

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2013-001690

The State of South Carolina,.....Respondent,

v.

Kenneth Jowan CraigAppellant.

RECORD ON APPEAL

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1 The first is 2012-GS-42-2199. It's an amended
2 indictment that has two counts. The first count charges him
3 with armed robbery as to the victim Amanda Kiwitz, and also
4 the second count charges him with possession of a weapon
5 during the commission of a crime of violence or violent
6 crime.

7 THE COURT: Has he been indicted -- tell me if he has
8 been indicted on those.

9 SOLICITOR JORDAN: He has been indicted, Your Honor.
10 It was an amended indictment. He has been indicted---

11 THE COURT: All right. So, he has not yet been
12 arraigned on that charge, is that right?

13 SOLICITOR JORDAN: On the amendment, yes, sir, Your
14 Honor.

15 THE COURT: Okay.

16 SOLICITOR JORDAN: Correct.

17 The next several charges, Your Honor, are all attempted
18 armed robberies under 2013-GS-42-2844. That's as to victim
19 Brent Atkins.

20 2845. That's as to victim Bryan Rogers.

21 2846. That's as to victim Victoria Felton.

22 2847. That's as to victim Julie Tesnar.

23 2848. That's as to victim James Wesley Long. It's
24 listed as James Long in the indictment.

25 2849. That's attempted armed robbery as to Kimberly

1 Henderson.

2 2850. As to victim Nikki Scruggs.

3 2851. That's as to victim Jamie Mattox.

4 2852. That's as to victim Linda Greene.

5 2853 is as to victim Kesha Jolly.

6 2854. That's as to victim Justin Harrison.

7 Your Honor, those are attempted armed robberies.

8 The last charge is an armed robbery charge under 2855
9 as to victim Joseph McCullough.

10 THE COURT: All right. And has -- have -- has he been
11 arraigned on all those charges?

12 SOLICITOR JORDAN: No, sir, Your Honor.

13 THE COURT: Okay. Pass, pass it up please.

14 (Solicitor Jordan complies.)

15 THE COURT: All right, sir. Your name is Kenneth Jowan
16 Craig?

17 DEFENDANT: Yes, sir.

18 THE COURT: Did I say that correctly?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. Mr. Craig, I'm going to go over
21 these indictments with you at this point in time. If you
22 have any questions I'll be asking you -- please ask me and
23 I'll be glad to explain them further.

24 All right. The first one I'm going to discuss with you
25 is Case Number 13-GS-42-2855. It is an indictment for armed

1 Those are the indictments that have been presented to
2 the Court and those are the indictments that will be tried
3 in this case.

4 Now, this case involves -- and you may have heard
5 something about it. So, I'll tell you what it involves. It
6 involves an alleged robbery which occurred at a Waffle
7 House. That Waffle House is located on the Chesnee Highway
8 near I-85. This particular event resulted in a shooting in
9 which one of the customers shot one of the participants in
10 the crime. So that -- you may know something or have heard
11 something about that case. I want to make you aware of what
12 this matter involves so that you can more fully answer the
13 questions that I'm about to ask you.

14 Now, before I actually begin the trial of the case I'm
15 going to ask that the attorneys involved in this case
16 introduce themselves.

17 Now, in the case of the State, there's a number of
18 people who are alleged to be victims in this case. I'll ask
19 the State to also identify or introduce the alleged victims.
20 When their name is called, I'll ask that they stand and face
21 you so that you can put a face with the names.

22 First of all, I'll ask the attorneys introduce
23 themselves please.

24 SOLICITOR JORDAN: Thank you.

25 My name is Jennifer Jordan. I'm an assistant solicitor

1 here in the Seventh Circuit. I prosecute cases for
2 Solicitor Barry Barnette in Spartanburg and Cherokee
3 Counties.

4 Seated with me at the table is Susan Reese. She's also
5 an assistant solicitor here in Spartanburg County. Also
6 seated at the table is my paralegal, Christy Bell-Lindsey.

7 THE COURT: All right. Now, if you would -- would you
8 like to introduce -- do you want me to call their names or
9 you got them listed?

10 SOLICITOR JORDAN: Either way, Your Honor.

11 THE COURT: All right. Why don't you call their names?
12 When your name's called, please stand and face the jury
13 panel. These are the people that are alleged to be victims
14 in the case.

15 SOLICITOR JORDAN: Your Honor, I'll start with Brent
16 Atkins.

17 (Witness stands.)

18 THE COURT: Thank you. You can be seated once you face
19 the jury.

20 SOLICITOR JORDAN: Kimberly Henderson.

21 (Witness stands.)

22 THE COURT: James Wesley Long.

23 (Witness stands.)

24 SOLICITOR JORDAN: Jamie Mattox.

25 (Witness stands.)

1 would that be enough?

2 MR. WHELCHER: But it's the light. I can't see.
3 Can you put something---

4 THE COURT: Are you gonna use that during opening
5 statements?

6 MR. WHELCHER: Okay. Great.

7 SOLICITOR JORDAN: Not in my opening, Your Honor.

8 THE COURT: Okay. All right. Yes, Mr. whelcher.
9 Now, Ms. Jordan, you may proceed with your opening
10 comments.

11 SOLICITOR JORDAN: Okay.

12 Good morning, ladies and gentlemen of the jury.

13 January the 21st was an important day in the life of
14 Dante Williams. It was his birthday. Unfortunately Dante
15 Williams decided to spend the beginning of his birthday in
16 2012 with the defendant, Kenneth Craig. They were at some
17 family members house of Dante's, and you're gonna hear from
18 those family members, and they're gonna tell you some of the
19 things that transpired in the early morning hours of January
20 the 21st of 2012 between Dante Williams and Kenneth Craig.

21 It was a regular ordinary beginning of the day for 13
22 other people. The waffle House located on 221 in Chesnee
23 here in Spartanburg County, there were six employees
24 working. Kesha Jolly, James Wesley Long, Kimberly
25 Henderson, Victoria Felton, Brent Atkins, and Julie Tesnar

1 Black. They were all just going to their job, doing their
2 job, working that night.

3 Along with the six of them at that Waffle House were
4 seven individuals who were there. Justin Harrison was
5 there. Just got off work. Stopped by to have a bite before
6 he went home.

7 Bryan Rogers and Linda Greene were also there. They
8 had been in South Carolina attending an auction. Stopped by
9 the Waffle House.

10 Also there was Nikki Scruggs, Jamie Mattox, two friends
11 who had spent the evening together, decided to end it at
12 Waffle House.

13 The last two people that were there were in the back
14 corner. The ones in the back corner were Joseph McCullough
15 and Amanda Kiwitz.

16 Unfortunately their nice quiet evening or late early
17 morning ended when they crossed paths with Dante Williams
18 and Kenneth Craig. You'll hear from witnesses---

19 MR. WHELCHER: Objection, Your Honor.

20 She's talking about Kenneth Craig. There's been no
21 identification of Kenneth Craig. I understand he's the
22 person who's on trial. I would ask that she open her, begin
23 her opening preparatory remarks that the evidence that may
24 show it's Kenneth Craig. I would object to that.

25 SOLICITOR JORDAN: Your Honor, I just am stating the

1 facts as we intend to present them at trial.

2 THE COURT: Overruled.

3 You may proceed.

4 SOLICITOR JORDAN: Thank you.

5 Their, their lives interchanged.

6 You're going to hear from some of the people who were
7 at that Waffle House that night. They're gonna tell you
8 what they saw and what they heard.

9 I'll tell you right now, you're not gonna hear from all
10 of them who are there. You're not gonna have 13 different
11 people who are gonna come up here and identify him.
12 Everybody there had a different perspective, a different
13 view, a different angle.

14 You're also gonna hear from some of the officers who
15 were there who are gonna talk to you about the work that
16 they did in relationship to this case.

17 I will tell you that Dante Williams' life ended on the
18 same day that he was born. He was shot and killed that
19 night by one of the customers at the Waffle House. The
20 defendant went out the door.

21 Ladies and gentlemen, one of the things that I do love
22 about our jury system here in the U.S. is that we, we have
23 people who come in here and collectively, as a group of 12,
24 use their common sense that they use in their everyday life
25 to look at the facts, to analyze everything that we're gonna

1 put before you before you render a verdict. I'm going to
2 come back to you at the end of this trial and I'm gonna ask
3 you to return a verdict of guilty as to Kenneth Craig on all
4 of these charges.

5 Thank you.

6 THE COURT: Mr. Wheelchel, for the defense.

7 MR. WHELCHER: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WHELCHER: Does Your Honor have the indictments?

10 THE COURT: Mr. Wheelchel. Mr. Wheelchel.

11 MR. WHELCHER: Ladies and gentlemen of the jury, as
12 you've been told, my name is Dick Wheelchel. I'm an attorney
13 here in Spartanburg. As you can see, I've been doing that
14 for a while, and I represent Kenneth Craig.

15 Kenneth Craig, as you all know, is the fellow that's
16 been charged in all of these indictments brought to you by
17 the state. The judge has already told you that the
18 indictments don't mean anything as far as evidence is
19 concerned. They are the equivalent of the umpires yelling
20 play ball to start a baseball game.

21 I mean I don't mean to make light of this process. But
22 when an umpire -- the baseball game doesn't start until the
23 umpire yells play ball. A trial can not start until there's
24 an indictment. But that doesn't mean anything as far as
25 your using the fact that there's an indictment to find

1 anybody guilty. The judge has already told you that. He'll
2 tell you that again.

3 I never get tired of coming to this courtroom and
4 hearing Judge Couch's opening remarks to the jury. I don't
5 know how many cases I've tried in front of him. I haven't
6 bothered counting anymore. But I was a history and
7 government major in Wofford. When you start talking about
8 the Constitution and the Declaration of Independence and
9 that stuff, I kind of get into that.

10 But he told you about the lawyer's oath, the oath that
11 you took, and how you must remember facts. How very
12 important it is for you to remember these facts.

13 The burden of proof proving to you that this happened,
14 when it happened, how it happened, and by whom it happened
15 lies here with the State of South Carolina. They have to
16 prove that those armed robberies and attempted armed
17 robberies happened the way they say in that indictment to
18 your satisfaction beyond a reasonable doubt. They have to
19 prove that to you with evidence so strong and so convincing
20 as to remove the presumption of innocence from my client,
21 Kenneth Craig.

22 Because Kenneth Craig, you may hear him referred to as
23 Midget, called that all his life, Kenneth Craig, like
24 everybody, every citizen in this state and in this country,
25 is presumed innocent under our law. He is presumed innocent

1 halfway through this trial, all the way through this trial.
2 He and everybody who sits at that table that's hauled into
3 this courtroom by the State, they're very few people who
4 come in here willingly, that's why the judge is telling you
5 about how very exceptional this system is. Very few
6 countries have a system such as you determining his fate.

7 There's a lot of them that require just the opposite.
8 Him or anybody accused to prove their innocence. Thank God
9 we don't have that here.

10 But that's what is required of the State, and the judge
11 is already told you there's no burden of proof whatsoever on
12 the defense. None. It all lies with the State of South
13 Carolina, and that's the way it should be.

14 As he told you, it started with the Magna Carta. It's
15 about 800 years old. The Constitution's been working for a
16 couple hundred years in this country, and we all know it
17 works well.

18 What you need to understand about this particular
19 situation is this. At the time that Kenneth Craig was
20 arrested---

21 SOLICITOR JORDAN: Objection, Your Honor.

22 May I approach?

23 THE COURT: Yes, you may.

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

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 Q Okay. Could you point him out to the jury?
- 2 A (Witness points.)
- 3 Right there.
- 4 SOLICITOR JORDAN: Okay. Your Honor, if the record
- 5 will reflect she's identified the defendant as Kenneth
- 6 Craig.
- 7 THE COURT: The record will so reflect.
- 8 You may proceed, Ms. Jordan.
- 9 Q Brittany, whose birthday was on January 21st?
- 10 A Dante.
- 11 Q How old was Dante going to be last year on January the
- 12 21st of 2012?
- 13 A Twenty years old.
- 14 Q Was it -- was he gonna be 19 or 20?
- 15 A Nineteen. I'm sorry.
- 16 Q Okay. I'm gonna take you back to the day before his
- 17 birthday on January the 20th of 2012.
- 18 who was at your house that evening?
- 19 A Adisa Norman, me, and Roderick Drummond, and Joshua
- 20 McSwain.
- 21 Q Okay. And who else was there?
- 22 A Midget.
- 23 Q Okay. Who is Adisa?
- 24 A My friend.
- 25 Q Okay. Who is Roderick Drummond?

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 A My cousin.
- 2 Q Okay. Is this Roderick Drummond, Junior or Senior?
- 3 A Junior.
- 4 Q Okay. While y'all were there that evening, did you or
5 did Midget or Kenneth Craig discuss anything with Dante?
- 6 A Yes.
- 7 Q what did he discuss with him?
- 8 A About going on a mission, but I don't know what the
9 mission was.
- 10 Q Okay. Where did Midget and Dante have this
11 conversation?
- 12 A In my living room.
- 13 Q Okay. Did Dante leave with anyone that night before he
14 left with or did, did Dante leave with anyone that night
15 before he left with the defendant?
- 16 A Yes.
- 17 Q who did he leave with?
- 18 A Gerald.
- 19 Q who is Gerald?
- 20 A Slack, the one --.
- 21 Q Do you know Gerald's last name?
- 22 A No, ma'am.
- 23 Q Okay. was anyone else with them?
- 24 A His girlfriend, Nicole.
- 25 Q Okay. whose girlfriend?

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 A Gerald.
- 2 Q Okay. Did Dante come back that evening?
- 3 A Yes.
- 4 Q Okay. Did Dante leave again?
- 5 A Yes.
- 6 Q That time -- the second time he left for the evening,
7 about what time was it?
- 8 A Around 11:30 maybe.
- 9 Q Was that when he left with Gerald?
- 10 MR. WHELCHER: Objection, Your Honor. Leading the
11 witness.
- 12 THE COURT: Overruled.
- 13 Q What time did he leave with Gerald and Nikki?
- 14 A Maybe 10:00.
- 15 Q Okay. About what time, in the early morning hours, did
16 he leave with Kenneth Craig or Midget as everybody called
17 him?
- 18 A Left at night. Early.
- 19 Q Okay. What -- about what time was that?
- 20 A 12:00.
- 21 Q Okay.
- 22 A Midnight.
- 23 Q Was it already -- at that point in time was it already
24 Dante's birthday?
- 25 A Yes.

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 Q Okay. Do you recall any other conversations that night
2 between Dante and Midget?
- 3 A (Witness nods negatively.)
- 4 Q Okay.
- 5 THE COURT: You have to answer verbally, ma'am.
- 6 A No, ma'am.
- 7 THE COURT: Thank you.
- 8 Q Okay. When Dante and Midget left, did Dante, oh, I'm
9 sorry, did Midget say anything regarding his clothing?
- 10 A Yes.
- 11 Q What did he state?
- 12 A He took off his brown and white jacket and said I'm in
13 all black, let's go.
- 14 Q Okay. Did -- what kind of clothing was Midget wearing
15 if you recall?
- 16 A Black t-shirt, black pants, black shoes.
- 17 Q Okay. Were those the same items that he was wearing
18 later the next, later that night when officers arrived at
19 the house?
- 20 A No.
- 21 Q Are, are you sure if those were the same items or not?
- 22 A He had on the same clothes, but he had on a brown
23 jacket when he came back.
- 24 Q Okay. So, everything was the same except for the
25 jacket?

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 A Yes.
- 2 Q Okay. Did Dante -- when -- who did Dante leave with?
- 3 A Midget. Midget.
- 4 Q Midget.
- 5 Okay. When -- did Dante come back for anything?
- 6 A Gloves..
- 7 Q Okay. Do you recall if Midget had any gloves when he
- 8 left?
- 9 A Yes.
- 10 Q Okay. Do you recall what color they were?
- 11 A No, ma'am.
- 12 Q Okay. Once Dante left with Midget, did you see him
- 13 again?
- 14 A No, ma'am.
- 15 Q Okay. Did you see Midget again?
- 16 A Yes.
- 17 Q What -- when did you see him again?
- 18 A Around 3:30 that morning.
- 19 Q Okay. So, 3:30 in the AM?
- 20 A Yes. Yes, ma'am.
- 21 Q Okay. When he came back into the house, was anyone
- 22 with him?
- 23 A No, ma'am.
- 24 Q Okay. What did Midget do or describe to the jury what
- 25 Midget did when he came back into the house?

Brittany McSwain - Direct examination
by Solicitor Jordan

- 1 A Threw the keys at Roderick, Junior and he said I don't
2 know who car this is. I'm just waiting on my boy Dante to
3 call me back.
- 4 Q Okay. Who is -- how was he acting?
- 5 A Kind of nervous and shooked up about something.
- 6 Q Okay. Did he come in -- how did he come into the
7 house?
- 8 A He kind of like walked fast and threw the keys.
- 9 Q Okay. Did, did Midget say anything about where Dante
10 was?
- 11 A He said he was in Pineview Hills. He had dropped him
12 off there.
- 13 Q Okay. At that point in time what did you do?
- 14 A I was kind of like cautious cause I knew something had
15 happened to Dante by the way he was acting.
- 16 Q Okay. What -- did you, did you remain at the house?
- 17 A Yes.
- 18 Q Okay. What did you do when, when you were at the
19 house?
- 20 A Nothing. I just asked him where was Dante. He said he
21 had dropped him off.
- 22 Q Okay. When did you find out that Dante was no longer
23 alive?
- 24 A When his mother called.
- 25 Q Okay. Who was his mother?

Adisa Norman - Direct examination
by Solicitor Jordan

- 1 Q Starting in the Fall, what grade will you enter?
2 A Tenth.
3 Q Okay. Do you know Brittany McSwain?
4 A Yes, ma'am.
5 Q How do you know her?
6 A She my best friend.
7 Q Okay. Do you know other members of her family such as
8 Dante Williams?
9 A Yes, ma'am.
10 Q Okay. Do you also know Joshua Fielder?
11 A Yes, ma'am.
12 Q Okay. Did you -- do you recall where you were on
13 January the 20th of 2012?
14 A Yes, ma'am.
15 Q Where were you?
16 A 351 Alexander.
17 Q Why were you there?
18 A For Brittany.
19 Q Okay. Did you spend a lot of time at that home?
20 A Yes, ma'am.
21 Q Okay. Who else was with you that evening?
22 A Dante, Josh, Brittany, Midget, and Rod.
23 Q Okay. When you say Midget, can you point to the jury
24 and tell them who you're referring to?
25 A Right there.

Adisa Norman - Direct examination
by Solicitor Jordan

- 1 Q Okay. The gentleman, the gentleman in the blue?
- 2 A Yes, ma'am.
- 3 SOLICITOR JORDAN: Okay. If the record reflects she
- 4 just identified the defendant.
- 5 THE COURT: The record shall so reflect.
- 6 You may proceed.
- 7 Q Adisa, did you have any point in time that evening to
- 8 hear any conversation between Midget and Dante?
- 9 A Yes, ma'am.
- 10 Q What was that conversation in regard to?
- 11 A I don't remember.
- 12 Q Okay. Do you, do you recall if they were talking about
- 13 anything that they were going to do or that one of them
- 14 wanted to do?
- 15 MR. WHELCHER: Objection, Your Honor.
- 16 THE COURT: Yes, sir.
- 17 MR. WHELCHER: She asked if she recalled the
- 18 conversation. She said she don't remember, and now she's
- 19 trying to ask her to tell us about something she doesn't
- 20 remember.
- 21 THE COURT: Ms. Jordan.
- 22 SOLICITOR JORDAN: Your Honor, I was just, I was just
- 23 trying to refresh her memory just to --.
- 24 THE COURT: All right. Well, I'll let you ask if she
- 25 recalls a conversation if you want to be sure or ask it in a

Adisa Norman - Direct examination
by Solicitor Jordan

- 1 different context. But if she doesn't recall, I don't know
2 how she could---
- 3 SOLICITOR JORDAN: Yes, sir.
- 4 THE COURT: ---relate what was in a conversation she
5 doesn't recall.
- 6 SOLICITOR JORDAN: Yes, sir.
- 7 Q Later that evening---
- 8 THE COURT: You may proceed.
- 9 Q ---did, did you see Dante and Midget leave?
- 10 A Yes, ma'am.
- 11 Q When they left, could you describe how they were
12 dressed?
- 13 A Midget had on all black wearing all dark clothes, but I
14 don't remember what Dante had on.
- 15 Q Okay. Do you recall if anyone had on gloves?
- 16 A Yes, ma'am.
- 17 Q Who had on gloves?
- 18 A Dante.
- 19 Q Okay. Did -- well, did he initially leave with the
20 gloves or did he come back to get them?
- 21 A I think he came back to get them.
- 22 Q Okay. Did you stay at the house that night?
- 23 A Yes, ma'am.
- 24 Q Okay. When -- once Dante left with the gloves, did you
25 see him again?

Adisa Norman - Direct examination
by Solicitor Jordan

- 1 A No, ma'am.
- 2 Q Okay. Did you see Midget again?
- 3 A Yes, ma'am.
- 4 Q when did -- did Midget -- who did Midget come back
5 with?
- 6 A Hissself.
- 7 Q Okay. when he came back, what was his demeanor or how
8 did he appear when he came back?
- 9 A Nervous.
- 10 Q Okay. what did he do when he came in?
- 11 A He gave Rod the keys.
- 12 Q Okay. How did he give him the keys?
- 13 A He threw them at Rod.
- 14 Q Okay. Did he say anything?
- 15 A Yes, ma'am.
- 16 Q what did he say?
- 17 A He said he don't know how Tae got the car.
- 18 Q Okay. Did he also -- did he say anything in reference
19 to where Tae was?
- 20 A Yes, ma'am.
- 21 Q what did he say?
- 22 A He say he dropped Dante off in Pineview Hills --
- 23 Q Okay.
- 24 A -- and then Dante got in a white car.
- 25 Q Okay. Did, did you find out later what happened to

Adisa Norman - Redirect examination
by Solicitor Jordan

- 1 A No. No, ma'am.
- 2 Q No, ma'am, you don't recall?
- 3 A I don't recall.
- 4 Q Okay. Thank you.
- 5 THE COURT: Anything further?
- 6 MR. WHELCHER: No, sir.
- 7 THE COURT: You may step down. Thank you very much.
- 8 You wish to excuse the witness?
- 9 SOLICITOR JORDAN: Yes, Your Honor.
- 10 THE COURT: Any objections?
- 11 MR. WHELCHER: No, sir.
- 12 THE COURT: Ma'am, you're free to leave if you'd like.
- 13 You have the right to stay as well.
- 14 You may call your next witness.
- 15 SOLICITOR JORDAN: State calls Justin Harrison.
- 16 THE COURT: Come forward, sir, to my left and be sworn.
- 17 JUSTIN HARRISON, being first duly
- 18 sworn, testified as follows:
- 19 THE COURT: Have a seat, sir. Once you're seated,
- 20 state your name.
- 21 THE WITNESS: Justin Harrison.
- 22 THE COURT: Thank you.
- 23 Ms. Jordan, your witness.
- 24 SOLICITOR JORDAN: Thank you, Your Honor.
- 25 DIRECT EXAMINATION

Justin Harrison - Direct examination
by Solicitor Jordan

- 1 BY SOLICITOR JORDAN:
- 2 Q Justin, how old are you?
- 3 A Twenty-four.
- 4 Q Where do you live?
- 5 A Boiling Springs.
- 6 Q Okay. And who do you live with?
- 7 A My grandma.
- 8 Q Okay. Where do you work?
- 9 A Do I have to answer that?
- 10 Q Yes, sir.
- 11 A It's now CBI -- CB&I in Laurens, South Carolina.
- 12 Q Okay. How long have you been there?
- 13 A A little over two years.
- 14 Q Okay. Did you work there in January of 2012?
- 15 A Yes.
- 16 Q Okay. Were you working on the, the Friday night of
- 17 January 20th?
- 18 A Yes.
- 19 Q Okay. What hours did you normally work?
- 20 A Normally we were on ten hour shifts, but for the last
- 21 two weeks we were on five eights.
- 22 Q Okay. Do you recall what time you got off on the
- 23 20th?
- 24 A Twelve o'clock midnight.
- 25 Q Okay. When you left work, where did you go?

Justin Harrison - Direct examination
by Solicitor Jordan

- 1 A To the waffle House.
- 2 Q And which waffle House is that?
- 3 A The one on 221.
- 4 Q Okay. Do you know what county that's in?
- 5 A It's still Spartanburg.
- 6 Q Okay. Did you go straight there?
- 7 A Yes.
- 8 Q Okay. Why did you choose that waffle House?
- 9 A Because the other waffle House was right beside a motel
- 10 and I was advised not to go there.
- 11 Q Okay. Did you -- before you went to waffle House, did
- 12 you have anything alcoholic to drink?
- 13 A No.
- 14 Q Did you have any type of illegal substances in your
- 15 system?
- 16 A No.
- 17 Q Okay. Had you been to that waffle House after work
- 18 before?
- 19 A Yes.
- 20 Q And when you -- I'm gonna show you a picture and ask if
- 21 you can identify this. Actually I'm gonna show you a few.
- 22 (WHEREUPON, three photographs were marked as State's
- 23 Exhibit Nos. 1 through 3 for identification purposes only at
- 24 this time.)
- 25 Q Justin, I'm gonna hand you what the court reporter just

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1 marked as State's Exhibits 1, 2, and 3, and ask you if you
2 can review those and if you can identify those.

3 A Yes.

4 Q Okay. Can you tell the jury what is in photographs
5 starting with the one on top?

6 That's State's Exhibit No. 3.

7 A That's the area around the Waffle House.

8 Q Okay. Flip over to the next one.

9 Can you explain what's in State's Exhibit No. 2?

10 A Still the same area. A little larger view with 85 and
11 221 in the same picture.

12 Q Okay. Can you explain to the jury what's in or
13 actually when this -- can you tell the jury what's in
14 State's No. 1, that first photograph?

15 A The second seats where I was sitting at. There's a
16 black bag and Dante lying on the floor.

17 SOLICITOR JORDAN: Your Honor, at this point we would
18 move to admit State's Exhibit 1, 2, and 3.

19 THE COURT: Any objections?

20 MR. WHELCHER: No, sir.

21 THE COURT: Without objection, they'll be admitted.

22 (WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were
23 received into evidence at this time.)

24 THE COURT: You may publish.

25 SOLICITOR JORDAN: Thank you.

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- 1 THE COURT: You welcome.
- 2 Q Justin, I'm gonna hand you a pointer and ask you to
3 show the jury what you just referenced as to where you were
4 seated when you went in the -- push the button and point.
- 5 A That second seat.
- 6 Q Okay. I'm gonna take you back for a minute.
7 Before you entered the Waffle House, what did you do?
- 8 A I reached into my glove compartment and put my Glock in
9 my holster.
- 10 Q Okay. Justin, are you a concealed weapons permit
11 holder?
- 12 A I am.
- 13 Q Okay. How long have you had that permit at that point
14 in time?
- 15 A It's a few months.
- 16 Q Okay. Did -- when you went inside, did you, did you
17 order any food?
- 18 A Yes.
- 19 Q Okay. Did you receive your food?
- 20 A Yes.
- 21 Q Okay. Justin, what, what was the first thing that made
22 you aware that something was wrong?
- 23 A When I heard two people come through the door and one
24 shouting you know what time it is, get down, get down, if
25 you move we're gonna kill you, if you move you die.

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- 1 Q Okay. Did you -- what did you -- what did you think
2 was happening?
- 3 A I figured they was robbing the place.
- 4 Q Okay. How many people came in?
- 5 A Two.
- 6 Q Okay. what was the first person carrying?
- 7 A As far as the first person, can you clarify?
- 8 Q well, I'll ask you this.
9 The first person that you saw, what were they carrying?
- 10 A A pistol.
- 11 Q Okay. what did the pistol look like?
- 12 A It was black.
- 13 Q Okay. Did the other person have anything in their
14 hands?
- 15 A A black trash bag.
- 16 Q Okay. And I believe that you referenced a bag in
17 State's Exhibit No. 1.
18 could you use the pointer?
- 19 A Right there.
- 20 Q Okay. Do you know or do you recall how that bag was
21 placed there?
- 22 A I do not.
- 23 Q Okay. Justin, what -- was, was one of them talking or
24 were they both talking?
- 25 A I just heard one.

