

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2013-002269

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S.C. Supreme Court

DAVORIS SMILEY,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX VOLUME II OF II

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar No. 78871

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

JOSHUA S. NASROLLAHI
209 Waller Avenue
Greenwood, SC 29649
(864) 538-6000

ATTORNEY FOR RESPONDENT

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1 THE COURT: Yes, ma'am.

2 MS. MOORE: I have nothing, Your Honor.

3 THE COURT: All right.

4 SOLICITOR MOWRY: Thank you, Your Honor.

5 MS. MOORE: Thank you, Your Honor.

6 THE COURT: All right. Do you want just a couple
7 minutes before we begin closing argument, and then -- since
8 both defendants have presented evidence, I assume you will
9 be going first, and we'll go in the order that we've gone in
10 already in the trial. That is, Mr. Smiley and Mr. Mitchell
11 will go first, and Mr. Pulley and Ms. Moore will go second
12 followed by the State.

13 SOLICITOR MOWRY: Thank you, Your Honor, and the State
14 would waive opening.

15 THE COURT: All right. So, I will then give you about
16 five to ten minutes to gather your thoughts.

17 Court will be in recess for a short period of time
18 before we begin closing arguments.

19 (Whereupon, a short recess was taken at this time.)

20 THE COURT: All right. State ready to proceed?

21 SOLICITOR MOWRY: State is ready, Your Honor.

22 THE COURT: Mr. Mitchell, you ready?

23 MR. MITCHELL: Yes, sir, Your Honor.

24 THE COURT: And Ms. Moore.

25 MS. MOORE: Yes, Your Honor.

1 THE COURT: Bring the jury in.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, at this time we have reached the stage of this
6 proceeding where the attorneys will be given the opportunity
7 to make their final or closing argument or summation, and in
8 this case Mr. Mitchell will be going first.

9 You may proceed.

10 MR. MITCHELL: Thank you, Your Honor.

11 Ladies and gentlemen of the jury, thank you for your
12 service this week, and my job now is to kind of go through
13 and sift through what we've heard, and to present to you
14 some things for you to consider in your deliberation.

15 At the beginning of the case the prosecution promised
16 you that you would be able to make a decision beyond a
17 reasonable doubt that my client, Mr. Smiley, had committed
18 the crimes for which he's charged. The prosecutor asked you
19 to use common sense. I'm gonna ask you to use critical
20 sense.

21 We are asking to, for you to hold yourselves to a
22 higher standard than just common sense. I'm gonna ask you
23 to ask hard questions when you're deliberating on this case.
24 If you ask the questions, and can not get an adequate, a
25 satisfactory answer, then you have reasonable doubt.

1 There's a lot of things said in this trial. I want you
2 to ask some of these questions of yourselves.

3 Could the witnesses who say they were 100 percent sure
4 really be 100 percent sure?

5 Could the police really ID someone from a video screen
6 about the size of that computer that was divided up into
7 nine camera shots?

8 Could they really identify someone and just say hey,
9 that's somebody in Laurens County?

10 Ask yourself that question.

11 Ask yourself can I believe the witness especially when
12 his story changes so that it will benefit him?

13 Ask yourself, does the evidence speak for itself?

14 You've seen the video footage many times in this case.
15 Yet, the prosecution had to interpret the video for you.
16 Everybody says the video speaks for itself yet time and time
17 again they ran it over and over again. They said that's so
18 and so, that's so and so. Look, he's doing this, he's doing
19 that.

20 Does the evidence speak for itself?

21 Does it tell you that that little image that's this
22 tall is somebody in this courtroom?

23 Does it tell you that.

24 Can you believe, can you believe the positive
25 identification in this case?

1 I don't believe that this case has had one positive ID.
2 They're a lot of people who are told what to say in this
3 courtroom. A lot of people who are told who was in the
4 courtroom, that the these two defendants are the two people
5 on there. But there's no positive ID in this case.

6 I'd like to review the evidence with you for just a few
7 moments and ask that you deliberate on what we go over when
8 you consider the State's evidence.

9 I believe there's several problems with this case. The
10 first problem was their first witness, and I know she's a
11 victim and I'm not trying to put her down in anyway. But
12 she came right out and says I can identify Mr. Smiley in
13 this courtroom.

14 But do you believe that a person can identify someone
15 one year later whom she only briefly saw and she's only
16 seeing this much of him?

17 Can you identify somebody one year later when that's
18 all you saw of them?

19 When you see, when you seen the video, that's all she
20 saw of the person holding the gun. If she was 100 percent
21 sure, and then you saw how unreliable a witness she was.

22 Right after watching the video I asked her this
23 question. I said was the person holding the gun, did he
24 have his hair and head covered, and she said to us, after
25 watching the video, no, he didn't. She's not a very

1 reliable witness.

2 She never picked him out of a live lineup. She never
3 picked him out of a photo lineup. The first time that she
4 had seen my client was Tuesday of this week. Of course she
5 could point him out. She was told by the defense, I mean by
6 the prosecution where the defendants were sitting.

7 All right. Then there's Captain Krissy Cofield. She
8 was another person who claims that she can see tiny objects
9 on a video screen this small, and that she can identify who
10 they are with 100 percent certainty. She said she had grown
11 up with one of the defendants as a member of her extended
12 family. Yet she didn't know his first name. She didn't
13 know his first name, but she could tell you that she could
14 identify him from, from this, this far up. She could
15 identify him by his forehead.

16 Did you notice -- and also by his haircut.

17 Did you notice how similar other defendants' haircuts
18 were in this courtroom?

19 I don't think she could identify him on that video
20 based on this much of his head showing. I don't think she
21 was that, well, that familiar with him that she doesn't know
22 his first name.

23 Then there's Deloris Byrd. She testified that shortly
24 after the incident she picked up Robinson and Pulley.

25 How that helps me?

1 Some other witness putting Robinson and Pulley
2 together. Smiley's nowhere in that scene.

3 Then there's Patrick Durkin. He was the young officer
4 who said that, after there was an announcement to go start
5 looking around in the area, and drive around and start
6 looking for suspects, he's the one that told us that he saw
7 a car coming down the street. Let me, let me refresh your
8 memory with one of these, one of these diagrams.

9 He testified that he was driving around back here in
10 this perimeter. He was driving down this street, and he saw
11 someone driving down this way, and that forced him to have
12 to turn around cause he wanted to see what those people were
13 up to. He said they were driving down this way, they
14 stopped around here, picked someone up in this driveway,
15 turned around and went this way, and he was already heading
16 this way. So, he had to turn around in the same driveway
17 and go back, and that he left. That -- they went that way
18 and he went that way and he had, he stopped him.

19 You might be saying how does that help, help your case?

20 well, when I questioned the, Chip Steppe, the guy with
21 the dogs, I asked him why is it dogs couldn't find the shirt
22 that was from the scene of the crime, and he responded that
23 it was very likely that they had ditched the shirt when
24 they'd gotten in their car. They had driven away, ditched
25 the shirt, but Mr. Durkin, Officer Durkin, he said that they

1 were picked up and they went off that way. They weren't
2 picked up and dropped there and then went back that way.

3 So, Mr. Durkin helps us out by saying that no, they
4 didn't ditch the shirt using the car. There was somebody on
5 foot who walked a couple doors down and ditched that shirt,
6 and Mr. Steppe and Mr. Super Dog did not touch that.

7 All right. Then we, then we go to Porsha Miller.
8 Porsha Miller, she was another person who was told what to
9 say. She shows up in Court and she testified that my client
10 had a green looking jacket with a hood on. That's very
11 convenient because we need to have my client with a green
12 jacket with a hood on so he can be placed in that store.

13 The problem with her testimony is that she also said
14 that the sheriff came there and arrested my client. If you
15 look at what the sheriff's deputy said, the sheriff's deputy
16 said he came downstairs and he had on a t-shirt and jeans,
17 and then the evidence says, and he was arrested at that
18 point, the evidence says that all he had was a t-shirt, a
19 pair of shorts.

20 where's the green hoodie that Porsha Miller said that
21 he was wearing that day to link him to the crime scene?

22 He wasn't wearing it that day in her apartment. The
23 police arrested him, detained him. There's no evidence that
24 he was wearing a green or a dark or a navy blue or any kind
25 of jacket with a hood.

1 So, once again, there you have a witness being told
2 what to say, and other witnesses disproving that that link
3 of that, that little fact is not really what's going on.

4 Then there's, there's Robbie Haupfear. Oh, I'm sorry.
5 Robbie Haupfear was I believe the sheriff's deputy who
6 helped me out by saying that my client was not wearing a, a
7 hoodie. Go back there. Right. And Mr. Haupfear, Haupfear
8 also testified that when he went to Porsha Miller's, Porsha
9 Miller's apartment there was nobody trying to run away,
10 there was nobody hiding under a bed, there's nobody hiding
11 in a back closet, that when he was asked to come downstairs
12 from going to the bathroom, my client walked down very
13 casually. If he just committed a crime and was afraid of
14 the police, I don't think he would of been so casual.

15 There's another problem with that scene. There was
16 money there. There was a lighter there that was brought
17 into evidence, but there's no way to tie that money to my
18 client. There was no fingerprinting done of the lighter.
19 There's no fingerprinting done of the money. We had a money
20 expert in here, a fingerprint expert, said that money can
21 sometimes give us fingerprints. He said a lighter could
22 give us fingerprints. Yet, the State didn't think that was
23 important enough to have that sent off for fingerprint
24 analysis.

25 So, once again, we don't know whose, whose lighter that

1 was. We don't know whose money that was, and Porsha Miller
2 testified that she had friends over that day. She said that
3 Mario Suber was in the house the day, in the apartment that
4 day, and I believe Robert, Robert, Robbie Haupfear also said
5 that, that there was another individual in that apartment
6 when he went to get my client.

7 Then there's Leann Riggott. I believe that she made up
8 her mind once one of the defendants was feeding her his
9 version of the events. We have what, what I've mentioned at
10 the beginning of this case in my opening remarks is that we
11 have is a cookie jar crime. One person did the crime, and
12 to get out of trouble, he said it wasn't me, it was my
13 little brother.

14 This whole case is not based on positive ID. There is
15 no positive ID of who was in that store that day. This
16 whole case is based on the testimony of one person to the
17 police, and that's Lakasion Robinson, Robinson.

18 Leann Riggott made up her mind that what her version of
19 the story was was true, and then she went and that colored
20 everything she did from that point forward. She was another
21 one of the people that came to us today or in the last few
22 days here and said without, without a 100 percent certainty
23 I can watch a video with one-ninth of the screen, tiny
24 little images on a small screen, and I can tell you that
25 somebody walking around with a hoodie on is Davoris Smiley.

1 I don't know where she got his name out of all the
2 people that live in Laurens. She pulled it out of a hat,
3 pulled it out of the air. I don't know. But she just --
4 she had her mind made up that this is who it was, and I
5 think that what the reality of the situation is, Robinson
6 said it. So then she had to go and pursue it.

7 The prosecution -- I mean the police say put on a good
8 face, that the case that they presented makes sense even
9 when things come back later to disprove it.

10 Here's the sad thing. A lot of things came back later
11 to disprove their theory of the case. The problem was they
12 already a plea and a sentence from their key witness, and
13 they couldn't go back to him and say, listen, I think you're
14 the one who did it.

15 What came back way after Lakasion Robinson did his plea
16 and got probation?

17 What came back so much later, actually came back the
18 week of this trial?

19 We got it on Monday I believe it was. It was the DNA
20 evidence. The DNA evidence says that the black shirt was
21 Robinson's shirt. The, the evidence -- the DNA evidence
22 said that there were two people that contributed DNA to that
23 shirt, and the other contributor wasn't one of the
24 defendants in this room.

25 There was another shirt that was found with the black

1 shirt, and it came back that there was no DNA from Robinson,
2 Pulley, or Smiley. So now we have a third, a fourth
3 possible person who was wearing something that night, and it
4 was ditched in the, in the bushes. A fourth possible
5 suspect.

6 was it Mario Suber?

7 was it this guy named Black?

8 we don't know who it was. The police didn't follow-up
9 with that. They didn't even know to follow-up with that
10 because the DNA for that shirt didn't come back until just
11 this week.

12 So, there's a lot of things that are left open.
13 There's a lot of evidence that we don't have. There's a lot
14 of evidence we probably will never have, but it just
15 seems -- and if you'll, if you'll follow the logic here,
16 Leann Riggott took one person's version of the story, of the
17 events, and that's how the whole investigation went from
18 that point forward. So, of course, we got to make his
19 version work.

20 Right interesting thing is, as we're wrapping up the
21 State's evidence, their last two witnesses help us out
22 incredibly. Officer, SLED Officer Crooks, he said that
23 fingerprinting was done at the scene of the crime, but none
24 of the fingerprints came back to the defendant, my, my
25 client, Mr. Smiley.

1 You saw on the video the gunman touched the cash
2 register. He touched the front door, grabbed things,
3 touched things. None of the fingerprints came back to
4 implicate Mr. Smiley.

5 Then we have Mr. Meeh. I already mentioned what he
6 brought in for us, the, the clothing. Once again, the black
7 shirt that was supposedly worn by one of the defendants in
8 the room here didn't come back with his, with his DNA, and,
9 and they do say that State's gonna tell you it was only worn
10 for a short time.

11 There was a lot of stress going on from whoever was
12 suppose to be wearing that shirt. There was probably
13 sweating going on there. There was, there was a claim that
14 they ran out the door. They're running out the door.
15 They're running through a couple blocks away to get away
16 from the scene of the crime supposedly.

17 I believe that if one of the defendants in this room
18 was wearing that, it would of shown up in the, as a
19 contributor, and Mr. Meeh also helped us in implicating a
20 fourth possible suspect that, that shirt that was submitted
21 as evidence, it has, it had two contributors, and none of
22 those two contributories to the white t-shirt fits any of
23 the, any of the other defendants. Not even Lakasion, and we
24 know what the other ones were wearing. The State made it
25 very clear as to what they were wearing when they were

1 apprehended, but we don't know if there was possibly a
2 fourth person there.

3 There was a lot of switching going on. The State is
4 believing the story of Lakasion that he switched hats with
5 someone, he switched shirts with someone.

6 what if he switched shoes?

7 what if he switched something else?

8 we don't know what he switched. when they left the
9 camera, all we see in this video are three people walking
10 by, and two people walking back, and one person walking
11 back. we don't know who switched what.

12 I just -- I believe, ladies and gentlemen of the jury,
13 that this isn't a slam dunk. This is a case that requires
14 asking lots of questions. This is a case that requires
15 really questioning the credibility of almost every witness,
16 and then it requires you to say if I can't answer all these
17 questions to my satisfaction, then I'm gonna have to give a
18 verdict of not guilty.

19 Thank you.

20 THE COURT: Ms. Moore for Mr. Pulley.

21 MS. MOORE: Thank you, Your Honor.

22 THE COURT: Yes, ma'am.

23 MS. MOORE: Good afternoon, ladies and gentlemen of the
24 jury.

25 If you will recall a couple of days ago I asked you to,

1 to please pay very close attention to what the witnesses
2 could and could not tell you, and also, in anticipation of,
3 of your watching the video, I asked you to please look at
4 that video, and you determine what you can and can't see in
5 that video, and, ladies and gentlemen of the jury, I submit
6 to you that now that all of the evidence has been presented
7 in this courtroom, I had, I had no idea that this case was
8 as big of a mess as it actually is.

9 Let's talk about these witnesses, and I know Mr.
10 Mitchell has, has gone over it, but I wanted to point a few
11 things out to you. The State started with Anna Sebastian,
12 and I concur with what Mr. Mitchell said about Ms.
13 Sebastian. She is, in fact, a victim.

14 This is an armed robbery and conspiracy trial for my
15 you client. And, so, that it is appropriate to ask Ms.
16 Sebastian questions about what happened on the night of this
17 robbery.

18 what did she tell you?

19 She sat in that witness chair and very plainly pointed
20 to my client and said Jakeivan Pulley. She pointed to Mr.
21 Smiley and said Davoris Smiley, and say yes, those are the
22 men that, that robbed me that night.

23 But what did she say when this robbery was fresh in her
24 mind?

25 How did she describe these individuals who went into

1 the store?

2 Two black males.

3 That's it. Certainly no, no discussion about specific
4 names. Remember that she told you in this courtroom that
5 the first time that she had heard the name was that day when
6 she testified. In her original statement, which was entered
7 into evidence in this case, she didn't say anything about
8 allegedly my client going into the store prior to the
9 robbery and leaving. But yet, somehow, here almost a year
10 later, she has a recollection of all of this.

11 Then what happens?

12 Mr. Mitchell asks her did you show her a lineup?

13 Oh, yes. Yeah, we showed her a lineup.

14 Okay. How interesting.

15 well, how many people were you shown in this lineup?

16 what did she say, multiple?

17 I can't remember the exact phrase.

18 Oh, yeah, several, multiple.

19 Interesting.

20 Upon my cross-examination she admitted that she was
21 confused, that, in fact, in this case, there was no lineup.
22 There's no lineup. That, in fact, not until two days ago
23 did you actually have a victim of that night identifying
24 anybody. Certainly not in the record of this case.

25 She, she used the word I am confused.

1 what she was talking about?

2 Talking about Mr. Melendez, what he said. Oh, no, no,
3 that was -- oh, now, I was talking about a robbery that
4 happened a year prior where there was the lineup or some
5 type of identification.

6 Let's talk about Krissy Cofield, Captain Krissy
7 Cofield?

8 Did you notice that, in the State's direct examination
9 of Captain Krissy Cofield, which, by all accounts, the
10 evidence has established she is the one who identified my
11 client, none of the victims, right, till two days ago, did
12 you notice that the State, on direct examination, only
13 showed her that portion of the video that shows the
14 individual coming into the store with no masks?

15 That's it.

16 Remember?

17 It wasn't until Mr. Mitchell cross-examined her, and
18 the State, in redirect said, oh, wait a minute, oh, wait a
19 minute, she did actually see other parts of the video and
20 we'll get to that in just a minute.

21 what was this person seen doing on this video?

22 Buying a Coke.

23 Not masked. walking around a store. Talking to the
24 shop keeps.

25 Krissy Cofield, on the basis of a 15-inch screen, which

1 Detective Riggott testified in regard today, sent out an all
2 points bulletin. Remember Officer Durkin talked about that.

3 Ladies and gentlemen of the jury, you -- we all have
4 seen this video basically for almost two days straight now,
5 and on redirect, again not in the direct, but in redirect
6 Krissy Cofield tells you that on the basis of this
7 gargantuan, huge screen certainly compared to a 15-inch
8 screen that was actually in there that night, and these
9 individuals' nose, mouth, chin, and neck are covered. She
10 doesn't have any doubt the person in video is Jakeivan
11 Pulley, and I challenged her on that.

12 How?

13 Oh, it's -- oh, I can, I can recognize him. It's his
14 hairline and his eyes.

15 Ladies and gentlemen, I, I think that's what you call
16 the definition of reasonable doubt. Particularly, think
17 about Krissy Cofield and that night, according to the
18 robbery, looking at that 15-inch screen versus this, and,
19 again, I'll tell you, ladies and gentlemen of the jury, I've
20 sat and watched that video for almost two days straight, and
21 you can't see anything in that video.

22 Then we had Mr. Robinson.

23 Now, ladies and gentlemen of the jury, you saw Mr.
24 Robinson yourself. You got an opportunity to see him. He
25 took the stand. You saw his demeanor. You saw the fact

1 that he was basically unresponsive to a lot of the questions
2 that were asked of him.

3 He contradicted himself, didn't he, on very key points?

4 Remember that Detective Riggott was operating under the
5 assumption that my client, Jakeivan Pulley, was the one who,
6 in fact, stuffed the sweater in the bushes.

7 where did she get that information?

8 Kasion Robinson.

9 He told you, from that witness stand, that no, that was
10 me. No, I stuffed it. I stuffed it.

11 Do you think that's a key point?

12 Kasion Robinson, in watching this video, could not or
13 certainly would not identify the individuals who were seen
14 walking up and down Harper Street. Saw him. He didn't
15 testify to that. Displayed images of the actual robbery,
16 which we've seen for two days.

17 He didn't identify anyone. He -- the question becomes
18 why not. I'll tell you why not. You heard about it today.

19 DNA expert, what did he say?

20 He said that these defendants were excluded, and that's
21 a big difference between excluded and inconclusive.

22 Specifically asked him. Said no, they were, they were
23 excluded. There was, in fact, a second strain for that DNA,
24 but it excluded the defendants.

25 Ladies and gentlemen, I, I submit to you that, that Mr.

1 Robinson has every reason to come to this courtroom and
2 testify inconsistently on the basis of his original
3 statements that he gave to law enforcement, and that is
4 quintessential definition of reasonable doubt.

5 As I stated, Officer Durkin, basically what did he tell
6 us?

7 He basically confirmed what Krissy Cofield told us,
8 that she sent out an all points bulletin, after watching the
9 videotape, of an individual buying a Coke in a store and a
10 15-inch screen, and sent an all points bulletin, stops some
11 suspicious looking males, explained that, and put them into
12 investigative detention. Subsequently my client was
13 arrested, but he has never been identified by the victims in
14 close proximity to this incident.

15 Ladies and gentlemen of the jury, Officer Steppe, who
16 I'll, I'll call the dog guy, I can't say that, you know,
17 there's really anything that he testified to established
18 anything, and I got to tell you I'm sure that you were
19 sitting there thinking the same thing I was thinking about a
20 lot of this stuff that he was testifying to that's fairly
21 incredulous.

22 Remember when he said anything is possible. Key points
23 on that. The dogs were never given anything to specifically
24 smell. He testified to that. No dogs, you know, for 20, 20
25 hour period. Oh, no, no, no, the 20 hour period, even

1 though there are cells and the debris from our bodies that
2 falls into the atmosphere and into the, into the, the ground
3 and the floor, oh, yeah, my dog can distinguish any
4 suspects, between any suspects and anybody else.

5 That established nothing and, furthermore nor, Durkin
6 established why, in fact, my client was apprehended, and
7 Mr. Mitchell pointed out in his closing that we really do
8 have some very suspicious information in this case.

9 Porsha Miller. Porsha Miller. Here is a young woman
10 who came to this courtroom to testify, and, yet, when she's
11 asked about a gentleman named Mario Suber, who's an
12 African-American male, she got really defensive.

13 Did you notice that?

14 She got defensive, and she was insistent. Oh, no, no,
15 Mario. No, never. No, he wasn't in my house. No, Mario
16 wasn't in my house.

17 where was he?

18 Oh, well, he was around. He was outside.

19 where was he?

20 Remember?

21 I cross-examined her.

22 Do you recall making a voluntary statement on or near
23 the time of the actual robbery?

24 what does she say?

25 She told the police that Mario was inside her

1 apartment. She squirmed.

2 Ladies and gentlemen, you are the trier of fact. The
3 judge will instruct you on that. It's up to you to find the
4 facts and evidence in this case. That's suspicious.

5 why is she doing that?

6 I think Mr. Mitchell's points were very well taken on
7 that.

8 Talk a little bit about Detective Riggott's testimony.

9 Did you notice how many times Detective Riggott said
10 the phrase appears to be?

11 well that appears to be. well, yeah, that appears to
12 be the, the same, same shirt. Yeah, that, again, that
13 appears to be the same, same jeans. well, yeah, that
14 appears to be the same, the same shoes. Yeah, it appears to
15 be.

16 Ladies and gentlemen, I submit to you that you don't
17 need this testimony. You've watched this video for two
18 days. It's up to you to determine not what appears to be,
19 but what is in regard to my client in an armed robbery and
20 conspiracy prosecution.

21 And just note, there again, Detective Riggott was also,
22 on the night of the robbery, looking at that 15-inch screen.
23 Let's take a look at it.

24 How, how big is 15-inches?

25 And, again, you can estimate. She estimated. If it's

1 projected on a screen it's much smaller.

2 Detective Riggott also admitted that there was an
3 individual named Black.

4 Did you follow-up on that?

5 We're trying to figure out who robbed a store here.

6 Did you figure it out?

7 It's in the information that you're given.

8 No, never followed up.

9 Ladies and gentlemen, I, I would submit to you that I
10 think probably the most disturbing testimony in this entire
11 armed robbery and conspiracy trial was the testimony of
12 Captain John Stankus, my only witness, and the last witness
13 in this case.

