRE: May it please the Court?

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

5 Q Good morning.

6 A Good morning.

7 Q Mr. Webb, didn't both victims testify at your trial?

8 A Yes, sir.

9 Q And do you recall Nathan McCall's testimony?

10 A Yes, sir.

11 Q Didn't --

12 MR. WHITMIRE: On page 55, Your Honor.

13 Q Didn't Nathan testify that you pistol whipped him?

14 A Pistol whipped him?

15 Q In the face.

16 A No. He didn't say I hit him in the face. He said I
17 hit him in the head, I'm pretty sure.

18 Q And didn't Nathan testify that you stole a pistol from
19 under his mattress?

20 A Yes, sir.

21 Q And I believe, didn't Nathan's 911 tapes get published
22 to the jury?

23 MR. WHITMIRE: On page 61, Your Honor.

24 THE COURT: Where were the cites on page 55? Is that
25 what you used?

1 MR. WHITMIRE: Yes, Your Honor.

2 A It was 51, right? The first one was 51?

3 Q Well, the first one was 55. And do you recall, the
4 second victim, Jason McCall's testimony during trial?

5 A Yes, sir.

6 Q And do you recall that Jason testified that you went
7 into his room and stole money from him?

8 A He also said that the money was mine.

9 Q He did testify that he owed you a little bit of money.
10 That is correct.

11 A He said when I come in his room I asked him, "Do you
12 have my money," and he said, "Yeah, I've got some of
13 it."

14 Q But didn't Jason also testify that he only owed you
15 just a little bit and you took significantly more than
16 what he owed you?

17 A No. He said, he never set a value on what he owed me.

18 MR. WHITMIRE: Referring to page 80, Your Honor.

19 Q You held a gun to him and demanded money. Is that
20 correct? Or that was his testimony.

21 A Yeah, but like I said, he also said this one here and
22 it was conflicting. He said this and then he said,
23 that, too, you know.

24 Q And then on page 91, Jason testified that you stole
25 between \$125.00 and \$150.00. Is that correct?

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

23

1 A Yes, sir.

2 THE COURT: What page is that?

3 MR. WHITMIRE: Ninety-one, Your Honor.

4 Q Then on page 94, didn't Jason testify that he owed you
5 a little bit of money, but certainly not that much?

6 A (Looks through documents)

7 Q And Mr. Webb, regarding Applicant's Exhibit #1,
8 according to this, didn't the officer get a statement
9 from, I believe it is Nathan McCall, your claiming you
10 didn't get discovery?

11 A I did not get the discovery until 2011. We already
12 know that, but I guess I was going for two of them,
13 the initial officer and Scott Arnold.

14 Q And Officer Davis did not testify at your trial. Is
15 that correct?

16 A No, sir.

17 Q And in this statement, do you recall that, reading:
18 Jeff struck him in the head and stole his pistol from
19 him. Shane lay beside him in the bed and shot into
20 the wall.

21 A Shane hit him in the head with a silver pin handgun.
22 That's what it says.

23 Q How does that differ from his testimony at trial?

24 A He said that I did it. Scott Arnold was saying that I
25 did it. This was the initial officer and he was the

1 first one to take the statement, the first statement,
2 and Scott Arnold's the second one and the story
3 changes by the time Scott Arnold got there.

4 MR. WHITMIRE: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 Q Mr. Webb, can you just read that line, starting right
7 there. (Indicating)

8 THE COURT: Where are you in the record?

9 MR. WHITMIRE: I'm referring to State's Exhibit #1.

10 A Scott Arnold, not Kevin Davis. He's referring to
11 Scott Arnold, not Kevin Davis. The second officer on
12 the scene, he was referring to him. The first officer
13 was Kevin Davis. You can see the time at the top.

14 MR. WHITMIRE: Beg the Court's indulgence.

15 Q Mr. Webb, do you recall, going back to Jason McCall's
16 testimony, do you recall Jason testifying that both of
17 you entered the home with guns?

18 A He, Jason said that I was the only one that had a gun
19 until we entered. Right?

20 MR. WHITMIRE: Referring to page 191, Your Honor.

21 Q And weren't two women with you guys when you went to
22 rob this house?

23 A Yes, sir.

24 Q And they both testified at your trial. Is that
25 correct?

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

25

1 A Yes, sir.

2 Q Now, you did give a statement to police, didn't you?

3 A Yes, sir.

4 Q And wasn't that statement introduced when, I believe,
5 Scott Arnold testified at trial?

6 A Yes, sir.

7 Q Do you recall your statement?

8 A Yes, sir.

9 Q And wasn't the gist of your statement; wrong place,
10 wrong time, mere presence?

11 A No. That wasn't exactly what I said. I mean, I told
12 Scott Arnold, I told him that we was collecting money
13 and he said, "I already know you collected money." He
14 said, Scott Arnold said -- Yeah, basically, I said it
15 was, yeah, wrong place, wrong time, we shouldn't of
16 been there. So, yeah, you're right.

17 Q But you never told Scott Arnold you were collecting
18 money. Is that correct?

19 A Oh, yes. I told him that

20 MR. WHITMIRE: Beg the Court's indulgence for just a
21 moment.

22 A As a matter of fact, he had told me that.

23 MR. WHITMIRE: Referring to page 185, Your Honor,
24 starting at line 14.

25 MR. WEBB: You said 185?

1 MR. WHITMIRE: Uh-huh.

2 MR. RICHEY: What line?

3 MR. WHITMIRE: Starting at line 14.

4 Q Mr. Webb, would you mind reading, starting at line 14
5 through line 1 on the next page?

6 A He says, basically, basically, they all went there, me
7 and Shane Elliott, Vicki, they all went there. He
8 says Shane got on the bed with Nathan. He stated he
9 did not discharge a firearm. He stated that he, that
10 he took three-and-a-half grams of ICE. He said it
11 wasn't money. He stated that he took ICE. He said
12 that he did hear a gunshot go off after all. He told
13 Shane, we need to get the hell out of here, that he
14 told me, that's what he told me, but he didn't, he
15 didn't discharge a firearm inside the residence or at
16 the residence and in all your 15 years in law
17 enforcement, does ICE mean methamphetamine.

18 Q Thank you, Mr. Webb. From the trial transcript,
19 reading right here, you never told Detective Arnold
20 that you went to the home just to collect a debt.

21 A He says, basically. He didn't say the entire thing
22 that I told him, either.

23 Q You were just there to pick up some drugs and guns
24 went off. You weren't planning on a robbery then.
25 That's what you were saying, right?

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

27

1 A No, I was there. I told him I was there. He said
2 this was what I basically said. He's not saying this
3 is all that I said. He said, basically, is what he
4 said.

5 Q Now, do you recall your current girlfriend at the time
6 giving a statement afterwards?

7 A Yes, sir.

8 Q And testifying at trial?

9 A Yes, sir.

10 Q She said you went there ---

11 THE COURT: Where is that -- what is that witness,
12 please?

13 MR. WEBB: Laura Meadows.

14 MR. WHITMIRE: Page 150, Your Honor.

15 Q Ms. Meadows testified that you were involved in the
16 altercation that led to the shooting, that you were
17 picking up some money. Is that correct?

18 A Yes, sir.

19 Q And some of the other witnesses testified, including,
20 I believe it was Jason McCall, that you did owe him a
21 little, that he did owe you a little bit of money. Is
22 that correct?

23 A Yes, sir.

24 Q But the statement from the officer, and what you told
25 him and what your lawyer had to work with, indicates

1 that you were just in the wrong place when a drug deal
2 went bad when someone was picking up some ICE. Is
3 that correct, just from what we just read?

4 A But he said, basically. He didn't say all of it.

5 Q No, from what you just read.

6 A Yeah, from what I just read, that's what he said.
7 That's what Scott Arnold said.

8 Q So, there were numerous witnesses who testified at
9 trial who say that yes your best defense was maybe
10 Jason owed you a little bit of money, but you don't
11 tell the police that in your voluntary statement. Is
12 that correct?

13 A Yes, I told them. And in my discovery they've got
14 pictures of the list of people that owed me and Jason
15 McCall was on it and Nathan McCall. But that wasn't
16 disclosed to me until 2011, either.

17 Q But when he originally gave you the Miranda, when he
18 gave you the Miranda ---

19 A I told him, I ---

20 Q warning, and you gave ---

21 A --- that's what I was tell---

22 Q --- him your original statement.

23 THE COURT: Hang on. Let him finish his question and
24 then you can give your answer. All right?

25 MR. WHITMIRE: Yes, sir.

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

29

1 Q After he gave you the Miranda warning, you gave him
2 that original statement, what you said right there.
3 You didn't tell him, did you?

4 A Yes, I told him. As a matter of fact, Scott Arnold
5 and Greg Reed told me, "We know that you were only
6 going to collect money ---

7 Q So, it's your ---

8 A --- so tell us what happened." And so, I told them I
9 was there and ---

10 Q Mr. Webb, it's your contention that Detective Arnold
11 was actively withholding this information when he
12 testified at trial?

13 A Yes.

14 Q That's your contention?

15 A Yes. If he had a different story from Kevin Davis,
16 why wouldn't he hold something back?

17 Q And do you recall your attorney's cross examination
18 during this trial?

19 A Yes, sir.

20 Q And he impeached most of the witnesses, didn't he?

21 A No, he didn't. He didn't move to impeach no one.

22 Q Didn't -- weren't you acquitted on the discharging of
23 a weapon into a firearm charge?

24 A Yes, sir.

25 Q And didn't two of your, well, purported co-defendants,

1 cleared you of doing that when you guys were leaving
2 the house and the jury came back and acquitted on
3 that.

4 A Yeah.

5 Q But you don't deny hitting Nathan McCall in the head
6 with a pistol, do you?

7 A No, sir. I told you that.

8 Q And stealing a pistol from under his bed?

9 A No. I did not steal no pistol from him.

10 Q And you don't deny pointing a pistol at Nathan and
11 taking him back to his room?

12 A You are talking about Jason?

13 Q Jason.

14 A I did not have a gun.

15 THE COURT: What was that response?

16 MR. WEBB: I did not have a gun. I didn't have a gun.

17 Q But every witness that was in that home that day,
18 every witness testified at trial. Is that correct?

19 A Uh-huh.

20 Q Didn't they all put you with a gun?

21 A They all put me with a gun and my co-defendant.
22 That's what I'm saying.

23 Q So, it's your contention it's just a big conspiracy
24 against you?

25 A Yes. That's what I'm telling you.

CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

31

1 Q And regarding your hand of one issue, wasn't your
2 co-defendant, Shane Elliott, charged with the same,
3 the same burglary, the same overall set of facts?