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1 Q Okay. So, did you, did you follow their commands and
2 get down?

3 A No.

4 Q Okay. why?

5 A My best chance of survival was to be aware of the
6 situation and not have my head in the floor.

7 Q Okay. Was there a benefit to you remaining at the bar?

8 A Just like I said.

9 Q Okay. What did you see the two robbers doing?

10 A The one with the black trash bag -- after I saw the gun
11 I thought this just got serious. Stared forward. The guy
12 with the trash bag, he crosses my vision and I see the other
13 one in the -- it kind of makes a L-shape in the Waffle
14 House. He was over there, I assume, robbing customers.

15 (WHEREUPON, a diagram was marked as State's Exhibit No.
16 4 for identification purposes only at this time.)

17 Q Justin, I'm gonna show you what the court reporter just
18 marked as State's Exhibit No. 4 and ask if you can identify
19 that.

20 A Yes, that's the Waffle House layout.

21 SOLICITOR JORDAN: Okay. Your Honor, at this point in
22 time I'd move to admit this into evidence as State's Exhibit
23 4.

24 THE COURT: Any objection?

25 MR. WHELCHER: No, sir, Your Honor.

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1 THE COURT: Without objection, it will be admitted as
2 has been marked.

3 (WHEREUPON, State's Exhibit No. 4 was received into
4 evidence at this time.)

5 THE COURT: You may publish.

6 Q Using the pointer again, could you just reference to
7 the jury where you were seated?

8 A Right there.

9 Q Okay. Which door or what's the only entrance or exit
10 that you're aware of for the public at Waffle House?

11 A (Witness points.)

12 Q Can you explain to the jury what their Waffle House
13 entrance looks, looks like for those who may not know?

14 A It's a set of two doors. One opens out toward the
15 parking lot, then you make a L-turn, and another, another
16 one opens up right there.

17 (WHEREUPON, two photographs were marked as State's
18 Exhibit Nos. 5 and 6 for identification purposes only at
19 this time.)

20 Q Justin, I'm gonna you show you State's 5 and 6, and ask
21 you to identify -- if you recognize those and if you can
22 identify them.

23 A Yes, it's the two doors leading into the Waffle House.

24 SOLICITOR JORDAN: Your Honor, at this time the State
25 moves to admit 5 and 6 into evidence.

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- 1 THE COURT: Any objections?
- 2 MR. WHELCHER: No, sir, Your Honor.
- 3 THE COURT: Without objections they'll be admitted as
4 marked.
- 5 (WHEREUPON, State's Exhibit Nos. 5 and 6 were received
6 into evidence at this time.
- 7 THE COURT: You may publish.
- 8 SOLICITOR JORDAN: Thank you.
- 9 Q Justin, what were these two individuals wearing?
- 10 A All black.
- 11 Q Okay. What was on their hands?
- 12 A Black gloves.
- 13 Q What was on their -- did they have anything shielding
14 their face?
- 15 A I know the guy I shot did.
- 16 Q Okay. Do you know if the other one had anything on his
17 face?
- 18 A At the time I initiated contact he did not.
- 19 Q Okay. What, what did you think when the individual
20 with the gun came towards you?
- 21 A He was gonna kill me.
- 22 Q Okay. What did you do?
- 23 A I stood up and I met force with force.
- 24 Q Okay. What happened at that point?
- 25 A He dropped to the ground.

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- 1 Q okay. where did you -- what did you then do?
- 2 A I then proceeded toward the second suspect.
- 3 Q okay. where did you meet up with this second suspect?
- 4 A Backed up in that corner.
- 5 Q Okay. And I'll back you up for a moment.
- 6 where, where were you when you shot and killed Dante
- 7 Williams?
- 8 A I was somewhere around there at the juke box.
- 9 Q Okay. When you met up with the second individual in
- 10 the back corner, what happened?
- 11 A I told him to get down and he starts saying I got to
- 12 check on my buddy, got to check on my buddy. I say you
- 13 ain't going nowhere. I look over to the waitress and tell
- 14 her to call 9-1-1. She says I can't, the phone line's been
- 15 cut.
- 16 I'm looking down. I had a shirt on with a pocket where
- 17 I normally keep my cell phone. Looked down, he started
- 18 coming toward me, I redrew or repointed my gun at him, told
- 19 him I told you to get down. He's up coming toward me. Then
- 20 he gets back down.
- 21 He starts crawling and I kick him maybe three times,
- 22 and at that point in time I figure he's going for the gun.
- 23 He has no care about his buddy. I'm trying to restrain him.
- 24 He goes over towards the body, and at that point, point,
- 25 figured he was about to run. I tried to get between him and

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1 the door, and by the time I'm beside him, he gets up, he
2 takes off, we wrestle through the door leading out. He puts
3 both hands on my gun, and at that point I figured he's
4 trying to disarm me, and I twisted up towards his chest and
5 pulled the trigger.

6 Then following him out, he runs off. I go back into
7 the waffle House, sit I believe it was at that seat. I
8 unload -- basically make the gun safe. Drop the mag and
9 rack the shell that got stuck in the breach.

10 Q Okay. I'm gonna take you back, take you back a little
11 bit further real quick.

12 You mentioned, you mentioned a phone in your pocket.
13 what did you do with that phone?

14 A I handed it to the waitress.

15 Q Okay. At the point in time that you were in the back
16 corner---

17 (WHEREUPON, a video was marked as State's Exhibit No. 7
18 for identification purposes only at this time.)

19 Q I'm gonna show you what's now State's Exhibit No. 7.
20 Ask if you can identify that photograph.

21 A Yes, that's the corner.

22 SOLICITOR JORDAN: Your Honor, at this time the State
23 moves to admit No. 7 into evidence.

24 THE COURT: Any objection?

25 MR. WHELCHER: No, sir, Your Honor.

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1 THE COURT: Without objection it will be admitted as
2 marked.

3 (WHEREUPON, State's Exhibit No. 7 was received into
4 evidence at this time.)

5 THE COURT: You may publish that document.

6 SOLICITOR JORDAN: Thank you, Your Honor.

7 Q Can you show the jury, on State's Exhibit No. 7, where,
8 where the second robber was.

9 A Backed up in that corner.

10 Q Okay. Where -- how close did you get to him?

11 A It was pretty much right there.

12 Q Okay. Did you advance towards the corner at any point?

13 A I did, but I kept my distance.

14 Q Okay. At this point in time did he have anything
15 obstructing his face?

16 A No.

17 Q Were you able to get a clear look at his face?

18 A Yes.

19 Q How long do you, do you recall that you were able to
20 get a clear look at his face?

21 MR. WHELCHER: Objection, Your Honor. I have a matter
22 of law I'd have to take up.

23 THE COURT: All right, sir.

24 Ladies and gentlemen of the jury, at this time I'll ask
25 you to step back to the jury room. Don't begin any

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1 discussions until I ask you to do so.

2 Thank you very much.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Yes, sir, Mr. Whelchel.

6 MR. WHELCHER: Your Honor, I believe that the state was
7 about to ask for an identification of my client as the
8 second robber, which is the term being used so far, and I
9 would object to the identification of my client at all at
10 this point. I believe the Court has to determine whether or
11 not the identification is reliable before---

12 THE COURT: Well, the question she was asked was how
13 long did you look at his face.

14 MR. WHELCHER: Yes, sir, I may of been premature. But
15 I think that's where we're going.

16 SOLICITOR JORDAN: That is where I'm going, Your Honor.

17 THE COURT: Okay. well, it would seem she was asking
18 questions to lay a foundation as to the reliability or
19 non-reliability of any identification.

20 MR. WHELCHER: Yes, sir.

21 THE COURT: All right. But I'll hear you out.
22 Go ahead.

23 MR. WHELCHER: Your Honor, this gentleman's
24 identification, initial identification did not take place
25 until three days after my client was arrested. He was not

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1 asked, was not shown, as far as I've been told, was not
2 given a photographic lineup, was not given a show-up.

3 what happened in this case, Your Honor, and I have
4 several different items of law that I need to take up at
5 this time, and Your Honor may want to go ahead and let the,
6 the jury go to lunch. I suspect these may take some, some
7 time.

8 THE COURT: Yes, ma'am.

9 SOLICITOR JORDAN: Your Honor, I don't know exactly
10 what all his matters of law are going to be or whether or
11 not he's asking for a hearing outside the presence of the
12 jury. I think State versus Lewis is clear that there's --
13 no hearing is necessary if law enforcement conducted no
14 pretrial out-of-court identification.

15 Mr. Welchel's correct. Justin was never shown a
16 lineup in this case at all. He actually viewed the
17 defendant's photograph on the evening, on the news. Don't
18 know what time of, when it was.

19 when Officer Bryant went to speak with him on the
20 24th, yes, sir, on the afternoon of the 24th, that is at
21 which point in time Officer Bryant asked him if he had seen
22 the news of the second arrest and he said yes, and asked him
23 what he thought as to the photograph that he saw. I don't
24 know why the jury should be released at this point.

25 THE COURT: I think he's saying that his hearing may

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1 take that long---

2 MR. WHELCHER: Yes, sir.

3 THE COURT: ---or his argument may take that long
4 concerning the identification of his client. We're at
5 11:30. So, he's---

6 SOLICITOR JORDAN: Yes, sir.

7 THE COURT: Do you intend to make some, a proffer of
8 some kind?

9 MR. WHELCHER: Your Honor, I, I have several motions
10 this---

11 THE COURT: Well, I don't doubt that. But I'm just
12 trying to find out exactly -- how long do you think this
13 will take, Mr. whelchel?

14 I'll ask you the \$24,000 question.

15 MR. WHELCHER: Well, I was wrong yesterday. So, I
16 think once we start this it will run into the lunch period,
17 and, Your Honor, that's about all I can say at this point
18 because---

19 THE COURT: Well, I'm trying -- if I do release them
20 I'm trying to figure out when to bring them back.

21 SOLICITOR JORDAN: And, Your Honor, I guess my, my
22 concern is that, is he, is he, at this point, entitled to an
23 in camera hearing cause I think, under State versus Lewis,
24 that he's not.

25 MR. WHELCHER: Your Honor, the problem is this. That

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1 in part of my asking if the jury be released or excused at
2 this point, but it's not entirely that. So, there's several
3 motions that require the jury to be excused so that we can
4 have these hearings outside of their presence.

5 SOLICITOR JORDAN: Your Honor, may we just inquire as
6 to what all the motions are?

7 THE COURT: Yeah, let's -- give me -- tell me the
8 motions.

9 Mr. Wheelchel, I've got to plan what to do.

10 MR. WHELCHER: I know, Your Honor.

11 THE COURT: So, you're gonna have to tell me or we're
12 just gonna shut this down and bring the jury back.

13 Now, how's he want to do this?

14 MR. WHELCHER: I wanted to make sure there wasn't an ID
15 before we got this. So --.

16 THE COURT: Well, there hasn't been. So now tell me
17 what your motions are.

18 MR. WHELCHER: All right. My initial motion, Your
19 Honor, is that this identification should be suppressed in
20 that any and all evidence allegedly obtained as a result of
21 my client's arrest needs to be suppressed because it was in
22 violation of his Constitutional rights. As I told the jury
23 before, nobody had made an identification of my client as
24 the person who was involved in the robbery until this point
25 that they're about to bring out.

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1 His arrest, Your Honor, in my opinion, is without
2 probable cause, and because his arrest was, is without
3 probable cause, everything stemming from there is to be, in
4 my opinion, withheld from the jury and is not admissible,
5 and I think what was -- I don't know if -- there is, in the
6 list of potential state's documents or exhibits, a
7 photograph of my client, the booking photograph of my
8 client, and I think there, they're -- I'm assuming they're
9 planning on using that at some point because that was in the
10 paper also and essentially what happened is this, Your
11 Honor.

12 After my client was arrested, the State did nothing as
13 far as identification is concerned. At the time he was
14 arrested nobody, who was a patron or employee of the Waffle
15 House, had identified my client as either of the persons
16 involved in the armed robbery.

17 So, my motion is that the arrest of my client is
18 without probable cause. As a matter of fact, Your Honor,
19 the warrant itself claims that the robbery happened at the
20 waffle House at such and such a time and date, and then, at
21 the end of the warrant, the probable cause is listed, is
22 shown as based on police investigation, and my motion is
23 initially that that warrant does not state probable cause
24 for the arrest of my client, and that this identification is
25 a direct result of the photographs that were taken as a

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1 result of the arrest of my client.

2 Subsequent to his arrest, on the, later on the 21st,
3 there was no show-up, one person show-up or anything like
4 that, one person identification, or photographic lineup,
5 Your Honor. What the State did---

6 THE COURT: I don't know of a case though that says
7 that that's a prerequisite to the issuance of a warrant.

8 MR. WHELCHER: I think the warrant -- my argument, Your
9 Honor, is that the warrant didn't have probable cause, it
10 did not state probable cause, that they had no probable --
11 nobody had identified him at that point. The only evidence
12 they have at that point is the fact that he was at this
13 Alexander Avenue residence and then left with the other
14 fellow. Nobody, at that time, has put him in that waffle
15 House.

16 They arrested him. They photographed him. They let
17 that -- well, that was taken up by the papers and the TV,
18 and then they go to him three days later and say have you
19 seen the news. So, they used the news.

20 THE COURT: Well, I understand what you're saying, and
21 we'll hear you out.

22 MR. WHELCHER: So---

23 THE COURT: I'll let you -- now, how many motions you
24 got?

25 I still haven't gotten an answer to my question and I'm

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1 asking it again.

2 MR. WHELCHER: Your Honor?

3 THE COURT: You got one motion I believe to suppress
4 the warrant.

5 MR. WHELCHER: Yes, sir---

6 THE COURT: Is that what I've heard?

7 MR. WHELCHER: ---and everything---

8 THE COURT: What other motions do you have?

9 MR. WHELCHER: Well, Your Honor---

10 THE COURT: Let's do this without arguing them. Let's
11 just tell me about them.

12 MR. WHELCHER: I'm sorry, Your Honor.

13 The initial motion is to suppress the warrant, and the
14 secondary motion is to suppress the warrant and the
15 identification that leads from the warrant, the alleged
16 identification that leads from the warrant and property
17 evidence that they claim was taken as a result of this
18 illegal arrest.

19 THE COURT: Two motions?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: Okay. Now, it sounds like we're gonna have
22 to take a proffer from the officers as to the, how they got
23 the warrant.

24 SOLICITOR JORDAN: Your Honor, I, I don't---

25 THE COURT: I think we---

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1 SOLICITOR JORDAN: I would, I would object.

2 THE COURT: Seems like we might should of done this
3 pretrial, but---

4 SOLICITOR JORDAN: I, I agree with that aspect of it,
5 but my, my, my issue, at this point, is we're way past the
6 probable cause stage. He has -- he was arrested based on a
7 judge signing a warrant for probable cause. He then had a
8 probable cause hearing on March the 19th of 2012 where,
9 once again, a magistrate judge said there's probable cause.
10 He is not before this Court on a warrant. He is before this
11 Court on 13 indictments. We are well past---

12 THE COURT: And we've had the -- we've gone past the
13 stage where you have the right to object to the indictment.

14 SOLICITOR JORDAN: Yes, sir, under State versus Gentry
15 we have. So, I do object to that, to anything in regards to
16 the warrant, probable cause of that warrant. We're past
17 that. We are at, as he pointed out to the jury, beyond a
18 reasonable doubt on indictments.

19 THE COURT: Mr. whelchel.

20 MR. WHELCHER: Your Honor, I don't believe the
21 Constitution of this state or the United States limits my
22 client to when he can make an objection to the introduction
23 of this type of evidence.

24 THE COURT: Talking about the identification evidence?

25 MR. WHELCHER: The identification and everything else

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1 that's taken from the arrest.

2 THE COURT: well, you can state the reasons why you
3 think the identification should fail. But to attack the
4 warrant, I think you're a little late to attack the warrant.

5 MR. WHELCHER: No, sir.

6 THE COURT: Tell me what case says you can.

7 MR. WHELCHER: Well, Your Honor, the Constitution says
8 I can cause---

9 THE COURT: well, I, I -- okay. Tell me what case says
10 you can. Let me ask that question one more time.

11 MR. WHELCHER: Your Honor, the case that I have, Your
12 Honor, is the case of the State versus Ellefson.

13 THE COURT: Go ahead.

14 MR. WHELCHER: I'll give you the---

15 THE COURT: Just flip the thing over. There we go.

16 SOLICITOR JORDAN: Our paper.

17 MR. WHELCHER: I'm sorry, Your Honor. The case of
18 State versus Ellefson, E-L-L-E-F-S-O-N. The cite is 224
19 S.E.2d 666. It's a 1976 --.

20 THE COURT: That's after Gentry?

21 MR. WHELCHER: No, sir.

22 THE COURT: It's before Gentry?

23 MR. WHELCHER: Yes, sir.

24 THE COURT: Gentry's after that. That's what I meant
25 to say.

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1 MR. WHELCHER: Okay.

2 SOLICITOR JORDAN: I think -- can I just look over his
3 shoulder real quick to get the cite again?

4 THE COURT: Sure.

5 SOLICITOR JORDAN: Your Honor, might I have a moment to
6 pull that case --

7 THE COURT: Yeah, let's go ahead and pull it.

8 SOLICITOR JORDAN: -- unless Mr. whelcher has an extra
9 copy.

10 (Pause.)

11 THE COURT: I've read Ellefson. I've just briefly read
12 it. It's a search and seizure case that occurred after
13 someone was arrested, right?

14 MR. WHELCHER: Yes, sir.

15 THE COURT: What's that got to do with the issue that I
16 have here?

17 MR. WHELCHER: When my client is arrested without
18 probable cause, Your Honor, everything that stems from his
19 arrest is tainted and should be, should not be allowed to go
20 to the jury, which includes the pictures that were used in
21 his photograph.

22 THE COURT: His likeness?

23 MR. WHELCHER: Yes, sir. Everything that was obtained
24 as a result of that illegal arrest, Your Honor, should be---

25 THE COURT: well, it---

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1 MR. WHELCHER: ---is fruit of the poisonous tree.

2 THE COURT: Have you read State versus Drayton?

3 SOLICITOR JORDAN: I have a copy for him if he needs
4 it.

5 Under 293 S.C. 417?

6 THE COURT: Yes, ma'am.

7 SOLICITOR JORDAN: Your Honor, I also, in that same
8 line---

9 MR. WHELCHER: I think I may have.

10 SOLICITOR JORDAN: In that same line I also have State
11 versus Tisdale under 338 S.C. 607.

12 MR. WHELCHER: And I think we can distinguish Tisdale,
13 this case from Tisdale.

14 THE COURT: I think Drayton involved an in-court
15 identification that was held to be reliable despite the fact
16 that they observed the defendant on television after his
17 arrest and at a preliminary hearing.

18 MR. WHELCHER: Could you say that again, Your Honor?

19 THE COURT: My understanding of Drayton --

20 MR. WHELCHER: Yes, sir.

21 THE COURT: -- is that an in-court identification is
22 reliable despite the fact that the witness observed the
23 defendant on television after his arrest and at a
24 preliminary hearing.

25 MR. WHELCHER: Yes, sir, but I'm asking for the hearing

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1 before Your Honor. Your Honor has to determine---

2 THE COURT: Oh, I haven't said I've determined
3 anything.

4 MR. WHELCHER: Okay.

5 THE COURT: I just asked you if you read the case.

6 MR. WHELCHER: Yes, sir. Yes, sir. But what I'm
7 asking for is the hearing, at this point, to determine, for
8 this Court to determine the reliability because under---

9 THE COURT: Oh, I'm -- we were heading there I think---

10 MR. WHELCHER: Okay.

11 THE COURT: ---when you objected to her question as to
12 how long you got to observe the witness.

13 MR. WHELCHER: Yes, sir, I may of been a couple
14 questions too early.

15 THE COURT: Okay.

16 MR. WHELCHER: And I apologize for that. But I, I
17 didn't want it to get right up the edge.

18 THE COURT: Well, I think we have to address your other
19 issue first I guess.

20 Are you still taking the position that the, in spite of
21 what Drayton says, the fact that he may of been arrested
22 somehow prevents them from having an in-Court
23 identification?

24 MR. WHELCHER: When he's arrested without probable
25 cause. I don't think there's -- they talk about probable

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1 cause---

2 THE COURT: well, I didn't see that.

3 MR. WHELCHER: Drayton -- I'm sorry, Your Honor.

4 THE COURT: I see them talking about probable cause.

5 I'll go back and take a look at that.

6 MR. WHELCHER: Yes, sir.

7 THE COURT: I mean I didn't see the word probable cause
8 in there. I looked for it.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: I just -- it may of got away from me.

11 MR. WHELCHER: May I -- Your Honor, Drayton is an
12 identification case.

13 THE COURT: Yes, sir.

14 MR. WHELCHER: But---

15 THE COURT: It is.

16 MR. WHELCHER: The probable cause arguments --.

17 THE COURT: well, I'm back to your probable cause
18 argument. I understand you have that argument as well. But
19 we'll talk about -- I think I will release the jury for
20 lunch and tell them to come back.

21 Bring them in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. Ladies and gentlemen, there's
25 some matters I will have to take up with the attorneys at

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1 this time, and it's already ten minutes to 12:00, and I
2 don't want you to sit back there while I'm going over these
3 things with the attorneys and not have your lunch.

4 So, I'm gonna go ahead and release you to go for your
5 lunch at this point in time. I'll ask that you be back in
6 the jury room by two o'clock this afternoon. We should be
7 in a position to resume at that time.

8 I'll give you the same instructions I have given you
9 every time you have left the courthouse. Don't discuss the
10 case with anyone. Don't allow anyone to discuss it with
11 you. Don't attempt to gather any information on your own.
12 Don't listen to, watch, or read media reports. Please
13 report any contact that you might have from someone else
14 concerning your participation on the jury. Be back in the
15 jury room at two o'clock.

16 Thank you very much. You're free to go at this time.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Just, just for my information, Ms. Jordan,
20 I don't believe that there was any formal identification
21 process conducted by the State in this case, is that
22 correct?

23 SOLICITOR JORDAN: Correct.

24 THE COURT: So, the State did not take a picture to him
25 initially?

Justin Harrison - Direct examination
by Solicitor Jordan

1 That was on television apparently when the arrest
2 occurred?

3 SOLICITOR JORDAN: Your Honor, I would, I would defer
4 to Justin again, but I recall that it was on television, but
5 I would, I would ask him to make sure it wasn't the
6 television or the print media.

7 THE COURT: Okay. But it was some form of the media?
8 It was not State sponsored?

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: The State did not conduct the
11 identification process?

12 SOLICITOR JORDAN: Yes, sir, you're correct. It was
13 the media. It was not the State.

14 THE COURT: Okay. All right. I just wanted to be sure
15 I had that correct in my mind.

16 SOLICITOR JORDAN: All right. And just for the record,
17 none of the people in the waffle House were shown lineups.
18 It's not just as to Justin. It's to all.

19 THE COURT: Oh, I understand.

20 SOLICITOR JORDAN: Any witness that I may call from
21 this group.

22 THE COURT: All right now. On the question of whether
23 or not, at this point in time you have the right to
24 challenge the probable cause for the warrant, can you
25 address how Gentry might affect this situation?

Justin Harrison - Direct examination
by Solicitor Jordan

1 MR. WHELCHER: I don't think Gentry affects that at
2 all, Your Honor, cause Gentry deals with the indictment
3 itself, and, quite frankly, my understanding---

4 THE COURT: well, it has -- what Gentry says though is
5 that objections to matters such as the indictment, things
6 that occurred -- and I'm gonna go read Gentry cause I think
7 it may mention something besides indictments. But it says
8 those objections have to be raised before the jury is sworn.

9 MR. WHELCHER: I'll go look at Gentry too, Your Honor,
10 but I don't think it says specifically with indictments, and
11 I don't think that my client is precluded from bringing a
12 constitutional violation at this point because there was not
13 the normal situation, Your Honor---

14 THE COURT: well, see, I don't know the circumstances
15 under which he was arrested. What I do know thus far---

16 MR. WHELCHER: That's right.

17 THE COURT: ---I think from the testimony I've heard is
18 that the, there were people present at, at the home --

19 MR. WHELCHER: Yes, sir.

20 THE COURT: -- the location, who saw him apparently
21 dressed in the manner in which the people, the perpetrators
22 were dressed, that they saw him leave with the, the deceased
23 perpetrator sometime within a reasonable period of time
24 before the incident occurred in the same vehicle, and that
25 that, when they left, there had been some talk of some type

Justin Harrison - Direct examination
by Solicitor Jordan

1 of a mission or hitting a lick is I think what I heard thus
2 far.

3 MR. WHELCHER: Yes, sir.

4 THE COURT: And I, I believe that information may of
5 been available to the police before the arrest occurred. I
6 don't know that for sure. But I don't know exactly when
7 they interviewed those witnesses.

8 MR. WHELCHER: Yes, sir.

9 THE COURT: Okay. So, that's what I'm hearing thus far
10 concerning probable cause.

11 MR. WHELCHER: I understand, Your Honor.

12 THE COURT: Okay. Now, do you want to, do you want to
13 make a proffer on that particular issue?

14 MR. WHELCHER: Logistically, Your Honor---

15 THE COURT: We're gonna do it right now.

16 MR. WHELCHER: Okay. Well, that's what I needed to
17 know.

18 THE COURT: Yes, sir, we're gonna get on with this if
19 we can.

20 MR. WHELCHER: Okay.

21 THE COURT: So, do you wish to make some type of a
22 proffer on that particular issue?

23 You're making the motion.

24 MR. WHELCHER: Yes, sir, the arrest issue?

25 THE COURT: Yes, sir, I'll go ahead and let you put up

Justin Harrison - Direct examination
by Solicitor Jordan

1 whatever you want to put up. Now, I'm not agreeing, at this
2 point in time, that you even have the right to put it up.

3 SOLICITOR JORDAN: And, Your Honor, we just would like
4 to note our objection on the record.

5 THE COURT: Oh, you're reserving that fully. I'm just
6 trying to move this along if we can.

7 MR. WHELCHER: Yes, sir.

8 THE COURT: So, if you'd like to go ahead and make the
9 proffer, I'll be happy to hear it, and I'll ask this
10 witness -- are you gonna use this witness for this purpose?

11 MR. WHELCHER: No, sir.

12 THE COURT: All right. I'm gonna ask you, Mr.
13 Harrison, step down. I will instruct you in the time that
14 you're not on the stand you should not discuss your
15 testimony, either what you've already said, or what you
16 might say, with anyone.

17 You understand that, sir?

18 WITNESS: Yes, sir.

19 THE COURT: All right. You can have a seat.

20 MR. WHELCHER: Your Honor, I was gonna -- I may use
21 this witness, but I was gonna start with Investigator
22 Bryant.

23 THE COURT: All right. You may call the witness.
24 Come forward, Investigator Bryant.

25 JASON BRYANT, being first duly

Jason Bryant - Direct examination
by Mr. Whelchel

1 sworn, testified as follows:

2 THE COURT: Have a seat, sir. State your name once
3 you're seated.

4 WITNESS: My name is Jason Bryant with the Spartanburg
5 County Sheriff's Office.

6 THE COURT: And your witness, Mr. Whelchel, and please,
7 please let's confine this examination to the question of
8 probable cause---

9 MR. WHELCHER: Yes, sir.

10 THE COURT: ---prior to arrest.

11 MR. WHELCHER: Yes, sir.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. WHELCHER:

15 Q Now, Investigator Bryant, you obtained the warrant in
16 this case for Kenneth Craig?

17 A If I could see the actual document I appreciate it.

18 SOLICITOR JORDAN: Your Honor, could we look at the
19 very first indictment, the 2012 indictment?

20 It may be encompassed it in.

21 THE COURT: I think it may be in there. Let me see.
22 I'll just hand it to the officer and he can take a look at
23 it.