14 Ladies and gentlemen of the jury, when you are the
15 captain, and you are transmitting information to SLED for
16 the purposes of assisting SLED in using their forensic
17 capabilities and testing, don't you think that you need to
18 have the accurate information transmitted to SLED?

19 Is that something to be blasé about?

20 Captain John Stankus, your name's right here, submitted
21 by.

22 Well, I, you know, I really -- I just transmitted the
23 information.

24 The problem is that my client is identified as subject
25 one. Lakasion Robinson is identified as subject two, and

1 Davoris Smiley is identified as subject three, and as I, I
2 had Captain Stankus testify, he submitted to SLED that
3 subjects one and two switched shirts during the robbery so
4 the DNA on both should be on both shirts. This turned out
5 to be a wash. Right, it's not on there.

6 Subject two, Robinson, and subject three touched the
7 cash register, and subject one, my client, touched the front
8 door and the counter top. This is information that is
9 transmitted by Captain John Stankus to SLED to assist them
10 in their evaluation of this evidence.

11 Now, ladies and gentlemen of the jury, when you start
12 your deliberations, when you think about this clothing
13 that's right behind me, I want you to ask yourself has, in
14 fact, the State, in any way, shape, or form, not just proof
15 beyond a reasonable doubt, the judge is gonna discuss that
16 with you in just a little while, had they actually proven to
17 you that the clothing that you see here is the clothing that
18 you see in the robbery and on those individuals outside
19 because I'll tell you what it appears to be, what it appears
20 to be, or is a more reasonable explanation here that Mr.
21 Robinson had that shirt on the whole time, and Mr. Pulley
22 didn't have the shirt on the whole time, the clients
23 excluded by DNA.

24 Laurens Police thinks it was Robinson and Smiley went
25 in there and touched the cash register and that was the

1 information that was transmitted to SLED, and the fact that,
2 not until two days ago, did we have a victim who actually
3 identified anybody.

4 Members of the jury, I leave you with that. If you
5 will recall, a couple of days ago, I asked you to please
6 take a look at this evidence, and make a finding beyond a
7 reasonable doubt, and, as I said, there is -- not only do we
8 have a reasonable doubt, but we do, in fact, have a doubt
9 for there is a reason cause the solicitor asked you to take
10 a look at.

11 Proof beyond a reasonable doubt in a criminal case is
12 not a technicality. It is a vital protection for someone
13 who comes into this courtroom and is accused of a crime, in
14 particular, a serious crime like armed robbery and
15 conspiracy.

16 Thank you.

17 THE COURT: The State may proceed.

18 SOLICITOR MOWRY: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 SOLICITOR MOWRY: Ladies and gentlemen, after listening
21 to Mr. Mitchell and Ms. Moore, I'm reminded of the old
22 slight of hand magicians that will distract your attention
23 with some minor movement while they're doing the trick down
24 here, and that, in essence, ladies and gentlemen, is what
25 we've got here. They are desperately trying to distract

1 your attention away from the facts to protect their clients
2 from being convicted.

3 There's an old expression that I've heard from time to
4 time that goes, who are you gonna believe, me or your lying
5 eyes, and that's what they're trying to convince you of
6 right now. Believe them and not your own eyes.

7 I am of an age where I remember when Michael Jordan was
8 just becoming a star, and he did a series of commercials for
9 Nike, the shoe company. He did them with Spike Lee, the
10 director, who was playing a character named Mars Blackman.
11 Some of y'all may remember these commercials. And during
12 these commercials, Michael Jordan would be performing some
13 unbelievable acrobatic basketball move, and the catchline or
14 the tagline in the commercial was, money, Michael Jordan, it
15 must be the shoes.

16 well, ladies and gentlemen, in this case it must be the
17 shoes. Let's take a look at what we got here. All of this
18 evidence that we presented to you of clothing that is tied
19 back to the various defendants, and you're gonna have the
20 video back there with you. You may be sick of looking at
21 it, but if you wish to look at it some more you'll have
22 that, that video back there. what I'd like you to do, as
23 you're considering all this, is think about what each of
24 these defendants was wearing.

25 At the start, here's Mr. Robinson's clothes. He

1 identified himself as wearing those clothes. Sorry. I
2 thought I had it up quicker. In the video, Lakasion
3 Robinson identifies himself as wearing these items, the
4 black pullover, the white shoes, and these jeans. Davoris
5 Smiley, these shorts with this kind of funky belt, this pair
6 of boots, the ankle high tan boots, and the yellow cap. But
7 most obvious, Jakeivan Pulley, who came in wearing the jeans
8 with those decals on there, the black shoes, and this top.

9 Get this aimed a little better.

10 At any rate, there's Davoris Smiley.

11 Flip the lights for me please, sir.

12 Excuse me. Not Davoris Smiley. But Lakasion Robinson.

13 As I said, electronics are not my friends.

14 That's what it looked like from behind. This right
15 here.

16 What color shoes has he got on?

17 Little white tennis shoes.

18 There's no doubt that's Lakasion Robinson, and, ladies
19 and gentlemen, there's no doubt that's the figure now
20 wearing the black, the -- not wearing the black pullover,
21 but now wearing the yellow hat that you see going down the
22 street.

23 Mr. Mitchell would have you believe that all of these
24 defendants went behind the coin laundry and practically got
25 naked, exchanging pants, exchanging shoes, exchanging

1 everything. There's Mr. Pulley with his jeans. The same
2 individual that we saw go into the store to buy a Coke, the
3 same individual that we saw come behind the counter to
4 threaten Anna Sebastian.

5 Additionally, ladies and gentlemen, we have Davoris
6 Smiley. Look at the video. Look at the video. He's got
7 the hat at first. He's wearing these shorts. He's got
8 these boots on. You can see them in the, in the large video
9 of the store, and if you want to know what Mr. Smiley looked
10 like up close, let me suggest that you look at that picture.

11 That's the view that Anna Sebastian had. That's the
12 view that Diana Melendez had of him pointing gun with which
13 hand?

14 His left-hand.

15 which way was he writing?

16 with his left-hand.

17 which way is the gunman pointing?

18 with his left-hand.

19 Lakasion Robinson was no where at the scene. Mr.
20 Mitchell can wish it all he wants. It don't make it so.

21 There is Davoris Smiley writing with his left-hand.
22 There is Davoris Smiley pointing a gun with his left-hand
23 hours before that robbery took place.

24 You heard Deputy Rainey from Greenville County. In the
25 early morning hours of that very day, he's making videos or

1 taking pictures like that.

2 Do we know that this is the same hat?

3 Take a look at the logo on the back. Major league
4 logo, major league baseball logo. Very same hat. You can
5 see in another picture, the front of it. You can see the P
6 for Pittsburg. You can see the doo rag on his head.

7 If you look at the video you'll get another look at
8 this gun. Take a look at it. Take a look at the video.
9 Compare the video. The gun you see in the video to that
10 gun.

11 Ladies and gentlemen, it's either the same gun or a
12 twin, another one that's made just like it.

13 Now, let's talk about some of the evidence.
14 Mr. Mitchell would have you believe that nobody identified
15 these two defendants.

16 well, ladies and gentlemen, about four people
17 identified these defendants. Anna Sebastian, who was in the
18 store and getting robbed, and having a gun shoved in her
19 face.

20 Ladies and gentlemen, I don't know about you, but there
21 are a lot of folks that could have that happen to them and
22 they'll say it's something I'll never forget. You just get
23 that burned into your mind. And they made it sound like oh,
24 their faces were so covered.

25 How many times in the video do you see them pulling

1 those make shifts masks up, the make shift masks that were
2 nothing more than t-shirts?

3 She got a good chance to see them up close and real
4 personal.

5 Krissy Cofield. She's identifying a relative. She's
6 identifying a relative. Might not be a real close relative,
7 but it's a relative. She knows who he is. She knows what
8 he looks like.

9 Is there any doubt in your mind that the person wearing
10 these clothes, went in the store to buy the Coke, is there
11 any doubt in your mind that that same person came back in
12 and threatened Anna Sebastian and Diana Melendez, give me
13 the money?

14 We didn't call Diana Melendez. She was 16 years old
15 when this happened. She was traumatized by it. She's in
16 special education. We didn't call her. Mr. Mitchell did.

17 What did Diana Melendez tell us?

18 She tells us that one of the robbers says to other one,
19 let's go D or let's get out of here D as in Debo, as in
20 Davoris Smiley. We didn't call her. That's the defense's
21 own witness that tells you that.

22 Leann Riggott testified that she knew Davoris Smiley
23 from the community, had known him for several years. You
24 can look on the video and see that it's a rather unique
25 personality, rather unique shape. And, so, she recognized

1 him.

2 Is it shocking that when he was arrested he's wearing
3 ankle high brown boots just as the figure on the screen;
4 that he's wearing these gray shorts that at first he was
5 wearing this baseball hat before he swapped it out with
6 Lakasion Robinson?

7 Now, why do you think he did that?

8 Well, he wanted to pull that hood up over his head, and
9 front or back, the baseball hat was going to be a tip off.
10 He didn't want to be recognized.

11 Why do you think they traded clothes?

12 Why do you think that Jakeivan Pulley wanted this black
13 pullover?

14 Because he had just been in the store to case it, to
15 scope it out, to see who's in there, and he knew he would be
16 recognized if he, if he went back in wearing the same
17 clothes.

18 But minutes after he did that, he puts on that and he
19 goes down the street. You see him. The same jeans, the
20 same black shoes, and then a couple of minutes later, you
21 see Lakasion Robinson coming down the street now wearing a
22 t-shirt, but those little white shoes, the white shoes.

23 You think they exchanged all their clothing?

24 That makes absolutely no sense at all. Absolutely no
25 sense at all.

1 The plain fact of the matter is that this item went
2 over here to Pulley. This item went over here to Robinson.
3 And when they met back up, around 104 Watts Street, this
4 item went back to Pulley, this item went into the bushes.
5 It's that simple.

6 Now, Mr. Mitchell would have you believe that Davoris
7 Smiley wasn't at the scene I gather.

8 But what did Davoris Dorrah, the resident at 104 Watts
9 Street, tell you?

10 He told you that the three of them, those two
11 defendants, and Lakasion Robinson, all came up together,
12 that Davoris Smiley used the bathroom, that they made phone
13 calls, and they left.

14 What did this Black do?

15 According to a witness, Black, Detective Riggott told
16 it she tried to track down, but nobody could seem to point
17 her towards just that nickname, picked up Davoris Smiley and
18 took him away.

19 And where was he found?

20 About three or four miles away, about three or four
21 hours later. Plenty of time to ditch his hoodie, to ditch
22 his gun, or give it to somebody for safekeeping. But
23 apparently not fast enough to dispose of \$705 that he had on
24 him, and what Porsha Miller tells you is that, when he got
25 there, there was nothing in her baby's crib, that he asked

1 to use the bathroom upstairs at 905 Laurens Terrace, and
2 that when the police came, and Mr. Smiley came downstairs,
3 low and behold there are all those items plus \$705 in cash
4 in that crib along with these other items.

5 So, we have identifications of Pulley and Robinson.
6 Both of them from Anna Sebastian. Of Pulley from Krissy
7 Cofield. Of Pulley from Lakasion Robinson. Of Smiley from
8 Anna Sebastian, from Leann Riggott, from Lakasion Robinson,
9 and also from Porsha Miller.

10 Now, ladies and gentlemen, do you recall that I asked
11 Anna -- I showed her this picture of Lakasion Robinson, and
12 I asked her categorically was that one of the people that
13 came in. You can look at the robbers. Completely different
14 height. Mr. Robinson was the tallest of the three. He was
15 also the slenderest of the three.

16 The white shoes, the nose knows, he looks nothing like
17 either one of those two witnesses or defendants, and Anna
18 Sebastian can say that he was not a robber because you can
19 watch him walk down towards watts Street, walk down towards
20 town, and never be seen again on the video.

21 Look at the shape of the heads of the robber who comes
22 around the counter.

23 Does that look anything like Robinson?

24 Does the robber with the gun look anything like
25 Robinson?

1 No.

2 They look like Jakeivan Pulley and Davoris Smiley.
3 Think about the clothing. Pulley with the gray tank, the
4 black shoes, the jeans with the patches. Smiley with the
5 brown boots, the hat at the first, these gray shorts, the
6 belt.

7 Let me show you this picture.

8 Does that look familiar, the belt, the jeans, the doo
9 rag, the hat, fifteen hours before the armed robbery?

10 Does that look at all familiar?

11 Look in the video and ask yourselves that's exactly
12 what he had on. Yes, it is.

13 These are not rocket scientists, ladies and gentlemen.
14 They didn't think about cameras apparently, and they've
15 gotten themselves in a world of trouble.

16 Think about Davoris Dorrah who says that all three of
17 them came to the house at 104 Watts Street, that two left in
18 one car after Mr. Smiley had left, the dog search.

19 Now, Ms. Moore can belittle that as much as she wants.
20 But use your common sense. Some of you may be hunters.
21 Some of you may of used dogs before. Use your common sense.

22 Which direction did the robbers go as soon as they left
23 the store?

24 They came out the door. They went left. They went
25 around the coin laundry and disappeared.

1 what did Chip Steppe say?
2 I'll flip it this way.
3 He went down here, began to work his dog a little bit.
4 His dog picked up a scent.
5 And where did his dog go?
6 To 104 Watts Street.
7 Who got seen at [REDACTED] Watts Street?
8 Davoris Smiley, Jakeivan Pulley.
9 Davoris Dorrah, the resident, tells us that they were
10 there. Officer Durkin stops the car with Robinson and
11 pulley and takes them into custody.
12 The gun. Ladies and gentlemen, that gun, you take a
13 look at it.
14 Again, you take a look on the video, and you make the
15 determination, ladies and gentlemen, does that gun look
16 exactly like what's in the video?
17 Now, Robinson says that Smiley had the gun.
18 which left-hander do you think it is?
19 Another slight of hand thing that Mr. Mitchell tried to
20 pull. That Robinson's left-handed, therefore Robinson was
21 the gunman. Robinson, the much more slender, the much
22 taller, wearing white shoes, wearing jeans.
23 No.
24 whose that with the gun in those pictures, the gun that
25 looks just like the one in the robbery?

1 It's Davoris Smiley and nobody else.

2 Now, I just want to remind you about Porsha Miller.

3 Smiley shows up in the small hours of the morning, asked to
4 use the bathroom. Upstairs, next to bedroom, nobody in the
5 daughter's room, the daughter is spending the night at, at a
6 relative's house according to Porsha Miller, and in the
7 daughter's room, were nobody could of left it because Mario
8 Suber, the man with the shoulder length dreadlocks -- did
9 you see anyone even close to shoulder length dreadlocks
10 anywhere in the video?

11 Another slight of hand maneuver by the defense.

12 You find \$700.

13 Fingerprints. Lord knows I wish I could present you
14 some fingerprints of the robbers.

15 Ladies and gentlemen, that was the case. We don't have
16 any. The police got as much as they could from the scene.
17 I wish I could of given you more on that.

18 The DNA.

19 Well, let me remind you of something, ladies and
20 gentlemen. It's not that the two defendants were excluded
21 from having worn this shirt because of the DNA. That was
22 one of the reasons that I asked Paul Meeh, the DNA analyst
23 about this. Yes, it came back Robinson.

24 Why?

25 Because this was his shirt.

1 He'd been wearing it.

2 But I asked him specifically, does that mean that
3 nobody else wore that shirt, that neither one of these two
4 could of worn it?

5 No.

6 No, it might be that they wore it for some short period
7 of time, and just didn't leave any DNA or findable DNA.

8 So, what does your common sense tell you?

9 That Lakasion Robinson gave Jakeivan Pulley this shirt
10 to disguise himself from having been in this store for a few
11 minutes before. That's all.

12 Now, ladies and gentlemen, I ask you at the start of
13 the trial to do three things, and you've already done of
14 them admirably. You listened very closely to the testimony
15 and the evidence that was presented from this witness stand.
16 I asked you to listen very carefully in a couple of minutes
17 when His Honor instructs you on the law in this case.

18 The law, ladies and gentlemen, of armed robbery. The
19 use of a gun or a deadly weapon to steal something of value
20 from another person. That's what armed robbery is.

21 Now, you might argue or think to yourself well, there
22 was only one person with the gun, does that mean the other
23 person wasn't guilty of it?

24 Ladies and gentlemen, we have a law in South Carolina
25 and it's entitled the hand of one is the hand of all. If

1 two people go into a criminal enterprise, such as an armed
2 robbery, then every act committed by every one of the
3 robbers is gonna be imputed to the others. In other words,
4 if you've got somebody sitting outside as the getaway
5 driver, and the other person goes in the store and sticks up
6 the store and takes the money, and comes out and jumps in
7 the car and the getaway driver drives away, the getaway
8 driver is just as guilty as the man who pointed the gun.
9 The hand of one is the hand of all.

10 In conspiracy, ladies and gentlemen, you've had a
11 chance to see a lot of conspiracy here. The exchange of
12 clothes, first of all.

13 But before they come into the store, what did the two
14 figures do?

15 The two figures, Smiley and Pulley, they go off up the
16 street and then when they come back, what do they have over
17 their faces?

18 The make shift masks, white t-shirts that they thought
19 was gonna disguise them from Anna Sebastian. Too bad for
20 them they didn't work very well. They conspired, they
21 planned, they plotted to commit this act.

22 Then the use of the weapon during the commission of
23 violent crime. I think you'll all agree, armed robbery is a
24 violent crime, and that certainly qualifies as a deadly
25 weapon, as a gun.

1 So, listen very carefully when His Honor instructs you
2 in the law in this case, ladies and gentlemen, and that's
3 the law that you take back there with you to the jury room.
4 That's law in which you base your decisions. Then I ask you
5 to do one last thing for me, and use your common sense.

6 I'm not quite sure what critical sense is. I ask you
7 to use your common sense. Test the evidence with your jury
8 common sense, and I think your common sense will tell you,
9 ladies and gentlemen, that the State has proved this case
10 beyond a reasonable doubt, that these defendants did rob the
11 Guatemex Store, that Davoris Smiley did point that gun at
12 Diana Melendez and Anna Sebastian, and you would be more
13 than justified in bringing back a verdict of guilty on all
14 counts.

15 Thank you very much.

16 THE COURT: Ladies and gentlemen of the jury, that
17 completes the closing arguments or statements made by
18 counsel. I told you earlier that once we've reached this
19 stage of the trial it would my responsibility to charge you
20 concerning the law to be applied in this case.

21 Throughout this case I have instructed you concerning
22 your conduct, and I'll ask you one other, one more time if
23 any of you have any difficulty in complying with any of my
24 instructions to you during this trial, I'd ask that you now
25 please stand.

1 (No response.)

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

4 Now, when we started this case the other day I went
5 over with you the indictments in this case, and I explained
6 to you that the indictments in this case are the charges
7 that bring this matter before this Court. It informs this
8 Court, you, I, and the other participating, of the charges
9 to be tried in this case. It informs the defendants of the
10 charges that have been lodged against the defendants in this
11 matter.

12 At the time I'm going to go over with you again the
13 indictments in this case. First of all, there are three
14 indictments that have been lodged against Davoris Smiley.
15 The first indictment that I will go over with you is Case
16 Number 11-GS-30-1062. That indictment is for the offense of
17 armed robbery.

18 The indictment states, in part, that the defendant,
19 Davoris Smiley, did, in Laurens County, state aforesaid, on
20 or about the 24th day of April, willfully and unlawfully,
21 while armed with a deadly weapon, or while alleging, either
22 by action or by word, that he was armed while using a
23 representation of a deadly weapon, or any object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon, feloniously take

1 from the person or presence of Anna Sebastian, and a
2 juvenile, by means of force or intimidation, goods or monies
3 described as follows: United States currency, with the
4 intent to deprive the owner permanently of such property,
5 Guatemex Store, in violation of Section 16-11-330 of the
6 Code of Laws of South Carolina, 1976 as amended, against the
7 peace and dignity of the State and contrary to the statute
8 in such case made and provided.

9 The second indictment in Mr. Smiley's case is for the
10 possession of a weapon during the commission of violent
11 crime. That indictment states that Davoris Smiley did, in
12 Laurens County, in the state aforesaid, on or about the
13 24th day of April, 2011, possess a firearm, or visibly
14 display what appeared to be a firearm or visibly display a
15 knife during the commission of a violent offense, to wit,
16 armed robbery, or any lesser included violent offense in
17 violation of Section 16-23-490 of the Code, of the South
18 Carolina Code of Laws, 1976, as amended, against the peace
19 and dignity of the State and contrary to the statute in such
20 case made and provided.

21 The third indictment against Mr. Smiley is for the
22 offense of criminal conspiracy. That indictment states that
23 that Davoris Smiley, along with another person or persons,
24 did, in Laurens County, state aforesaid, on or about the
25 24th day of April, 2011, willfully and unlawfully unit,

1 combine, conspire, confederate, agreed between and among
2 themselves, and have a tacit understanding with each other
3 or with other persons whose names are unknown to the grand
4 jurors for the purpose of committing the act of armed
5 robbery in violation of section 16-17-410 of the Code of
6 Laws of South Carolina, 1976 as amended, against the peace
7 and dignity of the state and contrary to the statute in such
8 case made and provided.

9 The second defendant in this case, Jakeivan Pulley,
10 there's two indictments in his case. The first indictment
11 is Case Number 11-GS-30-1057. It is for the offense of
12 armed robbery.

13 That indictment alleges that Jakeivan Pulley did, in
14 Laurens County, in the state aforesaid, on about the 24th
15 day of April 2011, willful and unlawfully, while armed with
16 a deadly weapon or while alleging, either by action or
17 words, he was armed while using a representation of a deadly
18 weapon, or any object which a person present during the
19 commission of the robbery reasonably believed to be a deadly
20 weapon, feloniously take from the person or the presence of
21 Anna Sebastian and a juvenile, by means of force or
22 intimidation, goods or monies described as follows: United
23 State currency, with the intent to deprive the owner
24 permanently of such property, Guatemex Store, in violation
25 of section 16-11-330 of the South Carolina Code of Laws,

1 1976 as amended, against the peace and dignity of state and
2 contrary to the statute in such case made and provided.

3 The second indictment against Mr. Pulley is for
4 criminal conspiracy. That's Case Number 11-GS-30-1058.

5 That indictment states that Jakeivan Pulley, along with
6 another person or persons, did, in Laurens County, state
7 aforesaid, on or about the 24th day of April, 2011,
8 willfully and unlawfully unite, combine, conspire,
9 confederate, agree between and among themselves and have a
10 tacit understanding with each other or with other persons
11 whose names are unknown to the grand jurors for the purpose
12 of committing the act of armed robbery in violation of
13 section 16-17-410 of the South Carolina Code of Laws, 1976
14 as amended, against the peace and dignity of the State and
15 contrary to the statute in such case made and provided.

16 Those are the indictments in this case and I will
17 remind you the fact that a defendant has been arrested,
18 charged, and indicted in a case is not evidence in the case,
19 and can not be considered by you as evidence of guilt in the
20 case. Nor does the fact that an indictment has been issued
21 create any presumption or inference of guilt. Those are
22 simply the documents, the formal written instruments, that
23 contain the charges made against the defendants. It's the
24 document that brings this case into this Court.

25 Now, in this case there are two defendants in this, and

1 each of them has been charged with armed robbery and
2 conspiracy. And in the case of Mr. Smiley, he's also been
3 charged with the possession of a weapon during the
4 commission of violent crime.

5 Now, the case of each defendant and the evidence and
6 the law concerning that defendant should be considered
7 separately and individually by you. Your verdict does not
8 have to be the same for both defendants. The fact that you
9 may find one defendant guilty or not guilty should not
10 control your verdict as to other defendants.

11 where more than one person is charged with a crime, if
12 the evidence warrants it, you, the jury, can convict one and
13 acquit the other. You can convict both or you can acquit
14 both. You must take, take each defendant individually and
15 consider the evidence as to that defendant and take my
16 instructions concerning the law individually as to each
17 defendant. You will be asked to write separate verdicts of
18 guilt or not guilt as to each individual defendant on each
19 charge before this Court.