4 A No, sir. No, sir. If he was, he would have been
5 charged with at least two strong armed robberies, not
6 one.

7 Q And at the time, weren't there, if you recall, weren't
8 there pending charges for one of the co-defendants,
9 Maria?

10 A No. There were no charges against none of the girls.

11 Q You were the first person out of this coterie of four
12 people who robbed the McCalls that day to be tried.
13 Is that correct?

14 A Yes, sir. And the rest of them was never charged.
15 They was never charged. Nicky and Maria was never
16 charged with nothing.

17 Q Do you have evidence of that here today?

18 A Yes, sir. That's what he told me. The girls were
19 just bystanders. That's what Scott Arnold said. How
20 does he say that? The girls never bonded out. They
21 wrote a statement and went home.

22 Q I believe it was on 2/15, in the State's closing, you
23 allege there was a parole violation?

24 A Yes, sir.

25 Q But the Solicitor never, never inferred guilt or never

1 mentioned to the jury that your silence inferred
2 guilt. Is that correct? Never once.

3 A Yes, sir. He did.

4 Q Your voluntary statement did get in. Correct?
5 Through Scott Arnold.

6 A Yes, sir. But I invoked my right to remain silent.
7 If you go back into my sentence. It's what Danny Day
8 told me to do. That was the whole argument of me
9 trying to fire him and all, was just a -- he told me
10 to do it and so I invoked my right to remain silent
11 and the Solicitor did comment on it. He said there's
12 no evidence to the contrary. What is that?

13 MR. WHITMIRE: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. RICHEY: Yes, sir. Just a couple.

16 REDIRECT EXAMINATION

17 BY MR. RICHEY:

18 Q You said that you have a ledger where Jason and Nathan
19 owed you money?

20 A Yes, sir.

21 Q Can you show it to us?

22 A Yes. There's a picture in here. I'm sorry I didn't
23 show it to you last night.

24 Q That's all right.

25 A There it is. As a matter of fact, there are two of

REDIRECT EXAMINATION OF JEFFREY WEBB BY MR. RICHEY

33

1 them.

2 MR. RICHEY: May I approach the witness, Your Honor?

3 THE COURT: Yes, sir. You don't have to ask every
4 time.

5 Q These two ledgers, basically what the police took from
6 you, they show that these guys basically owed you
7 money.

8 A Yes, sir.

9 Q Okay. So, when you went into that house that day, the
10 cops were under the impression that these boys owed
11 you money for whatever reason.

12 A Yes, sir.

13 Q And the money that you actually took was the money
14 that was owed to you on this list.

15 A Yes, sir. I didn't take the money. He didn't give me
16 the money. It was three-and-a-half grams of ICE that
17 he give me. There was no money. He owed me \$150.00
18 and he gave me three half-grams of ICE. And I was
19 honest about that. Even Scott Arnold says that.

20 (Mr. Richey shows document to Mr. Whitmire)

21 Q And so the money that you were robbing was essentially
22 money that was owed to you.

23 A Yes, sir.

24 Q And so your intent that day was to get the money back
25 and not to rob him.

1 A Yes, sir.

2 Q Okay.

3 MR. RICHEY: We would offer this as Applicant's #2,
4 please.

5 THE COURT: Any objection?

6 MR. WHITMIRE: No, Your Honor.

7 THE COURT: Numbers two and three or just as one?

8 MR. Richey: I'm going to staple them and that will be
9 just one if that's okay with the Court.

10 THE COURT: Yes, sir.

11 (WHEREUPON, two pages of a ledger are entered into
12 evidence as Applicant's Exhibit #2, without objection)

13 Q You did not admit to hitting Nathan in the head with a
14 gun. Is that correct? Is that what you're telling us?

15 A Yes, sir.

16 MR. RICHEY: Okay. Thank you.

17 THE COURT: Hold on a minute. I thought I heard him
18 testify that he did admit that he hit him with a gun. Is
19 he saying that he did not admit that?

20 MR. Richey: I didn't get the full answer. That's why
21 I asked him again.

22 A Yeah. I hit him. Yes.

23 Q So, your testimony is that you did hit Nathan with the
24 gun.

25 A Yes. Shane did, too.

RE-CROSS EXAMINATION OF JEFFREY WEBB BY MR. WHITMIRE

35

1 Q All right.

2 THE COURT: So the record is clear, Mr. Whitmire asked
3 you if you admit that you hit the victim.

4 MR. WEBB: Yes, that's what I said.

5 THE COURT: And you said, "Yes, I did."

6 MR. WEBB: Yes, sir.

7 THE COURT: Okay. Any re-direct on that, Mr.
8 Whitmire?

9 MR. WEBB: Sorry about that.

10 MR. WHITMIRE: I have just a couple of questions for
11 you.

12 RE-CROSS EXAMINATION

13 BY MR. WHITMIRE:

14 Q Are you saying -- you've answered the first question
15 for me. Now, the second one. You were convicted of
16 armed robbery. Is that correct?

17 A Huh?

18 Q You were convicted.

19 A Yes, sir.

20 Q And multiple witnesses put you in that house
21 presenting a weapon and stealing other guns. Is that
22 correct?

23 A They weren't several of them putting me in the house
24 stealing no gun. The only ones that testified that I
25 stole a gun was Shane and Nathan. Not several. But

DIRECT EXAMINATION OF DANIEL DAY BY MR. RICHEY

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1 Nathan didn't say nothing about it in his first
2 report.

3 MR. WHITMIRE: Nothing further, Your Honor.

4 THE COURT: All right. You may step down.

5 MR. WEBB: Yes, sir. Thank you, Your Honor.

6 THE COURT: Yes, sir. Any additional witnesses, Mr.
7 Richey?

8 MR. RICHEY: No, Your Honor.

9 THE COURT: All right. Let's take about a ten minute
10 break and we'll come back and take the State's case.

11 MR. WEBB: Thank you very much, Your Honor.

12 THE COURT: Yes, sir.

13 (Brief Break)

14 THE COURT: Excuse me, I thought we were finished with
15 your case. Go ahead.

16 MR. RICHEY: We call Mr. Day. I'm sorry.

17 THE COURT: Okay.

18 (After being duly sworn by the Clerk of Court,

19 **DANIEL DAY** testified as follows:)

20 CLERK OF COURT: If you would, please, state your name
21 for the record and spell your last name.

22 MR. DAY: It's R. Daniel Day. D-A-Y.

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Mr. Day, do you recall representing Mr. Webb in the

DIRECT EXAMINATION OF DANIEL DAY BY MR. RICHEY

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1 case that we are here today for?

2 A Yes, sir.

3 Q And you were appointed to represent him?

4 A Appointed through the Public Defender's office.

5 Q You are the Public Defender in Oconee County?

6 A Yes, sir.

7 Q And I want to get straight through this. Can you turn
8 to page -- do you have the transcript up there with
9 you?

10 A I do.

11 Q Would you turn to page 218. We're going back to lines
12 12 through 17. And I'm going to refer, actually, I'm
13 going to start at line 15 where it says, "And there
14 was no evidence to the contrary." Now, in this case,
15 Mr. Webb did not testify. Is that correct?

16 A Did not.

17 Q And he did not put forth any evidence?

18 A Did not.

19 Q Okay. Do you believe that at that point he does not
20 have to present any evidence under the constitution?
21 Right? He doesn't have to.

22 A That's true.

23 Q And do you believe that the Prosecutor's comment here
24 is essentially to shift the burden, what we call
25 "burden shifting"? Do you believe that?

1 A That's what it sounds like to me.

2 Q And do you believe that an objection to that may have
3 been appropriate?

4 A Yes, I do. I don't know how I missed that, but if I
5 had heard that, certainly I think that warranted an
6 objection at that point.

7 Q And do you believe that that is the kind of thing that
8 impressed them, that, for the Solicitor to put that
9 requirement on him?

10 A I think it's highly improper. That's correct.

11 Q And as to the hand of one, hand of all -- one moment.

12 MR. RICHEY: May I take one moment, Your Honor,
13 please?

14 THE COURT: Yes, sir.

15 Q As to the hand of one, hand of all charge, and during
16 the transcript I think the Judge said, "I'm going to
17 charge strong arm robbery." Do you recall that?

18 A Yes. We requested the lesser included be charged.

19 Q Do you believe that the hand of one, hand of all
20 charge was applicable to this case as charged?

21 A I didn't like it because the co-defendant wasn't on
22 trial at the same time, but unfortunately, under the
23 facts of the case I can see where the Judge said that
24 one of the -- that a co-defendant testified in the
25 case and therefore, there was testimony that he was

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1 involved. Other people were there and that's why he
2 said he was going to charge it. I didn't particularly
3 like it because he was not an actual defendant at
4 trial, but that was what the Judge decided to charge.

5 Q Do you believe that it was appropriate to ask the
6 Judge for a new trial based on the charge was unfairly
7 prejudicial to Mr. Webb?

8 A I made my motions at the end of trial, but as to that
9 particular argument on that particular issue, no, I
10 didn't.

11 Q This data from the charged indictment kind of
12 happened, when I say pretty quickly, I mean from the
13 time frame, of where you were in the case or some time
14 prior to trial, but the actual indictment on armed
15 robbery to trial kind of happened rather quickly. Is
16 that correct?

17 A Well, I think he was actually indicted prior to that
18 some time before that.

19 Q Let me re-phrase that. The service of the indictment,
20 it's my understanding the service of the indictment
21 served on him March 5th and the trial was March the
22 15th. Correct?

23 A That's correct.

24 Q Do you believe he should have been arraigned on this
25 indictment prior to trial?

1 A I think probably should have. I -- he was aware of
2 what the charges were and the facts of the case, et
3 cetera, et cetera. This was the one, we were in the
4 second day of drawing a jury on a death penalty case
5 when I got word that they wanted to serve me, wanted
6 me to come accept service and I couldn't get out of
7 that trial, leave to go do that, and three weeks later
8 I was still in that trial.

9 Q In terms of the evidence, let me ask you about
10 discovery. There's been a question, and with Mr. Webb
11 it remains an issue as to the discovery, and I'm going
12 to ask you if you are familiar with these documents,
13 if you are familiar with what these documents are. As
14 a public defender, you would normally get these faxed
15 to you.

16 A I'm sure I got these. These all look familiar, yes.

17 Q And in some of those documents, Mr. Webb requested
18 discovery, there's a motion for discovery?

19 A Yes.

20 Q Okay. You supplied him with the discovery. Is that
21 correct?

22 A Yes. I was looking. I did not see -- normally we do
23 a receipt of the discovery and we give it to the
24 defendant. It's not in the file. I know I reviewed it
25 with him. I know I reviewed all the evidence with

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1 him, but I do not see where we have a receipt that
2 says that he got a copy of everything. We normally do
3 that. Martha Pruitt, who is my assistant at that
4 time, normally, is the one who would take those over
5 to the client.