24 There you are.

25 WITNESS: Thank you, sir.

Jason Bryant - Direct examination
by Mr. whelchel

- 1 THE COURT: Yes, sir.
- 2 A I did, yes, sir.
- 3 Q Did you find the copies?
- 4 A I have a copy of it, yes, sir, attached to the
5 indictment.
- 6 Q Okay. Now, at the time that you obtained the
7 warrant -- thank you, sir.
- 8 Would you read this statement here for the record
9 starting what is listed as the probable cause, probable
10 cause is based on the following facts?
- 11 A That on January the 21st, 2012, in the City and
12 County of Spartanburg, one Kenneth Jowan Craig did take
13 money belonging from the Waffle House at 2230 Chesnee
14 Highway, Spartanburg, South Carolina, with the intent to
15 deprive while armed with a handgun, deadly weapon.
16 Affiant's belief is based upon police investigation.
- 17 Q Okay. And when you contacted or talked to the
18 magistrate to obtain that warrant---
- 19 A I'm sorry, sir. I didn't hear you.
- 20 Q I'm sorry.
- 21 You talked to a magistrate to obtain that warrant?
- 22 A I did.
- 23 Q Who -- which magistrate gave you the warrant?
- 24 A Judge Atkins.
- 25 Q Nancy Atkins?

Jason Bryant - Direct examination
by Mr. Wheelchel

1 A That's correct.

2 Q Were you aware, at the time that Nancy Atkins gave you
3 the warrant, that Brent Atkins, one of the victims in this
4 case, was her son?

5 A Not at that time, no, sir.

6 SOLICITOR JORDAN: Your Honor, I'd object at this point
7 of a conflict at this point because, as I've stated earlier,
8 we're way past the indictment stage or the warrant stage.

9 THE COURT: I'll -- do you disagree with her---

10 MR. WHELCHER: Yes, sir, Your Honor.

11 THE COURT: ---characteristic?

12 well, tell me how you disagree.

13 MR. WHELCHER: Excuse me?

14 THE COURT: Do you disagree with her characterization
15 of the---

16 MR. WHELCHER: Yes, sir.

17 THE COURT: Okay. Tell me how you disagree with that.

18 MR. WHELCHER: Your Honor, probable cause has to be
19 based on them obtaining information and going to a neutral
20 and detached magistrate. A neutral and detached magistrate,
21 I don't think, can be the mother of one of the victims in
22 the case.

23 SOLICITOR JORDAN: Your Honor, at this point in time I
24 still object to it because we're way past the warrant stage.
25 We are at indictment and I, I kind of am trying to figure

Jason Bryant - Direct examination
by Mr. Whelchel

1 out what his theory is behind this other than he's arguing
2 some fruit of the poisonous tree on probable cause on the
3 warrant that, even if you took away Judge Atkins, who we do
4 not even know if she knew at this point in time her son was
5 a victim or not, you still have a separate judge in the
6 Magistrate Court, Judge Tommy Wall, who did, at a probable
7 cause hearing where Officer, Investigator Bryant testified,
8 issued probable cause at that point in time.

9 I think all we're doing at this point is muddying the
10 water. I understand the Constitution does, says that a
11 person can not be arrested without probable cause, but we're
12 past that. We're way past start and we're, we're -- to use
13 his analogy of playing ball, we're heading around first and
14 second base at this point and he wants us to go back to the
15 dugout and start all over.

16 MR. WHELCHER: I disagree with that, Your Honor. I
17 won't---

18 THE COURT: I'm gonna go ahead and let him make his
19 proffer.

20 SOLICITOR JORDAN: Yes, sir.

21 THE COURT: You've reserved your right to object to the
22 whole procedure and the motion. I have my doubts about it
23 myself.

24 SOLICITOR JORDAN: Thank you.

25 THE COURT: But I'm gonna allow him to present whatever

Jason Bryant - Direct examination
by Mr. Whelchel

1 evidence he wishes to present, and then I'll make whatever
2 rulings I think are appropriate.

3 You may proceed.

4 MR. WHELCHER: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. WHELCHER:

7 Q Now, you talked to the magistrate and obtained the
8 warrant --

9 A Yes, sir.

10 Q -- that you have before you, is that correct?

11 A Yes, sir.

12 Q And the warrant reflects that your probable cause is
13 based on your investigation?

14 A Yes, sir.

15 Q Am I correct in assuming that you told the magistrate
16 more than is based on the investigation?

17 A I explained to her the individuals that we had spoken
18 with.

19 Q which would be who?

20 A Miss McSwain, the individuals from the family members
21 of Dante Williams, people at 351 Alexander Avenue, and those
22 people.

23 Q Okay. And of those people that you spoke to at 351
24 Alexander Avenue, how many of them were at the Waffle House
25 when this happened?

Jason Bryant - Direct examination
by Mr. Welchel

- 1 A None.
- 2 Q Okay. So, the evidence that you had at that time was
3 that my client had been in the company of Dante?
- 4 A Had planned a robbery or a mission or a lick with him,
5 had changed his clothes---
- 6 Q Well---
- 7 A ---had -- was the only one that had left with him prior
8 to the robbery.
- 9 Q Is that what you told the judge?
- 10 A That's correct.
- 11 Q Did you tell the judge about Slack's involvement?
- 12 A I did not know of Slack at that time or Slack, any
13 involvement of Slack because Dante Williams had left with
14 Kenneth Jowan Craig and only Kenneth Jowan Craig at that
15 time according to witnesses that have already testified.
- 16 Q You took the statements or your people cause you're the
17 chief investigator?
- 18 A I apologize, sir.
- 19 Q You are the chief investigator in this case?
- 20 A I am, I am a violent crime investigator, yes, sir.
- 21 Q Okay. And you or your people took the witness
22 statements from specifically Brittany McSwain?
- 23 A If I remember correctly Allan Wood, at that time, was
24 the one that had taken that. I believe I had either
25 notarized or witnessed the statement.

Jason Bryant - Direct examination
by Mr. Whelchel

- 1 Q Okay.
- 2 A And there was also another statement that was taken at
3 351 and also I interviewed -- if I can refer to my notes
4 please?
- 5 Q Sure.
- 6 A I did interview Adisa.
- 7 Q Excuse me?
- 8 A Adisa.
- 9 Q Okay. So, you took statements from Brittany?
- 10 A (Witness nods affirmatively.)
- 11 Q You interviewed Adisa whose already testified?
- 12 A There's also a Josh Fielder.
- 13 Q You take a statement -- somebody took a statement from
14 him?
- 15 A A statement was taken from him.
- 16 Q Okay. And of those statements, none of those people
17 were at that waffle House at all?
- 18 A No, sir, but they did state that the prior engagement,
19 involvements, plan to do a robbery and that they had changed
20 clothes and left together.
- 21 Q Okay. Their planned statements to do a robbery was,
22 according to the evidence that's been submitted at that
23 point, was my client asking, according to the witnesses, my
24 client asking Dante if you wanted to hit a lick and Dante
25 saying no, I don't want to or something of that nature?

Jason Bryant - Direct examination
by Mr. Welchel

- 1 A Well, according---
- 2 Q Is that correct?
- 3 A According to statements that were taken, and I don't
4 have those with me up here.
- 5 Q Do you want to step down to get them?
- 6 A It doesn't matter. That will be fine. If I could have
7 that blue and black notebook in that chair please?
- 8 Your Honor, this was an indictment without a copy of a
9 warrant. I didn't want to get that---
- 10 THE COURT: That's amended I believe.
- 11 A And I'll give that to you also.
- 12 If I could refer to my notes just one second please?
13 Who do you want to start with or which statement you
14 want to start with?
- 15 Q What I want to start with?
- 16 A Yes, sir.
- 17 Q Okay. Did you inform the magistrate, when you talked
18 to the magistrate, that you had this witness -- I'm sorry.
19 The first girl that testified here today. I can't remember.
- 20 A Brittany.
- 21 Q Brittany. Thank you.
- 22 Did you inform the magistrate that Brittany had given
23 you a statement?
- 24 A Yes, sir.
- 25 Q Okay. And did you show her the statement?

Jason Bryant - Direct examination
by Mr. Welchel

- 1 A I do not recall if I did or had---
- 2 Q Or did you just summarize the statement?
- 3 A I could have. I could of either way. I do not recall.
- 4 Q You just don't remember?
- 5 A Don't remember.
- 6 Q Okay. So, if you don't remember whether you showed her
7 the statement or summarized the statement, do you remember
8 what you told her?
- 9 A Absolutely.
- 10 Q About what Brittany said?
- 11 A Absolutely.
- 12 Q Okay. And did you tell her that Brittany said that my
13 client asked Dante if he wanted to hit a lick?
- 14 A I, I summarized the statement to the judge. I'll be
15 glad to go over the statement with you.
- 16 Q I'm -- if you -- well, you said you didn't show her the
17 statement, is that right?
- 18 A I provided the judge information that was on the
19 statement.
- 20 Q Okay. That's what I'm trying to find out, detective.
21 You summarized what you believed to be the evidence as
22 you had it at that point?
- 23 A Correct.
- 24 Q Okay. When you summarized that evidence, did you tell
25 the judge that Dante, in response to people who have said

Jason Bryant - Direct examination
by Mr. Wheelchel

1 that my client asked him if he wanted to hit a lick, said
2 no?

3 A I do not recall.

4 Q Okay. Did you tell the judge that after Dante said --
5 or you don't even know cause you don't remember, is that
6 right?

7 A I do not recall making that statement to them, no.

8 Q Okay. Did you inform the judge that it was not until
9 after Dante had a conversation and a trip with Slack that---
10 SOLICITOR JORDAN: Judge, I object at this point. I
11 actually -- never mind. I withdraw that.

12 Q I'll start again.

13 Did you inform the magistrate that after Dante had a
14 meeting or a trip or something of that nature with Slack
15 that's in the Brittany Williams statement that he came back
16 and he announced he had a mission?

17 A I did discuss---

18 Q Did you tell her that?

19 A ---the mission with the judge---

20 Q Okay.

21 A ---and that Dante and Kenneth Jowan Craig had left
22 together.

23 Q Okay.

24 A I did.

25 Q They, they left the house after Dante says he has a

Jason Bryant - Direct examination
by Mr. Whelchel

- 1 mission?
- 2 A Correct.
- 3 Q Okay. Did any of the statements reflect -- did you
4 discuss all of the statements or which statements did you---
- 5 A That would be the interview---
- 6 Q You only had two at that time, is that right?
- 7 A Two statements and one interview if I remember
8 correctly.
- 9 Q And the interview was with?
- 10 A Adisa.
- 11 Q Adisa.
- 12 A That's correct.
- 13 Q Nobody knows what the mission is?
- 14 A well, they were gonna do a lick or a robbery for, in
15 celebration to Dante's birthday.
- 16 Q Oh, yeah. Nobody knows what the mission is that
17 Dante's talking about when he comes back---
- 18 A well, it's the---
- 19 Q ---and asked for a mission?
- 20 A It's the lick that they had discussed in regards to---
- 21 Q what I'm asking you is where does it say that in those
22 statements?
- 23 A One second. In the interview with Adisa Norman, she
24 stated that Dante and Midget spoke of a lick that they were
25 going to do, wanting to go do a lick for his birthday.

Jason Bryant - Direct examination
by Mr. Whelchel

- 1 Q She didn't say which one said what?
- 2 A That was in regards to the interview of Adisa.
- 3 Q Who said what?
- 4 It's important.
- 5 A That was -- well, that was in regards to -- hold on one
6 second if I can refer --.
- 7 Q My question, Investigator Bryant, is Dante and Kenneth
8 Craig, is that right?
- 9 A Yes, sir.
- 10 Q Spoke of a mission according to the statement or the
11 interview?
- 12 A Of a lick.
- 13 Q Excuse me.
- 14 A Yes.
- 15 Q Okay. Can you show me in that interview where you're
16 talking about?
- 17 A She stated that Dante and Midget spoke of a lick that
18 they were going to do, they wanted to do a lick for his
19 birthday.
- 20 Q Who said anything about the lick, Dante or Midget?
- 21 A Both of those, both of those were engaged in a
22 conversation.
- 23 Q And who said what about the lick?
- 24 That's what I'm trying to find out.
- 25 A Both of them.

Jason Bryant - Direct examination
by Mr. Wheelchel

- 1 Q where does it say that---
- 2 A Both.
- 3 Q ---that both of them involved---
- 4 A She---
- 5 Q ---talked about the lick?
- 6 A She stated that Dante and Midget spoke of a lick that
7 they were gonna do wanting to do a lick for his birthday.
- 8 Q Uh-huh. (Affirmative).
- 9 A Both of them were engaged in a conversation in regards
10 to the lick that they wanted to do for his birthday.
- 11 Q According to her?
- 12 A That's correct.
- 13 Q Okay. And was that information related?
- 14 A It was.
- 15 Q Okay. What other information was related?
- 16 A Information that was on Brittany McSwain's statement,
17 and also -- if I could have just one moment?
- 18 Information that was on Joshua Derard Felder's
19 statement.
- 20 Q Okay. Okay. Now, when you obtained this warrant,
21 how---
- 22 A Sir?
- 23 Q How is it that you told the magistrate that it was my
24 client, Kenneth Craig, who was the one who did the armed
25 robbery?

Jason Bryant - Direct examination
by Mr. Welchel

- 1 A In, in his statement I discussed also that I know of---
- 2 Q whose statement?
- 3 whose statement?
- 4 A In Felder's -- Fielder's statement.
- 5 Q Okay.
- 6 A I know a lick is a armed robbery. It was Dante's
7 birthday. Midget and Dante both were talking about the
8 lick. Midget was wearing the same clothes he has on now,
9 dark jeans, black shoes, black shirt. He had taken off the
10 jacket and didn't want to take it.
- 11 He and Dante left in my cousin's daddy's Crown Vic,
12 blue in color. Midget was driving. Dante left and came
13 back shortly and he had a gun, but I didn't see the gun.
- 14 After they left, Midget came back in about 30 minutes
15 by himself. He said that he had dropped off Dante, dropped
16 Dante off at Pineview Hills to a girl's house in a white
17 Chrysler or something similar to that vehicle. Dante was
18 suppose to call when he was ready to be picked up.
- 19 Then I went by Tonya Woodruff -- then time went by and
20 Tonya Woodruff called inquiring about Dante or Tae and then
21 calling back saying he was dead. We had went to sleep by
22 then.
- 23 Q Did you read that to the magistrate as you just did now
24 or did you---
- 25 A I, I gave that information to the magistrate. I

Jason Bryant - Direct examination
by Mr. Wheelchel

1 summarized that information to the magistrate.

2 Q Okay. Now that the magistrate has all of that
3 information summarized---

4 A Yes.

5 Q ---did you tell the magistrate that anybody at the
6 Waffle House had identified my client as the, one of the
7 persons committing the armed robbery?

8 A I told the magistrate that individuals had stated that
9 they had planned the robbery, they had left shortly after,
10 and that he had stated that he had went to---

11 Q He who?

12 A ---dropped -- that -- Mr. Craig. I apologize. Let
13 me -- I apologize. I advised the magistrate that they had
14 planned the robbery, changed clothes, came back in for the
15 gloves, and had left together, and shortly afterwards, and
16 that the only one that had come back was Mr. Craig.

17 Q Okay. And you didn't have a statement at that time by
18 Mr. Craig when you went to see the magistrate?

19 A No, sir, he did not -- we did not take a statement from
20 him.

21 Q Okay. And nobody has identified at the time you
22 obtained the warrant?

23 A At that time Mr. Craig -- there was an interview and he
24 advised that he had no information in regards to anything
25 that had happened. He had dropped Dante off.

Jason Bryant - Direct examination
by Mr. Welchel

- 1 Q You had already---
- 2 A It was later---
- 3 Q You had already---
- 4 A ---that he had changed his story and did have knowledge
5 of it.
- 6 Q I'm talking about what you told the magistrate.
- 7 A Oh, no, sir, at that time no statement was taken from
8 him.
- 9 Q Okay. And did you already have the warrant when you
10 took my client from Alexander Avenue?
- 11 A No, sir.
- 12 Q You -- somebody got it in the process?
- 13 A That's correct.
- 14 Q Okay.
- 15 A I did --
- 16 Q So---
- 17 A -- at that time.
- 18 Q Were you the one who transported him?
- 19 A Myself and Investigator Williams.
- 20 Q Okay. And did you attempt to interview him and then
21 get the warrant or how did that work?
- 22 A We went to the Sheriff's Office where I did attempt to
23 interview him.
- 24 Q Okay. And, again, once you had told all that you
25 summarized here earlier in your testimony to the magistrate,

Jason Bryant - Direct examination
by Mr. Whelchel

1 did the magistrate inquire of you of his, has there been
2 any, has there been any identification?

3 A Well, she had knew of the information of the prior
4 happenings in regards to the incident and coming back.

5 Q She knew of what information?

6 A That they had discussed planning the robbery for his
7 birthday.

8 Q I understand that.

9 A That they had left together.

10 Q I understand.

11 A That they had changed clothes, they had -- I'm dressed
12 in all black.

13 Q I understand that.

14 A I'm ready. Life's good.

15 Q Okay. Had any information regarding the identity of my
16 client as the person, one of the persons involved in the
17 armed robbery been given to the magistrate at that point, an
18 actual identification?

19 A The information was provided to the magistrate in
20 regards to the preparation and the planning of the robbery.

21 Q I'm---

22 THE COURT: Mr. Whelchel, I think the question's been
23 asked and answered.

24 MR. WHELCHER: All right.

25 So, the answer would be no---

Jason Bryant - Direct examination
by Mr. Whelchel

1 A The answer would be the information---

2 Q Oh, okay.

3 A ----provided to the magistrate---

4 THE COURT: As I said, it's been asked and answered,
5 Mr. Whelchel.

6 MR. WHELCHER: That's all I would have, Your Honor.

7 THE COURT: All right. Do you wish to cross-examine
8 the witness?

9 SOLICITOR JORDAN: Your Honor, not waiving my objection
10 to all of this I do.

11 THE COURT: Okay. Your objection is preserved. You
12 may cross-examine him.

13 CROSS-EXAMINATION

14 BY SOLICITOR JORDAN:

15 Q Did you, did you, did you or other officers on scene
16 that night at the waffle House obtain some general
17 information as to the race and sex of the defendant?

18 A That's correct.

19 Q Did you also view a video that captured the entire
20 crime on it?

21 A We did.

22 Q And on that video what did you see?

23 A Observed two individuals going to the waffle House.
24 One with a pistol, one with a bag. We did observe on the
25 video the fatal gunshot of Dante Williams, and the other

Jason Bryant - Cross-examination
by Solicitor Jordan

1 individual in the altercation with Mr. Harrison and him
2 fleeing the scene.

3 Q Okay. Were you able to identify them by race and
4 gender on the video?

5 A You could, you could observe that they were black
6 males.

7 Q Okay. And you also used that information you gathered
8 from the multiple people inside?

9 A That's correct.

10 Q Okay. And you presented to that, to the judge all this
11 information, including the statements you received from Josh
12 Felder, Brittany McSwain, and the oral statements you
13 received from Adisa Norman?

14 A The, the information from Brittany, from Josh, and the
15 interview of Adisa.

16 Q Okay. And a probable cause warrant was issued?

17 A That's correct.

18 Q Okay. Do you recall the following -- well, I guess it
19 was two months later.

20 Do you recall attending a probable cause hearing here
21 at the Spartanburg County Courthouse---

22 A I did.

23 Q ---in this case?

24 Who was the defense attorney at that point?

25 A It was Mr. Welchel.

Jason Bryant - Cross-examination
by Solicitor Jordan

- 1 Q Okay. Do you recall who the judge was?
- 2 A Judge wall.
- 3 Q Okay. Was -- were you subject to cross-examination at
4 that point?
- 5 A I was.
- 6 Q Okay. Was probable cause granted?
- 7 A It was.
- 8 Q Okay. Just to clarify something, when did you obtain
9 the warrant?
- 10 Did you obtain it before or after you talked to the
11 defendant at the Spartanburg County or the Sheriff's Office?
- 12 Did you obtain the warrant before you spoke to him or
13 after you spoke to him?
- 14 A After.
- 15 Q Okay. And at that point he denied everything?
- 16 A That's correct.
- 17 Q Which is inconsistent with what he told you later?
- 18 A That's correct.
- 19 SOLICITOR JORDAN: Okay. Your Honor, we have nothing
20 other than just plain argument at this point.
- 21 THE COURT: Okay. Wish to ask any other questions?
- 22 MR. WHELCHER: No, Your Honor.
- 23 THE COURT: You may step down.
24 wish to call any other witnesses as far as the proffer
25 is concerned?

1 MR. WHELCHER: No, sir.

2 THE COURT: All right. You may step down. Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Mr. Whelcher.

5 MR. WHELCHER: Your Honor, it is still the defense
6 position that once -- that when a warrant is issued it must,
7 it must be issued with probable cause that relates back to
8 the Fourth Amendment of the United States Constitution and
9 our Constitution for this state, and that, in this instance,
10 this warrant that he's, he obtained does not, was issued, in
11 my opinion, without probable cause. There is insufficient
12 evidence to show that the, a crime was committed and that
13 person committed the crime.

14 There might be some speculation and some stuff, some
15 evidence about or some statements they obtained about who
16 was with who and everything like that prior to the robbery,
17 and some people after the robbery.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. WHELCHER: But my understanding of probable cause
20 is simply this. There has to be evidence to show that a
21 crime was committed, and that that person committed the
22 crime, and I don't think the evidence---

23 THE COURT: well, the standard of proof though for
24 probable cause is much lower than proof in this Court.

25 MR. WHELCHER: Oh, I understand that, Your Honor. I'm,

1 I'm not saying that. I'm saying that, in our opinion, in my
2 opinion, that that standard was not met, still has not been
3 met, and my client---

4 THE COURT: So, so what effect does that have on this
5 whole matter?

6 I mean that -- wait -- let me be sure I'm clarifying
7 your position and correctly. I want to be sure I'm deciding
8 what you're asking me to decide.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: My understanding is this all stems from
11 your challenge of the identification of your client as a
12 result of his having been arrested and apparently the
13 publication in the media of a booking photo.

14 MR. WHELCHER: Yes, Your Honor. I don't know what was
15 published cause I haven't been given---

16 THE COURT: Well, I'm talking about what was in the
17 media. Not what you've been given. That's available to you
18 I suppose.

19 MR. WHELCHER: Yes, sir, Your Honor. The problem is
20 it's incumbent upon the State to prove that the---

21 THE COURT: Well, they didn't get there. You stopped
22 them when they asked about whether or not, how long they had
23 looked at this gentleman. But I understand that. But
24 I'm -- let's, let's get -- again, I want to get to the
25 issues you want me to decide.

1 MR. WHELCHER: I understand, Your Honor.

2 THE COURT: Let's try to stay out of the argument.

3 MR. WHELCHER: My problem is they kind of dovetail.

4 THE COURT: Well, let's get to the issues you want me
5 to decide. My understanding is that you are challenging any
6 identification by Mr. Harrison in particular---

7 MR. WHELCHER: Yes, sir.

8 THE COURT: ---at this point in time. If that
9 identification was based upon a booking photo published in
10 the media as a result of what you claim to be an illegal
11 arrest --?

12 MR. WHELCHER: Exactly, Your Honor.

13 THE COURT: All right. And is that all you're asking
14 me to decide?

15 And, so, the reason we're going through the probable
16 cause hearing is because you're trying to establish that it
17 was an illegal arrest to begin with.

18 MR. WHELCHER: That's first, Your Honor.

19 THE COURT: All right. Well, tell me the whole thing.

20 MR. WHELCHER: Your Honor, if Your Honor---

21 THE COURT: This is not hide and seek.

22 MR. WHELCHER: I know.

23 THE COURT: I need to know what you're wanting me to
24 decide.

25 MR. WHELCHER: Your Honor, if Your Honor decides or

1 rules that there was probable cause and that Your Honor is
2 going to allow this identification to go forward, it is
3 still my position that Your Honor has to have, at this
4 point, an in camera hearing to determine that the
5 identification is reliable, that---

6 THE COURT: Well, that -- you're getting -- you know,
7 we didn't get to that point. You were challenging any
8 identification is what I understood---

9 MR. WHELCHER: Yes, sir.

10 THE COURT: ---if it was based upon the photos that was
11 taken -- you started talking about fruit of the poisonous
12 tree. I heard you make that argument.

13 MR. WHELCHER: Yes, sir.

14 THE COURT: And I assume what you were arguing was that
15 because the booking photo was obtained as a result of an
16 illegal arrest that the State should not be allowed to use
17 that identification because it was fruit of the poisonous
18 tree.

19 Did I hear that correctly?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: So, is that where we are?

22 MR. WHELCHER: At this point, yes, sir.

23 THE COURT: Well, tell me where -- is there another
24 motion?

25 MR. WHELCHER: Well, I don't---

1 THE COURT: You keep hedging on me, Mr. Wheelchel.

2 MR. WHELCHER: I'm not trying---

3 THE COURT: I am trying to get to the point as to what
4 you want me to decide.

5 MR. WHELCHER: That's what I want you to decide at this
6 point, Your Honor.

7 THE COURT: All right. Now, one thing I want to ask
8 you, Mr. Wheelchel.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: The booking photo was publish in the media,
11 and I asked if the State made any efforts to hold any type
12 of formal identification process. I was told by the State
13 that there was none.

14 Do you agree with that statement?

15 MR. WHELCHER: I don't know, Your Honor. See that's,
16 that's---

17 THE COURT: Well, if you -- you have the right to offer
18 proof at this point in time if the State participated in a
19 formal identification process. You know, a show-up lineup,
20 a photo lineup, a stand-up in the row lineup, any type of
21 identification process that was sponsored by the State, that
22 the State did---

23 MR. WHELCHER: Yes, sir.

24 THE COURT: ---State action, and that's -- there's a
25 difference you know.

1 MR. WHELCHER: Oh, yeah, I understand.

2 THE COURT: If people just identify people when they
3 see them on the street, that's not -- a different
4 identification from when the State sponsors an
5 identification, and the question of suggestiveness for the
6 State sponsored identification are not necessarily present
7 if I happen to walk down the street and see a gentleman I
8 observed committing a crime earlier in the week and say
9 that's the guy who did it, and I call a policeman and say
10 that's the guy who did it. There's a difference in that
11 identification---

12 MR. WHELCHER: Oh, I---

13 THE COURT: ---that I have to analyze.

14 MR. WHELCHER: Yes, sir.

15 THE COURT: So, I'm trying to determine if you're
16 claiming that the State conducted any type of formal state
17 identification process here.

18 MR. WHELCHER: Yes, sir.

19 THE COURT: Okay. What did they do?

20 MR. WHELCHER: The State advocated their
21 responsibility, in my opinion in this case, to do that
22 lineup or to conduct that lineup in a method that should be
23 done in accord with Neal v. Biggers.

24 Here's what the State did, Your Honor. The State
25 obtained the arrest warrant for my client. Then they

1 contacted what's going to be their main witness for
2 identification and in this case, Your Honor. Three days
3 after they contacted him, they contacted him and asked him
4 did you see the news --

5 THE COURT: Uh-huh. (Affirmative).

6 MR. WHELCHER: -- and then he told them what they're
7 doing---

8 THE COURT: He told them that he had?

9 MR. WHELCHER: Yes, sir.

10 THE COURT: Okay.

11 MR. WHELCHER: And I think he'll identify my client,
12 Your Honor. Subsequently, or as soon as they asked him did
13 you see the news, then they get into the question of is that
14 the fellow and he said yes. They're using the -- they're
15 using the press, Your Honor, to establish their
16 identification, and I think that use of the press to
17 establish their identification three days after my client's
18 arrest is improper and that's what I'm objecting to.