20 There are multiple charges, and I've explained to you
21 the charges that have been lodged against each defendant,
22 and each indictment alleges a separate and distinct offense.
23 You, the jury, must consider each indictment separately on
24 the evidence and the law applicable to that indictment, and
25 not be influenced by your decision as to other indictments.

1 The defendant, defendants can be convicted or acquitted
2 on any or all of the charges that have been lodged, and,
3 again, you will be asked to write a separate verdict not
4 only as to each defendant, but as to each charge that the
5 defendant faces.

6 To all of those indictments, the defendants in this
7 case have entered the plea of not guilty. Under the law and
8 the Constitution of this state, and of the United States,
9 that plea places the burden of proof in this case solely
10 upon the State. That burden is to prove the defendant
11 guilty beyond a reasonable doubt.

12 Now, a person whose been charged with the commission of
13 a criminal crime, a criminal offense in South Carolina is
14 never required to prove himself innocent of that charge. I
15 will instruct you that it's an important rule of law that a
16 defendant, in a criminal case, no matter what the
17 seriousness of the crime might be, will always be presumed
18 to be innocent of the crime for which the indictment has
19 been issued unless guilty has been shown and proven to you,
20 the jury, by evidence that satisfies you of that guilt
21 beyond a reasonable doubt.

22 The presumption of innocence doesn't end when you begin
23 your deliberations. It accompanies the defendant throughout
24 the proceedings and into your deliberations. Some people
25 describe the presumption of innocence that every defendant

1 has somewhat like the robe that I wear into the courtroom.
2 It remains about the defendant's shoulders from the
3 beginning of the trial throughout the proceeding. It
4 accompanies the defendant into your deliberations. It
5 remains about the defendants' shoulders until such time as
6 it has been stripped from the defendant by evidence that
7 satisfies you of that defendant's guilt beyond a reasonable
8 doubt.

9 Now, the presumption of innocence is not just a legal
10 theory. It's not just a legal phrase. It's a substantial
11 right that every defendant is entitled to unless you, the
12 jury, find the defendant guilty by proof that satisfies you
13 of that guilt beyond a reasonable doubt.

14 Now, you've heard me talk already about proof beyond a
15 reasonable doubt several times in this charge. It's an
16 important rule of law that the State has the burden of
17 proving its case beyond a reasonable doubt, and you may be
18 asking yourself well, just what is meant by a reasonable
19 doubt.

20 What is a reasonable doubt?

21 I will tell you that reasonable doubt is that kind of
22 doubt that would cause a reasonable person to hesitate to
23 act, and the State has the burden of proving the defendant
24 guilty beyond a reasonable doubt.

25 Now, some of you may of served as jurors in civil

1 cases, and let me explain to you, a civil case is a case
2 where someone is seeking monetary damages from somebody,
3 money. It can be because of an injury. It can be because
4 of a breach of a contract. It can be, be because someone is
5 failed to pay a debt that they owe. That's what is meant by
6 civil case where someone is seeking a monetary judgment
7 against someone else, and in those cases the standard of
8 proof is proof by the great weight or the preponderance of
9 the evidence. That's been described as the scales of
10 justice tilting ever so slightly in favor or either the
11 plaintiff or the defendant.

12 Now, that's not the standard of proof that applies to a
13 criminal case. The standard of proof in a criminal case is
14 more powerful than that. It's proof beyond a reasonable
15 doubt. Proof beyond a reasonable doubt would be that kind
16 of proof that would leave you firmly convinced of the
17 defendant's guilt.

18 Now, I'm gonna tell you there's very few things that go
19 on in this world that can be proven beyond any doubt
20 whatsoever, and that's not the standard of proof that the
21 state is held to in this case. The state is not required to
22 present proof that overcomes every possible doubt in a case.

23 I will tell you that if, after, after considering all
24 of the evidence in the case, if you are firmly convinced of
25 the defendant's guilt beyond a reasonable doubt, you must

1 find the defendant's guilty on those issues. However, on
2 the other hand, if you think there's a reasonable
3 possibility that the defendant is not guilty of the charge
4 or issue or matter that you're deciding, then you must give
5 the defendant the benefit of that doubt, and find the
6 defendant not guilty on that matter.

7 Now, I wanted to remind you that, during the trial, you
8 and I have had different duties to perform. It's my duty,
9 as the trial judge, to rule upon certain questions or issues
10 that have come up or perhaps the admissibility of evidence,
11 and you are to consider only the evidence that was placed
12 into the record of the case. If there was any question that
13 I overruled or if there was any matter that excluded from
14 the record of the case during the trial, you should
15 disregard that information in its entirety. You are only to
16 consider the evidence that was placed into the record of the
17 case during the trial of this case.

18 I now have the additional duty to charge you concerning
19 the law in this case, and as the presiding judge, I told you
20 at the beginning of the trial, I'll tell you again, I am the
21 sole judge of the law in this case. It's your duty, as
22 jurors, under the oath that you've taken, to take the law as
23 I give it to you now, and apply it to the facts as you
24 determine them to be. If you came into the courtroom with a
25 notion as to what law is or what it ought to be, leave those

1 notions outside of the jury room before you begin your
2 deliberations.

3 Again, you must take the law as I give it to you. You
4 should then apply it to the facts as you determine them to
5 be, and, thereby, you should be in a position to render a
6 just, true, and a fair verdict in this case.

7 Now, I told you at the beginning of the trial, in every
8 case tried in this court before a jury the jury is the sole
9 and exclusive judge of the facts in this case. I will tell
10 you now that you should not take from anything that I might
11 of done in the discharge of my duties as the presiding
12 officer during this trial to indicate to you that I have a
13 preference one way or the other as to how you determine the
14 facts in this case. The law doesn't allow me an opinion
15 concerning the facts. I do not have an opinion as to how
16 you determine the facts in this case.

17 Now, there are two types of evidence that you have the
18 right to consider in this matter, and let me explain to you
19 what I mean by two types of evidence.

20 First of all, you have the right to consider what is
21 called direct evidence. Now, direct evidence is testimony
22 by a witness who claims to have direct knowledge concerning
23 the facts about which that witness testified. Someone who
24 actually saw what happened, felt it, heard it, experienced
25 it. That's testimony by witness testifying directly about

1 the fact that's sought to be proven.

2 There's another type of evidence that you, the jury,
3 have the right to consider, and that evidence is referred to
4 as circumstantial evidence. Now, circumstantial evidence is
5 proof of a chain of facts or circumstances that indicate the
6 existence of a fact. Sometimes it's described as proof of
7 collateral facts from which a main fact could be inferred.

8 Now, let me explain to you what common sense, sense
9 example of what I mean by proof of a fact by circumstantial
10 evidence. Let's say last night, before you went to bed, you
11 looked outside the window at your home. The stars were
12 shining. It was a beautiful evening outside. You went to
13 bed, you slept well all night, didn't wake up at all. The
14 next morning you got up and looked out the very same window
15 you looked out the night before, and the sun might be
16 shining, but you notice from the trees, all the trees are
17 wet and water is dripping off you trees. The grass in front
18 of your house may be wet. There could be puddles in the
19 driveway or in the road outside your home.

20 Now, you, you slept all night. You didn't see it rain.
21 You didn't hear it rain. But from the facts that you know
22 to be true you could reasonably infer that some time during
23 the night it rained. Now, that's what we mean by proof of
24 collateral contacts from which a main fact can be reasonably
25 inferred.

1 Now, the law makes no distinction between the weight or
2 the value that you, the jury, can give to the, to either
3 direct or circumstantial evidence nor is there a greater
4 degree of certainty required of circumstantial evidence than
5 that of direct evidence. You should weigh all the evidence
6 in the case. And if, after weighing all the evidence, if
7 you're not convinced of the defendant's guilt beyond a
8 reasonable doubt, you must find the defendant not guilty.
9 On the other hand, if you're firmly convinced of the
10 defendant's guilt beyond a reasonable doubt, you must find
11 the defendant guilty.

12 Now, circumstantial evidence, again, is a proof of
13 chain of, or a chain of facts that indicate the existence of
14 another fact, and, again, it immediately establishes
15 collateral facts from which a main fact can be reasonably
16 inferred.

17 Now, ladies and gentlemen, I told you at the beginning
18 of the trial, and you probably understand now, it will be
19 your responsibility, and as part of the fact finders in this
20 case, to determine the credibility of the witnesses you've
21 heard, to determine the believability of the testimony that
22 they've offered in this case. It's your duty, as a juror,
23 to analyze the evidence that you've heard and determine
24 which evidence convince you of its truth.

25 In determining believability of witnesses who've

1 testified, you can believe one witness against all the
2 others or all the others against one. You can believe all
3 of, part of, or none of what a witness has told you. You
4 have the right to weigh the testimony that you've heard.
5 You have the right to consider anything that might be in the
6 record that would assist you in determining credibility or
7 believability.

8 Again, you have the right to consider such factors as
9 whether or not a witness exhibited an interest, a bias, or
10 prejudice, or other motive. You can consider an appearance
11 and manner of testimony. Again, you have the right to
12 consider anything that's in the record of the case to
13 determine the question of credibility or believability of
14 the witnesses who've testified.

15 Now, ladies and gentlemen of the jury, I'm going to
16 instruct to you and I'm going to emphasize to you the fact
17 that the defendants in this case, the fact that they did not
18 testify is not a factor to be considered by you in anyway in
19 your deliberations and in your consideration of the question
20 of guilt or innocence in this case. It must not be
21 considered by you in any manner whatsoever.

22 A defendant has a Constitutional right to remain
23 silent. The assertion or the exercise of that right, the
24 right to remain silent, should not even be considered by you
25 in your deliberations. I repeat, under your oath, you are

1 to draw no conclusions whatsoever from the fact that the
2 defendants in the case did not testify. The fact that the
3 defendants did not testify should not even be discussed by
4 you in anyway in the jury room during your deliberations.

5 I have instructed you and the law is that the burden of
6 proof is solely upon the State. The defendant is not
7 required or any defendant is not required to prove himself
8 innocent. The burden of proof in this case is solely upon
9 the State. It remains upon the State to prove the defendant
10 guilty beyond a reasonable doubt.

11 Now, ladies and gentlemen, there was testimony in this
12 case by witnesses who were declared to be experts in this
13 case, and I explained to you at that time that it's an
14 exception to the general rule of evidence in this state that
15 allows, that allows experts to state opinions solely within
16 their area of expertise and to state the reasons for the
17 opinions that they have within their expert, area of
18 expertise. That's different from lay witnesses who are not
19 allowed to testify concerning opinions on matters.

20 I will tell you that just because a witness has been
21 declared to be an expert gives that witness' testimony no
22 greater weight than that of any other witness. You should
23 consider the testimony of an expert witness like any other
24 witness. You give it the weight that you think it deserves.
25 If you find that the expert's opinion is, is not supported

1 by sufficient facts or by sufficient reasoning or by
2 sufficient education or experience, you have the right to
3 disagree, to, to disregard that opinion in its entirety.

4 In other words, you treat the testimony of an expert
5 like any other witness. You give it the weight you think it
6 deserves. You have the right to, to totally disregard the
7 testimony of an expert if you find that it should not be
8 followed even though the expert's opinion may not be
9 contradicted in anyway. Again, you're the sole judges of
10 the facts and you give it the weight you think it ought to,
11 ought to have.

12 Now, an issue in this case is the identification of the
13 defendants as the persons who committed the crimes that are
14 charged. I will tell you the State has the burden of
15 proving identity beyond a reasonable doubt. You must be
16 satisfied, beyond a reasonable doubt, of the accuracy of the
17 identification of the defendant before you can convict the
18 defendant of the crimes that are charged.

19 Identification testimony is an expression or a belief
20 or an impression by a witness. You must determine the
21 accuracy of the identification of the defendant as the
22 person who committed the crime. You must consider the
23 believability of each identification witness in the same way
24 as any other witness.

25 You may consider whether the witness had adequate

1 opportunities to observe the offender at the time of the
2 offense. This can be affected by such things as the length
3 of time available or how far or how close the witness was
4 from the occurrence, the lighting conditions, whether the
5 witness had a chance to see or know the person before the
6 occurrence.

7 Once again, I instruct you the burden of proof on the
8 State extends to every element of the crime charged. That
9 includes the burden of proving, beyond a reasonable doubt,
10 the identity of the defendant as the person who committed
11 the crime that was charged. I will tell you, again, if,
12 after examining all of the evidence, if you have a
13 reasonable doubt as to the accuracy of the identification,
14 you must find the defendant not guilty.

15 Now, I will tell you it is the law in this state that
16 if a crime is committed by two or more people acting
17 together in committing the crime, the act of one is
18 considered to be the act of all. A person who joins with
19 another to commit an unlawful act is criminally responsible
20 for everything done by the other person which happens as a
21 probable or natural consequence of the acts done in carrying
22 out the common plan and purpose.

23 For example, two people can be guilty of killing
24 another person when only one person of the two had a gun and
25 there was only one bullet that killed the person and only

1 one of the two people fired the shot that caused the death
2 if those two or two or more people are acting together
3 assisting each other in the commission of the offense. In
4 that case the act of one is the act of all or sometimes it's
5 been said, under the law, the hand of one become the hand of
6 all.

7 Now, prior knowledge that a crime is going to be
8 committed without anything more than that is not sufficient
9 to make someone guilty of that crime. Mere knowledge that
10 another one is going, another person is going to commit a
11 crime, even if the defendant was present when the crime is
12 committed, is not sufficient to convict the defendant as a
13 principal. Guilt as a principal is shown by actual or
14 constructive presence, presence at the scene of the crime as
15 a result of some prior arrangement between the actors.

16 Therefore, a finding of a prior arrangement or a common
17 plan or scheme is necessary in order for someone to be found
18 guilty as a principal. The State must prove, beyond a
19 reasonable doubt, by competent evidence, all of the
20 theories, the theory of the hand of one is the hand of all.
21 A principal in a crime is one who either actually commits
22 the crime or who is present aiding, abetting, assisting in
23 the commission of the crime.

24 When a person does an act in the presence of and with
25 the assistance of another, the act is done by both. Where

1 two or more people are acting with a common plan or intent
2 and they are present at the commission of the crime, it does
3 not matter who actually commits the crime. All are guilty.
4 The hand of one is the hand of all.

5 Presence at the commission of a crime means to be
6 sufficiently near to aid, abet, and assist in the commission
7 of the crime. I will tell you merely being present where a
8 crime is committed is not sufficient to commit, convict,
9 convict one as a principal on the theory of aiding and
10 abetting.

11 Intent is a necessary element. There must of been a
12 common design or intent to commit the crime and the crime
13 must have been committed pursuant thereto with the person
14 aiding, abetting, by some act or overt act.

15 Intent means intending the result which occurs. Not an
16 accident or involuntary action. Intent may be shown by acts
17 and conduct of the defendant and other circumstances from
18 which you, the jury, might reasonably infer intent. Again,
19 the State has the burden of proving those elements beyond a
20 reasonable doubt.

21 Now, I'm going to discuss the law on the charges that
22 are before this Court. In this case, both defendants have
23 been charged with conspiracy, and the defendants having been
24 charged with conspiracy, the State must prove, beyond a
25 reasonable doubt, that the defendants combined with one or

1 more persons for the purpose of committing an unlawful act
2 or committing an unlawful act, a lawful act by unlawful
3 means.

4 There has to be a mutual understanding, an agreement, a
5 common plan. Mere passive knowledge or consent to criminal
6 conduct by another is not enough to make them a conspirator,
7 conspirator. There must be guilty knowledge and also
8 participation.

9 Similarly, the mere fact that a defendant may of
10 associated with a person or met another person and discussed
11 common aims or interest does not establish proof of the
12 existence of a conspiracy or that the defendant was involved
13 in a conspiracy. On the other hand, it's not necessary that
14 the agreement be a formal one, that it be in writing, that
15 the persons hold a meeting and expressly state the terms and
16 common plan or that the agreement be stated in words between
17 them.

18 The agreement of a criminal conspiracy may come into
19 being through an implied or mutual understanding. The
20 willful, intentional, and knowing adoption by two or more
21 persons of a common plan is sufficient.

22 No overt acts need to be shown to establish a
23 conspiracy. A conspiracy may be shown by circumstantial
24 evidence and the conduct of the parties. In order to
25 convict the defendant of conspiracy, the State must prove,

1 beyond a reasonable doubt, not only that the defendant knew
2 of the unlawful conduct, but the defendant agreed to combine
3 with the other person for the purpose of accomplishing the
4 unlawful conduct.

5 Now, that's the law concerning conspiracy.

6 Both defendants are charged with the offense of armed
7 robbery. In order to prove this offense, the State must
8 prove, beyond a reasonable doubt, that the defendants took
9 personal property and personal property is property that's
10 not attached to real estate. Anything that's movable, can
11 be moved around is personal property.

12 So, the State must prove that the defendant took
13 personal property from the person or presence of another
14 person. The property is in the presence of a person if it's
15 within their reach, inspection, observation or control so
16 that the person could, if not overcome by violence or
17 prevented by fear, keep possession of that property. The
18 State must prove, beyond a reasonable doubt, that the
19 defendant carried the property away intending to permanently
20 deprive the owner of the property, and to keep the property
21 for the defendant's own use. The slightest removal of
22 property or the complete possession of the property, if even
23 for an instance by the defendant, is sufficient to show a
24 taking and a carrying away of the property. Taking and
25 carrying away of the property must have been done with

1 violence or by putting the owner of the property in fear of
2 violence.

3 Finally, the State must prove, beyond a reasonable
4 doubt, that the defendant was armed with a deadly weapon
5 during the robbery.

6 Now, a deadly weapon is any article, instrument, or
7 substance which is likely to cause death or great bodily
8 harm, and whether an instrument is been used as a deadly
9 weapon depends upon the facts or circumstances of each case.

10 I will tell you that there are examples in South
11 Carolina of instruments which may be considered by a jury to
12 be a deadly weapon, and they include a pistol, a shotgun, a
13 rifle, a dirk, a dagger, a knife, a slingshot, metal
14 knuckles, razors, gasoline fire bombs, Molotov cocktails. A
15 gun can be a deadly weapon even if it's not operating and,
16 and -- let me move on.

17 Now, one of the defendants, Mr. Smiley, is charged with
18 one additional crime, and that is possession of a weapon
19 during the commission of or an attempt to commit a violent
20 crime, and in that case the State must prove, beyond a
21 reasonable doubt, that the defendant was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime.

24 A firearm means any machine gun, automatic rifle,
25 revolver, pistol, or any weapon which will and it is

1 designed to or may be readily converted to expel a
2 projectile. In order to find the defendant guilty of
3 possession of a weapon during the commission of a violent
4 crime, you must first find the defendant guilty of
5 committing the violent crime, and in this case the alleged
6 violent crime is armed robbery.

7 I will tell you that in Code Section 16-1-6 of the
8 South Carolina Code of Laws, armed robbery is defined as a
9 violent crime under the law of this state.

10 Mr. Larry Sherfield, will you raise your hand?

11 (Juror complies.)

12 THE COURT: Just raise your hand, sir. That's fine.

13 You're going to be the foreperson of my jury. You can
14 put your hand down.

15 What that means is that, during the deliberations, you
16 will be responsible to preside over the deliberations of the
17 jury. If there's any questions that the jury might have of
18 the Court during deliberations, you'll write that on a piece
19 of paper and submit it to the Court through the bailiff who
20 will be seated outside of the jury room door.

21 Also, I will be giving you a verdict form in a few
22 minutes, and you will have that in your possession, and you
23 will be responsible for filling out that form once a verdict
24 has been reached.

25 Now, I tell you that I can't answer each and every

1 question that you may have during deliberations. I'm not
2 allowed to enter into your decisions concerning the facts in
3 this case.

4 I will, I will, however, tell you, Mr. Foreman, don't
5 edit any question the jury might have. Simply get the jury
6 to agree on the form of the question, write it down, I'll
7 decide what the appropriate answer will be.

8 Once the verdict's been reached, again, you'll inform
9 the bailiff. You'll come back into the courtroom for us to
10 reach, to, to receive the verdict.

11 I told you at the beginning of the trial your verdict
12 must be unanimous. Each and every one of you must agree
13 upon the verdict before it becomes the verdict of the jury.
14 That's on each question that I ask you. So, a verdict can't
15 be reached on any question that I ask you on the verdict
16 form until all of, all 12 of you agree on the verdict. Then
17 it becomes the verdict of the jury and should be recorded by
18 the, by the foreperson and be submitted to the Court once
19 all questions have been answered.

20 Again, none of you has any greater say than the others
21 in the outcome of the case. The verdict must be unanimous
22 before the jury has reached a verdict.

23 Now, I've gone over a lot of things with you. I'm
24 going to do a couple of things right now. I'm going to send
25 you back to the jury room. I'm gonna go over my charge with

1 the lawyers to see if I've misspoken about anything or if I
2 need to add anything to my charge concerning the law. We're
3 going to gather the evidence up and it will be given to you
4 to take into the jury room with you. And, so, we want to be
5 sure that only the proper evidence goes back there for your
6 consideration.

7 So, we've got a couple of things to take care of before
8 I turn the case over to you.

9 Mr. Foreman, I'm going to ask you not to let the jury
10 begin any discussions until I've brought you back to the
11 courtroom and given you final instructions.

12 At this time, retire to the jury room.

13 Thank you very much.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Any objections to the charge from the
17 State?

18 SOLICITOR MOWRY: No objections, no additions, no
19 deletions, Your Honor.

20 THE COURT: From the defense, Mr. Mitchell?

21 MR. MITCHELL: No objections, Your Honor.

22 THE COURT: Ms. Moore.

23 MS. MOORE: No, Your Honor.

24 THE COURT: I'm going to ask the attorneys to come
25 forward and let's segregate the evidence to be taken back to

1 the jury room and let's be sure we have an agreement as to
2 what the evidence ought to be.

3 I have verdict forms here. Once you finish that, I'll
4 let you take a look at those. See if there's any objections
5 to the verdict form.

6 (Pause.)

7 THE COURT: All right. Do we have any agreement as to
8 the exhibits from the State's part?

9 SOLICITOR MOWRY: Yes, sir.

10 MR. MITCHELL: Yes, sir.

11 THE COURT: Mr. -- you got an agreement too, ma'am?

12 MS. MOORE: I do, Your Honor.

13 THE COURT: All right. Let's bring the jury back.

14 wait a second. wait a second, Mr. Bailiff. We got to
15 get the defendants back in the courtroom. Just wait a
16 second.

17 (WHEREUPON, the defendants come into the courtroom at
18 this time.)

19 THE COURT: All right. Mr. Bailiff, let's bring the
20 jury in.

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

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, and Mr. Foreman, I am going to pass over some verdict
25 forms. Let me pass this one first.

1 Mr. Bailiff, if you'll hand this one to Mr. Sherfield
2 for me.

3 (Bailiff complies.)

4 THE COURT: Now, Mr. Sherfield, what I've handed to you
5 is the verdict form that applies to Mr. Smiley's cases, and
6 let me go over that with you. At the top you'll see it
7 states it's in this county and this state. Over to the
8 right it states the Court that we're in, the Court of
9 General Sessions for the Eighth Judicial Circuit. Below
10 that is the caption stating it's the State of South Carolina
11 versus Mr. Smiley. Over to the right is a verdict form for
12 three different indictments, and I'm not going to go over
13 the numbers with you, but there's three numbers.

14 The first question that it asks you is as to the
15 offense of, well, there's two, two charges.

16 First of all, armed robbery and criminal conspiracy.
17 Below those first two charges, those first two questions I
18 have the choices of not guilty or guilty.

19 Now, let me tell the jury, don't take from the fact
20 that I put those choice in any order on the form to indicate
21 that I have a preference about the verdict. I can assure
22 you I've been doing this about eight years now, and that's
23 the way every verdict form I've prepared is. It's in that
24 same order. That's the way it is on my computer. So, it
25 doesn't show a preference for either guilty or not guilty or

1 not guilty or guilty by the order I've put them in.

2 When a verdict's reached on those two issues, on the
3 question of the armed robbery indictment, and on the
4 criminal conspiracy indictment, you'll put a check beside
5 the appropriate verdict, either not guilty or guilty.