6 Q And do you have any letters showing that you actually
7 sent him the discovery?

8 A Only after the trial.

9 Q Okay. That's your recollection of it actually leaving
10 your office going to him?

11 A Yes. After the trial, he sent me a letter. We got it
12 and we made a copy and Martha mailed it to him, but
13 not before the trial, no.

14 Q Okay. And that would be just the March 19th letter
15 where you stated we'll have a copy made and sent to
16 you as quickly as possible.

17 A Yeah.

18 Q So, that's...

19 MR. RICHEY: I'm going to have these marked. There
20 are a bunch, but marked as one exhibit.

21 A I think one of those was addressed to one of the
22 correctional officers.

23 Q This is going to be Applicant's #3 and this is a
24 letter from your office generated by you? (Hands
25 document to the witness)

1 A Yes.

2 Q This will be #4. (Has document marked) You've heard
3 the discussion about the officer's testimony with
4 regards to Nathan being struck by Shane. Do you
5 recall that during discovery?

6 A Yes.

7 Q And do you believe this evidence could be used to
8 impeach Nathan at trial in terms of Shane being the
9 aggressor?

10 A Yeah. I think I did. There was no question Shane was
11 involved in this thing. Shane Elliott got one heck of
12 a deal to testify.

13 Q Also, were there any plea offers in this case that you
14 recall?

15 A Yes, sir.

16 Q And what were those?

17 A The first one was for ten years. That was early in
18 the case back in October of '09. Ten years. We said,
19 "No". We reviewed the case and fairly early in the
20 case, of course. He turned down the ten years that
21 was offered as strong arm, but that was a minimum for
22 the armed robbery and that's why they were offering
23 it. Mr. Webb said no, he wanted to go to trial and
24 then later they offered a seven year sentence on
25 strong arm, straight, on everything and either include

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1 or dismiss some other pending charges he had as a part
2 of that and, again, he said no, he wanted to go to
3 trial. He didn't believe that he was guilty and he
4 wanted to go to trial.

5 Q And you heard his testimony when he said there were no
6 plea offers. Did you convey those to him? Could you
7 tell me how you conveyed those offers to him?

8 A In person. Yes, sir.

9 Q So, you went to the jail and said there's been an
10 offer?

11 A Yes, sir.

12 Q So, is that what the Solicitor is referring to in here
13 where he said "work something out"?

14 A Yeah. The Solicitor was always looking for a way to
15 save a trial and that's what he was talking about
16 wanting to do. At the time, the first time he
17 mentioned it, I don't feel we really had enough
18 evidence that we could realistically and knowingly
19 make a decision on that too early in the case but I
20 conveyed it to him. He said, "No, I prefer to go to
21 trial." We worked on it for a trial and it came up as
22 seven years, because they knew it was getting close to
23 trial and, again, he said no, he would prefer to go to
24 trial.

25 Q And the Applicant, in terms of this money, in terms of

1 this money list, do you believe that this money list
2 was favorable to him in the case, that he actually
3 went to the house to get money that was owed to him?

4 A Yes. But then again we have to stop and look at the
5 reason why the money was owed to him and that's what
6 had me worried because if our defense was going to be
7 that they were selling drugs on his behalf and hadn't
8 paid him for them, in my opinion, eleven of twelve
9 jurors would have been lost right then, they weren't
10 going to buy anything that we presented. And Mr. Webb
11 told me from the beginning that they had money of his
12 and that it was drug money and they had gotten drugs
13 from him and still hadn't paid him for them and he was
14 mad about it, but he went there and they had done
15 business before. They knew each other and he said
16 that's why he went there. He wanted to get the money
17 that was owed to him and he ended up getting some
18 drugs instead, apparently, because they didn't have
19 any money. They had spent it.

20 Q At the preliminary hearing they were referring to, you
21 were not at that preliminary hearing, were you?

22 A I was not. No.

23 Q So, the Solicitor could not have tried to work
24 something out with you at that hearing if you were not
25 there. Right?

CROSS EXAMINATION OF DANIEL DAY BY MR. WHITMIRE

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1 A That's true.

2 Q Thank you. Answer any questions Mr. Whitmire may have
3 for you.

4 MR. WHITMIRE: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. WHITMIRE:

8 Q Addressing the Applicant's allegations in the order
9 that were just presented, on page 246, do you recall
10 Judge Macaulay giving instruction to the jury not to
11 draw a conclusion from the fact that the Defendant had
12 not testified in this case?

13 A That's true. He did and I remember that.

14 Q How many cases have you tried, criminal cases?

15 A Two to three hundred.

16 Q Would you say it's rare to object during the State's
17 closing?

18 A It is rare, but that's one of the main reasons for an
19 objection during the State's closing, a burden
20 shifting statement.

21 Q Brief time line, when were you appointed to represent
22 Mr. Webb?

23 A Oh, let's see. He applied in August, I believe it is,
24 of '09. August the 4th in '09 and I got the case on
25 August 6th of '09.

1 Q And you made all your Brady Rule and Rule 5 motions.
2 Is that correct?

3 A Beg your pardon?

4 Q And you made all your Rule 5 and Brady Motions. Is
5 that correct?

6 A Yes.

7 Q Do you recall receiving statements from all the
8 witnesses that testified at trial in that discovery
9 request?

10 A Yes, we did.

11 Q And you reviewed all that with Mr. Webb?

12 A I did. I went over each one of them and he was the
13 one who told me what he believed was true and what
14 wasn't true.

15 Q Based on your review of discovery of Mr. Webb, did you
16 advise him of his chances at a jury trial?

17 A Oh, I'm sure I did. Yes.

18 Q And it's your testimony that Mr. Webb turned down two
19 plea offers?

20 A Yes.

21 Q Were there any other witnesses or defenses that Mr.
22 Webb asked you to investigate before you went to
23 trial?

24 A Yeah, we subpoenaed quite a few people and then at
25 trial he told me about two others I wasn't aware of

CROSS EXAMINATION OF DANIEL DAY BY MR. WHITMIRE

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1 and I brought that to the Court's attention about
2 wanting to get those witnesses as well, but the Judge
3 said we would proceed. I would even send out deputies
4 to find them on subpoenas, et cetera, but he wanted to
5 proceed with the trial.

6 Q Mr. Webb was aware that the State was proceeding to go
7 to trial under the armed robbery charge. Is that
8 correct?

9 A We discussed that, yes. He had not been served with
10 it and if I remember correctly, like I said, they
11 brought to my attention that the indictment was out
12 there. I think he wanted my assistant, Martha, to
13 accept service and she wouldn't do that and I couldn't
14 do it because I was in trial and that's when they went
15 over and served Mr. Webb sometime after that.

16 Q Mr. Webb put these concerns on the record during the
17 second day of trial. Is that correct?

18 A Yes.

19 MR. WHITMIRE: Just one second, Your Honor.

20 Q And on page 114, did Judge Macaulay tell him, "you are
21 well aware of these charges we're here for," and all
22 the time you have been involved with a death penalty
23 trial.

24 A Yes.

25 Q And you put on the record the time you reviewed

1 discovery with Mr. Webb and attempted to locate
2 witnesses that he desired you locate.

3 A Yes.

4 Q And the jury returned, well, they acquitted Mr. Webb
5 on discharging a weapon, well, firing into a home. Is
6 that correct?

7 A That's correct.

8 Q And he was charged with hand of one on that, too. Is
9 that correct?

10 A Yes.

11 Q And the jury still acquitted him. One final question.
12 You tried this case to the best of your abilities. Is
13 that correct?

14 A I did.

15 Q And regarding -- well, one more. Regarding Nathan
16 McCall on cross examination, you were able to get him
17 to admit he had pending charges. Is that correct?

18 A Oh, yes. Yes, sir. I mean, they all did.

19 Q And that was a actually trial strategy to attack the
20 credibility of every testifying witness?

21 A Oh, yes. We always go after the credibility and
22 particularly people that have records and these people
23 had pending charges and adverse to Mr. Webb. Yeah, we
24 went after them.

25 MR. WHITMIRE: No further questions, Your Honor. The

REDIRECT EXAMINATION OF DANIEL DAY BY MR. RICHEY

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1 State rests.

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Mr. Day, in this case, these witnesses gave
5 conflicting statements. Correct?

6 A They did.

7 Q And they all were not consistent.

8 A That's true. Absolutely.

9 Q And do ---

10 THE COURT: Hold on. What's going on?

11 MR. RICHEY: Thank you, Your Honor.

12 THE COURT: Mr. Richey, I'm sorry. Excuse me.

13 MR. RICHEY: Thank you, Your Honor.

14 Q There were conflicting statements given. Correct?

15 A Absolutely.

16 Q By all parties that testified. Correct?

17 A No doubt. Yes, sir.

18 Q And do you -- and some of these witnesses had pending
19 charges and not convictions. Correct?

20 A That's true.

21 Q And do you believe those pending charges, do you
22 believe they would be, their credibility would be
23 impeached by their pending charges as well as charges
24 they had been convicted on?

25 A Yes, because some of those charges came about as a

1 result of a relationship with Mr. Webb and that's one
2 of the things I wanted to get to, the fact that that
3 really suggested that they had bias against him and
4 more of a reason to lie.

5 Q Thank you.

6 MR. RICHEY: No further questions.

7 MR. WHITMIRE: No further questions, Your Honor.

8 THE COURT: Thank you, Mr. Day. May Mr. Day be
9 excused?

10 MR. WHITMIRE: Yes, Your Honor.

11 THE COURT: Mr. Richey?

12 MR. RICHEY: Yes, Your Honor.

13 THE COURT: Thank you, sir. Mr. Richey, anything
14 further from the Applicant?

15 MR. RICHEY: No other witnesses, Your Honor, but I'd
16 like to be able to offer a closing argument.

17 THE COURT: Mr. Whitmire, any witnesses?

18 MR. WHITMIRE: No, Your Honor. The State rests.

19 THE COURT: Okay. I'll glad to hear from you, but I'm
20 going to ask each of you attorneys to specifically address
21 this alleged Doyle situation where the Solicitor supposedly
22 made a comment, "You didn't hear anything to the contrary."

23 Also, I want to hear you on the fact that we had the
24 hand of one, hand of all charged where, supposedly, there
25 were different indictments, one for armed robbery and one

1 for strong arm robbery. Mr. Richey, since you are the
2 moving party.