19 THE COURT: Okay.

20 MR. WHELCHER: Now, I understand the Tisdale situation

21 --

22 THE COURT: Yes, sir.

23 MR. WHELCHER: -- the rulings in Tisdale.

24 THE COURT: Yes, sir.

25 MR. WHELCHER: I think this situation can be -- I think

1 it's a different situation than in Tisdale and if you want
2 me to argue Tisdale now --?

3 THE COURT: Now would be the time.

4 MR. WHELCHER: Your Honor, Tisdale involved robbery of,
5 if I remember correctly, a First Citizens Bank.

6 Beg the Court's indulgence, Your Honor.

7 (Pause.)

8 MR. WHELCHER: Tisdale involved the arrest of
9 Mr. Tisdale after a bank robbery, Your Honor. The day after
10 the bank robbery, three witnesses from the bank, who have
11 had sufficient time, according to the Court, to make their
12 identification of him called the State or called the
13 investigators involved and told them that the fellow that
14 was in the newspaper and that they had witnessed or seen in
15 the newspaper was the fellow that committed the robbery.
16 That was the very day after the robbery, Your Honor.

17 A short amount of time in time span between the robbery
18 itself and the identification, and there is no question but
19 that in this situation, in that situation with Tisdale that
20 Court ruling was proper.

21 what differentiates this case, in my opinion, is this.
22 This identification was not conducted until three days after
23 my client was arrested, and my client had been on the TV and
24 in the newspapers almost constantly for that amount of time.
25 They advocated, in my opinion, their responsibility to

1 perform an identification properly, and just let the press
2 do it for them.

3 THE COURT: Are you telling me the State controls the
4 press' publication of that picture?

5 MR. WHELCHER: No, sir, the State---

6 THE COURT: If there's some evidence, if there's some
7 evidence of the, that I'd like to hear that.

8 MR. WHELCHER: No, sir, but they know and we all know
9 that the State takes the, excuse me, the press takes the
10 photographs from a booking report and puts them in the paper
11 on a routine basis, and, in this particular case, because of
12 this, the notoriety of this case, Your Honor, there was no
13 question but that it was going to be on television and in
14 the paper, and the key fact is this, Your Honor.

15 When the State, through the Investigator Bryant,
16 contacts the witness, they contact him and begin, according
17 to the, what testimony I've heard, they begin, and it's in
18 the investigative notes, they begin their conversation with
19 have you seen the news of the shooter or the second person's
20 arrest. They use the news to do the identification.

21 THE COURT: Again, is there any evidence of some prior
22 arrangement or some effort by the press to be sure those
23 pictures were published?

24 MR. WHELCHER: Oh, no, sir.

25 THE COURT: There's no evidence of that?

1 MR. WHELCHER: No, I'm not---

2 THE COURT: So, as far as we know, those -- the reports
3 that you're talking about were done by the media in the
4 general course of their business?

5 That's what they do?

6 MR. WHELCHER: Yes, sir.

7 THE COURT: Okay.

8 MR. WHELCHER: My -- yes, sir. But my argument is
9 that, instead of doing what they should have done and could
10 have done and are required to do, in my opinion.

11 THE COURT: Now, is there a -- I'm not sure about --
12 you say there's a requirement that the State go through
13 some---

14 MR. WHELCHER: Your Honor?

15 THE COURT: ---formal identification process?

16 MR. WHELCHER: well, there's a requirement that they,
17 that they produce the evidence for them to go forward with
18 and---

19 THE COURT: well, it may be identification. It may not
20 be. I don't know what they're gonna present.

21 MR. WHELCHER: Yes, sir. But my, my -- what I'm
22 arguing to the Court is that the facts in this case are
23 different from the facts in Tisdale. If you read Tisdale
24 and---

25 THE COURT: I'm reading it right now.

1 MR. WHELCHER: Yes, sir.

2 THE COURT: I've got it in front of me.

3 MR. WHELCHER: It will also show you, tell you that
4 they were in the process, at that time that they received
5 the call, of developing a photo lineup or a show-up. I
6 forget which, Your Honor. But I think it was a photo
7 lineup. There was no effort to do one of those in this
8 case. They just waited until the people saw it on the news.

9 THE COURT: All right. I'll hear from the State on
10 that argument.

11 SOLICITOR JORDAN: Your Honor, we believe that both of
12 this -- that this issue, as far as identification in the
13 media, has been thoroughly covered by our courts in Tisdale
14 and in Drayton. The press has the First Amendment right for
15 freedom of the press, freedom of speech, all of that.

16 They -- you know, what they publish is what they
17 publish. One of the, one of the reasons or we don't want
18 suggestive lineups. Investigator Bryant did his job by
19 asking have you seen any media coverage on this before he
20 gives him a lineup that would be thrown out probably in this
21 Court because, you know, he had already seen one picture at
22 that point.

23 Even if you look at, I believe it's Drayton, it talks
24 or Drayton or Tisdale has not only media identification, but
25 also has the defendant arriving or being, being identified

1 by the witness at a preliminary hearing in this case. I
2 just -- I don't understand the argument as to attacking
3 probable cause at this point. We're way past that, and I
4 believe that Drayton and Tisdale completely cover the issue
5 in this case as to the identification by Justin Harrison of
6 the defendant. It's, it's---

7 THE COURT: All right.

8 SOLICITOR JORDAN: Just hitting the probable cause
9 issue, it was a -- I've listened to this Court many times
10 talk to juries about direct and circumstantial evidence.
11 Circumstantial evidence was presented to the judge who
12 issued a warrant based on probable cause. Circumstantial
13 evidence was presented to yet another judge who issued
14 probable cause.

15 One indictment initially went to the Grand Jury
16 charging him with a, with a, the armed robbery of the Waffle
17 House with the and/or language. I, after reading another
18 case that came down in May, decided that, because of the
19 duplicitous indictment issue, to send them back to the Grand
20 Jury to fix that so that if, if the State prevails at trial
21 we don't have to re-litigate that based on, this based on
22 that issue. I don't, I don't understand where he's -- I
23 don't understand his arguments, and I don't think that
24 they're correct and proper.

25 THE COURT: All right. Mr. Welchel, going back again,

1 the basis upon which you're attacking the warrant is the
2 lack of information presented to the magistrate?

3 MR. WHELCHER: Yes, sir, Your Honor.

4 THE COURT: And that did not, was not sufficient to
5 establish probable cause and that's what you want me---

6 MR. WHELCHER: Yes, sir.

7 THE COURT: That's what you want me to decide?

8 MR. WHELCHER: Exactly, Your Honor.

9 THE COURT: All right. I've decided that that was
10 sufficient and probable cause did exist.

11 MR. WHELCHER: I understand that. I want the Court to
12 know I'm not doing this to belabor a point. But there are
13 issues that have to be brought up after this trial.

14 THE COURT: Oh, I understand.

15 MR. WHELCHER: Yes, sir.

16 THE COURT: I'm not telling you not to bring them up.
17 I want to be sure I'm deciding what you want me to decide.

18 MR. WHELCHER: Yes, sir.

19 THE COURT: Okay. And, so, I'm trying to be sure that
20 I'm addressing the issues you've asked me to address.

21 MR. WHELCHER: Yes, sir.

22 THE COURT: And my understanding is that you're
23 challenging the warrant that was originally issued for his
24 arrest, arrest based on a failure of probable cause that was
25 presented to a magistrate?

1 MR. WHELCHER: Exactly, Your Honor.
2 THE COURT: And that's it?
3 MR. WHELCHER: Yes, sir.
4 THE COURT: And I've decided there was sufficient
5 evidence---
6 MR. WHELCHER: Yes, sir.
7 THE COURT: ---to justify a warrant to be -- probable
8 cause did exist.
9 MR. WHELCHER: Okay.
10 THE COURT: All right. Now, the next issue that I
11 think you want me to decide then is whether or not the
12 identification by Mr. Harrison, in particular, should be
13 excluded based on the fact that police, through their
14 inaction---
15 MR. WHELCHER: Exactly.
16 THE COURT: ---provided a suggestive identification?
17 MR. WHELCHER: Exactly.
18 THE COURT: And now we haven't gotten to the
19 reliability of his investigation because we didn't get that
20 far. So, I'm not ruling on that yet.
21 Okay?
22 MR. WHELCHER: Yes, sir.
23 THE COURT: But I, I am going to rule that, based on
24 Drayton and Tisdale, that the identification should not be
25 excluded for the reasons that you asked me to exclude it.

1 MR. WHELCHER: I understand, Your Honor.

2 THE COURT: Okay. So, I will allow the identification
3 to go forward should it be determined that the
4 identification was reliable.

5 MR. WHELCHER: Yes, sir.

6 THE COURT: Now, does the State wish to put
7 Mr. Harrison back on the stand and let's deal with
8 reliability before we bring the jury back in?

9 SOLICITOR JORDAN: Your Honor, we still, we still
10 object just based upon State versus Lewis where we don't
11 believe that there's a need for an out-of-court hearing to
12 determine the reliability because Neal versus Biggers is to
13 be used when there's police lineups, show-ups, whatever it
14 may be, in there.

15 THE COURT: Well, but Mr. -- you have to understand
16 that, that Mr. Welchel's making the argument that somehow
17 there was some conspiracy on the part of the State to not
18 conduct an identification process and allow that process to
19 occur in the press although he presented no evidence to
20 indicate that the State somehow sponsored that activity.

21 SOLICITOR JORDAN: And, therefore, there should be no
22 probable cause on that argument because there, there has
23 been no evidence to that.

24 THE COURT: So -- no, I'll let you put him on the
25 stand. If he makes the objection, we'll deal with it at the

1 time. I got a feeling he'll make the objection.
2 SOLICITOR JORDAN: Yes, sir.
3 THE COURT: All right. We're in recess until two
4 o'clock.
5 Thank you very much.
6 SOLICITOR JORDAN: Your Honor, if I can just remind Mr.
7 Harrison that he can not talk to anybody.
8 THE COURT: Mr. Harrison has been reminded --
9 SOLICITOR JORDAN: Yes, sir.
10 THE COURT: -- until he retakes the stand or till he
11 finishes his testimony he should not discuss that testimony
12 with anyone.
13 WITNESS: Yes, sir.
14 THE COURT: Thank you.
15 (WHEREUPON, Court was in recess for the lunch hour.)
16 THE COURT: State ready to proceed?
17 SOLICITOR JORDAN: Yes, sir.
18 THE COURT: Defense ready?
19 MR. WHELCHER: Yes, sir.
20 THE COURT: All right. Mr. Harrison, you need to
21 resume the stand.
22 Bring the jury in.
23 (WHEREUPON, the following takes place within the
24 presence of the jury.)
25 THE COURT: All right. The record will reflect the

1 jury has returned to the courtroom.

2 If anyone had any difficulty in complying with my
3 instructions during your absence, please stand.

4 (No response.)

5 THE COURT: It appears that everyone's been able to
6 comply with my instructions.

7 During your absence I have denied two motions made by
8 the defense.

9 You may proceed at this time, Ms. Jordan.

10 SOLICITOR JORDAN: Thank you, Your Honor.

11 If I may have one moment?

12 Found it. I was just looking for something I was gonna
13 seek to introduce.

14 THE COURT: Okay. All right. You may proceed.

15 SOLICITOR JORDAN: Thank you.

16 THE COURT: Yes, ma'am.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR JORDAN:

19 Q Justin, I believe we were at the point where we were
20 talking about your view of the second robber.

21 A How long it lasted, yes, ma'am.

22 Q Okay. Could you tell the jury how long you had an
23 opportunity to view the second robber without his mask on?

24 A In that situation it seems like an eternity, but I
25 believe the video shows it was probably around 30 to 45

Justin Harrison - Direct examination
by Solicitor Jordan

1 seconds approximately.

2 Q Okay. And how close in contact were you with the
3 defendant, with the second robber?

4 A I would say a couple of feet.

5 Q Okay. Justin, have you had an occasion to watch a
6 video of this armed robbery up in my office?

7 A Yes.

8 Q Okay. Was that a fair and accurate depiction of the,
9 of what the events that happened at Waffle House that day?

10 A Yes, besides the part that it didn't show him in the
11 corner.

12 SOLICITOR JORDAN: Okay. Your Honor, at this point the
13 State moves to -- I'm sorry.

14 (WHEREUPON, a DVD was marked as State's Exhibit No. 8
15 for identification purposes only at this time.)

16 SOLICITOR JORDAN: Your Honor, at this point the
17 State's moves to admit State's Exhibit No. 8 and publish to
18 the jury.

19 THE COURT: Any objection?

20 MR. WHELCHER: I don't know why she didn't so earlier,
21 Your Honor, but, no, I have no objection.

22 THE COURT: All right. It will be admitted as marked.

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

25 THE COURT: You may publish it.

Justin Harrison - Direct examination
by Solicitor Jordan

- 1 when you hear publish it, that means they can show it
2 to you. That's what she's saying.
3 You may publish the, the video.
4 SOLICITOR JORDAN: Thank you.
5 (WHEREUPON, State's Exhibit No. 8 was published for the
6 jury at this time.)
7 Q Justin, did you speak with law enforcement in the, I
8 guess at this point we'd call it early morning hours of the
9 21st?
10 A I did.
11 Q Did you provide a written statement to law enforcement?
12 A I did.
13 Q Justin, I'm gonna take you to two or three days ahead
14 at this point and ask you if, at any point, you, you saw any
15 information regarding the arrest of this defendant?
16 A I did.
17 Q Where did you see that?
18 A On the news.
19 Q Okay.
20 A I was at my grandma's house.
21 Q Is that -- that's where you live?
22 A Yes.
23 Q Okay. What did you see on the news?
24 A I saw his picture and that they had caught the second
25 suspect.

Justin Harrison - Direct examination
by Solicitor Jordan

1 Q Okay. Justin, when you saw the picture on the screen,
2 what was your immediate thought?

3 A That's him.

4 Q Okay. How sure were you of that?

5 A A hundred percent. No doubt.

6 Q Justin, did you also attend a bond hearing or a hearing
7 in this case at a, at, on February the 3rd of 2012?

8 A I don't know of the date, but I did go to a bond
9 hearing.

10 Q Okay. Was that in -- where was that located?

11 A I believe it was this room.

12 Q Did you have a chance, at that point, to view the
13 defendant?

14 A Yes.

15 Q Okay. What was your reaction at the point that you saw
16 the defendant that day?

17 A That's still him. His hair was a little longer.

18 Q Okay. Justin, can you point out to the Court and to
19 the jury the---

20 MR. WHELCHER: Objection, Your Honor. Lack of
21 foundation at this point. The only thing that's been
22 testified to is 30 to 45 seconds. There's been no testimony
23 by this defendant of type or weight or anything of that
24 nature involving my client or whoever it was at this
25 particular time, Your Honor.

Justin Harrison - Direct examination
by Solicitor Jordan

1 THE COURT: I'd ask you lay a little better foundation.

2 SOLICITOR JORDAN: Thank you, Your Honor.

3 Q Justin, could you tell the jury what you recall from
4 seeing the defendant that night in Waffle House, the second
5 robber?

6 A He was short, small build, and the only way to describe
7 his eyes was like a sad puppy.

8 Q Okay. What was his complexion?

9 A Very dark.

10 Q Okay.

11 A Had a very thick mustache.

12 Q Did he have any other facial hair?

13 A I didn't look.

14 SOLICITOR JORDAN: Okay. Your Honor, at this point I'd
15 move to have the witness identify the defendant.

16 MR. WHELCHER: May I be allowed to cross at this time
17 on that, Your Honor, or---

18 THE COURT: Yes, sir, I'll allow you to cross at this
19 time on that.

20 MR. WHELCHER: Thank you, sir.

21 CROSS-EXAMINATION

22 BY MR. WHELCHER:

23 Q Sir, is this -- do you have a copy of your statement
24 that the solicitor made reference to?

25 A I do not.

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 Q I want you to look at that, sir. Take your time.
- 2 A (witness complies.)
- 3 Q Okay. Now, when you gave that statement to the police,
4 it was on the 21st shortly after the robbery occurred, is
5 that correct?
- 6 A Yes, sir.
- 7 Q Okay. And presumably your memory would of been fresher
8 then than it is now---
- 9 A Yes, sir.
- 10 Q ---is that right?
- 11 Okay. You did not tell the police, at that time, that
12 you had 30 to 45 seconds to view the second robber's face,
13 is that correct?
- 14 A I can't recall.
- 15 Q Well, is it in the statement?
- 16 A No.
- 17 Q Okay. There is no height or weight in that statement
18 either, is there?
- 19 A No, sir.
- 20 Q Okay. There are no sad eyes -- is that what you said,
21 sir?
- 22 A Sad puppy dog eyes.
- 23 Q Oh, there's no reference to sad puppy dogs eyes in that
24 statement, is there?
- 25 A No.

Justin Harrison - Cross-examination
by Mr. whelchel

- 1 Q Okay. You don't make any reference to the lighting
2 conditions in the waffle House at the time, do you?
3 You can review the statement.
- 4 A No point.
- 5 Q Okay. Am I correct in, and I want you to correct me if
6 I'm wrong, did you say earlier in your testimony that they
7 were, the robbers dressed in all black?
- 8 A Yes.
- 9 Q Okay. Now, correct me if I'm wrong, when these two
10 individuals come into the Waffle House, one of them has a
11 gun and one of them does not?
- 12 A Yes.
- 13 Q Okay. The one who had the gun is the one that ended up
14 getting shot---
- 15 A Yes.
- 16 Q ---very soon thereafter, is that right?
- 17 A Yes, sir.
- 18 Q And at no time during---
- 19 SOLICITOR JORDAN: Your Honor, I object at this point.
20 Is he going to the identification or is he crossing the
21 witness?
- 22 MR. WHELCHER: still going to the identification, Your
23 Honor.
- 24 THE COURT: well, let's, let's get to it.
- 25 Q The one that did not get shot, did not have a gun, and

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 that's the one you say that you saw for 30 to 45 seconds---
- 2 A Yes.
- 3 Q ---is that right?
- 4 Okay. Did the individual -- both of them had masks on?
- 5 A I assume. But at the time I saw the second suspect I
- 6 assume he removed it.
- 7 Q Excuse me?
- 8 A By the time I seen the second suspect I assumed he had
- 9 removed it. By the time I initiated contact he has nothing
- 10 to block his face.
- 11 Q Okay. For all of the time that they're in -- I want to
- 12 make sure I'm not confused.
- 13 Okay. For all of the time that these two individuals
- 14 are in the Waffle House, the fellow with the gun did have a
- 15 mask on?
- 16 A Yes.
- 17 Q You don't recall if the fellow without the gun had a
- 18 mask on or not, is that correct?
- 19 A Correct.
- 20 Q Okay. But you didn't shift your focus to him until
- 21 after you had shot the fellow with the mask and with the
- 22 gun?
- 23 A Correct.
- 24 Q Okay. And on that video that we just saw, the fellow
- 25 that you say did not have a mask and did not have a gun was

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 back in the corner of the Waffle House?
- 2 A Yes, sir.
- 3 Q Showing you State's Exhibit No. 7.
- 4 A That's it.
- 5 Q And this would be the corner that you say the second
6 fellow was in?
- 7 A Yes, sir.
- 8 Q And this is State's Exhibit No. 4. Let me get it on
9 the record what it is, sir. This is the State's Exhibit No.
10 4, and you were seated right here where it says Justin
11 Harrison with that arrow pointing to it?
- 12 A Yes, sir.
- 13 Q And over here -- could you step down please, sir?
- 14 A (Witness comes down from the stand.)
- 15 Q What I want you to do is get in the middle so that this
16 is, so the jury can see, all the jury can see this. I'll
17 hold it up.
- 18 A That's the corner.
- 19 Q Right here's the corner --
- 20 A Yes, sir.
- 21 Q -- where you say the second suspect was?
- 22 A Yes, sir.
- 23 Q But your attention was focused on the fellow who was
24 standing right here approximately at the end and had the
25 gun, is that right?

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 A It depends on what time frame.
- 2 Q Well, until you shot him, your attention was on the
3 fellow with the gun, is that right?
- 4 A Yes.
- 5 Q And not until then did you shift what attention you
6 had?
- 7 A Yes, sir.
- 8 Q Okay. Go ahead and have a seat.
- 9 A (Witness returns to the stand.)
- 10 Q And you've already said that this is a fair and
11 accurate representation of how they looked that night?
- 12 A Yes, sir.
- 13 Q You're 5'10"?
- 14 A Yes, sir.
- 15 Q Okay. Now, when you saw this photograph or when you
16 saw the news -- was it newspaper---
- 17 A It was a---
- 18 Q ---or---
- 19 A News broadcast.
- 20 Q Excuse me?
- 21 A It was on TV.
- 22 Q TV. That's, that's what I needed to know.
23 So, you saw this broadcast on TV?
- 24 A Yes, sir.
- 25 Q Okay. And when you saw the broadcast on TV, that

Justin Harrison - Cross-examination
by Mr. Wheelchel

- 1 person didn't have a mask on?
- 2 A No, sir.
- 3 Q And that person was only one person?
- 4 A Yes, sir.
- 5 Q There weren't other people like---
- 6 A No, sir.
- 7 Q ---an array of photographs or anything like that?
- 8 A No, sir.
- 9 Q Okay.
- 10 SOLICITOR JORDAN: Objection, Your Honor. It's not a
- 11 police lineup he saw. It's in the news.
- 12 MR. WHELCHER: I believe I'm on cross, Your Honor.
- 13 THE COURT: You are on cross and I didn't take that as
- 14 an objection.
- 15 You may proceed.
- 16 MR. WHELCHER: Thank you, Your Honor.
- 17 Q So, what you saw three days after the accident was a TV
- 18 report that this is the fellow that's been arrested, am I
- 19 correct?
- 20 A I'm not sure it was three days.
- 21 Q Well, when the officer called you, do you recall that?
- 22 A Yes, and I plainly told him that -- he asked me if I
- 23 could---
- 24 Q Wait a minute. Let me ask you, let me ask you a
- 25 question.

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 Do you recall---
- 2 THE COURT: I'm gonna let him finish any answer that he
3 has for your questions.
- 4 You may complete your answer.
- 5 THE WITNESS: Thank you.
- 6 The police called me and asked me if I could identify
7 the second suspect from a police lineup and I said there was
8 no use, that's the guy, y'all caught him.
- 9 Q They called you and asked you if you could identify the
10 second suspect from a police lineup?
- 11 A On a police lineup.
- 12 Q when did they do that?
- 13 A It was a couple days.
- 14 Q A couple of days?
- 15 A Yeah.
- 16 Q Do you know exactly when it was?
- 17 A No.
- 18 Q Okay. Okay. When you saw this on the news, as I was
19 asking earlier, there was not a collection of six
20 photographs?
- 21 A No.
- 22 Q There was just my client?
- 23 A Yes.
- 24 Q Okay. And the news report was that this is the person
25 that was arrested, is that correct?

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 A Yes.
- 2 Q Okay. And prior to the two or three days later that
3 you were contacted by the Sheriff's Department -- who did
4 contact you?
- 5 Do you remember?
- 6 A I don't know if it was Rusty or if it was Jason. I
7 can't remember.
- 8 Q Rusty or Jason.
- 9 Mr. Bryant you mean?
- 10 That's Jason, right?
- 11 A Yes.
- 12 Q Okay. This person, the second one where you say tried
13 to grab your gun or did grab your gun?
- 14 A He did. Both hands.
- 15 Q Okay. And I think you testified that you shot this,
16 this second person?
- 17 A No.
- 18 Q Okay.
- 19 A I may have. I shot around at him.
- 20 Q You fired your weapon is what I'm getting at?
- 21 A Yes.
- 22 Q Okay. And you don't know if it struck him or not?
- 23 A It didn't. It hit the ceiling.
- 24 Q Excuse me?
- 25 A It didn't hit him. It hit the ceiling.

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 Q Okay. And is that what is shown right at the door or
2 is that outside the door?
- 3 A Yes, that's between the two doors.
- 4 Q The outer door leading to the very outside?
- 5 A And the inner door.
- 6 Q Showing you State's Exhibit No. 5 and No. 6 --
- 7 A Yes, sir.
- 8 Q -- can you identify those?
- 9 A That's between those two doors inside there.
- 10 Q This is the very outer door, State's Exhibit No. 5, is
11 that right?
- 12 A Yes, sir.
- 13 Q And this is the inner door --
- 14 A Yes, sir.
- 15 Q -- State's Exhibit No. 6?
16 And in-between those two doors is where you say that
17 shooting took place?
- 18 A Yes, sir.
- 19 MR. WELCHEL: Okay. Beg the Court's indulgence, Your
20 Honor?
- 21 THE COURT: Yes, sir.
- 22 (Pause.)
- 23 MR. WELCHEL: That's all I'd have at this point, Your
24 Honor.
- 25 THE COURT: All right.

Justin Harrison - Cross-examination
by Mr. whelchel

1 MR. WHELCHER: And this is subject, this is subject to
2 my earlier objections, Your Honor.

3 THE COURT: Oh, I understand that.

4 Do you have any objections, at this time, to his
5 continuing to testify in this matter?

6 MR. WHELCHER: Yes, sir, Your Honor. I don't think
7 there's sufficient foundation has been laid. The only thing
8 that's been testified to is he didn't give height, weight,
9 or anything of that nature. All he says is maybe 30 to 45
10 seconds. There's no testimony about the lighting conditions
11 either.

12 THE COURT: I'll hear from the State.

13 SOLICITOR JORDAN: Your Honor, I believe there's ample
14 evidence in here to allow for the admissions of the, of
15 Justin's in-court identification. The weight and
16 reliability is for the jury to determine.

17 But as far as, as far as the admission of that, Your
18 Honor, he testified to how long he had a view, the defendant
19 was not wearing a mask. I believe that there's a sufficient
20 foundation for this.

21 He was not shown a lineup when he was contacted by
22 police. He stated I told them there was no use, I'm
23 positive you got the guy. I believe that we have a proper
24 foundation for the admission of the evidence.

25 THE COURT: Mr. whelchel, anything further?

Justin Harrison - Cross-examination
by Mr. Wheelchel

1 MR. WHELCHER: Positive he got the guy after he sees it
2 in the newspaper after the fact, Your Honor.

3 THE COURT: Is that---

4 MR. WHELCHER: That's all I'd have, Your Honor.

5 THE COURT: Does that continue to argue his
6 reliability?

7 SOLICITOR JORDAN: No, sir.

8 MR. WHELCHER: Yes, sir, Your Honor.

9 THE COURT: Okay. Overruled. I'll allow him to
10 testify.

11 MR. WHELCHER: Thank you, Your Honor.

12 THE COURT: You may proceed with your examination, Ms.
13 Jordan.

14 SOLICITOR JORDAN: Thank you.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Justin, could you please point out to the Court and the
18 jury who the second robber was that night at the Waffle
19 House?

20 A (Witness points.)

21 Kenneth Craig.

22 SOLICITOR JORDAN: Your Honor, let the record reflect
23 the defendant, as he just stated, pointed to the defendant.

24 THE COURT: The record shall so reflect.

25 You may proceed, Ms. Jordan.

Justin Harrison - Direct examination
by Solicitor Jordan

1 Q Justin, after, after this happened earlier, earlier
2 before all of the testimony before lunch, you were talking
3 to say, talking about what happened once you came back into
4 the waffle House.

5 Could you explain to the jury again what you did once
6 you came back in?

7 A I walked in and I dropped the magazine and cleared the
8 breach. There was a shell casing still left in the gun from
9 where he had both hands-on it and it jammed the casing. It
10 didn't cycle forward.

11 Q Okay. Where did you place the gun?

12 A I believe it was on the far right of the bar.

13 Q Okay. Once you did that, what did you do?

14 A I called my grandma.

15 Q Okay. When the first officer arrived on scene, what
16 did you do?

17 A He basically took my phone and hung it up and he went
18 to go check the bathrooms, and I sat down and pulled out my
19 CWP and handed it to him.