6 Now, in order to reach that third question at the
7 bottom of the page, that has to do with the possession of a
8 weapon during the commission of a violent crime. You would
9 not ask, answer that question if the defendant was found not
10 guilty of armed robbery because there would not have been a
11 violent crime committed.

12 So, if you have found the defendant guilty of armed
13 robbery, then you must answer the indictment as to whether
14 or not he is guilty of possession of a weapon during the
15 commission of a violent crime, and you'll check again either
16 guilty or not guilty as to that charge as it applies to
17 Mr. Smiley.

18 Now, the next verdict form I'll pass to you, Mr.
19 Bailiff, if you'll pass this one over, is the form that's in
20 Mr. Pulley case. Now, Mr. Pulley is charged under two
21 indictments. One if criminal conspiracy, the conspiracy
22 charge. The other is the charge of armed robbery.

23 Again, the choices on those two charges are either not
24 guilty or guilty. Once a verdict has been reached on the
25 questions, you'll put a check or an X in the appropriate

1 line. Once you've answered all of the questions that are
2 required to be answered, you would sign the forms and date
3 them, knock on the door, let the bailiff know you've
4 completed your work. We'll bring you back into the jury
5 room to accept the verdicts.

6 Now, ladies and gentlemen, we're going to send the
7 evidence back to you, and you have that available to you to
8 observe during your, during your deliberations. I don't
9 know whether we have the ability for them to play the video
10 back there.

11 Is that available in the jury room?

12 SOLICITOR MOWRY: We can make that available, yes, sir.

13 THE COURT: If you would like to have that video played
14 during your deliberations, let us know. We'll make
15 arrangements to get that to you or bring you either back
16 into the courtroom and allow you to observe it in the
17 courtroom. We'll make that available to you if you're like
18 to review that video. It's in evidence. You have a right
19 to view it if you feel that's necessary in reaching your
20 verdict.

21 Now, I know it's a little late in the evening. We're
22 gonna put you into the jury room and let you begin your
23 deliberations. If you feel that the deliberation are going
24 to go on to such, to such a length of time that you might
25 need some supper brought to you, let us know. We'll have

1 that delivered to you in the jury room. If we go past 5:30
2 or so I'll send the clerk in. We'll get numbers for your
3 family if you want someone called and told where you are.
4 The clerk will call them and let them know that you're in
5 the jury room doing your responsibility in deliberations in
6 this case. So, we'll send someone in.

7 But now, when someone's in the room either taking your
8 dinner order or getting those phone numbers if it becomes
9 necessary to do that, don't be deliberating at that point in
10 time. Suspend your deliberations. Don't discuss the case
11 until that person has completed their work and left the jury
12 room. When that person is left, then you can resume your
13 deliberations at that time.

14 Now, at this time I'm going to ask the jury to retire.

15 Now, sir, you are the alternate. I'm going to ask that
16 you remain seated. The 12 members of the jury are now
17 instructed to retire to the jury room and begin your
18 deliberations.

19 Thank you very much.

20 BAILIFF: Your Honor, I think one of them might of
21 asked for a smoke break before we start. I don't know.

22 THE COURT: Well, if there's any of you that need to
23 smoke, don't begin discussion until that person is stepped
24 out with the bailiff, had the smoke, and comes back into the
25 room. In other words, all 12 have to be present for

1 deliberations to go forward.

2 So, if that person stepped out of the room, suspend
3 your deliberations until they get back.

4 You may retire with the jury panel.

5 Thank you, sir.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury, and the alternate juror was dismissed
8 at this time.)

9 THE COURT: Now, any objections to my final
10 instructions by the State?

11 SOLICITOR MOWRY: No, sir, Your Honor.

12 THE COURT: Any instructions, objections by the
13 defense?

14 MR. MITCHELL: No, Your Honor.

15 MS. MOORE: No, Your Honor.

16 THE COURT: All right. Court will be in recess until
17 such time as a verdict has been reached.

18 Defendants remain in custody.

19 Thank you very much.

20 SOLICITOR MOWRY: Thank you, Your Honor.

21 (WHEREUPON, the jury began deliberations at 4:21PM and
22 returned with a verdict at 4:48PM.)

23 THE COURT: All right. I'm informed that a verdict has
24 been reached.

25 Is the State ready to receive the verdict?

1 SOLICITOR MOWRY: Yes, sir Your Honor.
2 THE COURT: Is the defense ready to receive the
3 verdict, Mr. Mitchell?
4 MR. MITCHELL: Yes, sir, Your Honor.
5 THE COURT: Ms. Moore.
6 MS. MOORE: Your Honor, there are a few family members
7 we were waiting on. They are on their way.
8 THE COURT: Well, how long do you think it will be?
9 MS. MOORE: I would ask for ten minutes.
10 THE COURT: I'm gonna go ahead at this time and proceed
11 with receiving the verdicts.
12 MS. MOORE: Yes, sir.
13 THE COURT: Bring the jury in.
14 I will caution anyone, if you can not control your
15 emotions when the verdict is reached, you should leave the
16 courtroom at this time.
17 (WHEREUPON, the following takes place within the
18 presence of the jury.)
19 THE COURT: Mr. Foreman, I have been informed by the
20 bailiff that you have reached verdicts in this case.
21 Is that true?
22 FOREMAN: Yes, sir.
23 THE COURT: Pass the form to the bailiff please.
24 (Foreman complies.)
25 THE COURT: Thank you, sir.

1 Madam Clerk, you may publish the verdicts.

2 CLERK: As to Indictment Number 2011-GS-30-1057, for
3 the offense of armed robbery against the defendant Jakeivan
4 Pulley, we, the jury, unanimously find the defendant,
5 Jakeivan Pulley, guilty.

6 As to the Indictment Number 2011-GS-30-1058, we, the
7 jury, as to the offense of criminal conspiracy, unanimously
8 find the defendant, Jakeivan Pulley, guilty.

9 As to the Defendant Davoris Smiley, as to Indictment
10 Number 2011-GS-30-1064, we, the jury, as to the offense of
11 criminal conspiracy, unanimously find the defendant, Davoris
12 Smiley, guilty.

13 As to Indictment Number 2011-GS-30-1062, for the
14 offense of armed robbery, we, the jury, unanimously find the
15 defendant, Davoris Smiley, guilty.

16 As to Indictment Number 2011-GS-30-1063, for the
17 offense of possession of a weapon during the commission of a
18 violent crime, we, the jury, unanimously find the defendant,
19 Davoris Smiley, guilty.

20 Ladies and gentlemen of the jury, if this is your
21 unanimous verdict, let it be shown by raising your
22 right-hand.

23 (WHEREUPON, all jurors raise their hands at this time.)

24 THE COURT: Thank you.

25 Anything further for the jury before I release them,

1 from the State?

2 SOLICITOR MOWRY: No, sir, Your Honor.

3 THE COURT: From the defense?

4 MR. MITCHELL: No, Your Honor.

5 MS. MOORE: No, Your Honor.

6 (WHEREUPON, the jury panel was dismissed at this time.)

7 THE COURT: All right. State prepared for sentencing
8 at this time?

9 SOLICITOR MOWRY: Yes, sir. Your Honor, I apologize.
10 I'm back in the days of rubber stamps for this kind of
11 stuff.

12 Thank you, sir.

13 THE COURT: I'm gonna ask that all of the papers get
14 signed. If you would finish with that for the defense, and
15 please let me know.

16 Ma'am, any further outburst will be treated as contempt
17 of court and could be sentenced to up to a year in prison by
18 this Court. If you can't control your emotions you may step
19 outside.

20 Thank you, ma'am.

21 Mr. Mitchell, have you signed the form?

22 MR. MITCHELL: Yes, Your Honor.

23 THE COURT: Pass those, those back up please.

24 Pass them up, Ms. Moore.

25 All right. I'll hear from counsel table. You can just

1 stay back there.

2 All right. Mr. Smiley, you have been found guilty by a
3 jury of your peers of armed robbery, possession of a weapon
4 during a violent crime, and criminal conspiracy.

5 Mr. Pulley, you have been found guilty by a jury of
6 your peers for armed robbery and criminal conspiracy.

7 At this point in time I'll hear from counsel
8 considering sentencing in this matter.

9 I'll start with Mr. Smiley.

10 Mr. Mitchell, this is your opportunity to speak in
11 mitigation.

12 MR. MITCHELL: Yes, Your Honor.

13 The first thing I would like to say is that the, Mr.
14 Smiley here is very young. He's -- he was 18 when this
15 happened. He just turned 19 and that he has his whole life
16 ahead of him.

17 I would just ask that you would not give him the
18 maximum sentence. The Court -- the, the prosecution, when
19 we were talking about plea, pleading out this case was
20 recommending ten years. I know that that offer came and
21 went. But at the same time, my client was just really
22 wanting to -- he didn't know that, how the process worked
23 and he wanted to have his chance in a trial, and I just, I
24 just ask you won't use that against him, and he's remorseful
25 about this situation.

1 And I just ask that you give him a chance that we would
2 teach him the, the society and the, the laws would teach a
3 lesson for the sentence, but that it wouldn't, it wouldn't
4 take away his whole life.

5 THE COURT: Mr. Smiley, this is your opportunity to
6 address the Court concerning this matter.

7 Is there anything that you'd like to say to me?

8 You can stand while you're speaking. Thank you.

9 DEFENDANT: I just want to say I apologize. I ain't
10 trying to be in prison for the rest of my life. I'm trying
11 to, you know what I'm saying, at least be able to learn from
12 it and do something with my life. That's all.

13 THE COURT: Thank you, sir.

14 Is, is there any member of his family who wishes to
15 speak on his behalf?

16 I don't know if there is anyone who would like to do
17 that.

18 MR. MITCHELL: I think they, they were just a little
19 distraught and they walked out, Your Honor.

20 THE COURT: I understand.

21 Ms. Moore, this is your opportunity to speak on behalf
22 of Mr. Pulley.

23 MS. MOORE: Thank you, Your Honor.

24 As Mr. Mitchell said, my client was also 18 at the time
25 of this crime, and, Your Honor, I, I, would ask the Court to

1 show mercy to Mr., Mr. Pulley, Your Honor. Again, he was
2 very young.

3 Mr. Mitchell properly stated that the offer was, in
4 fact, ten years. Again, that offer came and went. Your
5 Honor, when you're so young you don't appreciate how young
6 you really are.

7 Your Honor, I would just ask this Court to, to impose a
8 sentence that, that does what a sentence is suppose to do.
9 You know certainly there is that aspect of retribution. But
10 also, Your Honor, for an 18 year old, for the purpose of
11 rehabilitation, and give him a light at the end of the
12 tunnel so that there is, in fact, the hope for
13 rehabilitation.

14 Your Honor, I, being a defense attorney, I get very
15 frustrated because I feel like, in, in this state and
16 certainly states across this country, we spend more on
17 incarceration than we do education, and the question is what
18 are we getting for our money.

19 Your Honor, I'm certainly mindful that, that this Court
20 must impose a suitable sentence for what happened in this
21 matter, and, Your Honor, I would just ask for leniency on
22 behalf of Mr. Pulley.

23 THE COURT: Mr. Pulley, this is your opportunity to
24 speak to this Court.

25 Is there anything you'd like to tell me?

1 DEFENDANT: Yes, sir, I know what I did is wrong, and I
2 apologize and I ask for not only your forgiveness, but the
3 victims, and I mean yeah, I'm young. I got my whole life
4 ahead of me. I got a kid. But I mean I just ask you, just
5 you know what I'm saying, take thought of the matter, you
6 know what I'm saying.

7 I mean I understand what I did, a wrongful thing and
8 really wasn't thinking at the time I was doing it, and
9 wasn't thinking about nothing else but myself, and the last
10 couple months that I've been locked up I had nothing to do
11 but think. And during that duration of time, whatever time
12 you do give me, and I will continue to think.

13 I ask you and this little bit of time I got in touch
14 with myself and with God, and I mean, like I say, I ask for
15 forgiveness. God already done forgave me and he put me at
16 peace with myself on my heart, my soul.

17 So, thank y'all.

18 THE COURT: Thank you.

19 Anyone wish to speak on behalf of Mr. Pulley?

20 (WHEREUPON, a person stands in the audience.)

21 THE COURT: Sir, your name is?

22 MR. PULLEY: Timothy Pulley.

23 THE COURT: Bullock?

24 MR. PULLEY: Pulley.

25 THE COURT: Thank you.

1 MR. PULLEY: Yes, sir, I'm his father.

2 THE COURT: Yes, sir, I'll be happy to hear from you.

3 MR. PULLEY: First of all, I ask for leniency for him.
4 I like to apologize to the Court for this matter of taking
5 time. But I like to apologize to the victim and the family
6 of whoever is concerned. I just ask for your leniency for
7 him and hope he get himself together and everything else.
8 So, that's all I have.

9 THE COURT: Thank you, sir.

10 I'll hear from the State.

11 SOLICITOR MOWRY: Your Honor, I don't have anything
12 much more to add. I would just simply like to ask that the
13 criminal histories be made part of the record, and I would
14 ask you to hear from Mr. Wilshire, our victim advocate, who
15 will speak on behalf of the victims in this case.

16 THE COURT: Mr. Wilshire.

17 MR. WILSHIRE: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. WILSHIRE: The victims would defer to your wisdom
20 and experience in sentencing, Your Honor.

21 THE COURT: Thank you.

22 Is there currently a charge pending against Mr. Smiley?

23 SOLICITOR MOWRY: Yes, sir, evidently so. For
24 concealed weapon by inmate at the detention center in
25 January, in January.

1 THE COURT: I appreciate and have considered the age of
2 the, of the defendants. I have also considered the criminal
3 records that have been submitted to me for both defendants.

4 The crime that was involved, was involved in this case
5 is a crime that is one classified by the laws of this state
6 as a violent crime. It is a most serious offense. That of
7 armed robbery. It is one which places the lives of innocent
8 people at risk, and I've considered all of those factors as
9 well.

10 For both defendants, in the case of criminal
11 conspiracy, the sentence is five years to run concurrent
12 with other sentences.

13 In the case of Mr. Smiley, the possession of a weapon
14 during the commission of a violent crime is also five years
15 run currently.

16 I have given both defendants credit as will be
17 determined by the Department of Corrections for time
18 previously served on all sentences.

19 In the case of the armed robbery, for Mr. Smiley, the
20 sentence is 15 years.

21 For the -- in the case of Mr. Pulley, the sentence is
22 12 years.

23 Good luck to you.

24 Court's adjourned.

25 SOLICITOR MOWRY: Thank you, Your Honor.

1 MR. MITCHELL: Thank you, Your Honor.

2 (WHEREUPON, the criminal records for the defendants
3 were marked as Court's Exhibit Nos. 2 and 3 and received
4 into evidence at this time.)

5

6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the
Seventh Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Laurens County, South Carolina, on the 28th and 29th day of
February, and the 1st day of March, 2012.

I do further certify that I am neither of kin, counsel
nor interest to any party hereto.

June 26th, 2012

Pamela E. Green

PAMELA E. GREEN, Court Reporter

8
RJ

FORM 5

STATE OF SOUTH CAROLINA LYNN W. LANCASTER
IN THE COURT OF COMMON PLEAS

County of Laurens 2012 SEP 24 A 9 46

Davoris Smiley, # 2499165
Full name and prison number (if any) of Applicant

v.

LAURENS COUNTY
CLERK OF COURT

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2012 -CP30-74

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland B+E Center A2-50B
2. Name and location of Court which imposed sentence 100 Hillcrest Square, Judicial Center, Laurens S.C. 29360
3. Name(s) of co-defendant(s) (if any) Lakosion Robinson, Takeivan Ardevious Pulley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Don't know
 - (b) _____

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Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) my trial started Feb. 28, 2012 and ended March 1, 2012
- (b) 15 years - Violent night - serious
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- * I don't know if my attorney filed for a direct appeal or not
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I was forced through trial
- (b) I was ill-advised by counsel
- (c) I believe I received incompetent counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was offered a plea and then the plea was retracted
- (b) Counsel advised me not to take a plea and I had a good chance of beating trial
- (c) Counsel did not represent me to the fullest of his ability during trial
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) I've been incarcerated for 6 months since my sentencing
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? 2 - I don't know if my attorney filed for a direct appeal or not
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Shad Mitchell, Esquire P.O. Box 402
Lawrence, MS 39360

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Bond arraignment, Initial Appearance

ii. Trial

iii. Imposition of sentencing

19. State clearly the relief you seek in filing this application:

I would like to get back in front of a General Sessions judge, and I would also like to seek reconsideration for the time I was sentenced to.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

I, Daworis Smiley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daworis Smiley

SWORN to and subscribed before me this 17th
day of September, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
October 8, 2014

Revised 3/2003

LYNN W. LANCASTER

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2012 SEP 24 A 9:46

I, Davoris Smiley, hereby apply to leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

LAURENS COUNTY
CLERK OF COURT

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Davoris Smiley

Applicant

SWORN or affirmed to and subscribed before me this
17th day of September, 2012.

[Signature]
Notary Public

My Commission Expires: _____

My Commission Expires
October 8, 2014

Revised 3/2003

WITNESSES

Lenora Riggott
Laurens Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011
Indictment # 11GS30- / 062

WARRANT NUMBER

1284956

THE STATE

vs.
Dorveta Tanyata Smiley

Frank Bill

Justin Chalken
Foreman of the Grand Jury

Date: 7-15-11

VERDICT

Guilty
Joselyn Ransom
Foreman 3/1/12

INDICTMENT FOR

ARMED ROBBERY
16-11-0330

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Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

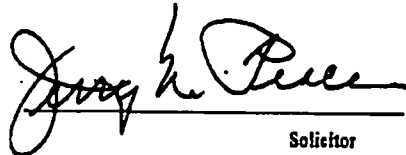
INDICTMENT FOR

**ARMED ROBBERY
16-11-0330**

- At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

That Davoris Tanyata Smiley, did in Laurens County, state aforesaid, on or about the 24th day of April, 2011 willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or 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 Ana Sebastian, and a juvenile, DOB 7/6/95 by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner permanently of such property, Guatamax Store in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Laurens

VS.

Davoris Tanyata Smiley

AKA:

Race: BLK Sex: M Age: 19

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Laurens, SC [REDACTED]

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10-30 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS30-1062

A/W#: 1284956

Date of Offense: 4/24/2011

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lowd Act)

☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mowry, Warren

4124 SC Bar#

Defendant

Attorney for Defendant

74730 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 36-5-2993 (DUI Assessment)	\$12	\$
§ 36-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 36-5-2942(J) (Vehicle Assessment)	\$40/cv	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 5.90
TOTAL		\$ 156.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 3/1/12

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Leson Riggson
Laurens Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011
Indictment # 11GS30-1063

WARRANT NUMBER

1284957

June Bill

Paul D. Parker
Foreman of the Grand Jury

Date: 7-15-11

THE STATE

vs.
Daveris Tomyana Smiley

VERDICT

Guilty
James P. Searcy
Foreman 2/1/12

INDICTMENT FOR
POSSESSION OF A WEAPON DURING A
VIOLENT CRIME
16-23-0490

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

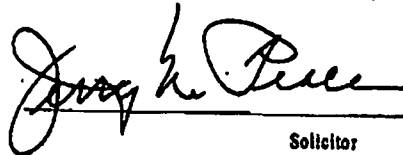
INDICTMENT FOR

**POSSESSION OF A WEAPON DURING A
VIOLENT CRIME
16-23-0490**

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

That Davoris Tanyata Smiley, did in Laurens County, state aforesaid, on or about the 24th day of April, 2011 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Armed Robbery, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Laurens

VS.

Davoris Tanyala Smiley

AKA:

Race: BLK

Sex: M

Age: 19

DOB:

SS#:

Address:

City, State, Zip: Laurens, SC

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Poss. weapon during violent crime (0-5 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS30-1063

A/W#: 1284957

Date of Offense: 4/24/2011

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code #

0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC
whenever 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mowry, Warren

4/24

Davoris Smiley

Defendant

Chad A. Hatfield

Attorney for Defendant

74730

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/1/12☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$ 100 \$ 100.00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$ 100 \$

§ 14-1-211(A)(2) (DUI Surcharge)

\$ 100 \$

§ 56-3-2995 (DUI Assessment)

\$ 12 \$

§ 56-1-286 (DUI Breath Test)

\$ 25 \$

Proviso 47.9 (Public Def/Prob)

\$ 300 \$

§ 14-1-212 (Law Enforce. Funding)

\$ 25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge)

\$ 150 \$

§ 30-21-114(BUI Breath Test Fee)

\$ 30 \$

§ 56-3-2942(I) (Vehicle Assessment)

\$ 40/co \$

Proviso 90.5 (SCCA Surecharge)

\$ 5 \$ 5.00

3% to County (if paid in installments)

\$ 5.40 \$

TOTAL

\$ 103.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Leann Riggott
Laurens Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011

Indictment # 11GS30-1064

WARRANT NUMBER

1284960

THE STATE

vs.
Davoris Tanyata Smiley

June Ball

Justitia

Forewoman of the Grand Jury

Date: 7-15-11

VERDICT

Guilty

James R. Smith
Foreman

**INDICTMENT FOR
CRIMINAL CONSPIRACY
16-17-0410**

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

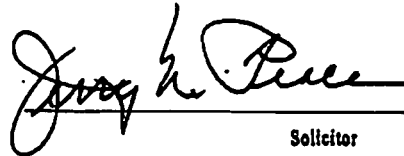
INDICTMENT FOR

**CRIMINAL CONSPIRACY
16-17-0410**

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

That Davoris Tanyata Smiley, along with another person or persons did in Laurens County, state aforesaid, on or about the 24th day of April, 2011 willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Davoris Tanysta Smiley

AKA:

Race: BLK Sex: M Age: 19DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Laurens, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Conspiracy (0-5 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS30-1064A/W#: 1284960Date of Offense: 4/24/2011S.C. Code §: 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0410of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Warren Mowry 4124 Davoris Smiley Chad A. [REDACTED] 74730
Mowry, Warren SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/1/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. or Job Corp.

Recipient:

May serve W/E beginning

*Fine:

Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2993 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$300

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$30

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.3 (SCCA Surcharge)

\$3

\$

3% to County (If paid in installments)

\$

TOTAL

\$

Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

IN THE COURT OF GENERAL SESSIONS

EIGHTH JUDICIAL CIRCUIT

VERDICT FORM

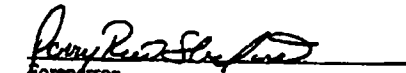
Case Numbers: 2011-GS-30-1062

2011-GS-30-1063

2011-GS-30-1064

Defendant.

I certify this decision was the unanimous decision of the Jury.


Foreperson

March 1, 2012

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 11/20/12
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 349965 LOC: LEE
 SMILEY, DAVORIS TANYATA SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N
 015-00-000 CURRENT SENT START DATE: 04/25/2011
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 12/18/2024 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000054 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 NO HIGH SCHOOL DIPLOMA/GED
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 000565 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-@ 1 Sess-1 167.7.50.33 SCDC1677 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 11/20/12

C0511

SMILEY, DAVORIS TANYATA FBI # 623159ED4 SID# SC01899707 SCDC # 349965

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 15 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: DAR1154B

RACE.....: B SEX....: M

PROJ MAXOUT DATE: 12/18/2024

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 20 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
SMUG/POSS CONTRABAND PRI	5	0	0	LAURENS	1/16/2012	N	3
CRIMINAL CONSPIRACY	5	0	0	LAURENS	4/25/2011	N	2
ARMED ROBBERY	15	0	0	LAURENS	4/25/2011	V	4
FIREARMS PROVISION	5	0	0	LAURENS	4/25/2011	N	3

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

11/14/12	LEE	INCARCERATED	ADMINISTRATIVE
3/ 7/12	KIRKLAND	INCARCERATED	R&E PROCESSING
3/ 7/12	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL

*NO WORK ASSIGNMENTS *

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Davoris Smiley #349965

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-30-0741

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Joshua S. Nasrollahi, Bar No.
Address:
PO Box 51523 Greenwood SC 29649
phone: fax:
e-mail: other:

Defendant's Attorney:
J. Rutledge Johnson, Bar No. 78871
Address:
PO Box 11549 Columbia, SC 29211-1549
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 8, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the
attached order.
☐ Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

Attached herewith and incorporated herein are the records of the Laurens County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I was forced through trial"
 - a. "I was offered a plea and then the plea was redacted"
2. "I was ill-advised by counsel"
 - a. "Counsel advised me not to take a plea and I had a good chance of beating trial"
3. "I believe I received incompetent counsel"
 - a. "Counsel did not represent me to the fullest of his ability during trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent interprets the Applicant claims to be claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

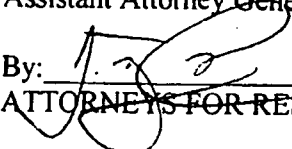
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

January 8, 2013.