3 MR. RICHEY: Thank you, Your Honor. I'll address the
4 burden shifting issue. When we look at the Solicitor's
5 comment on here, if I phrase it the way it should have been
6 phrased, it might be a little more clear. Basically, the
7 Solicitor said the evidence presented by the State shows
8 that this Defendant is guilty. Fine. He's fine there,
9 because he is specifically arguing his evidence. But when
10 he goes and says, "no evidence to the contrary", that's
11 where the burden shifts, because he's telling the jury
12 there was no evidence presented to the contrary. In this
13 case, the Defendant, where there was no evidence, the
14 Defendant did not testify, then this statement is more
15 critical, because the only person who then would put up
16 evidence to the contrary would be the Defendant.

17 THE COURT: Well, let me ask you this. Is the remedy
18 for an alleged Doyle violation automatic mistrial?

19 MR. RICHEY: Yes, sir, I think it is. I think the
20 granting of a new trial ---

21 THE COURT: What are the factors?

22 MR. RICHEY: I can't remember the law off the top of
23 my head, because I actually had a case in Greenville I've
24 done on a violation where the Solicitor made, the comments
25 were more egregious than this, but they were sent back.

1 But I believe the comments that directly reflect on the
2 evidence presented, I believe it's a violation. Clearly, I
3 think, the statement that starts no evidence to the
4 contrary and all that, the burden definitely is shifting to
5 him.

6 THE COURT: Is it ever appropriate to look at it from
7 the totality of the trial or evidence, meaning, looking at
8 Judge Macaulay's opening instructions, he tells them the
9 burden is on the State. He clearly does that in his
10 closing to the jury and he says, "a failure to testify
11 shall not be considered by you." If, based on those
12 correct charges to the jury and the totality of all the
13 other testimony in the case there is overwhelming evidence
14 of this Defendant's guilt, is a mistrial necessitated by
15 that one line alone?

16 MR. RICHEY: Your Honor, I believe in this case,
17 because if this was the case where the Defendant put up
18 evidence and testified and all that, that's different. But
19 in my opinion, in this case, because of the constitutional
20 issue, he had the absolute right to remain silent. Once
21 the Solicitor then invokes this, then there's no remedy
22 because there's no evidence put up by him. You know,
23 there's no way you can do it, because once you put that cat
24 out of the bag, it can't get put back in. The judge can
25 charge and do whatever, but you can't put that back in the

1 bag and I think the right to remain silent is such a
2 critical right it trumps the jury instruction, because the
3 judge can say it all he wants, but what happens is, all
4 this case is done and the Solicitor stands up in closing
5 argument and says look -- and I'll say it in the extreme --
6 "Hey, look, he didn't put up any testimony." That bell has
7 been rung. Okay? It's been rung and that's why counsel
8 has then to go in and object at that point. Once the
9 objection is made, then the judge can then step in and try
10 to fix it. See, there was no fixing of it here because the
11 objection wasn't made and I think that's what Mr. Day was
12 referring to.

13 THE COURT: So, you're saying, then, if an objection
14 had been raised at that point, then Judge Macaulay could
15 have fashioned some type of curative instruction that would
16 overcome the alleged Doyle violation?

17 MR. RICHEY: Yes, sir. He could do that. Now, at
18 that point there's some hope to it that the judge can step
19 in and try to fix the situation, but without the objection,
20 it doesn't get fixed on the spot.

21 THE COURT: Okay.

22 MR. RICHEY: Do you want me to address the second
23 point to be raised, the hand of one, hand of all?

24 THE COURT: Yes, sir.

25 MR. RICHEY: Judge, interpreting the hand of one, hand

1 of all, when I look at that and how Judge Macaulay
2 rationalizes the charge, I had it in front of me. I think
3 it's on page 209, it's on page 209.

4 THE COURT: Just one second. Okay.

5 MR. RICHEY: This, and I think, Your Honor, when Judge
6 Macaulay goes through -- what Judge Macaulay is essentially
7 telling them is, he's saying, look, I've got two co-
8 defendants here. One is charged with armed robbery, one is
9 charged with strong arm robbery. If you want me to charge
10 the hand of one, hand of all, then I think I have to charge
11 the lesser included to kind of balance it up so the jury
12 will have something to say, you know, maybe it was strong
13 arm robbery, it wasn't an armed robbery. Okay? That's why
14 I think this charge should have been objected to, because
15 the State would have to have made a decision at this point.
16 If there is no hand of one, hand of all, then they would
17 have to tell the judge, they would have to make some
18 allowance to get strong arm robbery on the table. I mean,
19 they would have to. If the objection is, no judge, we
20 would have to object to that, we don't want hand of one,
21 hand of all, the State is asking for that, we do not
22 believe it is a hand of one, hand of all case, because he
23 is charged with strong arm, we're charging armed robbery
24 and some of these cases that I was reading last night, they
25 talked about, you can only compute the crime the co-

1 defendant has, so they would compute to my client strong
2 arm robbery, but we've got an armed robbery charge here.
3 Okay?

4 THE COURT: Was there evidence that the indictments
5 against the co-defendants were ever before the jury?

6 MR. RICHEY: No. I think the jury knew that the
7 co-defendants were charged with similar offenses, not the
8 same offense.

9 THE COURT: Does it make a difference in the cases
10 that you reviewed as to whether they were going forward
11 with the trial of the co-defendants in the same trial or,
12 the reason I ask that in this case, obviously from what
13 I've heard, they were dangling a carrot over Mr. Webb's
14 head saying, "You go ahead and plead to strong arm, we'll
15 go ahead and let you plead to some type of offered plea,
16 not Alford as in Alford versus North Carolina, but
17 O-F-F-E-R-E-D, but if not, we will go back and directly
18 indict you and go after the higher charge based on the
19 facts of this case." And my question would be, if the
20 evidence in the indictments against the co-defendants were
21 not before the jury, what would have prevented the State
22 doing the same thing in trying him and the co-defendant in
23 the subsequent case, because they are all based on the
24 same acts. Am I being obtuse with you? In other words, if
25 the conduct that the defendants are charged with stem from

1 the same actions or inactions by the co-defendants, does
2 the fact that the present indictments, when you don't have
3 the co-defendant who's not on trial indicted with the same,
4 does that make that charge totally appropriate?

5 MR. RICHEY: Your Honor, I think the Court is saying,
6 simply what I'm saying is, I think the problem in this case
7 is when the State does not have them charged with the act,
8 that they are trying to impute this conduct on my client.
9 I mean, say the State charges him with larceny, grand
10 larceny or larceny, he went in the house and they stole
11 goods and they also enter a larceny charge and he testifies
12 the same way, but he's charged with larceny, then there's
13 no way the State can say the hand of one, the hand of all
14 on armed robbery. I mean, they couldn't do it. They would
15 not get this charge because they would have to use the
16 extreme -- understand what I'm saying, they couldn't say,
17 you went in the house on a larceny, the armed robbery
18 happened and so we're going with the hand of one, hand of
19 all, they both did the armed robbery and the larceny. I
20 don't think they would get the charge of hand of one, hand
21 of all on armed robbery and that's what you have here.
22 They are trying to impute the criminal act of this co-
23 defendant to my client but that co-defendant is not charged
24 with the acts they are trying to impute from this hand of
25 one to him. So, that's why I think this charge is

1 improper, but at the stage of this trial, the State would
2 be in a tremendous bind if Judge Macaulay says, "I'm not
3 charging that." The State would be in a tremendous bind
4 because, essentially, they would have to go all or nothing.
5 Okay? Hey, it was this individual acting. We've got no
6 hand of one charge, all that, and so the State would have a
7 real problem in this case in the end.

8 THE COURT: Does the fact that strong arm robbery is a
9 lesser included make a difference in the analysis?

10 MR. RICHEY: Your Honor, I think if you look at strong
11 arm robbery versus larceny, okay. You look at strong arm
12 robbery and larceny, a person couldn't be charged with
13 strong arm robbery and larceny at the same time. I don't
14 believe they call it a lesser included charge. That's not
15 what the State is saying. They are trying to impute a
16 higher charge to him. See, I think it would have been the
17 opposite way if the jury had come back and said, "No, it
18 was strong arm, not armed robbery." That's different. But
19 they are trying to impute a higher criminal responsibility
20 from this co-defendant to my client and that's what the
21 hand of one, hand of all is. We all did this, we all get
22 the same thing, we all get charged the same thing, but then
23 they waltz in and say, "No, these are strong arm and these
24 are armed," and I think that's the problem with this hand
25 of one, hand of all logic used in this case.

1 THE COURT: Okay. All right. Let me hear from the
2 State. Hold on. I'm sorry. I know you had other grounds.
3 I particularly asked for those two. I will be glad to hear
4 from you on the other grounds of the arraignment, the
5 discovery and Brady.

6 MR. RICHEY: Okay. Your Honor, as to the discovery, I
7 think the testimony from my client admitted, at best, he
8 made a request for the discovery. The documentation shows
9 he sought discovery after the trial. It's his position
10 because of the statements that were made, one of the
11 statements -- and I'll say this to the Court in all candor,
12 it's my understanding that was a difference that was told
13 at trial that was not ---

14 THE COURT: Say that again, please?

15 MR. RICHEY: During the testimony, in terms of the
16 first officer, it's Exhibit #1.

17 THE COURT: Right.

18 MR. RICHEY: Where he talks about the officer saying
19 that the other guy hit him in the head. It was my
20 understanding my client did not do that, but he made, we
21 clarified that, but I would just say that that part of the
22 discovery, it is our position that that was information
23 that he could have impeached the victim on and that did not
24 happen and that Mr. Day did testify that he went over the
25 discovery with him. Okay? So, I'll just say that my

1 client says he didn't see it until afterwards.

2 THE COURT: All right. And you would agree would you
3 not that the fact that Mr. Webb said, "I admit that I hit
4 him in the head with this gun," kind of circumvents any
5 argument he has about the exculpatory nature even as to the
6 credibility of their statements?

7 MR. RICHEY: That is a problem. Could I have one
8 moment?

9 THE COURT: Sure. Absolutely.

10 (Mr. Richey speaks with the Applicant off the record)

11 MR. RICHEY: Your Honor, I understand your point. I
12 agree with that point.

13 THE COURT: Okay.

14 MR. RICHEY: I guess the other issue I had, he was not
15 arraigned on the charge. The arraignment is a process, I
16 do understand that we had a full blown trial, so we ---

17 THE COURT: Can't you waive an arraignment? Isn't
18 that correct?

19 MR. RICHEY: You can, Your Honor. I don't think there
20 was any waiver here, but I would just say we knew it was
21 coming down to trial.

22 THE COURT: In this case, and I'm not pretending to
23 know the answer, I think, isn't the law that once you
24 select a jury and they are seated, that you've waive your
25 right to have an arraignment?