20 Q Okay. So, Justin, when you saw the defendant's picture
21 on the news, how certain were you that that was the person
22 who was the second robber?

23 A One hundred percent.

24 Q And standing here in Court today, how certain are you?

25 A A hundred percent.

Justin Harrison - Direct examination
by Solicitor Jordan

1 SOLICITOR JORDAN: Your Honor, may I have -- if I may
2 have a moment?

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q Please answer any further questions Mr. Wheelchel may
6 have.

7 THE COURT: Mr. Wheelchel, your witness.

8 MR. WHELCHER: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WHELCHER:

12 Q Prior to today you've seen my client at a bond hearing,
13 is that correct?

14 A Yes, sir.

15 Q Okay. Did you go to the preliminary hearing if you
16 know?

17 A I don't know.

18 Q Okay.

19 A I don't know what that is.

20 Q I understand.

21 You were there at the bond hearing when they called his
22 name and you were going, having a hearing to set his bond
23 and he was the guy that walked into the courtroom when they
24 called his or came over from the box when they called his
25 name?

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 A Yes, he stood up.
- 2 Q Okay. And you were here yesterday when his name was
3 called and he stood up and identified himself to the jury
4 panel and everybody else, is that right?
- 5 A Yes.
- 6 Q Okay. And other than my investigator, he's the only
7 black gentleman sitting on this side at this table, is that
8 correct?
- 9 A Yes.
- 10 Q Okay. You were scared that night, sir?
- 11 A You can say that.
- 12 Q I thought you said that earlier, is that right, you
13 feared for your life?
- 14 A Yes.
- 15 Q Okay. And is your recollection that both of the
16 robbers came in and they were in black, is that correct?
- 17 A Yes, sir.
- 18 Q All black?
- 19 A And the first guy with the gun, he had blue jeans on.
- 20 Q Okay. Where was your gun when you fired this shot at
21 the person you say is my client?
- 22 A It was probably around my chest area and between his.
- 23 Q Can you show me?
- 24 A (Witness comes down from the stand.)
- 25 Just say you were---

Justin Harrison - Cross-examination
by Mr. Whelchel

1 Q Wait a minute. You're gonna have to turn so they can
2 see it.

3 A It happened on that side.

4 Q Tell me -- just tell me where to go, where to stand I
5 should say.

6 SOLICITOR JORDAN: Your Honor, I---

7 A Stand over here.

8 SOLICITOR JORDAN: I object to this demonstration.

9 It's, it's on the video as to the movements and everything
10 that are here, which is the best evidence in this instance.

11 MR. WHELCHER: Well, the best evidence is this alleged
12 witness who is the one who was there that night.

13 THE COURT: I'm not gonna comment on which is best or
14 which is not best, but I'm not sure where you're setting him
15 up.

16 MR. WHELCHER: Well, actually---

17 THE COURT: He's having difficulty in doing what you're
18 asking him to do.

19 MR. WHELCHER: That's what I'm trying to get---

20 THE COURT: So, it doesn't match the scene. So,
21 whatever, whatever you decide to do with him, it needs to
22 match the scene.

23 MR. WHELCHER: I understand, Your Honor.

24 THE COURT: All right.

25 Q When you two, you and the fellow you say is the guy --

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 A Yes, sir.
- 2 Q -- that was leaving that night --
- 3 A Yes, sir.
- 4 Q -- my client, when y'all were at the doors---
- 5 A Uh-huh. (Affirmative).
- 6 Q ---and leaving, put me in the position that you say he
7 was in.
- 8 A Stand over to my left.
- 9 Q Okay. Now, wait a minute. You got to -- what we got
10 to do first is tell the jury where the outer door is.
- 11 A This is the inner door. The outer door would of been
12 somewhere over there.
- 13 Q Okay. All right. That's what I'm looking for and
14 you're there?
- 15 A Yes.
- 16 Q Where is the other person?
- 17 A If here's the inner door, he would of been right beside
18 me.
- 19 Q Okay.
- 20 A We're wrestling through the door.
- 21 Q Facing the same way?
- 22 A Yes, facing the same way.
- 23 Q Okay.
- 24 A We're going through the door. Then when he goes --
25 we're in -- now we're entered this middle area.

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 Q The area between the doors?
- 2 A Yes.
- 3 Q Okay.
- 4 A And he's going toward that door. And that's when I'm
5 like this trying to block his path. And he puts both his
6 hands on my pistol and he's---
- 7 Q Uh-huh. (Affirmative).
- 8 A ---kind of leaning over me I assumed. Like over here's
9 the gun, and he's this close, and I do like that and pull
10 the trigger.
- 11 Q The gun fired?
- 12 A Yes, it fired.
- 13 Q Okay. And this close?
- 14 A Yes.
- 15 Q Okay. Thank you, sir.
- 16 A (Witness returns to the stand.)
- 17 Q The person, after that happened, did they stay there
18 with you, run out the door, what?
- 19 A They ran out the door.
- 20 Q Do you know which direction or did you come back in the
21 store, I mean the waffle House?
- 22 A I came back in, but he headed back out toward the back
23 of the waffle House.
- 24 (Witness comes down from the stand.)
- 25 Q Showing you again State's Exhibit No. 4, and I'll hold

Justin Harrison - Cross-examination
by Mr. Welchel

- 1 it up so the jury can see, and you say the person---
- 2 A would of ran out that way.
- 3 Q Hang on a second.
- 4 And this is the outer door, is that right?
- 5 A Yes, sir.
- 6 Q And this is the area you just described for the jury
- 7 where that feud took place?
- 8 A Yes, sir.
- 9 Q Okay. And you say he ran out this door?
- 10 A Yes, sir.
- 11 Q And you went back in or turned to go back in or what
- 12 happened?
- 13 A I went to go back in and a waitress ran up to me, what
- 14 kind of car is he driving, which way did he head, I went
- 15 back out, and he was gone.
- 16 Q Okay. When you went back out, did you see him?
- 17 A No.
- 18 Q Okay. But when he ran out or this person ran out,
- 19 which way did he run?
- 20 A He went that way.
- 21 Q You see him round the corner?
- 22 A I'm not a hundred percent sure, sure.
- 23 Q But, but---
- 24 A But he ran that way.
- 25 Q Okay. So, when he came out the door, whoever it was

Mike Moskal - Direct examination
by Solicitor Jordan

1 WITNESS: Yes, sir, Michael Moskal.

2 THE COURT: Thank you.

3 Your witness, Ms. Jordan.

4 SOLICITOR JORDAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR JORDAN:

7 Q Can you tell the jury where you're employed?

8 A Yes, ma'am, I'm currently employed by the South
9 Carolina Law Enforcement Division that's commonly known as
10 SLED and am assigned to their trace evidence department.

11 Q How long have you been employed with SLED?

12 A Since 2007.

13 Q Could you give the jury the information about your
14 educational background?

15 A Yes, ma'am, I have a Bachelors of Science in Chemistry
16 from College of Charleston. I taught chemistry at
17 Summerville High School for about seven years after that,
18 and then was employed by SLED.

19 Once I was employed by SLED I began a fairly intensive
20 in-house training for all analysis we perform in the trace
21 lab. Specifically gunshot residue. That was about a six or
22 seven month period where I worked with a Court qualified
23 analyst in gunshot residue. I worked cases with them from
24 receiving evidence to writing up a report. It included
25 learning how to run the instrumentation, how to analyze

Mike Moskal - Direct examination
by Solicitor Jordan

1 gunshot residue, how to collect it.

2 At the end of that period I was given a model case
3 where I performed the analysis on it, and then wrote a
4 report and defended it against a group of people just like
5 it would be in a trial. At the end of that, upon successful
6 completion, they deemed me qualified to analyze gunshot
7 residue.

8 Q Okay. Have you testified before in any Courts in the
9 State of South Carolina?

10 A Yes, ma'am, 20 times in State and Federal Court.

11 Q Okay. Were you qualified as an expert in gunshot
12 residue in all those instances?

13 A Seventeen of them were gunshot residue.

14 SOLICITOR JORDAN: Okay. Your Honor, at this time we
15 move to admit this witness as an expert in GSR---

16 THE COURT: Is there an objection?

17 SOLICITOR JORDAN: ---gunshot residue.

18 MR. WHELCHER: No, sir.

19 THE COURT: Without objection then I'll qualify the
20 witness as an expert in that field.

21 Q I'm gonna direct your attention to State's No. -- I
22 believe it's 23, but let me double-check. Yes, State's No.
23 23, and ask you if you can identify that for the jury.

24 A Yes, ma'am. State's Exhibit, Exhibit No. 23 would of
25 been my SLED Lab Number L12-00895, Item Number 12. I

Michael Moskal - Direct examination
by Solicitor Jordan

1 from a jacket, as well as 16.2.1, which were the particle
2 lifts from the Mecca jeans.

3 SOLICITOR JORDAN: Okay. Your Honor, at this time we
4 move to admit State's No. 25 into evidence.

5 THE COURT: Any objections?

6 MR. WHELCHER: Subject to my earlier objections, Your
7 Honor.

8 THE COURT: Subject to those objections, it will be
9 admitted.

10 (WHEREUPON, State's Exhibit No. 25 was received into
11 evidence at this time.)

12 THE COURT: You may proceed.

13 Q In your expert opinion, can you tell the jury what you
14 found on the particle lifts from the Mecca jeans that were
15 collected from the defendant?

16 A On the particle lifts collected from the Mecca blue
17 jeans, again SLED Item Number 16.2, gunshot residue was
18 found.

19 Q Okay. Moving to the next item -- and when -- let me
20 ask you this.

21 when did you conduct that test or issue your report as
22 to that item?

23 A My report for that item was issued on March 4, 2013.

24 Q Okay. I'm gonna move your attention now to SLED's 16,
25 one -- which is one brown and white celebrity jacket.

Michael Moskal - Direct examination
by Solicitor Jordan

- 1 A Again, I recognize this item because it has the lab
2 number, item number, and my initials from the date that I
3 analyzed this. And, so, this is the one brown and white
4 Celebrity jacket.
- 5 Q Okay. And in your expert opinion, what was the result
6 of the test on that jacket?
- 7 A May I read the report?
- 8 Q Yes, sir.
- 9 A Okay.
- 10 Q Yes, sir.
- 11 A Item 16.1.1 are the particle lifts collected from a
12 brown and white Celebrity jacket. Round lead particles were
13 found. Round lead particles are one of the components of
14 gunshot residue, and non-round particles containing lead,
15 barium, and antimony were also found. These particles may
16 be associated with gunshot residue.
- 17 Q Thank you.
18 when did you test the jacket?
- 19 A The report was issued on March 4, 2013.
- 20 Q And just for clarification, is that the same date that
21 you did the blue jeans?
- 22 A That's the same report, yes, ma'am.
- 23 Q Okay. At that point in time did you perform an
24 analysis on any of the other items?
- 25 A The only other item reported at that time was the

Michael Moskal - Direct examination
by Solicitor Jordan

1 gunshot residue kit from Justin Michael Harrison, which
2 we've already discussed.

3 Q Okay. At my request, did you later receive the items
4 again?

5 A Yes, ma'am, I did.

6 Q And at that point in time what items did you test?

7 A At that time I additionally tested a pair of Nike
8 tennis shoes, a short sleeve United USA t-shirt and a long
9 sleeve cotton knit shirt.

10 (WHEREUPON, a gunshot residue kit was marked as State's
11 Exhibit No. 26 for identification purposes only at this
12 time.)

13 Q Okay. Turning our attention now to our -- let me go
14 back and show or come back to State's Exhibit No. 26, and
15 ask you if you recognize State's 26.

16 A Yes, ma'am, I do. Again, this bears my initials from
17 where I sealed this container as well as the SLED lab number
18 on the outer side of it.

19 Q Turning your attention first or actually -- at this
20 time, Your Honor, the State would move to admit No. 26 into
21 evidence.

22 THE COURT: Subject to your prior objections?

23 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

24 THE COURT: Sure. Take a look at it.

25 (Pause.)

Michael Moskal - Direct examination
by Solicitor Jordan

1 MR. WHELCHER: Do you have a report for these that
2 you've testified from?

3 THE WITNESS: Yes, sir, I do. 16.31, 16.71, and 16.72,
4 that's right there.

5 MR. WHELCHER: The May 1st report?

6 THE WITNESS: May 1st, yes, sir.

7 MR. WHELCHER: Begging the Court's indulgence, Your
8 Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. WHELCHER: Your Honor, I apologize. I am not sure
12 which items are actually trying to be placed into evidence
13 at this time. I'd like to ask her to ask the question again
14 just so that I can make sure---

15 SOLICITOR JORDAN: Well, Your Honor, as, as to---

16 MR. WHELCHER: ---following along with what---

17 THE COURT: I think she did ask which item.

18 SOLICITOR JORDAN: I was, I was starting out with the
19 shoes. I believe everything's already been placed into
20 evidence. I am just now seeking to go item-by-item, the
21 ones that were tested, starting with the shoes, going to
22 one, the black long sleeve shirt and the black short sleeve
23 shirt.

24 MR. WHELCHER: Okay. And we're talking about the May
25 the 1st testing now?

Michael Moskal - Direct examination
by Solicitor Jordan

1 SOLICITOR JORDAN: Yes.

2 MR. WHELCHER: I would object to the introduction of
3 Items 6.6, Your Honor.

4 THE COURT: On what basis?

5 MR. WHELCHER: Well, I have an analysis here that says
6 that they didn't perform any analysis. I have a sheet given
7 to me by the State that says they didn't analyze that.

8 SOLICITOR JORDAN: Your Honor, I believe we've already
9 discussed initially only two items in the package were
10 analyzed. At my request, other items were sent back down
11 there, and I believe that the report that he has in front of
12 him with this date -- Your Honor, could we, could we address
13 this outside the presence of the jury just to explain?

14 THE COURT: Sure.

15 Ladies and gentlemen of the jury, again, I'll ask you
16 to step back to the jury room, and again I'll ask you not to
17 begin discussions about this case until I've asked you to do
18 so.

19 You may retire.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Yes, ma'am.

23 SOLICITOR JORDAN: Your Honor, if I just may, by way of
24 explanation, when the items were sent back down to SLED,
25 Agent Moskal realized that he had incorrectly identified

Michael Moskal - Direct examination
by Solicitor Jordan

1 both shirts as long sleeve. He realized when he received
2 them back that there was a long sleeve and a short sleeve.
3 He initially, and he can correct me if I am wrong, he or I
4 can ask him the testimony, he initially---

5 MR. WHELCHER: Excuse me, Your Honor.

6 THE COURT: Let her finish.

7 SOLICITOR JORDAN: He initially -- he, he did an
8 amended report dated May 1st, 2013, as to 16.6, the one
9 black short sleeve United US, USA t-shirt and placed no
10 analysis found -- no analysis, no analysis performed. At
11 that point time, is my understanding, he was just correcting
12 the labeling description. He then performed the analysis
13 and issued the report on this, the supplemental report. He
14 amended his initial report and then issued a supplemental
15 report.

16 THE COURT: Yes, sir.

17 MR. WHELCHER: Well, I don't know that, Your Honor.
18 All I have is what they've given to me, and it says amended
19 report that says Item 16.16, one black short United States,
20 excuse me, one black short sleeve United USA t-shirt,
21 results, no analysis performed, and that's dated May the
22 1st, 2013, and then I'm also given another report that says
23 supplemental. And on that report it says that there was an
24 analysis done. I'm just trying to clear up my confusion
25 with or anybody's confusion for that matter with this.

Michael Moskal - Direct examination
by Solicitor Jordan

1 There's two reports dated the same date.

2 THE COURT: The question is the admissibility of the
3 test kit?

4 Is that what you're trying to get in, test kit?

5 SOLICITOR JORDAN: I'm was -- I'm trying to get in the
6 test kit, yes, sir. Yes, Your Honor, and also his analysis
7 of both of the shirts inside there. I believe the
8 testimony---

9 THE COURT: Well, I'll ask you, I'll ask you to, to go
10 over that with him or lay a foundation to explain---

11 SOLICITOR JORDAN: Yes, sir, I'll do that.

12 THE COURT: ---what he's done.

13 Is that what you want her to do?

14 MR. WHELCHER: Yes, sir.

15 THE COURT: All right.

16 SOLICITOR JORDAN: Yes, sir.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR JORDAN:

19 Q Agent Moskal, did you---

20 THE COURT: Well, now we're not making a proffer. You
21 can do that on the record.

22 SOLICITOR JORDAN: Oh.

23 THE COURT: It's not a question of the admissibility of
24 the questions you're gonna ask. You have a right to ask it.
25 She's on examination.

Michael Moskal - Direct examination
by Solicitor Jordan

1 SOLICITOR JORDAN: And, Your Honor, it's my
2 understanding my explanation was the correct explanation of
3 what occurred.

4 MR. WHELCHER: Well, I don't get to cross-examine her,
5 Your Honor.

6 THE COURT: I am---

7 SOLICITOR JORDAN: Well, that's -- I---

8 THE COURT: I'm gonna get you -- I'm gonna ask you to
9 lay a foundation as to that particular test kit, when it was
10 performed, and let him explain whatever questions or
11 confusions there are about -- are the reports gonna be
12 introduced?

13 SOLICITOR JORDAN: I'm not seeking to introduce the
14 reports. I've -- you know, I've -- he's testified as to
15 what they say. I don't think I need the reports placed in.
16 It's into evidence now as to two of the items and I --
17 hopefully it will be into evidence as to the other three.

18 MR. WHELCHER: Possibly.

19 THE COURT: Well, I'll let him testify to what tests he
20 performed, when he performed them, and which items of
21 evidence that she's attempting to put in were involved in
22 those tests. If he identifies them, there's a foundation
23 been laid for their admissibility I suppose. We'll see.

24 All right. Bring the jury in.

25 MR. WHELCHER: Excuse me?

Michael Moskal - Direct examination
by Solicitor Jordan

1 THE COURT: I said bring the jury in.

2 SOLICITOR JORDAN: And, Your Honor, just for---

3 THE COURT: Just one second.

4 SOLICITOR JORDAN: Just for reflection, I believe I was
5 at the point of moving to admit State's No.---

6 THE COURT: Yes, but he's objecting to it---

7 SOLICITOR JORDAN: ---26.

8 THE COURT: ---and I have not heard this witness
9 testify about the confusion or when that may of been done,
10 and -- but now she hasn't attempted to introduce those
11 reports. So, they're not in the record.

12 MR. WHELCHER: Well, I understand that, Your Honor.

13 THE COURT: They don't have to match those reports for
14 them to be admissible.

15 MR. WHELCHER: Okay.

16 THE COURT: Unless there's some surprise or some effort
17 to, to hide something from you.

18 Is that what you're making a motion concerning?

19 MR. WHELCHER: No, sir, I was just trying to find out
20 why they're two different reports, and trying to do it
21 outside the presence of the jury.

22 THE COURT: Well, she's not introducing the reports.

23 MR. WHELCHER: Well, she's introducing his analysis and
24 the analysis is -- the end result of his analysis is the
25 report that's---

Michael Moskal - Direct examination
by Solicitor Jordan

1 THE COURT: I understand that. But this witness
2 testified that that item was used by him in a test and the
3 test results were thus and so and that's the item.

4 what makes it not admissible?

5 I'll ask you.

6 MR. WHELCHER: Your Honor, it's not admissible if it's
7 not reliable, and it's not reliable if there's two tests --
8 if there's a test done and then there's a report that says
9 there wasn't a test done.

10 THE COURT: Well, maybe, maybe not. You can
11 cross-examine him on his reports.

12 MR. WHELCHER: I understand. That's what I thought I
13 was gonna---

14 THE COURT: Now's not the time -- now's not the time to
15 do that.

16 MR. WHELCHER: Okay.

17 THE COURT: I mean I'm gonna let you explore it if
18 you'd like to explore it.

19 MR. WHELCHER: Yes, sir.

20 THE COURT: I'm not limiting you in that fashion.

21 MR. WHELCHER: I understand, Your Honor.

22 THE COURT: The question is the admissibility of this
23 item. And if he testifies that he used it in a test, and
24 when he used it, and he identifies that as the item, I have
25 yet to hear why it's not admissible. Now, the fact it may

Michael Moskal - Direct examination
by Solicitor Jordan

1 of been mislabeled in a report that he gave, that may create
2 some issue as far as discovery is concerned.

3 MR. WHELCHER: Your Honor, there's no---

4 THE COURT: But it doesn't make it not admissible. I
5 haven't heard why it's not admissible. Give me a rule.
6 There's Rules of Evidence.

7 MR. WHELCHER: Your Honor, the rule is that can cause
8 confusion with the jury, I can't cite the specific rule, but
9 the jury can possibly be confused about this item.

10 THE COURT: Well, she's not introduced what you're
11 confused by. The jury hasn't seen it.

12 MR. WHELCHER: Well, I was just cross-examining him. I
13 didn't ask the jury to be confused.

14 THE COURT: Well, I'm gonna give you a chance to
15 cross-examine, but she's on direct still.

16 MR. WHELCHER: Okay.

17 THE COURT: Okay. Bring the jury in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The jury's returned to the
21 courtroom. I'm asking the State to lay a further foundation
22 for the admissibility of the item in question.

23 SOLICITOR JORDAN: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 CONTINUED DIRECT EXAMINATION

Michael Moskal - Direct examination
by Solicitor Jordan

1 BY SOLICITOR JORDAN:

2 Q As to item, State's No. 26, did you initially issue a
3 report when you looked at the first set of, when you looked
4 at the blue jeans with GSR and the jacket with particles?

5 Did you initially issue a report?

6 A Yes, ma'am, I did.

7 Q Okay. And what was the date of that report?

8 A On March 4th, 2013, I issued a report for the GSR kit
9 from Michael or from Justin Michael Harrison, and all the
10 clothing belonging to Kenneth Jowan Craig, which included
11 the Celebrity jacket, the Mecca blue jeans, the pair of
12 tennis shoes, the pair of gray socks, a belt, and two
13 shirts.

14 Q Okay. When the items were resubmitted for further
15 testing on additional items, did you notice a, a typo in
16 your report from May 4th?

17 A Yes, ma'am, I did.

18 Q What was that typo?

19 A The, the typo in the report and the mistake in the
20 report was that I had labeled both t-shirts originally as
21 long sleeve t-shirts when, in fact, one t-shirt was a short
22 sleeve t-shirt and the other was a long sleeve t-shirt.

23 Q Did you get further descriptions, other than just the
24 length of the sleeve, on these two shirts?

25 A Yes, ma'am, I did.

Michael Moskal - Direct examination
by Solicitor Jordan

- 1 Q What were those further descriptions in the first
2 report, the full description?
- 3 A The full description -- my Item 16.6 was described as
4 one black long sleeve United USA t-shirt, and the second
5 one, Item 16.7, was described as one black long sleeve
6 cotton knit t-shirt or cotton knit shirt.
- 7 Q Did you issue a report where you corrected the
8 typographical error?
- 9 A Yes, ma'am, I did.
- 10 Q What did you list on that report as the item, SLED
11 number, and name?
- 12 A On May 1st I issued an amended report for Item 16.6
13 where it was corrected and described as one black short
14 sleeve United USA t-shirt.
- 15 Q So, am I correct to understand that you issued a report
16 and changed the sleeve length description?
- 17 A Yes, ma'am.
- 18 Q Okay. Did you, at that point in time, did you
19 further -- did you complete testing on several of those
20 items?
- 21 A Yes, ma'am.
- 22 Q Is State's 26 the lifts from the items that you tested
23 that day---
- 24 A Yes, ma'am.
- 25 Q ---or tested in this report?

Michael Moskal - Direct examination
by Solicitor Jordan

1 A Tested in that report, correct.

2 SOLICITOR JORDAN: Your Honor, at this point we move to
3 admit State's No. 26.

4 THE COURT: Any objection?

5 MR. WHELCHER: Subject to my earlier objection, yes,
6 sir.

7 THE COURT: Subject to the earlier objection it will be
8 admitted into evidence.

9 (WHEREUPON, State's Exhibit No. 26 was received into
10 evidence at this time.)

11 THE COURT: You may proceed.

12 SOLICITOR JORDAN: Thank you, Your Honor.

13 Q Let me focus your attention on the black Nike shoes,
14 State's No. 16.3.

15 A Yes, ma'am.

16 Q Could you state to the jury how you tested those shoes?

17 A Yes, ma'am, these shoes were tested -- again, I
18 recognized these because they have the SLED lab number, the
19 item number, and my initials from where I, I initially
20 numbered them when the analysis was first performed on them.

21 Each one of these shoes was tested separately, and
22 while I took one -- again, one of those aluminum double
23 sided sticky tape for a particle lifts and dabbed it across
24 the entirety of this shoe from the toe to the heel and
25 including the bottom of it. One was done for each one of

Michael Moskal - Direct examination
by Solicitor Jordan

1 these shoes.

2 Q Okay. What was the result of the testing on the black
3 pair of Nike shoes?

4 A On, on the black Nike tennis shoes, round particles
5 containing lead were found.

6 Q Okay. Can you tell the jury what that is consistent
7 with?

8 A Yes, ma'am. Round particles containing or round
9 particles that are contained with lead or containing lead
10 are associated with gunshot residue, and what that means is
11 I described gunshot residue as being a round particle that
12 contains lead, barium, and antimony or any combination of
13 those pieces. If it has those three, and it's round, that
14 is absolutely unique to gunshot residue. There are no other
15 known sources for that material.

16 However, as you back down to two of those particles or
17 one of those particles, they begin to, they begin to have
18 other outside sources where you can come up with those.
19 And, so, that's why it's reported as being associated with
20 gunshot residue.

21 Q Thank you.

22 A Yes, ma'am.

23 Q Now we're gonna move to the Item 16.16, the one black
24 short sleeve United USA t-shirt.

25 A Yes, ma'am.

Michael Moskal - Direct examination
by Solicitor Jordan

1 Q Could you state to the jury what analysis you performed
2 on that item?

3 A Yes, ma'am. Again, I recognized this because it has
4 the lab numbers, the item numbers, and my initials from when
5 I perform analysis on it. And, again, with the t-shirt, I
6 would of taken the aluminum sticky tabs -- excuse me for
7 just one second.

8 (Pause.)

9 A On 16.6 -- my Item 16.6, I would have taken one
10 particle lift and collected from the front of the right
11 sleeve. I would have taken a second particle lift and
12 collect from the right chest area, a third particle lift
13 from the left chest area, and a fourth particle lift from
14 the left sleeve.

15 Q what was the result of the examination on the short
16 sleeve t-shirt?

17 A On Item -- my Item 16.16.1, the short sleeve United USA
18 t-shirt, I found round or I found non-round particles
19 containing lead, barium, and antimony.

20 Q And what is, what is -- what can the jury derive from
21 that?

22 A The non-round particles of non -- the non-round
23 particles containing lead, barium, and antimony are
24 characteristic with gunshot residue.

25 Q Thank you.

Michael Moskal - Direct examination
by Solicitor Jordan

1 Moving to 16.7.

2 Could you describe that item and show it to the jury?

3 A Again, I recognize this because it has the lab number,
4 the item number, and my initials from where I performed
5 analysis on this, and this is the long black sleeve cotton
6 knit t-shirt.

7 On this particular item I would have collected one
8 particle lift from the right cuff, a second particle lift
9 from the right forearm from where the cuff ends to
10 approximately where the elbow would of been. A third sample
11 would of come from the right chest. And -- no, I'm sorry.
12 I apologize.

13 One would of been from the front of the cuff. One
14 would of been from the back of the cuff, and a third from
15 the, from the forearm. The chest would not have been
16 collected on this one because, when we analyzed, when we
17 test samples of clothing, we're looking for the area that
18 would be closest to the weapon when it's fired, and the
19 areas closest to the weapon with the long sleeve t-shirt are
20 typically gonna be the forearm of that, of that shirt.