1 Joshua S. Nasrollahi (SCBN 80227)
2 The Law Office of Joshua S. Nasrollahi
3 209 Waller Avenue, Greenwood, SC 29646
4 (864) 538-6000
5 (864) 538-6014 (fax)
6 josh@jsnasrollahi.com

7 **IN THE COURT OF COMMON PLEAS**
8 **COUNTY OF LAURENS**
9 **EIGHTH JUDICIAL CIRCUIT**

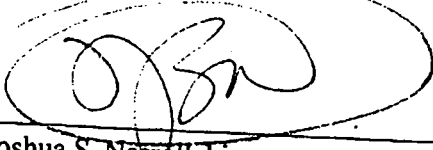
10 Davoris Smiley, SCDC #349965,) Case No.: 2012-CP-30-741
11 Plaintiff,)
12 vs.) Amended Application for Post-Conviction
13) Relief
14 State of South Carolina,)
15 Defendant.)
16)
17)
18)

- 19
20 1. Place of detention: Lee Correctional Institute
21 2. Name and location of Court which imposed sentence: Court of General Sessions,
22 Laurens County.
23 3. Name(s) of co-defendant(s) (if any): Lakasian Robinson and Javevian Pulley.
24 4. The indictment number or numbers (if known) upon which and the offenses for
25 which sentence was imposed: 2012-GS-30-0342
26 5. The date upon which sentence was imposed and the terms of the sentence: The
27 Applicant was sentenced on March 1, 2012 to five (5) years for criminal conspiracy,
28 five (5) years for possession of a weapon during a violent crime, and fifteen (15)
years for armed robbery, with all sentences running concurrently.
6. Check whether a finding of guilty was made: after a plea of not guilty.
7. Did you appeal from the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed: Not applicable
(b) the result in each such Court to which you appealed: Not applicable

- 1 (c) the date of each such result: Not applicable
2 (d) if known, citations of any written opinion or orders entered pursuant to such
3 results: Not applicable
4 9. If you answered "no" to (7), state your reasons for not so appealing: Trial counsel
5 never informed the Applicant of his right to appeal this matter and the Applicant
6 never requested trial counsel to file notice of appeal.
7 10. State concisely the grounds on which you base your allegation that you are being
8 held in custody unlawfully:
9 (a) The Applicant's right to effective assistance of counsel as guaranteed by the
10 United States Constitution was violated as result of trial counsel's failure to
11 meet with the Applicant to discuss his case prior to trial. Prior to trial, the
12 Applicant was incarcerated at the Laurens County Detention Center. Trial
13 counsel met with him only a couple of times before the case was called for trial.
14 (b) The Applicant's right to effective assistance of counsel was violated where trial
15 counsel failed to properly and adequately investigate the case. As a result of trial
16 counsel's failure to adequately prepare and investigate, trial counsel called a
17 witness to the stand who testified against the Applicant.
18 (c) The Applicant's right to effective assistance of counsel was violated where trial
19 counsel failed to obtain a copy of the transcript of a co-defendant's plea.
20 (d) The Applicant's right to effective assistance of counsel was violated where trial
21 counsel failed to challenge the admissibility of several pieces of evidence
22 critical to the State's case. These critical pieces of evidence were obtained in
23 violation of the Applicant's Fourth Amendment rights and should have been
24 suppressed.
25 (e) The Applicant's right to effective assistance of counsel was violated where trial
26 counsel made improper comments on the Applicant's failure to testify.
27 (f) The Applicant's right to effective assistance of counsel was violated where trial
28 counsel failed to timely advise the Applicant of his right to appeal his
conviction.
11. State concisely and in the same order the facts which support each of the grounds
set out in (10): See Number 10.
(a)
(b)
(c)
12. Prior to this application have you filed with respect to this conviction:
(a) any petition in a State Court under South Carolina Law? No.
(b) any petition in State or Federal Courts for habeas corpus or post-convictions
relief? No.
(c) any petition in the United States Supreme Court for certiorari other than
petitions, if any, already specified in (8)? No.
(d) any other petitions, motions or applications in this or any other Court? No.

- 1 13. If you answered "yes" to any part of (12), list with respect to each petition, motion
2 or application:
3 (a) the specific nature thereof: Not Applicable.
4 (b) the name and location of the Court in which each was filed: Not Applicable
5 (c) the disposition thereof: Not Applicable
6 (d) the date of each such disposition: Not Applicable
7 (e) if known, citations of any written opinions or orders entered pursuant to each
8 such disposition: Not Applicable
9 14. Has any ground set forth in (10) been previously presented to this or any other
10 Court, State or Federal, in any petition, motion or application which you have filed?
11 No.
12 15. If you answered "yes" to (14) identify:
13 (a) which grounds have been presented: Not Applicable
14 (b) the proceedings in which each ground was raised: Not Applicable
15 16. If any ground set forth in (10) has not previously been presented to any Court, State
16 or Federal, set forth the ground and state concisely the reasons why such ground has
17 not previously been presented: Not Applicable
18 17. Were you represented by an attorney at any time during the course of:
19 (a) your arraignment and plea?
20 (b) your trial, if any? Yes
21 (c) your sentencing? Yes
22 (d) your appeal, if any, from the judgment of conviction or the imposition of
23 sentence? Not Applicable
24 (e) preparation, presentation or consideration of any petitions, motions or
25 applications with respect to this conviction, which you filed?
26 18. If you answered "yes" to one or more parts of (17), list:
27 (a) the name and address of each attorney who represented you:
28 i. Chad Mitchell, PO Box 402, Laurens, SC 29360
(b) the proceedings at which each such attorney represented you:
i. Trial and sentencing
19. State clearly the relief you seek in filing this application: The Applicant seeks to
have his conviction vacated and a declaration of a new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

Dated this 10 day of March, 2013
At Greenwood, South Carolina


Joshua S. Nasrollahi

1 Joshua S. Nasrollahi (SCBN 80227)
2 The Law Office of Joshua S. Nasrollahi
3 209 Waller Avenue, Greenwood, SC 29646
4 (864) 538-6000
5 (864) 538-6014 (fax)
6 josh@jsnasrollahi.com

7 **IN THE COURT OF COMMON PLEAS**
8 **COUNTY OF LAURENS**
9 **EIGHTH JUDICIAL CIRCUIT**

10 Davoris Smiley, SCDC #349965,) Case No.: 2012-CP-30-741
11 Plaintiff,)
12 vs.) Certificate of Service
13)
14 State of South Carolina,)
15 Defendant.)
16)
17)
18)

19 I hereby certify that a copy of the Amended Application for Post Conviction Relief in the
20 above-captioned case has been furnished to the parties of record by depositing the same with the
21 U.S. Postal Service, with sufficient postage affixed thereto, and directed to the following:
22

23
24 Rutledge Johnson
25 PO Box 11549
26 Columbia, SC 29211-11549

27 **[Signature Follows on the Next Page]**
28

Dated this 20th day of March, 2013
At Greenwood, South Carolina

Emily Burdette
Emily Burdette
Administrative Assistant to Joshua S. Nasrollahi

)

)

1

)

;

;

)

)

609

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
 (AW) - Denotes Applicant's Witness
 (SW) - Denotes State's Witness

1		
2		
3		
4		
5	<u>(AW) Davoris Smiley</u>	
6	Direct examination by Mr. Nasrollahi:	5
7	Cross-examination by Mr. Johnson:	18
8	Redirect examination by Mr. Nasrollahi:	24
9	Recross-examination by Mr. Johnson:	27
10		
11		
12	<u>(AW) Lisa Crawford</u>	
13	Direct examination by Mr. Nasrollahi:	28
14		
15	<u>(SW) Chad Mitchell</u>	
16	Direct examination by Mr. Johnson:	32
17	Cross-examination by Mr. Nasrollahi:	45
18		
19	<u>(AW) Lisa Crawford (Rebuttal)</u>	
20	Direct examination by Mr. Nasrollahi:	62
21		
22		
23	Certificate of Reporter	65
24		
25		

EXHIBITS

1

2 Applicant's

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4	1	Visitor's Log		X	32
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1 THE COURT: All right, Mr. Johnson, what have we got.

2 MR. JOHNSON: If it please the Court, Your Honor.

3 This case is Davoris Smiley versus the State of South
4 Carolina. Case number 2012-CP-30-0741. Mr. Smiley was
5 indicted at the July 2011 term with the Laurens County
6 Grand Jury for armed robbery, possession of a weapon
7 during the commission of a violent crime and criminal
8 conspiracy. On February 28th through March the 1st of
9 2012 he underwent trial by jury pursuant to which he was
10 convicted of all charges as indicted. The Honorable Roger
11 L. Couch sentenced to imprisonment for 15 years for the
12 armed robbery, 5 years concurrent for the possession of a
13 weapon during the commission of a violent crime and 5
14 years concurrent for the criminal conspiracy. He filed no
15 appeal however he did file a timely PCR application on
16 September 24th of 2012. He also filed a subsequent
17 amendment through counsel and I will have to get that date
18 for you. However, the State filed its return on January
19 the 8th of 2013 and he is represented here today by Mr.
20 Josh Nasrollahi.

21 THE COURT: All right, counsel, I will hear from you.

22 MR. NASROLLAHI: Judge, at this time I call Mr.
23 Smiley to the stand.

24 THE COURT: Ms. Holston will place you under oath.

25 DAVORIS SMILEY, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Nasrollahi:

4 Q State your name for the record.

5 A Davoris Smiley.

6 Q Where are you currently incarcerated?

7 A Lee Correctional Institution.

8 Q And how long have you been incarcerated there?

9 A Two years.

10 Q Two years. Okay. And why are you presently
11 incarcerated, on what charges were you convicted?

12 A Armed robbery, possession of a weapon during a
13 violent crime and criminal conspiracy.

14 Q All right. And were you convicted as the result of a
15 guilty plea or a trial?

16 A Trial.

17 Q And who was your trial counsel?

18 A Mr. Chad Mitchell.

19 Q Was he an appointed attorney or was he retained?

20 A He was appointed.

21 Q When was he appointed, approximately? Was it one
22 month, two months, six months?

23 A It seemed like it was two months after I was
24 incarcerated.

25 Q And when were you incarcerated, in Laurens County I

- 1 am assuming, when were you incarcerated?
- 2 A April the 24th of 2011.
- 3 Q And when did you subsequently go to trial?
- 4 A February 28th.
- 5 Q Two months after April 24th he was appointed, so he
- 6 was at least six months appointed as your attorney?
- 7 A Yes, sir.
- 8 Q In the course of you, let me back up for a second.
- 9 Pending trial were you ever released on bond?
- 10 A No, sir.
- 11 Q So you remained in the detention center until trial?
- 12 A Yes, sir.
- 13 Q How frequently did you meet with your attorney?
- 14 A Once I recall he offered me a plea.
- 15 Q Do you recall when that was?
- 16 A No, sir.
- 17 Q Was it right around the time of trial?
- 18 A He came once and offered me a plea and then he came
- 19 again at the trial the next day.
- 20 Q At any point during your meetings with your attorney
- 21 did you discuss your case with him?
- 22 A No, sir.
- 23 Q Not at all?
- 24 A No, sir.
- 25 Q Did he go over some of the facts that he uncovered in

1 the case with you?

2 A I don't recall.

3 Q You don't recall. Did he provide you with the
4 discovery in the case?

5 A Yes, sir.

6 Q Did you have any telephone contact with counsel?

7 A No, sir.

8 Q Did you send counsel any correspondence?

9 A I wrote him twice but never received any
10 correspondence back.

11 Q What did you write him about, do you recall that?

12 A I wrote him, really just asked him like what was
13 going on in the case. And I wrote him again asking for
14 the discovery. I never received anything back from him.

15 Q And you said that you met with him, trial counsel
16 prior to trial and he conveyed an offer to you from the
17 State. Do you recall what that offer was?

18 A Ten years.

19 Q Ten years?

20 A Yes, sir.

21 Q Ten years on all charges or what?

22 A It was ten for armed robbery, five for possession of
23 a weapon concurrent and five for conspiracy concurrent.

24 Q So ten on all charges. And did you accept that offer
25 or did you decline it?

1 A I declined it.

2 Q When he conveyed this offer to you did he explain the
3 elements of the crime to you, these particular grounds to
4 you?

5 A No, sir.

6 Q Did he explain to you the maximum penalty that you
7 were looking at?

8 A Yes sir, he did.

9 Q Did he voice an opinion as to your success if you
10 were to go to trial?

11 A No, sir.

12 Q Let's take another step back. The night when the
13 underlining incident occurred, April the 24th. The
14 evidence presented at trial establishes that there was an
15 armed robbery.

16 A Yes.

17 Q Shortly after, well not shortly, several hours after
18 this armed robbery you were apprehended by law
19 enforcement?

20 A Yes, sir.

21 Q Can you tell me a little bit about that?

22 A I was in Laurens Terrace Apartments and I was just
23 sitting around and the police came, Laurens City came and
24 I think it was SLED or SWAT or something and they came
25 knocking on the door of the apartment that I was in. And

1 I was upstairs, I didn't know what was going on and I came
2 downstairs and they was like, that's him. And they cuffed
3 me and brought me to the City.

4 Q When you were handcuffed were you informed that you
5 were being placed under arrest?

6 A Yes, sir.

7 Q When were you informed that you were being placed
8 under arrest?

9 A Right after they put the cuffs on me.

10 Q Did they inform you as why you were being placed
11 under arrest?

12 A No, sir.

13 Q After that it was explained at trial that the, you
14 weren't the occupant of the residence that you were found
15 at, you weren't the tenant there, were you?

16 A No, sir.

17 Q That was Porsha Miller?

18 A Yes, sir.

19 Q It was developed at trial that Porsha Miller signed a
20 consent to search that apartment?

21 A Yes, sir.

22 Q Do you recall what was uncovered pursuant to that
23 search?

24 A It was \$700.00 dollars in cash, bags of marijuana, I
25 think a scale and cell phone.

- 1 Q Were you in possession of the cell phone at the time
2 or was that found in the apartment?
- 3 A It was found in the apartment.
- 4 Q In the apartment, it wasn't found on you?
- 5 A No, sir.
- 6 Q And it was also developed at trial that a search
7 warrant was applied for and obtained for the cell phone?
- 8 A Yes, sir.
- 9 Q What information was taken from your cell phone?
- 10 A Pictures.
- 11 Q Pictures?
- 12 A Yes, sir.
- 13 Q Were those pictures used at trial?
- 14 A Yes, sir.
- 15 Q What were they pictures of?
- 16 A Pictures of me with a gun.
- 17 Q And it was argued at trial that those were pictures
18 of you prior to the armed robbery with the gun that was
19 used?
- 20 A Yes, sir.
- 21 Q Was the firearm ever discovered or uncovered in this
22 case?
- 23 A No, sir.
- 24 Q Was there any evidence of a particular firearm ever
25 presented at trial?

1 A No, sir.

2 Q This search warrant for the cell phone, did you ever
3 have an opportunity to sit down and discuss this search
4 with trial counsel?

5 A No, sir.

6 Q So you never discussed whether it was a valid search
7 warrant or if you had any defenses?

8 A No, sir.

9 Q To the search warrant. Did counsel ever move the
10 Court to challenge the search warrant?

11 A No, sir.

12 Q Take another step forward in the timeline of events
13 here. You were at some point provided with discovery?

14 A Yes, sir.

15 Q And that discovery contained an incident report?

16 A Yes, sir.

17 Q In that incident report it states that you were
18 located at Laurens Terrace Apartments and you were
19 handcuffed and placed into the police vehicle pursuant to
20 an investigative detention?

21 A Yes, sir.

22 Q Did you ever discuss that with your attorney?

23 A No, sir.

24 Q Okay. Did your attorney ever make any motions before
25 the Court challenging the validity of that arrest?

1 A No, sir.

2 Q And at the time that you were apprehended was there a
3 search warrant, was there an arrest warrant, I apologize.

4 A No, sir.

5 Q Based on the documents in your discovery file was an
6 arrest warrant later obtained?

7 A Yes, sir.

8 Q But to your knowledge there was no warrant for your
9 arrest at the time you were apprehended?

10 A To my knowledge it wasn't.

11 Q Did you discuss any of this with trial counsel?

12 A No, sir.

13 Q Did trial counsel bring any of this to your
14 attention?

15 A No, sir.

16 Q When you were arrested, when you were taken into
17 custody, the clothes that you were wearing, what happened
18 with those clothes?

19 A The Laurens City Detective, she took all of my
20 clothes.

21 Q And what happened with those clothes?

22 A They put them in the trial.

23 Q For what reason did they present them in trial?

24 Would you agree with me that the reason that they were
25 presented at trial was to show that the--

1 MR. JOHNSON: Objection, this is direct.

2 MR. NASROLLAHI: I will rephrase my question.

3 THE COURT: Rephrase.

4 Q Was a video obtained from the incident site?

5 A Yes, sir.

6 Q There was a video tape of that?

7 A Yes, sir.

8 Q And did you have an opportunity to view that
9 surveillance footage?

10 A I did during the trial.

11 Q During the trial?

12 A Yes, sir.

13 Q How many suspects were on that video?

14 A Two.

15 Q And one of those suspect or both of those suspects
16 were wearing identifiable clothes?

17 A Yes, sir.

18 Q Did the State in the trial in this case present your
19 clothing as evidence linking you to the incident site?

20 A Yes, sir.

21 Q Did they make arguments comparing the clothes that
22 were in evidence to the clothes worn of the suspects in
23 the surveillance footage?

24 A Yes, sir.

25 Q Prior to trial did you ever have an opportunity to

1 watch this video?

2 A No, sir.

3 Q Did trial cocounsel have an opportunity to watch the
4 video?

5 A Yes, sir.

6 Q Did he show the video to you?

7 A No, he told me he watched the video. He never showed
8 it to me though.

9 Q I am trying to think of a way to phrase this question
10 without leading. So at trial the clothes that were
11 recovered from your person were used in evidence against
12 you?

13 A Yes, sir.

14 Q And were the photos also used against you, photos
15 from the cell phone?

16 A Yes, sir.

17 Q And did you remember being booked into the Laurens
18 County Detention Center?

19 A Yes, sir.

20 Q Do you remember signing certain forms when you were
21 being booked in?

22 A Yes, sir.

23 Q Do you recall at trial whether videos of you signing
24 these documents was admitted into evidence?

25 A No sir, I never knew nothing about it.

1 Q But you recall at trial whether still frames of the
2 surveillance footage from Laurens County Detention
3 Center--

4 A They had me signing a booking report, yes sir.

5 Q Why would they introduce that into evidence?

6 A I later discovered that they was trying to figure
7 what hand I write with.

8 Q And why was that important?

9 A Because they said the gunman was left handed.

10 Q Are you left handed?

11 A Yes, sir.

12 Q To your knowledge were any of your codefendants in
13 that case left handed?

14 A Yes, sir.

15 Q Which of your codefendants was left handed?

16 A I think Mr. Robinson was left handed.

17 Q Was that the individual that you stood at trial with?

18 A That was the one that testified against me at trial.

19 Q Just for the Court's clarification how many
20 codefendants were there?

21 A Two.

22 Q How many, outside of trial how many people were
23 charged for this armed robbery?

24 A One.

25 Q So who was charged with the armed robbery?

- 1 A They charged me, they charged all three of us.
- 2 Q Who is all three of you?
- 3 A They charged me, Davoris Smiley, Jakeivan Pulley and
- 4 Lakasion Robinson with armed robbery. But Lakasion
- 5 Robinson was later dropped to, I can't remember.
- 6 Q He wasn't tried with you?
- 7 A No, sir.
- 8 Q Who was tried with you?
- 9 A Jakeivan.
- 10 Q And you said that Mr. Robinson testified against you?
- 11 A Yes, sir.
- 12 Q In the course of trial was it ever made clear whether
- 13 Mr. Robinson had received any kind of promise or offer or
- 14 anything in return for his testimony?
- 15 A He stated during the trial that he was promised that
- 16 he wouldn't be incarcerated if he testified.
- 17 Q He stated that at trial?
- 18 A Yes, sir.
- 19 Q And did your attorney have the opportunity to
- 20 cross-examine him on that issue?
- 21 A Yes sir, he cross-examined him.
- 22 Q How many witnesses did your attorney call at trial?
- 23 A He called one.
- 24 Q Who was that witness?
- 25 A I think it was Anna Sebastian or something like that.

1 Q And how was she a witness in this case?

2 A She was actually a State's witness, she was someone
3 who claimed to be victimized by me, the applicant. And
4 she basically went against me--

5 Q My question is, how was she informed of any of the
6 facts in your case?

7 A I never knew that she was a witness on my behalf
8 until the trial.

9 Q Let me ask you this. Did she observe any events
10 regarding the alleged incident? Was she present in the
11 store that was robbed during the robbery?

12 A Yes, she was a victim.

13 Q Was she present in the store when it was allegedly
14 robbed?

15 A Yes.

16 Q And he called her as a witness?

17 A Yes, sir.

18 Q Do you recall how she testified?

19 A She, I can't remember exactly.

20 Q I don't need to know what she said but did she
21 testify for you or did she testify against you?

22 A Against me.

23 Q And was this after she was called by your attorney in
24 this case?

25 A Yes, sir.

1 Q Did your attorney call any other witnesses in this
2 case?

3 A No, sir.

4 Q Okay. At the conclusion of trial what was the
5 verdict?

6 A Guilty, I was found guilty on all charges.

7 Q And what was the sentence that was imposed?

8 A 15 years for the armed robbery, 5 years concurrent
9 for the possession of a weapon and 5 years concurrent for
10 the conspiracy.

11 Q What relief are you asking for from this Court today?

12 A I am asking that I get a retrial, a fair trial
13 because I feel that I was prejudiced because my attorney
14 called a State's witness.

15 Q Tell me what relief, not the reasons why, what relief
16 are you looking for?

17 A A retrial.

18 Q Please answer any questions from the Attorney
19 General.

20 CROSS-EXAMINATION

21 By Mr. Johnson:

22 Q Mr. Smiley, would you agree with me that at trial
23 there was a witness who claimed to be your cousin who
24 identified you by looking at that video?

25 A No, sir. That was Mr. Pulley.

1 Q You wouldn't agree with me that, let's see, what is
2 her name?

3 A It is Christy Cofield, (phonetic).

4 Q She claimed to have known you from prior--

5 A No sir, she claimed she knew Jakeivan Pulley.

6 Q I stand corrected. Would you agree with me that this
7 cell phone they found that had you, had a picture of you
8 holding a gun and it was some gang signs or flipping a
9 bird, that was introduced at trial?

10 A Yes, sir.

11 Q But they blacked out the flipping of the bird?

12 A Yes, sir.

13 Q And showed you wearing a Pittsburgh Pirates hat
14 backwards, holding a gun with your left hand, correct?

15 A Yes, sir.

16 Q And your counsel argued to exclude that from the
17 trial, didn't he. Before the trial ever started he filed
18 a motion in limine which is a pretrial motion to get those
19 excluded so they don't come in as evidence against you.
20 Isn't that right?

21 A Yes sir, I think so.

22 Q But the Judge ruled that those were admissible and
23 they come in as evidence that you were involved in the
24 trial?

25 A Yes, sir.

1 Q And would you agree with me that your codefendant,
2 Mr. Robinson, he was charged with armed robbery and he was
3 the first to take the deal and plead to misprision of a
4 felony in exchange for his testimony at trial against you
5 and Mr. Pulley, isn't that correct?

6 A Yes, sir.

7 Q And he testified that y'all had an agreement that you
8 were wearing gray shorts and timberland boots, correct?

9 A Yes, sir.

10 Q And that you had a hoody on and that you had a
11 Pittsburgh Pirates Baseball hat on, correct. The first
12 time you walked past the store?