1 MR. RICHEY: Yes, sir.

2 THE COURT: All right.

3 MR. RICHEY: Thank you, Your Honor.

4 THE COURT: Thank you, sir. Let me just note, as to
5 the grounds of the arraignment, I'll deny your motion and
6 your petition. As to discovery and as to the Brady basis,
7 I am denying those three. I want to hear more about the
8 others we just went over.

9 MR. RICHEY: Thank you, Your Honor.

10 THE COURT: So, what I'm asking, Mr. Whitmire, I want
11 to hear you about the hand of one, hand of all and also,
12 the Doyle violation.

13 MR. WHITMIRE: May it please the Court. To start
14 with, I was unaware of this issue coming in here today so
15 I'll do the best I can. I would ask for the opportunity to
16 brief by the end of the week if you still have any
17 continuing questions.

18 THE COURT: I'm going to have that done anyway.

19 MR. WHITMIRE: Thank you. Starting with the reported
20 Doyle violation, citing State v. King, 349 S.C. 142, it is
21 permissible for the Solicitor to refer to certain evidence
22 as uncontradicted by the defendant who is the only person
23 who could contradict the evidence when multiple witnesses
24 testify. I don't see how this necessarily becomes a
25 standard or something that would resemble a Doyle violation

1 on ---

2 THE COURT: Well, if you look at the totality of the
3 argument made by the State, he was saying everybody was
4 saying that Shane committed this wrongdoing, but everybody
5 said it was this Defendant. Everybody said it was this
6 Defendant. Everybody who testified said it was this
7 Defendant and there's no evidence to the contrary. If he's
8 already gone through and said everybody on behalf of the
9 State said he did it and there's no evidence to the
10 contrary, what could it possibly mean but this Defendant
11 didn't testify?

12 MR. WHITMIRE: Within in the context of the trial
13 we're talking about the witnesses that were privy to the
14 actual offense, the two victims and then the co-defendant,
15 the two potential co-defendants, it's all specific to
16 everyone who could have possibly testified, along with the
17 victim's voluntary statement, so all that evidence was
18 before the jury. I'm not, like I said, I'm not 100% on the
19 law and I don't want to mislead the Court if it would be a
20 Doyle violation or not or could be harmless error or
21 automatically prejudicial. I would note for the record
22 that Judge Macaulay issued instructions prior to the
23 State's closing and to the Applicant's closing for the
24 jury, on page 212, I believe, for the jury not to infer
25 guilt of the Defendant for not testifying or putting up a

1 defense and on 246, Judge Macaulay does this again. I
2 believe that prior instruction and the subsequent
3 instruction would certainly have completely diminished any
4 possible harm from maybe an inference that itself is
5 questionable from the State's closing argument.

6 Addressing the next issue, the hand of one issue.
7 Again, I haven't looked at any case law on point, but the
8 co-defendant was charged in the same factual nexus as the
9 crime that Mr. Webb was on trial for and Mr. Webb was
10 charged, and possibly two other co-defendants, was the
11 first to proceed to trial. The co-defendant did have
12 pending charges against him that had yet to be resolved.
13 It's speculative to suggest there is some disparity over
14 this because hand of one was allowed as a jury charge. Mr.
15 Webb's trial at that time there was a plea offer for strong
16 arm robbery. We are talking about ---

17 THE COURT: Now, a plea has no relevance at trial.

18 MR. WHITMIRE: Factually, evidence of the crime
19 committed could have been imputed, because we have Shane
20 Elliott's own testimony of what he did. Specifically,
21 looking at he fires a bullet in the headboard in Nathan's
22 room, holds Nathan at gunpoint. From his own testimony at
23 trial, he takes part in an armed robbery. That alone
24 allows a factual nexus for hand of one. Nothing further,
25 Your Honor. The State rests.

1 THE COURT: All right. Any response?

2 MR. RICHEY: Judge, when you start looking at the
3 burden shifting, I think the standard here is, would a
4 reasonable attorney practicing law in South Carolina, in
5 the United States, object to this. What would a reasonable
6 attorney do? And I think Mr. Day's testimony is quite
7 clear. He's tried 200-300 cases and he said looking at
8 that, it's clearly burden shifting, an objection should
9 have been made.

10 THE COURT: Okay. You're talking about the Doyle and
11 not the differences in the indictments. Correct?

12 MR. RICHEY: Yes, sir. Yes, sir.

13 THE COURT: Well, let me ask you this. I meant to ask
14 you this earlier. On the charge, because that was raised
15 by Mr. Day before the Court. Correct?

16 MR. RICHEY: Yes, sir.

17 THE COURT: As far as the charge of the hand of one,
18 hand of all, the Court rationalized what is the proper
19 charge for me to give under the circumstances.

20 MR. RICHEY: Yes, sir.

21 THE COURT: So, under the record, if I read it right
22 and I may be wrong, but it seemed like Mr. Day did bring
23 that issue up before the Court and the Court said, "No, I'm
24 going to go ahead and charge it." Is that a fair
25 statement?

1 MR. RICHEY: No, I think what happened, when, if you
2 go back to 209, I think what Judge Macaulay is doing, he's
3 sitting there and it doesn't appear on 208 that there's any
4 discussion about this charge. Okay? And so, what happens
5 on 208, Judge Macaulay says, "All right, at a sidebar,
6 taken in the light of the request to charge." It sounds
7 like they requested hand of one, hand of all and Judge
8 Macaulay brought them up and they had some discussion and
9 Judge Macaulay basically says this is what I'm going to do.
10 Now, Mr. Day, he says, "Yes, sir. I would ask for the
11 lesser included charge of strong arm robbery, the same that
12 the co-defendants are charged in this case. So, our
13 position is, the charge that Judge Macaulay gave, it should
14 have been objectionable because the charge of hand of one,
15 hand of all in any form was not the proper charge.

16 THE COURT: And you don't believe that the fact that it
17 was charged was an issue more for direct appeal?

18 MR. RICHEY: Well, if there's not an objection to it,
19 it's not preserved.

20 THE COURT: Okay.

21 MR. RICHEY: The standard -- if the Court approves, I
22 would like to briefly state the standard on the other one.

23 THE COURT: Okay. Go ahead.

24 MR. RICHEY: I think I stated, would a reasonable
25 attorney object at this point. That's the standard. And I

1 believe from Mr. Day's testimony, that he's tried over 200
2 to 300 cases, that he's reviewed it and this was something
3 he should have objected to. I think that is the standard,
4 should have objected.

5 THE COURT: And resulting prejudice such that the
6 outcome would have been different. So, that's a very
7 important leg of that.

8 MR. RICHEY: Yes, sir. Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WHITMIRE: Your Honor, just briefly on page 209,
11 Judge Macaulay says at line 19, addressing the hand of one,
12 "The only reason I'm bringing this up is because I have to
13 look at all the evidence and what might be permissible to
14 be charged under the evidence, not the weight or value of
15 it." What exactly the co-defendant is charged with, at
16 least, is ancillary. Second, addressing the overwhelming
17 evidence of guilt. We have Mr. Webb admitting on the stand
18 here today, "Yes, I did pistol whip the first victim."
19 There was evidence, physical evidence presented at trial
20 that testified as to that exact comment. Both victims do
21 testify. Shane Elliott testifies, the two women testify
22 and then his girlfriend, who had absolutely no interest in
23 this transaction, or whatever it might have been,
24 testified that he comes and tells her, "I was involved.
25 Shots were fired. Someone owed money," and so we have

1 numerous witnesses testify. The question of guilt, I
2 believe, is pretty clear cut in this case. Nothing
3 further, Your Honor.

4 THE COURT: All right. Let me ask the attorneys. I'm
5 going to ask you to brief, 1) whether or not about the
6 statement by the State in his closing, "no evidence to the
7 contrary," page 218, is, in fact, a Doyle violation or
8 burden shifting as Mr. Richey pointed out and if so,
9 whether that requires a mistrial or could it be cured by
10 some other charge to the jury such as was given or
11 overwhelming evidence of guilt. Okay?

12 And then, 2) Whether there should have been an
13 objection to the charge of hand of one, hand of all if, at
14 the time of trial, the co-defendant not on trial was
15 charged with a lesser included offense of strong arm
16 robbery.

17 I don't particularly care what kind of format. You
18 can do a letter form or whatever you want to do, just let
19 me see what your arguments are. How long do you need to
20 get that in, Mr. Richey?

21 MR. RICHEY: My client is going to send me stuff. I
22 don't know what the time frame is for the Court. I could
23 do it within -- could we do thirty days? Is that...

24 THE COURT: Yes, sir.

25 MR. WHITMIRE: Same here, Your Honor.

1 THE COURT: And let me tell both of you, I don't want
2 a bunch of memo wars, so turn in what you want to turn in.
3 Mr. Whitmire, Mr. Richey, turn in what you're going to turn
4 in, but that's it. Okay?

5 MR. RICHEY: Yes, sir.

6 MR. WHITMIRE: Thank you, Your Honor.

7 THE COURT: Thank you, gentlemen. Thank you for your
8 presentation. And for the record, exhibits #1,#2,#3,#4 are
9 admitted, without objection.

10 (Whereupon, Exhibit #1, a request for discovery,
11 Exhibit #2, copies of ledger, #3, letters, and #4, a letter
12 from Mr. Day, are entered into evidence, without
13 objection.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR OCONEE COUNTY, SOUTH CAROLINA, HELD IN ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON MAY 06, 2013 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 7TH DAY OF NOVEMBER, 2013.



JO RICE
OFFICIAL COURT REPORTER

Case Report

Detail

Print Date/Time: 08/28/2009 11:13
 Login ID: mesmith
 Case Number: 2009-00018783

OCONEE COUNTY SHERIFF OFFICE
 ORI Number: SC0370000

HILMON RD
 WHERE THE SUSPECT'S CAR HAD BEEN FOUND. SUSPECT'S RAN INTO THE WOODS AND A
 SEARCH WAS
 STARTED. INVESTIGATOR ARNOLD TOOK OVER THE CASE AND R/O CONTINUED IN THE
 SEARCH. NO
 FURTHER INFORMATION IS AVAILABLE AT THIS TIME.

SUPPLEMENTAL BY NG

SUBJECT (WEBB) ARRESTED 7-26-09 FOR STRONG ARM ROBBERY WARRANT N130067.

SUBJECT (ELLIOTT) ARRESTED 7-24-09 FOR STRONG ARM ROBBERY WARRANT N130070.