21 So, with a long sleeve garment we test the front and
22 the back of the cuff and then the forearm. So, one would of
23 been the right front cuff, second the right back cuff, and
24 third the right forearm, and then three samples on the left
25 arm from the same areas.

Michael Moskal - Direct examination
by Solicitor Jordan

1 Q Could you tell the jury what the result of your
2 examination of the black long sleeve shirt was?

3 A Yes, ma'am, on the long sleeve cotton knit shirt, Item
4 16.7, one particle of gunshot residue was found and one
5 non-round particle containing lead, barium, and antimony was
6 found.

7 Q Thank you.

8 Agent Moskal, I'm just gonna take a, take some time now
9 just to go back and talk about GSR on clothing.

10 A Yes, ma'am.

11 Q It's my understanding as to or could you just remind
12 the jury what the GSR policy is as to a human and testing?

13 A Yes, ma'am, gunshot residue is a very fragile type of
14 evidence. It's a lot like if you're in the kitchen and you
15 have baking flour on your hand. As you get it on your
16 hands, as time progresses, it begins to disappear. Whether
17 it's because you're wiping your hands on your pants,
18 scratching your face, rubbing your hands through your hair,
19 as well as actually being absorbed through the skin in your
20 hand.

21 So, what we have found is that gunshot residue does not
22 survive on a person's hands for a period of more than six
23 hours after shooting. So, SLED policy is, if we receive a
24 GSR kit, and it has been collected beyond a six hour period,
25 we do not analyze it because it can not be associated with

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by Solicitor Jordan

1 that particular incident.

2 Q okay. Thank you.

3 Moving to clothing, is there any sort of policy in
4 reference to clothing and time?

5 A On clothing, the clothing is not sweating, it's not
6 rubbing it's hands on other things. So, as far as materials
7 being deposited on clothing, it's gonna stay there until its
8 removed from an outside source. So, as long as items of
9 clothing have been sealed and collected properly, we will
10 analyze clothing for an indefinite amount of period, an
11 indefinite time period.

12 Q You mentioned unless the, and I may get your words
13 mixed up here, how -- what are some potential ways that it
14 could leave clothing?

15 A If the -- it can be removed by an outside source. So,
16 if an article of clothing is washed, it could be, it could
17 definitely be removed from that, that sample.

18 Q Is there any way to tell the length of time that
19 gunshot residue has been on an article of clothing?

20 A No, ma'am, if, if I were to go shoot today with this
21 coat on or these pants on, any GSR that deposited on the, on
22 my clothing would stay there until these were washed or it
23 was worn away.

24 Q Is there -- when you find GSR on clothing, what, in
25 your expert opinion, is the source of or can you get GSR

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by Solicitor Jordan

1 from anything other than gunshot?

2 A When we look and we actually see the round three
3 component particles, they're not produced other, in anything
4 other than the primer of the cartridge case being fired.

5 Q So, in -- is it true then that when you have gunshot
6 residue on clothing, then that clothing has come into
7 contact with a gun or is there any other explanation for it?

8 A When we find gunshot residue or its components on
9 clothing, that indicates to us that it was near a weapon
10 when it was fired or somebody had touched it who had gunshot
11 residue on him.

12 Q Okay. I just want to just talk to you about the
13 placement of someone's hands on a weapon.

14 If someone has their hands on a weapon, in your expert
15 opinion on, near the ejection port area, would that -- could
16 that potentially change the -- I've, I've lost my word.

17 Could that, could that change how the GSR or I take
18 this back.

19 Can you tell the jury where GSR comes from in weapons?

20 A Yes, ma'am. GSR is going to come out of the weapon in
21 any of the openings. So, if you're looking at a revolver,
22 that's gonna be the muzzle end. That's gonna be the
23 cylinder gap where the, where you -- when you think about a
24 revolver, you see the muzzle coming out at you and you see
25 the three or six round holes around the sides. All of those

Michael Moskal - Direct examination
by Solicitor Jordan

1 are openings from where gunshot residue can come out of the
2 gun.

3 when you look at a semiautomatic pistol, it kind of
4 limits it a little bit more. You're simply looking at the
5 muzzle end and the ejector port and research shows that the
6 majority of that gunshot residue coming out comes out of the
7 muzzle end and a small fraction of it comes out of the
8 ejector port.

9 Q Okay. If someone were to have their hands over the
10 ejector port, could that limit or change the amount of
11 gunshot residue that comes out of that point?

12 MR. WHELCHER: It calls for conjecture on his part,
13 Your Honor.

14 SOLICITOR JORDAN: Your Honor, he's an expert.

15 MR. WHELCHER: He may be an expert, but he's still
16 gonna have to conjecture about this. He doesn't know.

17 THE COURT: Overruled.

18 A If something were blocking that ejector port, it would
19 definitely alter how the GSR smoke cloud comes out of that
20 gun.

21 SOLICITOR JORDAN: Your Honor, may I have one moment?

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 Q I want to step back and talk to you about the packaging
25 of these items.

Michael Moskal - Direct examination
by Solicitor Jordan

1 When you received these items, where were they?

2 Were they, were they all in that one bag?

3 A Yes, ma'am, when I received this, this bag was sealed.

4 The bag, the brown paper bag was sealed as well as the
5 plastic outer container. Both were sealed and all of the
6 items, the two shirts, the coat, the belt, the pants, the
7 socks, the tennis shoes, were all sealed inside this paper
8 bag.

9 Q Okay. Based upon the fact that those item were sealed
10 in there, is there -- could there be the potential for
11 mixture of the items or mixture of any residue on the items?

12 A Yes, ma'am, if one item has gunshot residue on it and
13 it rubs up against a second item, it is possible to transfer
14 that material to the second item. So, with all of these
15 being packaged together, those materials could have
16 transferred from one item to another.

17 Q But isn't, isn't it true that the, the gunshot residue
18 or the particles, round or non-round, would of had to of
19 been on an item inside the bag --

20 A Yes, ma'am.

21 Q -- for the mix?

22 A Any particles that I found here would of been inside
23 this bag at the time of packaging it.

24 Q And what did you find again on the blue jeans?

25 A Gunshot residue was found on the blue jeans.

Michael Moskal - Direct examination
by Solicitor Jordan

1 SOLICITOR JORDAN: And, Your Honor, before I sit down,
2 I would ask, I don't believe I've already covered this, but
3 I would ask to admit State's No. 23, which is the GSR kit.

4 MR. WHELCHER: Yes, sir.

5 THE COURT: No objection?

6 MR. WHELCHER: No, sir, Your Honor.

7 THE COURT: All right. It will be admitted as marked.

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

10 SOLICITOR JORDAN: One moment again.

11 THE COURT: Certainly.

12 (Pause.)

13 Q Please answer any questions Mr. whelcher may have.

14 A Yes, ma'am.

15 THE COURT: Mr. whelcher, your witness.

16 CROSS-EXAMINATION

17 BY MR. WHELCHER:

18 Q I want to make sure that I heard you correctly a moment
19 ago.

20 A Yes, sir.

21 Q You said that this GSR can be transferred from one
22 piece of clothing in that bag to another?

23 A Yes, sir, that is possible.

24 Q The GSR can also be transferred from one individual to
25 another if they made contact with each other, is that

Kenneth Craig - Direct examination
by Mr. whelchel

- 1 Q Okay. You need to answer my questions so they can take
2 it down.
- 3 where did -- when you left the house, were you walking
4 at that time?
- 5 A Yes, sir.
- 6 Q what time was it?
- 7 A It was late.
- 8 Q After dark?
- 9 A Yeah.
- 10 Q Okay. And how was Dante dressed?
- 11 A In all black.
- 12 Q Okay. And how were you dressed?
- 13 A I had on blue jeans, a black thermal, a black t-shirt,
14 black socks, and a blue belt.
- 15 Q Okay. Did you have on this coat that's been introduced
16 into evidence?
- 17 A No, sir.
- 18 Q Okay. Did you have the coat on later in the day after
19 you came back to her house?
- 20 A When Detective Bryant came and got me from the house I
21 put it on.
- 22 Q Okay. So, you had on t-shirts?
- 23 A One t-shirt, one thermal.
- 24 Q Okay. And that's all other than the blue jeans and the
25 shoes and the belt?

Kenneth Craig - Direct examination
by Mr. Wheelchel

- 1 A Came on back behind going to back that way.
- 2 Q Okay. And where did you go?
- 3 A Back to Ms. Patricia house.
- 4 Q Okay. Did Slack say or do anything to you while you
5 were in the car?
- 6 A Yeah.
- 7 Q What?
- 8 A When he first jumped in the car he touched me and told
9 me I think Tae dead, you got to tell the family.
- 10 Q What do you mean he touched you?
- 11 A Can you come over here?
- 12 Q Sure.
- 13 A Like that right there. Well, can y'all, can y'all see?
- 14 Q Here.
- 15 A Show on you there.
- 16 Q You were driving?
- 17 A Yes, sir.
- 18 MR. WHELCHER: Can I borrow this chair for a minute?
- 19 BAILIFF: Yeah.
- 20 Q Were you this close or closer?
- 21 A The car -- a little bit closer. About like that.
- 22 Q The steering wheel's in front of you right here,
23 correct?
- 24 A Yes, sir.
- 25 Q Okay. Slack gets in the car on the right side, is that

Kenneth Craig - Direct examination
by Mr. Whelchel

- 1 right?
- 2 A Passenger side, yes, sir.
- 3 Q Show us what he did.
- 4 A He got in, leaned to the side, and grabbed my side, and
5 he touched me. I looked up. He said I think Tae dead --
6 well, I think Dante dead. You got to tell the family. I
7 looked at him and told him you got to be fucked up. I don't
8 know what's going on.
- 9 Q Okay. We've heard that one enough.
- 10 A That's what I said.
- 11 Q I understand.
- 12 And then y'all drove on?
- 13 A Yeah.
- 14 Q How long were you in the car with Slack?
- 15 A From there till we got back to St. Andrews.
- 16 Q And do you know how long that would take?
- 17 A No, I really don't. I'm like everybody else. I was
18 shocked myself. So, time I'm not good with.
- 19 Q When you got back to Ms. Pat's, where did Slack go?
- 20 A He told me let him out by the pathway.
- 21 Q By what?
- 22 A By the pathway.
- 23 Q The one that leads back to his house?
- 24 A Yes, sir.
- 25 Q Okay. And you went back to Ms. Pat's house?

1 the jury has returned to the courtroom.

2 I hope everyone had a good evening and have returned
3 ready to proceed with the trial.

4 If anybody had any difficulty in complying with my
5 instructions over the evening I'd ask that you please stand.

6 (No response.)

7 THE COURT: It appears that all jurors have been able
8 to comply with my instructions thus far.

9 I told you that, upon your return, the parties will be
10 allowed to make their closing statements or arguments to
11 you, and at this time the State will be going first.

12 You may proceed, Ms. Jordan.

13 SOLICITOR JORDAN: Your Honor, just as to the law?

14 THE COURT: Yes.

15 SOLICITOR JORDAN: Thank you, ladies and gentlemen.

16 Right now I'm just gonna speak to you what the law is
17 in the State of South Carolina, and, of course, the judge,
18 at the end, is going to tell you what the law is, but I'm
19 just going to inform you of what that is, and then Mr.
20 whelchel's gonna have a chance to talk to you and I'll be
21 back.

22 The defendant in this case is charged with multiple
23 crimes, but they boil down to three different areas of the
24 law by statute. The first is that he's charged with armed
25 robbery. He has two counts of armed robbery.

1 Armed robbery states that I have to prove that, in
2 Spartanburg County, while armed with a pistol, other items,
3 or a deadly weapon or while alleging, by either words or
4 actions, he was armed while, while using a representation of
5 a deadly weapon or any object which a person, person present
6 during the commission of a robbery reasonably, reasonably
7 believed to be a deadly weapon feloniously takes something
8 from the person or presence of another. That's armed
9 robbery.

10 The next charge he has or the next set of different
11 charges he has is attempted armed robbery. It's that
12 statute, but the actual taking doesn't occur. Attempted
13 armed robbery.

14 He's also charged with possession of a firearm during
15 the commission of a violent crime. That while committing a
16 violent crime, armed robbery is defined as a violent crime,
17 he was in possession of a firearm.

18 Those are the charges by statute. The judge is also
19 gonna talk to you about a law that we have in our state
20 that's called the hand of one is the hand of all. That's
21 what it's commonly known as.

22 what that basically states that if the crime is
23 committed by two or more people who are acting together in
24 committing the crime, the act of one is the act of all.
25 That a person who joins with another to accomplish an

1 illegal purpose is criminally responsible for everything
2 done by the other person which occurs as a natural
3 consequence of the acts done in carrying out the common plan
4 or purpose.

5 An example of this is that if two or more people, two
6 people or more can be guilty of killing another person when
7 only one of the two had a gun, there was only one bullet,
8 and only one of the two fired the shot that caused the
9 death. If two or more people are together, acting together,
10 assisting each other in committing the offense, the act of
11 one is the act of all or, as it's sometimes said, it's the
12 hand of one is the hand of all.

13 THE COURT: Mr. Welchel, you may proceed for the
14 defense.

15 MR. WHELCHER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. WHELCHER: Ladies and gentlemen of the jury, 48
18 hours ago or roughly 48 hours ago I stood before you and
19 told you this:

20 That at the time of my client's arrest not a single
21 soul had identified him as the person, as the other person
22 involved in the waffle House, and now you've heard people
23 get up on the stand and make an identification.

24 You also heard me asking them, each and every one of
25 them who had a chance and identified, the ones who actually

1 identified my client.

2 You also heard me ask them, them these questions:

3 In your statements that you gave that night or that
4 morning because what we're talking about is an incident that
5 took place at about 1:15 in the night. The early AM. I
6 think one of the waitresses testified we were waiting on our
7 bar rush. It's Saturday. It was Saturday night just
8 turning into Sunday morning.

9 Nobody, nobody said, at that time, one of those two
10 people was very short, one of them was a lot shorter than
11 the other, one of them was slighter build. Nobody, at that
12 time, said there was something specific about the voice.
13 Not until they're here, almost 18 months to the day after
14 this event took place, do we hear anything about a specific
15 voice. Eighteen months.

16 Now, let me talk to you about the process here cause
17 I've had that job. I'm a lot older than them. I had that
18 job in the past, and the difference between law enforcement
19 and the prosecutors and the way that they view these cases
20 when an arrest is made on a case, the statistics kept by the
21 Sheriff's Office, case cleared by arrest. They're done.

22 1:15 there's an armed robbery. 11:30PM that same day,
23 case is cleared. We got the guy.

24 We're gonna wait 18 months to have anybody identify or
25 wait -- wait a minute. I'm sorry. After his name and

1 likeness is all over the news, we're gonna contact the
2 witness, the witness and we're gonna say -- and this is
3 three days later. Three days of that coverage. We're gonna
4 contact him and we're not gonna say will you come in and
5 view a lineup we've prepared.

6 Will you come in -- and what do we say or what did he
7 testify that we said or they said?

8 They contacted him and said this:

9 Have you seen the news?

10 That is the way they decided to conduct this
11 investigation in this case.

12 Is that believable, credible, allowable?

13 You're the ones who decide what the facts are, and
14 whether or not you believe them. It doesn't matter what I
15 think or anybody else in this room thinks about that. But
16 judging the facts now in this room about this case are
17 seated before me. And part of the things that you determine
18 when you determine what the facts are is how the facts are
19 gathered and how the facts are presented and how the facts
20 are preserved or not preserved.

21 Speaking of fact preservation, when the State, the
22 government, when the government takes the known samples for
23 Mr. Harrison -- now, there is no question I think in
24 anybody's mind, there, then, or now, that Mr. Harrison shot
25 one of the robbers. Okay. Nobody ever doubts that.

1 But yet, the government shows up and they do those
2 tests and they talk to you about how they do the tests and
3 all the dabbing and the special thing that you hold that
4 with so that you don't contaminate one sample from another
5 sample or this from that. You know, four different wands
6 and a special handle.

7 But when my client gets arrested, and they're gonna do
8 the same kind of tests on his clothing, let's just throw all
9 those clothes in there together. We're not gonna separate
10 them. They had a chance. They could do it right then. But
11 no, they throw them all together, throw them in a bag, and
12 every time -- and you heard testing was requested multiple
13 times. Multiple times.

14 And between the tests, where do the clothes go?
15 We all know where they went cause they told us where
16 they went. These clothes have been in and out of that bag
17 no, who knows how many times, and the agent that testified,
18 I think Moskal, told us from the very beginning on my
19 cross-examination, I asked him and it says here that you can
20 not tell us when, where, or how this residue got there.

21 Your test won't do that?

22 He said no, no, it won't do that.

23 Then I asked him, the trace evidence lab, that's where
24 you run all the GSR tests for the entire state?

25 Yeah. And he went into a big long elaborated answer to

1 try to, you know, inform you how they try to keep that
2 clean, and I understand that.

3 But how -- trying to keep it clean doesn't really
4 matter, and, you know, my wife's a nurse. She's the -- use
5 to be the head hanchu nurse at the hospital years ago. We
6 were talking the other day and we were talking about -- I
7 think there was something in the paper or newspaper. I
8 don't know what it was, but it was about salmonella, and she
9 said that the statics have shown that salmonella -- you
10 know, everybody worries about outbreaks at restaurants and
11 stuff and most of the time you get it right in your own
12 kitchen, and it's kind of like right in your own lab.

13 You got to clean those things up. But it don't really
14 matter if you clean it up or not if you keep stuffing
15 everything back in there together. If you keep dumping the
16 peas and the carrots together, you're gonna have peas and
17 carrots. You're not gonna have peas over here and carrots
18 over here. But every time these items are taken in and out
19 of that bag for the testing, and that's what's got to be
20 done. You just got to make sure that when you're testing
21 this item, what you're testing comes from this item, and he
22 told you we can't do that. Not the way it's bagged.

23 You decide what you believe, what is acceptable, the
24 level of proof, the weight you want to attach to some piece
25 of evidence or alleged evidence. You decide that and the

1 way you decide that is very simple.

2 The judge is gonna talk to you about that, but it's
3 this. Each and every one of you bring to today a level of
4 common sense that you use in every day life to decide who
5 and what you're gonna believe. You do that when you deal
6 with your co-workers, wives, children, everything like that.
7 That's why we have 12 citizens that do that.

8 So, let's talk about applying common sense. You're
9 gonna have a video. You've seen it probably more than you
10 want to, but this video is going to be available to you.
11 You can run it in -- I know you can run it better than I
12 can. We've proven. We've shown that. You'll be able to
13 see this video cause it's in evidence with all this other
14 stuff that the State has put into evidence. But you'll have
15 that with you, and here's what I want you to do.

16 I want you to remember and recall the testimony that we
17 brought out about how tall people are that are involved in
18 this case. I stood back here while my client was on the
19 stand and Slack stood up. Slack was, I believe, right there
20 yesterday, and my client said Slack and Dante were the same
21 height or about the same height. You heard it. You look at
22 the video. You look. You can stop it. You look at that
23 video when they come in the door, those two people, and you
24 tell me -- cause we know that Dante's 5'11".

25 Remember the lady from the Coroner's Office?

1 Seventy-one inches tall. 5'11". That's Dante. My
2 client tells you they're about the same height.

3 Look at that video. Tell me or not, not tell me. Look
4 at the video and see if you can see that when they come in
5 that door. One of them is at least five inches shorter than
6 the other.

7 And here we go again. Not until he testified Tuesday,
8 I believe, did you hear anything about anybody being
9 five inches shorter. Not until you can -- and we've all had
10 the opportunity to see Midget. He's called Midget for a
11 reason. Not until we're here in a courtroom 18 months later
12 is there anybody anywhere with any statement or any
13 description said got a distinctive voice, he's 5'6", slim
14 built. Eighteen months after the fact. Of course, and if
15 we do have an ID three days later, after one photograph, and
16 one likeness has been all over the newspaper and the TV.

17 why?

18 why wasn't there a lineup between the arrest and call
19 Mr. Harrison three days later?

20 It's simple to do. The computer does that. Three
21 days. Three days might not seem like a long time to you,
22 but even then we don't hear anything about he's 5'6", he's
23 slender build, he's slight.

24 You got him. That's him. Don't need to do anything.

25 The proper procedure would of been to prepare that and

1 take it to those witnesses once the arrest has been made.
2 Not to wait, advocate your responsibility to the newspaper
3 and the TV coverage cause that's what happened.

4 So, you have two people going into this waffle House.
5 You can see -- you determine whether you believe that those
6 two people are five, six inches -- my client told you
7 yesterday, he's five and a half, 5'6". You're the ones who
8 determine it. It doesn't matter what anybody else says. I
9 mean you can hear what the witnesses say. You determine the
10 facts. You determine who and what you believe.

11 Now, we've talked a little bit about the, what I call
12 the professionals, the SLED guys, and the, the cops. Well,
13 let me talk to you about another one. They made a big deal
14 out of bringing to you the officer that talked all about
15 fingerprints, and the great thing about all of that was that
16 we got to find out that the bag that the fellow who didn't
17 have the gun, according to everything you've been told that
18 would be him, my client, the bag didn't have his fingerprint
19 on it. There was a print. There was a partial print. But
20 it ain't his.

21 Now, we know his prints were available then cause he
22 admitted to you he has some prior criminal convictions.
23 Nobody's trying to hide that. He's telling you he made
24 mistakes. He said he was young. He's still young, and you
25 heard what the officer said. We've photographed it and

1 showed you that little card and then we send it in to
2 A.F.I.S. and this computer sends it back.

3 Do you wonder, cause I do, when they just sat and
4 didn't do a lineup, they already knew that fingerprint on
5 that bag didn't match Midget?

6 And, you know, here's the other thing. Midget can't
7 help being short. I can help being the size I am. Midget
8 can't help being short. Once you grow you grow as tall as
9 you're gonna get, and as far as I know you can't get any
10 bigger, taller. So, once he shows up here and he's standing
11 or sitting, it doesn't matter, it's pretty obvious that he
12 is a short slight of stature individual and the other thing
13 is this.

14 From the very beginning of this trial, ladies and
15 gentlemen, there's been three people sitting over here. One
16 of them is me and the two guys that went in were or
17 described as black males. So, I'm out. My investigator,
18 Curtis. Curtis has been called a lot of things in his life.
19 Been in the Air Force for a long time. Air Force I think.
20 But Midget ain't one of them.

21 So, who are you gonna pick out?

22 I want you to understand just how difficult it is when
23 somebody says that's him and it's not. It's essentially
24 your word against theirs.

25 who is new to this equation?

1 Ask yourself that.

2 who's new to the neighborhood?

3 who's new to the house?

4 who's the brand new person in this whole thing?

5 Slack lives a block away, and Slack is immediately
6 involved in this situation cause, do you remember, Brittany
7 tells you she heard him ask.

8 Now, even -- that's the other thing. This is a man
9 whose met these people within a week or less and he barely
10 knows them. Yet he's going to say, in front of whoever was
11 there, and there were more people there than you heard or
12 that was brought up to testify, and he's suppose to have
13 said, so that everybody could hear, hey, Dante, you want to
14 hit a lick for your birthday.

15 Now, assuming that you believe that, then you got to
16 believe the response. Nah, I just want to chill.

17 Then what happens?

18 Slack shows up and notices how Slack is the one who
19 makes everything possible. Midget don't have a car. Dante
20 don't have a car. Slack produces, provides a car that he
21 got from the fellow that was seated on the front row with
22 him yesterday. The two of them seated there together.

23 So, that's where we -- and you remember what Brittany
24 said?

25 This -- and she said she heard him say that. And then,

1 on cross-examination, I asked her and all this other
2 information that you have that you testified to is what
3 Slack told you?

4 Yes.

5 We have Slack going off with Dante. Midget's not
6 there. Dante comes back and they tell you Dante says I got
7 a mission, and they tell you they talked about it, but they
8 don't tell you what was said. They don't know what they're
9 talking about because they didn't testify to it.

10 Shortly -- or we don't really know, cause nobody knows
11 time frames here, my client and Dante leave. They even
12 tried to tell you they left in a car. Remember I think it
13 was Keisha or maybe the other girl. I was -- it was Keisha
14 I think. Not Keisha. The first girl that testified. I
15 asked her no, I didn't see him.

16 Well, where were you?

17 She just assumed, because they left together, they
18 went -- they got in a car. But nobody knows. You don't
19 hear how a car becomes involved until my client tells you we
20 left, we went to Slack's. There was a car, and it's just a
21 block away.

22 They go there and they're in the car and you hear that
23 they're drinking beer and smoking blunts. They go to
24 Pineview Hills and then Slack, on the way to Cowpens, tells
25 my client to drop us off at the Waffle House and he does.

1 They've already gotten gas. He drops them off at the Waffle
2 House and he leaves.

3 You heard -- and you heard him cross-examined. But
4 here's the thing. If you leave the Waffle House and you're
5 heading back to Spartanburg, and the police are coming,
6 you're heading in the opposite direction of where they're
7 coming from. You're heading in the opposite direction where
8 the first one was because he was coming from Jones Road and
9 the Motel 6.

10 My client says he saw him, looked at him, he was nosey,
11 turned around. He had just dropped two people off at the
12 Waffle House.

13 Now, of course, it's going to be argued to you, I
14 assume, that he dropped them off cause he knew there was
15 gonna be a robbery or actually didn't drop them off. He's
16 the one driving.

17 Okay. Assuming he's the one driving, you commit an
18 armed robbery and then you park the car so far away that you
19 have to run to it. Yeah, you committed the armed robbery.
20 You parked the car so far away that you have to run to it
21 because Mr. Harrison said, after the shooting took place, he
22 went out and the fellow ran around the back side or actually
23 he didn't know where he ran to. He just lost him. Thought
24 he went that way. But I was asking which direction is
25 which.

1 You're gonna be able to see in the video who's
2 wrestling with who. You're gonna be able to see heights.
3 Mr. Harrison and I are about the same height. I asked him
4 that. You look and you see if you think that fellow is
5 five inches shorter, the fellow who he's wrestling with,
6 cause they say that's my client. You're gonna have that
7 evidence. You decide. It doesn't matter what anybody else
8 says. You decide. And the picture is worth a thousand
9 words cause you're the one who decides that. Not me. Not
10 the State. You.

11 And while we're talking about Mr. Harrison, I don't
12 want you to think that I'm making light of what he had to do
13 and what he did that night cause I am not. And there's
14 nobody from that side, from the defense, telling you that it
15 was wrong in anyway his reaction when a man had a gun.

16 However, when we're up here in front of you and he
17 testified that that fellow was trying to get the gun from
18 him or thought he was trying to get him, wrestling for the
19 gun or what, in-between the two doors, running away, that
20 fellow, you'll have the video to see what you can see of
21 that.

22 But here's the thing. Shot at his chest at point blank
23 range. Mr. Expert, all of that stuff comes out, and yet we
24 find several microscopic particles on the t-shirt.

25 Let me ask you a question or ask yourselves this

1 question. Everybody involved in this case told you the same
2 thing. Both dressed in black. Everybody involved. We kept
3 looking at the video, and it took me, I don't know why, to
4 point out the fact, and you'll be able to see this, point
5 out the fact that that fellow, Slack, had on a white t-shirt
6 hanging out from under it. Everything else.

7 Again, we get back to Slack. Slack is the one who's
8 with Dante when Dante comes back and says I got a mission.
9 Slack is the one who provides a vehicle.

10 Now, backing up again. If you believe what they say
11 that my client wants to get these guys, and let's go hit a
12 lick, get Dante, let's go hit a lick, they gonna do that
13 without a car?

14 Dante is the one who talks to Slack and comes back with
15 a mission. Slack is the one who provides the automobile for
16 this that he got from his buddy.

17 And who drives?

18 He doesn't even know. Didn't even meet the guy till
19 that weekend. Didn't even meet the guy who owned the car
20 until that very weekend. But they have him driving. Slack
21 has him driving.

22 Is there a doubt in your mind about whether maybe some
23 more investigation of Slack might of been called for in this
24 instance in this case?