13 A Yes, sir.

14 Q And then he also testifies that later he gets the hat
15 from you and he also gives Mr. Pulley a black pullover
16 shirt that he had, correct, that is his testimony?

17 A Yes, sir.

18 Q And that you and Mr. Pulley were the ones that went
19 in and robbed the store, correct?

20 A Yes, sir.

21 Q And then later on he is the one who directs police
22 where to find that shirt that he gave to Mr. Pulley that
23 he later ditches as he is running away from the store,
24 correct?

25 A Yes, sir.

1 Q And you said you seen that video?

2 A I seen it during the trial.

3 Q And there is a guy in gray shorts and timberland
4 boots and a hoody pulled up with a shirt over his face,
5 left handed, holding a gun robbing the store, isn't that
6 correct?

7 A Yes, sir.

8 Q Okay. And there is also Mr. Pulley who is seen going
9 in the store and buying a coke with designer jeans, some
10 type of design on the pocket of his jeans, correct?

11 A Yes, sir.

12 Q And that is how he is identified, because there is a
13 fellow who walks in thereafter, after he buys a coke,
14 involved in the robbery, he goes around the counter who
15 has those jeans on, correct?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes, sir.

19 Q So your codefendant, Mr. Robinson, testifies that you
20 are there, it is your gun and that Mr. Pulley is the one
21 who runs around to the side of the cash register but it is
22 you who is the gunman, correct?

23 A Yes, sir.

24 Q You also have the store clerk, I think she is from
25 Guatemala who identifies that she remembers the gray

1 shorts and the boots, correct, that you were wearing
2 those?

3 A She says she remembered me because she picked me out
4 of a lineup.

5 Q There was no lineup, correct?

6 A Yes, sir.

7 Q And that is what your counsel argued?

8 A Yes, sir.

9 Q And would you agree with me that you are shorter than
10 Mr. Pulley?

11 A Yes.

12 Q As far as height is concerned, he is taller than you
13 are, correct?

14 A Yes, sir.

15 Q And that counsel, your counsel, Mr. Mitchell, called
16 the State's witness to state that the taller man had the
17 gun, correct, isn't that what her testimony was?

18 A No, sir. That wasn't her testimony.

19 MR. JOHNSON: Your Honor, if I can direct you to page
20 481 of the transcript.

21 THE COURT: All right.

22 MR. JOHNSON: And where Ms. Melendez, line 21 says
23 the tall guy had the gun. So the record will reflect that
24 Mr. Mitchell called Ms. Melendez for the point of showing
25 that the tall, taller fellow, Mr. Pulley, was the one who

1 had the gun.

2 Q Would you agree with me now that she testified that
3 the taller guy had the gun, meaning Mr. Pulley?

4 A Yes, sir.

5 Q So there is a reason that counsel called Ms. Melendez
6 on your behalf at trial even though she was a State's
7 witness, correct?

8 A Yes, sir.

9 Q They never found the gun, we know that. But they do
10 find you in Ms. Miller's house or apartment wearing gray
11 shorts and timberland boots, correct?

12 A Yes, sir.

13 Q And that Ms. Miller testifies, well the police
14 testify that there is \$700.00 dollars found in her
15 daughter's crib along with a lighter, I believe and there
16 is a cell phone that is later, it is not in your
17 possession but it is your cell phone, correct?

18 A Yes, sir.

19 Q And she testifies that she did not put the \$700.00
20 dollars there or the daughter did not put the \$700.00
21 dollars there and nobody else had gone upstairs that day,
22 correct?

23 A Yes, sir.

24 Q But your counsel brings out the fact that she did
25 have some people over there that day. It was actually a

1 fellow downstairs when the police came in. There was
2 another male in the house when the police entered,
3 correct?

4 A Yes, sir.

5 Q But your counsel argued that, right?

6 A Yes, sir.

7 Q But she testified that you must have been the one who
8 put the money there, right?

9 A Yes, sir.

10 Q That is all I have.

11 REDIRECT EXAMINATION

12 By Mr. Nasrollahi:

13 MR. NASROLLAHI: Your Honor, over on page 485 of the
14 transcript.

15 THE COURT: Okay.

16 MR. NASROLLAHI: And if I can approach the witness.

17 THE COURT: You may.

18 Q This is from the exact same transcript that Mr.
19 Johnson was cross-examining you on. Starting at and this
20 is during the cross-examination conducted by the Solicitor
21 in the case starting at line 13, let's start at line 12,
22 excuse me, back up, line 11. This is a question by the
23 Solicitor. What did she say right there going all the way
24 down to line 14.

25 A It says don't know, okay, that is fair. When they

1 were getting ready to leave the store did they say
 2 anything.
 3 Q And this is the witness that was called by your trial
 4 counsel. What did she respond starting at line 15?
 5 A I heard the part of let's go, let's go, D I think.
 6 Q Ms. Rosemary Commander-Felder says, say it again,
 7 please.
 8 A Let's go, D. Let's go, D.
 9 Q And she asked again, I guess rephrasing what she
 10 says?
 11 A That was on my right, or on my left, say that.
 12 Q Of your codefendants did anybody have a name that
 13 started with D?
 14 A Besides me, no sir.
 15 Q So would it be inferential that D is applied to you?
 16 A Yes, sir.
 17 Q At the trial in this case you were ID'd but you were
 18 ID'd by Detective Riggott?
 19 A Yes, sir.
 20 Q She was the, I guess investigating officer. Do you
 21 recall how she was able to identify you?
 22 A She said that she knew me and she knew how I walked.
 23 Q But what gave her the opportunity to observe how you
 24 walked in relation to this case?
 25 A On the video it showed people walking past the store.

1 Q Did she also testify at trial that she was able to
2 recognize you based on, from your nose up to the top of
3 your forehead?

4 A Yes, sir.

5 Q Were the suspects in this case on the video, were
6 they masked?

7 A Yes, sir.

8 Q Okay. And the Attorney General asked you whether the
9 State moved to exclude the pictures in this case. Do you
10 remember on what grounds your attorney moved to exclude
11 these pictures?

12 A I don't recall.

13 Q Did he move to exclude these pictures in limine on
14 the basis that they were overly prejudicial?

15 A I don't recall.

16 Q In the course of the prosecution, was evidence
17 admitted that there was any swapping of clothes?

18 A Yes, sir.

19 Q What clothes were you wearing when you were
20 apprehended?

21 A A white tshirt, jean shorts, brown boots and a yellow
22 hat.

23 Q Were you wearing a hoody?

24 A No, sir.

25 Q You weren't wearing a hoody?

1 A No, sir.

2 Q And as you testified earlier all of the evidence that
3 was obtained from you was bagged as evidence?

4 A Yes, sir.

5 Q And this evidence was gathered pursuant to your
6 arrest?

7 A Yes, sir.

8 Q How tall is Mr. Robinson?

9 A I would say--

10 Q Is he taller than you?

11 A Yes, sir.

12 Q How much taller than you?

13 A I would say at least like, at least five or six
14 inches.

15 Q That is all I have.

16 THE COURT: Anything else.

17 MR. JOHNSON: Just briefly.

18 RE CROSS-EXAMINATION

19 By Mr. Johnson:

20 Q Mr. Smiley, Mr. Robinson explained that you gave him
21 your hat because you wanted to pull up the hoody and the
22 hat would interfere with that. Isn't that what he
23 testified to?

24 A I don't recall.

25 Q So there was evidence of clothes swapping, correct?

1 A Yes, sir.

2 Q But Mr. Robinson explained exactly what was swapped,
3 there was no swapping of shorts or boots according to his
4 testimony at trial, correct?

5 A Yes, sir.

6 Q It was a shirt and a hat, correct?

7 A Yes, sir.

8 Q No further questions.

9 THE COURT: You may step down. Call your next
10 witness.

11 MR. NASROLLAHI: At this time I call Lisa Crawford.

12 LISA CRAWFORD, being

13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Nasrollahi:

16 Q Private Crawford, tell the Court where you are
17 presently employed?

18 A Laurens County Sheriff Office jail admission.

19 Q And what do you do at the jail admission?

20 A Classification officer.

21 Q Classification officer?

22 A Yes, sir.

23 Q Are you involved in any way with jail visitations?

24 A In some points, yes.

25 Q Is there a jail visitation policy at Laurens County

1 Detention Center?

2 A Yes, sir.

3 Q Can you explain a little bit about the jail
4 visitation policy at Laurens County Detention Center?

5 A When somebody comes in to visit we get a copy of
6 their ID and log it into a computer that they were, that
7 this person, this inmate was visited on this day by this
8 person.

9 Q And is that done on a piece of paper or is that done
10 in a computer?

11 A In a computer, well, both.

12 Q So it is a double log?

13 A Yes.

14 Q How long has Laurens County Detention Center--

15 A I can only speak for the five years that I have been
16 there.

17 Q Okay. And in the past five years how long have they
18 followed this policy?

19 A The whole time that I have been there.

20 Q And does that visitation policy apply to attorneys?

21 A It does.

22 Q Are there any other special restrictions or
23 privileges that apply to attorneys?

24 A We have to have a drivers license and a bar card for
25 an attorney and will log it in and they have private

1 visits instead of the video visits we have now.

2 Q And the information obtained whenever an attorney
3 comes to visit the Laurens County Detention Center, is
4 that retained by Laurens County Detention Center?

5 A Yes.

6 Q Where is that retained?

7 A We have two places, it is in the computer and in a
8 log book that where everybody that enters the jail is
9 logged in and then it is in the computer under that
10 inmate's name.

11 Q Is that information obtained and retained on a
12 regular basis?

13 A Yes, sir.

14 Q How regular?

15 A Every time a person visits.

16 Q Okay. Ms. Crawford, I am going to hand you this
17 document, can you tell the Court what it is?

18 A This is a log and it is booking reports and it looks
19 like it is incident reports from when he was incarcerated.

20 Q Is that documentation, can you confirm whether that
21 came from Laurens County Detention Center?

22 A Yes, sir.

23 Q And that top page is a visitors report?

24 A Yes, sir.

25 Q What is listed on that visitors report?

1 A The visitors name and the date.

2 Q So it tells who came to visit Mr. Smiley and when
3 they came to visit?

4 A The date, not the time.

5 Q The date. Is Mr. Mitchell listed on that jail log?

6 A I see him on here once.

7 Q And when was that date?

8 A 12/27/12.

9 Q 12/27/12. Is it possible that Mr. Mitchell may have
10 come to visit and for whatever reason that information
11 wasn't logged into the computer?

12 A It is possible.

13 Q Is it possible that Mr. Mitchell may have come to
14 visit and that information wasn't listed in the computer
15 and it wasn't written down in the paper form?

16 A It is possible.

17 Q Okay. How possible would that be for it to happen on
18 more than one occasion?

19 MR. JOHNSON: Calls for speculation, Your Honor.

20 THE COURT: I will allow the question, she can answer
21 it. It is her job.

22 Q How possible, I mean how likely is it that an
23 attorney can come visit a client in jail and on more than
24 one occasion that information would be lost?

25 A Not frequently but it does happen.

1 Q No further questions.

2 MR. JOHNSON: No questions from the State, Your
3 Honor.

4 MR. NASROLLAHI: Your Honor, at this time I move the
5 jail log to be entered as a plaintiff's exhibit.

6 MR. JOHNSON: That is fine.

7 THE COURT: Okay. Without objection.

8 (Whereupon, Plaintiff's Exhibit 1 was admitted into
9 evidence.)

10 MR. NASROLLAHI: No further witnesses from the
11 plaintiff.

12 MR. JOHNSON: We would call Mr. Chad Mitchell.

13 CHAD MITCHELL, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Johnson:

17 Q Mr. Mitchell, how long have you been practicing law?

18 A Since 2007.

19 Q And how much of your practice is criminal?

20 A Probably less than five percent.

21 Q And have you ever tried cases before?

22 A That was my first trial.

23 Q And what did you do in preparation for that trial?

24 A Well, when I got discovery I picked it apart with a
25 fine tooth comb, I had a high liter, I took notes, I tried

1 to find inconsistencies in the statements of the people.

2 I went to visit Mr. Smiley, we talked about the evidence.

3 He brought up things that I hadn't caught because I didn't

4 understand who all the people were. I can't remember all

5 of the things that I done. I wrote opening statements, I

6 took notes during the trial, wrote closing statements the

7 night before the closing day.

8 Q How many times did you visit Mr. Smiley?

9 A I believe it was at least two times, it may have been

10 more than that. I know that I went on October the 11th of

11 2011. That was not listed on that sheet that was just

12 referenced. I am pretty sure I went closer to the day of

13 the trial. That log only said December and the trial was

14 in February and I think I went closer to the day of the

15 trial. I know I went in October. One time I took my

16 staff with me because I was kind of training her and I

17 took one of my staff members with me. I don't think that

18 was on that log from what I understand.

19 Q And when you were to visit Mr. Smiley what all did

20 you discuss with him?

21 A Well, the very first time, it really wasn't about

22 evidence as much as it was about the offer of the State.

23 This was way before there was even a date set for a trial.

24 I think I went on February the 27th of 2011 and I told him

25 what the plea was. I explained to him the difference

1 between concurrent and consecutive. I said that the State
2 was offering ten years for the armed robbery. And there
3 were all the minimums. From that the Solicitor said there
4 were the minimums that they could offer for this crime
5 based on everything and so the minimum was 10 years armed
6 robbery, 5 years concurrent for criminal conspiracy and 5
7 years concurrent for the possession of a weapon during the
8 a violent crime. And I explained to Mr. Smiley that the
9 Judge could sentence up to 30 years for the armed robbery
10 and not allow the other charges to be concurrent but
11 consecutive. So that there was a potential of 40 years.
12 And I remember telling him that the 10 years, with
13 everything being concurrent was a good deal because I
14 think he could get out at 8 and a half years with good
15 behavior. So I felt that that was a good deal. But
16 during the whole time he never once admitted his guilt to
17 me. And so I was telling him all of his options
18 basically.

19 Q Did you explain the elements of the crimes to Mr.
20 Smiley?

21 A I believe so. When I got the warrants, I always look
22 up the elements myself. So I am pretty sure we had a
23 conversation about what that meant. What does conspiracy
24 mean, what does possession of a weapon. I mean I went
25 through all of that with him.

1 Q So you said you went on February 27th, could that be
2 2012 instead of 2011?

3 A That was 2012, I am sorry.

4 Q That is fine.

5 A That was before the trial, I can't remember the trial
6 date. It was in 2012, February of 2012 and also October
7 are two dates that I went. The reason the October date
8 might have been missed is I was seeing another inmate for
9 a different trial or a different plea the same day. I
10 went and saw two people that day in court, in the
11 detention center.

12 Q Did you take discovery to Mr. Smiley when you met
13 with him?

14 A Yes, I took a folder. I think it was in a manila
15 folder. I just copied everything that the Solicitor had
16 given me.

17 Q Did you take a copy of the video to Mr. Smiley?

18 A No, I didn't. I actually had a video, I went and
19 watched the video at the Solicitor's office on his laptop.
20 I didn't get a copy of that, I don't remember getting a
21 copy of it.

22 Q Did you relay whatever you saw to Mr. Smiley?

23 A I told Mr. Smiley that they had a video and I
24 described the people in the video. I said they had a
25 hoody on, they had something over their face. I don't

1 know how much detail I gave him about clothes. I just
2 said they, I didn't say it was gray or black or whatever.
3 I don't remember how much detail I gave him but I just
4 said, the Solicitor says they have you in the video.

5 MR. JOHNSON: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q I have a video. Do you recognize this?

8 A Yes, sir.

9 Q What is that a picture of or a video of?

10 A It was a video that the store had taken. They have a
11 surveillance video. It is actually a nine panel screen so
12 they have nine cameras. And you can watch all nine
13 cameras simultaneously so they are like one-ninth of your
14 screen.

15 Q And is that the video you would have reviewed in Mr.
16 Smiley's case?

17 A Yes.

18 Q Would a disc of that be a fair and accurate copy of
19 that video?

20 A I would think so.

21 MR. JOHNSON: At this time I introduce that as
22 State's 1.

23 MR. NASROLLAHI: Without objection.

24 THE COURT: All right.

25 MR. JOHNSON: Judge, You want me to give you the copy

1 and let you watch it in-chambers or I can play it right
2 now. It is about a twenty minute video.

3 THE COURT: I can watch it in-chambers. Let's let
4 Ms. Holston mark it.

5 (Whereupon, State's Exhibit 1 was admitted into
6 evidence.)

7 MR. JOHNSON: Just for the Court's information I had
8 to get this from the Court of Appeals because they were
9 the only ones who had a copy of it for Mr. Pulley's
10 appeal.

11 Q Mr. Mitchell, in that video, if you remember, what
12 did you see or what was shown on the cameras?

13 A There were people coming and going in the store. I
14 think there was a scene where a young man came in, it
15 looked like he was looking around for something. I think
16 he bought a soft drink and then left. And then, I don't
17 know, sometime later, I don't know if it was 15 minutes,
18 20 minutes later he, two more people, or two people came
19 back in and they had their faces covered and they held the
20 clerk at gunpoint and asked for the money. And one of
21 them reached over and grabbed the money out of the till.
22 And that is basically what was on the video that was
23 relevant to this whole thing.

24 Q In the first video was there anything distinctive
25 about the fellow's clothing?

1 A You could tell what he was wearing, you could tell it
2 was some sort of embroidered, I think it had some shorts
3 or some sort of embroidery on it. He did not, obviously
4 the first time he came in, the first boy that came in was
5 not wearing a mask. So his face was showing.

6 Q And so I guess you describe that as kind of a
7 designer, on the back pocket as designer jeans or
8 something?

9 A Right. Some sort of designer clothes, yes.

10 Q And you say the two individuals that are later seen
11 on the video walking back and forth in front of the store,
12 does one of them have the designer jeans on?

13 A Right. In the trial I remember that the Solicitor
14 was pointing out kind of like play by play everybody who
15 shows up in one video screen or another. And he was
16 pointing out, look, there is those same pants in this
17 screen shot.

18 Q And then there is another fellow who was wearing
19 cargo type shorts and timberland, tan boots, work boots?

20 A Right.

21 Q And that is the same type clothing as Mr. Smiley had
22 on when he was found at Ms. Miller's house, correct?

23 A Right.

24 Q And I guess as far as your preparation, you saw the
25 video and you related to Mr. Smiley?

1 A Right. What the Solicitor, when we were talking
2 about the case and working on the negotiated, some sort of
3 a plea he said I have got the evidence of the clothes and
4 I have got them on video. And I said how do we know it is
5 that guy and how do we know it is the same person. And
6 the Solicitor said that, you know, they were arrested in
7 the same clothes. So I, in the evidence that I had there
8 was something about the clothes listed. And so I
9 highlighted that, I knew that, they had the clothing
10 evidence.

11 Q Then did you get a copy of the codefendant's
12 statement or statements, specifically Mr. Robinson?

13 A I had a copy of all of the statements made by all of
14 the witnesses and there were like other people, like
15 girlfriends and people who were driving cars. I read all
16 of the statements of everybody that was questioned as far
17 as I could tell.

18 Q And did you research legal issues in the case?

19 A Well the one issue that I felt needed to be addressed
20 was the prejudicial value of what they found on Mr.
21 Smiley's cell phone. I felt that, just the fact that
22 someone has a picture of themselves holding a gun is not
23 evidence that you are committing a crime or planning on
24 committing a crime. They were just kind of joking around
25 type pictures. So I asked, I did a motion to have those

1 excluded because they were just going to be prejudicial to
2 make him look like a thug or make him look like he was,
3 you know, planning something. And I asked the Judge to
4 exclude those but he didn't rule in favor on that motion.

5 Q And I am sure counsel is going to bring out, there is
6 something about the arrest warrant and, or search warrant
7 and these videos. Was there a search warrant for the
8 phone?

9 A I don't remember there being a search warrant for the
10 phone. I thought they took that from him after they, when
11 they incarcerated him. I am sorry, when they took him in
12 for questioning I thought they took that. I am not, I
13 don't remember. I do remember that I first questioned the
14 search warrant in my mind about where he was standing and
15 then I realized that it wasn't his apartment. And so if
16 the person who owned the apartment or rented the apartment
17 let him in that was that person's right to do. So I
18 didn't feel like I had a ground to question the search
19 warrant of where he was found because it wasn't his house.

20 Q And therefore you would have a standing to challenge
21 that search warrant?

22 A Right.

23 Q Now, in preparation, the plea offer. Whose decision
24 was it to reject that plea offer?

25 A Mr. Smiley's.

1 Q And after he rejects that plea offer are you
2 preparing for trial at that point?

3 A Right.

4 Q And what defenses, if any, did Mr. Smiley present or
5 did you want to present on Mr. Smiley's behalf?

6 A I felt there was some inconsistencies in the
7 statements. I felt the fact that the State's, one of the
8 coconspirators went State's evidence. One of the things,
9 let me just go back to why I called Diana Melendez. In
10 her statement she said that the tall one had the gun. Out
11 of the three people my client was the shortest. So I felt
12 there was some inconsistencies from the very beginning of
13 this case where, you know, one of the witnesses said it
14 was the tall one that had the gun and then my client is
15 the short one. There was another person who the left
16 hand, I think the tall guy was the one that was left
17 handed. So I was trying to follow ways in which there was
18 inconsistencies in the statements of various people. And
19 I was trying to bring those out in trial. So I got ready
20 for that when their turn to come up for direct, I
21 cross-examined those on those issues. I am the one that
22 called Diana Melendez because of her inconsistency,
23 because her statement said one thing and the police filed
24 a totally different direction I felt.

25 Q So was there ever a defense of, it wasn't me, I

1 wasn't there?

2 A I don't think we ever used, I think we used that by
3 implication. We didn't use that as a defense because my
4 client chose not to take the stand.

5 Q And you advised him about taking the stand?

6 A I told him it was his choice, I told him that he has
7 the fifth amendment right to not take the stand. He was
8 pretty much set in doing that from the very beginning on
9 his own. I didn't advise him one way or the other.

10 Q Did you research or challenge anything about the
11 arrest warrant. His claim that there was no arrest
12 warrant when they took him into custody. Do you see any
13 issues with the, in the arrest warrant if there was one?

14 A No. And I think my understanding of that was they
15 were doing an investigation the very night of the crime
16 and they took him for investigative questioning. I think
17 they let him go, in the meantime, I don't know if they let
18 him go or not. I think they could hold him for so many
19 hours. And then in the meantime the next morning they got
20 an arrest warrant based on the testimony on all the people
21 they had kind of rounded up. So I didn't particularly
22 think that there was something inappropriate with that.

23 Q And had there been something inappropriate would you
24 have either objected or filed a motion?

25 A Oh, yes. I think I said at the beginning, this was

1 my first criminal trial and I was picking the brains of
2 several other attorneys that I knew in town. And I
3 actually got help from someone else in making that motion
4 in limine about the prejudicial value of the cell phone
5 pictures. I mean I was trying to take every angle and
6 bounce it off of somebody else and do what I felt needed
7 to be done.

8 Q So even though this was your first trial you went to
9 other attorneys and got their experience and advice?

10 A Yes.

11 Q In your opinion would you surmise that the most
12 damaging evidence in this case was the codefendant really
13 explaining these clothes swapping between the three
14 suspects?

15 A I think that the most damaging evidence was the
16 clothing. The cell phone records showed Mr. Smiley
17 wearing some of the clothes very early that same morning,
18 I think it was maybe 3:00 or 4:00 in the morning. Then
19 the whole day goes by and they do this in the very late
20 hours of the day, they allegedly did this in the very late
21 hours of the day. And some of those items of clothing
22 were seen in the video. And then when they were rounded
23 up several hours later some of that same clothing, he came
24 or they were wearing it and that is what was entered into
25 evidence because they were wearing it that day. So I

1 think the clothing was the biggest problem in this case as
2 far as identifying the suspects. I did not think the
3 testimony of the police was very good. But I do think
4 that Robinson or the one that went State's evidence, he
5 really snitched on his friends or at least pointed fingers
6 on his friends. That didn't help either.