NCIC CLEAR/WANTED

SUBJECT JEFFERY WEBB WAS ARRESTED AND TAKEN OUT OF NCIC

NCIC ENTRY/WANTED (CAUTION)

JEFFERY A WEBB ENTERED NCIC
 WARRANT NUMBER #N130067
 NIC #W726934589

FILED-CLERK'S OFFICE
 2013 MAR 28 4:28 PM
 CANCELLED
 CLOCK IN STAMP
 ANDERSON
 GENERAL SESSIONS

SUPPLEMENTAL BY SCOTT ARNOLD

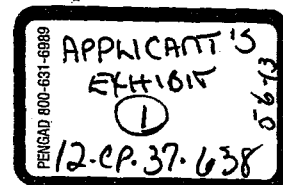
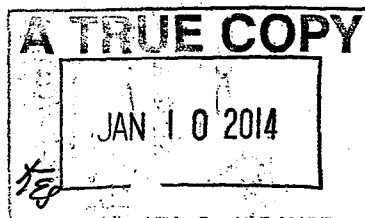
I/O WAS DISPATCHED TO [REDACTED] LITTLE RIVER LN IN REFERENCE TO A SHOOTING. UPON
 ARRIVAL I/O SPOKE WITH NATHAN MCCALL. HE STATED THAT JEFF WEBB AND SHANE
 ELLIOTT CAME TO HIS RESIDENCE AND HAD ROBBED HIM BY GUN POINT. JEFF STRUCK HIM
 IN THE HEAD WITH A PISTOL AND STOLE HIS PISTOL FROM HIM. SHANE LAID BESIDE HIM IN
 THE BED AND SHOT INTO THE WALL. NATHAN GAVE A VOLUNTARY STATEMENT ABOUT THIS
 CASE. I/O ALSO SPOKE WITH JASON MCCALL. HE STATED THAT JEFF POINTED A GUN AT HIM
 AND STOLE \$125 FROM HIM. JASON ALSO GAVE A VOLUNTARY STATEMENT ABOUT THIS
 CASE. MARIA AND RYANNE WAS AT THE RESIDENCE WHEN THE ROBBERY TOOK PLACE.
 THEY GAVE A VOLUNTARY STATEMENT ABOUT THIS CASE. I/O TOOK PHOTOGRAPHS OF THE
 SCENE. I/O OBTAINED THE FOLLOWING WARRANTS ON SHANE AND JEFF:

SHANE: 1) WARRANT # N- 130070 FOR STRONG ARM ROBBERY
 2) WARRANT # N-130084 FOR DISCHARGING A FIREARM INTO A DWELLING.

JEFF: 1) WARRANT # N- 130083 FOR STRONG ARM ROBBERY.
 2) WARRANT # N- 130081 FOR DISCHARGING A FIREARM INTO A DWELLING.
 3) WARRANT # N- 130067 FOR STRONG ARM ROBBERY.

NOTE FROM JEFF WEBB INTERVIEW
 RECORD OF INTERVIEW

CASE # 0918783 AND 0919139



Case Report Detail

A TRUE COPY

JAN 10 2014

CLERK OF COURT - OCONEE COUNTY

OCONEE COUNTY SHERIFF OFFICE
ORI Number: SC0370000Print Date/Time: 08/28/2009 11:13
Login ID: mesmith
Case Number: 2009-00018783

KD5790 - DAVIS

No

UNARMED (01)

Associated Numbers

Booking ORI:

SC037023C

Booking Number:

2009-00002372

Arrest Charges

No.	Group/ORI	Crime Code	Statute	Description
1	State	520	16-23-0440(A)	WEAPONS / DISCHARGING FIREARMS INTO A DWELLING
Counts: 2		Charge Date/Time: Attempt/Commit: COMMIT (C)		

Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
07/23/2009	STOLEN/ETC. (7)	CURRENCY / MONEY (20)					

Seq #1

Property Codes

Property Type: CURRENCY /
MONEY (20)

Property Class:

Date Received: 07/23/2009

STOLEN/ETC. (7)

UCR Value:

Initial Value: \$150.00

Stolen Location:

Suspect Vehicles*To deft. reports*NARRATIVE

R/O RESPONDED ON 7/23/09 TO [REDACTED] LITTLE RIVER LANE REFERENCE TO ROBBERY. R/O SPOKE TO

NATHAN MCCALL WHO STATED THAT MICHEAL SHANE ELLIOTT AND JEFFREY WEBB HAD CAME TO HIS

HOUSE AND NATHAN STATED THAT SHANE HAD HIT HIM IN THE HEAD WITH A SILVER HANDGUN AND

KNOCKED HIM ONTO THE BED. NATHAN THEN STATED THAT SHANE HAD SAT ON THE BED AND

THREATENED TO KILL HIM. NATHAN STATED THAT SHANE ASKED HIM FOR MONEY AND NATHAN TOLD HIM

HE DIDN'T HAVE ANY MONEY SO SHANE TOLD HIM HE WAS GONNA TAKE HIS GUN. NATHAN STATED THAT

SHANE HAD THEN FIRED ONE SHOT OUT THE DOOR OF THE BEDROOM TOWARDS THE HALLWAY. NATHAN

STATED THAT JEFF WEBB HAD TAKEN JASON MCCALL INTO THE BACK BEDROOM WHERE JEFF HAD TAKEN

→ \$150 IN CASH. NATHAN STATED THAT SHANE AND JEFF HAD TAKEN HIS RUGER P-95 AND HAD THEN

WALKED OUT THE DOOR AND GOTTEN INTO A GOLD CHEVY MALIBU. AS JEFF AND SHANE WERE LEAVING

ONE HAD FIRED A SHOT AT THE HOUSE WHICH WENT THROUGH THE OUTER WALL AND HAD HIT A LIGHT

IN THE DINING ROOM AREA. R/O BEGAN TO TAKE STATEMENTS FROM THE VICTIM WHEN R/O RECEIVED

INFORMATION TO THE LOCATION OF THE SUSPECTS. R/O LEFT THE SCENE AND WENT TO

INTEC

1911 12 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043

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Bridgette

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ALL COPY

JAN 10 2014

OFFICE OF THE ATTORNEY GENERAL

APPLICANT'S
 EXHIBIT
 (2)
 12-CP-37-638

APPLICANT'S
EXHIBIT

(2)

PENG 12.CP.37.638

5-6-13

ZYRTEC

~~100.00~~

SHANE - 125.00

WFF DUKES - 200.00

Bradley - 30.00

B. MCNULT - ~~100.00~~

Bridgette - ~~100.00~~

JENNY - 140.00

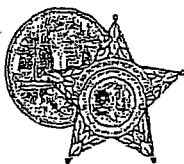
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J.C. - ~~100.00~~

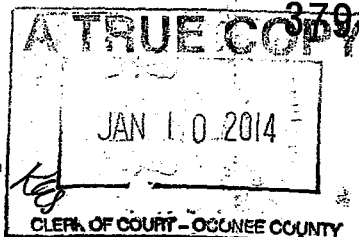
Bobby - 30.00

TRUE COPY

JAN 10 2014



Oconee County Detention Center



INMATE REQUEST TO STAFF

Inmate Name Jeffrey Webb Cell C-cell Date 9/11/09

Addressed to: Danny Day
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

I want a copy of my motion, statements, photos, police reports, etc. Copy of the transcribe from my preliminary (9-11-09). I also wish to know if there are any ballistic reports or test ran on the firing into a dwelling. Statutes and criteria on all my charges. Also someone needs to William Hartshorn house to show that there is no way to hit him without hitting the house. (Please take pictures of house from the road.)

Disposition by staff member: _____

Signature _____

FILED - CLERK'S OFFICE
ANDREWS
2009 SEP 21 11:28
CLOCK IN STAMP
CLOCK IN STAMP
Date: _____

Disposition by Director: _____

EXHIBIT
SEP 21 2009
BY: _____

Signature _____

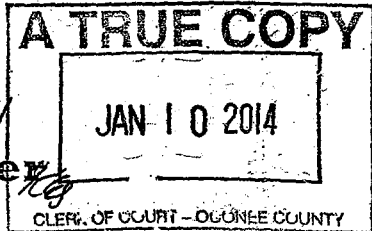
APPLICANTS
EXHIBIT
3
12-CP-37.638
PENGAD 800-631-6999

Date: 1 / 1 / 09



(Please Fax) I need a copy

Oconee County Detention Center



INMATE REQUEST TO STAFF

Inmate Name Jeffrey Webb Cell C Date 9/18/09

Addressed to: Danny Day
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

I want a copy of my motion, statements, photos, police reports, etc. Also I would like a copy of the transcript from my preliminary, which was held on (9-11-09). I also wish to know if ballistic reports or test were ran on the firing into a dwelling. I would also like the statutes and criteria on all my charges. Also I need someone to go to William Hartshorn's house to show there was no why to hit him without

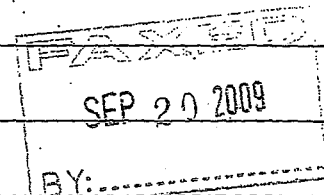
Disposition by staff member: hitting the house. (Please get Pictures of the house from the road.) Thank you for your time,

Jeffrey Webb

Date: 1/1

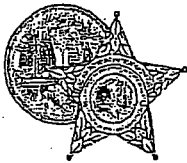
Signature

Disposition by Director: _____



Date: 1/1

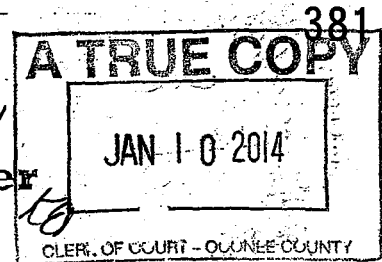
Signature



(Please Fax)

I need a copy

Oconee County Detention Center



INMATE REQUEST TO STAFF

Inmate Name Jeffrey Webb Cell C Date 9/18/09

Addressed to: Danny Ray
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

I want a copy of my motion, statements, photos, police reports, etc. Also I would like a copy of the transcript from my preliminary, which was held on (9-11-09). I also wish to know if ballistic reports or test were ran on the firing into a dwelling. I would also like the statutes and criteria on all my charges. Also I need someone to go to William Hartshorn's house to show there was no way to hit him without

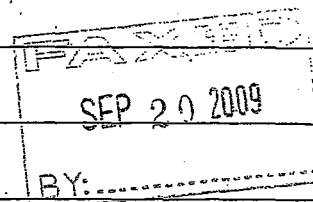
Disposition by staff member: hitting the house. (Please get Pictures of the house from the road.) Thank you for your time,

Jeffrey Webb

Signature

Date: 9/18/09

Disposition by Director: _____



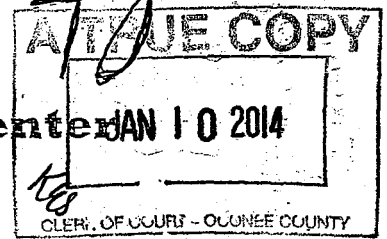
Signature

Date: 9/18/09



PLEASE FAX

Oconee County Detention Center



INMATE REQUEST TO STAFF

Inmate Name Jeffrey Webb Cell C Date 1/1

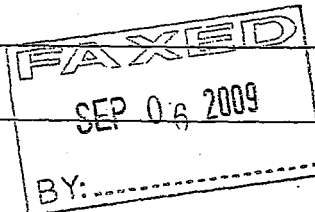
Addressed to: Mrs. Martha Pruitt
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

If you would please send me the statutes under ordinance
section 56-05-1220, 56-05-2920, 56-01-0460(1), 6-11-0312(B),
16-11-0325, 16-23-0440, and C/L; 16-03-0620 and the criteria
of these offense codes 0760, 0137, 0086, 0624, ~~0012~~ 0657, 2464,
and 0052.