25 Because you're gonna hear what we call the charge, and

1 the judge may have talked to you in his initial opening
2 remarks, but this is fundamental basic law. The State has
3 to prove to you the evidence so strong and so convincing
4 beyond a reasonable doubt.

5 Now, we'll get to see the video as I told you probably
6 too many times, and you'll get to decide whether or not
7 there's five or six inches difference in height between
8 those two robbers that come in that store.

9 And do you remember when he stood up and my client had
10 already said they're the same height or about the same
11 height?

12 You look at the video.

13 There's reasonable doubt in and of itself right there,
14 but the discharge of a firearm at point blank range into the
15 chest area with all of what you heard in Mr. Moskal
16 testified about the, how the expulsion of those particles
17 come out, and we have the minute ones that he found on a
18 shoe, and a sleeve, and a shirt, and the shirt that nobody
19 says was there, the brown and white shirt.

20 My client, if you believe them, is dressed in all
21 black. They're both dressed in all black except for the
22 t-shirt that nobody seemed to remember, the white one,
23 that's hanging down slack's whatever, and the stuff is on
24 that shirt too.

25 And that's when I asked him, you can transfer this from

1 cloth to cloth, from one piece of clothing to the other?

2 Here we are again.

3 And you can transfer it from person to person?

4 And if you can transfer it from person to person, you
5 can, and you can transfer it from clothing to clothing,
6 there's your next reasonable doubt. He should have a bunch
7 of GSR on his clothing shot at point blank range. I don't
8 know how he missed.

9 How did he miss?

10 well, here's how he missed. That is not the man that
11 he shot at. It's simple.

12 The judge will charge you, as I said earlier, and I am
13 not gonna put words in his mouth cause I've seen him do this
14 a time or two before, you have to be convinced as individual
15 jurors and as a collective body.

16 when I say that, I mean this:

17 Your verdict must be unanimous. All 12 of you must
18 agree on the verdict, on each and every indictment that is
19 given to you using all of this evidence. You take the facts
20 as you determine them to be, and you can take the facts and
21 the lack of facts or the lack of an identification prior to
22 an arrest or the lack of an identification until after it's
23 been plastered all over the news media or the lack of an
24 identification until 18 months afterward when Midget's the
25 only midget on that side of the courtroom.

1 But you take the law as the judge instructs you about
2 the law, and the facts as you determine the facts to be, and
3 you put those two together and the decision you come up with
4 is what we call the verdict.

5 And the word verdict comes from the combination of
6 Latin words, vera dictum and it means simply this:

7 It means to speak the truth.

8 I submit to you that the truth in this case is that
9 there was a tragic, tragic incident. There's no question
10 but that a young man lost his life unnecessarily. But the
11 question you have to answer is what's in there.

12 Has it been proven to you, each individual person on
13 this jury, has it been proven to you, beyond a reasonable
14 doubt, with evidence so strong and so convincing as to
15 remove the presumption of innocence?

16 Now, the judge will tell you the presumption of
17 innocence still remains with my client. It still remains
18 with anyone who is accused of a criminal offense because the
19 burden of proof lies with the State of South Carolina, the
20 government. The burden of proof lies with the government.
21 The same people who let this case sit for three days, let it
22 run all over the newspaper and the TV, and then decided
23 let's call that fellow and see if he can identify somebody
24 after we've arrested him.

25 what you have to do is you have to marry, so to speak,

1 the law and the facts as you determine them to be and then
2 you come up with the decision, the verdict. I submit to you
3 that the facts presented in this case and the lack of facts
4 and the way that this case was investigated and the way that
5 this case was handled from collection of clothes to
6 collection of identifications -- and even in the very
7 beginning nobody asked these people can you give us a
8 description specifically height, weight, anything specific.

9 No.

10 I submit to you that when you marry the law as the
11 judge charges you and the facts in this case, the proper
12 verdict is not guilty.

13 Thank you.

14 THE COURT: Ms. Jordan, for the State.

15 SOLICITOR JORDAN: Yes, sir.

16 Thank you, Your Honor.

17 Ladies and gentlemen, Mr., Mr. Welchel mentioned that
18 a picture is worth a thousand words. I believe this video
19 is worth one word 14 times. That word's guilty.

20 He wants to talk to you about the video and height and
21 how you can't tell the difference with the height or how you
22 can tell there's, you know, they're the same height. You
23 can tell it. You can see it in the video.

24 Ladies and gentlemen, what do we know about the camera
25 system?

1 We know the camera system was up in the ceiling.
2 What do you get from a video up in the ceiling?
3 You get an angle. The angle's going to distort the
4 height.

5 But I'll tell you this, take the video and watch it.
6 You'll have it back there with you. Watch when Brent, who
7 you saw on the stand---

8 MR. WHELCHER: Objection, Your Honor, and I hate to
9 interrupt in the closing. But she's just told the jury that
10 the angle of the video's gonna distort the height. But
11 that's already been admitted into evidence as a fair and
12 accurate representation of what happened that night. We
13 can't argue this it's distorted now after it's been admitted
14 as a fair and accurate representation.

15 THE COURT: She has the right to argue inferences that
16 can be taken from the evidence. I did hear testimony that
17 the system was contained in the ceiling of the, of the
18 building. And, so, she has the right to argue any
19 inferences that she feels might be reasonably drawn from the
20 evidence admitted.

21 MR. WHELCHER: Yes, sir.

22 THE COURT: Overruled.

23 SOLICITOR JORDAN: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 SOLICITOR JORDAN: If you'll just give me a moment to

1 pull -- I want to show you just a small clip, and ask you to
2 focus on an item that's in one specific position in the
3 entire video. I'm gonna ask you to look -- I'm gonna ask
4 you to watch this light switch. It doesn't change.

5 watch when Kenneth Craig comes through the door and
6 stands right in this area. Watch where he hits that light
7 switch. 5'6". Then I want you to watch where Brent Atkins
8 hits that light switch. 6'1".

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

11 SOLICITOR JORDAN: Right there. His shoulder is below
12 that light switch. Even if you give him a little bit of a
13 lean it's below that light switch in that area.

14 Here's Brent. Watch him hit that light switch. It's
15 at his shoulder blades. He still has his head up above it.

16 There's your height difference right there. Not when
17 people are rushing through the front door at the very
18 beginning and the camera's up here. Look at something
19 that's stationary. Watch it. You'll have it back there.

20 Look at the video. See what it tells you cause it's
21 telling you part of this story, and there's a lot of stories
22 that are mixed in with this.

23 Let's talk about Dante Williams. My old boss use to
24 tell or he, he had this quote one time that he told me, and
25 I even saw it in the newspaper, where some, some mistakes,

1 some choices cost you 40 bucks. Some cost you your life.
2 That your successes and failures in life are based upon the
3 choices that you make.

4 Dante made some bad choices. There is no doubt about
5 that. One of the choices he made was to befriend that man
6 right there, and I'm not diminishing Dante's actions at all.
7 We clearly see what Dante did in that video. He chose to go
8 with him. Dante's story ended that night. Kenneth Craig is
9 still going.

10 what other stories do you know?

11 You know the stories from all of the, from several of
12 the people who were in the waffle House. You've seen them
13 all on the video. You see what they went through.

14 We know the story -- we know what Brittany told you.
15 Look at all the witnesses in the stories that the, and the
16 story that they put together.

17 Brittany tells you that Midget, the defendant, is
18 talking to Dante about going on a lick or a mission for his
19 birthday. It's his idea, his choice to talk to Dante about
20 that. At that point in time Dante's like no, I'm cool. She
21 talks about how Dante and them have another conversation
22 about a mission or a lick.

23 Ladies and gentlemen, the one thing I don't recall her
24 saying is that she -- there was ever any mention of her, of
25 a conversation between Slack and Dante. I don't recall

1 that. The conversations she discussed were between Midget
2 and Dante. Not Slack. Mission/lick for your birthday.
3 Adisa even tells you that, that there's a conversation
4 between those two about a mission or a lick.

5 Brittany also told you Dante and Midget left together
6 dressed in all black. She talked to you about the brown
7 jacket. He took his jacket off. Kenneth Craig took his
8 jacket off, and said, in all black, I'm good or I'm ready.
9 I don't remember the exact words she used as to that, but
10 I'm in all black, I'm ready.

11 He was ready for the mission that he was gonna go on,
12 that he was going on with Dante.

13 And guess what, ladies and gentlemen?

14 He did. They went on that mission.

15 She also tells you that they left together. It was
16 Dante's 21st birthday. His 21st birthday was Saturday,
17 January 21st -- or not his 21st birthday. His birthday
18 was on Saturday, the 21st, 2012. He turned 19. We know
19 where he was at 1:10 and where he remained.

20 They left together in all black. I'm good. Dante
21 comes back in for his gloves. Dante never came back, but
22 Midget did.

23 You remember how she describes that he came back?

24 He didn't just walk back in. But he came in fast like
25 he was nervous and he threw the keys. Those keys were

1 connecting him to Dante. Not that -- apparently he wasn't
2 focused on all the other stuff about leaving earlier, going
3 on a mission or a lick, all, dressed in all black and that
4 he was good. But he comes in, throws the keys down. Man,
5 he dropped his bro off, his Breck, he dropped him off. I
6 dropped him off at Pineview Hills. I dropped him off at
7 Pineview Hills.

8 No, he didn't. He tells you that. Waiting on my boy,
9 Tae. Waiting on my boy, Tae, to call. Dropped him off at
10 Pineview Hills. I think we can all agree that that didn't
11 occur.

12 Adisa, heard him talk of a mission. Dante. Midget.
13 Not Slack. She never mentioned seeing Slack. She thinks
14 Dante came back for the gloves, but she's not sure. That's
15 a ring of truth. She's not up here going yeah, he came back
16 for the gloves. She thinks he did, but she's not sure.

17 she tells you Midget came back alone, also fast, also
18 nervous, also throwing keys. Dropped my boy Tae off at
19 Pineview Hills.

20 There are stories from all those people who were inside
21 of the waffle House that night, and you heard from Justin.
22 Justin was placed in the position, by Dante and Midget, to
23 take someone's life that night. He tells you that he's, he
24 had just been at work, worked a shift, came to the waffle
25 House where he had been many times, was eating before he

1 went home to his grandmother's house where he lived, has a
2 concealed weapons permit, took it in with him.

3 You see him on the video just eating, and he sees two
4 people walk in. He doesn't get down because he doesn't want
5 to put himself in a position of vulnerability down there.
6 He tells you that there's a pistol and a black trash bag.
7 His best chance for survival was not to get on the floor.

8 The second robber crosses his vision. And if you watch
9 the video, Dante and Midget are not together, but just
10 coming in the door and then they separate. Midget comes in
11 the door, goes to the counter where Justin is sitting, and
12 places down the black bag, and then he focuses his attention
13 on the employees.

14 That's his part of the mission. He's got to get the
15 employees. He wants what's in that cash register in the
16 presence of those employees who are there. Puts the bag
17 down at the cash register. He walks around.

18 Dante is controlling the other people. He's got his
19 gun. Y'all get down. Y'all know what time it is, and you
20 hear from several of the people in the store that day that
21 both of them were talking. They were working together.
22 They were committing this crime.

23 Justin says they're all, they're wearing all black.
24 Gloves. They both have on gloves.

25 Ladies and gentlemen, that's why you don't have a

1 fingerprint. There was a partial. It was lifted. It
2 didn't match. Didn't match Midget or Kenneth Craig. Didn't
3 match Dante Williams and it didn't match Gerald, Slack
4 Davis. They had gloves on.

5 What are you not going to get on a bag if you're
6 wearing gloves?

7 Fingerprints. You're not gonna have those.

8 Justin tells you he stands up. He shoots Dante.
9 Several shots are fired, and you see Dante goes down fast.
10 But now he's left with Kenneth Craig.

11 Watch the video. He says I had 30 to 45 seconds with
12 Kenneth Craig in this area. I'll show it to you. We'll,
13 we'll look at how much time he had with him.

14 (WHEREUPON, another portion of the video was played for
15 the jury at this time.)

16 SOLICITOR JORDAN: Dante's down at 36 seconds, 39, 40.
17 41, 42, 43, 44. Justin's back there in that area with him.
18 The mask is off.

19 51, 54, 56, 58.

20 1, 2, 3, 4, 6, 8, 10, 13, 15, 16, 18, 19, 20, 22, 23,
21 24, 25, no mask, 28, 29, 30, 31, 36, 37, 38, 39, 40. No
22 mask. He's right there with him.

23 We know there's also the struggle at the door that's on
24 the other angle. It's a long time for him to view that
25 person without a mask. When you see Kenneth Craig come in,

1 you can tell he's wearing a mask because it's black. The
2 whole facial outline is black.

3 But when you watch this aspect of the video, after the
4 mask has come off, you see the hairline, and the change in
5 color between his hair and his face.

6 You saw Slack. Slack has a darker complexion and less
7 hair. Look at that video and what you see. You see him.

8 Justin told you, after all that time he had to view
9 him, one hundred percent sure it was him. He had the best
10 view of Kenneth Craig that night. One hundred percent sure
11 it was him.

12 He did see him on the media. But as I recall, he
13 stated that the officers called him for a lineup, and he
14 said there's no need, you got him. Justin knew. They
15 didn't call him and say hey, have you seen the media. My
16 recollection is they called him for a lineup, no need, you
17 got him.

18 He sees him at another hearing a few weeks later.
19 That's him. He sees him here. That's him. One
20 hundred percent sure.

21 The man who spent the most time with him, the man who
22 had a heightened sense of awareness, he took out Dante and
23 then went straight to him protecting himself and the other
24 people in that Waffle House. One hundred percent sure.

25 And you see, you see the space, how close they are.

1 Waffle Houses are not that big. Not a big restaurant. It's
2 an L-shape, and they spent a lot of their time in that small
3 area of the L-shape.

4 Ladies and gentlemen, Justin's attention was on Kenneth
5 Craig. Dante, Dante was down. His attention was focused on
6 him.

7 Mr. Welchel wants to make a lot about well, there is
8 that, there was that shot at the end that was fired, and it
9 was fired in what I would call the vestibule area. Watch
10 the video and see how fast they go through the vestibule
11 area. They start struggling at the inner door and go
12 through towards the outer door.

13 Justin doesn't tell you he shot him. He says he shot
14 up. They were struggling. He shot up.

15 GSR was where?

16 On his pants.

17 shot up. I'll get to the explanation that Kenneth
18 Craig gives you for the GSR on his pants later and I'll talk
19 to you about the bag and the collection.

20 Next you hear from Bryan Rogers. Mr. Rogers was at
21 that waffle House that night with his girlfriend. They had
22 just been down here, wanted to eat on the way back to North
23 Carolina. Stopped at the waffle House. Just got his food
24 and he sees two people coming in there, and he thinks you
25 can't wear that in the store.

1 Cause you know why?

2 They're wearing masks.

3 You don't wear masks in a store.

4 Dark clothes, mask, y'all know what time it is, get
5 down.

6 He saw Justin reach for his gun and he said thank God.
7 He told you too here that he got a look at Kenneth Craig and
8 he was pretty sure. He wasn't a hundred percent certain.

9 That's honesty, ladies and gentlemen. He's pretty
10 sure. Not a hundred percent certain, but he did see him.

11 Joseph. Joseph tells you that he's in there with his
12 friend, Amanda. They had been moving and just wanted
13 coffee. All he wanted was a cup of coffee, and that cup of
14 coffee turned into this.

15 Rushed the front door, two men, all black, masks.
16 Stayed at his table. Took his phone and wallet out, and
17 remember how he remembers the details of Dante taking the
18 wallet and the phone and stacking them before he gets -- and
19 then he gets Amanda's stuff and he comes around.

20 There's your armed robbery at that point. Remember
21 where the hand of one hand of all. That's your armed
22 robbery with Dante taking those items from those two people.
23 The others are attempted armed robberies because items were
24 not taken from them cause Justin stopped it.

25 Joseph said he was in a state of shock. He talks about

1 he, the mask on the robber did come off when he got to the
2 back corner.

3 Julie Tesnar Black, one of the waitresses who worked at
4 the waffle House, she's in the back taking a break before
5 the bar crowd. They're back in the back smoking. She
6 knows, you know, she knows the store. Knows the bar crowds
7 coming in. She's been there for a awhile. She talks to you
8 about this store.

9 she tells you or she shows, and you've got the pictures
10 of it, she shows you that this waffle House has many
11 entrances and exits for vehicles. It's not just a one way
12 in and one way out. It's many.

13 221, into the waffle House, back into the empty parking
14 lot where the abandoned Ingle's is, and I believe it was a
15 Dollar General or General or Dollar Tree back here. Right
16 here there's a roadway and entrance and exit between waffle
17 House and McDonald's. You have another exit right here on
18 Mt. Pleasant Road.

19 Do you know who also knew this McDonald's or this, this
20 area well, this waffle House well?

21 Kenneth Craig.

22 He told you he use to live back there, Lakeview Manner.
23 He knew the -- he knew this waffle House wasn't one way in
24 one way out. He knew this area.

25 He picked it. He picked the mission. He came up with

1 the mission. He picked the mission and Dante went with him.
2 knew the area. Knew the exits.

3 She said she knew what was going on, and you can see in
4 the video how she stands up and she looks out that door and
5 she sees them. She tells them all and you also heard
6 Victoria say Julie said we're getting hit.

7 The robber comes in the room, and gets them out, asked
8 for the head waitress cause he knew his part. She goes to
9 the register to open it. She's gonna give him what they've
10 got. At that point in time she says it's about the same
11 time that she hits the register when the shots go off, and
12 you see she does go down. All of them go down. I don't
13 blame them. I would of been on the floor too. She goes
14 down, but she doesn't stay down.

15 She comes up and you look at the waffle House layout.
16 There's nothing obstructing the view. State's No. 7,
17 there's nothing obstructing the view. They're not high
18 counters from where the employees were. They're no high
19 counters. That's the open area right here in the corner
20 that employees use to go in and out to serve customers at
21 tables. There's a better view of it -- pardon me for one
22 moment.

23 Right here. State's 14. It's an open area. You see
24 them in the video in this area. There's the cash register.
25 You see them back here. This is where the silverware is.

1 She had a good view of him.

2 She told you she heard his voice. It sent chills down
3 her spine. She knew it was Kenneth Craig when she saw him.
4 She heard his voice. Chills down her spine. You can't fake
5 emotions like that.

6 You can fake tears. We saw someone trying to do that
7 yesterday.

8 Victoria working. Julie said they're getting a hit.
9 Comes in, got the masks on. Like I said, you can see where
10 he's got the mask on where his, it's all one black area in
11 his face region when he comes through the door of the back.

12 I said well, what did he look like, expecting some
13 characteristics, and she looks and goes him. Kenneth Craig.
14 Justin. Julie. Victoria. Bryan, not sure, pretty sure,
15 but not a hundred percent it was him.

16 And you got a chance to look at Kenneth Craig and also
17 to look at Slack. You got to see them both. There's
18 differences between the two of them. Hair. Slack doesn't
19 have as much. Shorter cropped. He has a fuller area of
20 hair all over on the sides and everything.

21 Look at that video when that mask is off. That's him.
22 Slack also has a darker complexion than Kenneth Craig. The
23 video is him.

24 Brian Outlaw was the first officer on scene. He was
25 just across 85 at Motel 6. Thank goodness officers work

1 extra duty cause he was right there. He tells you that he's
2 in the parking lot of Motel 6 in his car. Gets the call and
3 goes. Lights are on. Lights are on.

4 You-all -- you know also that the phone call -- you see
5 Justin hand the phone call or the phone in the video over to
6 the waitress to make a phone call to 9-1-1. So, the phone's
7 going on and Kenneth Craig's still in there. Still in
8 there.

9 He leaves from here. Officer Outlaw, Deputy Outlaw
10 leaves from here and goes, he estimates, maybe .3 miles.
11 Crosses over 85 and he's at the Waffle House. He tells you
12 I'm the first officer on scene by -- been there probably --
13 it's probably a minute before the other officers get there.

14 where does he tell you he parks?

15 The front of the waffle House.

16 He doesn't say I blocked any entrances or exits. I
17 parked at the front of the waffle House. It was just him
18 for about a minute, and I point out this time because I'm
19 gonna talk to you about timing and the defendant in just a
20 little bit cause timing doesn't add up.

21 Continuing on with each person. Investigator Shaffer's
22 there. He tells you the location of Joseph's wallet and
23 cell, at Dante's body, and you see the pictures. He takes
24 photographs of the waffle House and the gun. There's no
25 doubt that there's a gun there that night. You've got it.

1 Hand of one. The State does not have to prove that all of
2 the individuals involved had a gun. Hand of one.

3 There's your gun. That's your weapon, your deadly
4 weapon right there.

5 He collects the bag. I've already talked about the
6 prints. There's not gonna be prints. There's no -- with
7 gloves on, and it didn't match any of them.

8 Terry Carter, she takes Amanda's items off of Dante in
9 the pockets, and she tells you she gives you part of those
10 or she gives you the items -- she gives the items back to
11 Amanda because they're hers. They were taken from her.

12 Anthony Knighton tells you that he did a GSR kit on
13 Justin cause there's a time limit on the hands on people,
14 and he tells you later that night that he went and he took
15 all this clothing from the defendant. At one place, all
16 this clothing came from the defendant.

17 Mr. Welchel has made a big point about contamination,
18 they, they -- it's just contaminated.

19 Ladies and gentlemen, there was mixture. It wasn't
20 contamination. He tells you about peas and carrots and how
21 you put peas and carrots together and they're gonna mix.

22 Well, guess what you got to have to get a mixture of
23 peas and carrots?

24 You got to have the peas and the carrots. You got to
25 have the gunshot residue on one of those items to get any

1 sort of mixture. Just like you can't separate the peas and
2 the carrots, you can't separate the gunshot residue.

3 He tells you about all the trips that bag took. That
4 bag took two trips to the State Law Enforcement Division.
5 He tells you that there's multiple tests of these items.

6 Ladies and gentlemen, there were two sets of tests, but
7 the items were tested once. Not both times.

8 What was tested the first time?

9 The brown jacket that we know he's wearing at the time
10 of his arrest, and there's some particles and stuff on it.
11 The first test also was on the jeans. It wasn't during the
12 second test with the jeans. It was the first test when they
13 found the GSR the first time because it was on his clothing.
14 Peas and carrots, on his clothing, GSR.

15 You can have transfer. And I love the fact that the
16 defendant explained it away for you. He just happened to
17 pick up Slack after this, and I'll get to that in a second.
18 But I just wanted to point out he tells you it's a Crown
19 Vic. He shows you how close they were seated beside each
20 other in this Crown Vic.

21 It looked more like a smaller model Ford to me with the
22 closeness that they were seated.

23 And that Slack leans over and touches his leg at the
24 same spot Michael Moskal says he tested his pants for GSR?

25 That's an awesome coincidence. Awesome. He is one of

1 the most unluckiest men in the world if you believe some of
2 the stuff he told you.

3 Ladies and gentlemen, the GSR was there because he was
4 in the Waffle House when gunshots were fired. He tussles
5 with Justin and a shot was fired. You see them. They're,
6 they're tussling there. They're both bent. They're both
7 rushing towards the door. There's movement going on.
8 That's how he got GSR there.

9 He also had on gloves. Maybe he had his hand around
10 the muzzle. Justin tells you that he has his hand -- I'm
11 sorry. Around the ejection port. You know GSR comes out of
12 it.

13 what if he got in his car and said woo?

14 I was driving to work this morning and one thing I
15 noticed was I had one hand on the wheel and the other hand
16 right here. If he had on gloves, there's your transfer too.

17 The point is his clothes had GSR. There's no
18 contamination here. Michael Moskal testified we followed
19 procedures in there to assure that things are not
20 cross-contaminated. Cross-contaminated means from other
21 places. He's claiming contamination within this bag. Peas
22 and carrots.

23 Before I talk to you a while about the defendant's
24 story, I just want to talk to you about Brent and Keisha.
25 Brent tells you he's 6'1". Watch the video. He tells you

1 that robber is smaller than him.

2 Do you know what's smaller than him?

3 Midget.

4 5'6".

5 watch the video. watch the stationary object in the
6 video. watch that.

7 He passed by him and then Brent got on the ground. Yet
8 again, don't blame him.

9 Kesha, she sees him come in. It's fast when they walk
10 through and they're not together side-by-side long. watch
11 the video. They knew what their mission was and what each
12 one of their jobs were in that mission and they split up
13 when they come in to carry it out. All black. Masks.

14 She was talking about differences in sizes and she
15 tells you I'm five foot. Maybe she even stated that she was
16 a little below five foot. She's tiny.

17 watching the video, at the angle, at the angle where
18 you get the view behind the register and that second robber
19 passes her, there's some difference, but she's five foot.
20 And then she tells you, in comparison to Bryan, she says
21 that the robbers were the same height, but then she talks
22 about a head difference, a head difference.

23 And she tells you she also got to the floor and she
24 stayed there and she screamed. You heard of her screams
25 from Julie and Victoria.

1 The defendant. I don't even think I could begin to
2 count the number of inconsistencies or lies that he told.
3 There were a lot.

4 He even, sitting here with you guys, told you, when I
5 asked him, I said, you knew Dante was dead on the floor of
6 Waffle House and you went back and told his family that you
7 dropped him off at Pineview Hills?

8 I believe he stated well, it was a little bit of a lie.

9 Ladies and gentlemen, that's not a little bit of a lie.
10 That's like you're either pregnant or you're not. Your
11 friend is either dead at the Waffle House where you left him
12 or he's at Pineview Hills. It's not a little bit of the
13 lie, of a lie.

14 He can't even keep up with the story he's made. He
15 can't keep up with it because it's not the truth. The truth
16 is the easiest thing to remember. Lies you've got to
17 remember. You got to remember what you told people.

18 He told Brittany and Adisa -- they testified that he
19 said I dropped off Tae at Pineview Hills. Tells you he
20 tells the officers I don't know anything. I don't know
21 anything about those conversations.

22 He also wants you to believe that the officers picked
23 him up and didn't talk to him about a robbery. They only
24 talked to him, I don't know, three to five minutes. That's
25 it. But they also filled out a waiver form with him.

1 But three to five minutes and that's it?

2 That's it.

3 Then he writes the officers a note and they go and see
4 him. They didn't stop their investigation on February or on
5 January 21st, 2012, when he was taken into custody that
6 evening. They did talk to Justin and they did talk to the
7 defendant, and they got a statement from him. Compare the
8 statement that he gave that you heard him read parts of to
9 that day to his testimony yesterday. He couldn't even keep
10 that straight.

11 A couple of the inconsistencies. He told you here that
12 he had pulled out and was at a red light on 221 when he sees
13 the cops car, the cop lights. Back in February he tells the
14 officers, prior to leaving the waffle House, he sees two or
15 three cop cars. Prior to leaving.

16 He doesn't have an issue with understanding what the
17 word prior means. He has an issue with the fact that he
18 used it back in February of 2012. That's his problem with
19 it. Prior to leaving the Waffle House.

20 He tells you that or he testified that his statement
21 says I turned around in the store right before you get to
22 Raceway and then he shows you Raceway. He shows you that
23 the Raceway is on 85, is on the side of 85 right at Waffle
24 House. But then he remembers I've already told them I
25 turned around at the Citgo.

1 So, now, right before the Raceway is where he wants the
2 Citgo to be. You can't move buildings. The Citgo's over on
3 the other side of 85. He doesn't like the wording he used
4 back then. So, he just kind of stretches what that word
5 means right beside. Now we're across 85.

6 He tells you that when he turned back around, cause
7 that's where he dropped his friends off, and something was
8 going on cause the cop cars were turning into the Waffle
9 House. He drops his friends off there. Sees these cop
10 cars. He tries to get back in, but it's blocked. In that
11 time frame it's blocked.

12 You see the video.

13 It's about two minutes for the robbery, and he's
14 telling us that, in the span of seeing the cars turn around
15 or seeing the cop cars coming and him turning around and
16 coming back they've already got it blocked?