7 Q You cross-examined him about his, I guess, account of
8 the incident, correct?

9 A Right. I cross-examined him from the position that
10 he was the one that did it, I even said that he is the one
11 caught with his hand in the cookie jar and said his little
12 brother did it. That was my analogy to the jury that he
13 was smart enough to point fingers faster than the other
14 ones.

15 Q Because he was in fact caught with Mr. Pulley in a
16 car leaving the scene, well, later on leaving the scene?

17 A Right. I tried to get the jury to think, you know,
18 he is the one that was responsible for this. I think he
19 was even older than Mr. Smiley and I tried to get the jury
20 to believe there is some doubt on how innocent he was in
21 all of this but he decided to I guess, take the easy way
22 out and rat his friends out and plead to misprision of a
23 felony for probation. I think that is how it went down.

24 Q But your client was the one stuck with the big
25 charges?

1 A Yes.

2 Q And he was the one identified as the gunman in the
3 store that night?

4 A Yes.

5 Q That is all I have.

6 CROSS-EXAMINATION

7 By Mr. Nasrollahi:

8 Q You just testified that part of your investigation
9 into this, these crimes is you looked over the
10 inconsistencies in the record, is that right?

11 A In the statements of all of the people that were
12 questioned.

13 Q Did you look for inconsistencies in any other
14 documents that were provided to you?

15 A Yes. I can't remember the volume of documents. Yes,
16 I was looking for things.

17 Q So I am guessing that, you know, you didn't raise an
18 issue at trial, you didn't find an inconsistency in any of
19 the other documents?

20 A What I did, if I found something that I felt needed
21 to be brought up I took notes and then I was ready to
22 question that person when it was time to cross-examine
23 them.

24 Q Right. Let's talk about your understanding of
25 arrest, constitutional speaking. I mean, is your

1 understanding is and you just testified to this, is your
2 understanding that a law enforcement officer can place an
3 individual into detention without placing them in arrest
4 for several hours. Am I characterizing your testimony
5 correctly?

6 A As I understood the original arrest, I understood
7 that it was called investigative detention. And that they
8 had, they had some sort of reason to place him under that
9 because they had witnesses. I think one of the detectives
10 said they had a witness that said that it was Mr. Smiley
11 and that Mr. Smiley lives or is staying at some fellow's
12 house and that is how they found him so quickly. So they
13 went and found him.

14 Q But it is your understanding of law enforcements
15 position, they didn't place him under arrest, they placed
16 him in investigative detention?

17 A That is what I understood.

18 Q So would that give you pause as to the issue of
19 whether there was probable cause to arrest him in the
20 first place? They didn't place him under arrest, they put
21 him in investigative detention?

22 A Right.

23 Q So would you take that information and assume that
24 they didn't have probable cause to arrest him in the first
25 place?

1 A I thought they had probable cause because they had
2 had witnesses say that he was the one that was involved.

3 Q Right. But they don't, let me back up. Let me ask
4 you if you recognize that document?

5 A Yes, I do. I think it is one that I received.

6 Q Let me just, is that a fair and accurate
7 representation of the incident report you received?

8 A I believe so.

9 Q And you got that from the State?

10 A Yes.

11 Q Let's look on the back page here. Let me see if I
12 can find it real quick. Let's start right here.

13 Basically everything leading up to that if you recall was,
14 they were looking for Mr. Smiley, they got information
15 that Mr. Smiley was at Laurens Terrace and they went to
16 Mr. Smiley, they went to Laurens Terrace looking for Mr.
17 Smiley. Is that a safe summary of what everything, the
18 incident report says up to that line?

19 A Yes.

20 Q And the incident report says that once they arrived
21 they saw Mr. Smiley, correct?

22 A Correct.

23 Q And once they observed Mr. Smiley they placed him in
24 investigative detention?

25 A No, it says, once the police were inside Davoris

1 Smiley walked down the stairs. Officer Carter positively
2 identified Mr. Smiley. Mr. Smiley was then placed in
3 double locked handcuffs. Then it says Mr. Smiley was
4 advised that he was being placed in investigative
5 detention.

6 Q In handcuffs?

7 A Right.

8 Q In the back of a cop car. I think the next sentence
9 is they put him in the back of a vehicle?

10 A Right.

11 Q And reading that and looking at that would that give
12 you pause that perhaps law enforcement didn't believe they
13 had probable cause to arrest him? I mean just reading up
14 to that section?

15 A Just reading that sentence alone I wouldn't say that.
16 But I thought that stuff that was being done before that
17 is why they were looking for him in the first place.

18 Q My question is this. Law enforcement has this
19 information that Mr. Smiley has been involved in an armed
20 robbery. They get information from other sources which
21 aren't confirmed in that incident report. They go to
22 Laurens Terrace. They find Davoris Smiley and instead of
23 placing him in formal arrest they place him in
24 investigative detention.

25 A Correct.

1 Q That's correct?

2 A Yes, sir.

3 Q And that didn't raise any concerns for you?

4 A No, it didn't.

5 Q And then moving on, after he is placed in the cop car
6 they later found that he was under trespass notice?

7 A Right.

8 Q This is after he is in handcuffs in the back in the
9 cop car in investigative detention?

10 A Correct.

11 Q Right. And that is when they placed him under
12 arrest. It says that in the incident report. The word,
13 arrest, is not used any where else in that incident report
14 prior to their discovery that he was on trespass notice?

15 A Correct. He was then advised he was under arrest
16 after they learned that he was on trespass notice.

17 Q Okay. I mean is that information that you would want
18 to put to the arresting officer on the stand, I mean why
19 they did that or do you think that it wasn't a concern?

20 A I guess I just thought they had probable cause to go
21 look for him because they had already arrested the other
22 two suspects.

23 Q If you read up a little bit more or if you go back a
24 little bit. They were also placed in investigative
25 detention?

1 A Right. And I think they had already started talking.

2 And they are the ones that led the police to Mr. Smiley.

3 Q But taking a step forward. After he is finally
4 placed under arrest, they execute, they search the
5 premises under a consent to search. That is where they
6 find, I think at trial it was developed that they found
7 the money, the marijuana and some chapstick?

8 A Right.

9 Q But the location of the cell phone in question is not
10 really made clear?

11 A I don't know when they got the cell phone.

12 Q So it was either on Mr. Smiley's person or it was in
13 the house, I mean it was in the apartment? There is only
14 two possible--

15 A I just don't remember that detail.

16 Q But they find all of this evidence particularly the
17 large amount of cash there and it goes on there to say
18 that he is transported to the, I guess, the detention
19 center or to law enforcement, where ever they took him.
20 And then he goes on to say that he will be charged with
21 armed robbery.

22 A Correct.

23 Q So there is a little bit of an issue in determining
24 whether law enforcement even in their own minds thought
25 they had probable cause to arrest Mr. Smiley?

1 A I don't know what was going on in their minds. I
2 just gathered from the incident report that they were
3 doing one thing after another.

4 Q But would you agree with me that when they placed
5 handcuffs on him he was under arrest, constitutionally
6 speaking?

7 A Yes.

8 Q And based on your experience and your research if
9 they didn't have probable cause to arrest him at that
10 point he was an illegal arrest?

11 A That thought didn't go through my mind.

12 Q But I mean I am asking you now, if they didn't have
13 probable cause to arrest him it is an illegal arrest?

14 A Right.

15 Q Okay. And any evidence they obtained from him would
16 be fruits of the poisonous tree?

17 A If that is what, yes.

18 Q I mean you are aware of this?

19 A Yes.

20 Q Were you aware of this at the time you were
21 representing Mr. Smiley?

22 A Yes.

23 Q Okay. And the critical evidence and you said this on
24 direct was the clothing, the clothing that he was wearing.
25 That was critical evidence in his case. I mean the

1 Attorney General asked you what you thought the most
2 damaging evidence was in the case and you said the
3 clothing?

4 A Right.

5 Q Okay. The clothing that he was wearing as he
6 testified was taken from him after the arrest and it was
7 placed into evidence?

8 A Correct.

9 Q So if this was an illegal arrest would you consider
10 those cloths fruits of the poisonous tree?

11 A I guess they would be.

12 Q Looking back on it now do you think you should have
13 moved to suppress the evidence?

14 A I guess looking back on it I should have but I didn't
15 think it was an illegal arrest at the time.

16 Q And what made you think that it wasn't an illegal
17 arrest?

18 A Because they had witnesses that implicated him and so
19 they had probable cause to go arrest him and question him.

20 Q But they didn't think they had probable cause
21 otherwise they would have arrested him.

22 MR. JOHNSON: Objection, that calls for speculation.

23 MR. NASROLLAHI: I think it is pretty clear on the
24 face of the document that they placed him in investigative
25 detention instead of placing him under arrest for armed

1 robbery.

2 THE COURT: They did what they did.

3 Q I am going to hand you this document also. Do you
4 recall this document?

5 A Yes.

6 Q And what is that document?

7 A It was a search warrant that was prepared by Leann
8 Riggott.

9 Q And what is the search warrant for?

10 A It is for a DNA test of Davoris Smiley. It is for a
11 Blue Samsung T-Mobile cell phone. That is the description
12 of the property. And then the premises was the Laurens
13 County jail. Is that what you are asking?

14 Q Yes. But what I am particularly looking at is the
15 cell phone. Okay. That is listed up here at description
16 of premises, persons, place or things to be searched. Let
17 me see this. This is the actual warrant. Read for me the
18 description of property?

19 A Buccal swab from Davoris T. Smiley and Blue Samsung
20 T-Mobile cell phone to include all information on cell
21 phone not limited to all calls incoming, outgoing, text
22 messages, incoming and outgoing contacts and photos.

23 Q Now, when you got this case you researched the law of
24 search warrants, right?

25 A I didn't go back and start studying it all over again

1 but I was relying on what I knew and other things.

2 Q And from that search warrant they were authorized to
3 obtain all the information on Mr. Smiley's phone?

4 A Right.

5 Q All of the information. There is no date range,
6 there is no time period. There is information relating to
7 the crimes that he is, there is no limitation, it is all
8 the information on his cell phone?

9 A Correct.

10 Q And that is pretty much what they got, right?

11 A Yes.

12 Q And that doesn't strike you as being vague and
13 un-particularized?

14 A Well, it was a cell phone, it wasn't all of his
15 personal belongings, it wasn't, I thought it was really
16 one item.

17 Q One item but there is lots of information on that one
18 item?

19 A Correct.

20 Q And they got all the information off of the item?

21 A Right.

22 Q And the law on search warrant says it has to be
23 particularized?

24 A Well, I thought the cell phone was the particular. I
25 didn't really think about the fact that everything on the

1 cell phone had to be, I mean they didn't list the
2 particular items from the cell phone.

3 Q That was all the information that was on it, that is
4 pretty sweeping, isn't it?

5 A Yes, I guess so.

6 Q Did you research that issue?

7 A No, I did not.

8 Q Did you research whether, you know, whether the
9 search warrant was valid, if it asked for all the
10 information on that cell phone?

11 A No, I did not.

12 Q Did you do a general search of, you know, case law
13 saying that, requesting all of certain records without a
14 date frame?

15 A No, I did not.

16 Q And you never moved to suppress the, okay, sorry.
17 You did move to suppress the pictures taken from the cell
18 phone?

19 A I did.

20 Q But you did that under Rule 803, you said it was more
21 prejudicial than it was probative?

22 A Right.

23 Q But you never challenged the validity or, you know,
24 the validity of the search warrant and move to suppress
25 any of the documentation from it?

1 A No, I did not.

2 Q Okay. Another critical piece of evidence in this
3 case was the testimony of Mr. Robinson, the third
4 codefendant, the rat in this case?

5 A Right.

6 Q And by that time, by the time this case went to trial
7 he had already plead guilty in front of, actually this
8 Judge here. Were you aware at the time that he had
9 already plead guilty?

10 A I believe so.

11 Q Were you aware of the fact that he offered to turn
12 State's witness instead of, in return for a good deal?

13 A Yes.

14 Q What was the deal that he got?

15 A I don't remember.

16 Q Would you disagree with me if I said that he got
17 probation?

18 A I don't remember what he got.

19 Q I mean--

20 A That would have been a good deal.

21 Q That would have been a good deal. So, he got
22 probation, you say that is a really good deal?

23 A Yes.

24 Q While, you know, his codefendants were looking at
25 pretty significant terms in prison?

1 A What is the question?

2 Q My question is, that is a pretty good deal especially
3 considering that his codefendants were looking at going to
4 prison for a particularly long time?

5 A Yes. That is a good deal.

6 Q Very good deal. And at trial you objected because
7 the State didn't provide you with a copy of the plea
8 transcript. Do you recall that?

9 A No, I sure don't.

10 Q But you never requested a copy of the transcript of
11 his plea?

12 A I don't remember.

13 Q Okay. Well, you didn't. All right.

14 MR. JOHNSON: Well, he is testifying for counsel.

15 MR. NASROLLAHI: I will withdraw that.

16 THE COURT: Rephrase your question.

17 Q Do you think it would have been important to have for
18 impeachment purposes the guilty plea?

19 A I believe that we brought out the fact that he plead
20 guilty to impeach his credibility in the
21 cross-examination.

22 Q But did you bring out on cross-examination that he
23 had openly said that he was turning State's witness?

24 A I don't remember that part of the transcript. But I
25 remember questioning him about it.

1 Q Did you ever talk to Diana Melendez before you called
2 her as a witness?

3 A No, I did not.

4 Q So you had a witness that was already giving
5 inconsistent statements and you called her as a witness
6 without prior interview?

7 A No, the only thing that I wanted her as a witness for
8 is to say, to confirm that she said at the very beginning
9 of all of this that the tall one had the gun. And she did
10 say the same thing, she said the same thing in the trial
11 that that is what she said that night.

12 Q Let's back up a little bit. When Mr. Smiley was
13 arrested, at that time there was no arrest warrant?

14 A I guess not.

15 Q Okay. Are you familiar with the laws of arrest under
16 State law?

17 A Yes, a little bit. I don't really know what I am
18 suppose to say for that.

19 Q How many hours after the alleged incident was it
20 before Mr. Smiley was arrested.

21 A I think it was less than four hours.

22 Q But it wasn't immediately after?

23 A No.

24 Q And law enforcement officer arrested suspect four
25 hours after the alleged incident?

1 A I don't know.

2 Q You don't know. So, several of the critical
3 elements, several of the critical items of evidence in
4 this case could have been challenged?

5 A Yes.

6 Q The clothes, the cell phone pictures. You could have
7 gotten more impeachment evidence from the guilty plea.
8 That just leaves the testimony of the law enforcement
9 officers, Leann Riggott, right?

10 A Right.

11 Q And she testified at trial that she watched this
12 video and recognized Davoris Smiley right there when she
13 saw it?

14 A I think she was one of the ones that said that.

15 Q Right. And she said that she had known Davoris from
16 another incident or something and that is how she
17 recognized him. Did she say anything in her incident
18 report about immediately recognizing Davoris Smiley?

19 A This incident report was Christy Cofield's. No, I am
20 sorry. This one is hers too.

21 Q Right.

22 A I don't know if she was the one that arrested him, I
23 don't know that.

24 Q She is the officer writing the report?

25 A Right.

1 Q Leann Riggott wrote that report. And she later
2 testified that she had recognized Mr. Smiley from the
3 video?

4 A Right. I don't know if this report says she watched
5 the, well, here it goes. Reporting officer began watching
6 the video. Reporting officer saw three males walking in
7 front of the store, one wearing gray tank top and dark
8 pants and the other two males were wearing dark colored
9 tops and jeans. It appeared one of those two males had a
10 different colored design on the back pants pockets. But
11 the three males walked past the store and around the
12 laundry mat and out of camera view. A few minutes later
13 the male wearing the gray tank top came back and he walked
14 in the store looking around, he then went to the front
15 counter and paid for a canned drink. The male then walked
16 out of the store. Lieutenant Cofield recognized the
17 subject as Mr. Pulley. Once the male subject left the
18 store he walked towards Camp Street around the laundry mat
19 and out of camera view. Several minutes passed and then
20 two subjects wearing dark tops walked back into view.
21 They walked onto the sidewalk and walked past the store
22 approximately four times. The last time the males walked
23 past the store they stopped near the intersection of the
24 Camp Street for a few seconds. They walked into the store
25 and once inside the store one subject pointed a gun at Ms.

1 Sebastian with his left hand. The subject appeared to
2 have his finger on the gun's trigger. It appeared that
3 the subject attempted to pull the pistol's trigger, as the
4 subject appeared to pull the pistol's slide back and
5 attempted to fix a jam.

6 Q But no where in there does it say, responding officer
7 recognized the suspect as Davoris Smiley?

8 A No. The responding officer was Christy Cofield, it
9 says Detective Riggott and Chief Morris were notified and
10 later arrived on the scene to process the scene. The SLED
11 team was notified and then it goes on from there. But,
12 no, it doesn't say that Leann Riggott, it doesn't say in
13 this report that she knew who was in the video. It says
14 Christy Cofield knew who one of the people was in the
15 video.

16 MR. NASROLLAHI: At this time I would like to move
17 the incident report into evidence as 2 and 3.

18 THE COURT: Any objection?

19 MR. JOHNSON: No, Your Honor.

20 (Whereupon, Plaintiff's Exhibits 2 and 3 were
21 admitted into evidence.)

22 MR. NASROLLAHI: That is all I have.

23 MR. JOHNSON: Nothing from the State, Your Honor.

24 THE COURT: You can step down. Anything else, Mr.
25 Johnson?

1 MR. JOHNSON: No, Your Honor. The State has no
2 further witnesses.

3 MR. NASROLLAHI: I have one witness in reply, Ms.
4 Crawford. I will be very, very quick.

5 THE COURT: Ms. Crawford, you are still under oath.

6 DIRECT EXAMINATION

7 By Mr. Nasrollahi:

8 Q If an attorney comes to visit more than one client at
9 the jail how is that logged into your system?

10 A They hand us a list of who all they want to see and
11 we turn around and put in the computer each inmate's name
12 that the attorney visited.

13 Q And would that information still show up on the
14 visitor log for the inmate?

15 A Yes. Each individual inmate would be put in.

16 Q That is all I have.

17 MR. JOHNSON: No questions, Your Honor.

18 THE COURT: All right.

19 MR. NASROLLAHI: Nothing further on reply. Can she
20 be released?

21 THE COURT: Sure.

22 MR. NASROLLAHI: At this time, Judge, we would ask
23 that the Court grant the applicant's application. I think
24 that we have showed that there was ineffective assistance
25 of counsel especially in regard to failing to suppress or

1 challenge certain evidence admitted to this claim that is
2 critical in this case. Failing to challenge the search
3 warrant which is overly broad particularized, evidence
4 obtained from this is very prejudicial to my client. We
5 believe that the performance of trial counsel in this case
6 failed below the reasonable standard of, that a trial
7 attorney is suppose to employ in representing his client.
8 And that that caused prejudice clearly in the back that my
9 client was convicted. I believe that if the clothes had
10 been suppressed, if the cell phone information had been
11 suppressed and the testifying coconspirator had been
12 properly impeached then there is a very strong likelihood
13 that the trial would have turned out differently.

14 MR. JOHNSON: Just in brief reply, Your Honor, the
15 State asked you to deny this application. First and
16 foremost here is overwhelming evidence that Mr. Smiley's
17 guilt in this case, that after you review that video and
18 read the transcript to see that the clothing that he has
19 admitted to wearing when he was arrested, the gray shorts
20 and the video, you will see that a left handed gunman
21 comes in looking just like Mr. Smiley. And you will see
22 them out side of the store going back and forth talking
23 and standing, he and Mr. Pulley. They come in the store
24 and robbed it. Once you review that and read the
25 transcript to those overwhelming evidence of guilt and in

1 that there would be no prejudice showing from any alleged
2 deficiency of counsel. Furthermore the issue about
3 crossing the coconspirator. Once you read the transcript
4 you will see that the, his guilty plea transcript would
5 not have been helpful. It may have been a little bit of
6 impeaching, he still got the same information on doing
7 that, he also had a reason to call Ms. Melendez, even if
8 he did not talk to her she still gave the same answer that
9 she gave in her statement therefore no prejudice can be
10 shown. The State asked you to deny this application.
11 Thank you.

12 THE COURT: I will read this stuff and I will let
13 y'all know.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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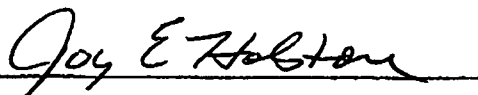
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the date of June 3rd, 2013.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 December 22, 2013
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA

County/Municipality of LAURENS

SEARCH WARRANT

Date 04/27/2011

Officer DET SGT. LEANN RIGGOTT

000000000105

Date Printed: 04/27/2011 09:33:18 AM

Q: P 1

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF LAURENS

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PERSON OF DAVORIS TANYATA SMILEY WHO IS CURRENTLY IN THE LAURENS COUNTY JAIL AND
SAMSUNG T MOBILE CELL PHONE BELONGING TO DAVORIS TANYATA SMILEY

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

BUCCAL SWAB FROM DAVORIS T. SMILEY AND BLUE SAMSUNG T MOBILE CELL PHONE TO INCLUDE ALL INFORMATION ON CELL PHONE
NOT LIMITED TO ALL CALLS (INCOMING AND OUTGOING), TEXT MESSAGES (INCOMING AND OUTGOING), CONTACTS, AND PHOTOS

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

JUDGE PAUL D LYLES

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person; a copy shall be attached to a prominent place on such premises.

Laurens
4-27-11

, S.C.

Leece Sealant

(L.S.)

Signature of Judge

Date Printed: 04/27/2011 09:33:18 AM

SCAA/513
(3-78)

2 P 2

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STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

Personally appeared before me, one LEANN RIGGOTT
who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

BUCCAL SWAB FROM DAVORIS T. SMILEY AND BLUE SAMSUNG T MOBILE CELL PHONE TO INCLUDE ALL INFORMATION ON CELL PHONE
NOT LIMITED TO ALL CALLS (INCOMING AND OUTGOING), TEXT MESSAGES (INCOMING AND OUTGOING), CONTACTS, AND PHOTOS.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PERSON OF DAVORIS TANYATA SMILEY WHO IS CURRENTLY IN THE LAURENS COUNTY JAIL AND
SAMSUNG T MOBILE CELL PHONE BELONGING TO DAVORIS TANYATA SMILEY

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON 06/24/2011 DAVORIS T. SMILEY ALONG WITH JAKHIVAN FULLEY AND LARASHION ROBINSON CONSPIRED AND DID ROB AT GUNPOINT
THE QUATREX STORE LOCATED AT 1105 N. HARPER ST IN THE CITY LIMITS OF LAURENS, SC. THE SUBJECTS TOUCHED ITEMS IN THE
STORE AND ALL THREE SUSPECTS HAD CELL PHONES ON THEIR PERSON AT THE TIME OF ARREST AND IT IS BELIEVED THAT THE THREE
MAY HAVE HAD CONVERSATIONS ON THEIR CELL PHONES BEFORE AND OR AFTER THE ROBBERY BETWEEN THEMSELVES AND OR OTHERS.

Sworn to and Subscribed before me

this 27th day of April 2011

Leann Riggott
Signature of Judge

(L.S.)

Leann Riggott
Affiant

Address 250 W LAURENS ST

LAURENS SC 29360

Phone 864-984-3532

Date Printed: 04/27/2011 09:33:18 AM

u. P3

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RETURN

I received the attached Search Warrant 4-27-11, and have executed it as follows:

On 4-27-11 at 2:00 o'clock PM, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Darius Smiley
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Blue Samsung T mobile cell phone

This inventory was made in the presence of _____
AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____
day of _____, _____

Signature of Judge (L.S.)

[Signature]
(Signature of Officer Executing Warrant)

Date Printed: 04/27/2011 09:33:18 AM

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-30-00741

Davoris Smiley

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Joshua S. Nasrollahi

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2154
Judge Code

8-9-13
Date

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Davoris Smiley,
Applicant,

-v-

State of South Carolina,
Respondent.

COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2:50

Case No. 2012-CP-30-00741

ORDER

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

Griffith, J.

A jury convicted the Applicant Davoris Smiley of armed robbery and possession of a deadly weapon during a violent crime and the Honorable Roger Couch sentenced him to fifteen years in prison. The conviction stems from a robbery that occurred on the evening of April 24, 2011, at the Guatemex Store in Clinton, South Carolina. That night, two masked men wearing "dark tops" entered the Guatemex and, while one of the robbers held the clerk at gunpoint, the other robber took cash out of the register. The robbers then fled on foot.