I Greatly Appreciate Your Time,
Jeffrey Webb

Disposition by staff member: _____



Signature _____

Date: 1/1

Disposition by Director: _____

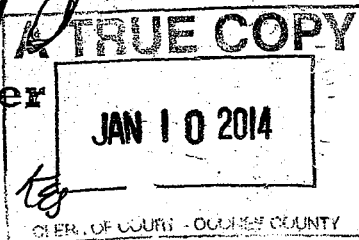
Signature _____

Date: 1/1



PLEASE FAX TO

Oconee County Detention Center



INMATE REQUEST TO STAFF

Inmate Name Jeffrey Webb Cell C Date 1 / 1

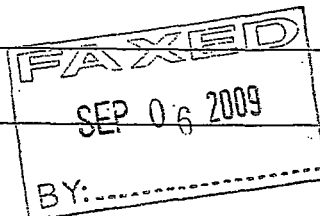
Addressed to: Mrs. Martha Pruitt
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

If you would please send me the statutes under ordinance
section SG-OS-1220, SG-OS-2920, SG-01-0460(1), 6-11-0312(B),
16-11-0325, 16-23-0440, and C/L; 16-03-0620 and the criteria
of these offense codes 0760, 0137, 0086, 0624, ~~0086~~ 0657, 2464,
and 0052.

I Greatly Appreciate Your Time,
Jeffrey Webb

Disposition by staff member: _____



Signature _____

Date: / /

Disposition by Director: _____

Signature _____

Date: / /

**TENTH JUDICIAL CIRCUIT PUBLIC DEFENDER
OCONEE COUNTY**

Mailing Address:

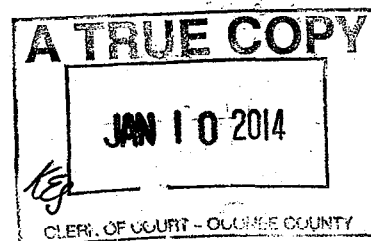
415 South Pine Street, Walhalla, South Carolina 29691

Phone: (864) 638-3133 - FAX (864) 638-3120

R. Daniel Day - Public Defender

April 19, 2011

Jeffrey A. Webb #214186
386 Redemption Way F-4-A
McCormick Correctional Inst.
McCormick, South Carolina 29899



Re: Files

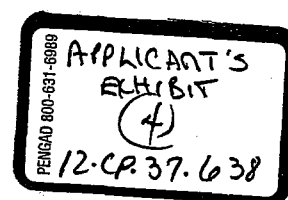
Dear Mr. Webb,

I am in receipt of yours of April 18, 2011 concerning your request for your files.
This is the first request I have received from you.

I will have a copy made and sent to you as quickly as I can. This may take a few days to complete.

R. Daniel Day

FILED-CLERK'S OFFICE
APR 20 2011
2013 MAR 9 D 4: 28
CLOCK IN STAMP
GENERAL SESSIONS AND
COURT LEAS



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jeff A. Webb,
S.C.D.C. No. 214186,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2012-CP-37-638

ORDER OF DISMISSAL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 2 AM 11 38

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 12, 2012. Respondent made its Return on December 4, 2012. An evidentiary hearing into the matter was convened on May 5, 2013 at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Rodney W. Richey, Esquire. The Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office. Applicant and plea counsel testified.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. The Applicant was indicted at the November 2, 2009, term of the Oconee County Grand Jury on two counts of Armed Robbery and of Possession of a Weapon During the Commission of a Violent Crime (2019-GS-37-1279; 2009-GS-37-1282). Applicant was represented by Daniel Day, Esquire. On March 15-16, 2010, the Applicant was tried and convicted of the aforementioned offenses. Applicant was sentenced by the Honorable Alexander S. Macaulay to concurrent sentences of twenty years. Applicant did

appeal his conviction, which was dismissed and remitted to the lower court by the South Carolina Court of Appeals (No. 2011-UP-566).

At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to challenge Applicant's arraignment.
 - b. failure to prepare and investigate Applicant's case for trial.
 - c. failure to communicate a guilty plea offer to Applicant.
 - d. failure to object to an alleged Doyle violation.
 - e. failure to object to the trial judge's improper jury instruction on accomplice liability.
2. Prosecutorial misconduct
 - a. failure to make Brady disclosures

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified. Applicant alleged trial counsel was ineffective for not challenging a suspect indictment and arraignment procedure. Applicant stated he discussed the matter with trial counsel during the course of representation. Applicant alleged trial counsel was ineffective in failing to convey the solicitor's guilty plea offer. Applicant stated he was never advised a guilty plea offer materialized. Applicant stated trial counsel promised to work something out but failed to follow through.

Applicant alleged trial counsel was ineffective in failing to prepare his case. Applicant testified to his version of the events that led to his arrest. Applicant stated he was in the victims' home during the commission of the offense. Applicant stated one of the victims, Nathan McCall, owed him money. Applicant stated he pistol-whipped Nathan McCall during the commission of the offense. Applicant asserted he was falsely accused of firing shots. Applicant stated trial counsel failed to review discovery with him. Applicant alleged trial counsel was ineffective for failing to investigate evidence that corroborated his version of the facts of the offense. Applicant

stated he requested Brady materials in September of 2009. Applicant stated he received no response to this request.

Applicant alleged trial counsel was ineffective for failing to object to the solicitor's comments during his closing argument. Applicant stated the solicitor improperly commentated on Applicant's silence. Applicant stated he was prejudiced because solicitor's impropriety constituted a burden shift. Applicant stated trial counsel failed to object and request a curative instruction to remedy the harm.

Applicant alleges trial counsel was ineffective for failing to object to the trial judge's instruction on accomplice liability. Applicant stated the facts of his case did not support a "hand-of-one" jury instruction. Applicant alleged the trial judge erred on the matter because his primary co-defendant was only charged with strong armed robbery while Applicant was charged and convicted for armed robbery. Thus, Applicant argued the trial judge should have not sanctioned the jury imputing criminal liability for armed robbery.

Last, Applicant alleges prosecutorial misconduct. Applicant stated the solicitor failed to disclose favorable evidence pursuant to Brady. Applicant stated the solicitor failed to provide him with a statement made by Jason McCall. Applicant submitted an exculpatory statement from Jason McCall. Applicant stated Jason McCall originally claimed he was assaulted by someone other than Applicant during the commission of the offense. Applicant stated the victim's statement was inconsistent with his trial testimony. Applicant also stated the solicitor failed to provide him with a handwritten list of money owed to him.

At the PCR hearing, trial counsel testified. In anticipation of the hearing, trial counsel reviewed his case file. Trial counsel filed discovery. Trial counsel reviewed all of the evidence in the case with Applicant and made notations in his file to that effect. Trial counsel stated he

ultimately relinquished all discovery materials to Applicant subsequent to his conviction. Trial counsel discussed Applicant's version of the facts with him prior to trial. Trial counsel summarized the solicitor's case against Applicant. Applicant was charged with committing an armed robbery with three other persons. Applicant's co-defendant, Shane Elliott, implicated Applicant's Applicant as the ringleader. Additionally, four eyewitnesses implicated Applicant. Applicant's girlfriend provided a statement as to Applicant's motive. Applicant also made a statement to police. Trial counsel investigated the credibility of the probable witnesses and investigated inconsistencies in their statements. Trial counsel testified he discussed Applicant's version of the facts with him. Applicant claimed the offense resulted from a dispute regarding drug money with the victims. During the course of representation, trial counsel obtained a guilty plea offer to the lesser-included offense of strong armed robbery. Trial counsel conveyed the offer to Applicant. Ultimately Applicant rejected the offer and subsequent negotiations because he desired a jury trial. Trial counsel testified the solicitor offered a ten-year term of imprisonment. Trial counsel personally conveyed the offer to Applicant. Ultimately Applicant rejected the offer and subsequent negotiations because he desired a jury trial. Trial counsel testified Applicant was indicted well before trial. Trial counsel recalled Applicant was well aware of the indictments and pending trial date.

In preparation for trial, trial counsel testified Applicant asked him to investigate several auxiliary witnesses. Inevitably, trial counsel was unable to compel their attendance at trial. Trial counsel testified an objection would have been appropriate to the solicitor's reference that "Applicant presented no evidence to the contrary" during closing arguments. Trial counsel testified he personally disliked accomplice liability in Applicant's case because the co-defendants were not on trial. Trial counsel requested a jury instruction for strong armed robbery.

Trial counsel made a motion on the matter and did not believe the jury instructions prejudiced Applicant.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A.

This Court finds Applicant's allegation that trial counsel was ineffective for not challenging the arraignment or requesting a continuance on the matter is without merit. "When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge." Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 517 (2005) (citing State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). This Court finds trial counsel's testimony credible and Applicant's testimony not credible. At trial, the solicitor informed the trial judge that Applicant had been personally notified of the pending armed robbery indictment at a preliminary hearing the year prior to trial. (Trial Tr. pp.107-9). The circumstances surrounding service of process were put on the record. (Trial Tr. pp.107-15). This Court finds Applicant was adequately apprised of the armed robbery indictment. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for not preparing his case. Without a doubt, “[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986). “Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff’d, 828 F.2d 670 (11th Cir.1987). This Court finds trial counsel’s testimony credible and Applicant’s testimony not credible. Trial counsel adequately investigated the State’s evidence, probable witnesses, and kept Applicant apprised of developments in the case. Applicant did not present this Court with credible evidence to support a deficiency argument on the matter. This Court finds trial counsel reasonably fashioned a defense based upon the circumstances of the case. Applicant’s version of facts told to trial counsel did not comport with the statement he made to the police. In the statement, Applicant admitted to taking the victim’s “ice,” not money. (Trial Tr. p.185). See Strickland, 466 U.S. at 691, 104 S. Ct. at 2066 (The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.). Therefore, these allegations are denied and dismissed.