17 Brian Outlaw tells you I was the first one there and I
18 was there by myself for about a minute. The officers --
19 Brian Outlaw got there fast, but he was by himself. He also
20 wants to tell you, when I tried to turn, and it was blocked.
21 So, I went around to the other entrance on Mt. Pleasant Road
22 and tried to come in. It was blocked too. That must of
23 been blocked by the imaginary officer who got there in that
24 short time frame.

25 when I was little growing up -- I'm one of five kids,

1 and four of us are older than the younger one. So, I
2 remember one of my older brothers growing up would always
3 come up with imaginary people to blame things on, Orville
4 and Eugene. He even named them. Slack's not imaginary, but
5 that's who he picked to blame on, it on.

6 I love the part where he just happens to turn around
7 and just happens to run, almost hit Slack, on Mt. Pleasant
8 Road. Think about it. The timing doesn't fit. Slack
9 wasn't there. He didn't almost hit him. I almost hit him.

10 Unluckiest person I know. Unluckiest person I know.

11 He says well, Slack got in the car. That's when he did
12 the touching and the talking, and they must of been, you
13 know, he touched him. They're talking. He tells you, from
14 this witness stand yesterday, I went straight back to
15 Alexander Avenue. Straight back to Dante's family's house.

16 But what did he tell the officers back in February, a
17 few weeks after this happened?

18 I drove around for an hour and a half to two hours to
19 come up with a story. To come up with a story. Tells you
20 in that story that he tells Slack well, Dante and I had gone
21 to Pineview Hills. But he told you guys yesterday that he
22 went to Pineview Hills with Dante, Slack -- with both of
23 them. He can't keep up with the lies he's told because
24 they're not the truth.

25 He also has told you that in this statement yesterday

1 he says he turned around, after he tells you he turn around
2 at the store right beside the Raceway, he tells you later on
3 that he turned around at the store where he got the gas.
4 So, even on this day he couldn't keep his lies straight.
5 The truth doesn't change. Lies do.

6 If you believe, if you believe parts of his story, then
7 he's made himself -- he drops them off and he's the getaway
8 driver if you want to believe his story. He just happened
9 to drop them off. They just all happened to wear all black.
10 There was a gun. There's a couple of masks. You see Dante
11 had on two masks.

12 Ladies and gentlemen, look at this mask. Its original
13 intention was not to be a mask. It appears to me to be the
14 sleeve of a black shirt with holes cut out. So, Dante just
15 happened to have this with him.

16 He just happened, from the time that he was dropped off
17 and walked into that Waffle House, made another mask?

18 They planned it. It was their mission. Hitting a
19 lick.

20 Let's talk about how unlucky he is. I like to cap -- I
21 like to call it the just so happened aspect of his story.
22 If you believe his story, he just so happened to be with
23 Brittany and Adisa who just so happened to talk to the cops
24 about the mission or the lick. Just so happened.

25 He just so happened to end up with a vehicle that night

1 from people he didn't know. He tells you I was driving it.
2 Just so happened.

3 He just so happened to be in a car with two people who
4 were gonna go commit armed robbery where they're all dressed
5 in black?

6 where, before he leaves, it just so happens that
7 Brittany talks about he changes his clothes or he doesn't
8 change his clothes. He says -- takes off his jacket. I'm
9 in all black. I'm good.

10 He was starting his mission. The mission didn't start
11 when they walked into the waffle House. It started at
12 Alexander Avenue when he started talking about it and
13 planning it.

14 He just so happened to drive them to the robbery. They
15 were going to Pineview Hills and then they were going to
16 Cowpens via 221, and then they stopped for gas and they're
17 like oh, just drop us off at the waffle House, the waffle
18 House that he lived around, he knew it. Just drop us off
19 there. Just so happened.

20 He also, and this is probably the craziest part of his
21 story, he just so happened to drop off two people to rob a
22 waffle House who give him the getaway car. I'm gonna commit
23 a robbery, but I'm gonna let you take the car. You take it
24 with you. Just leave us.

25 It doesn't add up. It's just another one of his

1 stories that he tells.

2 He's with people who are dumb enough to give away the
3 getaway car. Go ahead and take it with you.

4 He also just so happened -- and we talked about this.
5 So, I won't belabor it. Just happened to run back into
6 Slack. Just so happened.

7 Thank goodness those cop cars had blocked that first
8 entrance and that second entrance. Thank goodness for that.
9 Just so happened.

10 He just so happened to go back and tell the family I
11 don't know where Dante is -- or I'm sorry. I dropped Dante
12 off at Pineview Hills. Brittany and Adisa remember that.

13 So, under his story, Brittany just so happened to lie
14 to the officers. Adisa just so happened to lie to the
15 officers. They both talked about licks or missions. Just
16 so happened.

17 They weren't lying, ladies and gentlemen. They told
18 the officers what they heard. They told the officers who
19 Dante left the waffle House with, I'm sorry, who Dante left
20 Alexander Avenue with. Dante left with him. All black.
21 Dressed in all black.

22 Look at the video, ladies and gentlemen. Justin
23 Harrison tells you it's him. Victoria tells you it's him.
24 Julie tells you it's him. Watch the video. It tells you
25 that too.

1 There's -- we've -- I've, I've hit on this too that the
2 number of cop cars that he says he saw. It ranges anywhere
3 from three, four, whatever number, whatever story you want
4 to take. Changes it around.

5 He told you yesterday, as he testified, one of his
6 statements was just a little bit of a lie. A little bit of
7 a lie.

8 Ladies and gentlemen, the hand of one is the hand of
9 all. He was with Dante Williams that night. He committed
10 these crimes that night.

11 Kenneth Craig's story with Waffle House hasn't finished
12 yet. You get to write that ending and it's guilty.

13 Thank you.

14 THE COURT: Ladies and gentlemen, that completes the
15 closing arguments or statements by counsel. We've been
16 going for a little while. So, we're gonna take a short
17 break before I start my charge on the law cause it will take
18 a few minutes as well and I know you probably need to
19 stretch your legs.

20 I'm gonna ask that you step back to the jury room, and
21 this may be the last time -- well, I may ask you one other
22 time -- that I'll tell you not to begin any discussions
23 about this matter until I've completed my charge on the law
24 and instructed you to begin your deliberations.

25 So, at this time, you may retire to the jury room.

1 that guilt beyond a reasonable doubt.

2 Now, to give you kind of a visual idea of what we mean
3 by this presumption of innocence that remains with the
4 defendant, I want you to kind of visualize that presumption
5 of innocence somewhat like the robe that I wear into the
6 courtroom everyday. That presumption of innocence remains
7 about the defendant's shoulders throughout the trial. It
8 accompanies the defendant into your deliberations in the
9 jury room. It remains about the defendant's shoulders until
10 such time as it has been stripped from him by evidence that
11 satisfies you of the defendant's guilt beyond a reasonable
12 doubt.

13 So, the presumption of innocence it not just a legal
14 theory and it's not just a legal phrase. It's a substantial
15 right. Every defendant is, is entitled to that presumption
16 of innocence until you, the jury, are satisfied, from the
17 evidence, of the defendant's guilt beyond a reasonable
18 doubt.

19 Now, you've heard me refuse, refer to the standard of
20 proof of proof beyond a reasonable doubt several times
21 already, and I, I believe you understand it's a very
22 important concept in our criminal justice system, and you
23 may be asking yourself well, just what is the definition of
24 a reasonable doubt.

25 what is a reasonable doubt?

1 I will tell you that a reasonable doubt has been
2 defined as that kind of doubt that would cause a reasonable
3 person to hesitate to act, and the state has the burden of
4 proving the defendant guilty beyond a reasonable doubt.

5 Now, I want to draw a distinction for you. Some of you
6 may have served or been involved in cases involving civil
7 matters. Civil cases are cases involving the, someone
8 seeking monetary damages and that could be for various
9 reasons that someone may think someone else owes them money.
10 And, in civil cases, the standard of proof is different than
11 in this case.

12 The standard of proof in a civil case is proof by the
13 greater weight or the preponderance of the evidence. If
14 you've ever seen the scales of justice. That would be the
15 scales of justice tilting ever so slightly in favor of
16 either a plaintiff or a defendant in a civil case. So,
17 that's the standard of proof in a civil case. That's not
18 the standard of proof we use in criminal cases.

19 The standard of proof used in a criminal case is more
20 powerful than that. It's proof beyond a reasonable doubt.

21 Now, proof beyond a reasonable doubt would be that kind
22 of proof that would leave you firmly convinced of the
23 defendant's guilt. Now, I'm going to tell you there's very
24 few things that go on in peoples lives that can be proven
25 beyond any doubt whatsoever, and that's not the standard of

1 proof that the state is held to. They're not required to
2 prove their case beyond any doubt whatsoever.

3 I will tell you that if, based on your consideration of
4 the evidence, if you are firmly convinced that the defendant
5 is guilty of the crime charged, again, beyond a reasonable
6 doubt you must find the defendant guilty. However, on the
7 other hand, if you think there's a real possibility that the
8 defendant is not guilty, then you must give the defendant
9 the benefit of that doubt and find him not guilty.

10 Now, I will remind you that, during the trial, you and
11 I have had different duties to perform. It's been my job
12 and responsibility to preside over the trial, and I've had
13 to rule on the admissibility of evidence and questions
14 concerning the appropriateness of questions that may have
15 been asked, and I will tell you that if there was anything
16 that I ruled out, did not allow into evidence, or struck it
17 from the record, then you should not consider any matter
18 such as that at all in reaching a verdict.

19 You are to consider only the competent evidence that's
20 been put into the record of the case during the trial, and
21 you are only to consider the testimony which has been
22 presented from the witness stand and the exhibits which have
23 been made a part of the record and any stipulations as to
24 the admissibility of evidence made by the attorneys in this
25 matter.

1 I have now the additional duty of charging you
2 concerning the law, and I'm going to remind you, at the
3 beginning of the trial, I told you that I am the sole judge
4 of the law in this case, and it's your duty to accept and
5 apply the law as I now state it to you.

6 Again, if you have an idea as to what the law is or
7 what it ought to be, you should leave those notions outside
8 of the jury room. It's your responsibility to take the law
9 exactly as I state it to you and apply it to the facts as
10 you find those facts to be because, in every case tried in
11 this Court before a jury, you are the sole and exclusive
12 judges of the facts.

13 Again, I'm going to caution you, you should not take
14 from anything that I have said or that I am saying or
15 anything that I do in this case to somehow indicate to you
16 that I have an opinion one way or the other as to how you
17 determine the facts in this case. The law doesn't allow a
18 judge an opinion on that subject, and I can assure you I
19 have no opinion as to how you should determine the facts in
20 this case. So, don't infer, from anything that I've said or
21 done or might say or do, to indicate otherwise. I do not
22 have an opinion as to how you determine the facts in this
23 case.

24 As jurors, it's your duty to determine the effect, the
25 value, the weight, and the truth of the evidence that's been

1 presented during this trial. Now, in doing so, you have the
2 right to consider two types of evidence, and let me explain
3 to you what I mean by the two types of evidence you can
4 consider.

5 The law generally classifies evidence as either direct
6 evidence or circumstantial evidence. Direct evidence is
7 testimony by a witness who claims to have direct knowledge
8 of the facts about which that person testified. Someone who
9 experienced the events about which they're testifying. That
10 is someone such as an eye witness or a participant in an
11 event. They can testify directly as to what they saw,
12 heard, felt, smelled, things that they experienced directly.
13 So, that's what we mean by direct testimony, direct evidence
14 on a particular issue.

15 The other type of evidence that a jury has the right to
16 consider is what we call circumstantial evidence. Now,
17 circumstantial evidence is different from direct evidence.
18 Circumstantial evidence involves proof of a chain of facts
19 or circumstances that indicate the existence of another
20 fact. It's been described as proof of collateral facts from
21 which a main fact might be reasonably inferred.

22 That's a lot of lawyer language, and I like to use a
23 very simple example I've used as long as I've been on the
24 bench, and I think it explains to you what we mean by proof
25 of facts by circumstantial evidence.

1 Let's say last night, before you went to bed, you
2 walked to the window in your bedroom and looked outside.
3 The stars were shining. It's a beautiful night out,
4 outside, and you went to bed and you slept well all night.
5 Didn't wake up at all.

6 The next morning you got up and walked to the same
7 window at your home and looked outside and the sun might be
8 shining. But then you notice there's water dripping from
9 all the trees. The driveway in front of your house is wet.
10 The grass is wet. There's puddles in the road.

11 Now, during the night, you slept well all night. You
12 didn't see it rain. You didn't hear it rain. So, you
13 didn't directly experience that. But from a chain of facts
14 that you know to be true, you could reasonably infer that at
15 sometime during the night it rained. So, that's what we
16 mean by a chain of facts or circumstances indicating the
17 existence of another fact or collateral facts from which a
18 main fact might be reasonably inferred.

19 So, that's what we mean by proof by circumstantial
20 evidence. So, circumstantial evidence is, is not based on
21 observation. It's based on evidence -- inference.

22 Now, the law doesn't make any distinction between the
23 weight or the value that you can give to either direct or
24 circumstantial evidence nor is there a greater degree of
25 certainty required for circumstantial evidence to be, to

1 warrant a finding of fact than that of direct. I will tell
2 you, as jurors, you should weigh all of the evidence in this
3 case, both direct and circumstantial. And if, after you've
4 weighed all the evidence, if you're not convinced of the
5 defendant's guilt beyond a reasonable doubt, then you must
6 find the defendant guilty. However, on the other hand, if
7 you're firmly convinced of the defendant's guilt beyond a
8 reasonable doubt, you must find the defendant guilty.

9 Now, as being the finders of the facts, I explained to
10 you, at the beginning of the trial, it's gonna be necessary
11 that you determine the credibility or the believability of
12 the testimony that you've heard during the case, and that's
13 what credibility means. It just means believability.

14 It's your duty, as jurors, to analyze and evaluate the
15 evidence and determine which evidence convinces you of its
16 truth. In determining the believability of witnesses who
17 testified in the case, you can believe one witness against
18 all of them. You can believe all of them against one. You
19 can believe all of, part of, or none of what any one witness
20 may have said.

21 You, as the sole judges of the facts, have the right to
22 consider whether a witness may have, have an interest in the
23 outcome of the case, whether or not you believe a witness
24 may have a bias or a prejudice one way or the other, whether
25 or not the witness actually had the ability to know the

1 facts that the witness purported to testify about, and
2 you've observed the witnesses as they testify, how they
3 delivered their testimony, the way they spoke. Use your
4 good common sense in evaluating the testimony that you've
5 heard. Make a determination as to the credibility or
6 believability of the testimony that you've heard in this
7 case.

8 Now, an issue in this case has been the identification
9 of the defendant as the person who committed the crime
10 charged. Now, I will tell you, the State has the burden of
11 proving identity beyond a reasonable doubt. You must be
12 satisfied, beyond a reasonable doubt, of the accuracy of the
13 identification of the defendant before you can convict the
14 defendant. Identification testimony is an expression or a
15 belief or an impression by a witness. You must determine
16 the accuracy of the identification of the defendant. You
17 must consider the believability of each identification
18 witness the same way as any other witnesses.

19 You may consider whether the witness had an adequate
20 opportunity to observe the offender at the time of the
21 offense. This can be affected by such things as the length
22 of time that was available, how far or close the witness was
23 from the, the alleged perpetrator, the lighting conditions,
24 and whether the witness had the chance to see or know the
25 person in the past.

1 Once again, I instruct you, the burden of proof is upon
2 the State. It extends to every element of crimes that are
3 charged and specifically it also includes the burden of
4 proving, beyond a reasonable doubt, the identity of the
5 defendant as the person who committed the crime.

6 I will tell you, as I've told you before, if, after
7 examining all of the testimony, if you have a reasonable
8 doubt as to the accuracy of the identification, you must
9 find the defendant not guilty. However, on the other hand,
10 after examining all the testimony, including the
11 identification testimony, if you are firmly convinced of the
12 defendant's guilt beyond a reasonable doubt, you must find
13 the defendant guilty.

14 Now, in this case, the defendant has been charged with
15 several offenses, and I'm going to go over, first of all,
16 the offense of armed robbery. Armed -- the offense of armed
17 robbery is located in the South Carolina Code of Laws in
18 Code section 16-11-330. The defendant, in those
19 indictments, has been charged with armed robbery.

20 In order to prove this offense, the State must prove,
21 beyond a reasonable doubt, that the defendant took personal
22 property from the person or presence of another person.
23 Property is in the presence of a person if it's within that
24 person's reach, inspection, observation, or control so that
25 the person could, if not overcome with violence or prevented

1 in this situation, step outside and we won't have a problem
2 with that situation. So, at this time if anybody would like
3 to leave, please do so.

4 Bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury's returned to the courtroom.

9 I've been informed by the bailiffs that a verdict has
10 been reached.

11 Is that true, Mr. Foreman?

12 FOREMAN: Yes, sir.

13 THE COURT: Pass the form to the bailiff please.

14 (WHEREUPON, the foreman complies.)

15 THE COURT: Thank you.

16 Madam Clerk, you can publish the verdicts.

17 CLERK: Yes, sir.

18 THE COURT: Court come to order while the verdicts are
19 read.

20 CLERK: The State of South Carolina versus Kenneth
21 Jowan Craig, we, the jury, unanimously find the defendant,
22 Kenneth Jowan Craig, concerning the offense of armed robbery
23 against Amanda Kiwitz, on Indictment Number 2012-2199, the
24 verdict is guilty.

25 we, the jury, unanimously find the defendant, Jowan,

1 Kenneth Jowan Craig, concerning the offense of possession of
2 a firearm during the commission of a violent crime,
3 Indictment Number 2012-2199, the verdict is guilty.

4 we, the jury, unanimously find the defendant, Kenneth
5 Jowan Craig, concerning the offense of armed robbery against
6 Joseph McCullough, Indictment Number 2013-2855, the verdict
7 is guilty.

8 we, the jury, unanimously find the defendant, Kenneth
9 Jowan Craig, concerning the offense of attempted armed
10 robbery against Brent Atkins, Indictment Number 2013-2844,
11 guilty.

12 we, the jury, unanimously find the defendant, Kenneth
13 Jowan Craig, concerning the offense of attempted armed
14 robbery against Bryan Rogers, Indictment Number 2013-2845,
15 guilty.

16 we, the jury, unanimously find the defendant, Kenneth
17 Jowan Craig, concerning the offense of attempted armed
18 robbery against Victoria Felton, Indictment Number
19 2013-2846, guilty.

20 we, the jury, unanimously find the defendant, Kenneth
21 Jowan Craig, concerning the offense of attempted armed
22 robbery against Julie Tesnar, Indictment Number 2013-2847,
23 guilty.

24 we, the jury -- we, the jury, unanimously find the
25 defendant, Kenneth Jowan Craig, concerning the offense of

1 attempted armed robbery against James Long, Indictment
2 Number 2013-2848, guilty.

3 We, the jury, unanimously find the defendant, Kenneth
4 Jowan Craig, concerning the offense of attempted armed
5 robbery against Kimberly Henderson, Indictment Number
6 2013-2849, guilty.

7 We, the jury, unanimously find the defendant, Kenneth
8 Jowan Craig, concerning the offense of attempted armed
9 robbery against Nikki Scruggs, Indictment Number 2013-2850,
10 guilty.

11 We, the jury, unanimously find the defendant, Kenneth
12 Jowan Craig, concerning the offense of attempted armed
13 robbery against Jamie Mattox, Indictment Number 2013-2851,
14 guilty.

15 We, the jury, unanimously find the defendant, Kenneth
16 Jowan Craig, concerning the offense---

17 (WHEREUPON, a phone begins to ring in the courtroom.)

18 THE COURT: Take that phone please.

19 (Bailiff complies.)

20 THE COURT: Thank you.

21 Sorry, Madam Clerk, you may proceed.

22 CLERK: Yes, sir.

23 We, the jury, unanimously find the defendant, Kenneth
24 Jowan Craig, concerning the offense of attempted armed
25 robbery against Linda Greene, Indictment Number 2013-2852,

1 guilty.

2 we, the jury, unanimously find the defendant, Kenneth
3 Jowan Craig, concerning the offense of attempted armed
4 robbery against Kesha Jolly, Indictment Number 2013-2853,
5 guilty.

6 we, the jury, unanimously find the defendant, Kenneth
7 Jowan Craig, concerning the offense of attempted armed
8 robbery against Justin Harrison, Indictment Number
9 2013-2854, guilty.

10 signed by the foreperson. Dated July the 25th of
11 2013.

12 Ladies and gentlemen of the jury, is this your verdict
13 and still your verdict, if so, please raise your
14 right-hands.

15 (WHEREUPON, all jurors raise their right-hands at this
16 time.)

17 CLERK: So say you-all.

18 THE COURT: Thank you very much.

19 Anything further from the State before I release the
20 jury?

21 SOLICITOR JORDAN: No, sir, Your Honor.

22 THE COURT: Anything further from the defense?

23 MR. WHELCHER: No, sir, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, the jury was dismissed at this time.)

1 THE COURT: Any objection to that?

2 MR. WHELCHER: Oh, excuse me, Your Honor.

3 THE COURT: It would be more.

4 MR. WHELCHER: A year and a half. So, it would be 365
5 plus another 184, Your Honor.

6 SOLICITOR JORDAN: Your Honor, I just -- I don't know
7 the exact number of days, but he has been in custody since
8 January 21st, 2012.

9 MR. WHELCHER: 549, Your Honor, according to the clerk.

10 THE COURT: That's what I added up too.

11 MR. WHELCHER: Yes, sir.

12 THE COURT: I would ask you have a seat at the table.
13 It's gonna take a while to fill these out.

14 MR. WHELCHER: Ye, sir.

15 THE COURT: So, you can have a seat back at the table
16 please.

17 MR. WHELCHER: Yes, sir.

18 (Pause.)

19 THE COURT: You can approach the bar.

20 (WHEREUPON, the parties comply.)

21 THE COURT: All right. Mr. Kenneth Jowan Craig, it is
22 the sentence of this Court, first of all, in Case Number
23 2012-GS-42-2199, Count One, which is for armed robbery, the
24 sentence of this Court is that you be confined to the State
25 Department of Corrections for a period of 20 years. I have

1 run that sentence consecutive to the sentence in the next
2 case and concurrent with the other sentences given on
3 today's date. I've given credit for 549 days.

4 The next case that I'm sentencing is Case Number
5 2013-GS-42-2844, it's a case for attempted armed robbery,
6 the sentence is ten years. I've run that consecutive with
7 the first case I announced and concurrent with others.

8 On the possession of a weapon during the commission of
9 a violent crime, Case Number 12-GS-42-2199, the sentence is
10 five years. I've run that concurrent with credit for the
11 days that you've requested.

12 On all others, let's see, on the other armed robbery,
13 which is 2013-GS-42-2855, the sentence is 20 years
14 concurrent with credit for time served.

15 On all attempted armed robberies, other than the one
16 I've announced earlier, the sentence is ten years run
17 concurrent with credit for time served.

18 Good luck to you, sir.

19 DEFENDANT: Thank you, sir.

20 MR. WHELCHER: Thank you, Your Honor.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

25


C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 22nd, 23rd, 24th, and 25th day of July, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 24th, 2013



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

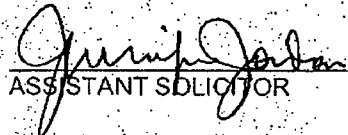
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Bryan Rogers, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 13 2013

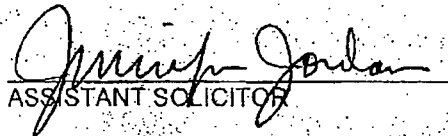
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

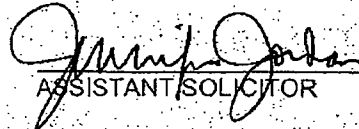
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

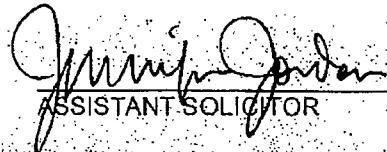
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT


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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

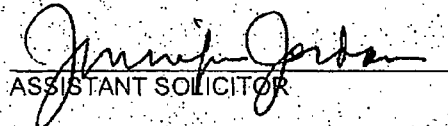
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided:


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

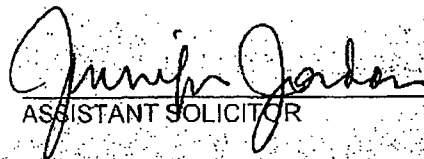
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At a Court of General Sessions, convened on JUN 13 2013 the
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 13 2013


At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Justin Harrison, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on June 13, 2013, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-ARMED ROBBERY

That the Defendant, Kenneth Jowan Craig, did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Amanda Kiwitz, by means of force, violence and/or intimidation, to wit: goods or monies, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 06 2012

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Justin Harrison and/or Keshia Jolly and/or Linda Greene and/or Jamie Mattox and/or Nikki Scruggs and/or Amanda Klwitz and/or Kimberly Henderson and/or James Long and/or Joseph McCullough and/or Julie Tesnear and/or Victoria Felton and/or Bryan Rogers and/or Brent Atkins by means of force, violence, and/or intimidation, to wit: goods or monies, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO-POSSESSION OF WEAPON DURING COMISSION OF VIOLENT CRIME

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of § 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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) INDICTMENT

At a Court of General Sessions, convened on JUN 13 2013 the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Kenneth Jowan Craig, did in Spartanburg County, on or about January 21, 2012, while armed with a pistol, dlrk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Joseph McCullough, by means of force, violence and/or intimidation, to wit: goods or monies, in violation of Section 16-11-330 (A), 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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 13 2013


At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Brent Atkins, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

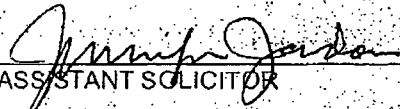
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Brent Atkins, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on June 13, 2013, the
 Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-ARMED ROBBERY

That the Defendant, Kenneth Jowan Craig, did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Amanda Kiwitz, by means of force, violence and/or intimidation, to wit: goods or monies, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
 COMMISSION OF A VIOLENT CRIME**

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

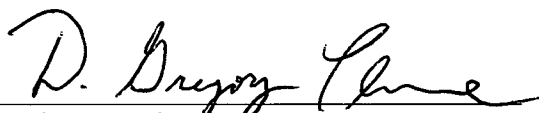
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies, to the best of my ability, with the August 13, 2007 order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and other Sensitive Information in Appellate Court Filings."

April 21, 2014



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ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable Roger L. Couch, Circuit Court Judge

RECEIVED

APR 21 2014

SC Court of Appeals

Appellate Case No. 2013-001690

The State.....Respondent,
v.
Kennth Jowan CraigAppellant.

PROOF OF SERVICE

I hereby certify that a true copy of the *Record on Appeal* in the above-referenced case has been served upon counsel of record via hand delivery on the 21st day of April, 2014, to address shown below.

Jennifer Ellis Roberts, Assistant Attorney General
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1000 Assembly Street
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ATTORNEYS FOR THE APPELLANT

D. Gregory Placone
Associate
Admitted in SC, FL

April 21, 2014

VIA HAND DELIVERY

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *The State v. Kenneth Jowan Craig*
Appellate Case No. 2013-001690

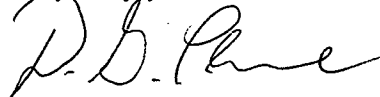
Dear Ms. Kitchings:

On behalf of Appellant Kenneth Jowan Craig, please find enclosed an original and ten (10) copies of the ***Record on Appeal***, along with the ***Proof of Service***. Please return a clocked-in copy to our courier.

By copy of this letter and as evidenced by the attached Proof of Service, we are serving counsel of record with a copy of the same.

Thank you for your assistance in this matter.

Very truly yours,



D. Gregory Placone

DGP/bn
Enclosure

cc: Robert Michael Dudek (via email, w/encl.)
Jennifer Ellis Roberts, Assistant Attorney General (via hand delivery, w/encl.)

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APR 21 2014

SC Court of Appeals