Surveillance footage from the store showed that, prior to the robbery, three men walked back and forth in front of the Guatemex. One of the men wore a gray tank top and dark jeans while the other two men wore "dark colored tops and jeans." Then, minutes before the robbery took place, the individual wearing the gray tank top entered the Guatemex, purchased a soda, and left. At trial, the store's clerk, Anna Sebastian, identified that individual as the co-defendant Jakeivan Pulley. Sebastian also identified Pulley as the robber who took money out of the register, this time wearing a dark sweater.

SEL
1

After the robbery, law enforcement stopped a vehicle near Watts Street with two females, Pulley, and Lakasion Robinson inside. Based on information received from officers processing the Guatemex crime scene, Pulley and Robinson were arrested and charged with the robbery. Once in custody, Detective Leann Riggott interviewed Robinson and learned that Robinson had discarded a black sweater near Watts Street. The sweater was retrieved from where Robinson indicated and was placed in evidence.

While Detective Riggott was interviewing Robinson, law enforcement received an "anonymous tip," where they learned that Smiley was now at Laurens Terrace Apartments, four miles away from the Guatemex. Once at [REDACTED] Laurens Terrace Apartments, Lieutenant Robbie Hauptfear approached the apartment's tenant, Porsha Miller. As they spoke, Smiley appeared and was immediately placed in "investigative detention," where he was handcuffed and placed in the back of a patrol car. It was just after one o'clock in the morning, more than four hours after the robbery took place. Hauptfear then obtained consent from Miller to search her apartment, where he found, among other things, \$705 in cash and a cell phone. Smiley was processed into the Laurens County Detention Center, where his clothing was bagged and collected as evidence by Detective Riggott.

After Smiley's arrest, Detective Riggott obtained a search warrant for the cell phone taken from Laurens Terrace Apartments. The search warrant describes the property sought from the cell phone as "all information on cell phone [sic] not limited to all calls (incoming and outgoing), text messages (incoming and outgoing), contacts, and photos." The affidavit in support of the search warrant states that "all three suspects had cell phones on their person at the time of arrest and it is believed that the three may have had

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conversations on their cell phones before and or [sic] after the robbery between themselves and or [sic] others." Nothing in the surveillance footage—which Detective Riggott personally viewed—shows any of the suspects using a cell phone. As a further matter, nothing in the statement taken from Robinson indicates that any cell phones were used in the commission of the robbery. Smiley's phone was searched pursuant to the search warrant and its contents were seized. Among the photos taken from Smiley's phone was a picture of Smiley posing in front of a mirror with a handgun. The handgun actually used in the Guatemex robbery was never recovered.

Trial counsel was later appointed to Smiley's case. Over the course of the several months leading up to trial, counsel met with Smiley at the jail "two or three times." Records from the Laurens County Detention Center indicate that counsel visited with Smiley on only two occasions, the last being the day before trial. According to Smiley's testimony at the PCR hearing, counsel did not discuss the case with him to any real extent. Nonetheless, Smiley's case proceeded to trial, where he was tried together with Pulley. Robinson had earlier struck a deal with the State and had pled guilty to misprision of a felon, where he received a probationary sentence.

At trial, the State used the clothing seized from Smiley to tie him to the Guatemex robbery. The State also used the pictures taken from Smiley's cell phone to paint him as the gunman. Throughout the trial, the only individual who positively identified Smiley as the gunman was Detective Riggott, who claimed that she could recognize Smiley by his forehead—the only part of gunman's face exposed on the video, which Detective Riggott viewed on a 17-inch monitor. Another source of critical testimony was that of Lakasion Robinson, who pinned the entire robbery squarely on Smiley and Pulley. Prior to trial,

defense counsel never requested a copy of Robinson's plea colloquy nor did he investigate whether Robinson had exchanged a probationary sentence in return for his testimony. All the same, during the defense's case in chief, trial counsel called a single witness, whose testimony further implicated Smiley as the gunman. At the PCR hearing, trial counsel admitted that he never interviewed the witness beforehand and was unaware of what her testimony would be.

In his application, Smiley claims that trial counsel was ineffective for several reasons: (1) trial counsel was ineffective for failing to object to the introduction of Smiley's clothing at trial; (2) trial counsel was ineffective for failing to object to the introduction of the pictures from Smiley's cell phone; (3) trial counsel was ineffective for failing to investigate his co-defendant Lakashian Robinson; (4) trial counsel was ineffective for failing to investigate Diana Melendez before calling her as a witness; and (5) trial counsel was ineffective for failing to meet with the Applicant in order to investigate and prepare for the case.

STANDARD OF LAW

In an action for post-conviction relief, the burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence. Frasier v. State, 351 S.C. 385, 570 S.E.2d 172 (2002) (citing Rule 71.1(e), SCRCP); Butler v. State, 286 S.C. 441, 442 (1985). "To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different." Johnson v. State, 480 S.E.2d 733, 735 (1997)(citing Underwood v. State, 309 S.C. 560 (1992); Simmons v. State, 308 S.C. 481 (1992)). In

this way, an ineffective assistance of counsel claim involves a two prong analysis: (1) that counsel's performance was deficient and (2) that counsel's performance prejudiced the Applicant. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Demonstrating error requires a showing that counsel's performance fell below the "reasonableness under professional norms." Id. at 117. In order to show prejudice, the Applicant must prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson, 480 S.E.2d at 735(citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

I. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE INTRODUCTION OF THE CLOTHING SEIZED FROM THE APPLICANT AS A RESULT OF HIS ILLEGAL ARREST.

Smiley first argues that several articles of clothing introduced at trial should have been suppressed as the fruits of an illegal arrest. The first step in determining whether Smiley's argument has any merit is whether the "investigative detention" in question constituted an arrest. "The test for determining if a particular encounter constitutes a seizure within the meaning of the Fourth Amendment is whether in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." State v. Brannon, 379 S.C. 487, 499, 666 S.E.2d 272, 278 (Ct. App. 2008) aff'd, 388 S.C. 498, 697 S.E.2d 593 (2010)(citing Michigan v. Chesternut, 486 U.S. 567, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988); United States v. Analla, 975 F.2d 119 (4th Cir.1992); United States v. Sullivan, 138 F.3d 126, 132 (4th Cir.1998)). There is no question that when Smiley was handcuffed and placed in the back of a patrol car, he

5 SCJ

was under arrest. It would be absurd to think that a reasonable person in handcuffs and in the back of a police patrol car would believe he was free to leave.

The next factor in analyzing Smiley's argument is whether Smiley was arrested pursuant to a valid arrest warrant or, without a warrant, upon suspicion of a "freshly committed crime." S.C. Code Ann. § 23-13-60; State v. Martin, 274 S.C. 141, 145, 268 S.E.2d 105, 107 (1980). There is no evidence that the arrest in question was made pursuant to a valid arrest warrant. According to the incident report and trial testimony, Smiley was immediately arrested when he was observed by law enforcement at Laurens Terrace Apartment. The incident report further reveals that not until *after* Smiley was arrested and Miller's apartment was searched was Smiley charged with the commission of a crime.

This Court must then resolve whether law enforcement arrested Smiley upon suspicion of a freshly committed crime. Here, officers arrested Smiley hours after the robbery—according to the testimony of Detective Riggott, more than four hours later. The four-hour lapse in time between the incident and the arrest cannot be construed by this Court as law enforcement acting on suspicion of a freshly committed crime. Cf. Martin, 274 S.C. at 147-47 (reversing suppression of evidence under S.C. Code Ann. 17-13-30 where there was evidence of an accident, the defendant appeared highly intoxicated and admitted to driving, and a group of fifteen to twenty people had congregated around the scene of the accident); State v. Mims, 263 S.C. 45, 47-48 (1974)(approving warrantless arrest for breach of peace where the officer arrived minutes after being summoned, hear scuffling inside the home, and an argument in a high voice); Simmons v. Smith, 2012 WL 2935369 (D.S.C. July 2, 2013)(finding evidence of freshly

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committed crime where officers responded to a 911 call and discovered signs of a struggle and injury to the victim and arrested the plaintiff minutes later); Koon v. County of Newberry, S.C., 2010 WL 3781798 (D.S.C. Sept. 21, 2010)(finding no violation of § 23-13-60 where officers responded to 911 call and found evidence of domestic violence); Fradella v. Town of Mount Pleasant, 325 S.C. 469, 475-76 (Ct. App. 1997)(concluding that there was evidence of a freshly committed crime where Fradella admitted to dispatch that he was involved in a car accident, was identified by another individual as a driver, and was found 27 minutes later intoxicated at his home); State v. Retford, 276 S.C. 657 (1981)(finding evidence of a freshly committed crime where there was evidence of an automobile break in, a witness observed the defendant's criminal behavior and officers placed the defendant under arrest within moments of arriving on the scene). The clothes obtained from Smiley, likewise, were taken from him after he had been transported to and booked into the detention center and, thus, were the fruits of an illegal arrest. In this regard, trial counsel's failure to object to the admission of the clothing was error.

By the same token, it is questionable whether Smiley's arrest was supported by probable cause. "Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested." State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006)(citing State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996)). The question of probable cause must be resolved looking "the totality of the circumstances surrounding the information at the officer's disposal. Baccus, 367 S.C. at 49(citing George, 323 S.C. at 496; Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964)). In determining the existence of probable cause,

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the Court must consider "whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was committing an offense." Beck, 379 U.S. at 91 (citing Brinegar v. United States, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L.Ed. 1879 (1949); Henry v. United States, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959)).

According to the incident report and trial testimony, law enforcement, using a tracking dog, followed a scent to 104 Watts Street, which was the direction the robbers fled. There, no subjects were found. The incident report goes on to state that "[o]fficers received information of the other two subjects names, Davoris Smiley and Lakasion Robinson." The source of this "information" is unknown. At trial, Detective Riggott testified:

Q. Later on did you receive any information about Smiley's whereabouts?

A. Oh, yes, sir, we did.

Q. Okay. Now, I'm not gonna ask you—well, how did that come into your possession? How did that information come to you?

A. At the time Captain Cofield had gotten an anonymous tip of his location.

Q. And in response to that tip, what did y'all do?

A. She forwarded the information to Chief Morris, and I believe at that time they went to that location.

Q. All right. And what was that location?

A. 905 Laurens Terrace.

Again, there is nothing in the record confirming the source of the information received by law enforcement regarding Smiley's involvement in the robbery. Clearly, nothing in the incident report or trial testimony reveals that the co-defendants were the source of this information. See Beck, 379 U.S. at 94("There is nowhere in the record any indication of what 'information' or 'reports' the officer had received, or, beyond what has been set out above, from what source the 'information' and 'reports' had come."). Moreover, Captain Cofield never testified as to any "anonymous tip" she received regarding Smiley's whereabouts or involvement in the robbery.

Additionally, there was no evidence that Smiley behaving in any suspicious manner; on the contrary, the evidence indicates that Smiley walked calmly into the hands of law enforcement. Lieutenant Haupfear testified as to Smiley's demeanor at the time of arrest:

Q. All right. When you came to the house, did you call for Mr. Smiley to come down or did you call out for him?

A. No, sir.

Q. Did he come down on his own volition?

A. Yes, sir.

Q. Did you have to go—you didn't have to go look for him then?

A. No, sir, we were talking to Ms. Miller and he walked from downstairs, from upstairs.

Q. Just casually walked down the steps? He wasn't trying to be evasive?

A. No, sir.

See Beck, 379 U.S. at 94("And the record does not show that the officers saw . . . saw, heard, smelled, or otherwise perceived anything else to give them ground for belief that the petitioner had acted or was then acting unlawfully."). Based on the record before the Court, there is a strong question as to whether probable cause existed for law enforcement to conduct a warrantless arrest. Again, as the clothing seized from Smiley was the result of an illegal arrest, trial counsel's failure to object to their introduction was error.

Smiley, by the same note, was prejudiced by trial counsel's failure to object to the introduction of the clothing at trial. At trial, the State used Smiley's clothing to tie him to the robbery:

Q. What did you observe in the [Guatemex surveillance] video?

A. [Detective Riggott:] I observed the clothing to be the same clothing in the video.

Q. Okay.

A. It appeared to be the same clothing.

Q. Specifically, what, what did you observe?

A. You mean the description of the clothing?

Q. The, the various items of clothing you saw in the video and, and the clothing you see here.

...

A. Okay. The gray shorts were, were worn by the shorter male in the video. Appeared to be the same shorts.

Q. Okay. Appeared to be the same shorts as State's exhibit 9?

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A. Yes, sir.

Q. All right.

A. And the belt and also the boots. The individual with the gray shorts is also wearing boots that look exactly like those.

Q. State's Exhibit No. 17?

A. Yes, sir.

At the PCR hearing, trial counsel admitted that the clothing in question was "critical" to the State's case. Trial counsel further stated that he was unaware that the seized clothing was subject to challenge because of the legality of Smiley's arrest. Moreover, trial counsel stated that he was under the impression that law enforcement could have detained Smiley for several hours of questioning without constituting an arrest. In this way, trial counsel's failure to object to the admission of this evidence constituted error and prejudice.

II. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE PICTURES SEIZED FROM SMILEY'S PHONE.

Smiley next contends that counsel was ineffective for failing to move to suppress the pictures seized from his cell phone. He supports this contention on the grounds that the pictures were seized in violation of the Fourth Amendment of the United States Constitution. "The Fourth Amendment's guarantee against unreasonable searches and seizures is, of course, in part implemented by the constitutional requirement that 'no Warrants shall issue, but upon probable cause, and particularly describing the things to be seized.'" United States v. Jacob, 657 F.2d 49, 51 (4th Cir. 1981)(emphasis omitted). The

search warrant in this case violates both the probable cause and particularity requirements of the Fourth Amendment.

"The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." Marron v. United States, 275 U.S. 192, 196, 48 S.Ct. 74, 76 (1927). The particularity requirement of a search warrant prohibits law enforcement from engaging in "a general, exploratory rummaging in a person's belongings." Coolidge v. New Hampshire, 403 U.S. 443, 467, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); see also Maryland v. Garrison, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987) ("By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit."). "General warrants of course, are prohibited by the Fourth Amendment." Andresen v. Maryland, 427 U.S. 463, 480, 96 S. Ct. 2737, 2748, 49 L. Ed. 2d 627 (1976). "[W]arrants will frequently lack particularity where they include a general, catch-all paragraph or provision, often one authorizing the seizure of 'any or all records' of a particular type." United States v. Vilar, S305CR621KMK, 2007 WL 1075041 (S.D.N.Y. Apr. 4, 2007)(citing United States v. Bianco, 998 F.2d 1112, 1116 (2d Cir.1993); United States v. Hickey, 16 F.Supp.2d 223, 238 (E.D.N.Y.1998); United States v. Gigante, 979 F.Supp. 959, 966-67 (S.D.N.Y.1997)). See also U.S. v. Wecht, 619 F.Supp. 2d 213 (E.D.Pa. 2009)(finding that search warrant affidavit did not provide sufficient information to justify seizure of all

information on a laptop); U.S. v. Abrams, 615 F.2d 541 (1st Cir. 1980)(finding a search warrant that permitted seizure of all Medicare and Medicaid records invalid for lack of particularity); United States v. Ford, 184 F.3d 566, 576 (6th Cir. 1999)(“Failure to limit broad descriptive terms by relevant dates, when such dates are available to the police, will render a warrant overbroad.”).

The search warrant in this case is a clear violation of the prohibition set forth in cases like Coolidge. The search warrant allowed the seizure of all “information” on the phone. The common sense import of this language is clear—anything and everything on the phone was fair game for law enforcement. In this way, the search warrant authorized law enforcement to essentially rummage through the contents of Smiley’s phone for any evidence deemed of interest. There were no limitations placed on what law enforcement was authorized to seize. The warrant, instead, extended to each and every call, text, photo—every item of information on the phone—regardless of its probative value to the crime in question.

The affidavit in support of the search warrant, furthermore, does not establish probable cause as to how *all* of the contents of the phone were related to the crimes charged. No doubt some if not much of the contents of the cell phone predate the alleged offense. The pictures at issue are just such a case, their being taken hours before the robbery. Nothing in the warrant and supporting affidavit articulate a justification for seizing them. In re Application of Lafayette Academy, 610 F.2d 1, 6 (1st Cir.1979)(rejecting justification for the seizure of records predating offense as being unsupported in affidavit). Additionally, it is unsettled as to how several of the categories listed in the warrant were relevant at all to the robbery. Nothing in the record, for

example, indicates that a single picture was taken with a cell phone at any time before, during, or after the robbery. The justification for seizing *all* pictures on the phone is a mystery. The link, moreover, between the pictures and the conversations between the conspirators, as alleged in the supporting affidavit, is a bigger enigma.

At the PCR hearing, trial counsel stated that he was unfamiliar with Fourth Amendment jurisprudence. He stated that his knowledge of search warrants was what he had learned in law school. While counsel did object to the admission of the pictures on Rule 803, SCRE, grounds, his failure to object to their admission on Fourth Amendment grounds was error, unsupported by any discernable trial strategy. It is also doubtless that Smiley was prejudiced by counsel's deficient performance. The gun used in the robbery was never recovered. Instead, the state used the pictures of Smiley posing with the gun—pointing out the similarities between the one in the picture and the one in the Guatemex surveillance footage—to link him to the robbery. For this reason, it was both error and prejudice when trial counsel failed to raise a Fourth Amendment objection to the admission of the pictures in question.

III. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE SEVERAL CRITICAL WITNESSES

Smiley also argues that trial counsel's failure to investigate the plea colloquy of co-defendant Robinson, defense witness Diana Melendez, and to meet with Smiley himself and prepare for trial constitutes a violation of the Strickland test. "While a lawyer's failure to investigate a witness who has been identified as crucial may indicate an inadequate investigation, the failure to investigate everyone whose name happens to be mentioned by the defendant does not suggest ineffective assistance." Jones v. United

States, 2:03-3861-18, 2006 WL 2038305 (D.S.C. July 19, 2006) (citing Huffington v. Nuth, 140 F.3d 572, 580 (4th Cir.1998)(internal quotations omitted). "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland, 466 U.S. at 690-91. "Without a doubt, '[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.'" Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007)(citing Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); Strickland, 466 U.S. at 691, 104 S.Ct. 2052).

A. Trial Counsel Was Ineffective for Failing to Investigate Robinson's Plea.

Also linking Smiley to the robbery was Robinson's testimony. By the time Smiley stood for trial, Robinson had plead guilty to misprision of felon and had received a probationary sentence. Evidence was adduced that there may have been a deal between Robinson and the State with regard to Robinson's testimony. At trial, counsel objected to the introduction of Robinson's testimony on the grounds that the transcript of Robinson's plea had not been provided in discovery.

It is not speculative to consider that there some evidence of impeachment value in Robinson's plea. Prior to Robinson's taking the stand, and outside the presence of the jury, Robinson's public defender was called to testify as to her understanding of Robinson's plea negotiation and subsequent plea:

Q. To your knowledge, were, were there any, any promises, rewards, inducements made to a codefendant in this case whether or not they will testify at trial?

A. The best thing to look at would be the guilty plea transcript. As far as a

written agreement or an oral agreement of you get to plea because you testified, no. I do believe, during the guilty plea, I mentioned that he would cooperate and I told him that he may be called as a witness in this trial.

...

- A. But I do believe I said there would be cooperation during the guilty plea, and the best thing to look at would be the transcript word-for-word. It's been sometime.

Evidence in this case indicates that Robinson was involved with the robbery, the degree of which is uncertain. Robinson either gave Pulley his sweater and then discarded the sweater afterwards or it was Robinson himself who was the gunman. His involvement, nevertheless, was somewhat greater than the waiver indictment of misprision of a felon to which he pled. Cf. U.S. v. Dung Vu, 215 Fed.Appx. 9 (1st Cir. 2007)(finding no ineffective assistance where trial counsel failed to obtain co-defendant's plea transcript for sentencing purposes but evidence amply demonstrated defendant's leadership role in the crime).

Trial counsel's belief that the transcript in question was subject to Rule 5, SCCrimP, and Brady v. Maryland, 373 U.S. 83 (1983), was contrary to established law. His failure to request a copy of the transcript is thus error. See Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978)(finding the State has no obligation under Brady to furnish evidence equally available to the accused); State v. Cox, 274 S.C. 624, 266 S.E.2d 784 (1980)(same). The fact that Smiley was deprived of potentially valuable impeachment material thus constitutes prejudice.

B. Trial Counsel Was Ineffective for Failing to Investigate the Testimony of Diana Melendez Prior to Calling Her as a Witness.

Smiley also claims that it was ineffective assistance of counsel for failing to interview Diana Melendez prior to calling her as a witness at trial. At the PCR, trial counsel testified that he did not interview Melendez, an eye-witness to the crime, before subpoenaing her for trial. At trial, Melendez testified on cross-examination:

Q. Did the guy on the right-hand side say anything?

A. I, I don't know.

Q. Don't know. Okay. That's fair. When they were getting ready to leave the store, did they say anything?

A. Only I head the part of let's go, let's go, D I think.

Q. Say it again please.

A. Let's go, D.

Q. Let's go, D. And did the one that was on my right [the gunman] or on my left [Pulley] say that?

A. On the left.

Q. The left?

A. Yes.

Trial counsel further testified at the PCR hearing that he was completely unaware as to what Melendez's testimony would be. Prior to trial, he never interviewed her as to what her testimony would be. Instead, he called her as a witness in order to bring out inconsistencies in her statement to law enforcement. It is clear from the incident report—the source of the inconsistencies that trial counsel sought to bring out—that Melendez

was an eye-witness to the crime in question. In this way, trial counsel's failure to investigate Melendez and her possible testimony was unreasonable. The end result, however, was that Smiley's own witness testified against him. Counsel's failure to investigate an eyewitness to the crime before calling her as a witness constitutes both error and prejudice under Strickland.

IV. Trial Counsel Was Ineffective for Failing to Prepare the Case.

According to trial counsel's testimony at the PCR hearing, he met with his client at least three times prior to trial. The testimony of Private Crawford at the Laurens County Detention Center and the visitation logs she introduced into evidence indicated that counsel only met with Smiley twice. Trial counsel averred that one of the visits could have been erroneously logged by the detention center where counsel met with several clients on the same day. In reply, Private Crawford testified that this was likely impossible, given the protocols the detention center followed when logging attorney-client visits.

Trial counsel also testified that while he conducted some research into the laws applicable to the case, he relied mostly on his consultation with other attorneys in preparation for this case. As addressed above, trial counsel never researched or investigated the laws governing searches and seizures here in question. With regard to the issue of the search warrant specifically, trial counsel conducted no independent research at all. Smiley testified that he and trial counsel hardly discussed the facts of the case prior to trial. In this regard, for example, trial counsel never inquired into the nature of the contents of the cell phone, which would have been probative to the issue of probable cause underlying their subsequent seizure. Trial counsel, additionally, never inquired into

the specific facts surrounding Smiley's illegal arrest. In conjunction with the fact that counsel admitted that he did not research any of the Fourth Amendment issues, trial counsel's failure to interview constitutes both error and prejudice.

CONCLUSION

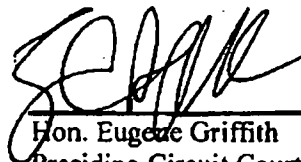
This Court finds the Applicant has satisfied the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant presented specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has satisfied the second prong of the Strickland test – that he was prejudiced by counsels' performance. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance.

Based on the testimony of the witnesses, a careful review of the record and all of the foregoing, the Court finds and concludes that the Applicant has met his burden in establishing that the Applicant is entitled to post-conviction relief. For the foregoing reasons, this application for post-conviction relief is granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Applicant has met his burden in establishing that he is entitled to post-conviction relief and the same is hereby granted. Applicant is ordered remanded to the custody of the Laurens County Detention Center pending further proceedings on this case.

IT IS SO ORDERED.



Hon. Eugene Griffith
Presiding Circuit Court Judge
Eighth Judicial Circuit

This 9th day of August, 20 13
At Laurens, South Carolina

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