This Court also finds Applicant failed to prove trial counsel was ineffective for not communicating a plea offer. “Pursuant to these professional standards, counsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State.” Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). This Court finds trial counsel’s testimony credible and Applicant’s testimony not credible. This Court finds the guilty plea offer was conveyed to and subsequently rejected by Applicant. See Lafler v.

Cooper, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for not objecting to an alleged Doyle violation during the solicitor's closing argument. "An accused has a right to remain silent and the exercise of that right cannot be used against him." Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240 (1976). "Specifically, the solicitor must not comment, either directly or indirectly, on a defendant's silence, failure to testify, or failure to present a defense." State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). "A solicitor's closing argument must stay within the record and has reasonable inferences to it." Id. The solicitor did not explicitly comment on Applicant's silence nor did he implicitly comment on it. The solicitor's comment "there is no evidence to the contrary" was made in the context of the solicitor's argument that the eyewitness and co-defendant testimony presented at trial denoted Applicant as the causal connection to the victims and scene of the offense.

"[Officer Arnold] talked to every single one of them, and like I say, every single one of them was fairly consistent in what they say happened. And the finger on every single one of them was fairly consistent in what they say happened. And the finger on every single one of them, it did not point at [co-defendant] they all blamed [co-defendant]. But the big finger pointed right back at the defendant right there, [Applicant]. He was the mastermind, he was the ringleader. I'm not excusing what [co-defendant] did, but [Applicant's] the one that did it (pointing to defendant). And there was no evidence to the contrary. They all saw it. Even though, like I saw, some of them have sketchy memories.

(Tr. 218, lines 7-18). Therefore, the alleged Doyle violation was nothing more than the solicitor's specific argument confined to summarizing the eyewitness testimony.

Furthermore, this Court finds the alleged error did not constitute prejudice. The reviewing

court applies enumerated factors to determine if the error is harmless: “(1) the reference to the defendant’s right to remain silent was a single reference, which was not repeated or alluded to; (2) the solicitor did not tie the defendant’s silence directly with his exculpatory story; (3) the exculpatory story was totally implausible; (4) the evidence of guilt is overwhelming. McFadden v. State, 342 S.C. 637, 641, 539 S.E.2d 391, 393 (2000). The alleged implicit Doyle violation occurred only once. Second, the solicitor distinguished his summary and version of the eyewitness and co-defendant testimony from Applicant’s exculpatory statement. Applicant’s exculpatory statement was introduced at trial. (Trial Tr. pp.185-6). The solicitor’s closing argument addressed the statement separate and apart from his summary of the eyewitness and co-defendant testimony. (Trial Tr. p.220). Third, Applicant gave a statement that was inconsistent to testimony provided by the co-defendant, two eyewitnesses, the two victims, and Applicant’s girlfriend. Fourth, Applicant’s conviction was supported by overwhelming evidence of guilt. Numerous witnesses and the victims implicated Applicant in the commission of the offense. Last, the trial judge gave thorough jury instructions regarding the matter prior and subsequent to the solicitor’s closing argument. (Trial Tr. p.212; p.246). Thus this Court finds any purported error on the matter would have constituted harmless error. Therefore this allegation is denied and dismissed.

D.

This Court finds Applicant failed to prove trial counsel was ineffective for not objecting to the trial judge’s jury instructions on accomplice liability. “One who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design or purpose.” State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). “To warrant reversal, a trial judge’s refusal to give a requested jury charge

must be both erroneous and prejudicial to the defendant.” State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002). “Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues.” Id. at 263, 565 S.E.2d at 304. This Court finds the facts of the case clearly supported the jury charge. See State v. Peeler, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). Applicant presents a novel restrictive interpretation of accomplice liability predicated upon the actual charges brought by the State and not on the underlying facts presented at trial. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of trial.”). Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant’s allegation of prosecutorial misconduct is without merit. “In South Carolina, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused’s guilt or innocence or was impeaching. State v. Moses, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010). Applicant alleged the solicitor failed to provide him with the victim’s initial statement to police where the victim implicated a co-defendant and not Applicant in the assault. However, the issue of the assault was not in dispute. At the PCR hearing, Applicant admitted to “pistol whipping” the victim. Therefore, a facial analysis of the statement was neither favorable to Applicant nor was it material to Applicant’s guilt or innocence. This Court also finds the list of monies owed to Applicant did not constitute favorable or material evidence. Therefore, this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

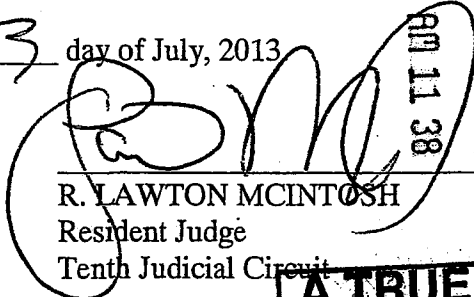
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR; Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

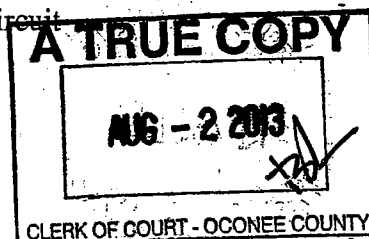
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 23 day of July, 2013


R. LAWTON MCINTOSH
Resident Judge
Tenth Judicial Circuit

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 2 PM 11 38

Anderson, South Carolina



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
2012-CP-37-638

COUNTY OF OCONEE)

JEFFREY A. WEBB #214186,)

APPLICANT,)

VS.)

STATE OF SOUTH CAROLINA)

RESPONDENT.)

ORDER OF SUBSTITUTION

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 APR 23 PM 2 18

It has come to the Court's attention that Rodney W. Richey is to be substituted for Lisabeth K. Rogers, Esquire, as appointed counsel for Jeffrey Webb in the above matter.

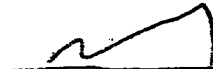
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Rodney W. Richey, Esquire be substituted for Lisabeth K. Rogers, Esquire as appointed counsel for Jeffrey Webb in the above matter.

S/ALEXANDER S. MACAULAY
JUDGE, TENTH JUDICIAL CIRCUIT

Walhalla, South Carolina

April 22, 2013

WE CONSENT:


 Rodney W. Richey, Esquire


 Lisabeth K. Rogers, Esquire

A TRUE COPY

APR 23 2013

CLERK OF COURT - OCONEE COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jeffrey Webb,

Plaintiff,

vs.

State

Defendant.

IN THE FAMILY COURT
10th JUDICIAL CIRCUITMOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Docket No. 2012-CP-37-638

Plaintiff's Attorney:

Rodney Richey, Bar No. 9506

Address:

PO Box 10916 Greenville, SC 29603

Phone: 864-467-0503 Fax 864-467-0646

E-mail: rodney@richeyandrichey.com Other: _____

Defendant's Attorney:

Kaelon May, Bar No. _____

Address:

PO Box 11549, Columbia, SC 29211

Phone: 803-734-3970 Fax 803-734-4113

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted 4/18/13

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by: HL Date Filed: _____☒ MOTION FEE COLLECTED: \$ 25.00☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 APR 23 PM 2:18

WITNESSES

ARONLD, SCOTT, Oconee Co Sheriff's Dept.

R. Scott

DOCKET NO. 2009GS37 01279

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

NOV 02 2009

Term

ARREST WARRANT NUMBER

N130067

THE STATE

VS.

Jeffrey A Webb

ACTION OF GRAND JURY

James Bill

DRW

Indictment for

VERDICT

Armed Robbery

SC Code: 16-11-0330(A)
CDR Code: 0139

*Guilty of Armed Robbery
Steady of Possession of a Weapon
Puck 06/06/09 3-16-10*

Foreperson of Petit Jury
Date:

FILED OCONEE, SC
BEV. J. WHITEFIELD
CLERK OF COURT
NOV - 2 P 3:55

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Oconee)

At a Court of General Sessions, convened on NOV 02 2009, the Grand Jurors of Oconee County present upon their oath:

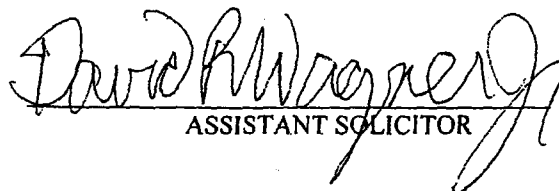
Armed Robbery

That **Jeffrey A Webb** did in Oconee County, on or about the **July 23, 2009**, while armed with a deadly weapon, to wit: a pistol, or while alleging either by action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a 9mm ruger pistol from the person or presence of Nathan McCall. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Possession of a Weapon During the Commission of a Violent Crime

That **Jeffrey A Webb**, did in Oconee County on or about **July 23, 2009**, while committing the crime of Armed Robbery, a crime of violence, have in his possession a pistol, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

ARONLD SCOTT, Oconee Co Sheriff's Dept.

ARONLD SCOTT

DOCKET NO. 2009GS37 01282

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

NOV 02 2009

Term

ARREST WARRANT NUMBER

N130083

THE STATE

VS.

Jeffrey A Webb

ACTION OF GRAND JURY

James Bell

More Shelby

Foreperson of Grand Jury

Date: NOV 2 2009

VERDICT

DRW

Indictment for

Armed Robbery

Shelby of Armed Robbery

Shelby of Possession of a Weapon

with a 701but 3-16-10

Foreperson of Petit Jury

Date:

SC Code: 16-11-0330(A)

CDR Code: 0139

2009 NOV -2 P 3:55

CLERK OF COURT
BEVERLY WHITEFIELD
FIVE O'CONNOR, SC

RECEIVED
CLERK OF COURT
NOV 02 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on NOV 02 2009, the Grand Jurors of Oconee County present upon their oath:

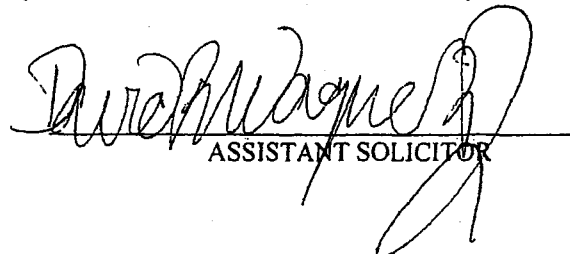
Armed Robbery

That **Jeffrey A Webb** did in Oconee County, on or about the **July 23, 2009**, while armed with a deadly weapon, to wit: a pistol, or while alleging either by action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: \$125.00 from the person or presence of Jason McCall. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Possession of a Weapon During the Commission of a Violent Crime

That **Jeffrey A Webb**, did in Oconee County on or about **July 23, 2009**, while committing the crime of Armed Robbery, a crime of violence, have in his possession a pistol, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR